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**Media Law and Media Capture in Slovakia and the
Czech Republic after the year 2000**

Dissertation

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Abstract

This dissertation connects theories and notions of media and democracy, oligarchization of media, media capture, and media systems with the economic theory of competition law. Slovak and Czech media laws are analyzed in a comparative legal analysis. Pluralism as the core value in all of the above-mentioned theories is researched. Novel historical periodization of the 1989 – 2020 era is proposed, as these 30 years are framed as a permanent transition of the media system of three distinct types. The Herfindahl-Hirschman index proves that the Slovak and Czech media markets are concentrated or oligopolistic, and this trend was strengthened in the last decade of the examined era. The new tool, the Power of Media Owners (POMO) indicator, is invented to show the strength of media oligarchs across platforms. This proves inefficacy of the cross-media ownership regulations, and it is used to measure the level of media capture. Fourth model of media systems, the non-pluralist authoritarian Eastern Oligarchic Captured model is described and the situation in Slovakia and Czech Republic is compared to it, concluding that both examined countries are in fact closer to more established Polarized Pluralist Mediterranean model, which is framed as a half-way to the Eastern model. Conclusions reveal which changes in law (or their absence) are causing the move of the countries towards more media capture. The normative part of the conclusions ('Media Reform') recommends specific policy steps to prevent this type of backsliding into more authoritarian models.

Abstrakt

Táto práca spája teórie o médiách a demokracii, o zajatí médií (media capture), oligarchizácii médií a mediálnych systémoch s ekonomickou teóriou súťažného práva. Je vykonaná komparatívna analýza českého a slovenského mediálneho práva, pričom v centre výskumu je pluralizmus ako hlavná hodnota spájajúca spomenuté teórie. Dejiny médií po roku 1989 v skúmaných krajinách dostávajú novú periodizáciu, ktorá je opísaná ako pokračujúca transformácia troch rôznych typov. Herfindahl-Hirschmanov Index je použitý ako dôkaz, že najmä v poslednej skúmanej dekáde sa české a slovenské mediálne trhy posunuli ku koncentrovanej až oligopolistickej štruktúre. Vyvinuli sme nový nástroj – indikátor POMO (Power of Media Owners), ktorým sa dá vypočítať sila jednotlivých mediálnych oligarchov naprieč platformami, teda na celom mediálnom trhu. Táto analýza ukazuje nedostatočnosť a neúčinnosť regulácie vlastníctva médií v ČR a SR. Opísaný je tiež štvrtý typ mediálneho systému – nepluralitný, autoritársky, tzv. Východný oligarchický model zajatých médií; situácia na Slovensku a v Česku je porovnaná oproti tomuto modelu. Výsledkom je konštatovanie, že situácia v skúmaných krajinách je bližšie k už zavedenému modelu polarizovaného pluralizmu, avšak tento model je vnímaný ako polcesta k autoritárskemu modelu. Záver opisuje, ktoré zmeny v práve SR a ČR viedli k posunu k väčšiemu zajatiu médií. Normatívna časť záveru nazvaná “Mediálna reforma” ponúka konkrétne politiky, ktoré by mali pomôcť predísť väčšiemu upadaniu týchto mediálnych systémov smerom k autoritárskym vzorom.

Keywords

pluralism, media law, media capture, media systems, Slovakia, Czech Republic, concentration, oligarchization, Power of Media Owners (POMO) indicator, Eastern Oligarchic Captured model

Klíčová slova

pluralizmus, mediální právo, média v zajetí, mediální systémy, Slovenská republika, Česká republika, koncentrace, oligarchizace, POMO indikátor, sila vlastníkov médií, Východný oligarchický model zajatých médií

Length of the work: 601 679 characters with spaces

Declaration

1. I hereby declare that I have compiled this thesis using only the listed literature and resources.
2. I hereby declare that my thesis has not been used to gain any other academic title.
3. I fully agree that my work is used for study and scientific purposes.

In Bratislava on 29. 7. 2022

Peter Hanák

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I would like to express my gratitude to everyone who contributed to this dissertation with advice, especially my first supervisor, PhDr. Tomáš Trampota, Ph.D. and my current supervisor PhDr. Václav Moravec, Ph.D., Ph.D.

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Introduction

Media law and media regulation serve as the basic framework for the media system. They set the rules, processes, and boundaries of formal relationships within the media system, as well as the relationship between the media and actors from other social spheres. The absence of regulation is also a very powerful policy.

These relationships, predominantly between the media and the political and economic actors, as they are regulated or unregulated by law, are the topic of this dissertation.

The context of these relationships can be extremely broad. This is the first major problem we faced: How to narrow down the scope of this project in a way that would bring new and meaningful knowledge? Over the 8 years from the start of this project, we have realized that the initial project was vaguely defined, and the anticipated methods were not to bring anything new, perhaps only a report on a never-ending discussion about the possible changes in law that would inevitably be obsolete very soon. We have started to conduct the planned qualitative interviews among the stakeholders, to find that this might have some analytical value in describing the media transformation from a media history viewpoint, but it brings little insight into the current events and very questionable answers of the normative questions such as what should be done in future.¹

Speaking of changes, since the start of this dissertation project in 2013, everything had changed. The whole context – the media markets in Slovakia and Czech Republic have undergone a new kind of transformation of ownership, the economic models of functioning, and the models of journalism. Politics had also changed, and the connection between these two spheres has strengthened. Therefore, this dissertation had found its focus on these most important developments in both media markets and had narrowed the main scope of the analysis to these events.

If we claim that everything had changed, this includes the literature. The originally intended sources on media law such as Hoffmann-Riem – *Regulating the Media* (1996) are largely obsolete in terms of little reflection on the technological, economic, and political changes. As this dissertation will indicate, so is the law. The law only reacts to the changes and such a reaction requires time, political will, effort, and power. The literature quoted in this dissertation is predominantly newer than 2013, in order to respond

1 The stakeholders do have predictable interests: The state official would call for more regulation, a newspaper publishers would call for less regulation and possibly a state subsidy etc., all in effort to strengthen themselves (in political or economic terms), with inevitably biased views on what is the public interest.

to changing events. New theories and methods have been developed and published since then, which are helpful in understanding and explaining the media and the society from the viewpoint of year 2021.

Even if the scope of our analysis was narrowed down to the regulation of the relationships between media, political, and economic power, there is still a lot to consider. This dissertation deals with several theories and frameworks, some of them extremely broad, such as the theory of democracy. So much has been published on this topic that it would not fit in a library. A dissertation has to deliberately choose only those small parts of this library that are of some use as analytical tools or explain the most relevant context. Sometimes it feels like picking one stone from an entire never-ending universe and putting it on another stone because they fit, so I can build something on them. The point is: I am fully aware that this dissertation contains some simplifications. Every theory in the humanities and social sciences is a simplification of reality, and even the language itself simplifies the complex world. The obvious criticism of this work can be: „The reality is more complex.“ So, if a reader believes something is simplified, I am most likely to fully admit it. Simplification is inevitable.

Some of these simplifications are the reduction of several democratic criteria into analysis of the one that is the most relevant for the relationship between the media and political and economic powers: Pluralism.

If we ask what separates democracy from autocracy in the context of Central and Eastern Europe (CEE) in the examined time and in terms of media, it is the pluralism in the media system.² As we will show, this is strongly related to the above-mentioned relationship between the media and the political and economic powers.

The second big issue that this dissertation had faced was related to the first one, but more of a subjective kind than of an objective kind. As the author in 2013, in hindsight, I had little understanding of the field to be able to judge what new knowledge can be brought to the subject by what kinds of research methods. Over those 8 years, I have evolved as a doctoral student to first understand that the expectations at the Charles University Prague, as well as in European or international academia, are much higher than anything that I have experienced previously during my studies in Slovakia. I needed the travels to the international conferences such as ECREA or IAMCR, a summer school at the Central European University in Budapest, and a semestral exchange at the University of Helsinki

2 As it is going to be explained later, there are several other qualities of a democracy, but for our purposes, we deliberately choose to focus on pluralism.

to adjust my project to these standards. Parallel to my doctoral studies, I have finished a bachelor degree in law in order to understand my subject better, and then I have studied a joint programme called European Master in Law and Economics (EMLE) at universities in Hamburg, Rotterdam and Haifa. This master was focused on applying economic (and therefore empirical) methodology to legal analysis, and it had profoundly changed my views on what can be analyzed in law and how. This resulted in a change in methodology of this dissertation: I finally found the methods that could replace those that did not provide any meaningful insight.

This explains why it took 8 years to finish this dissertation and why it differs at some points from the original project. A full-time career in journalism and the change of thesis supervisor are only minor issues compared to the ones described above. The final decision was made to stay within the original topic and title of this project but to develop and apply a new set of methods. The original title Comparison of media law development in Slovakia and Czech Republic after year 2000 was changed after the small defence of this dissertation, as this was the major comment of the opponent and the committee.

The partial results of our analysis have already been published in academic journals, presented on conferences, and published in conference proceedings. Some are still, at the time of writing, in a review process, and some parts will be submitted to academic journals or presented on a conference also after the defense of this thesis. Everytime something was submitted outside this text before November 2021, it is quoted in this dissertation, and it is clarified in the footnotes – not to self-quote, but to achieve the maximal possible transparency.

After all the changes, the value of this research is of a number of kinds. First, it is a novel application of an economic methodology to the analysis of media law. There is a methodological innovation in application of the economic Herfindahl-Hirschman Index to measure the power of oligarchs over the news media: a new Power of Media Owners (POMO) indicator had been developed and used for the first time. This method may be used by other researchers in the field to measure how their media system is captured by colluded political and economic powers. The analysis can include other smaller platform markets as well, such as the market with political weeklies etc. However, the smaller the market, the smaller the change in cross-platform results. Scholars in the political economy of media or media capture can be inspired by the definitions of objectivized criteria to evaluate the level of media capture. It is a contribution to media capture theory, a novel framework for analyzing these kinds of relations. The results of this inquiry can influence

an update of the contested media systems theory, as was formulated by Hallin and Mancini. This dissertation offers a new view on this theory, including the nonpluralist models present in the geographical region, represented by models such as Russia and Turkey serving as implicit role models for CEE countries with similar collusion of powers over the media.

This project connects several different theories and views on the same events - the oligarchization, the political transformation and the change of the economic model of media, the media capture, the democratic back-sliding, the dewesternization of media in CEE, competition policy, the media systems theory – and relates them with the media law and regulations (or their absence or insufficiency). This dissertation strives to use the overlapping parts of these approaches in order to identify the single common component of these theories – pluralism. This leads to a recommendation for the change of the media laws in terms of influence in the processes to sustain the pluralist model of media in a democracy. For practitioners or politicians, the state officials, and regulators, the conclusions might be called a media reform proposal.

If there is an agenda or an interest that we admit to advocate, it is the watchdog role of journalism, independent of the political and economic powers. That is a normative goal of some of the proposals. For clarification of a possible conflict of interest, the author of this dissertation is a professional journalist. Nevertheless, on the basis of a very broad literature, we see the independency of journalism from the political power as a public good, not just the interest of journalists.

1. Theory: Media and Democracy, Media Capture and Media Systems

In this chapter, we connect several theories from media studies and political science to emphasize an important point. They all have a common aspect – pluralism. We offer a broad theoretical justification for why we are concerned about pluralism in the research of media regulation. This theoretical work makes an order in what is called various names in different theories and unites them around the notion of political pluralism. This chapter also justifies what is described later in the chapter on methods.

We bring several theoretical frameworks in which we can think about the events in the CEE region regarding media in last 30 years: (1) Transformation to liberal democracy (2) Media systems theory and (3) Media capture theory. It will be shown how all of them are connected to the general notion of balance of power and how they all describe and explain similar events in a similar way.

We will focus on theories of liberal and illiberal democracies and the role of the media in them. We will confront and criticize the theories of transition from totalitarian models to democratic ones. We will apply the useful parts of these frameworks to show the developments of the relationship between the media and power in the CEE. *We will use the media capture framework to assess the power relationships in these media markets.* Finally, we will explain what parts of these theories we find useful for understanding of the relationship between the media and the political power in the CEE that can be applied to the situation in the Czech Republic and Slovakia. We demonstrate that these theories describe very similar struggles of the media in these countries.

1.1. Democracy and Media

Democracy is about balancing power. Democratic theories in general discuss how to balance different interests of different social groups, balance between duties and rights, authority and liberty, the state and an individual, power and law.³

1. 1. 1. Transition to a Liberal Democracy?

This dissertation stands on the dialectical thinking about the struggle for power as it is understood by the Frankfurt School of thought: the power is dynamic, nobody gains

3 HELD, D. 2006. *Models of Democracy*. Cambridge: Polity Press. p. 71, 82.

immutable power, for every winner there is a loser that tries to push back.⁴ This allows us to see antagonisms, anxieties and competitions that constantly threaten to undermine and destabilize the powerful.⁵ This view is supported by empirical data – for example together with intensifying autocratization, there is also a growth of popular demand for democracy.⁶ An example of this in real life might be the prodemocratic protests in Belarus in 2020, that came as a reaction of people to very questionable election. There are theories that explain autocratization and democratization as waves on a timeline. „*Every wave of democracy has been followed by setbacks in which the system was seen as inadequate and new alternatives were sought by ambitious leaders and restless masses.*“⁷ Even ancient democracies had these setbacks – for instance the oligarchic coups in Athens 411 BCE and 403 BCE brought strong diversions from the democratic system.⁸

These theories, as starting point of this dissertation, are in contradiction to the Fukuyamaist concept of the full liberal democracy as the ultimate winner of history, the end point in evolution that is going to be reached in the process of transition from the totalitarian regime. This concept had been criticized as just an idea with questionable explanatory power that ignores the „*continued contestability of liberalism and of the liberal conception of the political good within and beyond Western nation-state.*“⁹ The reality in all post-communist countries is not an uncontested victory of liberal democracy. Democracy is not a point that can be reached once without the option of returning. We perceive democracy as a process and perhaps a normative goal – that describes the ideal, which is hardly ever fully reached („*in a permanent state of becoming*“¹⁰), but could be

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- 4 CARAH, N. LOUW, E. 2015. *Media and Society. Production, Content and Participation*. London, Thousand Oaks, Singapore, New Dehli: SAGE Publications. p. 48.
- 5 This argument was applied on media systems dynamics in the previous work of the author: HANÁK, P. 2017. Slovakia on Hallin and Mancini Map: Terminology od Media Systems Theory. IN: *Megatrends and Media. Media Future*. Conference Proceedings from the International Scientific Conference 25th – 26th April 2017. Trnava: Fakulta masmediálnej komunikácie UCM. Online: <https://fmk.sk/download/konferencie/Megatrends-and-Media-Media-future.pdf>. (Quoted on 13. 8. 2020).
- 6 LÜHRMANN, A. MAERZ, S. F. GRAHN, S. ALIZADA, N. GASTADLI, L. HELLMEIER, S. HINDLE, G. LINDBERG, S. I. 2020. *Autocratization Surges – Resistance Grows. Democracy Report 2020*. Varieties of Democracy Institute (V-Dem), University of Gothenburg. p. 4, 7, 9. Online: https://www.v-dem.net/media/filer_public/f0/5d/f05d46d8-626f-4b20-8e4e-53d4b134bfcfb/democracy_report_2020_low.pdf. (Quoted on 20. 8. 2020).
- 7 ZAKARIA, F. 1997. The Rise of Illiberal Democracy. IN: *Foreign Affairs*. Vol. 76. No. 6. p. 42.
- 8 JAKUB, M. 2015. Demokracia v internetovej dobe. [Democracy in the Times of Internet]. IN: BALÍK, S. 2015. *Ako právo reaguje na novoty*. [How Law Reacts to Innovations]. Bratislava: Ústav štátu a práva Slovenskej akadémie vied. p. 301-302.
- 9 HELD, D. 2006. p. 236.
- 10 MARKOWSKI, R. Normative and Empirical Models of Democracy. IN: ZIELONKA, J. 2015. *Media and Politics in New Democracies*. Oxford: Oxford University Press. p. 38.

looked towards. Political theorist R. Dahl in this context refers to „*both a goal or ideal and to an actuality that is only a partial attainment of the goal.*“¹¹

Liberal democracy is constantly challenged, every day contested by its ideological opponents. Fukuyama famously claimed that the totalitarian opponents of democracy – fascism and communism - had been defeated: it is „*the end point of mankind’s ideological evolution and universalization of Western liberal democracy*“.¹² As we will further document in this thesis, the underlying tendencies toward authoritarianism have survived, and they are fighting back. In contradiction to Fukuyama, the opposite camp has also declared victory – the Russian president Vladimir Putin had said in 2019 that liberalism is obsolete, and in fact the number of democracies in the world is on decline.¹³

In this dissertation, we understand democracy as a constant struggle to achieve power balance. In case of disbalance, the power can be shifted to the more powerful; it is accumulated and centralized.

Can a state or a regime still be regarded as democracy if the power is extremely centralized? A line after which there is no democracy anymore clearly exists. The obvious example is when the power is extremely centralized, in the hands of only one person. Centralization of power had been described long ago as typical for the most known totalitarian regimes such as the communist Soviet Union.¹⁴

How many people can hold the power and how should it be distributed? This question has many answers, depending on the democratic theory we consult. Communication is a terrain in which these relations of power are played out.¹⁵

Before we dive deeper into some of the theories, there is one more point to explain. If we think of democracy as a constant struggle, a never-ending movement on the line from autocracy to democracy¹⁶ (and back), then the „transition to democracy“ as a process can never be considered perfectly finished.

11 DAHL, R. A. 1998. *On Democracy*. New Haven, London: Yale University Press. p. 83.

12 FUKUYAMA, F. 1989. The End of History? IN: *The National Interest*. No. 16, p. 3.

13 LÜHRMANN, A. (et. al). 2020. p. 4.

14 This also applies to centralization of power of information. Hannah Arendt provides useful example: In Soviet Union, even statistics in fields of agriculture or crime, were not collected from regions, but created in Moscow and then centrally announced to the regions by the official newspapers Pravda or Izvestija. Obviously, this kind of statistics were fictional. IN: ARENDT, H. 2013. *The Origins of Totalitarianism*. Quoted from the Czech translation: ARENDTOVÁ, H. 2013. *Původ totalitarismu I – III*. Praha: Oikymenh. p. 38.

15 EKO, L. S. 2012. *New Media, Old Regimes: Case Studies in Comparative Communication Law and Policy*. Plymouth: Lexington Books. First paperback edition 2014. p. 21.

16 This is how the Liberal Democracy Index created on Gothenburg University in Sweden operates. Source: LÜHRMANN, A. (et. al). 2020. p. 11.

This is consistent with scholars who are sceptical of the narrative of the 'transition to democracy.' Sparks criticized the paradigm of transitology as mistaken in its fundamental approach: It had the underlying assumption that post-communist countries are all heading from totalitarian communism to democratization, with a definite end, democracy as practiced in north-west Europe and North-America.¹⁷ Also, it was a transformation towards market economy – a model of commercial media operated for profit. The reality was not that easy and clear for Sparks in 2008, that is why he claimed that transitology is in crisis: „*Nearly two decades later, this account of the trajectory of both society and the media no longer seems at all convincing.*“¹⁸ Perhaps the scholars of transitology simply made the same mistake as Fukuyama: they did not predict the opposite direction of the change – that the political systems can move towards less democratic, or that the for-profit operation of media can change for a different model, as will be shown later in this thesis. Other authors also admit that the transition paradigm did not anticipate the illiberal backsliding of Hungary and Poland.¹⁹

Especially in the post-communist world, there are several examples of states that were seen as transitioning to democracy, but they never delivered. Levitsky and Way claim that the study of post-Cold War hybrid regimes was initially biased: Viewed through the lens of democratization, hybrid regimes were frequently categorized as flawed, incomplete, transitional democracies, and autocratic turns were characterized as failure to consolidate democracy, stuck in transition, or even as a state of permanent transition. „*Such characterizations are misleading. The assumption that the hybrid regimes are (or should be) moving in democratic direction lack empirical foundation. Rather than partial, incomplete or unconsolidated democracies, they should be conceptualized for what they are: a distinct, non-democratic regime type.*“²⁰ On the other hand, the authors admitted that some countries marked as transitioning have democratized – and as one of the examples they list Slovakia.²¹

In the CEE, there are clear examples of countries that became at least formally democratic in their transition period, but they either never reached the same level or stage of liberal

17 SPARKS, C. 2008. After Transition: The Media in Poland, Russia and China. IN: JAKUBOWICZ, K. SUKOSD, M. 2008. *Finding the Right Place on the Map. Central and Eastern European Media Change in a Global Perspective.* Chicago: Intellect Books. p. 44.

18 Ibid. p. 45

19 PERUŠKO, Z. VOZAB, D. ČUVALO, A. 2021. *Comparing Post-Socialist Media Systems. The Case of Southeast Europe.* London, New York: Routledge Taylor&Francis Group. p. 134.

20 LEVITSKY, S. WAY, L. A. 2010. *Competitive Authoritarianism. Hybrid Regimes After the Cold War.* Cambridge: Cambridge University Press. p. 3 - 5.

21 Ibid. p. 3 – 4.

democracy as their western partners, or they even took the reversed direction at some point – towards the „illiberal democracy“ - which as we will show, is a less developed democracy – or no democracy at all. For example, Hungary in 2009 had fallen into category „Liberal Democracy“ in the Liberal Democracy Index, but in 2019 the Orbán regime had been evaluated as the first non-democratic member of the European Union, being defined as „Electoral Autocracy.“²²

1. 1. 2. What is democracy?

Democracy as the rule of people can have many forms – some of them are ideal academic concepts, some of them are practices of societal groups and institutions, including countries and international institutions. In this chapter, we will define democracy, to be able to clearly exclude what is not democratic. The most relevant variants will be shown. There is a range from minimalist to maximalist conceptions of what it takes for a country to be democratic. The minimal requirements are: (1) Elected officials (2) Free, fair and frequent elections (3) Freedom of expression (4) Alternative sources of information (5) Associational autonomy (6) Inclusive citizenship.²³ Some of them do not need explanation in this thesis (representativeness of the elected officials), some of them have rich literature and numerous court decisions behind them (freedom of expression), but some of them need a deeper look, because they are crucial for the main argument of this dissertation.

Access to alternative sources of information is described as follows: „*Citizens have a right to seek out alternative and independent sources of information from other citizens, experts, newspapers, magazines, books, telecommunications and the like. Moreover, alternative sources of information actually exist that are not under the control of the government or any other single political group attempting to influence public political beliefs and attitudes. And these alternative sources are effectively protected by law.*“²⁴

In other words, the plurality of media is among the very minimal democratic standards. One of the most famous scholars of democracy, Giovanni Sartori, claims that free elections with unfree opinions mean nothing: free public opinion is conditioned by polycentric structuring of media and their competitive interplay.²⁵

22 LÜHRMANN, A. (et. al). 2020. p. 4, 13, 16.

23 DAHL, R. A. 1998. p. 85.

24 Ibid. p. 86.

25 SARTORI, G. 1987. *The Theory of Democracy Revisited*. New Jersey: Chatham House Publishers. p. 98, 102.

The minimalist notion of democracy can be understood as a set of procedures for the selection of political leaders; in contrast to that, the maximalist understanding is a complex interaction of institutions and cultural practices, of procedures and norms that penetrate all aspects of society.²⁶ These different understandings of what is democracy, are visible in real politics in CEE at the moment, and it had always been present, since the fall of the communist totalitarian regimes, also within the national politics. The Czech Republic is given as an example: two leading political figures of first 20 years of transformation, Václav Havel and Václav Klaus, representing the two opposing concepts.²⁷ These two views are not the only ones – there is a range not just in between them, but far beyond them as well.

Sartori defined democracy *a contrario* – by defining what is not democracy. For him, the opposite of democracy is autocracy (not authoritarianism, dictatorship, or totalitarianism). Therefore, democracy is non-autocracy, which means that power is limited, controlled, and polycratic. „*The implications of the autocratic principle are that power will be uncontrolled, unlimited, and as concentrated (monocratic) as circumstances ... permit.*“²⁸ In other words and crucially for the argument of this dissertation: the concentration of power is a move against democracy.

A similar argument can be found in older literature as well. Lasswell and Kaplan also dwell on the concentration of power versus dispersion, the latter meaning separation of powers. In their view, dictatorship is rule by concentrated power, whereas in balanced rule, the power is dispersed. They see centralization and decentralization of power as territorial or functional distribution.²⁹

This is applied to media and information power as well: The totalitarian regimes have a unicentric, vertical, top-down structure of informing the public – the opinion is created by the elites. In contrast, in democracies, the opinion-formation processes are not characteristically hierarchic, and often they start from media.³⁰

26 VOLTMER, K. 2015. Converging and Diverging Pathways of Media Transformation. IN: ZIELONKA, J. 2015. p. 221.

27 Ibid. p. 220.

28 SARTORI, G. 1987. p. 207.

29 LASSWEL, H. D. KAPLAN, A. 1950. *Power and Society. A Framework for Political Inquiry*. New Haven: Yale University Press. p. 224 – 225.

30 SARTORI, G. p. 99.

1. 1. 3. Place of the media in democracy

Media and democracy condition each other: democracy cannot thrive without a free and vibrant media, and the opposite is also true.³¹ To decide freely in an election, a citizen needs civic competence – an enlightened understanding of possible government actions, that is only acquired in relation to freedom of expression: citizens have opportunities to express their views, learn from one another, engage in discussion and deliberation, read, hear and question experts, political candidates and persons they trust and learn in other ways that are dependent on freedom of expression.³²

Without qualitative media, democracy is unlikely to function properly – media are the source of basic information for active citizens as well as for politicians to allow for exchange of preferences between the citizens and the political elite.³³ „*Free expression means not just that you have a right to be heard. It also means that you have a right to hear what others have to say.*“³⁴

The need for several alternative³⁵ sources of information and access to them by the people can be interpreted as the vital need for plurality in democracy. The alternative sources of information cannot be marginalized (as they are in non-democratic regimes), but the majority of people must have real opportunity to access them. „*The population must have access to the media, there must be a significant degree of pluralism in all media, either internal or external, the press should reflect different views and ideologies, and the press must not be under control of the state or under control of a such a limited number of private owners that pluralism is limited.*“³⁶

The democratic theory warns against a situation in which the government controls all the important sources of information or a single group enjoys a monopoly in providing

31 ZIELONKA, J. 2015. p. 19.

32 DAHL, R. A. 1998. p. 97.

33 MARKOWSKI, R. 2015. p. 38.

34 DAHL, R. A. p. 97.

35 Alternative is understood here as: (1) Different than and independent from the state, (2) Different than and independent from the most powerful groups in society (such as the oligarchs), (3) Potentially different in opinions than the others, free to express any opinions based on facts. We are aware that the word „alternative“ have been misused for labeling conspiracy or disinformation oriented media. We strongly disagree with this label being used in this context. In terms of Radical Democracy theoretical vocabulary, we could see as „alternative“ any media that are still based of fact-checking, but are in some kind of struggle against the hegemonic order: they are free to criticize the government or inform critically on societal problems, they are likely to have bottom-up, not top-down structure of ownership.

36 BECKER, J. 2004. Lessons from Russia. A Neo-Authoritarian Media System. IN: *European Journal of Communication*. Vol. 19(2). p. 146.

information: citizens must have access to alternative sources of information that are not under control of the government or dominated by a group or point of view.³⁷

Many scholars agree that if power is concentrated, there is a risk of abuse. Baker introduced the notion of separation of powers into media power as well: More diverse, less concentrated media ownership should ideally bring more democratic distribution of communicative power – diversity of viewpoints, formats, contexts, sources and values.³⁸ Media are at structural risk of vulnerability to censorial pressure from the outside – but the risk is less serious if there is a variety of media owners on the market: The widest possible dispersal of media power reduces the risk of the abuse of communicative power in choosing or controlling the government.³⁹

Protection of pluralism seems to be the most important factor. Lack of efficient media policy, especially lack of (or dysfunctional) media ownership regulation preventing media capture, leads to weaker development of media markets and lower professionalization of journalists.⁴⁰

Earlier in this thesis we have explained the dialectical theory: for every force, there is a counter-force. But what happens if the counter-movement is suppressed? What happens if there is no freedom of speech to express and develop the counter-movement against the autocratic ruling elite? Or what if there is freedom of speech, but it is only formal, and in reality the dissenting voices do not have fair (or any) access to channels to reach a wider audience? Is it possible that voters do not hear what others (than the ruling elite) have to say?

In the times of social networks, everybody can publish almost anything, so the answers on possibilities of information monopoly or oligopoly are complex. Some authors have predicted that the freedom of speech on the Internet would bring a situation of endless possibilities for alternative information, the absolute pluralism. It is vital how many people listen or read these alternative sources – and that since the information on the Internet is very dispersed, there are still only few sources that have substantial impact. Despite the seemingly endless opportunities of the Internet, activist groups have found it

37 DAHL, R. A. 1998. p. 97.

38 HANÁK, P. CHUDOBA, D. 2017. *Media Ownership Regulation in the Digital Age: Is Europe Responding?* Paper presented at the IAMCR 2017 conference in Cartagena, Colombia, July 16. - 20. 2017.

39 BAKER, E. C. 2007. *Media Concentration and Democracy: Why Ownership Matters*. Cambridge: Cambridge University Press. p. 16, 6 – 53.

40 PERUŠKO, Z. VOZAB, D. ČUVALO, A. 2021. p. 218-219, 232.

difficult to get the attention of the mainstream media, what they say can also be lost on the web, partly because their statements tend to get a low engine search listing.⁴¹ Authoritarian regimes such as Russia found ways to control the Internet – the government controls the infrastructure, Internet gateways, exchange points and nodes⁴² and enabled only a handful of new leading brands to extend their ascendancy over technologies.⁴³ The structure of the Internet seems to remind unregulated capitalism: corporate dominance, market concentration, controlling gatekeepers and many more.⁴⁴

Therefore, we believe that the problem of media pluralism is still as urgent as before the social media era. Governments with autocratic mindsets seem to believe the same. Empirical data from the top 10 countries that autocratized the most over the decade 2009 – 2019 show that the governments in these countries first restricted the scope of media and civil society; Hungarian and Polish media laws are listed as an example.⁴⁵

However, there are also other ways to achieve the control over media than direct changes of the media law; there are ways the powerful use to gain more influence over the public debate. Many of these ways are connected to economic pressures that result in less pluralism.

The theory had predicted a decrease in the quality of democracy with decreasing pluralism, even a threat to its existence. In 2004 Becker wrote: „*It is possible that one day corporate concentration will lead us to a new paradigm of undemocratic media, but I do not believe we are there yet.*“⁴⁶ Many years later, the obvious question is: Are we already there?

This will be examined separately, by concepts such as media capture, oligarchization, and instrumentalization. But since democracy seems to have various forms, let us first introduce two competing concepts of democracy, relevant for the CEE region, and describe the ideas behind them and their real-life practice related to the media.

41 CURRAN, J. FENTON, N. FREEDMAN, D. 2012. *Misunderstanding the Internet*. London, New York: Routledge. p. 14.

42 EKO, L. S. 2012. p. 260.

43 CURRAN, J. FENTON, N. FREEDMAN, D. 2012. p. 179.

44 Ibid. p. 180.

45 LÜHRMANN, A. (et. al). 2020. p. 16-17.

46 BECKER, J. 2004. p. 147.

1. 1. 4. Liberal Democracy

The concept of liberalism historically emerged to uphold values of freedom of choice, reason and tolerance – as opposite to tyranny, absolutism and religious intolerance; liberalism sought to define uniquely private sphere independent of the church and state.⁴⁷ It comes from western tradition that seeks to protect an individual's autonomy and dignity against coercion, whatever the source – state, church or society; it argues that humans have natural inalienable rights; and its canonical figures include Milton, Jefferson, Madison, Hobbes, Locke, Smith, Montesquieu, Mill or Berlin.⁴⁸

One of the original goals of liberalism was to free civil society (personal, family and business life) from political interference, and gradually liberalism developed into the doctrine that individuals should be free to decide on their preferences in daily life: all variants of liberalism had united around constitutional state, private property and competitive market economy.⁴⁹ The most important liberal doctrine is that individuals were born free and equal, with natural inalienable rights at birth.⁵⁰

The idea of separation of powers is also crucial. All liberals always feared „the tyranny of majority“ or centralization of authority, usurpation of power that is both horizontal (from other branches of national government) and vertical (from regional and local authorities as well as private business and other non-governmental groups).⁵¹ In other words, they feared concentration and centralization of power. Already John Locke desired division of public power, namely between legislative and executive branches, Montesquieu separated judiciary, and stressed institutionalized separation and balance of powers.⁵²

Combined with anticipations of democratic government such as popular sovereignty, majority rule, constitutionalism, and representative system of parliamentary government, the work of John Locke had stimulated liberal democratic government (although Locke himself can not be clearly considered as a democrat).⁵³

Separation of powers is also the key philosophy behind the US Constitution – because its creators feared accumulation of power: „*What is distinctive about the American system is not how democratic it is but rather how undemocratic it is, placing ... multiple constraints*

47 HELD, D. 2006. p. 59.

48 ZAKARIA, F. 1997. p. 26, 30.

49 HELD, D. 2006. p. 59.

50 Ibid. p. 59.

51 ZAKARIA, F. 1997. p. 30.

52 HELD, D. 2006. p. 64, 67-68.

53 Ibid. p. 65.

on electoral majorities. American system is based on ... pessimistic conception of human nature, assuming that people cannot be trusted with power. “⁵⁴

There are criteria to measure liberal democracy used by the Liberal Democracy Index: quality of elections, suffrage, freedom of expression and the media, freedom of association and civil society, checks on the executive, and the rule of law.⁵⁵ This index views liberal democracy as the highest level of democracy itself, „electoral democracy“ being ranked lower, even though not all the literature on democratic theory would agree. Some authors claim the opposite – that in reality, democracy is a plural phenomenon: there are several diverging variants of democracy⁵⁶ or that not all differences are of a degree, but of a kind.⁵⁷

1. 1. 5. Illiberal Democracy

Long before Viktor Orbán proclaimed Hungary as a democracy of a different kind, the term „Illiberal Democracy“ was analyzed by Fareed Zakaria: as regimes that are democratically elected, but routinely ignore constitutional limits on their power and deprive their citizens of basic rights and freedoms (termed constitutional liberalism, representing civil liberties, rule of law, and separation of powers).⁵⁸ Zakaria mentions Slovakia specifically on the first page of his article as an example of illiberal democracy – because in 1997 it was under the rule of authoritarian prime minister Vladimír Mečiar.⁵⁹ The distinction lies in the separation of political liberties (democracy) from civil liberties (liberalism): „*Constitutional liberalism has led to democracy, but democracy does not seem to bring constitutional liberalism. ... Constitutional liberalism is about limitation of power, democracy about its accumulation and use.*“⁶⁰

The Liberal Democracy Index also distinguishes between (and is composed of) Electoral Democracy Index and Liberal Component Index – the first examines whether Dahl’s components (already listed in this thesis) are present de facto, the latter measures whether electoral democracy is complemented by the *rule of law*, *civil liberties* and sufficient

54 ZAKARIA, F. 1997. p. 38-39.

55 LÜHRMANN, A. (et. al). 2020. p. 10.

56 MARKOWSKI, R. 2015. p. 40.

57 SARTORI, G. 1987. p. 183 – 185.

58 ZAKARIA, F. 1997. p. 22 – 23.

59 The article is very illuminating reading: He starts with a 1996 quote of an american diplomat in Bosnia Richard Holbrooke who said: „Suppose the election was declared free and fair, and those elected are racists, fascists, separatists, who are publicly opposed to peace and reintegration. That is the dilemma.“ ZAKARIA, F. 1997. p. 22.

60 ZAKARIA, F. p. 30.

constraints on the executive by the judiciary and legislature – because these are generally considered as vital elements of liberal democracy.⁶¹ It is important to stress again, that freedom of expression and alternative sources of information are not the liberal component – they are the core of electoral democracy.

In Slovakia, there is a famous quote from back-then president of the parliament of the long-governing party Smer-SD Pavol Paška: „*Win the election and you can do anything.*“⁶² This fits the definition of illiberal democracy – gain the power by fulfilling the basic procedural requirements of democracy, and then there are no limits. It is in direct opposition to the concept of liberal democracy, which has checks and balances designed to prevent power accumulation: „*The trouble with these winner-take-all systems is that, in most democratizing countries, the winner really does take it all.*“⁶³

So, is 'illiberal democracy' even a democracy? Dahl claims that authoritarian leaders like to give their regimes a name that is a special type of democracy – „proletarian democracy“ as a nickname for totalitarian regime in the Soviet Union given by V. I. Lenin, or „people’s democracy“ created in past for CEE countries under the Soviet domination. He continues: „*But why should we cravenly accept the claims of despots that they really are democrats? A cobra does not become a dove because its owner says so. No matter what a country’s leader and propagandist may claim, we are entitled to judge a country to be a democracy only if it possesses **all** of the political institutions that are necessary to democracy.*“⁶⁴

Viktor Orbán would like Hungary assessed as an electoral democracy without the liberal component. Unfortunately, the reality of his politics is, measured and supported by data, electoral autocracy.⁶⁵ Different source calls the Hungarian regime „polarized authoritarianism.“⁶⁶

The case of Viktor Orbán is used here not just as an example – he is the most vocal leader, who serves as a role model to other politicians in CEE, and in fact, knowingly or not, other countries of this region seem to follow. Eastern Europe and Central Asia (in this case in one category) had fallen record low on the Liberal Democracy Index 2020 since

61 LÜHRMANN, A. (et. al). 2020. p. 10.

62 Pavol Paška said that in 2014 in public parliamentary debate in the National Council of Slovak Republic, to the members of parliament representing the opposition. Later that year he was forced to resign from his position because of his connection to a scandal with overpriced healthcare technology tender, together with the health minister from the same party. He had died in 2018.

63 ZAKARIA. 1997. p. 41 – 42.

64 DAHL, R. A. 1998. p. 101.

65 LÜHRMANN, A. (et. al). 2020. p. 6.

66 ZIELONKA, J. 2015. p. 16.

the dissolution of the Soviet Union in 1991 – with the most outstanding cases (after Hungary) being Poland and Czech Republic.⁶⁷

What happens first when a liberal democracy becomes an illiberal one? In Poland, the Law and Justice Party (PiS) had already changed the media law not long after its electoral victory in 2005. The new coalition adopted a law on composition of the National Broadcasting Council and replaced members of the media authority with new members closely linked with the governing parties; next year they also appointed their own president of the Polish Television (he accepted the post after talks with prime minister Kaczynski).⁶⁸

The events in Hungary are even more telling. Right after the victorious election Viktor Orbán and his party Fidesz have used the parliament to pass new regulations that (1) required media content to be balanced and not to incite hatred against any majority⁶⁹ and (2) established new media authority to enforce the rules: The National Media and Telecommunication Authority, headed by the Media Council, chaired by former Fidesz MP, appointed directly by prime minister Orbán.⁷⁰ By securing control over the regulation, Fidesz practically denied access of potential new players to broadcast licences.⁷¹ While before 2010, there had been multiparty control over the media in Hungary, after this year one-party control over the media was established, the ruling party took all.⁷² The public service media were merged under the new control of one new politically appointed manager, forcing out most of their critical journalists⁷³. They were replaced by pro-Fidesz journalists, in some cases their loyalty being rewarded by high salaries (several times the average).⁷⁴

The change did not only mean that Hungary is now a textbook example of media capture (we will elaborate on that later in this thesis) but it brought a constitutional change as well. Orbán had changed the constitution, demolishing the institutions established in early years of transformation to democracy – he significantly weakened counterbalances to

67 LÜHRMANN, A. (et. al). 2020. p.12.

68 BAJOMI-LÁZÁR, P. 2015. Political Actors and the Colonization of the Media. IN: ZIELONKA, J. 2015. p. 73.

69 DRAGOMIR, M. 2019. *Media Capture in Europe*. Media Development Investment Fund. Online: <https://www.mdif.org/mdif-publishes-report-on-media-capture-in-europe/>. (Quoted on 20. 8. 2020). p. 14.

70 BAJOMI-LÁZÁR, P. 2012. The Party Colonization of Media. IN: *East European Politics and Societies*. Vol. 27(1). p. 70.

71 DRAGOMIR, M. 2019. p. 14.

72 BAJOMI-LÁZÁR, P. 2012. p. 81.

73 DRAGOMIR, M. 2019. p. 14.

74 BAJOMI-LÁZÁR, P. 2012. p. 83.

government power and limited the independence of judiciary.⁷⁵ The weaker judiciary also means weaker protection of journalists. One-party colonization of media offers no checks and balances, ruling party may abuse its influence over the media without encountering much counter-pressure – as a result, media freedom may be severely restricted.⁷⁶

The prediction came true – Hungary had fallen in the media freedom rankings, we have seen several media outlets closing down or laying off their journalists. The new media authority blocks mergers of Hungarian media with independent foreign publishers and allows their mergers with Fidesz-friendly investors.⁷⁷ We could go on with examples from Hungary, but the point was already made – the media power is increasingly concentrated in the hands of the ruling elite around the Fidesz party.

Also other examples from the authoritarian/autocratic world show that one center of the power, usually in hands of one leader, does not tolerate pluralism of information, especially in broadcast media. In Russia, some degree of pluralism had emerged after the dissolution of the Soviet Union and the Yeltsin era; private televisions created a public sphere where the government could be criticised, but Vladimir Putin reasserted the control over these private media: NTV as a leading source of non-state broadcast news fell into the hands of government-controlled Gazprom company, the TV with the second largest national reach TV6 ended up in closure and Putin had also gained the control over the state-owned ORT, independent journalists had been harassed.⁷⁸

Some of the key signs for a country that is declining on the Liberal Democracy Index include nonstate actors harassing independent journalists and also the use of political violence by nonstate actors.⁷⁹ This had occurred in our examined countries as well – such as in the case of a murder of a Slovak journalist Ján Kuciak in 2018.

According to authors of the Liberal Democracy Index, if a country is on a decline in their index, first comes curtailing the press freedom and controlling the state media (to the level that they are not even allowed to report for example on Gretha Thunberg or human rights issues) – only much later the indicator on the freedom and fairness of elections fell.⁸⁰

75 POLYAK, G. 2019. Media in Hungary: Three Pillars of an Illiberal Democracy. IN: POLONSKA, E. BECKETT, CH. 2019. *Public Service Broadcasting and Media Systems in troubled European Democracies*. London: Palgrave Macmillan. Online: https://www.researchgate.net/publication/330378386_Media_in_Hungary_Three_Pillars_of_an_Illiberal_Democracy. (Quoted on 4. 10. 2020). p. 3.

76 BAJOMI-LÁZÁR, P. 2012. p. 85.

77 POLYAK, G. 2019. p. 8.

78 BECKER, J. 2004. p. 141 - 151.

79 LÜHRMANN, A. (et. al). 2020. p. 18, 20.

80 Ibid. p. 16.

Among indicators of democracy substantially declining in the decade 2009 - 2019, the most prevalent were: (1) government media censorship efforts, (2) civil society repression, (3) harassment of journalist, (4) media self-censorship, (5) civil society entry and exit, and (6) freedom of academic and cultural expression.⁸¹

So, if proponents of 'Illiberal democracy' are speaking about weakening the liberal aspects of democracy, evidence from their countries shows that they are also weakening freedom of expression and alternative sources of information that are not the liberal components, but at the very core of democracy itself. As Zakaria concludes: „*Democracy without constitutional liberalism is not simply inadequate, but dangerous, bringing with it the erosion of liberty, the abuse of power, ethnic divisions and even war.*“⁸² According to Zakaria, the enemy of liberal democracy is unchecked centralization.⁸³

1. 1. 6. Other models

In the variety of the models of democracy, there are several theories different from the liberal – illiberal division, that offer possible alternative explanations of the process in CEE. We will not develop them further in the thesis; we just offer them as an illustration of how these events can be theoretically conceptualized from multiple diverse points of view, and in some cases (such as Radical Democracy), we will occasionally borrow their vocabulary.

Some of the flaws of the above-described 'illiberal democracies' could also fall into the definition of *competitive authoritarian regime*. It is a hybrid regime with important characteristics of both authoritarianism and democracy; formal democratic institutions exist, parties compete for power, but the competition is unfair: the incumbents abuse their power to manipulate the elections, they have unfair media access, abuse the state resources or they skew the playing field by harassment and violence.⁸⁴ As a result, the power is often concentrated in the hands of the ruling elite. There are many nicknames for this, for example, Russia under the rule of Vladimir Putin was labeled „managed democracy“⁸⁵ - eventhough assessed by empirical data it cannot be defined as a democracy.

81 Ibid. p. 20.

82 ZAKARIA, F. 1997. p. 43.

83 Ibid. p. 32.

84 LEVITSKY, S. WAY, L. A. 2010. p. 3, 5.

85 BECKER, J. 2004. p. 146.

On the other side, there are different models praising pluralism than just the classic liberal democracy, for example, the concept of radical democracy. The authors of the theory sometimes even modify its name as 'radical and plural democracy' to stress that pluralism is, in fact, the core value of this democratic model. „*The multiplication of political spaces and the preventing of the concentration of power in one point are ... preconditions of every truly democratic transformation of society,*“ claim Laclau and Mouffe in their classic work.⁸⁶ According to them, democracy needs pluralistic discourse to contest the hegemonic power.

1. 2. Including the economic argument

The struggle for democracy is not the only relevant framework for thinking about the relationship between power and media. The media need not just formal guarantees of press freedom and plurality – they need the economic base for its realization. There are economic reasons and arguments for current situation that are substantially interconnected with the democratic arguments.

For instance, Slovak voters seem to expect and value different aspects of democracy than media freedom: a study had shown that they value social justice, namely combating poverty and leveling out of income, and if these economic dimensions of democracy are evaluated poorly in terms of performance, it might also contribute to the delegitimization of the political system.⁸⁷ Other authors emphasize that the current events on media markets are in fact struggles over resources.⁸⁸⁸⁹

There are also other economic arguments for the plurality of information. The lack of information facilitates the use of public office for private gain and political underperformance in terms of public good production.⁹⁰ There is a clear need to connect the economic and democratic arguments.

86 LACLAU, E. MOUFFE, CH. 2001. *Hegemony and Socialist Strategy. Towards a Radical Democratic Politics*. Second edition. London, New York: Verso. p. 178.

87 MARKOWSKI, R. 2015. p. 50, 55.

88 BAJOMI-LÁZÁR, P. 2015. IN: ZIELONKA, J. 2015. p. 76 – 78.

89 VOLTNER, K. 2015. p. 227.

90 CORDUNEANU-HUCI, C. HAMILTON, A. 2018. *Selective Control. The Political Economy of Censorship*. Policy Research Working Paper 8556. World Bank Group. Online: <https://openknowledge.worldbank.org/handle/10986/30283>. (Quoted on 13. 11. 2021). p. 6.

1. 2. 1. Media capture

There is one new analytical framework that is very relevant for media in the CEE countries, which connects the economic arguments with the democratic ones, Media capture theory.

The theory comes from the economic concept of regulatory capture. Nobel Prize-winning economist Joseph E. Stiglitz and others helped to extend it to media studies. Media must be independent of those on whom they are supposed to be reporting: media capture occurs when one or more of the parties media are supposed to be monitoring (government, corporations, or other institutions in the society), capture the media – so they fail to perform their societal watchdog function.⁹¹

The theory of democracy is mainly focused on power relations between the media and the state (government). Media capture also includes private interests. The threat to journalistic independence does not come from the government alone, but also from its collusion with a private sector – through advertising, state subsidies, or media owners: censorship is a thing of the past, now journalists receive more nuanced signals as to what should be covered.⁹²

Media capture is described also as the opposite to journalistic autonomy, as undue influence of the state (or groups connected to the state or government) over media and its democratic role, measured by the share of foreign ownership of the main media, pressure placed on journalists, state advertising and the length of the rule of one party.⁹³

Essentially, media capture seems to be connected to what is described as „instrumentalization of media“ by various groups - or oligarchization of media (if the instrumentalization is exercised by the oligarchs). Instrumentalization is a theory under which the actors of power relationships instrumentalize or utilize media to get the upper hand in power struggles.⁹⁴ Under media capture theory the media are instrumentally used by their capturers to gain certain goals connected to economic or political power. Media capture is also shown to be a negatively correlated factor with media freedom in an empirical study: „*The necessary conditions for higher media freedom in the period of*

91 STIGLITZ, J. E. 2017. *Toward a taxonomy of media capture*. IN: SCHIFFRIN, A. (ed.). 2017. *In the Service of Power: Media Capture and the Threat to Democracy*. National Endowment for Democracy. Online: <https://www.cima.ned.org/resource/service-power-media-capture-threat-democracy/>. (Quoted on 29. 10. 2021). p. 4.

92 SCHIFFRIN, A. 2017. p. 1.

93 PERUŠKO, Z. VOZAB, D. ČUVALO, A. 2021. p. 219.

94 EKO, L. S. 2012. p. 21.

digital modernity are consolidated liberal democracy, ... economic development, state support for digital infrastructure, and a lack of media capture. ⁹⁵

The term media capture is also used in this context by scholars from fields of media and politics, such as Jan Zielonka.⁹⁶ Media capture is defined as a collusion between the political class and media owners, a situation in which most of the news media are part of a governmental-business cartel that controls the flow of information, with the aim of protecting their unrestricted and exclusive access to public resources.⁹⁷

Furthermore, in political theory, it was also extended from „state capture“ - in which political parties use state resources for example to allocate public jobs to party supporters, and they do so also in the media, in a strategy described as „party colonization of media“ because „parties and senior politicians ... in the former communist countries have often taken control not only of the state but of the media as well.“⁹⁸

Since media capture (with the economic argument) is a broad concept and offers several analytical tools, we will first explain this concept, and only then will we relate it with oligarchization.

The term media capture has been used in academic literature since 2005 – 2006, especially since notable article of Besley and Prat⁹⁹ who start with example of Russia: freedom of the press is formally guaranteed and censorship is abolished, but the media in Russia are not free – for instance, the broadcasters are owned by state-controlled companies. They claim that media owners can have profit from collusion with the government; and that media capture depends on how costly it is to silence all the media – therefore, the more media, the costlier and more difficult the capture is.¹⁰⁰ Their economic model is consistent with previous findings such as that high level of state influence over media is correlated with higher levels of corruption, higher level of political longevity of the chief of executive and also that voters turnover is lower and corruption is higher in countries with highly concentrated media ownership.¹⁰¹

Italian economist G. Corneo also tried to put the relationship between media, voters, and monopolist media owner into mathematical models. He provided welfare analysis,

95 PERUŠKO, Z. VOZAB, D. ČUVALO, A. 2021. p. 234.

96 ZIELONKA, J. 2015. p. 1, 18, 73.

97 DRAGOMIR, M. 2019. p. 26.

98 BAJOMI-LÁZÁR, P. 2015. IN: ZIELONKA, J. 2015. p. 75.

99 BESLEY, T. PRAT, A. 2006. Handcuffs for the grabbing hand?: media capture and government accountability. IN: *American economic review*. Vol. 96. No. 3.

100 Ibid. p. 725.

101 Ibid. p. 726.

claiming, for example, that: „*If there is a sufficiently strong private concern with objective information, captured media induce a welfare loss because the information not transmitted to the population is very valuable.*“¹⁰² In other words, if someone buys silence of media, society is losing some significant value that can possibly be quantified. Also, he had concluded that increasing wealth concentration can undermine media objectivity and raise the risk of media being corrupted by a patron, who is willing to pay for manipulating the electorate.¹⁰³ Perhaps his article could be criticized for oversimplification, because he puts complex problems as objectivity, honesty, or influence over the election into simplistic mathematic formulas. Nevertheless, his view of an economist can help us see some logics in the relationship that was not seen before: *concentration of wealth* possibly having detrimental effects, perhaps even being prerequisite to media capture.

Another economist Maria Petrova agrees that *income inequality* can decrease media freedom¹⁰⁴, for example higher oil revenues are associated (or possibly only correlated) with lower media freedom.¹⁰⁵ Some authors frame this problem in Marxist-economic context: as the information-age version of the industrial-age struggle over the control of the means of production.¹⁰⁶

Petrova had developed the idea of media capture into a theory of inequality in the society. The unequal societies may have a low level of redistribution (low taxes) because the median voter may misperceive his or her self-interest as a result of an information campaign by the rich.¹⁰⁷ Simply – the rich buy the media or influence in them (capture them), and then fool the poor to support the interests of the rich.

Petrova did not really measure media capture, but she had used proxies – the evaluation of media freedom from Freedom House. For availability of alternative sources of information she had used another proxy, the number of Internet users. She had concluded that the availability of an alternative source of information leads to greater media

102 CORNEO, G. 2005. Media Capture in a Democracy. The Role of Wealth Concentration. In: *Journal of Public Economics*. 90 (1-2): p. 37 – 58., p. 47.

103 Ibid. p. 48.

104 PETROVA, M. 2008. Inequality and media capture. In: *Journal of Public Economics*. 92 (1-2). p. 196.

105 PETROVA, M. 2015. Media Capture Outside Advanced Democracies. In: *Comparative Democratization*. Vol. 13. No. 3. Online: https://mk0apsaconnectbv6p6.kinstacdn.com/wp-content/uploads/sites/26/2017/10/2015_13_3.pdf (Quoted on 24. 8. 2020). p. 20.

106 NOAM, E. 2015. *Who Owns the World's Media?: Media Concentration and Ownership Around the World*. Oxford: Oxford University Press. p. 3.

107 PETROVA, M. 2008. Inequality and media capture. In: *Journal of Public Economics*. 92 (1-2). p. 184.

freedom.¹⁰⁸ One might object that in this study the countries with early widespread Internet were the ones with free media – which could be the same countries with early literacy or early developed education (for instance Norway). Other factors than just those considered by her theory could play a role here. Petrova also concluded that many of the relationships only worked in democracies, not in autocracies (the effect was much smaller).

The rich, the corporate elite, the private business, play an important role in media capture theory. The independent media seem to stand on the other side, against the interests of the rich. Article from economists Dyck, Moss, and Zingales in *The Journal of Law&Economics* provides a deeper explanation for this argument. They see media as a counterbalance to organized groups of concentrated interests – media pack information into entertainment and inform otherwise passive voters – and elected officials are sensitive to informed voters, as the authors have shown on data from the history of the US Senate.¹⁰⁹ Similar reasoning is offered by other authors – free media are efficient in combating corruption.¹¹⁰

This might help us to see possible reasons of media capture: media are a disruptive element preventing the capture of state by private interest, media simply stand in the way of the rich. So, to capture the state and public resources, they first try to capture the media. The authors see media outlets as agents delegated by their customers to collect information on their behalf. If the media are agents in terms of economics, there can be the classical principal-agent problem. In other words: How do you (the customer of media, the principal) know that the agent (the newspaper) is acting in your interest and not in the interest of somebody else? To use an example from Petrova, how do you know that lower taxation advocated by your favourite newspaper is really better for you (or the society), and not better just for somebody much richer who had captured the newspaper (by owning it or incentivizing it by advertisement)?

Dyck, Moss, and Zingales ask an important question: Why do media collect and disperse information? To maximize profits. But here lies the problem – this only works in favour of the consumers if the ownership is dispersed (not concentrated) or if the large

108 Ibid. p. 207.

109 DYCK, A. MOSS, D. ZINGALES, L. 2013. Media versus Special Interests. IN: *Journal of Law&Economics*. Vol. 56. No. 3. p. 521 – 553.

110 SCHULZE, G. G. SJHRIR, B. S. ZAKHAROV, N. 2016. Corruption in Russia. IN: *Journal of Law&Economics*. Vol. 59. Online: <https://www.journals.uchicago.edu/doi/pdf/10.1086/684844>. (Quoted on 19. 11. 2021). p. 147, 162.

shareholder is a profit-seeking media company.¹¹¹ If the opposite is true, that the controlling shareholders in media company have an interests in regulated industries, the interest of their consumers might be outweighed by political interest of the owner.¹¹²

Here they touch on a crucial point: the changing economic model of many news media. That is what Rasmus Kleis Nielsen from Reuters Institute for the Study of Journalism at Oxford also points out in his text on Media Capture. „*Media ownership has historically been driven by just three motivations: power, public service, and profit. Power was the primary motivation in the early years of news until mass-market journalism turned the industry into a profitable business. Digital media are changing the equation again,*“¹¹³ Nielsen starts his chapter.

According to him, the most media in most of the world for the most of history have not been independent but used by someone powerful to exercise power, achieve their goals. Journalists were instrumentalized and did not have autonomy. A public service is a separate story, but more important is the fact that in western civilization (at first in the USA) penny papers started a commercial revolution and allowed the news industry to develop towards a degree of editorial independence – because media independent from the powerful could now exist on the motivation of profits. But this model is changing – the Internet and the digitalization of media caused that people (the audience) can access information from many sources for lower price than ever before, the digital economy is dominated by large technology companies (that take away large part of the advertising market) – and these two factors combined are destroying the business model of sales and advertising that for profit media have historically relied on.¹¹⁴ Also other sources claim that the conditions that made the birth and persistence of the liberal model of journalism do not exist in many countries.¹¹⁵

This also means that the barriers to entry the market are coming down and various players that are not motivated by profit, but by power, are entering the industry, turning it into influence-oriented industry.¹¹⁶ Other sources agree: media markets are disrupted by new

111 DYCK, A. MOSS, D. ZINGALES, L. 2013. p. 548.

112 Ibid.

113 NIELSEN, R. K. 2017. Media capture in the digital age. IN: SCHIFFRIN, A. (ed.). 2017. *In the Service of Power: Media Capture and the Threat to Democracy*. National Endowment for Democracy. Online: <https://www.cima.ned.org/resource/service-power-media-capture-threat-democracy/>. (Quoted on 29. 10. 2021). p. 33.

114 Ibid. p. 33 – 39.

115 ZIELONKA, J. 2015. p. 2.

116 NIELSEN, R. K. 2017. p. 40.

technologies and financial crisis, which makes them an easier purchasing target.¹¹⁷ Media in countries with small populations are even more vulnerable – if language barriers prevent cross-border circulation, the national market is often too small to support substantive pluralism.¹¹⁸

Media capture has an impact on the development of media markets: it is an impediment, a break, slowing down the development of media and journalistic professionalization.¹¹⁹ „Media capture is about what in journalism research is called instrumentalization, media being operated not for profit or for public service, but as an instrument for the pursuit of other interests“.¹²⁰

The Czech Republic is an example: The aggregate turnover of the top Czech publishers had decreased by 3 billion Czech crowns (approx. 114 500 milion euro) or 20 percent between 2008 and 2011 and newspapers also faced the growth of online news and decrease in paid circulation.¹²¹ This led to a change of ownership from foreign media (profit-seeking) companies to local tycoons with interests outside media markets.¹²² Czech Republic and Slovakia were particularly affected¹²³, and these events had been elsewhere described as dewesternization of the media market in CEE due to oligarchization.

1. 2. 2. Oligarchs and the CEE region

In CEE, the transition from totalitarian communist regimes to market economy involved a huge transfer of public property to the private sector, in many cases neither transparent, nor fair.¹²⁴ This redistribution of wealth to the private hands helped to create a new type of elites – several business people with political connections became rich.

To connect this with the economic arguments on oligopolies, let us remind that also outside of CEE, the media markets tend to be systematically oligopolic and they tend to

117 DRAGOMIR, M. 2019. p. 3.

118 VOLTNER, K. 2015. p. 226.

119 PERUŠKO Z. et. al. 2021. p. 218-219, 232.

120 NIELSEN, R. K. 2017. p. 38.

121 VOJTĚCHOVSKÁ, M. 2017. The gradual takeover of the Czech media system. IN: SCHRIFFRIN, A. 2017. p. 99.

122 This will be described in detail and analyzed further in the thesis, more is to find in our previous works: HANÁK, P. 2016. Criticism Towards Oligarch in „his“ Newspaper as a Reaction to Ownership Change. IN: CHUDINOVÁ, E. 2016. *Médiá – moc – manipulácia*. Bratislava: Paneurópska vysoká škola. Online: https://www.paneurouni.com/wp-content/uploads/2017/03/e_chudinova_a_kol_media_moc_manipulacia.pdf. (Quoted on 19. 11. 2021). p. 65 – 80.

123 DRAGOMIR, M. 2019. p. 5 – 6.

124 ZIELONKA, J. 2015. p. 6

concentrate even more¹²⁵ – whether we think about the big global content creators like Disney, Murdoch News Corporation etc., or the big tech and media companies such as Google or Facebook, or even the national markets.

National TV markets are a very good example almost in all European states – there are several big players with large shares of the market. Typically, there are just a few competing companies, each operating several channels, general and specialized, but all together not in hundreds, but maximum dozens of channels, under control of (typically) few companies. The European dual system means that the commercial channels are supplemented by public service television - in some countries the PBS TV might have similar or larger share of the audience as the commercial television; the numbers vary.

That is the reality in the Czech Republic and Slovakia as well: the TV markets are dominated by two large commercial TV companies, each offering a general channel and several specialized, and supplemented by the public service TV and several very small specialized channels. In other words: These markets are already oligopolic - they have always been oligopolic from their early development in the 1990s. Various explanations can be given for systematic oligopolism in the media markets. One of them is that the companies with capability of investing the most capital into new technologies are the winners – and they buy out their competitors (or merge, or create joint ventures or cooperate).¹²⁶ The other is that TV licences are a resource that is so scarce that it can be distributed only to several companies. By this point, it is only a description of the economic reality, without the political context. What happens if we consider all the political context, such as the media having important role in the political system and having influence over the election? And what if the political actors step in and try to control the media to use them as instruments to gain more power? And what if the economic power is very well connected to the political? That is where scholars start to discuss *oligarchization* of the media.

Oligarchization is a process that was widely observed and described across all of the countries of the CEE region, and it is understood predominantly as the change of media ownership from the hands of foreign for-profit media companies to the hands of the local economic elite – wealthy business people with multiple interests outside media, very often

125 PROKOP, D. 2001. *Der Kampf um die Medien*. [The fight over the media]. Citation from the Czech translation. PROKOP, D. 2005. *Boj o média. Dějiny nového kritického myšlení o médiích*. Praha: Nakladatelství Karolinum, Univerzita Karlova v Prahe. p. 344 – 345.

126 Ibid. p. 348.

in regulated industries such as banking, energy, telecommunications, agriculture and food processing, healthcare, etc.¹²⁷

Sukosd brings the question of how much the oligarchization is in fact a Russian concept, since it was in Russia in early 1990s where seven major oligarchs built their empires by connecting the economic (industrial) empires with political organizations (allied with Kremlin) and media empires: they tended to instrumentalize their media - so can we talk of Russification of CEE media in the meaning of oligarchization?¹²⁸

Štětka answers that the term oligarchization is associated with Russia and other post-Soviet countries, but nowadays it is more universal phenomenon.¹²⁹ It is indeed a concept that is typical for instrumentalization of media by the owner, and it can be framed by other authors (such as Bajomi-Lázár) also as indirect party colonization of media (since oligarchs are connected to the politicians, mostly political parties).

How do oligarchization and media capture differ from legitimate partisan media? The answer is the concentration of the media market. Baker claims that partisan media can be beneficial for democracy, but only if the distribution of power is relatively fair.¹³⁰ Otherwise media partisanship combined with media concentration can lead to authoritarian results.¹³¹ Also Prokop claims that the media oligopolies can create a dominant ideological power, a threat for democratic creation of opinion.¹³² Perhaps this is a reason why oligarchy is characteristic for the eastern countries with weaker democratic traditions. Here, it is important to remind that Russia is in the bottom 20 percent of the Liberal Democracy Index, with similar scores as Congo, Laos, United Arab Emirates, Cuba, and Cambodia.¹³³

If we define the oligarchs as the wealthy people or groups with ties to the politics, and if we notice that these kinds of cartel have gained a lot of power over the media in CEE, then oligarchization of media and media capture are two terms with very similar meaning.

127 ŠTĚTKA, V. 2015. The Rise of Oligarchs as Media Owners. IN: ZIELONKA, J. 2015. p. 86 – 90.

128 BALČYTIENĖ, A. BAJOMI-LÁZÁR, P. ŠTĚTKA, V. SUKOSD, M. 2015. Oligarchization, de-Westernization and vulnerability: Media between democracy and authoritarianism in Central and Eastern Europe. A roundtable discussion. IN: *Journal of Media, Cognition and Communication*. Vol. 3, no. 1 (2015). p. 132.

129 Ibid. p. 133.

130 HANÁK, P. CHUDOBA, D. 2017. *Media Ownership Regulation in the Digital Age: Is Europe Responding?* Paper presented at the IAMCR 2017 conference in Cartagena, Colombia, July 16. - 20. 2017.

131 BAKER, . 2007. p. 18.

132 PROKOP, D. 2005. p. 349.

133 LÜHRMANN, A. (et. al). 2020. p. 25.

We suppose that media capture is a broader term and that oligarchization is a part of the media capture process.

1. 2. 3. How do the powerful capture the media?

The methods of oligarchic media capture can vary, and many of them had already been described previously in this dissertation, as the case of Hungary – Fidesz and Viktor Orbán capturing the media market. Literature also depicts more general knowledge of what the powerful do when they capture the media.

First of all, they seem to target media authorities and regulators (that oversee both public and private sectors), public service broadcasters and their supervisory boards, and they also target media regulation.¹³⁴ This is a practice that requires cooperation between the powerful elite and the government, and it is called the regulatory capture, well known from economics. In media capture theory, it applies to authorities that regulate the media. Next steps are: control over the public service media, use of state financing as a control tool (state subsidies, state advertising etc.) and ownership takeover by the oligarchs aligned with the ruling politicians.¹³⁵

Coming from economics, media capture theorists stress the importance of economic incentives: sometimes direct bribes, sometime other forms: the most prevalent form quoted in media capture literature is advertising provided by government to the media.¹³⁶ Bajomi-Lazár also stressed that it is not just the political motivation (to influence the public to gain votes), but also the economic one: to feed and intellectual circle around a party from the resources of media or state (in case of public service media and regulatory authorities), to earn money from business around public service television or from state advertising or newspaper subsidies – to extract the resources and channel them to party supporters.¹³⁷

Indirectly, the connection between business, media, and politics can be used for far greater enrichment of the elites. The owners (oligarchs) can trade their influence in media for favorable regulation in sectors such as energy, health services, food industry, telecommunications, banking, and many others. In fact, such cases have already been proven in CEE.¹³⁸

134 BAJOMI-LÁZÁR, 2015. p. 77.

135 DRAGOMIR, M. 2019. p. 11.

136 PETROVA, M. 2015. p. 4.

137 BAJOMI-LÁZÁR, P. 2015. p. 76 – 77.

138 Ibid. p. 79.

1. 2. 4. Why is it a problem?

Questions are raised whether media owned or captured by the oligarchs are still able to perform their democratic watchdog role and there is also another threat to democracy – the usage of media to attack political opponents of the owner directly undermines fair political competition.¹³⁹

The watchdog role is ideally practiced by (at least to some extent) autonomous journalists in media that operate in the environment of press freedom. According to some analysts and scholars, the media freedom and the performance of the news media are poorer in the younger democracies of CEE: Political pressures and the deficit of media freedom in these jurisdictions are attributed to the poor design of media regulatory frameworks and the deficient implementation of media laws.¹⁴⁰¹⁴¹

How does democracy function if one of its pillars, the independent watchdog media („the fourth estate“) is not working properly? The answer is most likely to lie in performance of the other checks and balances, such as independent judiciary. As it has been demonstrated earlier in this dissertation, in the CEE region it is not so self-evident that we could rely on this. In contrast, the independence of the judiciary is a long-lasting problem of international concern, mass demonstrations, criminal investigations, etc. in several CEE countries, including Hungary, Poland, the Czech Republic, and Slovakia.

Some authors go even further and call party colonization of media (partially synonymized with media capture) a form of clientelism, which undermines the efficient and professional functioning of the state, and a form of corruption in which public and media resources are traded for partisan loyalties – media freedom and independence is often lost in the process, media are politicized in ways that undermine qualities of democracy such as electoral fairness, accountability, and transparency.¹⁴² Media content is less transparent and comprehensible for readers, because the captured dailies often do not admit to support specific politicians, but they support their interests secretly.¹⁴³

Pluralism of media (as a precondition to democracy itself) is probably the biggest concern of all.

139 VOJTĚCHOVSKÁ, M. 2017. p. 103.

140 BAJOMI-LÁZÁR, P. 2015. p. 81.

141 DRAGOMIR, M. 2005. *Television across Europe: regulation, policy and independence*. Volume 1. Budapest, New York: Open Society Institute. ONLINE: https://www.opensocietyfoundations.org/uploads/46941ffe-6fd0-48a3-aac5-2858b56fa86d/volone_20051011_0.pdf (Quoted on 6. 9. 2020). p. 21, 43, 49.

142 BAJOMI-LÁZÁR, P. 2015. p. 80.

143 VOJTĚCHOVSKÁ, M. 2017. p. 103.

Many media outlets were forced to concentrate by the economic situation on the market. After the 2008 economic crisis, some of the traditional news organizations were driven toward mergers and acquisitions as a way of reducing costs.¹⁴⁴

The threat to pluralism is so great that the European Commission considers it greater than the economic consequences. Plurality of media is a legitimate reason why an European state may interdict a concentration regardless of economic arguments and even regardless of positive compatibility decision by the European Commission – if the state finds that the concentration threatens plurality of the media.¹⁴⁵

In general, there are two arguments on how media capture distorts pluralism: the political and the economic. They are closely related.

The economics is as follows: If media system (including regulation) is captured, public funding to private media outlets can be channelled to those who sympathize with the policies of the capturers, in a way that is able to starve the critical outlets by means of denying them access to state-controlled resources.¹⁴⁶ In other words: too much market power in hands of a group of few people can create an oligopolistic or near-monopolistic situation on the market, where competitors are driven out of business.

The political argument: If media companies are driven out of the market, there is a lack of pluralism. Pluralism is vital for democracy to such an extent that without pluralism, there is no democracy anymore. And it works in the opposite direction as well: more pluralism (and independent ownership) means better protection from media capture.¹⁴⁷

Altogether, media capture has become a tool for undermining democratic society and handing it over to an authoritarians, and it may even provide a gateway for Russian or Chinese influence in vulnerable democracies (since it is their political-economic model: extreme media capture, capitalism without democracy).¹⁴⁸

1. 2. 5. Competition Law and Economics as a solution?

From the standpoint of economic analysis of law, concentration of media ownership can be analyzed in Competition Law&Economics. In the economic theory of monopolies or oligopolies, the strong players have an advantage and can push others out of the market.

144 NELSON, M. M. 2017. What is to be done? Options for combating the menace of media capture. IN: SCHIFFRIN, A. 2017. p. 147.

145 OSTER, J. 2017. *European and International Media Law*. Cambridge: Cambridge University Press. p. 478.

146 BAJOMI-LÁZÁR, P. 2015. IN: ZIELONKA, J. 2015. p. 80.

147 BESLEY, T. PRAT, A. 2006. p. 4.

148 NELSON, M. M. 2017. p. 145.

Subsequently, significant concentration and instrumentalization of media might fall into definition of *abuse of the dominant position on the market*, which is often prohibited by competition law (including European law) and should be prevented by regulation and functioning antimonopoly institutions. The dominant position on the media market is determined by audience and advertising revenue, which are relevant factors from both economic and media-pluralist perspectives and it means that just the economics-based approach is also a contribution to safeguarding media pluralism.¹⁴⁹ There are concerns that even a media cartel might occur in small markets such as the Czech Republic, where the entire market is dominated by just a few publishers, all of them with ties to politics.¹⁵⁰ In the European law, states are obliged to prevent such a situation. They must prevent influential economic or political groups from obtaining a dominant position over the media and interfere with editorial freedom.¹⁵¹

It is sometimes difficult to measure the influence of an oligarchic group that owns or captures media. Several tools and partial solutions were invented. For example, Reporters Without Borders (RSF, from French) had developed Indicators of Risk to Media Pluralism which break down the media capture problem into 10 dimensions that can be measured on a scale from low to high: (1) Audience concentration (2) Ownership concentration (3) Regulatory safeguards against ownership concentration (4) Cross-media ownership concentration (5) Regulatory safeguards against cross-ownership concentration (6) Ownership transparency (7) Regulatory safeguards for ownership transparency (8) Political control over media outlets (9) Political control over media funding (10) Political control over news agencies.¹⁵²¹⁵³

There are above mentioned proxies that help to measure the market power of a media firm – share of audience or advertising revenue. Germany protects plurality of opinion specifically – an undertaking should not acquire a dominant power of opinion, which is (in a simplified version) influence over 30 percent of viewers.¹⁵⁴ However, German highest administrative court and also Oster claim that this „market share“ proxy is controversial and insufficient to address challenges to media pluralism.¹⁵⁵

149 OSTER, J. 2017. p. 472.

150 VOJTĚCHOVSKÁ, M. 2017. p. 98 - 106.

151 OSTER, J. 2017. p. 477.

152 NELSON, M. M. 2017. p. 157..

153 REPORTERS WITHOUT BORDERS. *Media Ownership Monitor*. Online:

<https://www.rcmediafreedom.eu/Tools/Monitoring-tools/Media-Ownership-Monitor-Reporters-without-Borders>. (Quoted on 4. 10 .2020)

154 OSTER, J. 2017. p. 482 – 483.

155 Ibid. p. 484.

Some theories indicate that sometimes even more media concentration can be beneficial, because mergers based on economic reasons, vital for the economic survival of the company, clearly exist. It is the role of the antitrust authority to assess that.

1. 2. 6. Recommendations from the economic theories

It is not only competition law that has a role in protecting the public interest in media capture theory. Other fields of regulation than just the antitrust law are also important, for instance defamation law¹⁵⁶ - which can be a matter of civil lawsuits, or even criminal libel. This can be used to suppress critical journalists – to deter them from their work.¹⁵⁷

In media capture theory, normative recommendations can also be made. These are the proposed solutions:

- the ability of media to earn independent revenues¹⁵⁸ mostly from subscription and sales, not primarily advertising,¹⁵⁹
- ensuring media diversity, using antitrust rules and public interest tests, requiring full disclosure of owners and their economic and political interests,¹⁶⁰
- reforming the antitrust rules, including new aspects into the evaluation of media mergers, namely those that affect political accountability and review possible danger of capture,¹⁶¹
- the advertising budget of a media company should be diversified and dispersed, not concentrated,¹⁶²
- ensuring a fair and level playing field for all participants in the media ecosystem¹⁶³, namely equal access to media for the participants of the political competition, impartiality and maximal possible objectivity in electronic media, and its fierce enforcement,
- the government should take transparent action to protect media plurality – possibly funding or subsidizing independent journalism through schemes with clear rules¹⁶⁴ that are distanced from political bargaining,

156 PETROVA, M. 2015. p. 4.

157 More in our previous publication: HANÁK, P. 2016. Criminalisation of Journalism: Criminally Prosecuted Slovak Journalists in European Perspective. IN: Mediální studia 2/2016. Online: https://medialnistudia.fsv.cuni.cz/front.file/download?file=2016_02_05_hanak.pdf.

158 PETROVA, M. 2015. p. 20.

159 Dyck, Moss and Zingales analyzed how the famous muckraking magazines changed the American society for better by their reporting having influence over the decisions of elected senators. They were able to serve against the concentrated interests of corporations, because these magazines relied almost exclusively on sales. Source: DYCK, A. MOSS, D. ZINGALES, L. 2013. p. 550.

160 NELSON, M. M. 2017. p. 146, 152.

161 BESLEY, T. PRAT, A. 2006. p. 24

162 DYCK, A. MOSS, D. ZINGALES, L. 2013. p. 522, 548.

163 NELSON, M. M. 2017. p. 159 – 160.

164 Ibid. p. 151.

- strengthening the independence of media regulators – reforming broadcasting councils to make them independent of political meddling, passing a law forbidding members of parliament (or other politicians) from owning shares in media companies,¹⁶⁵
- rules on state advertising – ensuring that government advertising budgets are allocated in an open and competitive way independent of political influence,¹⁶⁶
- promotion of transparently funded public service media, setting a standard for public interest news as defined by independent journalists and editors. Governance should be independent and funding should be adequate to ensure high-quality journalism; independent bodies should be established to act as a buffer zone between government and news production,¹⁶⁷
- political support and high-level advocacy for independent media and freedom of expression,¹⁶⁸
- redistribution of advertising revenues from the biggest players such as Google or Facebook to producers of news.¹⁶⁹

1. 3. Media Systems

Among different countries with different sets of democracy and media power, there are clear patterns that are defined in media theory as media systems. We explain the basic theory and offer a contribution to it – we attempt to update and improve the most prevalent concepts, to use them later in our analysis.

What we understand as media systems is connected to the more general notion of „governmentality“ - the logics, structures, practices of exercising the power, the underlying political and cultural mentalities within which the media regulators operate, which have given rise to specific media and communication regulatory regimes.¹⁷⁰ As such, it is obvious that the media systems are interconnected with media law and democracy.

165 Ibid.

166 Ibid. p. 152.

167 Ibid.

168 Ibid.

169 Ibid. 155.

170 EKO, L. S. 2012. p. 20.

1. 3. 1. Hallin and Mancini: The original 3 models

Daniel C. Hallin and Paolo Mancini¹⁷¹ developed a widely used but also widely contested framework of media systems, predominantly for the Western Europe and North America. Some of their main criteria are closely connected to the subject of this dissertation, the relationship between the power and the media. Hallin and Mancini criteria for media systems classification are: development of media markets, political parallelism (how close are political parties or groups to the media), level of journalism professionalism, and most importantly for this thesis, the level of state intervention to the media.

They had described 3 main media systems in Europe and the North America: (1) Liberal, Anglo-American model (UK, USA, Canada, Ireland) (2) Democratic Corporatist North-Western European model (Sweden, Norway, Denmark, Finland, Netherlands, Belgium, Luxembourg, Germany, Switzerland, Austria) and (3) Polarized Pluralist Mediterranean model (Portugal, Italy, Greece, Spain and France).

The Liberal model is described as the one with the widest freedom of expression, minimal state intervention to media (also in terms of regulation, subsidies or public service broadcasting), high level of journalistic professionalism (the watchdog role of journalists), low political parallelism (media not directly interconnected with the political parties) and medium level of early press development. It is a model for commercial media. The market forces and private owners of the media, and subsequently the audience, have the most power in this model.

The Democratic Corporatist model is described as the one with democratic, but regulated, freedom of expression. The level of press freedom is very high, even though the media are subject to regulations. All of them have to be justified in courts protecting democracy and other human rights. There is a higher level of state intervention in the media - through regulation, but also through subsidies and the strong role of public service broadcasting. Journalism is highly professional and independent, and media are mostly not connected to the political parties. There is some level of power with societal interest groups (like the unions, the church, NGOs, etc.) - for instance, they have nominees in the committees that have powers over the selection of public service media management. These representatives of civil society play a role in ensuring pluralism of the public service

171 HALLIN, D. MANCINI, P. 2008. *Systémy médií v postmoderním světě. Tři modely médií a politiky.* Czech translation of *Comparing Media Systems*. Praha: Portál.

media.¹⁷² Typically, these countries had high literacy very early, so a large group of newspaper readers could develop that allowed vertical mass communication, from the elite to the masses. The power is with more actors: the state, the market (owners and the audience), the societal groups.

The third model - of Polarized Pluralism - is characterized by lower readership of newspapers and therefore a different model of communication – the newspapers are not read by the masses, but it is mostly communication within the elite. The role of state is stronger, in regulation especially. The freedom of expression is lower than in the other two models. The media are interconnected with political parties or political interest groups, often political parties or politicians own media, the media are partisan and so are the readers of newspapers¹⁷³. Also, the level of journalism professionalism is lower – journalists can be politicians at the same time, they repeatedly enter and exit the profession for other jobs (such as PR or even politics).

These criteria had been not just widely used, but also widely criticized by many authors, including the author of this text.¹⁷⁴ For instance, Bruggemann et al. say that not only the degree, but also the kind of state intervention to the media system matters: state interventionism may complement private media with public media, it may support private media, or restrict them; media freedom or regulation of media ownership would serve as better variable to distinguish Western media systems.¹⁷⁵

Our main concern is that some of the original criteria are outdated in the digital age, mainly when they try to assess media systems from the development of the market with printed press. This might have been a factor in history, when these countries developed their media markets, but it might not be valid for assessing media systems universally in the times when daily newspapers had already lost a lot of readers to the online platforms, social media, etc. Simply put, daily press circulation or their political affiliation is becoming more and more irrelevant. Moreover, if the criterion of daily newspaper circulation is applied now on countries with much later development of literacy, they

172 PERUŠKO, Z. VOZAB, D. ČUVALO, A. 2021. *Comparing Post-Socialist Media Systems. The Case of Southeast Europe*. London, New York: Routledge Taylor&Francis Group. p. 166.

173 HALLIN, D. MANCINI, P. 2008. p. 130.

174 HANÁK, P. 2017. Slovakia on Hallin and Mancini Map: Terminology od Media Systems Theory. IN: *Megatrends and Media. Media Future*. Conference Proceedings from the International Scientific Conference 25th – 26th April 2017. Trnava: Fakulta masmediálnej komunikácie UCM. Online: <https://fmk.sk/download/konferencie/Megatrends-and-Media-Media-future.pdf>. (Quoted on 13. 8. 2020).

175 BRUGGEMANN, M. (et. al.) 2014. Hallin and Mancini Revisited. Four Empirical Types of Western Media Systems. IN: *Journal of Communication*. Vol. 64. Issue 6. p. 1044.

would all fall into the Polarized Pluralist model, if we judge them only by the newspaper readership structure.

Another thing is that the criteria cannot be clearly separated. The partisanship of the media and the professionalism of the journalist are connected to each other. They are also linked to the level of state intervention to the media market since it is the politicians who decide on regulations. Therefore, we suggest to analyze media systems with respect to the level of media capture, oligarchization and instrumentalization. It is not a completely novel idea, some scholars had similar thoughts with including press freedom and foreign ownership into the main criteria to assess the media systems in CEE.¹⁷⁶

The criteria connected to the level of democracy – such as the freedom of speech, the liberty from regulations, and also political parallelism and professional independence of journalists - might not be applicable on nondemocratic countries like China or Russia at all. Hallin and Mancini themselves claim that they meant their book *Comparing Media Systems* not as an universal handbook of comparative studies of media systems, but as an analysis restricted to 18 specific nations within the western civilization.¹⁷⁷ That is why later they edited a book *Comparing Media Systems Beyond the Western World* including analyses of authors from various nonwestern countries, including Russia, China, etc.

Hallin and Mancini themselves had made some corrections to their theory recently. Mancini reminds that they had predicted a gradual converging trend towards the liberal (Anglo-American) model on the basis of television being a global unifying force – however, this did not materialize due to the Internet taking the place of television as the unifying force shaping the communication field – and it is not the liberal model anymore, since the Internet can also lead to control and censorship.¹⁷⁸

The convergence hypothesis was tested empirically with various results, but mostly the researchers concluded that there are still substantial differences between the countries of the Polarized Pluralist model and the others, which made Hallin and Mancini abandon their convergence hypothesis, stating that it was a mistake to articulate it as a

176 PERUŠKO, Z. VOZAB, D. ČUVALO, A. 2021. p. 6.

177 HALLIN, D. MANCINI, P. 2012. *Comparing Media Systems Beyond the Western World*. Cambridge: Cambridge University Press. p. 1.

178 MANCINI, P. 2020. Comparing Media Systems and the Digital Age. IN: *International Journal of Communication*. 14(2020). p. 5764 – 5765.

hypothesis.¹⁷⁹ However, they stress that media systems are not static, and they do undergo a long-term change.¹⁸⁰

Moreover, the Internet had brought de-institutionalization and political volatility (emergence of new unconventional political parties), the power of the old institutions (including traditional legacy mass media) is weakened, as well as other institutions of political parallelism – therefore this criterion is less relevant.¹⁸¹ However, most importantly for our work, polarization is strengthened and the role of the state, the level of market fragmentation and the rational legal authority remain important as criteria.¹⁸²

1. 3. 2. Place of CEE in media systems

The second book edited by Hallin and Mancini was only one of many attempts to apply this framework to other countries, including the CEE. Although it is often uneasy to find a unified category for as many media systems, some research has tried, and they arrived at several different conclusions. Many authors suggest that the Polarized Pluralist model is the closest to the CEE (and to Slovakia specifically as well¹⁸³), comparing the region to Italy, Spain and Portugal or picturing it as clearly Mediterranean.¹⁸⁴ Very often they quote older publications from Splichal and Sparks to write about „Italianization“ of media systems in CEE¹⁸⁵, some even speak of „Iberianization“.¹⁸⁶ Školokay claims that the CEE is a mixture of the Polarized Pluralist and the Liberal model¹⁸⁷, similarly Dobek-Ostrowska placed Poland and other CEE countries between these two models, with minor „few elements of the Democratic-Corporatist model and country’s postcommunist legacy.“¹⁸⁸

179 HALLIN, D. MANCINI, P. 2017. Ten Years After Comparing Media Systems: What Have We Learned? IN: *Political Communication*. 34: 2. p. 163 – 164.

180 Ibid. p. 167.

181 MANCINI, P. 2020. p. 5767 – 5769.

182 Ibid. p. 5771.

183 ONDRÁŠIK, B. 2008. Media Ownership, Regulation, Concentration and Competition in the Slovak Republic. IN: DOBEK-OSTROWSKA, B. GLOWACKI, M. 2008. *Comparing Media Systems in Central Europe*. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego. p. 209.

184 JAKUBOWICZ, K. SUKOSD, M. 2008. *Finding the Right Place on the Map. Central and Eastern European Media Change in a Global Perspective*. Chicago: Intellect Books. p. 28.

185 WYKA, A. W. 2008. In Search of the East Central European Media Model. IN: DOBEK-OSTROWSKA, B. GLOWACKI, M. 2008. p. 67.

186 PEREIRA, J. S. 2015. Variety of Media Systems in Third-Wave Democracies. IN: ZIELONKA, J. 2015. p. 244.

187 ŠKOLKAY, A. 2008. Research on Mass Media in Comparative Analysis. IN: DOBEK-OSTROWSKA, B. GLOWACKI, M. 2008. p. 33.

188 DOBEK-OSTROWSKA, B. 2012. Italianization (or Mediterraneanization) of the Polish Media System? IN: HALLIN, D. MANCINI, P. 2012. p. 49.

Others argue that these countries are a hybrid combination of these two with the Democratic Corporatist model; some authors even conclude that some states from CEE are closer to the Democratic Corporatist model than to anything else.¹⁸⁹ There are also theories that compare some CEE media systems to the Asian or Latin American new democracies. Recently, Croatian authors came with new empirical typology, based on original Hallin and Mancini criteria, concluding that there are 3 models: (1) The South-Eastern (Greece, Spain, Italy, the Balkans, Lithuania, Hungary and Russia), (2) The European mainstream (Slovakia, Czech Republic, Austria, Germany, Poland, Belgium, Estonia, Germany, France, Slovenia, Ireland, Portugal) and (3) The Nordic model (Finland, Denmark, Sweden, Netherlands).¹⁹⁰

These analyzes are usually around 10 years old, or, as in the case of the Croatian study, rely on data that are from 2010¹⁹¹ or older. The media systems in CEE have undergone substantial changes since, predominantly in terms of media ownership, which is now much more connected to the political elite, which affects the criterion of political paralelism. We could easily argue that for example, in Czech Republic, where 12 years ago scholars have found almost no political paralelism¹⁹², today the situation would be assessed differently, since one of the main political figures is closely tied to large portion of the market with daily newspapers.

If Poland and Slovakia were in between the southern Polarized Pluralist model and the Liberal commercial model in 2008 and 2011, have they not shifted since, especially with closer look to the changing nature of the media ownership? We have explained that there is a clear shift from the for-profit to the for-influence pattern of media ownership motivation. If in the 1990s and 2000s the main processes that pushed these countries towards the Liberal model were privatization, commercialization and tabloidization¹⁹³, where did oligarchization and media capture in 2010s push them?

This dissertation will analyze some of the changes, previously nicknamed Berlusconiization, implying similarity to the Italian model under government of media and

189 JIRÁK, J. TRAMPOTA, T. 2008. O vztahu médií a politiky v komparativní perspektivě. [On the Relationship between Media and Politics in Comparative Perspective]. IN: HALLIN, D. MANCINI, P. 2008. p. 17, 19.

190 PERUŠKO, Z. VOZAB, D. ČUVALO, A. 2021. p. 5.

191 Ibid.

192 JIRÁK, J. TRAMPOTA, T. 2008. p. 19.

193 DOBEK-OSTROWSKA, B. 2012. Italianization (or Mediterraneanization) of the Polish Media System? IN: HALLIN, D. MANCINI, P. 2012. p. 49.

business tycoon Silvio Berlusconi, or oligarchization, implying the eastern, less democratic models, such as in Russia.

1. 3. 3. Russian media system?

Looking at the world of media and politics from CEE, we feel the need to include Russia and its model in the analysis. The reasons are not only geopolitical, but also analytical. Russia is the country with one of the most captured media system, the least free media, and it is evaluated as one of the worst in the democratic rankings. If we look at the media and their relation to the political and economic power from any of the presented points of view, Russia always seems to be the opposite of the western models, namely the opposite of the Liberal and also the Democratic-Corporatist model. It is portrayed as such even in the legal comparative literature, stressing the history and tradition. Russia being grounded in a patrimonial, state-centric authoritarian culture that goes back to the 15th century and continued under the Tsarist and Communist regimes and then to a regime obsessed with national security.¹⁹⁴

Some scholars stress the so-called 'Russian factor' in the oligarchic instrumentalization of media (that we have better framed as media capture) even in the CEU. According to Sukosd, there are reports that Kremlin supports far right in Europe with the goal of destabilizing the EU, which contributes to pro-Russian orientations of some countries with right wing governments (namely Hungary): some Hungarian media organizations, including extreme right wing news portals, seem to enjoy support from Russian sources.¹⁹⁵ Whether the Russian willingness to inspire other countries can be proved or not, Russia really does seem to represent a model, in fact for some a role model to follow. There is no Russian, Eastern, or nonwestern model in *Comparing Media Systems*. Yet, in the follow-up by Hallin and Mancini, *Comparing Media Systems Beyond the Western World*, there is a full chapter on the Russian media system, written by Elena Vartanova, the dean of Faculty of Journalism at Lomonosov Moscow State University.

Vartanova describes the Russian media model as 'statist-commercialized', with a strong influence of the colluded political and economic elite on the media and a very strong role of the state. She proposed that several post-Soviet countries have similar features in their media systems *„of non-Western/non-European nature, including existence of a state-market complex and its significant influence on media, formal and informal links between*

194 EKO, L. S. 2012. p. 241, 260 - 262.

195 BALČYTIENĖ, A. BAJOMI-LÁZÁR, P. ŠTĚTKA, V. SUKOSD, M. 2015. p. 134.

political or integrated political economic elites and journalists... tolerance on the part of audiences to an instrumental use of media by the state and political clans...“¹⁹⁶ The descriptions seem almost identical to the description of media captured by the political players colluded with oligarchs. The role of media and journalism is also fundamentally different from the West: The public, but also Vladimir Putin himself, believe that the media „*should support his efforts to bring back order to Russia by strengthening central institutions.*“¹⁹⁷

Vartanova noticed that many features of the Russian media model are present in the Polarized Pluralist Mediterranean model of Hallin and Mancini, but according to her, the Russian media differs in one crucial dimension: the state-media relationship, including the role played by the state and state agencies in shaping media structures, policy, and journalism practices.¹⁹⁸

De Smeale argues that in terms of culture, 'the East' is characterized by respect for authority in contradiction to the respect of the West for the law. She proposed the „Eurasian media model“ in which for instance broadcasting is largely subordinated to state authorities and party elites.¹⁹⁹ In her article about the Russian model (she uses it as a synonym to the Eurasian), Central European media systems are expected to be more „European“ than Eastern European media systems.²⁰⁰ In the East, there is no public sphere in western understanding, no pluralist and independent Fourth Estate and no conversion of journalists into autonomous professional group.²⁰¹ The Internet is heavily regulated, filtered, some contents are censored.²⁰²

Both De Smeale and Vartanova see Russia as a unique entity, with very specific culture, but Becker argues that Russia is not a regime sui generis - in fact, it is similar to other authoritarian regimes and he describes it as the *neo-authoritarian media model*.²⁰³

What are the typical traits of the Russian model proposed by Vartanova and Becker?

- very strong state influence over media,
- television as a leading medium with the state as major actor both formally and informally,

196 VARTANOVA, E. 2012. IN: HALLIN, D. MANCINI, P. 2012. p. 140 – 141.

197 BECKER, J. 2004. p. 148.

198 VARTANOVA, E. 2012. IN: HALLIN, D. MANCINI, P. 2012. p. 141.

199 DE SMEALE, H. 1999. The Applicability of Western Media Models on the Russian Media System.

IN: *European Journal of Communication*. Vol 14(2): 173-189.

200 Ibid. 186.

201 VARTANOVA, E. 2012. IN: HALLIN, D. MANCINI, P. 2012. p. 141.

202 EKO, L. S. 2012. p. 242.

203 BECKER, J. 2004. p. 139 – 163.

- instrumental use of the media by the state or 'media-industrial complex' comprised of influential clans and driven by integrated political and business elites backed by the state (the oligarchs); the media play the role of innocent and obedient child,
- the media are used by the center of political power as a weapon to attack political enemies,
- appointments to key positions in media management are linked to political loyalty,
- almost no tradition of freedom of speech in history,
- subordination of the journalism to the political elite in the system of one predominant political party and to state (monocentric political regime),
- there is no pre-publication censorship, but the regime silences critics by economic pressure and/or selectively applied legal and quasi-legal sanctions, criminal and civil penalties for journalists concerning issues as libel, state interests, national security or image of the head of state; the weak judiciary is not able (or not independent enough) to protect the journalists,
- self-censorship of journalists and their instrumental use, no watchdog role, journalists are not an autonomous professional group, the concept of independent Fourth-Estate is absent,
- journalism is not a desired profession, young talented individuals leave for public relations or other jobs,
- media are perceived as a part of the power structure,
- there is some diversity and pluralism in media, but dissenting voices are made irrelevant, forces opposing state influence in media (investigative journalists, activists, the opposition and active audiences) are marginalized.²⁰⁴²⁰⁵

We could add one more characteristic trait from a different source in literature, perhaps underlying the above-mentioned traits: a patrimonial governmentality driven by national insecurity²⁰⁶; preoccupation with national security leading to the pursuit of government to control all communications, including the Internet.

As we had already explained, the term oligarchization comes from Russia, and even if it is not unique to Russia and the post-Soviet world, it is clear that on the map of Europe, the model of „party colonization of media“ and „media capture“ is typical for the southern

204 VARTANOVA, E. 2012. IN: HALLIN, D. MANCINI, P. 2012. p. 119 – 142.

205 BECKER, J. 2004. p. 148 – 150.

206 EKO, L. S. 2012. p. 260.

and eastern countries, not the western and not the northern. Part of the literature created a typology that reflects this geographical division, separating the „South/East European model“ including Russia, the Balkans, Hungary, Italy, Spain, and Greece.²⁰⁷

In most of the typologies, the key difference between western and nonwestern models lies in how many centres of power there are: in autocracy, there is usually one center of power (one dominant party), not multiple. So the real difference is *pluralism*: different polarized and possibly antagonist centers of media power in the democratic Hallin and Mancini Mediterranean model in contrast to monocentric regimes of the Russian, or let us say the Eastern model.

1. 3. 4. Eastern or South-Eastern model?

Another example of south-eastern (from the CEE perspective) country with similar traits in its media system might be Turkey.

Turkey is also described as a textbook case of extreme media capture: „*By any standards, press capture in Turkey is at the extreme end of the scale, better serving to protect the state from the individual than the ideal democratic order of protecting individual from the state.*“²⁰⁸ It is already familiar: The leader of the strongest, long-time ruling party, president R. T. Erdogan, supported businessmen from his close circle to become media owners.²⁰⁹ There were several cases of Turkish journalists being jailed, often on the basis of state-security issues. Reporters without borders stressed that many media outlets were closed, and labeled Turkey as the world’s biggest professional journalist jailer, ranking the country 154th out of 180 countries in the World Press Freedom ranking.²¹⁰

There is another notion similar to Russia: the media are obliged to help the government, an element of „ideological capture“ - that is important to nurture a press that will support the new order the regime is trying to achieve, „a new Turkey.“²¹¹

Also Turkey is not alone – there is a whole cluster of geographically, culturally, historically, and in terms of democracy vs. autocracy similar countries. Let us start from

207 PERUŠKO, Z. VOZAB, D. ČUVALO, A. 2021. p. 5.

208 FINKEL, A. 2015. *Captured News Media. The Case of Turkey*. Center for International Media Assistance, National Endowment for Democracy. Online: <https://www.cima.ned.org/wp-content/uploads/2015/10/CIMA-Captured-News-Media-The-Case-of-Turkey.pdf>. (Quoted on 4. 10. 2020). p. 5.

209 TUNCEL, H. *The Media Industry in Turkey*. IAMCR website. Online: <https://iamcr.org/medindturkey-2> (Quoted on 4. 10. 2020).

210 REPORTERS WITHOUT BORDERS. 2020. *Turkey*. Online: <https://rsf.org/en/taxonomy/term/145> (Quoted on 4. 10. 2020).

211 FINKEL, A. 2015. p. 16 – 17.

the bottom of the 2020 World Press Freedom Ranking. There are these Eurasian countries: Turkmenistan (179), Azerbaijan (168), Tajikistan (161), Kazaksthan (157), Uzbekistan (156), Turkey (154), Belarus (153), Russia (149).²¹²²¹³

In addition to Hallin and Mancini theory and connecting it to the theory of media capture and oligarchization of media, we suggest the Eastern Model to be called the Captured Oligarchic Model. We propose to draw the fourth model next to the original three. The question then would be obvious: Where do the countries in between them stand? Is the CEE region closer to the Eastern or the Southern (Polarized Pluralist) model?

In recent literature on media systems, a new model has been proposed connecting the traditional Polarized Plularist and the authoritarian models: A South-Eastern Balkan model developed by Peruško et al. at Zagreb University. The authors have focused on the Balkans, but also included Italy, Hungary, and Russia into this model²¹⁴. Some of the traits are: government friendly public service media²¹⁵ such as the case of Serbia where the state-controlled television exhibited no internal pluralism, and even the commercial media are controlled by the party currently in government while independent media are pushed to be marginal, which shows an extreme case of state capture, similar to Hungary.²¹⁶ This is partially consistent with our model: The Eastern Captured Oligarchic Model.

As with other media models in the original Hallin and Mancini theory, it can also be explained first by the history of media development. We claim that countries with this model do have their own path, different from the others. Contrary to the Democratic-Corporatist model, countries like Russia or Turkey had very late development of literacy and market conditions for mass media, and what is probably the most significant aspect: they were all born outside the liberal-democratic tradition. This means that the media in this model have a different role: they are not watchdogs in democracy, because in most of these countries, democracy is very limited. In fact, they are illiberal regimes at best, most of them rated as autocracies. Therefore, mass media and journalism serve different

212 REPORTERS WITHOUT BORDERS. *2020 World Press Freedom Index*. Online: <https://rsf.org/en/ranking>. (Quoted on 4. 10. 2020).

213 The ranking is not one universal criterion for establishing a distinct media system, but it is an indicator reflecting several different criteria directly linked to what is reflected in media systems theory, predominantly the relationship between the state and media, and subsequently it also reflects the professionalization of journalism.

214 PERUŠKO, Z. VOZAB, D. ČUVALO, A. 2021. p. 5.

215 Ibid. p. 167.

216 Ibid. p. 168, 214.

purposes, and contrary to all models of Hallin and Mancini, pluralism is not a defining feature of these systems.

The media are not independent and for-profit, they are highly dependent on political and economical elites, who are often the owners of the media outlets, or they are indirectly in control of them. The media are captured by the conglomerates of the rich and powerful, so called oligarchs, that use them for other purposes than pure profit from the media market. The media are instruments in their hands: used as a tool of influence and power. Some authors even claim that this is a mode of operation that describes reality in most of the countries outside of the Western civilization: it is the model of the most of the countries for the most of the history.²¹⁷ Contrary to this view, for now we consider the geographic and cultural proximity as an important factor, therefore we continue in tradition of Hallin and Mancini to define this system by the borders of a region (eventhough quite large one).

Becker believes that all nondemocratic countries and their media systems cannot be classified just as nondemocratic, but there is important difference between them in degree of pluralism and mechanisms of control, freedom, totalitarian versus authoritarian press systems, the degree of relative autonomy vis-a-vis the state and more.²¹⁸ That is why we do not discuss all nondemocratic systems such as China or other South-East Asian, Latin American or African regimes. We simply do not have enough knowledge to do so.

Many of these countries, both inside and outside of the Eastern model, are characterized by relatively late development of literacy and mass media. For this reason, there has not been enough time to develop the independent watchdog role of media: „...*the online media that distorted the for-profit model of independent journalism even elsewhere (including the West), came even before the watchdog role could arise or stabilize.*“²¹⁹

Can it be that the media system of a country is moving towards this Eastern model even before the whole political system shifts from democratic to autocratic?

1. 3. 5. South-Eastern direction of CEE?

Some scholars had observed that the political and media systems in CEE seem to deviate from western norms of independence, objectivity and detachment.²²⁰ If we are dewesternizing, in which direction are we going? If we would look at the process of

217 NIELSEN, R. K. 2017. p. 33 – 39.

218 BECKER, J. 2004. p. 144.

219 NIELSEN, R. K. 2017. p. 33 – 39.

220 VOLTMER, K. 2015. p. 228.

change in CEE as a move on the map, it is a move south-east, towards Russia and Turkey, at least in such obvious cases as Hungary.

In this dissertation, we combine the above mentioned theoretical concepts, as well as we combine more approaches to the theory of democracy, and we think in terms of possible move of CEE media systems towards Eastern (Eurasian) Captured Oligarchic media model. Since it was established sooner that many traits of the Mediterranean Polarized Pluralist model are very similar to the Eastern one (for example, Vartanova), we can think of „the move on the map“ as the south-eastern direction.

This does not mean that the media systems, for example, in Italy and Russia are the same. We acknowledge the substantial difference between Italy with some democratic tradition and Russia with none and other differences on the political level. We also acknowledge the difference between Italian (or southern) polarized pluralism with multiparty system and Russian (or eastern) polarized authoritarianism in which one group (the leader, his party and their state apparatus with collaborating oligarchs) has the most power over the state and media markets. But we also realize that these systems do have similar traits, such as low level of journalist professionalism, media interconnectedness with politics, their nonindependence, and subordination to political interests of their owners, as well as lower level of press freedom and high level of state intervention to the media (very often politically motivated).

Questions can be raised if we use the 2020 World Press Freedom Index as a proxy. Poland is ranked 62nd, Hungary 89th, Ukraine 96th, Bulgaria 111th. Are they closer to Italy (41st) or the Eastern Model? The answer for Bulgaria is obvious – closer to the countries of the Eastern model than to the rest of the original Polarized Pluralist Mediterranean systems. Let us remind that Bulgaria is still considered a democracy, the only EU member qualified as autocracy is Hungary. However, Hungary is still a bit higher in terms of press freedom. It might implicate several things: (1) press freedom is not perfect proxy for the relationship of media and democracy, (2) media freedom and democracy are like a chicken and egg problem, we do not know which has to come first, (3) the countries are both on their way to the Eastern model, only at a different stage, (4) other explanations by variables unknown to us. In any case, we are able to assess the path of several countries of our interest in the ranking in time to establish whether they are decreasing in media freedom or not.

Since we had already established that the position of a country on the map of media systems might be (constantly) changing, more than the specific position in time, we are interested in the dynamics: in which direction are they moving?

If we were to move on the map of the World Press Freedom Index by Reporters Without Borders, in Europe and Eurasia²²¹, it would be a move from the North-West to the South-East. The highest ranked countries in 2020 (and with small variations years before) were the North-European states: Norway, Finland, Denmark, Sweden, and the Netherlands. In the top 20 there are also Switzerland, Portugal²²² (as the only southern country in Europe), Germany, Belgium, Ireland, Estonia, Iceland, Luxembourg, and Austria. The move down the ranking is also a move south-east: for instance, Spain, France, Slovakia, Slovenia, Czech Republic, and Italy being ranked in the yellow zone (meaning fairly good), while the whole Balkans already rated significantly worse - in orange zone (meaning problematic), together with Poland, Ukraine, and Hungary; while there is one even worse group down the ladder and further south-east: Bulgaria, Turkey, Russia and Belarus being very low, in red zone (meaning bad, together and with similar scores with countries like Venezuela, Rwanda or Pakistan).²²³ The only worse countries in this ranking are the worst dictatorships such as North Korea, China, Saudi Arabia, Yemen etc.

Also, in a different ranking with different methodology and different results for the same countries, the Global Press Freedom by the Freedom House, the move down the ranking is the move in the south-eastern direction. In scores from 4 (the best) to 0 (the worst), North-Western Europe is 4, part of the central Europe (Czech Republic, Estonia, Poland, Austria) are 3, Slovakia, Hungary, Ukraine and the Balkans are 2, Turkey and Moldova are 1, Russia and Belarus are 0.²²⁴

221 More in terms of the defined media systems map than purely geographic division.

222 Portugal is an exemptional case from the Polarized Pluralist model. Even Hallin and Mancini themselves had admitted years after the publication of the theory that Portugal had changed a lot since it was clearly fitting their Mediterranean model and nowadays it might be incorrect to assimilate Portugal with the Polarized Pluralist model. Source: HALLIN, D. C. MANCINI, P. 2017. p. 160.

223 REPORTERS WITHOUT BORDERS. 2020. *2020 World Press Freedom Index*. Online: <https://rsf.org/en/ranking>. (Quoted on 4. 10. 2020).

224 REPUCCI, S. 2019. *Media Freedom: A Downward Spiral*. Freedom House. Online: <https://freedomhouse.org/report/freedom-and-media/2019/media-freedom-downward-spiral>. (Quoted on 6. 9. 2020).

1. 3. 6. Polarized Pluralism as the way down

If we would frame this differently, we could see the fall of CEE in the ranking in recent years as a fall from systems with Liberal and Democratic-Corporatist traits, through Polarized Pluralism, in direction down the rankings, towards the Eastern model.

Could it be that if the quality of democracy deteriorates (while the media are a part of the system), a country can first go through 'Italianization' to fall into the polarized pluralist model and then, if the quality of democracy deteriorates even more (to the extent that it is no longer a democracy anymore), the system falls into the Eastern model? If a country such as Hungary falls out of definition of democracy, can it still be assessed in terms of the original Hallin and Mancini criteria? Or is it heading towards a different system, the one represented by Russian and Turkish role models?

The similarities between the Mediterranean and the Eastern model might even lead us to rethink the Polarized Pluralist media system itself. It would bring back the question of countries like France, Spain, Greece, Portugal or Italy, which in Hallin and Mancini theory have a firm place in the Mediterranean model.

First, it has not been a stable and unified model historically. Most of the countries had very little recent democratic tradition; to the contrary, they are all relatively new democracies; Spain, Portugal, or Greece have relatively recent histories of dictatorships. This would support the hypothesis that the Polarized Pluralist model is actually somewhere between the traditional Western-democratic (the Liberal and the Corporatist-Democratic) and less democratic models. Is Polarized Pluralism a model of a country with flaws in democracy, or perhaps a model of countries in transition? In such a case, we would have to establish the direction, transition from what to what else. Why would it have to be the transition to democracy and not the opposite direction?

The countries of this model might go in different directions. One group towards the western models, another group towards the Eastern model. For instance, Italy under the government of Silvio Berlusconi, with highly captured and instrumentalized media, with concentration of much of the power (the cartel of media, economic and political powers), would be an example of the direction towards the less democratic model. Hungary under Viktor Orbán is another example.

Perhaps France with its long democratic tradition with early literacy and developed press, pluralism and more dispersed power had always been closer to the western models.²²⁵ Other sources seem to suggest that Portugal is also diverging from the Polarized Pluralist model towards the more democratic ones.²²⁶²²⁷

Great part of the data that helped Hallin and Mancini establish their classification are now 20-30 years old and could have changed significantly since (such as the level of state subsidies to the press in France). A lot of newer research had been done and it indicates that this model still exists as a relatively distinct one,²²⁸ compared to the northwestern „Democratic Corporatism“. In that case, we could think about it as a media system that is somewhere between the captured Eastern model and the north-western models. The substantial difference seems to be the political regime and its pluralist or autocratic nature. These questions are not new – scholars have been arguing since the publication of the first issue of *Comparing Media Systems* whether there are hybrid media systems in hybrid democracies.²²⁹ We have discussed the notions of hybridity and transition in the beginning of this dissertation.

1. 3. 7. Slovakia and Czech Republic

We had applied the Hallin and Mancini criteria on Slovakia in our previous work. We had theoretically justified the assumption that the place of a country on this map of media systems is not stable. To the contrary, a country can move on this map, by certain developments in the media system, sometimes in the direction of one model, sometimes in the direction of another model. For instance, if a state legislator decides to regulate the freedom of speech in more restrictive way and if the public service media fall under governmental political influence, the country can fall out of the definition of democratic corporatist model, changing for more polarized pluralist one. Hereby we add to our

225 Even the biggest difference between French and Anglo-American journalism culture can be interpreted differently than in original Hallin and Mancini theory. They claim that French journalism is based more on opinions, but their own data show that the main dailies are more alike than different: the analysis of main function of paragraphs in news dailies Le Monde, Le Figaro and The New York Times show, that in all of them, the reporting function is by far the most dominant one. In Le Monde it is 76,6 percent, in Le Figaro 70,0 and in The New York Times it is 90,3 percent. Source: HALLIN, D. MANCINI, P. 2008. p. 127.

226 BRUGGEMANN, M. (et. al.) 2014. p. 1043.

227 Portugal is also ranked number 10 by RSF, substantially higher than any other country of the Polarized Pluralist model. Source: REPORTERS WITHOUT BORDERS. *2020 World Press Freedom Index*. Online: <https://rsf.org/en/ranking>. (Quoted on 4. 10. 2020).

228 HALLIN, D. C. MANCINI, P. 2017. 162 – 164.

229 VOLTMER, K. 2012. How Far Can Media Systems Travel? IN: HALLIN, D. MANCINI, P. 2012. p. 238 – 244.

previous assumption: the country can fall even deeper into nondemocratic Eastern model.

As well as democracy is never fully and irreversibly achieved, but it is a constant struggle, the same applies on the media system. The Frankfurt School of dialectical thinking teaches us to see the competitions and antagonisms that can undermine the powerful.²³⁰

This means that while some actors – politicians, the state, the media owners, the oligarchs – change something substantial in the media system and drag us into the direction of the polarized or the less democratic eastern model, there are contra-movements possible by other actors. Journalists, their audiences, the civil society or even democratic politicians or business people with a different mindset are not powerless – they can enter the struggle, push back, and try to drag the country into the opposite direction, to more north-western European or liberal democratic models.

This view helps us to see the world and media systems, media regulation and also media ownership not as a game of the few who have the power and resources to rule the society top-down. It allows us to avoid this conspiracy-like thinking, in which the powerful groups that own the media use them to control the society.²³¹

This viewpoint also means that all the studies that had been conducted about placing a country on the map of media systems are only valid at their time. A country that was described as close to the Democratic Corporatist model in 2008, might have undergone changes for the Polarized Pluralist model by 2019 – for example, the Czech Republic could be analyzed again for this kind of change. Some sources indicate the shift towards the Mediterranean model after 2013.²³² Could it be dragged even deeper, following Hungary?

Based on this theory, we concluded the previous study with identification of such contra-moves or pushbacks against the obvious shift of Slovakia to the model of polarized pluralism by (among other things) changing ownership to the hands of oligarchs. The question was: What can be done to direct the Slovak media system in the North-Western European democratic model? The answers were: (1) founding new independent media financed by the audience (subscription), such as the daily Denník N (started by journalists who left other daily newspaper, partially bought by the oligarchs), (2) fighting for independent public service media, (3) supporting professionalism of journalists (for

230 CARAH, N. LOUW, E. 2015. p. 48.

231 HANÁK, P. 2017. p. 52.

232 VOJTĚCHOVSKÁ, M. 2017. p. 106.

instance founding a representative and independent professional organisation that would enforce the western standards of ethics and independence in journalism), and (4) reform of journalist higher education.²³³

As already mentioned above, parts of these developments in the CEE were already described in the literature and theorized. This dissertation has a focus on the less theoretically covered areas: namely, the regulation, media law, and power relations between the state (or politics) and the media markets.

²³³ HANÁK, P. 2017. p. 72.

2. Methods

As we have established in theory, we have good reasons to be mainly concerned with *pluralism*. That is the central meeting point of all the theoretical frameworks this thesis is based on, media and democracy, media systems, and also media capture. Pluralism is also the centre of legal analysis of communication, as communication and freedom of expression are pluralistic concepts.²³⁴ Therefore, in this chapter, we are in search of methods and methodologies that can help us establish how the media laws in Slovakia and Czech Republic are affecting pluralism in the Slovak and Czech media markets.

This dissertation is a combination of several different methodological approaches and, therefore, there are a number of different methods applied. As an interdisciplinary dissertation, the reader will see methods typical for media studies, political science, history, legal studies, and economics. In some cases, a combination of methods from several of these fields is needed. Therefore, we are proposing some methodological innovations, creating new ways of application of known methods to measure new questions in a new context, such as legal and economic methods in media studies. The most notable one is the creation of a new index - the POMO (Power of Media Owners) indicator, which is also applicable on other markets outside of the CEE. It is a new tool that is sensitive to cross-platform concentrations in the media markets. This type of concentration is not usually assessed by authorities deciding on potential mergers or acquisitions - but as we will explain, it is absolutely crucial to take cross-platform mergers into account where political pluralism is in danger.

Another methodological innovation is an attempt to set some objective criteria for assessing the levels of media capture. It is not enough to describe that the media in a certain country are or are not captured; it is necessary to answer questions like *how much* are the media captured, at least approximately. There is some degree of subjectivity of the researcher in our method, but the upfront formulated criteria for evaluation aim to decrease this subjectivity and in fact provide a tool – not to measure media capture precisely, but to establish whether the media system is totally captured, relatively captured, relatively free, or totally free. From the proposed framework, any researcher can get this approximate picture of where the media in an examined country stand.

We apply both quantitative and qualitative methods, as expected by the original research proposal. At first sight, it looks like a lot of quantitative data because of a lot of tables

234 EKO, L. S. 2012. p. 15.

with HHI analysis, but in fact the majority of this dissertation is based on qualitative methods – such as interpretation of the data in the political context of the examined states, analysis of relations between the subjects, media capture analysis, and media systems analysis – this all requires analytical skills on the side of researcher. The comparative legal analysis is a combination of quantitative and qualitative analysis, but with more importance on the qualitative part, since pure presence or absence of a legal rule does not reveal as much as the analysis of how is the law applied in practical reality, and that is a search for cases, their selection, and qualitative analysis to explain what do they actually *mean* for the media system.

This chapter is divided into subchapters according to methodologies, and then each methodological approach is specified by a detailed description of the methods.

Before explaining all of the methodologies, one approach needs particular attention, because it is the innovation brought by this thesis into media studies scholarship in the context of Slovakia and Czech Republic. This lies in the introduction of law&economics methodology to media studies scholarship in CEE. Therefore, we start with this methodology first.

2. 1. Law&Economics

Law&economics (L&E) as a field and as a method is often misunderstood in the context of CEE.²³⁵ In fact, it is *not* a bit of law and a bit of economics²³⁶ and it is also *not* the field of legal studies concerned with the economy. The methodology of law&economics as it is used in this dissertation is generally defined as the economic analysis of law, in which „*legal rules are analyzed as instruments to correct market failure, or at least to reduce its adverse consequences.*“²³⁷ Shortly, it is an application of economic methods in legal studies. This discipline has evolved into the „the most important development in legal scholarship in the twentieth century“²³⁸ and several contributors to it have been awarded

235 There is even a full chapter dedicated to these misunderstandings in one of the only few publications on Law&Economics in Czech language: BROULÍK, J. BARTOŠEK, J. 2015. *Ekonomický přístup k právu. [Economic Approach to Law]*. 1. vydání. Praha: C. H. Beck. p. 32 – 45.

236 Even if that is how some universities in the region have built their programmes, this is not how this dissertation understands the term Law&Economics (L&E).

237 PACESS, A. M. VISSCHER, L. 2013. Methodology of Law and Economics. IN: VAN KLICK, B. TAEKEMA, S. (ed.). 2011. *Law and Method. Interdisciplinary research into Law*. Series Politika, nr. 4. Tübingen: Mohr Siebeck. p. 85 – 107.

238 Quote of Professor Bruce Ackerman of Yale Law School in COOTER, R. ULEN, T. 2016. *Law and Economics*. 6th edition. Berkeley Law Books. Book 2. p. 2.

the Nobel Prize in Economics.²³⁹ Law&economics is among the mainstream methodologies in legal research predominantly in North American universities, but it is a growing field in Europe as well.²⁴⁰

If we are discussing legal solutions to fix market failures, one of the typical failures of the market mechanism is an *abuse of the dominant position* of a firm on a monopolistic or (more often) oligopolistic market. *Competition Law* is the first field in which the economic analysis met the law – because it was already needed to answer questions like „What is the defendant's share of the market?“²⁴¹ in the antitrust legal acts in the USA in the end of 19th century, such as the Sherman Act in 1890 – and the economic analysis of law remained virtually synonymous with antitrust economics until the 1960s.²⁴²

Contemporary competition policy has progressed dramatically since then. The danger of the economic powers having colluded with the political powers and the need for the regulator to step in is already well known, at least since the ultimate totalitarian regime demonstrated such collusion:

*„When the Allied Forces decided to break up industrial groups in Germany and Japan, one of the reasons might also have come from the danger of economic concentration of power being used for political purposes. Indeed, the close connection between political and economic power during the Nazi regime played a role in the attempt of increasing the dispersion of power. More generally, it might be feared that democracy could be put at risk when a few citizens and groups dominate a large share of resources.“*²⁴³

As we have demonstrated in the previous chapter, some media markets naturally tend to be oligopolistic. This is a good base for a hypothesis that can be empirically tested by methods of Competition Law&Economics.

239 For example: Ronald Coase, Gary Becker, George Stigler, Daniel Kahneman, Richard Thaler, Oliver Hart, Joseph Stiglitz, George Akerlof, John. F. Nash, James M. Buchanan, and several others can be considered as contributors to the economic theory of law, regulation and policy.

240 Although the progress of Law&Economics is slower than in USA, several top-ranking universities in Europe offer programmes in this field. The most known is at Utrecht University, or joint-degree programme of networked universities „European Master in Law&Economics“ (EMLE). We (the author of this dissertation) had graduated from this programme during his doctoral studies, attending universities in Rotterdam, Hamburg and Haifa.

241 COOTER, R. ULEN, T. 2016. *Law and Economics*. 6th edition. Berkeley Law Books. Book 2. p. 1.

242 POSNER, R. A. 2014. *Economic Analysis of Law*. Ninth Edition. New York: Wolters Kluwer Law & Business. p. 29, 349 – 351.

243 MOTTA, M. 2008. *Competition Policy. Theory and Practice*. Cambridge: Cambridge University Press. p. 27.

HYPOTHESIS 1: Slovak and Czech media markets are oligopolistic.

The basic method from Competition L&E will be used to test this hypothesis: Herfindahl-Hirschman Index (HHI). It is a method widely used throughout the world to calculate market concentration, for instance by the European Commission²⁴⁴ and also by the The United States Department of Justice²⁴⁵: „The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$).“²⁴⁶ The higher the HHI, the more concentration is on the market, with a maximum value of 10 000 signifying a monopoly, where one firm has 100-percent of the market share.²⁴⁷

The mathematical formulation of the HHI calculation that will be used repeatedly in this thesis is the following:

$$HHI = S1^2 + S2^2 + \dots + Sn^2$$

S1 – the share of a company on the market.

There is an easier way to estimate how much a market is concentrated – so called Top 4 or Top 8 analysis – when the top 4 firms on the market control more than 50 percent of the market, or the top eight enterprises account for more than 70 percent of the market, undesirable concentration of the market is said to be evident.²⁴⁸ The HHI is considered to

244 EUROPEAN COMMISSION. 2004. *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings*. (2004/C 31/03). Paragraph 16.

245 Here we need to clarify several things: The European and American competition and antitrust policies differ significantly in underlying philosophy and practice. The view of Richard A. Posner, one of the founding fathers of Law&Economics and especially its modern application to competition law, is closer to the American view: That competition policy should be based solely on the goal of economic efficiency. On the other hand, the European view is more open towards other policy goals. In this dissertation, we will work more with the European version, because our goal is to measure impact of media policy on democracy, not economic efficiency. However, both European and American views agree on HHI, its definition and use. KAUPER, T. E. 1977. *Antitrust Law: An Economic Perspective*. IN: *Michigan Law Review*. Vol. 75. Issue 4. p. 768 – 804. OSTER, J. 2017. *European and International Media Law*. Cambridge University Press. p. 445 – 501.

246 UNITED STATES DEPARTMENT OF JUSTICE. Herfindahl-Hirschman Index. Online: <https://www.justice.gov/atr/herfindahl-hirschman-index>. (Quoted on 12. 03. 2021).

247 BREKKE, K. 2018. Measuring market power in multi-sided markets. IN: OECD. 2018. *Rethinking Antitrust Tools for Multi-Sided platforms*. Online: www.oecd.org/competition/rethinking-antitrust-tools-for-multi-sided-platforms.htm. (Quoted on 12. 03. 2021). p. 88.

248 VALCKE, P. (et. al). 2009. *Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach*. Study for the European Commission. Leuven: Katholieke

be more robust indicator, even though there are concerns that HHI might only take the national media into account and it ignores the regional or local media.²⁴⁹ As far as this dissertation focuses on the two national markets, for the purpose of our analysis HHI is a satisfiable measure.

2. 1. 2. Traditional HHI and proposed POMO indicator

HHI seems to be a very simple tool to measure market power. However, to determine the inputs for this calculation, we first need to define what is the market under scrutiny and, more specifically, who are the participants and what their market shares are.

This is another economic and regulatory problem because *the definition of a relevant market* is a much more complex endeavour. Too much flexibility with its definition means very inaccurate results and, therefore, inefficient regulation.²⁵⁰ Imagine the vague definition of relevant media market. Are regional and national daily newspapers on the same market, or are they on two separate markets?²⁵¹ Or are there actually many more markets, such as: 1. the market with tabloid daily press 2. the market with broadsheet daily press 3. the market for specialized daily press (such as sports etc.)?²⁵² Any decision of an

Universiteit. Online:

https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/pfr_report.pdf. (Quoted on 12. 03. 2021). p. 73.

249 Ibid. p. 73 – 74.

250 POSNER, R. 2001. *Antitrust Law*. Chicago, London: The University of Chicago Press. p. 147.

251 Questions like these are traditionally answered by Competition Law&Economics by specific tests examining the relationship between concentration and the price, such as the SSNIP test (Small but Significant Non-transitory Increase In Price), Price-Concentration Analysis or Simulation Analysis. However, on media markets, and especially in this dissertation, we are less concerned about changes in pricing, for instance the price of printed newspapers paid by the customer. The danger of the abuse of the dominant position on the market lies elsewhere for us – in danger for plurality of political news. Moreover, computing possible mutual price-dependency of several media does not necessarily help us to understand whether they are on the same market of political news. It is difficult to apply a test based on pricing in a situation, where some of the products are for free (TV broadcasting) and the markets are two-sided (there is one market for the printed newspaper or access to its online version, and another market for advertising in the newspaper or TV) or even three-sided (third market with data about users). Therefore, we leave this kind of analysis to economists that are more concerned with pricing than plurality. However, we note that such analysis could be useful, especially concerning the cost of advertisement. However, there is another possible danger: That the publicly available data on the cost of adverts in different media platforms might not be reliable, since they are often subjects of private barter, bargaining with several private agencies etc. Such analysis is even more difficult if the media outlets advertise products and services offered by the owner of the media outlet, that is also an owner of a bank, telecommunication services etc. In such case, we have no information about real pricing. Sources: VAN DEN BERGH, R. 2017. *Comparative Competition Law&Economics*. Edward Elgar Publishing. p. 110, 123 – 125. POSNER, R. 2001. *Antitrust Law*. p. 156. TRAMPOTA, T. VOJTĚCHOVSKÁ, M. 2010. *Metody výzkumu médií*. [Methods of Media Research]. p. 39.

252 This was the subject of our master thesis from the field of Law&Economics, completed in 2018, with LL. M. degree from University of Haifa, Erasmus University Rotterdam and University of Hamburg:

antimonopoly authority depends on proper definition of the relevant market – to allow a media merger or acquisition or to prevent creation of media cartels, the protection of pluralism – the economic analysis has to precede the decision.

The reason for this application of HHI in our dissertation is related to the specific reality for markets with political information in the media. The original value of HHI and the economic analysis behind the competition law is to protect the market from exploiting consumers, mainly in terms of price. In media markets, this is not the main concern. There is a growing consensus in theory that standard market competition analysis alone is insufficient for guiding the regulation of media industry²⁵³²⁵⁴ and that the current market-oriented media policies all over Europe and North America had failed to secure pluralism.²⁵⁵

This problem and the problem of relevant market definition are well known. Andrea Prat, a scholar in the field of political economy of media, describes its methodological implications: „*Because there is little or no direct competition between outlets on different platforms (newspapers, broadcast television, radio, etc.), markets are invariably defined in terms of platforms. But that is unhelpful to understand political influence. What matters for media power is what information voters receive rather than how they receive it. Any reasonable media power index must be able to aggregate media influence across platforms.*“²⁵⁶

Andrea Prat had developed his media power index, showing the sources of information for voters in the USA, by simply asking the voters. That is one possible way. Since this dissertation has a different goal than measuring media power over voting patterns, we will not turn to voters. Instead, we are concerned about a lack of plurality on the market (only a few people controlling the majority of the market) as a result of insufficient regulation of media ownership.

HYPOTHESIS 2: Regulation of media ownership based on purely economic standards is insufficient to prevent all risks to the plurality of information.

HANÁK, P. 2018. *Relevant market for News Media Concentration in Slovakia and the Czech republic*. European Master in Law&Economics 2017/2018, Master thesis. 37 p.
253 PRAT, A. 2014. *How can we measure media power?* The Centre for Economic Policy Research. Online: <https://voxeu.org/article/how-can-we-measure-media-power#fn1>. (Quoted: 12. 03. 2021).
254 MONTI, G. 2007. *EC Competition Law*. Cambridge: Cambridge University Press. p. 141.
255 FREEDMAN, D. 2018. Populism and media policy failure. IN: *European Journal of Communication*. Vol. 33, iss. 6. p. 604 – 618.
256 PRAT, A. 2014.

To test this hypothesis, we propose a new method called the POMO (Power of Media Owners) indicator. First, we are using the Herfindahl-Hirschman Index (HHI) to quantify the level of concentration on media markets. To make this possible, we need to calculate the market shares of individual radios, televisions, news websites, and daily newspapers. Then, we analyze the HHI also for media owners – to show how the individual media are connected on the relevant markets and who controls what, what market shares do the owners have. The HHI interpretation methodology allows us to precisely identify whether the market is unconcentrated, moderately concentrated, highly concentrated, or oligopolic.

We analyze data for two relevant geographical markets a) Slovakia and b) Czech Republic. They will be further divided into product markets – radio market, daily press market, television market, and market for online news.

The question of who should be considered to be on the same market is going to be answered not by pricing tests, but by simplified definition, derived from the European Commissions' legal definition of the relevant market. This is related to the concept of *functionable interchangeability*, explained by the European Court of Justice in the case of *Hoffmann vs. La Roche*: Shortly, it is important to determine which products are sufficiently similar to be regarded by consumers as reasonable substitutes for each other.²⁵⁷²⁵⁸

Posner (2001) writes that market definition is a two-step process. First, we need to define a group of purchasers entitled to the protection of law.²⁵⁹ That is what we have just done: the consumers of information from the media a) Slovakia and b) Czech Republic. Second, *„the group of sellers that are serving these purchasers, or could do so if the market price rose even modestly because they sell a product that is a good substitute in either consumption or production, must be identified.“*²⁶⁰

In this analysis, we define the relevant market relatively broadly, because we consider different dailies to be substitutes for each other to at least some extent. Broadsheets and tabloids might be considered to be on the same market, since they both bring political

257 VAN DEN BERGH, R. 2017. p. 126.

258 EUROPEAN COMMISSION. 1997. *Commission Notice on the definition of relevant market for the purposes of Community competition law. (97/C 372/03)* Online: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1209\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1209(01)&from=EN) (Quoted on 8. 8. 2021).

259 POSNER, R. 2001. *Antitrust Law*. p. 149.

260 Ibid.

information and they are interchangeable to some extent (If there is no broadsheet left in the kiosk, would you buy a tabloid if it has a political topic that you wanted to read about on the frontpage? If yes, then it is a potential competitor.).²⁶¹ The second reason for this broad interpretation of the relevant market is that if we would divide the already small markets into even smaller pieces and then measure HHI, we would most likely find that all of them are at least oligopolic (for instance, the Slovak market for tabloid newspaper would consist only of two enterprises) or even monopolistic (in the Czech market there are also two tabloid newspapers, but they belong to the same owner). Such a narrow definition of a market would have no explanatory power, there would be nothing to analyze since we could already tell the result upfront, but the most importantly this view does not take possible substitutability of media containing at least some political news into account.

Therefore, our analysis is based on the premise that news are mutually substitutable. We are aware of the complexity of such a claim and we stress the importance of plurality. In no case do we suggest that one news source is enough; the term substitutability is used only in economic meaning for the purpose of the analysis. In this case we do not understand substitutability as Posner describes it, with example of canned apricots that cannot be priced differently by two neighboring shops without the price difference being quickly erased by consumers' switching to the lower-priced offering.²⁶² The newsmedia are not canned apricots, they differ in several ways – for us, the most important difference is the relevance of plurality for democracy. You do not need ten different types of canned apricots to satisfy your needs, but the democratic society definitely needs more sources of information.

In the world of media capture, it is hard to imagine what is the nearest substitute for a political newspaper that was stopped as the daily *Népszabadság* in Hungary²⁶³ - because most probably there is no close substitute. The product and its qualities will no longer be offered, the level of pluralism and therefore the quality of democracy will decrease, as the powerful groups will be even more powerful. They might also be able to capture even

261 Posner defines interchangeability this way: „If a product has no close substitutes in demand (meaning nothing that seems to provide the consumer with the same services at roughly the same price), and sellers of other products cannot readily switch to making it, then the market elasticities of demand and supply are assumed to be low. From this it can be inferred that any firm with a substantial share of sales of this product has non-trivial market power.“ POSNER, R. A. 2014. p. 369.

262 POSNER, R. 2001. p. 150.

263 BBC. 2016. Hungary's largest paper *Nepszabadsag* shuts, alleging pressure. IN: *Bbc.com*. Online: <https://www.bbc.com/news/world-europe-37596805>. (Quoted on 15. 7. 2021).

more resources, contributing to even more inequality, which is, as demonstrated in the previous chapter, a prerequisite to media capture. Nevertheless, we need to measure how many *more* political newspapers there are, how much audience do they have, and who controls them to show the real power relations on the market. For this purpose, we need the concept of substitutability.

Political plurality matters mostly in news and a review of plurality is needed mostly in current affairs and these genres should be considered across television, radio, the press, and online news.²⁶⁴ This is consistent with different authors claiming that contemporary censorship (including media capture by ownership) is targeted only to a part of the media markets: „...*censors economize coercion by targeting only the politically threatening segments of media markets.*“²⁶⁵ In other words, the capturers – oligarchs in collusion with politicians – do not inflict a lot of harm on political pluralism in a music TV targeted on seniors or in hobby magazines because they do not contain news or political content and therefore potential political influence through them would be more complicated (not completely impossible, but significantly more nuanced and indirect). This is why we are not analyzing the markets with magazines – because most of them do not matter much for political influence. There are some that do, but it is more an exception than a rule on the examined markets.

There are two possible interpretations of HHI – according to the Merger Guidelines used between 1992 and 2010 and those used after 2010. We are going to use both, since our data are from years 2000, 2010 and 2020, but also because the earlier document offers a stricter interpretation, which is closer to the needs of media markets.

The result of this HHI calculation is a number on a scale between 0 and 10 000. This value will signify how concentrated the market is. We apply and clearly describe the results in terms of both interpretations every time the HHI is calculated. We lean towards the stricter interpretation, because of reason explained in the next paragraph – but in the end our leaning does not change anything on the exact figures. Only the final conclusions will be built on the stricter interpretation of HHI. The numbers do not lie, and the reader is free to interpret them under the liberal criteria as well.

264 OFCOM. 2012. *Measuring Media Plurality*. Online: https://www.ofcom.org.uk/data/assets/pdf_file/0031/57694/measuring-media-plurality.pdf. (Quoted on 13. 11. 2021).

265 CORDUNEANU-HUCI, C. HAMILTON, A. 2018. p. 3.

The dangers of concentration for the economy is one thing, but the interpretation of risk caused by media concentration to democracy is a different problem. Since competition policy based solely on economic criteria has proven insufficient for media markets, and there is a need to protect plurality of information to sustain democracy, we argue that a stricter view on interpretation of these measures is necessary.

Therefore, we consider a value between 1000 and 1800 as moderately concentrated market, as defined by Merger Guidelines issued in 1992²⁶⁶ and as it was used by US competition agencies²⁶⁷ to assess mergers: if the post-merger HHI on the market is lower than 1000, it is considered as a low concentration and the merger would be approved; and if the value is between 1000 and 1800, it is considered to be a moderate concentration, allowed only if such a merger does not result in an increase in concentration of more than 100 points²⁶⁸. The value 1000 had been used as the threshold for potential significant anticompetitive effects until it was changed to 1500 in 2010. The newer version of Merger Guidelines from 2010 then defines the thresholds as follows: Anything between 1500 and 2500 is a moderately concentrated market, and anything above 2500 is a highly concentrated market.

This quantitative method needs to be completed by another step – analysis of the data in context of the media reality in the examined countries. Therefore, we need to undertake an explanatory analysis – going beyond description, answering „why“ questions instead of „what“ questions, attempting to look for causes of the patterns, investigating why certain factors lead to an outcome.²⁶⁹ Thus, a short text will follow the HHI analysis of both Slovak and Czech media markets.

As the next step, we will establish the market shares of the owners, so-called moguls or oligarchs, or even the whole oligarchic groups. This is similar to the „audience concentration per owner“ indicator established in the media pluralism monitor.²⁷⁰ Analysis of personal, business and political connections between various subjects is needed to determine which firm is connected to whom. Publicly available data (such as

266 U.S. DEPARTMENT OF JUSTICE. 1992. *Merger Guidelines*. Online:

<https://www.justice.gov/sites/default/files/atr/legacy/2007/07/11/11250.pdf> (Quoted 8. 8. 2021).

267 FEDERAL TRADE COMMISSION. 2007. *Report on Ethanol Market Concentration*. Online:

<https://www.ftc.gov/sites/default/files/documents/reports/2007-federal-trade-commission-report-ethanol-market-concentration/2007ethanol.pdf> (Quoted 8. 8. 2021) p. 2.

268 MOTTA, M. 2008. p. 235.

269 McCONVILLE, M. CHUI, W. H. 2017. *Research Methods for Law*. Second Edition. Edinburgh: Edinburgh University Press. p. 64.

270 VALCKE, P. (et. al). 2009. p. 75.

the results of work of investigative journalists, NGOs, scholars, and other sources) will be used.

Since the market share is computed from the share of the audience²⁷¹, this method places greater value on the national media with the largest audiences. This is consistent with the literature in media studies indicating that television-related problems are of greater importance. There are obvious reasons for this: television has the greatest power among all media platforms (high attention share)²⁷². In Slovakia and Czechia, daily newspaper readership is much weaker than European average and people in CEE spend a lot of time watching TV – 3 hours and 40 minutes on average a day.²⁷³ There are more TV screens than households in Czech Republic with only more prevalent technology being a smartphone²⁷⁴ - which can also be used to view TV content. This indicates a much larger influence of TV news compared to other sources. The metric based on audience share is therefore relevant in representing the media power.

The analysis of connections between the relevant players will help us to construct groups of media owners and calculate the Power of Media Owners Indicator for each group of owners in the following way:

$$POMO_1 = \frac{(M_1S \times SM_1) + (M_2S \times SM_2) + \dots + (M_nS + SM_n)}{100 \times \frac{RO_1}{(RO_1 + RO_2 + \dots + RO_n)}}$$

POMO₁ = relative strength of media owner 1 on the whole media market

M₁S = market share of a given owner on market 1 (for example, radio market)

SM₁ = size of market 1

RO₁ = Total reach of owner 1 and all his media in the population

271 The market share can be computed also from other variables than just the share of audience, but for the purpose of this study we choose to use the audience share exclusively, for the following reasons: The criteria of turnover and advertising revenue can be useful, but measuring them precisely is almost an impossible endeavour. The information are often not disclosed and the price of advertising is often dependent on bargains and barter, they are subjects to discounts, or even sold in packages for a variety of media platforms of the same owner. TRAMPOTA, T. VOJTĚCHOVSKÁ, M. p. 39, 50.

272 PRAT. A. 2014.

273 PEREIRA, J. S. 2015. Variety of Media Systems in Third-Wave Democracies. IN: ZIELONKA, J. 2015. p. 234-235.

274 134 TV screens per 100 households. Source: MORAVEC, V. 2016. *Média v tekutých časech. Konvergence audiovizuálních médií v ČR. [Media in Liquid Times. Convergence of Audiovisual media in Czech Republic]*. Praha: Academia. p. 49.

Explanation: We will assign audience share on the platform markets to the owners, and as a next step, we need to weight these numbers in respect to the size of the platform market. As a proxy to the market size, we use the daily reach of each platform (for example 30% of population reads daily newspapers) and apply this percentage to the market share of given owner. For example if Mr. Křetínský would hold 60 percent of such market, we multiply 60 times 0,30 (representing the size of the market compared to the population) and we get a figure of 20 percent – which is the reach of the newspapers owned by Mr. Křetínský on overall population. Performing these calculations also for real sizes of radio, TV and online news markets will lead us to a situation where we can compare the ownership shares of groups of owners (firms or oligarchs) across platforms. We will be able to show how strong they are on the market relative to each other, by quantifying how much audience do they reach on which product market. The final step that will lead us to calculation of the POMO (Power of Media Owners) indicator is the following: We will sum the reach of all owners and we will get a number that is much higher than 100 percent, since one person usually consumes more media a day (read more websites, watches television, listens to perhaps more than one radio) – and this sum of all shares will serve us as the hypothetical 100% of the whole media market in an examined country. Lastly, we will calculate a percentual share of sum of all the weighted shares of an owner from all markets from this hypothetical 100 percent. We will get a figure that will precisely quantify what is a share of a given owner (for example, Mr. Babiš) on the total national market of all media. This will show who is the dominant player across platforms, who has the most power on the national media market, who controls the most information flows, and will provide us a new picture that might be used in future also by the regulatory authorities. It will also show how much cross-media ownership there really is on a given market, how desirable is any action from the antimonopoly authorities, and how much pluralism is in danger in both examined states. The POMO indicator is going to be interpreted by Top 4 and Top 8 analysis that will show how much of the market is held by the 4 or 8 biggest players. This will help us to understand how desirable the concentration is.

Then, it will be easy to compare not only the situation on the national markets to each other, but also how efficient or satisfactory was which regulation aiming to prevent cross-media ownership. Moreover, the results of this analysis will later help us with further analysis of media capture and media systems.

A legitimate question can be brought up: how does the index account for seemingly infinite number of news sources? Can it ever be complete, especially in times of the Internet and social media? The answer is this: It does not matter that much. For the purpose of measuring the power of oligarchic groups over the media, the big players matter the most. Small alternative sources of information can be included into the computation, but if their market share is small, they change little – both because of the mathematical construction of the index and in the real life (because a webpage or a profile with independent news can exist, but if there is only a very limited audience, then this kind of platform is not significant in disseminating political news)²⁷⁵²⁷⁶. The European Commission explains this in the Guidelines: „*The HHI gives proportionately greater weight to the market shares of the larger firms. Although it is best to include all firms in the calculation, lack of information about very small firms may not be important because such firms do not affect the HHI significantly.*“²⁷⁷

This is similar in media and power relations: the big players with the greatest audience share matter the most. Existence of free, independent, uncaptured, but relatively small newspaper matters, but it does not really change much in the communication between the elites to the masses. Good examples of this are the independent newspapers in Russia: Even if the ruling regime is „*overwhelmingly controlling the media, Putin left some vocal dissident newspapers open in order to appease the middle-class.*“²⁷⁸ Majority of Russians keep to receive most of their political news from the largest (and state-captured)

275 The small competitors on the market matter from the economic point of view, as Posner explains: „The coordination of the pricing in 5 firms is easier than that of 14 firms. And while it may be unnecessary to obtain the agreement of the little firms in order to collude effectively still any part of the market that is outside of the colluding circle limits the power of the colluding sellers to raise the market price. The difference between a fringe of firms with a total of 20 percent of the market and one firm with 20 percent of the market is that the fringe is a check on the market power of the 4 largest firms while a 20 percent firm is a candidate to join the cartel.“ How much this can be applied to media markets, would be an interesting question. Certainly more plurality is better, even if the small media companies do not have a lot of audience, meaning that their existence matters, just as Posner described, because they serve as a check on power - even if Posner is talking about price and we are talking about the media power. On the other hand, how significant or irrelevant these small media are, matters as well – and that is why we need to measure their impact by the share of audience. Source: POSNER, R. 2014. p. 352 – 353.

276 A platform like Facebook or Twitter can be very powerful disseminator of political news, but we do not consider them as news media here. For the purpose of this analysis, news media are television, radio, press and online news organizations in which journalists create content by covering the current events, predominantly politics. Profiles of politicians on social media are considered to be channels for political communication, similar to a press conference – they can or do not have to be covered by the news media.

277 EUROPEAN COMMISSION. 2004. *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings.* (2004/C 31/03). Paragraph 16.

278 Quote of APPLEBAUM, A. 2014. IN: CORDUNEANU-HUCI, C. HAMILTON, A. 2018. p. 9.

televisions²⁷⁹, so the small newspapers do not influence the results of the elections²⁸⁰ especially if we bear in mind that the newspaper consumption is on a decline.²⁸¹

To understand how the media markets evolved over time, we need to compare the values at different times. Since the aim of this dissertation is to map the development after year 2000, we choose to evaluate the market powers by HHI in three points in time: 2000, 2010 and 2020. For the POMO indicator, there are more variables missing in our data to be able to calculate this value for 2000 and 2010, including the most important variable, the size of the platform markets. The datasets from 2000 and 2010 that we have obtained from the Median agency do not contain the information for instance on what share of population listens to radios daily – and this cannot be calculated from the data about listeners of each radio station, because one person might have listened to several radios in the same day.²⁸² For the purpose of this dissertation, it is sufficient to analyse POMO only for 2020, since we aim to measure the oligarchization – and that had occurred only after 2013. Also, 2020 is the stage at which we are assessing the efficiency of current legal regimes, sufficiency of regulation, etc.

Also, there might be a difficulty comparing data from different decades, because some datasets contain some information (such as in regional media) and some not. As we have already mentioned, the smaller the enterprise, the less it matters for the calculation, so only missing data on the big players would be a problem for this dissertation. The lack of data on the small media might matter in case there is a common owner behind many of them – as is the case with Czech newspapers in 2000. In such a case, we clearly disclaim that the data in our analysis might show a result that is possibly different from the reality. In other words, we do disclose the known unknowns on each occasion.

279 BBC. 2021. *Russia profile – Media*. Online: <https://www.bbc.com/news/world-europe-17840134>. (Quoted on 8. 8. 2021).

280 We are aware that there are several complex reasons of the results or the Russian elections, including possible and widely reported election frauds, imprisonment or even murders of members of the political opposition etc. In this dissertation, we claim that these practices of authoritarian regimes are interconnected with the authoritarian media policy.

281 TABAKOVA, O. (et. al.) 2020. *Media Consumption in Russia – 2020*. Moscow: Deloitte: CIS Research Centre Moscow. Online: <https://www2.deloitte.com/content/dam/Deloitte/ru/Documents/technology-media-telecommunications/media-consumption-in-russia-2020.pdf>. (Quoted on 8. 8. 2021). p. 8.

282 If we would know the precise numbers, for example that 50 percent of Czechs have listened to a radio daily in 2000, than we could weight the market shares of the owners against the size of the market (their market share on radio market x 0,50) and we would get the real reach of a given owner on a population. Then we could calculate the relative power of the owners to each other. Since this variable is not in the data, we cannot proceed to calculation of POMO value in 2000 and 2010.

Concerning the data for this quantitative analysis, there are multiple sources. First, the data for the analysis of market shares of both Slovak and Czech television, radio and daily press markets were provided by the research agency Median. The newer part of these data is publicly available on the Median agency website - the data on Slovakia can be found as results of MML-TGI commercial market research, in Czechia under Radioprojekt or Mediaprojekt commercial research. The missing part, data on Czech television market, was provided to us by the Median agency upon request. The older data – years 2000 and 2010 - were also provided to us by the Median agency upon request. This agency measures the markets consistently since 1996, their research is credible, and their results are comparable between Slovakia and Czechia because they operate in both countries under the same methodology. We have chosen to take samples from the 3rd - 4th quartals in all analyzed years, to make the data more representative and comparable. The figures representing viewers, listeners, and readers (the audience) were aggregated, the sum of all the individual figures represented 100 percent of the market, from which we had calculated the market shares. In all cases, if the calculation of the market shares was performed by us, it is based solely on this one metric – no „average time spent“ or any other similar metric is used in our calculations. On the other hand, some of the datasets do contain only information on market shares directly, so no computation on our side was needed. These numbers might have incorporated the metric regarding the time spent on this platform. The difference between the datasets and then the values of market shares are not of any significance for our analysis, since we mostly calculate the market shares within one dataset (only if we compare the HHI over time, it is the only exception where this might matter), and also these differences are so small that they do not really change anything about who is the market leader and whether he has 60 or 15 percent of the market. In other words – our calculations might lack precision in terms of a percent or two, but that is not at all decisive in our analysis, because, as was explained already, for HHI the big numbers decide everything. This is given by the mathematical structure of HHI – if you square a large number (lets say 60, representing 60% share of the market), you will get an enormous number ($60^2 = 3600$) ; if you square a value of 1 (lets say a specialized radio covering 1 percent of the audience), the result of a potential small mistake has almost zero potential to influence interpretation of the results of HHI (because $1^2 = 1$), since oligopoly is defined by $HHI = 2500$.

In one case, a dataset different from MML-TGI is used, because this one does not specify shares of smaller TV channels. In this one case, we have replaced this dataset with

publically available data from a different agency Kantar media (which cooperates on MML-TGI research anyway) and in this case, the data are not diverging significantly from MML-TGI, they are only more detailed.

The data on the Internet are a different case, because they are not part of MML-TGI and usually we do not see market shares of news websites. The most logical question is from what market do we compute the shares. As explained above, from the relevant market, therefore, from the market with news websites only. Since in the data on television, radio and press market, there are also tabloids and specialized media (such as on sports), we could not leave out these from the Internet dataset; otherwise we would calculate different things, and such market shares would not be comparable. The data on the audience of online news are structured differently. Usually, we can see the 'real users' metric (RU), but since one person is usually a user of more websites and the sum of all real users is much more than 100 percent, it was obvious that this is not the best metric for the purpose of this analysis. There is also one more important reason why we have ruled out RU metric – the methodology of its count had changed several times over the years in both Slovakia and Czech Republic. This means that it would show very different results each time we would build our analysis on it. Another metric used in the past, page views, is considered to be unreliable, since there are ways to artificially raise these figures. Therefore, we have chosen to use a metric called 'visits', representing the number of visits on the website per month. The month was chosen to be November in all examined years – for the reason of representativeness – it is inside fourth quartal, there are not many holidays (but there are some) – no Christmas or summer season, etc., and for the sake of comparability of the data. However, we have attempted to gain data from 2000, but there are no such data that would be precise and comparable from this year. The agencies guaranteeing the measurement (providing us with data) started their projects NetMonitor and IABMonitor as late as 2005. Similarly, as with the other media types, a part of this data (for year 2020) is publicly available on webpages of these organizations, and the older data (for 2010) were provided to us by these organizations upon request. We separated only those data related to news websites – we have excluded everything else, to be able to analyze only the relevant market with news websites. The sum of all their monthly visits represented 100 percent from which we had calculated the market shares.

Hereby we declare that each dataset is different – although generally comparable, in details each dataset differs, for example, the number of media listed – in one dataset there are only the biggest players, in another dataset there are up to 100 radios. Since the

difference between them is the absence of the small players that do not matter for HHI calculation, we consider these differences in the datasets as nonsignificant. Moreover, the market shares are computed within one dataset only; then the HHI or POMO is calculated from the market shares. If there are possible differences between the real figures and those calculated in this dissertation, they would be small and, therefore, unlikely to change anything in our conclusions. There is a possibility of more significant errors in case the real ownership structure is not a publicly available information. For instance some regional newspapers have changed their names since 2000, and the network of owners that unified them later had already been in operation in 2000, but there is lack of exact and publically available information on who owned which regional daily at which point of time. In cases of small radios from 2000, the same argument applies: the smaller the medium, the less concerned we have to be about the inaccuracy of the ownership analysis lacking the data on their precise ownership structure in a given point of time.

Once we had market shares, we could perform HHI analysis for market with all channels, dailies, and websites, and then we performed the same analysis for owners or controllers of those media to show the real concentration of ownership on the market. This double analysis has a purpose – it shows that even inside a big media group there can be some kind of plurality, such as cultural plurality, plurality of genres, programmes, etc. The analysis of ownership structure shows the more important part for our research: the political and economical power of the owners over the media markets.

The purpose of this inquiry is to give an empirical answer to several of the central questions of this dissertation. Where is the regulation of news media in Slovakia and the Czech Republic headed? Does it work properly (in expected way) to protect sufficient pluralism on the market with political information? And therefore, does the regulation of media safeguard the proper functioning of democracy, defined (among other things) by pluralism?

2. 2. Media Capture methods

As we have explained in the theoretical chapter, there is a recent theory that applied some measures from economics and political science to the media systems: media capture theory.

Media capture can be viewed as a form of centralization or concentration of power (usually both) in the hands of several already very powerful players. We can perceive the captured media system, especially if it is captured by a very small group of people, as the

opposite to the model of pluralistic democracy. In economic terms, it would be the monopoly of power (in this case over media) as an opposite to the free and competitive market with a lot of players. Total monopoly of power over media is perhaps possible in the strictest dictatorships such as North Korea or possibly China, where the government can control all flows of information. In CEE, we can examine possible oligopolies.

Media capture theory, coming from economics, defines it with wording of competition lawyers and economists: a governmental-business *cartel*, a *collusion* between the political class and media owners with aim of controlling the flow of information to protect their interests.²⁸³ Dwelling on the economic theory, this kind of cartel or collusion between important players creates a situation in which one group of players can *abuse their dominant position* on the media market.

As an economic concept, media capture can be measured. The Centre for Media, Data and Society at Central European University in Budapest had developed four-component model that can be used to identify the intensity of media capture in a given national context:

- 1.Regulatory capture
- 2.Control of public service media
- 3.Use of state financing as a control tool
- 4.Ownership takeover²⁸⁴

In this thesis, we will assess these four criteria in Slovakia and the Czech Republic, based on publicly available information. We will create a scale, from 0 representing no regulatory capture, no control of public service media, etc., to 10, representing the opposite – absolute regulatory capture, total control of public service media etc. The HHI and POMO values will be used to define the level of ownership takeover in Slovakia and the Czech Republic.

From the numbers generated by this assessment, we will construct a line from one extreme to another – from ideal, infinitely pluralistic and competitive media market/system on one side, to extremely concentrated, totally captured non-pluralistic media market/system on the other side. It is easily predictable that the place of the examined countries will be somewhere in between these extremes. The important question is where is it going to be close to what we can define as oligopoly?

283 DRAGOMIR, M. 2019. p. 27.

284 Ibid. p. 8.

To do so, we need to first define what these four components mean, then to define a specific scheme for evaluating these components more objectively, and then to compare the reality with the criteria.

2. 2. 1. Regulatory capture

This component represents political control over regulatory process through regulatory agencies such as broadcasting and licensing councils, etc. As in our dissertation, the concentration of power matters, we will also include the antitrust or antimonopoly authorities.

In economic terms, the regulatory capture refers to subversion of regulatory agencies by the firms they regulate, although nowadays the term is also used to describe successful efforts of firms to weaken regulation – as Posner explains, since the top officials of regulatory agencies are political appointees, interests groups influence the regulatory agencies: *„One can think of this influence as a kind of capture, although infiltration or undermining might be a better word for it.“*²⁸⁵

In some cases, this influence could be direct – as the Czech prime minister Babiš can be easily connected to media ownership as well as to appointees in the regulatory bodies. In other cases, these connections will be subtle or informal, such as family, political affiliation, business ties, etc.

We will be analyzing the background of the members of the councils, their possible political affiliation, the process of their nomination and approval, all from the publicly available information. The relevance of this criterion for Slovakia and the Czech Republic is clear also for the author of these criteria – he quotes cases from both countries as examples of regulatory capture playing a role in media capture.²⁸⁶

Based on this, we have constructed a scale of 0 to 10 for assessment, with clear criteria for evaluation, 0 representing no regulation, and 10 representing total capture of all agencies by 1 political centre. The criteria are as follows:

0 – No regulation.

1 – Regulatory agencies are independent of any political control or influence, nominations of their members and managers are out of control of politicians or powerful economic groups, there are zero connections between people from the agencies and political or any economic powers outside the agencies.

285 POSNER, R. 2014. p. 876 – 879.

286 DRAGOMIR, M. 2019. p. 9 – 10.

- 2 – Regulatory agencies are responsible to several political bodies from several branches of power (the power over them is dispersed), but there is no real connection between their members and other powers.
- 3 – Regulatory agencies are responsible to several branches of power that nominate representants of different societal groups as their members or managers; there are no direct political nominees.
- 4 - Regulatory agencies are responsible to at least 2 branches of power, nominees can be politically affiliated in a transparent and pluralist manner, different social, political and regional groups are represented.
- 5 – Some of the regulatory agencies are governed by political nominees in a pluralist manner, the majority is less political. Agencies perform their duties according to basic European standards.
- 6 – Majority of the regulatory agencies are governed by political nominees in pluralistic manner (internal pluralism), the decisions are unbiased, but not entirely up to standards.
- 7 – Regulatory agencies are divided among powerful groups (political parties or their allies), each group fully controlling an agency, but no group has a majority of them (external pluralism). The bias of each agency is evident.
- 8 – One political group controls the majority of agencies. Another group controls a minority of the agencies and is competing with the dominant group.
- 9 – One group controls the majority of the agencies and has significant influence in the other agencies, but there are still dissenting voices.
10. Total political capture of all agencies by one single political force.

2. 2. 2. Control of public service media

This component refers to political control over public-service media. In democracy, public service media have to be accountable in some way to the people, and in representative democracies this is done through politicians representing the people after election. Inevitably, there is some political influence on public-service media in every democracy. The question is how the system of relations and powers is organized to achieve both accountability and independence, necessary for fair reporting in the interest of all people, not just a group of powerful individuals. In fact, many states with western journalism culture (the watchdog model) are trying to separate PBS media from other political powers, to distance them through letting societal interest groups (civil society) to appoint their representatives into the PBS councils, rather than having them elected by

the parliament or appointed by the government.²⁸⁷ Even in the parliamentary model, there is an option of dispersion of power – governance over the public service media is divided proportionally between parties or different channels are given to different parties.²⁸⁸

On the other hand, authoritarian governments have several instruments to achieve a „*tight grip on public service broadcasters*“: the power to appoint governance structures and financing.²⁸⁹ As we have already described in the previous chapter, authoritarians usually appoint a new public service media manager – the one in Hungary had forced critical journalists out and replaced them by Fidesz-loyalists²⁹⁰ and similar process was observed in Poland.²⁹¹ The most efficient model for the government trying to control the public service media is if there is a model of state-media, with the top director responsible directly to the government and the budget being decided every year also by the government.

There are different models of checks and balances that could ensure the independence of PBS media from the government. If the PBS media are politically captured, it can be observed in several ways: by analyzing their content for political bias, but also on more structural level, observing the change of public media leadership accompanying the change of the government.²⁹²

From the publicly available information, we will assess:

- a) institutional independence of the public service media from politicians: process of nomination and control of the general director, replacement of managers by party loyalists,
- b) funding – its independence from political decisions,
- c) number of mutually independent public service media (their concentration),
- d) other factors signifying possible political affiliation (layoffs of critical journalists, protests and petitions, data from research on political bias, etc.),

In terms of number of mutually independent public service media, we need a firm assessment criteria from 0 to 10:

287 VOJTĚCHOVSKÁ, M. 2017. The gradual takeover of the Czech media system. IN: SCHRIFFRIN, A. 2017. p. 106 – 107.

288 PERUŠKO, Z. VOZAB, D. ČUVALO, A. 2021. p. 166.

289 DRAGOMIR, M. 2019. p. 10.

290 BAJOMI-LÁZÁR, P. 2012. The Party Colonization of Media. IN: *East European Politics and Societies*. Vol. 27(1). p. 83.

291 SIMON, K. 2019. *Media Capture Central European Style*. Heinrich Böll Stiftung. Online: <https://www.boell.de/en/2019/01/31/media-capture-central-european-style>. (Quoted on 23. 07. 2021).

292 SIMON, K. 2018. *Media in Chains: Lights, Camera, Capture*. Heinrich Böll Stiftung. Online: <https://www.greeneuropeanjournal.eu/media-in-chains-lights-camera-capture/>. (Quoted on 23. 07. 2021).

- 0 – More than five different mutually independent public service media institutions.
- 1 – More than 4 different mutually independent national public service media institutions with decentralized governance.
- 2 – 4 different national mutually independent public service media institutions with decentralized governance.
- 3 – 4 institutions, but with centralized governance.
- 4 - 3 decentralized institutions.
- 5 - 3 mutually independent public service media, but each with centralized governance.
- 6 – 2 mutually independent institutions with decentralized governance.
- 7 – 2 mutually independent institutions with centralized governance.
- 8 – 1 decentralized institution.
- 9 – 1 centralized institution.
- 10 – No public service media.

In terms of assessing other factors signifying political affiliation, we also need a scale and given criteria:

- 0 – Openly antigovernmental, anti-establishment public service broadcasting, the government or the political majority is in no position to step in, with the only option to tolerate the critique or fight it verbally. The public service broadcaster is not accountable to the politicians, and the results of elections of any kind do not have any impact on the medium-term, short-term, nor long-term.
- 1 – Very critical of the government. The broadcasting aims its investigative journalism and news at the government or the political majority, because it is considered to be the duty of their journalists to control the powerful more than the opposition. The director may be the nominee of opposition, but is not a political actor himself. The government or the majority in parliament has not many tools to fight against this.
- 2 – Critical. The broadcasting is equally critical to all political powers, critique and investigative journalism are aimed at the powerful players in the government, but only on those that fairly deserved it by their actions. The medium sometimes opens a scandal that can cost a government official his or her job. The management of the medium does not change after elections.
- 3 – No compromises, but public service caution with critique. The broadcasting is fair and makes no compromises with the political powers whatsoever. Reporting is cautious about straightforward critique of those in power, but the critique exists, even on the level

of investigative journalism. The staff is stable and is not subject of changes after general elections or after the appointment of the director.

4 – Compromises. The director nor the management are captured; they are never instrumentalized by politicians or their allies, but they themselves sometimes choose to compromise with the power in exchange for other favours (such as favorable legislation, regulation, budget, etc.). This happens rarely and the broadcasting is generally fair, sometimes critical, but the critique is sometimes weighted with uncritical coverage at other occasions. Compromises are not made in terms of staff and personal matters, politicians or other powerful actors do not have nominees inside the institution.

5 – Attempted capture. The capturers (political forces backing the director) are attempting to instrumentalize the broadcasting during the most important moments such as elections, but they are mostly not successful, the dissenting voices prevail or they are at least equal to the voices of capturers. Broadcasting is fair, but not too critical of the government or capturers. The only nominee of politicians or outside forces can be the director, but his powers towards the news are limited and it is not usual that the new director will replace the chief of news.

6 - Occasional capture. The institution is instrumentalized by the capturers on the most important occasions such as the elections, not in everyday reporting. Dissident voices are heard, but they are not decisive. Compromises are occasionally made also in terms of staff.

7 – Partial capture. Some parts of the broadcasting are captured as described at point 8, others are mostly free of capture. In the decisive moments, there is pro-government bias (or pro-capturer). The dissenting voices are a minority, but they can perform critical journalism, occasionally even towards the government or the capturers. The director is a political nominee and he is in control of the news, and usually the new director replaces the chief of news.

8 – Capture. Broadcasting biased in favour of the political group friendly to the government. The management of the institution has clear political backing and adversaries, and this is reflected in every day broadcasting. Dissenting voices are present, but marginalized, punished, or pushed out. The political nominees in the news are present.

9 – Major capture. The broadcasting or reporting serves only one political affiliation, even if it means more parties (for example, pro-government bias if the government is comprised of several parties). The director is a clear nominee of the capturer. The

institution is instrumentally used against the opposition on an everyday basis. There are no dissenting voices.

10 – Total capture. The broadcasting serves on party only, it is totally instrumentalized and used by the leadership of the party against any adversaries (even inside a coalition), there are no dissenting voices.

In each of the above-mentioned categories, a numeric value from 0 to 10 will be assigned, 0 representing minimal political control over the public service media (their independence from politics) to 10 representing maximal dependency of public service media on politicians and their decisions. Values will be averaged into one number, representing a level of political control over the public service media.²⁹³

We fully admit that assessing the media capture according to these criteria only by the researcher might bring some subjectivity. Yet, these ex ante numeric scales are far better than only verbal evaluations. Since the criteria are clearly given, there is not much room to diverge into subjective or biased judgements. Every claim about the facts that influence the evaluation is accompanied by evidence. However, for future use of these criteria, a panel of experts rather than just one researcher might objectivize the use of this method.

2. 2. 3. Use of state financing as a tool of media capture

The state often subsidizes the media, directly or indirectly, such as in a form of state advertisement. In case of the funds from the European Union, the state is often the actor deciding to which media is this advertising allocated. Therefore, we will analyze the publicly available data connected to public funding, state advertising, state subsidies and market – disruption measures²⁹⁴ such as the Hungarian advertisement tax.²⁹⁵

The danger of such financing can lie in disproportionately favoring those media outlets that refrain from criticizing the state²⁹⁶, the government or the oligarchic or interest group.

293 Hereby we are obliged to disclose our potential conflict of interest – we (the author) who had worked for the Slovak public service broadcaster RTVS between 2012 and 2018. We had signed a petition against the new director of RTVS, elected by parliament, together with more than 60 other journalists from RTVS during spring 2018. As well as in other cases of journalists signed under the petition, we were not offered prolongation of a time-limited contract in summer 2018. Since then, we have no relations to RTVS.

294 DRAGOMIR, M. 2019. p. 11.

295 EUROPEAN COMMISSION. 2016. State aid: Commission finds Hungarian advertisement tax in breach of EU rules. Press release. Online:

https://ec.europa.eu/commission/presscorner/detail/en/IP_16_3606. (Quoted on 23. 07. 2021).

296 SIMON, K. 2018.

In particular, this one question will be answered: Do all news media have equal access to state subsidies and state advertising, and is its distribution proportional to the reach of the media?

Hereby we also need to create a transparent ex ante scale for assessing the level of media capture by the state financing, from 0 representing no influence to 10 representing total capture.

Since this is a multidimensional measure, we suppose points instead of grading: plus 1 point if the state subsidy for the media exists and plus 1 if politicians decide about the money. Plus 1 point if media are getting state-advertising on a regular basis, plus 1 if this is decided by politicians, and plus 1 if it is not divided proportionally based on the relative strength of the media on their markets. Plus 1 if the state advertising is mostly given to the media friendly or tied to the government. Plus 1 point if the state is among the three biggest advertisers in the country. Plus 2 if more than 50 percent of the state advertising is given to companies directly connected to the governing politicians. Plus 1 if there is a special tax on media (for instance, advertisement tax) that favours one group of media over another. Minus 2 points if there is a transparent scheme allowing the media to compete for the state advertising on equal terms. Minus 1 point if this mechanism is separated from politicians. In this way, if a country has all of the listed components and no safeguards, the score will be 10, representing full capture. If there are none of the components listed, the score is 0, meaning no capture of the media by financing tools.

2. 2. 4. Ownership takeover - Concentration of ownership

The POMO value will be used to determine the concentration of the power of media oligarchs over the news media, and combined with the HHI of the product/platform markets. In concrete terms, the HHI values in 2020 in all four examined product markets will be averaged and then weighted by the percentage provided by the Top 8 analysis of POMO values. For example if 8 biggest players would control 90 percent of the Slovak market, the average HHI from Slovak TV, radio, daily press and news websites market will be multiplied $\times 0,90$. The result of this calculation will be a figure between 0 and 10 000 and it is going to be interpreted similarly as HHI. However, we need a new scale from 0 to 10, therefore: 0 – 200 would mean zero points on our scale, 201 - 400 will be 1 point, 400 – 600 will mean 2 points on our scale, 601 – 1000 will be 3 points, 1001 – 1500 will be 4 points, 1501 – 2000 will be 5 points, 2001 – 2800 will be 6 points, 2801 – 3600 will

be 7 points, 3601 – 4400 is 8 points, 4401 – 6000 is 8 points, 6001 – 8000 is 9 points and anything above 8000 is 10 points.²⁹⁷

Following these rules, we will have several values from the media capture scales for each examined country. We will average them and present one number representing the level of media capture on the national market from 0 (no capture) to 10 (total capture).

In case it is unclear how to assess a specific reality, in other words, how to assign a numeric value to something like independence of public service media, the Indicators for Media Pluralism methodological guidelines will be used.²⁹⁸

2. 3. Methodology of comparative law

One of the established methodological approaches coming from legal studies that can be applied to the study of media law is a comparative legal analysis. Since this dissertation is comparing media law in two states, some use of comparative law methodology is unavoidable: confronting one legal order to another is the definition of comparative legal analysis.²⁹⁹

Moreover, comparative law, especially the field of comparative constitutional law, often deals with topics such as the freedom of speech or structural matters like separation of powers³⁰⁰ - which can be reframed as deconcentration of power. Comparative communication law exists in literature as a subset of comparative law – it is defined as the study of jurisprudential sameness and difference in the field of national, regional and international communication.³⁰¹

Eberle (2011) describes the methods of comparative law in four steps:

297 A legitimate question can be brought here why the distribution of points is not even – why change of 200 is enough to change the point score on the lower end of the scale and 2000 is needed for change on the upper end. It is so, because it is the way HHI interpretation operates as well – anything above 2500 in an oligopoly. A market that is oligopolic is significantly more captured than 2,5 on scale from 0 to 10. That is why this scale based on HHI needs to be more sensitive on the lower end. Also, the distribution of the values on our scale is not arbitrary – notice that 2500 signifying oligopoly in HHI interpretation would mean point 6 on our scale of media capture from 0 to 10. An oligopolic market is thus closer to the description of reality as captured, but it does not mean a monopoly. Monopoly – a totally captured media market – would be anything above 8000. Also, multiplying the HHI values by any percentage automatically means a decrease of the value (unless it is 100 percent), that is why the interpretation for this result must be stricter/even more sensitive on the lower end than the original interpretation of HHI.

298 VALCKE, P. (et. al). 2009.

299 ŠTEFANOVIČ. M. 1996. *Základy porovnávej právovedy*. [The Basics of Comparative Law]. Bratislava: Vydavateľské oddelenie Právnickej fakulty Univerzity Komenského. p. 9.

300 EBERLE, E. J. 2011. The Methodology of Comparative Law. IN: *Symposium: Methodological Approaches to Comparative Law*. Vol. 16. Issue 1. Article 2. Roger Williams University Law Review. p. 54.

301 EKO, L. S. 2012. p. 13.

1. Acquisition of the skills of a comparativist
2. Evaluation of the law in words (written law, *law in books*) – external law
3. Evaluation of how the law actually operates in practice (*law in action*, application) – internal law
4. Conclusion - gathering the data, comparative observation³⁰²

Other legal comparativists would add some more points, for instance „*law in minds*“ as an another subject to be evaluated alongside law in books and law in action – legal ideas, concepts and intentions: how legal actors (for example the people drafting law) *think* about what they are doing.³⁰³ This is the reason why this dissertation will bring explanations of some changes in law by the politicians or public figures that pursued such change.

Comparing law from two very different legal families, such as, for example, the law of New Zealand to the law of Islamic Republic of Iran, would need a lot of attention to step 1 from the above mentioned list of methods from Eberle (2011) - acquiring the skills of comparativist. Eberle claims that this includes translation, cultural context of law, legal philosophies, etc.³⁰⁴ While comparing Slovakia and Czech Republic we have the advantage that we do not have to pay too much attention to this step, since both examined countries have common history, close cultural context, the same underlying legal philosophies (Roman – German – European). Almost no translation is needed, since the languages are mutually understandable. As both examined countries are members of the European Union, their legal systems can be considered interwoven, and as other members, they operate under the partial umbrella of a shared EU law.³⁰⁵ Nevertheless, the common legal history in the field of media regulations is briefly demonstrated in this dissertation. Step 2 – comparing law in books - is more important for us. „*The act of comparison requires a careful consideration of the similarities and differences between multiple legal data points, and then using these measurements to understand the content and range of the legal material under observation.*“³⁰⁶ This step could be also called „legal dogmatics“ - description of the content of law, explaining what does the law require³⁰⁷ in one state and in the other state.

302 EBERLE, E. J. 2011. p. 57.

303 EWALD, W. 2017. Rats in Retrospect. IN: BESSON, S. HECKENDORN, U. JUBÉ, S. (eds.) 2017. *Comparing Comparative Law*. Geneva/Zurich: Swiss Institute of Comparative Law. p. 23.

304 EBERLE, E. J. 2011. p. 59 – 60.

305 EWALD, W. 2017. p. 32.

306 EBERLE, p. 61.

307 ŠTEFANOVIČ, M. 1996. p. 62.

„Before we have comparison, we must have a description, and before we have a description, we have identification of the form of that which is to be described.“³⁰⁸ We are describing the media laws – mostly those regulating the content, ownership, organization, or finance of news media.

Step 3 then is to compare the application of laws in action. This means the way how the 2 different states apply the law to specific cases. For instance, if according to the written law there is a criminal sanction for defamation, in this step, we examine how many people were sentenced for this crime and what kind and how severe punishments were applied. We will illustrate the application of legal rules in concrete cases. Some theorists would consider this step being close to legal sociology³⁰⁹, since interaction with culture and societal norms and in general larger social context steps in.³¹⁰ It is a crucial step in the comparative legal analysis, since the law in practice often differs significantly from the law in books. For example, the authoritarian regimes also often guarantee the freedom of speech or other rights to their citizens, but the reality in countries such as Russia is rather different: the rule of government or the sovereign takes precedence over the rule of law, as well as over the rights of citizens.³¹¹

Before we proceed to conclusions, we need to address „law in minds“ - and briefly discuss the intentions behind some laws or its changes. This can be done by quoting the politicians that initiated the change or quoting the legislator who is obliged to state the purpose of the change during the legislative process. This might be called „legislative history“ of specific laws under review – such as if predominantly US judges often quote statements from members of Congress while discussing the law.³¹² Similarly, Slovak legal theory also mentions historical interpretation of law as „occasio legis“ - external reason why the law had occurred, and „ratio legis“ - the purpose and goal of the legal norm.³¹³ The interpretation of law is called „authentic“ if it is given by the authority that issues the

308 McCRUDDEN, CH. 2017. What Does It Mean to „Compare“, and What Should It Mean? IN: BESSON, S. HECKENDORN, U. JUBÉ, S. (eds.) 2017. *Comparing Comparative Law*. Geneva/Zurich: Swiss Institute of Comparative Law. p. 63.

309 ŠTEFANOVIČ, M. 1996. p. 62

310 Societal norms step in for example in case that some law (in books) is not applied in real life, because the society considers it inappropriate or obsolete. Example: Slovak criminal law allows to punish a person for defamation by 8 years in prison, but in reality courts never apply such a harsh sentence. This will be examined later in this dissertation.

311 EKO, L. S. 2012. p. 262, 265.

312 DWORKIN, R. 2014. *Riša práva*. Bratislava: Kalligram. Translation of DWORKIN, R. 1986. *Law's Empire*. Cambridge: Harvard University. p. 401, 433.

313 PRUSÁK, J. 1990. *Vybrané kapitoly z modernej teórie štátu a práva*. [Chapters from modern theory of state and law]. Bratislava: Právnická fakulta Univerzity Komenského. p. 158.

law³¹⁴ – often the legislator is obliged to attach the reasoning in written form during the legislative process itself. This might be a source of information about the legislators intent.

Some theorists would frame this as legal philosophy: in search for values, there are answers to questions such as if the law (as written or applied) is right, if it is as it should be, how should it be constructed and what ought and has to be – in comparison between 2 states, it is comparative legal philosophy and comparative legal politics.³¹⁵

Politics is not separable from law since, in democracy and especially in continental civil law, mostly elected politicians are the legislators creating the law. Ronald Dworkin claims in his famous article „Law as Interpretation“: *„Legal practice is an exercise in interpretation, not only when lawyers interpret particular documents or statements, but generally. Law so conceived is deeply and thoroughly political. Lawyers and judges cannot avoid politics in broad sense.“*³¹⁶

In this dissertation, we are not avoiding politics – to the contrary, we are analyzing the law in political context, where politicians are viewed as creators/authors of law. They create laws with political motivations and intentions to achieve some sort of political goal. That is why we will analyze some of their statements, to reveal their goals while passing a specific examined regulation. This will help to uncover their intention to concentrate or de-concentrate the power over media.

For the purpose of this analysis, only the law concerning media, journalism and specifically their relationship with power and democracy will be chosen. Also, it is essential that only those laws that have common goal³¹⁷ in both examined states, will be compared.

2. 4. Methods from social sciences

Various social sciences methods were applied during the preparation of this dissertation, including those traditionally found in the field of media studies. Some of these are directly applied in this dissertation; others were applied only to get some background information and were published separately – they will be quoted.

314 Ibid.. p. 158.

315 ŠTEFANOVIČ, M. 1996. p. 62.

316 DWORKIN, R. 1982. Law as Interpretation. IN: *Texas Law Review*, 60. Quoted from: ARNIO, A. McCORMICK, N. *Legal Reasoning*. Vol. 2. The International Library of Essays in Law & Legal Theory. p. 527.

317 ŠTEFANOVIČ, M. 1996. p. 60.

After all of the methods described above are applied, there is one last, the most crucial and the most media studies-related, - media systems analysis. This analysis will include (and partially is going to be partially based on) the knowledge acquired by previously described methods. It is also intended to supplement and explain the knowledge gained by the other methods.

2. 4. 1. Qualitative interviews

One of the methods applied previously, and it is quoted in this dissertation, is qualitative in-depth interview. Some of the consequences of media law and regulation can be assessed as a specific phenomenon, such as effects of a specific regulation on journalism. Some media laws (and their application in practice) can have „chilling effect“ on journalists. It is a sort of deterrence effect, but it is illegitimate and undesirable in democratic society. The effect is described as a situation in which the journalists do not publish information (even if it is correct and truthfull) because they are not sure that they can defend such publication in front of a court or authorities: they fear penalties, high litigation costs, or generally some kind of legal problems. Two kinds of chilling effect are described in the literature:

a) *Direct chill*: non-publication of certain information that contains the risk of criminal proceedings or costly litigation, a kind of self-censorship as a result of legal considerations; „If in doubt, take it out“ philosophy of publishers³¹⁸³¹⁹

b) *Structural chill*: preventive avoidance of taboo individuals or organizations that are considered to be a minefield – nothing is written about them³²⁰, because it is too dangerous or costly.

This way, the law and legal authorities can be misused by elites and public officials to suppress critical journalism.³²¹ Needless to say, critical and investigative journalism is a vital part of pluralism in the democratic society – it is the part of pluralism that really matters.

318 BARENDT, E. LUSTGARTEN, L. KENNETH, N. N. STEPHENSON, H. 1997. *Libel and the Media. The Chilling Effect*. Oxford: Clarendon Press. p. 190 – 191.

319 TOWNEND, J. 2017. Freedom of expression and the chilling effect. IN: TUMBER, H. WAISBORD, S. (eds.) 2017. *Routledge companion to media and human rights*. Routledge. p. 73 – 82.

320 BARENDT, E. LUSTGARTEN, L. KENNETH, N. N. STEPHENSON, H. 1997. p. 191-192.

321 BELÁKOVÁ, N. 2013. Analysing How Law Shapes Journalism in Post-Communist Democracies. IN: TRIVUNDŽA, I. T. CARPENTIER, N. NIEMINEN, H. et all. *Past Future and Change: Contemporary Analysis of Evolving Media Scapes*. Ljubljana: Faculty of Social Sciences. p. 157 – 163.

The chilling effect is, for the purpose of this study, perceived as a phenomenon. In social sciences, the phenomenological tradition of research collects information from long in-depth interviews with a limited number of people (traditionally up to 10) who had direct experience with the specific phenomenon; because this tradition is based on the view that understanding of reality comes from subjective experience, not from observation from outside.³²²

The existence of criminal penalties for defamation and the application of these laws in practice are described from the perspectives of those journalists who faced criminal process in Slovakia. Their selection is intentional – they have common conscious experience (in phenomenology called essence)³²³ - which can be researched for their understanding, experience, and consequences by the in-depth interviews. The interviews were semi-structured, with open questions, with the possibility of the researcher to react, interrupt the speaker and ask questions that were not prepared before the interview.³²⁴ Detailed information on construction of the interviews can be found in an article published from partial results of this research.³²⁵

The interviews needed to be analyzed. In phenomenological analysis, the researcher identifies *significant statements* (in the interviews), deduces topics, and then writes narrative-descriptive text on *what* and *how* the interviewee had experienced; the researcher then identifies the *substance* of the experience described and *meaning* of this experience.³²⁶

In this way, several journalists with experience of some kind of criminal proceeding have been started against them. Their experiences had been analyzed in an above-described way to find out the consequences of such regulation (the existence of criminal defamation law) on the work of professional journalists.

This analysis has some obvious downsides: for example subjectivity of the experience of the journalists, but more importantly an option that those who, in fact, had been chilled by the existence of criminal defamation in law, are not known. Therefore, only brave

322 CRESSWELL, J. W. 1998. *Qualitative Inquiry and Research Design, Choosing Among Five Traditions*. London, Thousand Oaks, New Dehli: SAGE Publications. p. 54-55, 86, 122.

323 GAVORA, P. 2006. *Spríevodca metodológiu kvalitatívneho výskumu*. [Guidebook of qualitative research methodology]. Bratislava: Regent. p. 31 – 33.

324 BERG, B. L. 2006. *Qualitative Research methods for the Social Sciences*. Boston, New York, London: Pearson Education. p. 95 – 97.

325 HANÁK, P. 2016. Criminalisation of Journalism: Criminally Prosecuted Slovak Journalists in European Perspective. IN: *Media Studies*. 2/2016. p. 245 – 264. Online: <https://medialnistudia.fsv.cuni.cz/post/5>. (Quoted on 15. 11. 2021).

326 CRESSWELL, J. W. 1998. p. 207, 223.

journalists that did not fear legal problems, actually ran into them – and that is how their cases became known also for the researcher.³²⁷ On the other hand, this method is useful to know how the journalists have reacted to such legal problems – whether they had been chilled pro futuro, whether their practice had changed after they experienced at least some stage of criminal proceedings against them. Another upside of this method is that it brings answers that are not predicted by the researcher: answers to open questions provide new knowledge that could not be discovered by yes or no type of questions or in a questionnaire. A limited number of journalists were asked about their experience with criminal proceedings. They were selected by the researcher because of the publicity of their cases; they are those journalists known for having trouble with police or prosecution for their work.

2. 4. 2. Media systems analysis

All of the above-mentioned methods borrowed from law or law&economics can be considered as a part of the media systems research as it is known from the much-quoted publication from Hallin and Mancini.³²⁸ Analyzing the legal and political framework of the media system, especially the relationship between media, law and politics, can bring information about the media system itself.³²⁹ Media systems analysis from its seminal work *The Four Theories of Press* by Siebert, Peterson and Schramm described the connection between then defined „press systems“ and politics by stressing that the press systems of each country reflects the social and political structures, the logic of social controls and power relations between individuals and institutions.³³⁰ Today we acknowledge that the media systems do not only reflect these structures, but as it is explained in detail in previous chapter, they are a deep part of the political system. If something significant is changing in the media system, it is impacting the political system and vice versa; the change of political system is almost surely having an impact on the media system. Media law is an integral part of media system, and therefore a change in media law can have consequences on political system (for instance, plurality and then the quality of democracy). Media systems analysis helps us to answer questions such as: Is a

327 HANÁK, P. 2016. p. 255.

328 HALLIN, D. MANCINI, P. 2008. *Systémy médií v postmoderním světě. Tři modely médií a politiky.* Czech translation of *Comparing Media Systems*. Praha: Portál.

329 TRAMPOTA, T. VOJTĚCHOVSKÁ, M. 2010. p. 33.

330 EKO, L. S. 2012. p. 15.

specific change in media law a move from one model of media system towards a different type of media system?

Two out of four original criteria for classifying media systems according to Hallin and Mancini are directly connected to the analyses described above of legal and political-economic connections of the media: 1. The role of the state (and its intervention in the media) 2. political parallelism. The latter can be researched by organizational analysis and analysis of the ownership structure.³³¹

The media systems theory had originally created three distinct models of media systems in the Western world, described in the theoretical chapter. Media systems analysis is inevitably comparative analysis. Comparing the Slovak and Czech media system might be interesting, but it is the larger context that interests us more.

For the purpose of this dissertation, the 3 models of media systems serve as a kind of role models. As we have already explained in the theoretical chapter, all 3 models are based in democracy and therefore they are pluralistic – even if there is a different kind of pluralism in different models, the basic criterion of pluralism is fulfilled. Are Slovakia and the Czech Republic within these systems, or outside of them? And where are they heading? To answer these questions, we need to look beyond these models. Specifically, as they are geographically defined as the western models, we need to ask the question of what is *east* of these models. And if we go beyond the CEE (which is the subject of the analysis), we find one neat answer. Russia³³² - a country that never had a culture of freedom of information.³³³

For the purpose of our analysis, we define a fourth model, in addition to the original 3 models: The Eastern Oligarchic Captured model. It is the concentrated, nonpluralistic model, in which the news media do not serve as a watchdog, but rather than a mouthpiece of the government – the regime can rely on a network of friendly outlets convincing the voters that the government is always right.³³⁴ Contrary to the original models, this one is not democratic, but authoritarian. It is very similar to what had been defined in the

331 TRAMPOTA, T. VOJTĚCHOVSKÁ, M. 2010. p. 36.

332 As it is already explained in the theoretical chapter, it is not only Russia representing the model, nor it is the only geographical answer for the question. There are several other examples falling into the model: Turkey, Belarus, Kazakstan etc.

333 EKO, L. S. 2012. p. 270.

334 SIMON, K. 2018.

theoretical chapter as the Eastern, Eurasian, or neoauthoritarian model³³⁵, with centralized power over the media.

To determine the place of Slovakia and the Czech Republic not only on the geographical map but also on a map of media systems, we need to compare them to both western models and the Russian one.

Since we consider pluralism as the defining criterion, we construct a scale/a line: from maximal pluralism to maximal concentration. Maximal concentration (total media capture) means that there is only one center of power that controls all the media.³³⁶

To determine the place of Slovakia and Czech Republic on this line, we will use the above-mentioned 4 components of Media Capture, including the results of the POMO indicator calculations. All the results from the 4 scales from these components will be averaged to create one unifying value that will represent the level of media capture in a) Slovakia and b) Czech Republic. These values will range from 0 to 10, and will signify the place of these two countries between total pluralism and total media capture.

This will indirectly help us to understand the position of the examined countries in relation to pluralistic western models and nonpluralistic eastern model. We acknowledge that we do not have data from Russia or the western countries to compare the position of Slovakia and the Czech Republic with them directly. This might be an idea for future researchers that would decide to use this methodology to quantify the positions of other countries on the scale as well. In this dissertation we use the 3 western models of media systems and the fourth eastern one as models, as rough examples, as a context for the analysis of Slovakia and Czech Republic.

There is no consistent method that would allow us to quantify precisely how much a specific change in law impacts the shift of a media system, because it all depends on *law in action*, the real application in practice in different contexts in different countries. That is why we need to use these approximate models from Hallin and Mancini. Thanks to their models, we can analyze some changes of law as an event in which a country has stepped out of one model and gained a trait typical for a different model, and after assessing

335 Sources: DE SMEALE, H. 1999. The Applicability of Western Media Models on the Russian Media System. IN: *European Journal of Communication*. Vol 14(2): 173-189. VARTANOVA, E. 2012. IN: HALLIN, D. MANCINI, P. 2012. p. 141. BECKER, J. 2004. Lessons from Russia. A Neo-Authoritarian Media System. IN: *European Journal of Communication*, Vol. 19(2): 139 – 163.

336 We do not consider any country or state to be a role model for total media capture with 100 percent of the media captured by a single person. Russia and other countries from the captured model serve us just as models – we are not quantifying their place on the scale, as well as we are not quantifying the place of countries from the western models. We use these models only to illustrate possibilities for trends in the countries under examination.

the impact on (existence of) pluralism, we can describe the dynamics of a media system in a given country. That helps answer the crucial questions: Are Slovakia and the Czech Republic moving on the map of media systems towards the Russian/Eastern Captured model?

2. 4. 2. Other methods

To some minor extent, other methods are used in this dissertation as well. For example, oral history – a method that is very close to the in-depth interviews described above, was used in one study³³⁷ to find out how the transformation of the Slovak media system began historically and on what bases it was created. Participants in the study were asked to speak freely about their experiences in 90-minute sessions with five Slovak journalists that remember the transformation process in early 1990s. As it is defined by Vaněk and Mücke – the researchers asked open questions (Why? How?) to encourage memory of the participants.³³⁸ The participants were senior journalists (or later media managers) playing crucial roles in the transformation process: Viliam Roth, Michal Tvarožek, Ľuboš Machaj, Ivan Mjartan and Michal Berko. The interviews were analysed using the phenomenological approach, similarly as is described in the previous paragraphs of this chapter.

337 HANÁK, P. OSVALDOVÁ, L. 2017. The 1989 Revolution and Transformation in Slovak Public-Service Radio. IN: *Media Studies*. 1/2017. Online: <https://www.medialnistudia.fsv.cuni.cz/en/post/11>. (Quoted on 25. 4. 2021).

338 VANĚK, M. MŮCKE, P. 2015. *Třetí strana trojúhelníku. Teorie a praxe orální historie*. [Third side of a triangle. Theory and practice of oral history]. Praha: Karolinum. p. 167.

3. Context: Slovak and Czech Media in a Constant Transition

This chapter serves as a description of the main events that occurred during the examined years on both Slovak and Czech media markets and in their media systems, in a context of history, politics, and connection between the media and the political power, often combined with the economic power. Since the primary focus of this dissertation is on media law, it is the historical context of media regulations that we chose to present on these pages. The more we are approaching the examined era, the broader and more detailed the description is, because this context is crucial for understanding the main ideas of this thesis.

3. 1. Media regulation history: Is there a common tradition?

Slovakia and the Czech Republic have some common tradition in media regulation, since they had been a part of the same state repeatedly in history. The purpose of this subchapter is to give context to next chapters and to show how close or distant had the media policy been in these two examined countries: Do they have a common history of media-state relationship, or are there two separate histories? This is important not only for the comparative legal analysis itself, but also for the analysis of media systems – Hallin and Mancini in their own reflection on what had been published on their theory concur with the argument of other scholars that historical institutional approach deserves greater attention in comparative research on media and politics.³³⁹

Both Slovakia and the Czech Republic had been parts of the multiethnic Austrian-Hungarian Empire until 1918, but the Czech and Moravian lands were under the Austrian jurisdiction, while the Slovak lands were under the Hungarian government. In dual-monarchy, this meant different legal regimes, including different laws regarding publications.

The legal dualism was preserved after formation of Czechoslovakia in the end of 1918, meaning that in Slovak part of the state the press was regulated by the Hungarian Press Act from 1914 and the Czech and Moravian parts were regulated by the Austrian Press

339 HALLIN, D. MANCINI, P. 2017. p. 166.

Act of 1863.³⁴⁰ This dual regime was valid, with some significant (and some unifying) novelizations, until 1950, when the first common Czechoslovak Press Act was adopted. Both legal norms were analyzed by comparative legal analysis, described as 'law in books' in the methodological chapter: similarities and differences in the content of legal norms are considered between multiple legal data points, in this case 26 institutes of media law, all presented in table number 1.

Their presence or absence in the Hungarian Press Act of 1914 and the Austrian Press Act of 1863 was analyzed, with a purpose to find a possible common tradition of Slovak and Czech press laws before 1950.

3. 1. 1. The Austrian-Hungarian Empire

The historical context of these press acts is an era of political liberalization for the Austrian Press Act – the press was not anymore under the competence of police (executive power, directly politically managed by the government), but under judiciary (that was supposed to be more independent from politics), preventive censorship and system of the government licences for press were abolished.³⁴¹ Nevertheless, some level of censorship had still been in operation, although a different kind – a more modern one – of confiscations of problematic printouts for charges such as the offense against the Emperor or the royal family or threat to the public order.³⁴²

The absence of pre-publication license from the government, and the presence of the system where the publisher only informs the state about the publication without asking for any kind of permission, is a defining trait of both Austrian and Hungarian Press Acts. This is an important finding because this kind of system is the key sign of modern European press regulation until now, in contrast to previous more authoritarian licensing models.

340 This subchapter is based on findings of the author of this dissertation, previously presented in Slovak language on an academic conference at University of Hradec Králové, but not yet published in a written form or in English language: HANÁK, P. 2015. *Dejiny regulácie médií v Česku a na Slovensku: Existuje spoločná tradícia?* [History of media regulation in Czechia and Slovakia: Is there a common tradition?]. Conference paper. Presented at: České, slovenské a československé dějiny 20. století. 1. 4. 2015, Univerzita Hradec Králové. The working-paper is available in Slovak language upon request to the author. This research was supported by the project grant SVV IKSŽ FSV UK 260 231.

341 KONČELÍK, J. VEČEŘA, P. ORSÁG, P. 2010. *Dějiny českých médií 20. století*. [History of Czech media in 20th Century] Praha: Portál. p. 18.

342 Ibid.

Table 1 – Comparison of the basic institutes (legal points) of the Press Acts of Austria (1863) and Hungary (1914).

	Austria	Hungary
Direct and verbalized press freedom guarantee	No	Yes
Compulsory mark of the publisher, his name, and address, etc.	Yes	Yes
Institute of 'responsible editor'	Yes	Yes
Compulsory printouts must be delivered to the state or public institutions	Yes	Yes
Guarantee of the same price of postal services to all legal prints	No	Yes
The government can forbid foreign press	Yes	Yes
No license requirement to publish a newspaper, only informing the state	Yes	Yes
Only the citizen of the state can be a publisher	Yes	Yes
Compulsory deposit on political press, used for possible fines and compensation	Yes	Yes
The deposit was ranked according to the geographic location of the publication	Yes	Yes
The right of correction	Yes	Yes

The newspaper can charge for correction over a given limit of words	Yes	No
The newsroom cannot comment on or edit the text of the correction	Yes	Yes
The publication of correction can be ordered by a state official	Yes	No
The dispute over the publication of a correction is decided by a court	Yes	Yes
Correction is limited to untruthful statements	No	Yes
Criminal sanctions for distribution of printouts forbidden by a court	Yes	Yes
Criminal sanctions for „journalistic corruption“	No	Yes
Criminal sanction for deliberate publications of untruthful hoax	No	Yes
Criminal sanction for threat to morals and decency	No	Yes
Possible imprisonment for crimes related to the content of a publication	Yes	Yes
The objective criminal responsibility of the publisher	Yes	Yes
Criminal responsibility of the responsible editor	Yes	Yes

An offended person can sue for non-material damages, in case of indecency and violation of morals	No	Yes
Criminal sanction for defamation defined in the Press Act	No	Yes
Regulation of labor law for journalists	No	Yes

Legend: Yes – means presence of the institute in the Press Act; No – means absence of the institute in the Press Act. The white color signifies the similarity or sameness of regulation; the grey color is a difference.

Source: Our own legal analysis of the Austrian Press Act 1863 and the Hungarian Press Act 1914.

This analysis was aimed only to find similarities or differences in the Press acts, not in other legal norms, so for cases such as labor rules for journalists, criminal sanctions, etc., it is possible that similar rules could be found in other legal norms of that time that were not examined in this analysis.

The analysis had shown that out of 26 examined legal points, there are 15 identical or similar legal institutes in the media laws of the Hungarian and Austrian parts of the empire. In the remaining 11 cases, these specific laws differ. This cannot be interpreted as a difference in a media system, since these differences are mostly in areas that are not the defining traits of a media system, but rather specific details, such as whether the newspaper can charge for a correction that is too long. The presence of the right to correction is an important feature in which the laws are similar.

The similarities occur in several areas that are significant for the definition of the media systems, such as the compulsory deposits for the political press, or the dispute that was resolved by courts. The deposits (used for possible damage coverage) were graded by the region of the newspaper publication, with the capitals (Vienna and Budapest) being the most expensive, both systems with discounts on nondaily press.³⁴³

343 HANÁK, P. 2015.

The Hungarian Press Act seems to be the stricter one when it comes to criminal sanctions for offences connected to journalism. This is hard to analyze if we only compare these two specific laws and not the whole legal systems, since the Austrian part of the empire could have had criminal sanctions codified in another act, not examined in this analysis. Therefore, we cannot conclude that the Hungarian part of the empire had a stricter regime. To conclude this short analysis, the Slovak and the Czech media regulation seems to have some common tradition coming from the Austrian-Hungarian Empire. Despite the fact that Slovak and Czech lands were under different legal regimes, these two regimes did not differ significantly in important features of their media regulations. This is also an explanation of why the legal dualism could have lasted (with some unifying changes) until 1950.

In terms of comparative legal analysis of „laws in action“ - the implementation of legal rules in practical everyday reality, the Hungarian act (its provision banning colportage of press insulting morals or sparking hatred) was used to censor socialist or nationalist press.³⁴⁴ The possibility of post-publication censorship had been applied later in Czechoslovakia to confiscate mostly extremist printouts, such as whole issues of problematic newspapers.³⁴⁵ Some of such censorship moves of the Czechoslovak state are well documented³⁴⁶, but in other cases the literature offers only anecdotal evidence of some individual cases, but no quantitative and comparative analysis of the application of these laws in Czech and Slovak lands was found.³⁴⁷

3. 1. 2. The Czechoslovak Press Law

During World War II Czechoslovakia had been split and had two different legal regimes of publishing, both totalitarian. In the Protectorate of Czechia and Moravia, the media were under total control of German occupying powers, strong censorship of all forms was

344 CHMELÁR, E. 1998. *Uhorská tlačová politika (so zreteľom na slovenské novinárstvo)*. [Hungarian press policy with focus on Slovak journalism]. Nitra: Univerzita Konštantína Filozofa. p. 125.

345 ŠEFČÁK, L. DUHAJOVÁ, Z. 1993. *Dejiny slovenského novinárstva 1918 – 1948*. [History of Slovak journalism 1918 – 1948]. Bratislava: Comenius University. p. 11 – 12.

346 ŽÁČEK, P. 2009. Tiskový pořádek před březnem 1939. [Press policy before March 1939]. In: *Pamět a dějiny*. 2009/02. Online: <http://www.ustrcr.cz/data/pdf/pamet-dejiny/pad0902/005-021.pdf> (Quoted on 9. 2. 2015). p. 5, 90.

347 The next steps of comparative legal analysis, such as analyzing „law in action/practice“ is not performed in this chapter for two reasons: (1) The purpose of this chapter is only to provide basic context for the next analysis of the main research focus of this dissertation, the era after the year 2000. (2) Further historical research into the topic of how the laws were applied in practice in different states (the Empire and then Czechoslovakia, both having 2 different legal regimes) would be necessary. Such a research is not the focus of this dissertation.

applied, most of the printed press seized to exist, and several journalists had died after their illegal publication activity had been discovered by the Nazi occupiers.³⁴⁸

In comparison, the regime in the Slovak Republic (1939 – 1945) had been less cruel, at least in terms of murdering journalists. The new republic had not been occupied by Nazi Germany until late 1944. As an ally of the Axis, the Slovak Republic was a totalitarian regime with one-party rule, in which the government had controlled all the media through The Office of Propaganda and applied preventive censorship, admitted only some people to journalism profession (for instance, non-Jewish).³⁴⁹

By the end of the war, Czechoslovakia was reunited under a new communist-type totalitarian regime directed from the Soviet Union. The press acts from old Austrian Hungarian Empire had been replaced only in 1950 by a new Press Act 184/1950, which was much shorter and reduced the press law in Czechoslovakia to a set of short rules (only 10 paragraphs) such as that the press can be only published after a licence was issued, only the state or some given legal organizations could publish periodicals, the press is not subject to a private business, and all journalists have to be members in politically controlled union of journalists.³⁵⁰ Some authors call this reduction of the legal text and institutes the „point zero“ in the Czechoslovak press law or even a „return to the press-law prehistory.“³⁵¹ There was no right to correction, deposits, or judicial control.

The fact that the Press Act of 1950 had missed out many important institutes of the traditional press law, led to regulation of the media by several directives of the ministries of information or education³⁵² and subsequently to a new Press Act of 1966.

This act was three times longer, contained 30 paragraphs, and reintroduced the right to correction. The main feature of the system remained: only a given set of institutions (such as political parties, state institutions, and other organizations) could publish a newspaper, certainly not everyone. There was no mention of censorship – paragraph 17 abolishing censorship was added in June 1968, but shortly after the start of Soviet-led military occupation of Czechoslovakia, this paragraph had been suspended in September 1968 – so the censorship was reintroduced.³⁵³

348 KONČELÍK, J. VEČEŘA, P. ORSÁG, P. 2010. p. 90.

349 DRGONEC, J. 2008. *Základy masmediálneho práva*. [Basics of mass-media law]. Bratislava: Eurokódex. p. 33 – 35.

350 184/1950 Press Act of Czechoslovakia. Online: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1950/184/19501228.html> (Quoted on 21. 09. 2021).

351 DRGONEC, J. 2008. p. 35.

352 KONČELÍK, J. VEČEŘA, P. ORSÁG, P. 2010. p. 142 – 143.

353 DRGONEC, J. 2008. p. 37.

Even more important than the official legal documents were the acts of the ruling party that held all the power and that was instructed from the Soviet Union. The Communist party of Czechoslovakia had an ideological and mass media departments that required only „opinion-reliable“ journalists to work in the media³⁵⁴, the rebels have lost their jobs in a wider process called *normalization* (opposed to liberalization in the 1960s).

The censorship was practically executed by the Central Publication Office that had to prevent publication of information „against the social interest“ - among others, information aimed against the political and ideological line of the state was included in the definition of this kind of information.³⁵⁵ First, this office was divided into the Czech Office for Press and Information and the Slovak Office for Press and Information, both directed according to wishes of the Communist Party of Czechoslovakia (for example, registration of every new daily or weekly newspaper had to be approved by the party leadership)³⁵⁶, and since 1980 it was centralized as the Federal Office for Press and Information.

3. 2. After 1989: Three decades, three transformations

After the fall of the totalitarian regime in 1989, everything had changed in Czechoslovakia. The censorship was abolished officially and also in practice, and the transformation from totalitarian to democratic society had begun. This included the media and media law.

This subchapter offers a novel periodization of the era. It needs to be stressed that the periods are fluid – they do not have sharp borders, and the years are given only approximately for better orientation on the timeline of events. Different authors might argue that not even the first period, the transition to a democracy, is fully achieved yet. This dissertation, as explained at the beginning of the theory, does not view transition to democracy as an irreversible process with given final destination, but, on the contrary, as a never-ending struggle, with the possibility to achieve some (even very high) levels of liberal democracy, and then to „slide back“ into a more authoritarian model (as it happened in Hungary).

354 BEDNAŘÍK, P. JIRÁK, J. KÖPPLOVÁ, B. 2011. *Dějiny českých médií. Od počátku do současnosti.* [History of Czech media. From the beginning till the present]. Praha: Grada Publishing. p. 335.

355 VOZÁR, J. (et. al.) 2015. *Sloboda prejavu v rozhodnutiach súdov.* [Freedom of speech in decisions of courts]. Bratislava: Veda. p. 26.

356 BEDNAŘÍK, P. JIRÁK, J. KÖPPLOVÁ, B. 2011. p. 337.

The proposed periodization of the media history in Slovakia and the Czech Republic after 1989 is: (1) Political transformation from a totalitarian regime to a democracy and a free market (2) Digital transformation (3) Oligarchization.³⁵⁷ Thus, we suggest the hypothesis that the Slovak and Czech media are in a permanent transition – with a specific course in approximately each decade.

3. 2. 1. Political transformation (1990s)

The Revolution of 1989 had started a transition from a totalitarian regime to a democracy. This is how the political transformation of Czechoslovakia is usually simplified. The reality in the media markets was much more complex. Until 1989, only a given set of institutions, all of them controlled to some extent by the communist leadership, could publish a newspaper. The state authorities controlled the availability of paper, so they were able to administratively set the revenue of every newspaper.³⁵⁸ There was a monopoly of the state on the markets with television and radio broadcasting. This was about to change – to a model of free media, where publication or broadcasting operate on a free market, are subjects to a competition and need to be commercially successful to survive. Instead of the Communist Party, readers, listeners, and viewers (the audience) were to decide which media will survive. The process to achieve this is called *commercialization* of the media market.

Some authors claim that this economic transition was the key point, and the presumed and declared political transformation to a desirable role for a democracy was just a front for rapid privatization of media into a strong industrial sector, not restrained by any feeling of responsibility towards society, in spite of creating profits and demanding almost total deregulation.³⁵⁹

Legaly, this model was gradually introduced by changing several laws. The first step was to abandon the leading role of the Communist Party and then legally forbid the censorship system in the constitution. The same had to be done with the Press Act - it was amended

357 This periodization and the subsequent parts of this dissertation were submitted as a chapter to HARPER, J. 2021. *God's media playground*. Unpublished yet. The chapter is in a review process by the time of writing this dissertation.

358 BEDNAŘÍK, P. JIRÁK, J. KÖPPLOVÁ, B. 2011. p. 339.

359 JIRÁK, J. KÖPPLOVÁ, B. 2008. The Reality Show Called Democratization: Transformation of Czech Media After 1989. IN: *Global Media Journal – Polish Edition*. No. 1 (4). Online: <http://globalmediajournal.collegium.edu.pl/artykuly/wiosna%202008/jirak-kopplova-czech-media.pdf> (Quoted on 27. 10. 2021). p. 7 – 8, 11.

already in March 1990 – the ban of censorship was reintroduced and an ideological paragraph about the role of the Communist Party was cancelled.³⁶⁰

Czechoslovakia and after the dissolution of Czechoslovakia, both new succession states had adopted their new constitutions, both coming from the same human rights documents, guaranteeing free speech, entering the Council of Europe and therefore and also allowing the jurisdiction of the European Court of Human Rights – a significant actor deciding over the free-speech cases in the last instance, with a history of important decisions that must be respected by the state authorities, including courts. The court had also decided on the cases of free speech from Slovakia and the Czech Republic. Czechoslovakia and then both succeeding states adopted the Charter of Fundamental Rights and Freedoms, which guarantees basic rights including the political ones, including the right to free speech. To this day, the provisions coming from this document (even as incorporated into the Slovak constitution directly) are the basis of constitutional protection of these rights. The second step was setting the ground for commercial broadcasting, by the Broadcasting Act 468/1991.

This process is a part of the broader trend of this period – *westernization* of the media. Since the model of functioning had been inspired by the western European countries or the US, the media owners and their managers had copied what appeared to be successful in these markets. The most important part of westernization was the change in ownership. Many western media houses or publishing companies had seen the opening markets in the post-socialist part of Europe as an opportunity and had entered these markets – they had bought media, sent their own managers, and tried to import the western professional standards. This was the case of the American TV company CME founded by the entrepreneur Ronald Lauder, who helped to start and later owned the most popular commercial televisions in both examined countries. Many other publishing houses from Germany, Netherlands, France or Sweden have invested into media in Czechoslovakia, and they have brought new technologies with them.³⁶¹

This had crucial impact on journalism because it was not only technology that was new – it was the approach to journalism, professional practices and expectations, new ethic norms and Western-style know-how, coming from the western owners.³⁶² The content of

360 Act. No. 86/1990 Coll. Amending Act No. 81/1966 Coll. On Periodical Press and Other Mass Media.

361 JIRÁK, J. KÖPPOVÁ, B. 2008. p. 14.

362 ŠTĚTKA, V. 2015. The Rise of Oligarchs as Media Owners. IN: ZIELONKA, J. 2015. p. 86 – 87.

media had changed radically – it suddenly had to reflect the needs and interests of the audience³⁶³ instead of the Communist Party or the state.

Some authors theorized about the initial moment of absolute freedom just after the revolution, with no control, no regulations – the researchers in the Eastern Germany had drawn this as the third possible way between the state-regulated and market-regulated media systems.³⁶⁴ We have found in a study on journalists from the state-broadcaster (and later public-service) radio in Slovakia in 1989 – 1990, that they all report to have experienced this „euphoric moment when everything was possible,“ even nationalism and extremism and „things that had no logic“ - but only for a short period of time, until the revolutionary situation had stabilized.³⁶⁵

The vacuum was not immediately filled by new ethical or self-regulatory norms copied from the West. In contrast to the totalitarian practice of controlling everything, journalists have now opposed any normative regulation or even self-regulation. They have seen these proposals as an attempt to restrict their free speech; even the discussion about the responsibility of journalists had been considered as close to heresy - and therefore it took several years to adopt the standard ethical codes of journalism³⁶⁶, in the end also inspired by the western standards.

Handbooks for journalists in the post-totalitarian CEE were published to teach them the basic practices of a journalist in a democracy, from a perspective and experiences of American journalism.³⁶⁷ The scholars that have directly experienced the era speak about an atmosphere in the society that was often uncritically embracing the western ideals of liberal democratic media, opposed to their deep crisis in other countries at the same time.³⁶⁸

The changes in media law could be framed as westernization as well, since the new legal acts were often drafted to mimic the foreign (namely western European) models. For instance the Austrian model of public-service broadcasting had strongly inspired the Slovak model during the early transformation period³⁶⁹, other sources mention inspiration

363 JIRÁK, J. KÖPPLOVÁ, B. 2008. p. 14.

364 ANDERSSON, A . WESTIN, J. 2009. *From Party Soldier to Real Journalist. Professional Identity and Media Systems in Transition*. Stockholm: Södertörn University. p. 39 – 41.

365 HANÁK, P. OSVALDOVÁ, L. 2017. p. 21 – 22.

366 MORAVEC, V. 2020. *Proměny novinářské etiky*. [*Changes in journalism ethics*]. Praha: Academia. p. 338.

367 MALLETT, M. F. 2000. *Příručka po novináře střední a východní Evropy*. Praha: Centrum nezávislé žurnalistiky. 3rd Edition. p. 8. Czech translation of: „The Handbook for Journalists of Central and Eastern Europe. Reston: World Press Freedom Committee.

368 JIRÁK, J. KÖPPLOVÁ, B. 2008. p. 13.

369 HANÁK, P. OSVALDOVÁ, L. 2017. p. 22.

by German, French or British models.³⁷⁰ First Slovak commercial radio Funrádio was inspired and co-owned by the French Hersant group and the founders travelled to Paris for inspiration.³⁷¹

There was no newsroom untouched by the changes. Even before the transition of state-media to a public-service model could happen, the old communist management of state-media was forced to step down or left their job voluntarily.³⁷² It was simply a part of the revolution that the transformation was about to happen without many of the former regime officials. Similarly, other journalists had to resign in other media and were shortly replaced, in some cases, by the people who had been ousted from the profession during the Soviet occupation of Czechoslovakia that had started in 1968. The state-media system had fallen apart and a dual system, typical for western Europe, was introduced, duality of public service and private broadcasting operating on license system.

Even the newspapers owned for decades by the communist party, serving as the main press channel of the party (Rudé právo, Pravda) were privatized. The Czech daily Rudé právo has transformed into Právo daily (with a new Czech owner, originally a journalist at this paper, Zdeněk Porybný) which is self-defined as a leftist daily until now with no significant change in the ownership. Pravda in Slovakia ended up first in the hands of the journalists, then it was owned by a Slovak oligarch Juraj Široký, and only in 2006 it was sold to the British publisher Northcliffe International. In both of these cases, the first privatization occurred as early as in 1990 – 1991 and it was executed by journalists of the dailies in a spontaneous and legally questionable way, later provoking a police investigation.³⁷³ Similarly, the influential daily newspaper of the communist youth organization Mladá fronta dily in Czechia was privatized by its journalists, evoking a legal dispute. In Slovakia, a similar daily of the communist youth organization, Smena, was not privatized, but kept under a state-controlled company. The paper had profiled against the interests of the prime minister Mečiar, so the government-installed management had decided to change the editor-in-chief – provoking the majority of the

370 MISTRÍKOVÁ, Z. ZMEČEK, A. 2001. *Mediálna ročenka 0.1, 1990 – 2000*. [Media yearbook 0.1, 1990 - 2000]. Bratislava: Mediálny inštitút. Online: <http://www.mi.sk/medialna%20rocenka/>. (Quoted on 8. 11. 2021). p. 12-13.

371 SUDOR, K. 2020. Študenti pred tridsiatimi rokmi na kolene založili prvú súkromnú rozhlasovú stanicu Fun rádio a nezarobili na tom. [Students had found the first private station Fun radio thirty years ago and did not make any money]. IN: *Dennikn.sk*. Online: <https://dennikn.sk/1924710/studenti-pred-tridsiatimi-rokmi-na-kolene-zalozili-a-postavili-prvu-sukromnu-stanicu-fun-radio-a-nezarobili-na-tom/>. (Quoted on 8. 11. 2021).

372 HANÁK, P. OSVALDOVÁ, L. 2017. p. 18 – 19.

373 MORAVEC, V. 2020. p. 382 – 383.

newsroom to leave and to start a new private daily – SME.³⁷⁴ The new daily was commercial success, the original Smena was not. Only in two and half years the publisher of SME bought Smena and merged these two dailies under the SME brand.³⁷⁵

This era was typical for very wild developments on the market – both in Czechia and Slovakia. The existing newspapers were mostly privatized, and many new publications had emerged and disappeared. Only in such a small market as Slovakia had several new dailies emerged: Verejnost', Telegraf, Meridian, Národná obroda) and the number of registered periodicals almost doubled between 1990 and 1994 – from 492 to 787.³⁷⁶ Many newspapers had not survived the transition to a commercial model – they did not find enough readership and ceased to exist because they could not survive on the market without being subsidized by the state (or affiliated organizations) anymore. Some authors claim that these periodicals, privatized early by their employees, ran into economic problems (such as high price of paper) and they were forced to sell the enterprise to stronger investors, until they ended up in hands of the foreign investors, resulting in a gradual concentration of ownership.³⁷⁷ They merged with existing newspapers (daily Práca, previously belonging to the unions, had merged with new daily SME), another traditional daily Národná obroda declined gradually until its closure in 2005, daily Roľnícke noviny also declined until it transformed into an almost irrelevant weekly.³⁷⁸ In Czech Republic, this was the case of for example: daily Svobodné slovo that ceased publication in 1998, the army daily and later weekly Obrana lidu, daily Práce, daily Zemědělské noviny. There are several explanations: The newspapers were less attractive than the new booming tabloid newspapers, they did not react to the changes as fast as their competitors, the management and journalists had no experience in running publications on a free market, the number of titles was only a result of a short boom and was not sustainable on small markets, and also that the newspaper publishers had suddenly faced a new type of competitor, the rising number of free and private electronic media.

374 FULMEK, A. 2018 *Bol som dlho v SME. [I have been in SME for long]*. Bratislava: Petit Press. p. 38 – 45.

375 Ibid. p. 76 – 82.

376 Ibid. p. 31.

377 BREČKA, S. ONDRÁŠIK, B. KEKLAK, P. 2010. *Médiá a novinári na Slovensku 2010. [Media and journalists in Slovakia 2010]*. Bratislava: Eurokódex. p. 9.

378 KRASKO, I. 2017. Noviny a časopisy, ktoré na Slovensku skončili. [*Newspapers and magazines that ceased their operation in Slovakia*]. IN: *Mediaguru.cz*. Online: <https://www.mediaguru.cz/clanky/2017/08/noviny-a-casopisy-ktere-na-slovensku-skoncily/>. (Quoted on 8. 10. 2021).

There was a significant difference in the Slovak and Czech political situation in the 1990s, affecting the media as well. In Slovakia, the governing force until 1998, with only a short break, was the movement of Vladimír Mečiar, later formed as political party HZDS. He was criticized for authoritarianism, state-capture and illiberalism aimed against human rights and perhaps the democracy itself.³⁷⁹ His rule was not recognized as fulfilling the criteria to entry the European Union or NATO, and Slovakia was excluded from this process for the time of his rule. He had been the force behind the dissolution of Czechoslovakia in 1992 and 1993, based on nationalism. He had also approached the media as a tool in the power struggle, as a constitutive element in state-building, demanding their support for his government.³⁸⁰ That is why a division line had emerged – many media of that time were considered pro-government (such as the new state-published daily newspaper *Slovenská republika* or the captured public service media) or anti-government media (such as the daily *SME* or the *Twist Radio*).

In Slovakia, this period had been similarly turbulent as in other areas of life in the transforming society: Slovak television had formally been separated from Czechoslovak television (by law) and it had 5 different directors over 3 years. The political nominations in STV in 1990s, resulting from a model with a lack of public-service identity that was not independent enough from politics³⁸¹, led to an era of politically biased broadcasting that was significantly pro-government.³⁸²³⁸³³⁸⁴ The television has been politically captured, and after the change of government and change of the STV management, an infamous cleansing had been exercised: Group of journalists most responsible for the pro-government bias were forced to quit their jobs, by methods such as banning them from their workplace and separating them on the highest floor of the television building, until they would quit or be eventually laid off.

379 His practices were labeled as one of the first examples of illiberal democracy by Fareed Zakaria. ZAKARIA, F. 1997. p. 22.

380 BREČKA, S. ONDRÁŠIK, B. KEKLAK, P. 2010. p. 11.

381 MISTRÍKOVÁ, Z. ZMEČEK, A. 2001.

382 JANCURA, V. 2010. Mečiar si urobil z STV hlásnu trúbu. [*Mečiar changed STV into his mouthpiece*]. IN: *Pravda*. Online: <https://spravy.pravda.sk/domace/clanok/165308-meciar-si-urobil-z-stv-hlasnu-trubu-hzds/>. (Quoted on 8. 10. 2021).

383 MATKOVSKÁ, Z. 2016. Televízne vysielanie krivili kádre socializmu aj mečiarizmu. [*TV broadcasting was bended by socialism and also mečiarism*]. IN: *SME*. Online: [Televízne vysielanie krivili kádre socializmu aj mečiarizmu - SME](https://www.sme.sk/c/1111111/televizne-vysielanie-krivili-kadre-socializmu-aj-meciarizmu-sme/). (Quoted on 8. 10. 2021).

384 KUBOŠ, M. 2001. *Taká malá propaganda*. [*A little bit of propaganda*]. TV documentary. Online: https://www.mojevideo.sk/video/1e82f/taka_mala_propaganda.html. (Quoted on 8. 10. 2021).

Slovak radio as the other public service broadcaster has also been captured – under its director Jaroslav Rezník the governing party HZDS had large coverage, the broadcasting was biased, and there were reports of several meetings between Mr. Rezník and the party officials.³⁸⁵

The political struggle over media and through media had led to creation of a specific journalism culture: some journalists were perceived more as activists, as a part of the political struggle, on one side or another, fighting for or against some parties or politicians. This did not have to be formally recognized, such as by membership of a journalist in a political party or working for a newspaper owned by a political organization. The division was informal – some media were perceived as pro-government and others as critical towards the government, to an extent that would not be acceptable in the standard western watchdog model. It is described as politicization of media – the postcommunist governments viewing the former state media as their prey and therefore exercising control over them, versus tensions between the media and the government.³⁸⁶ People who remember the era claim that the anti-government media were not just watchdogs, but they actively fought against the prime minister Mečiar, and a former opposition politician František Mikloško later commented, that they even supported the opposition leader Mikuláš Dzurinda.³⁸⁷ It became a problem, when Mr. Dzurinda was appointed as a prime minister after the election of 1998 – he expected that the newspapers such as SME daily would support him and his policies, and a part of the newsroom did, which sparked a conflict over the role of journalism in the publishing house – and according to the former editor-in-chief Martin M. Šimečka, he had resigned from his post as a consequence of these disagreements.³⁸⁸ The other side of this conflict, the director of Petit Press publishing house Mr. Alexej Fulmek had described this conflict as more broad problem of different worldviews between the editor-in-chief and the director, but also

385 PRAUS, L. 2017. Rozhlas pod vedením Rezníka išiel Mečiarovi po ruke, teraz z neho chcú šéfa RTVS. [*Radio under Rezník was mouthpiece of Mečiar, how they want him as a chief of RTVS*]. IN: *Sme.sk*. Online: <https://domov.sme.sk/c/20559409/rozhlas-pod-vedenim-reznika-isiel-po-ruke-meciarovi-teraz-z-neho-chcu-sefa-rtvs.html>. (Quoted on 8. 10. 2021).

386 BREČKA, S. ONDRÁŠIK, B. KEKLAK, P. 2010. p. 10.

387 MRVOVÁ, I. 2018. 20 rokov po porážke Mečiara. Akú úlohu zohrali médiá vtedy a akú zohrávajú dnes? [*20 years after the defeat of Mečiar: What was the role of media then and now?*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/626751/20-rokov-po-porazke-meciar-a-aku-ulohu-zohrali-media-vtedy-a-aku-zohravaju-dnes/>. (Quoted on 30. 10. 2021).

388 BENEDIKOVIČOVÁ, M. 2013. Šimečka: SME nehľadá pravdu. [*Šimečka: Sme is not in search for the truth*]. IN: *Sme.sk*. Online: <https://domov.sme.sk/c/6667070/simecka-sme-nehlada-pravdu.html>. (Quoted on 30. 10. 2021).

admitted that one of the main conflicts was over the support of right-wing liberal economic reforms of the government.³⁸⁹

In the Czech Republic, the atmosphere was different. The government was led by Václav Klaus (ODS party), a proponent of the libertarian free-market ideology. The Czech Republic had already integrated into NATO in 1999 (Slovakia had to wait until 2004). There were cases in which the daily press was connected to the politics, such as *Telegraf* or later *Denní Telegraf*, which was connected through several companies including a bank to the governing party ODS,³⁹⁰ but the political involvement of the news media did not come anywhere near the Slovak story. The struggle over TV Nova ownership was more legal than political³⁹¹³⁹², similarly, the legal battle over the ownership of *Mladá fronta Dnes* daily. None of this meant partisanship of the media. Apart from marginal *Haló noviny*, the media after 1989 had not been explicitly partisan, their inclination towards left or right was not very significant and could be analyzed only from the inclination of their audiences, and political paralelism typical for the Southern Europe was practically nonexistent on the Czech market³⁹³ until much later.

There had been an event that can be interpreted as the struggle over the independence of public service media, the 'Television crisis' in 2000-2001. The government supported by the ODS party and its chairman Václav Klaus had elected their nominees into the Council of the Czech Television (ČT) and they have replaced the director by Mr. Jiří Hodač, and a new news director was appointed – Mrs. Jana Bobošíková, former aide of Mr. Klaus. The reporters protested against this and demanded the resignation of Mr. Hodač, the Czech opposition, and also journalist organizations have supported them. The situation escalated into two parallel broadcastings of two groups – the striking news reporters and the official team around Mrs. Bobošíková, the public had supported the reporters on a protest of estimated 100 000 people, Mr. Hodač had suffered a collapse and had stepped down from medical reasons and the Parliament had replaced members of the Council of ČT to elect a new director, also a procedure of electing the Council was changed.³⁹⁴ This

389 FULMEK, A. 2018. p. 202 – 204.

390 MORAVEC, V. 2020. p. 340.

391 ŠÍDLO, J. 2002. *Boj o TV Nova pokračuje*. [*The fight over TV Nova continues*]. IN: *Idnes.cz*. Online: https://www.idnes.cz/zpravy/domaci/boj-o-tv-nova-pokracuje.A020801_221953_domaci_was. (Quoted on 29. 10. 2021).

392 BEDNAŘÍK, P. JIRÁK, J. KÖPPLOVÁ, B. 2011. p. 378.

393 JIRÁK, J. TRAMPOTA, T. 2008. IN: HALLIN, D. C. MANCINI, P. 2008. p. 18-19.

394 CZECH TELEVISION. Unknown year of publication. *Televizní krize 2000*. [*Television crisis of 2000*]. IN: The official website of ČT. Online: <https://www.ceskatelevize.cz/vse-o-ct/historie/ceska-televize-od-r-1993/krize/>. (Quoted on 31. 10. 2021).

can be interpreted as a successful attempt to defend the independence of the public service broadcaster in a situation of a threat of political capture. On the other hand, if we refuse to see only the imminent danger, but we choose to look at this from a long-term perspective, the changes in the law did not bring more autonomy, to the contrary – some authors interpret it as strengthening the political influence in the public service television.³⁹⁵ The politicians have lost the right to nominate the members, only the organizations representing cultural, regional, social, unionist, employer organizations, educational and research, ecological, and national minority interests could nominate a candidate.³⁹⁶ Still only the lower chamber of the Czech parliament has the right to elect the members of the Council of ČT, a proposal for more dispersion of power did not gain enough votes – and therefore the Council remains a quasi-political body, controlled only by one chamber of the parliament.³⁹⁷ Moreover, the parliament holds control over the Ethical code of ČT as well.³⁹⁸

The Slovak media became a deeper part of the political struggle over the future of the country. That is why we are going to focus on the role of some of these media in the struggle briefly. Especially the private commercial media had played a role in the mobilization of the society before the parliamentary election in 1998 that forced Mr. Mečiar out of the government and had changed the course of Slovakia towards the European integration. Some of these media were as follows: The daily SME, TV Markíza and Rádio Twist.

The public was hungry for new television projects. This can be illustrated by how the new Czech commercial TV Nova (started in 1994) had quickly dominated also on parts of the Slovak market.³⁹⁹ Similarly, new Slovak commercial TV Markíza had a rapid success – it only needed three weeks from its start in 1996 to become the most popular TV, beating the public service channels.⁴⁰⁰

Markíza was started by an entrepreneur and later politician Pavol Rusko and was co-owned (49 percent) by the American media company CME⁴⁰¹ - the same as TV Nova.

395 MORAVEC, V. 2020. p. 369.

396 Act No. 39/2001 Coll. Amending the Act No 483/1991 on Czech Television..

397 MORAVEC, V. 2020. p. 369 - 370.

398 Ibid. 370 – 372.

399 MISTRÍKOVÁ, Z. ZMEČEK, A. 2001. p. 32.

400 KERNOVÁ, M. 2006. Markíza po desiatich rokoch – obyčajná televízia. [*Markíza after 10 years – regular television*]. IN: *Sme.sk*. Online: <https://www.sme.sk/c/2878111/markiza-po-desiatich-rokoch-obyčajna-televizia.html>. (Quoted on 8. 10. 2021).

401 POLÁŠ, M. 2016. Markíza má 20 rokov. Zmenila mediálny trh aj politiku. [*Markíza is 20. It changed the market and politics*]. IN: *Mediálne.sk*. Online: <https://medialne.trend.sk/televizia/markiza-ma-20-rokov-zmenila-medialny-trh-aj-politiku>. (Quoted on 8. 10. 2021).

TV Markíza was also at the center of the political struggles over the face of the transformation to liberal democracy. Before the election of 1998, TV Markíza faced an attempt of capture – this time not metaphoric, but a physical capture of the building and the broadcasting by a group of strong men with connection to organized crime, especially Mr. Marian Kočner who claimed ownership rights to the television in a legal dispute. There had been protests of the political opposition that stood against the semi-authoritarian prime minister Vladimír Mečiar, in front of the TV Markíza building. Only the election that was won by the opposition led to Slovakia later being admitted to NATO and the European Union and therefore the basic first-stage political transformation to a liberal democracy accepted among others in Europe being finished. This was by far not the last involvement of TV Markíza or its co-owner Pavol Rusko in a political struggle. First, his wife had run and had been elected as a member of a parliament, then he himself founded a political party ANO, had been elected, and became the minister of economy. By then, he had sold his shares in TV Markíza, but the station was criticized for siding with his political party or allies, and Rusko had also taken several people known from the TV screen to politics. In the end, TV Markíza ended up owned entirely by the American broadcaster CME.

A significant contribution to the Slovak political debate was also made by the commercial Radio Twist, founded in 1993. The station focused on political news and political satire and was critical of the semi-authoritarian government of Vladimír Mečiar.

Even more visible examples of the media taking sides and being on opposing banks in a political competition were the dailies. The state-controlled Slovenská Republika was a mouthpiece of the governing party HZDS, launching campaigns against its political opponents (such as the president Michal Kováč), the politicians of the party were contributing to this daily, and use of disinformation was not rare.⁴⁰² The most visible newspaper from the other side of the political struggle was daily SME. Their reporters had investigated and published several major government scandals, most importantly the kidnapping of Michal Kováč jr., the son of the president, and the murder of an important person in this case, Robert Remiáš. The daily had revealed that the government-controlled secret service was behind both of these crimes, with possible connections of the agency

402 For example the conspiracy theory that Mr. Michal Kováč Jr., son of the president Michal Kováč, had „self-kidnapped“ himself. However absurd this might sound, this is the version of the event that this daily newspaper had pursued, in line with the government argumentation.

to organized crime. Due to lack of data, we can only assume that these revelations had an important effect on the 1998 election.

The process of commercialization of media has brought along several other processes or features typical for the western-type commercial media markets. For example, *tabloidization* of some media, first newspapers focused on celebrity-related content that was widely criticized. Some authors frame this process as subordination of media contents to achieving profits or commodification of the media – media production itself became a product.⁴⁰³ Several new tabloid newspapers had emerged, such as *Expres* (1990 – 1996) or *Blesk* – the tabloid founded by a Swiss publishing house Ringier had become one of the most successful media projects of the time.⁴⁰⁴

Similarly, the commercial television had focused some of its contents on celebrities, reality shows and licensed formats bought from foreign, predominantly western televisions, such as the *Big Brother*, *Superstar/Idol* shows, etc. Scholars criticized media of this era for decreasing diversity and quality of content, avoiding original production in favor of buying cheaper foreign programmes in packages, infotainment, and commercialization even in the public service media.⁴⁰⁵ This was visible in STV, the Slovak public service broadcaster after 2000 that also started to broadcast big shows such as the *Superstar/Idol*. All this was part of the broader westernization of the media market. Commercialization not only has adverse effects, but it turned out to be the way to bring more money into the business – which in turn means that the media business could be profitable. Thanks to this, the owners running the media for profit were satisfied – and they did not dictate the contents⁴⁰⁶ in terms of political affiliation or pursuing other economic interests than the profits from the advertising.

In an atmosphere of a political conflict between the prime minister and media, the Czech Republic discussed the new Press Act – the government proposed a strict version in which anyone mentioned in an article related to his or her human dignity or privacy could demand a right to correction, without a difference between truthfull or untruthfull

403 BEDNAŘÍK, P. JIRÁK, J. KÖPPLOVÁ, B. 2011. p. 358.

404 Ibid. p. 375.

405 BREČKA, S. ONDRÁŠIK, B. KEKLAK, P. 2010. p. 11.

406 ŠIMKA, K. 2018. Skeptické úvahy o tom, zda lze regulaci médií dosáhnout jejich plurality, kvality a relevance. [*Sceptic thoughts on whether media plurality, quality and relevance can be achieved by regulation*]. IN: ŠIMÍČEK, V. (ed.) 2018. *Regulace médií*. [*Regulation of media*]. Brno: Masarykova univerzita. p. 32.

statement.⁴⁰⁷ After protests of several international journalist organizations, the right to correction was removed from the proposal, including other restrictions, and the new Press Act No. 46/2000 was adopted.⁴⁰⁸

In both countries, new broadcasting legislation was needed. They began to regulate areas like protection of minors and much more, but the purpose of this dissertation is not to enumerate or describe them all. The important facts about both Slovak Act on Broadcasting and Retransmission 308/2000 and the Czech Act 231/2001 on Radio and Television Broadcasting Operation are that they: (1) harmonized the national law with the European legislation and (2) brought regulation of media ownership.⁴⁰⁹

3. 2. 2. Digital transformation (approximately from 2000)

The western owners had consolidated their acquisitions, domesticated the western professional standards in the newsrooms, and introduced the western licensed programmes. The number of periodicals had stabilized and the ownership has consolidated, even if some dailies still kept emerging and disappearing.⁴¹⁰

At the same time, the transformation to a liberal democracy had progressed to a stage where the European Union accepted Slovakia and the Czech Republic as their full members in 2004. Here, we draw the line of definitive confirmation that the process of transition from the totalitarian regime to a democracy had been finished. Yet, another kind of transformation was inevitably on its way, the digital revolution. Other authors had noticed that this tech-convergence of media had begun already in the 1990s⁴¹¹ - and we stress here that the boundaries of the eras of our periodization are fluid and it is upon interpretation where to start to date digitalization.

This sub-chapter is divided into two parts – the digital revolution and related economic problems for media is the first part, the legal aspects and changes is the second part.

As the first Slovak newspaper publisher, the daily SME had started its online presence as early as 1994, but the real digital presence of up-to-date online news began in 1999, with an online-publishing team since 2000 and the start of popular blogs in 2004 – altogether,

407 MORAVEC, V. 2020. p. 358 – 360.

408 Ibid. 360 - 361.

409 BREČKA, S. ONDRÁŠIK, B. KEKLAK, P. 2010. p. 19.

410 MORAVEC, V. 2020. p. 384.

411 BEDNAŘÍK, P. JIRÁK, J. KÖPPOVÁ, B. 2011. p. 358.

the website of this this daily newspaper had achieved the position of the most visited site on the Slovak Internet.⁴¹²

At about the same time, the decrease of newspaper circulation had progressed in a way that can be interpreted as a migration of newspaper readers to the Internet, first to the online versions of their favourite newspapers (such as SME daily or MF Dnes), to a wider network of websites and social media later. This trend was confirmed by data also in Slovakia – the flow of audience being proven from the traditional media to the online news.⁴¹³ The online news have a clear competitive advantage – they are much faster, a reader does not have to wait 24 hours for the news, he or she has it almost immediately. In addition, the Internet is an extremely competitive place. A newspaper publisher, in 1990s competing with only a handful of other printed dailies, had to suddenly face a new kind of competition, an endless list of new websites, not limited by distributing paper printouts. The low barrier to entry meant total dispersion of the audience – especially on small markets such as Slovakia or Czechia, the relatively limited number of readers now have considerably more sources they can read, the access is not limited by a region or state anymore, and in an increasingly global world, people who speak more than one language can easily cross the language barrier, too. To conclude, the reader still has the same time to spend reading, but his or her time is dispersed among much more possible sources, so predictably he or she would spend less time with each given provider of content. The reduced time spent on a website means lower income from advertising. The problem with monetizing the content became immediately very visible and apparent. The printed newspapers were usually paid, and their new online forms started as a free service. The readers got quickly accustomed to this reality and they began to expect to receive news for free. Many of the publishers understood the situation as unsustainable and started to try out different forms of online subscriptions to find an economically stable model. There is a worldwide debate on how to save newspapers by new economic models – books are being published on this topic⁴¹⁴, newspaper publishers are monetizing debates

412 SME. 2015. 20 rokov na internete. Sme.sk prešlo veľkými zmenami. [20 years on the Internet. *Sme.sk went through great change*]. IN: *Sme.sk*. Online: <https://ekonomika.sme.sk/c/7599368/20-rokov-na-internete-sme-sk-preslo-velkymi-zmenami.html> (Quoted on 28. 9. 2021).

413 RANKOV, P. 2009. *Slovensko a paradigmatické zmeny v komunikácii súvisiace s elektronizáciou. Výskum Čítanie 2008. [Slovakia and paradigmatic change in communication related to electronization. Reading 2008 Study]*. Bratislava: Slovenská národná knižnica.

414 BATSELL, J. 2015. *Engaged Journalism. Connecting with Digitally Empowered News Audiences*. Columbia University Press.

or discussions, earning money publishing books of their own or contracted authors⁴¹⁵, some media have tried to ask for donations from the readers or/and have side-business such as a café or a bar near the newsroom in pursuit to gain money from drinks.⁴¹⁶ It is clear that the publishers of the traditional media are trying a lot of new business models in order to survive economically. This can be viewed as the realization of the media managers that they are in the middle of another transformation process.

Several projects to save some money in the system had been tried globally and locally, and there had also been a Slovak experiment, the Piano project. This start-up operated as a joint paywall for several news websites of different publishers that were dividing the money among themselves according to a set of rules (for example, how much time the reader spent on which website). A number of leading Slovak broadsheets have tried to operate under Piano, the firm expanded abroad, but in the end the experiment on Slovak market had suffered loss⁴¹⁷ newspapers had withdrawn from the system and have introduced their own paywalls.

The economic problem of traditional news media had even deepened with the rise of social media. Around 2008 Facebook became popular in CEE and it meant further redirection of attention from the news media to a different kind of reception of information. Suddenly, it is upon an algorithm of a private company, whether your content reaches wide audience or not. What is even worse for the traditional media is that it is not only the attention that is redirected, but also the advertising.

Internet advertising is growing consistently in both Slovak and Czech markets and one of the most growing forms of advertising is investment in search⁴¹⁸ – being placed high in search listings. The most advertising still goes to television (47,6 percent on the Czech market), but the Internet is already second (30,3 percent) with more than double amount of advertising than the press (13,2 percent) and almost six times more than all radios (5,6 percent), while the Internet advertising is relatively the most growing and the press advertising is relatively the most declining.⁴¹⁹ Search advertising is growing by 25 percent

415 Ringier Axel Springer Slovakia (publisher of Aktuality.sk), Petit Press (publisher of SME daily) and Npress (publisher of Denník N daily) are all doing this.

416 The publisher of a Slovak political weekly .týždeň is an example of this - operating under a paywall, regularly asking for donations and also operating a bar in the same building as their newsroom, with the editor-in-chief Štefan Hríb often serving as a bartender.

417 STEIGAUF, P. 2013. Piano: Veľká strata, lepšie tržby. [*Piano: Big loss, better sales*]. IN: *Živé.sk*. Online: <https://zive.aktuality.sk/clanok/70612/piano-velka-strata-lepsie-trzby/>. (Quoted on 28. 10. 2021).

418 SPIR. 2020. *Průzkum inzertních výkonů SPIR 2020*. [*Advertising performance study SPIR 2020*]. Online: <http://www.inzertnivykony.cz/>. (Quoted on 30. 10. 2021).

419 Ibid.

a year and the Internet advertising is projected to grow even more in the future.⁴²⁰ The ratios on the Slovak market are very similar: In 2018 45 percent of advertising went to television, 33 percent to the Internet (including Google and Facebook), the press had only 9 percent and radios only 5 percent.⁴²¹ In 2020, the ratios were still similar, only the Internet advertising was growing – television had stable 44,79 percent of advertising market, the Internet had grown to 38 percent, the printed press had further decreased to 6,36 percent and radios had only 4,91 percent of the adds.⁴²² These numbers and the projections would look promising for the online media, but it is estimated that similarly to other media markets in Europe, two thirds of all the online advertising goes to Facebook and Google⁴²³, other sources estimate 60 to 80 percent.⁴²⁴

The search for a new economic model accelerated after the financial crisis in 2008 – 2009. Advertising companies had cut their advertising budgets and media worldwide had experienced a deep crisis. In the Czech Republic, the aggregate turnover of the top Czech publishers had decreased by 20 percent between 2008 and 2011.⁴²⁵

Combined with all of the above-mentioned economic problems, many newspapers worldwide had closed down, stopped their operations, bankrupted or moved entirely online – their business model simply stopped working. The for-profit model of commercial publishing was suddenly not making profits, so the whole purpose of many media enterprises had been frustrated. Nielsen describes three common purposes to run a news company – public service, profit and influence.⁴²⁶ If the publisher is not gaining any profits and it is not easy to turn to public service mode of operation, the rational strategy for any publisher is to sell the business to someone who can make a good offer – someone

420 MAV. 2021. SPIR: Internetová reklama v roce 2020 rostla o 15%, atakuje TV. [*The Internet advertising rises 15%, attacks TV*]. IN: *Mediaguru.cz*. Online: <https://www.mediaguru.cz/clanky/2021/03/spir-internetova-reklama-v-roce-2020-rostla-o-15-atakuje-tv/>. (Quoted on 30. 10. 2021).

421 KRASKO, I. 2019. Zisky a ztráty slovenských médií v roce 2018. [*Profits and losses of Slovak media in 2018*]. Online: <https://www.mediaguru.cz/clanky/2019/07/zisky-a-zraty-slovenskych-medii-v-roce-2018/>. (Quoted on 30. 10. 2021).

422 KRASKO, I. 2021. Slovenská reklama prišla o desiatky miliónů eur. [*Slovak advertising lost tens of millions of euros*]. IN: *Mediaguru.cz*. Online: <https://www.mediaguru.cz/clanky/2021/03/slovenska-reklama-prisla-o-desitky-milionu-euro/>. (Quoted on 30. 10. 2021).

423 MAV. 2019. Facebook a Google dominují digitálnímu trhu v Evropě. [*Facebook and Google dominate the digital market in Europe*]. IN: *Mediaguru.cz*. Online: <https://www.mediaguru.cz/clanky/2019/04/facebook-a-google-dominuji-digitalnimu-trhu-v-evrope/>. (Quoted on 30. 10. 2021).

424 SLÍŽEK, D. 2021. Google a Facebook vs. média. Zoufalí vydavatelé dělají zoufalé věci. [*Google and Facebook vs. Media. Desperate publishers make desperate decisions*]. IN: *Lupa.cz*. Online: <https://www.lupa.cz/clanky/google-a-facebook-vs-media-zoufali-vydavatele-delaji-zoufale-veci/>. (Quoted on 30. 10. 2021).

425 VOJTĚCHOVSKÁ, M. 2017. IN: SCHIFFRIN, A. (ed.). 2017. p. 97 – 110.

426 NIELSEN, R. K. 2017. IN: SCHIFFRIN, A. (ed.). 2017. p. 33 – 41.

who can use the media outlet for his or her own goals someone who is able to operate media at loss and can subsidize the media operations from a different kind of more profitable business such as energy or banking.⁴²⁷ It is very often for the third purpose – influence. This is how the digital transformation and economic conditions helped to start a new wave of ownership transition also in CEE, a process often called oligarchization. This will be discussed in one of the upcoming subchapters.

As in everything, the digital revolution certainly does not only have adverse effects. In both countries, the Internet helped the initially free of charge news websites to emerge quickly and to gain considerable audience, and some of them have brought journalism in public interest. For example Seznam.cz helped in a renaissance of investigative journalism in Czechia⁴²⁸, similarly Aktuality.sk in Slovakia⁴²⁹ - both started as a side-projects of local social networks Seznam.cz and Azet.sk and gained so much popularity that they had later become the leaders on the market with the news websites. At the time of writing, both are still predominantly free of charge, but both acknowledge the importance of paid subscription as a sustainable economic model and both offer „premium“ or „plus“ versions for subscribers.⁴³⁰

The digital revolution had also influenced television and radio broadcasting. The digitalization of television had changed the basic argument for regulating television more strictly than the press. While terrestrial frequencies for broadcasting were a scarce resource and therefore had to be distributed by the state and the demands on them were significantly higher than in case of printed press (like compulsory objectivity and impartiality), this is not the situation on the market anymore. While in 1990s owning a national TV such as TV Nova meant significant influence over the politics, after digitalization the TV frequencies stopped being the extremely scarce and valuable resource.⁴³¹ The cable television and digitalization had similar impact as the Internet on the press – total dispersion of attention into many different sources and slow decline of the viewership. While in the 1990s, TV Markíza had 47 percent share on the market, 60

427 ŠTĚTKA, V. 2015. IN: ZIELONKA, J. (ed.) 2015. p. 93.

428 ŠIMKA, K. 2018. IN: ŠIMÍČEK, V. (ed.) 2018. p. 38.

429 Possible conflict of interests disclosure: The author of this dissertation works as a journalist for Aktuality.sk since 2018.

430 In case of Aktuality.sk, the „plus“ version is still open for non-subscribers, in a form of a soft paywall – a banner that requires the reader to pay, but if he or she decides to not to do so, the system allows for further reading. Plus version is then without or with reduced advertising, access to discussion etc. Similar policy applies for Seznam.cz and its Premium version.

431 ŠIMKA, K. 2018. p. 36.

percent of viewers and 80 percent of advertising⁴³², in 2016 637 000 people watched its most viewed TV news of the random examined week, which represents 31,6 percent of the market⁴³³; in 2020 it was considered a success to achieve 32 – 33 percent of market share.⁴³⁴

The digitalization of the radio market is not finished yet, in neither Slovakia nor Czechia. In Slovakia, according to the Ministry of Culture of Slovakia, the planned transition from analog to digital radio broadcasting should take place between 2022 and 2026.

The digital transformation in 2021 is far from finished. Especially the world of social media is still experiencing a dynamic era, the platforms such as Youtube, Instagram, TikTok etc. continue to redirect a lot of audience and advertising revenue from traditional media to individuals (influencers). The search for a new economic model for independent journalism continues.

To conclude the description of changes, the business model of media across many regions had changed – the model of commercial media relying on profit from audience and advertising had often failed, and the only available remaining model in many cases seemed to be the media owned for the purpose of influence.⁴³⁵

The new situation on the market was reflected also in law, but from the beginning very slowly. First, no one knew how to regulate the Internet. The traditional press laws regulated the printed periodicals, broadcasting had license regime, and no law regulated the use of the Internet. This had to change, because from the viewpoint of law, there is no reason why the formally new relationships should escape the universality of law – the new online relationships are in their essence identical with those already regulated and that is why their regulation is already well-legitimized.⁴³⁶ It is unrealistic to expect that

432 ŠEVČÍKOVÁ, P. 2016. Od Ruska, cez Miku, Ťapákovú až po súčasnosť. Aký je príbeh televízneho lídra? [*From Rusko through Mika and Ťapáková till the present. What is the story of the television leader?*]. IN: *Stratégie.sk*. Online: <https://strategie.hnonline.sk/media/809039-lider-oslavuje-dvadsat-rokov-na-trhu>. (Quoted on 29. 10. 2021).

433 BARIAK. L. 2016. Koľko ľudí pozerá programy Markízy a JOJ. Čísla vám to prezradia. [*How many people watch Markiza and JOJ. The numbers will tell*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/390418/kolko-ludi-pozera-programy-markizy-a-joj-cisla-vam-to-prezradia/>. (Quoted on 29. 10. 2021).

434 TV MARKÍZA. 2020. Sledovanosť spravodajstva naďalej stúpa, rekordné Televízne noviny a Počasie. [*The audience of news is on the rise, TV News and Weather broke records*]. IN: *Markiza.sk*. Press Release. Online: https://www.markiza.sk/neprehliadnite/1991848_sledovanost-spravodajstva-nadalej-stupa-rekordne-televizne-noviny-a-pocasie. (Quoted on 29. 10. 2021).

435 NIELSEN, R. K. 2017. p. . 33 – 41.

436 POLČÁK, R. 2012. *Internet a proměny práva*. [*The Internet and changes in law*]. Prague: Auditorium. p. 98. Polčák quoted LESSING, L. 2004. *Freeculture*. New York: Penguin Press. p. 116.

the Internet would have freedoms that was denied from the other media from a legitimate reason and as it happened to new types of media in the past, as soon as a medium gains certain social influence, demands to control it raise as well and the practical barriers turn out to be surpassable.⁴³⁷

Even in the situation of no regulation, some of the news websites in Slovakia have respected the provisions of the press act: despite realizing the fact that the law does not apply on them, they decided voluntarily to publish corrections as if the law would apply.⁴³⁸ On the other hand, the online broadcasters in Czechia actively fought against the Broadcasting act being applied to them, for example in the case of online transmission of TV Óčko, then in 2006 an amendment to the Broadcasting Act had explicitly stated that the act cannot be applied on broadcasting on the Internet.⁴³⁹ This obviously did not solve the problem of the lack of regulation of the growing online services.

As is often the case with global problems, the international organizations are able to deal with them sooner than states. The European Union had adopted the Audiovisual Media Services Directive (AVMSD)⁴⁴⁰ to regulate on-demand services – meaning mostly online content, such as online TV. That is substantially different from classical broadcasting, because it is not viewed in real time, but only in time and place demanded by the viewer. The directive was amended in 2018 by another directive⁴⁴¹ in order to extend the rules to online video-sharing platforms, audiovisual content, and certain social media services. All this had to be transposed to both Slovak and Czech media law. The Slovak Broadcasting Act 308/2000 was amended several times, because the first amendment was found nonsatisfactory.⁴⁴² The Czech Republic reacted by the Act 132/2010 on audiovisual media services. These changes brought the oversight of broadcasting councils over some of the online content, namely, on-demand video. The broadcasting councils can for example monitor the content of the videos on demand and sanction unlawful behavior,

437 McQUAIL, D. 2009. *Úvod do teorie masové komunikace*. Czech translation of *Mass communication theory*. Prague: Portál. p. 167.

438 HANÁK, P. 2013. *Súčasný právny rámec spravodajských portálov na Slovensku*. [Current legal framework for news websites in Slovakia]. Master thesis. Bratislava: Comenius University. p. 42-43, 62.

439 POUPEROVÁ, O. 2010. *Regulace médií*. [Regulation of media]. Praha: Leges. p. 65 – 74.

440 Directive 2010/13/EU on audiovisual media services. Online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0013>. (Quoted on 30. 10. 2021).

441 Directive (EU) 2018/1808. Online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L1808>. (Quoted on 30. 10. 2021).

442 NATIONAL COUNCIL OF SLOVAKIA. The proposal of the government to amend the Broadcasting Act 308/2000 from 2012. Online: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=369448>. (Quoted on 30. 10. 2021).

such as hate speech, violation of protection of minors etc.⁴⁴³ The directive transposed into the Slovak and Czech law forbids hidden advertisement, tobacco and medication advertisement, alcohol adverts aimed at children, protects minors, protects human dignity, regulates product placement⁴⁴⁴, requires certain transparency of the provider of the service and investment of space for original European content⁴⁴⁵ and therefore brings the regulation of some of the contents on the Internet, including video or podcasting journalism, closer to regulation of traditional television or radio. For example, the Directive states: „*The right of reply is an appropriate legal remedy for television broadcasting and could also be applied in the on-line environment.*“⁴⁴⁶ The TV broadcasting over the Internet is now explicitly regulated by the Broadcasting Act.⁴⁴⁷ Yet, it is not the regulation of electronic versions of newspapers or magazines, because the directive explicitly excludes them from the regulation.⁴⁴⁸

The digitalization of television and the expected digitalization of the radio market meant that the laws regulating broadcasting were amended to prevent too much concentration of the digital market, by applying the rules forbidding the cross-media ownership also to the digital broadcasting – in the pursuit to protect plurality, the national digital broadcasters were forbidden to merge (or have connections in property) with the national terrestrial broadcasters, with another digital broadcaster⁴⁴⁹ and so on. The traditional broadcasters were ex lege given the licences for their operations in the digital market, too.⁴⁵⁰

There are many more regulations now in place responding to the emergence of the widespread Internet, such as data collection, domains⁴⁵¹ and much more, but it is not the purpose of this dissertation to describe them all. The comparison of the Slovak and Czech regulations in this field is included in the comparative legal analysis in the next chapter.

443 WÜNSCHOVÁ PUJMANOVÁ, A. (et. al.). 2012. *Zákon o audiovizuálních mediálních službách na vyžádání se souvisejícími dokumenty, formuláři, doporučenými postupy a metodickými výklady. Komentář.* [The Act on Audiovisual media services on demand with documents, forms, recommended procedures and methodic explanations. Commentary]. Praha: Linde. p. 39, 46-47.

444 Ibid. p. 55 – 56.

445 ROZEHNAL, A. 2011. *Zákon o provozování rozhlasového a televizního vysílání. Zákon o audiovizuálních mediálních službách na vyžádání. Komentář.* [Act on radio and television broadcasting. Act on audiovisual media services on demand. Commentary]. Praha: Wolters Kluwer. p. 236-238.

446 Directive 2010/13/EU, paragraph 103.

447 POUPEROVÁ, O. 2010. p. 75.

448 Directive 2010/13/EU, paragraph 28.

449 Act. No. 231/2001 Coll. on Radio and Television Broadcasting Operations. (Czech Broadcasting Act). Paragraph 55a.

450 ROZEHNAL, A. 2012. *Mediální právo.* [Media law]. Praha: Vydavatelství a nakladatelství Aleš Čeněk. p. 126.

451 DIBLÍK, J. VEIT, F. 2012. *Mediální právo a práva k nehmotným statkům v České republice.* [Media law and rights to intangible estates]. Praha: Linde. p. 77, 126.

There were several legal changes during this period that were not responding to the digital transformation, but to a different kind of context, a political and social situation, for example. In both examined countries, new criminal codes were adopted. Both brought controversies among journalists. The biggest controversy in the Czech Republic was caused by a novelization of the criminal law, later adopted into a new criminal code, nicknamed „muzzle law“ (*náhubkový zákon*). It imposed a criminal sanction (up to 8 years in prison) on who is unlawfully dealing with personal data, while the law demands at least one year in prison for the perpetrator who publishes the such data in television, film, press, radio, or online.⁴⁵² The goal of this law was to prevent journalists from publishing materials from surveillance or from the criminal proceedings, which was provoked by several cases of surveillance of top-level politicians published in the press in 2008.⁴⁵³ The Czech Republic was criticized for restricting the freedom of press by journalist organizations and also by the European Parliament. Shortly after, the new government decided to soften it and introduce a public interest clause under which some information can be published by the media. The Czech Parliament approved this amendment in 2011. This was not the only provision of the new criminal code that could pose a threat to journalism. Criminal defamation was kept as it was in the old Czechoslovak criminal code – the new law continued to punish defamation by 1 year in prison, and in case the crime is committed in the press, television, film, radio or the Internet, the punishment is up to 2 years.⁴⁵⁴ This is not exceptional in the European Union, but the journalist organizations such as the International Press Institute stress that defamation is not a crime anymore in several European states which proves this provision of law to be unnecessary restriction of the freedom of speech, while the protection of potential victims of defamation can be effectively achieved by the civic law.⁴⁵⁵

In this light, the Slovak provision of the same kind in the new Criminal Code seems even more excessive – the law allows to punish defamation by up to 2 years in prison in its least strict version, 1 to 5 years in case it was committed for example publically, and 3 to

452 Act. No. 40/2009 Coll. Czech Criminal code. Paragraph 180.

453 MORAVEC, V. 2020. p. 374 – 376.

454 Czech Criminal code, Act. No. 40/2009. Paragraph 184.

455 GRIFFEN, S. 2015. *Out of Balance. Defamation Law in the European Union: A Comparative Overview for Journalists, Civil Society and Policymakers*. Vienna: International Press Institute. Online: <https://issuu.com/internationalpressinstitute/docs/ipi-outofbalance-final-jan2015>. (Quoted on 31. 10. 2021).

8 years if the defamation caused great damage, a loss of job or a divorce of a marriage.⁴⁵⁶ This is by far the strictest possible punishment for defamation in the whole Europe.⁴⁵⁷ One more change in law happened to cause an unrest among Slovak journalists – it was the change in the Press Act that introduced a right to reply also for politicians, allowing anyone to reply to any article related to him or her in the Slovak newspapers. The newspapers protested with their first page being blank, but the law had passed despite their protests, and the first who had used this law against the newspaper was the former prime minister Vladimír Mečiar, by then a chairman of a party that was a minority partner in a Slovak coalition government.⁴⁵⁸ After the change of government in 2010, the new majority had amended the Press Act by stating that the public officials such as the top political figures do not have the right to reply.

3. 2. 3. Oligarchization, de-westernization and media capture (approximately since 2010)

The financial crisis started a different kind of media transformation, or more precisely, had added a new problem to the already existing digital transformation. Thus, we are not suggesting that the digital transformation has ended – to the contrary, it continues, but a new kind of problem had emerged alongside the digital transformation that had brought a new situation demanding another kind of transition. These changes – the sell-off of local media outlets by foreign investors to local tycoons - are often framed in the literature as the most important development in the local media landscapes in recent times.⁴⁵⁹ Namely, it is the transition from the for-profit model to the for-influence media model, not exclusive to the CEE region. Štětka is also framing this as the turning point in the history or the transformation of media systems in post-communist Europe.⁴⁶⁰ Perhaps other authors would not frame this as a separate transition era, but we do agree with this interpretation, for the following reason.

3.2.3.1. Dewesternization and media capture

456 Act. No. 300/2005. (Slovak Criminal Code). Paragraph 373.

457 GRIFFEN, S. 2015. p. 11.

458 ČTK. 2008. Tlačový zákon ako prvý testuje Mečiar. [*The Press Act is tested by Mečiar*]. IN: *Pravda.sk*. Online: <https://spravy.pravda.sk/domace/clanok/158027-tlacovy-zakon-ako-prvy-testuje-meciar/>. (Quoted on 31. 10. 2021).

459 VOJTĚCHOVSKÁ, M. 2017. p. 98.

460 ŠTĚTKA, V. 2015. p. 88.

The first (political) transformation had changed the model of media operation; the influence-oriented model of media in the examined countries (media owned or controlled by the totalitarian government) had changed to the for-profit model. The events after 2008 had partially reversed this. Some of the media stopped gaining and changed owners, and these new owners had different goals, not profits, but influence.

This is consistent with the theory of democratic backsliding, which is also considered as a kind of reversal of the transition process of the 1990s.⁴⁶¹

In Slovakia and the Czech Republic, this post-financial crisis era is characterized by *oligarchization*, a process of media ownership changes from the hands of foreign (international) publishing companies, focused on achieving profit, to the hands of local wealthy businessmen. Those publishing companies were predominantly from western Europe or the USA and entered the CEE markets in 1990s in a process framed as westernization of the media markets. Thus, their withdrawal can be framed as de-westernization of the same markets.⁴⁶²

These western companies had brought western type of thinking about media ethics and pursued western professional standards, such as the watchdog role of journalists, preventing the conflict of interests in journalism, etc. The media owned by the local oligarchs with political ties seem not to follow the same standards.

There are several examples of personal connections between politics and news media in Slovakia and Czech Republic that would not be acceptable in the west. For instance, Zuzana Martináková, former politician, former member of parliament, then chairwoman of a small political party and a presidential candidate, has returned to journalism after not being successful in politics – she had worked in Pravda daily and then became the editor-in-chief of the only Slovak news TV TA3. Both Pravda and TA3 had a background of oligarchic ownership, with their owners having interests in businesses dependent on political decision-making.

There are also several cases of former spokespersons of prominent politicians that had turned to journalism, even in the public service Radio and Television Slovakia (RTVS).⁴⁶³ Moreover, there are findings showing that the public service news sided those politicians

461 SUROWIEC, P. ŠTĚTKA, V. 2019. Introduction: media and illiberal democracy in Central and Eastern Europe. IN: *East European Politics*. Vol. 36. No. 1. p. 2.

462 ŠTĚTKA, V. 2015. p. 88.

463 The director of news in RTVS Vahram Chuguryan is a former spokesperson to the minister of education that had to resign over a corruption scandal, similarly with other people brought to the management of the public service news.

or their parties just before the elections: The Transparency International Slovakia had shown that the Slovak National Party (SNS), which had pushed the new director of RTVS Jaroslav Rezník, got greater coverage in the news in the first year of his term, and also all major politicians of SNS were mentioned far more often than in commercial media, and the coverage was positive in many more cases than in commercial televisions.⁴⁶⁴

Specifically, in the case of RTVS, the situation might be framed as a very explicit result of *media capture* – the takeover of critical news by the political parties being criticized. Two of three coalition leaders in the 2016 – 2020 government had publicly expressed their opinions about RTVS criticism.

The prime minister Robert Fico did not appreciate critical journalism from RTVS, criticized it on several occasions and even labelled it as leaning to the opposition and suggested that the director must be changed.⁴⁶⁵ The International Press Institute responded, that this call for parliament to change the director of RTVS is a risk that the broadcaster might lose the independence and might become a mouthpiece of the government, reminding that in 2017 RTVS had the public trust for objectivity.⁴⁶⁶

The chairman of the coalition party SNS and the head of the Slovak parliament Andrej Danko even suggested on multiple occasions that RTVS should not be a public service television anymore, but a state-owned and controlled medium⁴⁶⁷ financed only from the budget of the state, broadcasting news dedicated to topics of national holidays – and he criticized bravery of its journalists facing the prime minister.⁴⁶⁸

His desired model reminds of the one from before 1989, so Mr. Danko probably unknowingly advocated a total reversion of the transformation that took place in the 1990s. This shows that the people willing for power, exactly those politicians that are

464 KOSTELANSKÝ, Ľ. 2019. Po TASR pomáha Rezník Dankovi aj v RTVS. [*After TASR Rezník helps Danko also in RTVS*]. IN: *Transparency.sk*. Online: <https://transparency.sk/sk/po-tasr-pomaha-reznik-dankovi-aj-v-rtvs/>. (Quoted on 2. 10. 2021).

465 BAŽÍK, M. 2017. Fico kritizoval médiá a najmä RTVS, na jej čele podľa neho musí prísť k výmene. [*Fico criticized media and RTVS, he wants the change of its managers*]. IN: *Dennikn.sk*. Online: <https://dennikn.sk/minuta/724280/>. (Quoted on 2. 10. 2021).

466 SITA. 2017. Medzinárodný tlačový inštitút kritizoval Fica za výroky k RTVS. [*The International Press Institute criticized Fico for his words on RTVS*]. IN: *Pravda.sk*. Online: <https://spravy.pravda.sk/domace/clanok/426743-medzinarodny-tlacovy-institut-kritizoval-fica-za-vyroky-k-rtvs/>. (Quoted on 2. 10. 2021).

467 AKTUALITY.SK. 2017. Andrej Danko chce urobiť z RTVS štátnu inštitúciu. [*Andrej Danko wants RTVS to be a state institution*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/461856/andrej-danko-chce-urobit-z-rtvs-statnu-instituciu/>. Online. (Quoted on 2. 10. 2021).

468 TASR. 2017. V koalícii som neustupoval, RTVS by mala byť štátna inštitúcia. [*Danko: I did not retreat, RTVS should be a state institution*]. IN: *Pravda.sk*. Online: <https://spravy.pravda.sk/domace/clanok/453299-danko-v-koalicii-som-neustupoval-ak-dosiahnem-kompromis-nerobim-tlacovky/>. Online. (Quoted on 2. 10. 2021).

connected to the powerful business elites⁴⁶⁹ and seek to exercise the power in politics, are the ones benefiting from the media being oppressed. It is their interest to halt free press and pluralism – they want to capture the media from the position of power, because they view the role of journalists not as watchdogs, but as servants of the government. In the ideal world of Andrej Danko, a journalist should not confront a prime minister or a chairman of the parliament with uncomfortable questions, which are viewed as insolent or even rude behavior. Instead, it is the role of a journalist to report on ideas that the public official wants to present, to accompany him or her at state visits, to mirror how the official is representing the country. It is a different concept of the role of a journalist.

Reporters without borders (RSF) had repeatedly condemned both Andrej Danko and Robert Fico for their attacks on the public service broadcaster.⁴⁷⁰

Both politicians acted on their words and supported the change of director – their parties and allies (including the extreme right wing party) had elected Jaroslav Rezník for the position of the director of RTVS. In the next year, over 60 critical journalists had signed a petition⁴⁷¹ against the new director and his management and many of them had lost their jobs, left the institution voluntarily or did not have their contracts prolonged.⁴⁷² Some of them sued the institution for unlawful termination of their contracts, by the time of writing, the case is still unresolved. More than 200 other Slovak journalists had supported their colleagues against Jaroslav Rezník in another petition, claiming that „*silencing journalists and their replacement with obedient propagandists is the first step of dictatorship or totalitarian regime.*“⁴⁷³ Other institutions from academia⁴⁷⁴ or Reporters

469 The SNS party has a history of involvement in criminal cases with economic background – currently two former ministers from this party are serving a long jail sentence for misuse of public funds. Under chairmanship of Mr. Danko, the party is involved in a big corruption scandal called Dobytkár („Cattle Rancher“), in which SNS nominees and an oligarch connected to SNS Mr. Kvietik were arrested and are facing charges for corruption in millions of euros. By the time of writing, the case is not closed.

470 REPORTERS WITHOUT BORDERS. 2018. RSF concerned about Slovak party attacks on public media. IN: *Rsf.org*. Online: <https://rsf.org/en/news/rsf-concerned-about-slovak-party-attacks-public-media> (Quoted on 2. 10. 2021).

471 HRN. 2018. Situácia v RTVS je napätá, zamestnanci podpísali petíciu. [*Situation in RTVS is tense, employees signed a petition*]. IN: *Stratégie.sk*. Online: <https://strategie.hnonline.sk/media/1721952-situacia-v-rtvs-je-napata-zamestnanci-podpisali-peticiu> (Quoted on 2. 10. 2021).

472 Disclosure of possible conflict of interests: The author of this dissertation was among the journalists signing the petition and not having his contract renewed in response.

473 BALOGHOVÁ, B. BÁRDY, P. KOSTOLNÝ, M. (et al.). 2018. Výzva novinárov k RTVS: Verejnoprávne médiá nemožno umlčať. [*Journalists challenge RTVS: You cannot silence public service media*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/586017/vyzva-novinarov-k-rtvs-verejnopravne-media-nemozno-umlcat/>. (Quoted on 2. 10. 2021).

474 TASR. 2018. Filozofická fakulta Univerzity Komenského je znepokojená dianím v RTVS. [*Faculty of Arts at Comenius University is concerned about events in RTVS*]. IN: *Teraz.sk*. Online: <https://www.teraz.sk/slovensko/fif-uk-je-znepokojena-dianim-v-rtvs/322598->

without borders (RSF) have also criticized Mr. Rezník and his members of management for their previous political careers⁴⁷⁵ or for „undermining press freedom.“⁴⁷⁶ Eventually, Mr. Rezník had appointed a new director of news in RTVS – former spokesperson of a government minister for SNS.⁴⁷⁷

The political capture of RTVS did not stop here. More cases of critical journalists being laid off from RTVS have emerged in upcoming years⁴⁷⁸⁴⁷⁹, RSF kept reporting on pressure on journalists and quoted a telling case: The management had banned broadcasting of a radio discussion about the decrease of Slovakia in the 2019 World Press Freedom Index.⁴⁸⁰ RTVS kept being criticized for a bias in favor of the Slovak National Party (SNS)⁴⁸¹ and the model imagined by Mr. Andrej Danko came close to realization. The reporters accompanied him during his state-visits and were demanded to cover the visit in positive light to an extent that during the visit of Belarus it was undesirable to mention the type of political regime of president Lukasenko; or Mr. Danko being a guest

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- [clanok.html?utm_source=teraz&utm_medium=organic&utm_campaign=click&utm_content=undefin](#)
[ed](#). (Quoted on 2. 10. 2021).
- 475 ŠTRBA, P. 2018. Reportéri bez hraníc sa postavili za RTVS. Kritizujú aj Rezníka. [*Reporters without borders stand with RTVS, criticize Rezník*]. IN: *Sme.sk*. Online: <https://svet.sme.sk/c/20801860/reporteri-bez-hranic-rtvs.html>. (Quoted on 2. 10. 2021).
- 476 REPORTERS WITHOUT BORDERS. 2018. Unrest within Slovak public broadcaster over political pressure. IN: *Rsf.org*. Online: <https://rsf.org/en/news/unrest-within-slovak-public-broadcaster-over-political-pressure> (Quoted on 2. 10. 2021).
- 477 New director of news in RTVS Vahram Chuguryan had previously worked as a spokesperson of Peter Plavčan, the minister of education, a nominee of SNS. Mr. Plavčan was forced to step down after a scandal with European funds, indented for research, turned out to be directed to private firms with no research history, but political connections instead. The political connections of those firms, including firms connected to SNS, were discovered by a journalist Ján Kuciak, only six months before his murder. Source: KUCIAK, J. 2017. Plavčanove eurofondy tiekli blízko Smeru, SNS, Mostu aj Bonaparte. [*Plavčan eurofunds went near Smer, SNS, Most and Bonaparte*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/514824/plavcanove-eurofondy-tiekli-blizko-smeru-sns-mostu-aj-bonaparte/> (Quoted on 29. 10. 2021).
- 478 MEDIALNE.SK. 2019. V RTVS končí dlhoročný moderátor, nepredĺžili mu zmluvu. [*RTVS did not prolong contract of long-term anchor*]. Online: <https://medialne.trend.sk/televizia/rtvs-konci-dlhocny-moderator-nepredlzili-mu-zmluvu>. (Quoted on 3. 10. 2021).
- 479 MIKUŠOVIČ, D. 2021. Bývalá redaktorka Senková: Keď v RTVS zistili, že ma vyhadzujú v tehotenstve, ponúkli mi peniaze za fiktívnu analýzu. [*Former reporter Senková: When they realized they are firing me in pregnancy, they offered me money for fictional analysis*]. IN: *Denník N*. Online: <https://dennikn.sk/2485403/byvala-redaktorka-senkova-ked-v-rtvs-zistili-ze-ma-vyhadzuju-v-tehotenstve-ponukli-mi-peniaze-za-fiktivnu-analyzu-podcast/>. (Quoted on 3. 10. 2021).
- 480 REPORTERS WITHOUT BORDERS. 2019. *Journalists at Slovak public broadcaster feel pressure and fear it will grow ahead of elections*. Online: <https://rsf.org/en/news/journalists-slovak-public-broadcaster-feel-pressure-and-fear-it-will-grow-ahead-elections>. (Quoted on 3. 10. 2021).
- 481 BARIAK, L. 2019. Hanba pre vedenie RTVS. Nadpracu pre SNS si všimli aj v zahraničí. [*RTVS disgraced. Their work for SNS was noticed also abroad*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/705938/hanba-pre-vedenie-rtvs-nadpracu-pre-sns-si-vsimli-aj-v-zahranici/>. (Quoted on 3. 10. 2021).

in a discussion programme without a political opponent.⁴⁸² Yet, this did not help the SNS party to get elected again in 2020.

After the parliamentary election of 2020 and the change of government, the management of RTVS had found a new governing party to cover their backs: Sme rodina and its chairman Boris Kollár.⁴⁸³ Mr. Kollár had intervened in a political conflict concerning allegedly overpriced contracts and inefficient use of financial resources – and he had backed the current management of RTVS, with explanation that his party has no problem to get into the news now, in contrast to the era of the previous director.⁴⁸⁴ Boris Kollár and his party have also successfully blocked all the efforts to depoliticize RTVS, for instance by changing the law concerning the election of a new director or the model of RTVS governance.⁴⁸⁵

In the Czech Republic, public television and radio are separated, so it is not as easy to capture them both. The election of new members of the Council of ČT, close to the governing party ANO of Andrej Babiš, and their subsequent actions, was understood as an attempt to undermine the independence of the television, which motivated dozens of protestors to demonstrate in front of the Czech television in 2020.⁴⁸⁶ A source of Seznamzpravy.cz from the governing party ANO had been quoted saying that the governing party did not seek to replace the director of the TV, because it feared „people in the streets again.“⁴⁸⁷ The source referred to the protest of estimated 100 000 people

482 KOSEČEKOVÁ, R. 2019. Danko rečnil v RTVS sám. O svojich ambíciách bez politického oponenta. [*Danko discussed his ambitions in RTVS without a political oponent*]. IN: *Medialne.sk*. Online: <https://medialne.trend.sk/index.php/radia/danko-recnil-rtvs-sam-svojich-ambiciach-bez-politickeho-oponenta>. (Quoted on 29. 10. 2021).

483 This party is not nationalist by definition, but on the international level, they cooperate with Marine Le Pen from France or Matteo Salvini from Italy. The party chairman Boris Kollár is a wealthy man, owning a commercial radio Funradio, among other businesses. It is also possible to define him as a media mogul, a man connecting the political and business interests. On the other hand, it was not proven yet that he would use the media under his ownership as instruments for the political struggle.

484 BARIAK, L. 2020. Začal sa koalíčný súboj o RTVS? Sme šikanovaní, lebo máme kľúče od miešačky, tvrdí šéf Rady RTVS. [*Had the coalition fight over RTVS started? We are being bullied, says the chief of Council of RTVS*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/793839/zacal-sa-koalicny-suboj-o-rtvs-sme-sikanovani-lebo-mame-kluce-od-miesacky-tvrdi-sef-rady-rtvs/> (Quoted on 3. 10. 2021).

485 STRUHÁRIK, F. 2021. OĽaNO chcelo odpolitizovať voľbu riaditeľa RTVS, Boris Kollár je proti a reformu zastavil. [*OĽaNO wanted to depoliticize the vote of RTVS director, Boris Kollár is against it and he had stopped the reform*]. IN: *Denník N*. Online: <https://dennikn.sk/2558408/olano-chcelo-odpolitizovat-volbu-riaditeľa-rtvs-boris-kollar-je-proti-a-reformu-zastavil/>. (Quoted on 3. 10. 2021).

486 PŠENIČKA, J. 2020. Nová televizní krize 20 let poté: Jen dnes se za ČT demonstruje v autech. [*New TV crisis 20 years after: Today the demonstration is in cars*]. IN: *Seznamzpravy.cz*. Online: <https://www.seznamzpravy.cz/clanek/nova-televizni-krize-20-let-pote-jen-dnes-se-o-ct-demonstruje-v-autech-129906>. (Quoted on 3. 10. 2021).

487 Ibid.

during the first „Television crisis“ in 2000 – 2001. This indicates that popular protests could possibly help prevent political capture of the public service media.

The capture of the Slovak and Czech private media is measured elsewhere in this dissertation, but some basic context is needed here as well. The changes in these markets began already in 2007, when the J&T Media Group, a part of large oligarchic J&T Group, had bought TV JOJ, the second most popular commercial TV on the Slovak market. In 2010, the traditional daily newspaper Pravda was sold from the British owner Northcliffe International (Daily Mail) to the local company Florena, closely tied with the J&T Group.⁴⁸⁸ Shortly after, several journalists focused on domestic news have left Pravda⁴⁸⁹ because of the change of its political orientation to the left – meaning closer to the Smer party, whose politicians have met with the new formal owner of the daily Karol Biermann (former Smer-related political nominee as the director of Bratislava airport) under suspicious circumstances.⁴⁹⁰ The ownership of Pravda daily could have been hidden behind Biermann, because if the J&T Group would own it officially, it could face legal problems – since the cross-media ownership is forbidden, and J&T Group already had the TV JOJ and indirect control over a network of radio stations.

J&T Group has a lot of companies and therefore also business interests in the Czech Republic too. Moreover, one of the main figures of J&T, Patrik Tkáč, has developed a broad and long-term business partnership with one of the wealthiest Czechs: Daniel Křetínský from EPH company (in which Tkáč also has a share). These two investors, Křetínský and Tkáč, had bought the whole Ringier Axel Springer Czech Republic operation in Czechia, including the most popular tabloid newspaper Blesk, Aha! daily and Sport daily, popular weekly Reflex and several other smaller titles.⁴⁹¹

Regarding the Slovak press market, the most significant changes occurred in 2014: Penta company, notorious for a huge political corruption scandal nicknamed Gorila, had bought

488 ČTK. 2010. Klient skupiny J&T kúpil denník Pravda. [*Client of J&T group had bought Pravda daily*]. Online: <https://www.trend.sk/biznis/klient-skupiny-j-t-kupil-dennik-pravda>. (Quoted on 3. 10. 2021).

489 CZWITKOVITS, T. 2010. Exodus v Pravde: Po príchode nových majiteľov masový odchod novinárov. [*Exodus in Pravda: Mass departure of journalists after the new owners arrival*]. IN: *Pravda.sk*. Online: <https://medialne.trend.sk/tlac/exodus-pravde-prichode-novych-majitelov-masovy-odchod-novinarov-aktualizacia>. (Quoted on 3. 10. 2021).

490 AUGUSTÍN, R. 2010. Novou šéfredaktorkou Pravdy je Nora Slišková. *Medialne.sk*. [*Nora Slišková is the new editor of daily Pravda*]. Online: <https://medialne.trend.sk/tlac/novou-sefredaktorkou-pravdy-je-nora-sliskova-aktualizacia>. (Quoted on 3. 10. 2021).

491 BLESK.CZ. 2013. Blesk má nového majiteľa. Vydavateľstvi kúpili Daniel Křetínský a Patrik Tkáč. [*Blesk has a new owner. The publishing house was bought by Daniel Křetínský and Patrik Tkáč*]. IN: *Blesk.cz*. Online: <https://www.blesk.cz/clanek/zpravy-udalosti/225146/blesk-ma-noveho-majitele-vydavatelstvi-koupili-daniel-kretinsky-a-patrik-tkac.html>. (Quoted on 3. 10. 2021).

the 7PLUS publishing house with the most popular Slovak weekly, the second most popular Slovak tabloid newspaper and several other strong titles, then an economic weekly Trend, and then Penta also bought a share in Petit Press, the publisher of the SME daily – the opinion leading newspaper for last 20 years, with the most visited news website of Slovakia in that time. The reaction has been the departure of the majority of the newsroom, and almost all their leading journalists, to start a new daily newspaper, Denník N.

Penta has a record of influencing politics and it is the symbol of oligarchization: The communication of Marián Kočner, the main suspect in the murder of Ján Kuciak, had revealed that Jaroslav Haščák, one of the heads of Penta, had stopped an article before publication.⁴⁹² Kočner also controlled and financed a journalist from the Plus 7 dní weekly and Plus 1 Daily (both under Penta) and had used her for discreditation campaigns and his interests.⁴⁹³⁴⁹⁴ This is described as *instrumentalization* of media: when journalists or media are used as instruments to achieve political or economic goals, usually by an owner or by someone with ties to the owner.

One of the main owners of Penta Marek Dospiva has explicitly compared their ownership of media to an instrument – a nuclear briefcase. In an interview for the Czech economic daily Hospodářské noviny, he had said: „*Owning media makes us sure, that for anyone it would be harder to irrationally attack us.*“⁴⁹⁵ On another occasion, he had commented: „*I perceive the investment in media as politics. It is not a classical investment with the goal of return. It is about a side effect: everyone knows that I have a strong medium, and just this knowledge can provide me some benefits. Only the knowledge of the fact that a*

492 TREND.SK. 2020. Kočner ovplyvňoval médiá Penty. Riešil ich priamo s Haščákom. [Kočner had influenced media belonging to Penta. He dealt directly with Haščák]. IN: Trend.sk. Online: <https://www.trend.sk/spravy/kocner-ovplyvnoval-media-penty-riesil-ich-priamo-hascakom>. (Quoted on 3. 10. 2021).

493 KERNOVÁ, M. 2018. Redaktori Plus 7 dní žiadali prepustenie kolegyne kvôli kontaktom s Kočnerom. [Plus7 reporters demanded a dismissal of their colleague due to contacts with Kočner]. IN: Dennikn.sk. Online: <https://dennikn.sk/blog/1275515/redaktori-plus-7-dni-ziadali-prepustenie-kolegyne-kvoli-kontaktom-s-kocnerom/>. (Quoted on 3. 10. 2021).

494 AKTUALITY.SK. 2019. Kočnerova Threema: Novinárka Ruttkayová si pýtala od Kočnera peniaze na dovolenku. [Threema: Journalist Ruttkayová asked Kočner for money to go on a holiday]. IN: Aktuality.sk. Online: https://www.aktuality.sk/clanok/733762/kocnerova-threema-novinarka-ruttkayova-si-pytala-od-kocnera-peniaze-na-dovolenku/?AT=wgt.article_clanok_crosspromo.c.x...B.&utm_source=sport.sk&utm_medium=zona-article&utm_campaign=box-aktuality-article&utm_content=cross. (Quoted on 3. 10. 2021).

495 MIKULKA, M. 2015. Spolumajitel Penty Dospiva: Chceme mediální stít proti iracionálním útokům. [Penta co-owner Dospiva: We want media network as a shield against irrational attacks]. IN: Ihned.cz. Online: <https://archiv.hn.cz/c1-63893810-chceme-medialni-stit>. (Quoted on 3. 10. 2021).

*businessman owns a newspaper or a television, is strengthening his position.*⁴⁹⁶ This is practically a definition of the for-influence model of media ownership.

Penta has also invested in the Czech media market and since 2015 owns a network of regional newspapers Deník and several magazines⁴⁹⁷ - and symptomatically, as a part of the de-westernization movement, had acquired these from German Verlangsguppe Passau, the last of the three big western media companies on the Czech market, entirely exiting it in 2015.⁴⁹⁸

The era of oligarchization is typical for western publishers exiting the market and selling the media outlets to the local tycoons with ties to politics. This is also the case of Nový Čas daily, the most popular Slovak tabloid and the most popular newspaper. The newspaper was sold to a firm connected to Anton Siekel, an oligarch that got rich with financial group Istrokapital thanks to privatization in 1990s.⁴⁹⁹ The publisher of the daily, Swiss-German Ringier Axel Springer had sold much of their operations in Slovakia and had found two big purchasers – News and Media Holding (Penta) for a network of magazines and FPD Media, connected to Mr. Siekel.⁵⁰⁰ Anton Siekel has connections to SNS, a political party behind the nomination of Jaroslav Rezník as a director of RTVS.⁵⁰¹ Another departure of a major western investor had occurred in 2019 and it connects both Slovakia and Czech Republic: The American media company CME had sold a network of commercial TV stations to a Czech billionaire Petr Kellner, including the most popular Slovak commercial TV Markíza and the most popular Czech commercial TV Nova. Other

496 MALECKÝ, R. 2015. Penta má svůj atomový kufřík. Podívejte se, jaký biznis si chce pomocí médií ochránit. [*Penta has its nuclear briefcase. Look what business they want to protect*]. IN: *Hlidacipes.org*. Online: <https://hlidacipes.org/penta-a-jeji-byznys-po-zdravotnictvi-sazkach-a-real-estate-prichazeji-media/>. (Quoted on 3. 10. 2021).

497 ČTK. 2019. České média si rozebrali magnáti. Podívejte se, kdo vlastní deníky, weby i televize. [*Czech media is divided among moguls. Look who owns the dailies, websites and television*]. IN: *Aktualne.cz*. Online: <https://zpravy.aktualne.cz/ekonomika/majitele-medii-v-cesku-noviny-weby-televize-kdo-vlastni/r~67160c86faff1e9ac60ac1f6b220ee8/v~sl:f169947c588cad66d61d11d2c8bf80b9/>. (Quoted on 3. 10. 2021).

498 VOJTĚCHOVSKÁ, M. 2017. p. 99.

499 PETKOVÁ, Z. HALUZA, I. 2017. Anton Siekel: kto je milionár, ktorý kúpil Nový Čas. [*Anton Siekel: Who is the millionaire that bought Nový Čas*]. IN: *Medialne.sk*. Online: <https://medialne.trend.sk/tlac/anton-siekel-kto-je-milionar-ktory-kupil-novy-cas>. (Quoted on 3. 10. 2021).

500 KERNOVÁ, M. 2018. Nový Čas zmenil vlastníka. Nového majiteľa majú aj ďalšie tituly. [*Nový Čas and other titles had changed the owner*]. IN: *Omediach.com*. Online: <https://www.omeiach.com/tlac/13621-novy-cas-zmenil-vlastnika-noveho-majiteľa-maju-aj-dalsie-tituly>. (Quoted on 3. 10. 2021).

501 LEŠKO, M. KOVÁČ, J. 2019. Špeciálne vzťahy so SNS: Aký vplyv má Siekel na Danku. [*Special relations with SNS: What influence Siekel has over Danko*]. IN: *Trend.sk*. Online: <https://www.trend.sk/spravy/specialne-vztahy-sns-aky-vplyv-ma-siekel-danka>. (Quoted on 3. 10. 2021).

big players on the Slovak and Czech media markets (Andrej Babiš, Penta and J&T) were also mentioned as potentially interested in the transaction, but Kellner remained the only one with real offer.⁵⁰² Since Kellner had tragically died during a helicopter accident shortly after the transaction, concerns about falling of the most popular televisions in both countries into hands of other oligarchs more connected to politics remain in place.⁵⁰³

In the Czech Republic the political-economic interests in media acquisitions were even more obvious than in Slovakia. In 2013, the Czech billionaire with political ambitions Andrej Babiš had bought the opinion-leading newspaper with the strongest online presence Mladá Fronta Dnes (from a German publisher) and another traditional political broadsheet Lidové noviny. In Slovakia, he had bought Hospodárske noviny (the economic daily). He also owns the Czech daily Metro, two radio stations including the popular Radio Impuls, a music TV and several magazines.⁵⁰⁴

Andrej Babiš had been elected a member of the Czech parliament in 2013 and became the Minister of Finance and a deputy prime minister shortly after. Later, his political party ANO 2011 had won the election and he had become the prime minister of the Czech Republic in 2017.

The editors and many journalists of the newspapers bought by Babiš had departed their positions and started their new online projects, reasoning that it would be difficult to exercise their profession with integrity and credibility while owned by a political player.⁵⁰⁵

Mr. Babiš is a definition for an oligarch: extremely wealthy man connecting political and economic interests and benefiting from the connection.⁵⁰⁶ In the western concept of watchdog journalism the ownership of media by a politically active player is a clear

502 POLÁŠ, M. HOMOLA, M. 2019. Markíza mení majiteľa. Spoločnosť CME kupuje najbohatší Čech Kellner. [*Markíza changed the owner. CME is bought by the wealthiest Czech Kellner*]. IN: *Medialne.sk*. Online: <https://medialne.trend.sk/televizia/markiza-meni-majitela-spolocnost-cme-kupuje-najbohatsi-cech-kellner>. (Quoted on 3. 10. 2021).

503 A debate whether Kellner could be seen as an oligarch is possible, but for now his acquisitions in media did not mean political changes in editorial policies, departures of journalists or the content typical for instrumentalized media. He had owned TV Nova already in 2003 – 2004.

504 ČTK. 2019. České média si rozebrali magnáti. Podívejte se, kdo vlastní deníky, weby i televize. [*Czech media is divided among moguls. Look who owns the dailies, websites and television*]. IN: *Aktualne.cz*. Online: <https://zpravy.aktualne.cz/ekonomika/majitele-medii-v-cesku-noviny-weby-televize-kdo-vlastni/r~67160c86faff1e9ac60ac1f6b220ee8/>. (Quoted on 3. 10. 2021).

505 VOJTĚCHOVSKÁ, M. 2017. p. 101.

506 HRADÍLKOVÁ BARTOVÁ, E. 2021. Unikátní analýza: Babišovy firmy inkasovaly od státu násobně víc, než se dá veřejně dohledat. [*Unique analysis: Firms of Babiš got much more from the state as it is publically accessible*]. IN: *Denik N*. Online: <https://denikn.cz/718422/babisovym-firmam-se-u-statnich-instituci-darilo-spocitali-jsme-kolik-za-dobu-jeho-vlady-dostaly-z-verejnych-penez/?ref=mwat>. (Quoted on 8. 10. 2021).

conflict of interests and it has been described as Berlusconiization, or in the Czech context reformulated as „Babišization“.⁵⁰⁷

The behavior of Andrej Babiš as a media owner shows what appears to be the structural problem of such oligarchic ownership. He had appointed loyal journalists to the top position in the dailies and he had set up a mechanism allowing him to influence the contents in accordance to his interests.⁵⁰⁸ Several cases of him personally influencing the editorial content of the newspapers had been exposed, such as when he instructed the journalists with specific tasks or when he had used information published by his dailies against his political enemies⁵⁰⁹⁵¹⁰, or the manipulative interpretation of a scandal connected to Babiš, publication of news supporting his views from a (very probably) nonexistent author⁵¹¹, and so on. It is not only the ownership of political dailies that matters – in a political campaign just before the election, Babiš and his partisans had appeared in several lifestyle magazines owned by his group, talking mostly about positive general topics such as friendship, beautiful Czech mountains, or Czech cuisine, but also directly about politics.⁵¹² Speaking of the campaign in 2021, Babiš made a significant gesture by inviting the Hungarian prime minister Viktor Orbán to Prague just one week before the election, emphasizing their common interests and topics. The role of Orbán in the pursuit of illiberal democracy, including media capture, has been described in the previous chapters of this dissertation. Rhetorically, Babiš seems similar to the above quoted Slovak politicians that were behind the capture of RTVS, Robert Fico, and Andrej Danko. Babiš had repeatedly attacked journalists, especially those critical ones from the public service television ČT, accusing them of political bias, manipulation, or even corruption⁵¹³, on another occasion he had dragged the director of ČT into a political

507 MORAVEC, V. 2020. p. 242.

508 VOJTĚCHOVSKÁ, M. 2017. p. 102.

509 ŤOPEK, M. 2017. Babiš lhal, reagují novináři Mařky na nahrávku. Někteří podali výpověď, další ji zvažují. [*Babiš lied, say Mařka journalists in response to the recording. Some resigned, others consider it*]. IN: *Aktuálně.cz*. Online: <https://zpravy.aktualne.cz/domaci/novinari-z-mafry-zvazuji-hromadnou-vypoved-vadi-jim-ze-babis/r~8c403bec30b511e783780025900fea04/>. (Quoted on 5. 10. 2021).

510 KAČMÁR, R. 2017. Babiš dával úlohy reportérovi, novináři v MF Dnes zvažují hromadné výpovědi. [*Babiš gave tasks to a reporter, journalists in MF Dnes consider mass-resigning*]. IN: *Dennikn.sk*. Online: <https://dennikn.sk/754582/babis-daval-ulohy-reporterovi-novinari-v-mf-dnes-zvazuju-hromadne-vypovede/>. (Quoted on 5. 10. 2021).

511 MORAVEC, V. 2020. p. 243 - 247.

512 ŠVIHEL, P. 2021. Vlídna tvář Andreje Babiše. Jak jeho média dělají premiérovi kampaň. [*A nice face of Babiš. How his media campaign in his favour*]. IN: *Seznamzpravy.cz*. Online: <https://www.seznamzpravy.cz/clanek/vlidna-tvar-andreje-babise-jak-jeho-media-delaji-premierovi-kampan-174921>. (Quoted on 5. 10. 2021).

513 ŠTEFAN, V. 2017. Babiš zaútočil na Českou televizi. Novináře nařkl z korupce a chce si stěžovat. [*Babiš attacked the Czech Television, accused the journalists from corruption and wants to*

conflict⁵¹⁴ or even referred to age or family of the critical journalists instead of answering their questions⁵¹⁵.

We have already mentioned the Czecho-Slovak oligarchs Daniel Křetínský and Patrik Tkáč (EPH, J&T) that have acquired not only Slovak media, but also a part of Czech media market: four dailies (including popular tabloid Blesk and economic daily E15), news websites, a network of non-daily press publications, a part of the largest distributor of printed press and a network of commercial radio stations (including Evropa 2, one of three most successful radios in the country).⁵¹⁶

An owner who is very visibly involved in the production of the political content of his television is Jaromír Soukup of TV Barrandov. He is an owner, an editor-in-chief, a host of a range of programmes from political debates to cooking and he also acts like a political commentator - all in one person, not even distancing himself of political conflicts that he had been a part of.⁵¹⁷ Soukup is a millionaire and has been involved in politics since 1990s, occasionally supporting or financing candidates or parties, he had been a political nominee to the deputy minister of education, unsuccessfully ran for the European Parliament, he had founded his own political party (while owning the television), and he had also announced his presidential candidacy. His media group Empresa Media is co-owned by China International Group Corporation Limited and operates also the political weekly Týden, the Instinkt magazine, several other periodicals and websites, and TV Barrandov and Médea company⁵¹⁸ claiming that they are the biggest communication and media company in the Czech market (with the Slovak subsidiary Médea Slovakia).

Some Czech media owners remain nontransparently hidden behind offshore companies, or they do not reveal the full list of shareholders.⁵¹⁹

complain]. IN: *Irozhlás.cz*. Online: https://www.irozhlas.cz/zpravy-domov/babis-zautocil-na-ceskou-televizi-novinare-narkl-z-korupce-a-chce-si-stezovat_201701311721_pholinkova. (Quoted on 5. 10. 2021).

514 PŠENIČKA, J. 2021. Ředitel České televize vrací úder: Veřejnost ví, že Babiš nemá pravdu. [*The director of ČT strikes back: The public knows that Babiš is not right*]. IN: *Seznamzpravy.cz*. Online: <https://www.seznamzpravy.cz/clanek/reditel-ceske-televize-vraci-uder-verejnost-vi-ze-babis-nemluvi-pravdu-174406>. (Quoted on 5. 10. 2021).

515 BESSER, V. 2019. Babišovi dochází argumenty, zaútočil na novináře kvůli jeho věku. [*Babiš is short of arguments, he attacked a journalist for his age*]. IN: *Forum24.cz*. Online: <https://www.forum24.cz/babisovi-dochazi-argumenty-zautocil-na-novinare-kvuli-jeho-veku/>. (Quoted on 5. 10. 2021).

516 ČTK. 2018. Křetínský kupuje Evropu 2 a další rádia za 1,8 miliardy. [*Křetínský buys Evropa 2 and more radios for 1,8 billion*]. IN: *Novinky.cz*. Online: <https://www.novinky.cz/ekonomika/clanek/kretinsky-kupuje-evropu-2-a-dalsi-radia-za-18-miliardy-11785>. (Quoted on 5. 10. 2021).

517 MORAVEC. V. 2020. p. 247 – 248.

518 Ibid. p. 446.

519 Ibid. p. 249 – 250.

It is interesting to observe what happened to journalists who left the captured media: many of them started working for other media, and several leading personalities had started their own independent projects. Sabina Slonková, an editor-in-chief of Mladá fronta Dnes daily that left 6 months after Mr. Babiš acquired the daily, started her project Neovlyvni.cz – a website and a monthly magazine; her predecessor Robert Čásenský with colleagues had started a new monthly magazine Reportér. Dalibor Balšínek, an editor-in-chief of Lidové noviny, also bought by Mr. Babiš, had started an online „opinion-daily“ Echo24 and later a printed weekly Echo. The former editor-in-chief of Blesk and Reflex weekly Pavel Šafr had started another „opinion daily“ website Forum24.cz and also a weekly Forum. Some of these are not audited, but from the publicly available data, it seems that only Echo24.cz is a project that is a real competitor to the more established media houses, listing as the 10th most visited news website on the Czech Internet, and Forum24.cz listed as 15th.⁵²⁰

In Slovakia, journalists leaving the SME daily after Penta purchased a share in their publisher had founded a new daily, Denník N, that is printed and online. The online version is the 11th most visited website in Slovakia compared to the 2nd place of Sme.sk⁵²¹ and only 4000 printouts are sold every day, but their publishing house has also expanded to Czechia as well: In 2018, based on their model, a new Czech (predominantly online) daily Deník N was founded.⁵²²

All these numbers indicate that, even though there was an explosion of new independent media after the change of ownership, the new projects did not take positions of the captured media, and a large part of the audience stayed with the original media, regardless of the change in ownership.

As in previous eras, legislators have tried to respond with new laws or regulations that would solve the newly emerging problems or at least reduce the adverse effects. While in

520 MEDIAGURU.CZ. 2021. Zpravodajské weby 2020. Na čele Novinky, v TOP 10 i nový web CNN Prima. [*News websites 2020. Leading Novinky, new web of CNN Prima is in TOP 10*]. IN: *Mediaguru.cz*. Online: <https://www.mediaguru.cz/clanky/2021/01/zpravodajske-weby-2020-na-cele-novinky-v-top-10-i-novy-web-cnn-prima/>. (Quoted on 31. 10. 2021).

521 KRASKO, I. 2020. Pandemie vytáhla slovenské weby k rekordům. [*The pandemic drags Slovak websites to record numbers*]. IN: *Mediaguru.cz*. Online: <https://www.mediaguru.cz/clanky/2020/05/pandemie-vytahla-slovenske-weby-k-rekordum/>. (Quoted on 31. 10. 2021).

522 KRASKO, I. 2018. Vzniká Nový deník. Jak si vede jeho slovenský vzor Denník N? [*New daily has emerged. How is his Slovak role model Denník N doing?*]. IN: *Mediaguru.cz*. Online: <https://www.mediaguru.cz/clanky/2018/08/vznika-novy-denik-jak-si-vede-jeho-slovensky-vzor-dennik-n/>. (Quoted on 31. 10. 2021).

the Czech Republic, a new law nicknamed „Lex Babiš“ was adopted, in Slovakia no significant change in law was passed, despite several proposals.

Yet, there was one change that allowed the political capture of the public service broadcasters – or at least it had made it easier. The law that allowed the political capture of both public service television and public service radio broadcasting in Slovakia was the Act 532/2010 on Radio and Television of Slovakia (RTVS), the act that had constituted the institution. The previous institutions – Slovak Television (STV) and Slovak Radio (SRO) were two separate institutions with two separate directors, both elected by a council representing various societal groups – a model inspired by Germany typical for the North-Western Democratic-Corporatist media systems. The minister of culture Daniel Krajcer for the liberal party wanted to get rid of the director of STV that was reportedly responsible for a political bias in favour of the previous government – so he had proposed, sponsored, pushed and enforced a new law, approved by the parliament. The new act merged both institutions under a new one, cancelled the boards representing the society – and moved the election of the director to the hands of politicians – under the new law, it was the competence of the parliament to elect the director of RTVS. The new coalition governing was able to immediately elect a new director, Miloslava Zemková, who had previously successfully managed SRO, was elected in 2011.

Not long after, the coalition and the government had fallen apart, a snap election brought Mr. Robert Fico and his Smer party to the government in 2012, and the new majority in parliament had easily replaced Mrs. Zemková with their own nominee. This did not bring the political capture of the institution yet, but it was shown how fast this can be done in the new system, where the politicians decide over the fate of the public service broadcaster.

The legal changes in the Czech Republic were a response to the oligarchic takeover of the media and the inevitable conflict of interests coming from a politician owning the medium that should serve as a watchdog. „Lex Babiš“ was an amendment to the Act on Conflict of Interests 14/2017 that was adopted by the Czech Parliament to separate the ownership of media from politics. Public officials were banned from being the broadcasters or publishers of periodicals.

The legal debate around the act itself was resolved by the Constitutional Court of the Czech Republic in a decision that refused to call it unconstitutional, with the following arguments. First, the court wrote that it is the obligation of the state to prevent public officials from misuse of power to achieve their own interests, the public official must

decide ex ante whether he or she is going to serve in office and solve his or her conflict of interests or not.⁵²³ The court also examined the collusion between the economic, political and media power and concluded that: *„If there is an economically strong subject behind a political party, it is undoubtedly a big advantage in free competition of political forces, that could cause a deformation of this competition, and also of economic competition, where it is affected by regulation from a public office. Economic power can help to gain the political power that can be used in synergy to gain more economic power, for example by gaining from public procurement or limiting the competitors. ... From the viewpoint of the public interest and protection of the democratic values, it is acceptable for the legislator, who in reaction to concentration of considerable economic and media power enacts constitutional measures to prevent possible gradual deformation of a democracy into its fictional or illiberal variant... It is one of the measures of the self-defending democracy...“*⁵²⁴

In other words, the Czech constitutional court had decided that it is perfectly constitutional and in a democracy even desirable to separate those powers, prevent too much of their concentration, and to limit access to public office for the candidates who would not give up their conflicting roles. The legal argument is similar to the argument of this dissertation: the concentration of power is undesirable, because it is dangerous for political competition; in other words, pluralism needs to be secured. The court even quoted the the European Resolution on media pluralism and media freedom that: *„...emphasizes that freedom of the press requires independence from political and economic power, which implies equal treatment regardless of editorial orientation; reiterates the importance of preserving journalism that benefits from mechanisms which prevent the concentration of single, monopolistic or quasi-monopolistic groups, ensuring free competition and editorial diversity; calls on the Member States to adopt and implement a media ownership regulation in order to avoid horizontal concentration of ownership in the media sector and indirect and cross-media ownership, and to guarantee transparency, disclosure, and easy accessibility for citizens to information on media ownership, funding sources and management; underlines the importance of applying*

523 CONSTITUTIONAL COURT OF CZECH REPUBLIC. 2017. Pl. Ús. 4/17. Online: https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezy/2020/Pl. US 4 1 7_na_web.pdf. (Quoted on 29. 10. 2021).

524 CONSTITUTIONAL COURT OF CZECH REPUBLIC. 2017. Pl. Ús. 4/17. Online: https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezy/2020/Pl. US 4 1 7_na_web.pdf. (Quoted on 29. 10. 2021). p. 61.

*appropriate restrictions on media ownership by persons holding public office and of ensuring independent oversight and effective compliance mechanisms in order to prevent conflicts of interest and revolving doors; considers it essential to have independent and impartial national authorities to ensure the effective supervision of the audiovisual media sector.*⁵²⁵

In Slovakia, no such law was adopted, despite several proposals that sought more transparency into the real owners of media, for the purpose of better enforcement of the existing rules banning the cross-media ownership.

3. 3. Conclusions from the context chapter

This chapter had offered a new periodization of the recent media history in Slovakia and Czech Republic, according the three main (and overlapping) transitions: the political, the digital, and the transition of ownership/economic model. The consequences of these transitions are described to provide a context that is needed for further analysis. Namely, the ownership changes in the last decade, from the western publishing companies seeking for a profit from publishing, towards media ownership by domestic oligarchs with political interests. This shift has potential to change journalism itself from the position of power. This chapter had shown that the existing legal framework did not prevent the concentration of ownership and therefore had failed to secure the realization of an ideal of maximal levels of pluralism on a market with independent media.

However, this description of reality has to be supported by data to prove that pluralism is threatened. To prove that there is a problem, we need to confront these observations with more empirical evidence.

525 European Parliament Resolution of 3 May 2018 on media pluralism and media freedom in the European Union (2017/2209(INI)). Paragraph 43. Online: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0204_EN.html. (Quoted on 29. 10. 2021).

4. Empirical Chapter

There has been a great deal of literature dedicated to the regulation of media worldwide and also in the Czech Republic and several publications in Slovakia, many of them quoted in the previous chapters. Many of them have mostly a legal and descriptive character: they quote the law, in the best scenario, they explain it and comment on it while using the court decisions. There is a lack of publications that would analyze the law or its effects in practice; they usually lack the context necessary for any reasonable analysis. If, for example, Rozehnal⁵²⁶⁵²⁷ writes about the restrictions of cross-media ownership, he does not mention any context – no actual market shares of the main players, no possible or real-life violations, he does not mention how the law is bypassed or whether the owners that are banned from owning something else, actually own something else or not. In other words, these kinds of text do not raise questions whether the goal of the regulation had been achieved, whether the law in its current shape is satisfactory or needs to be changed or amended. This kind of publication is a pure description, a pure 'law in books' approach. Because of this, many Czech publications on media law are alike, very similar in content - they describe and quote the same laws, they all describe the right to reply, etc., the competence of the Broadcasting Council, etc.⁵²⁸

This chapter is an attempt to fix this absence, to fill the blank space. The analysis is of two kinds: a comparative legal analysis and the economic analysis of law and its context. The results of these will be used for further analysis of media capture, and then the findings will contribute to a partial media systems analysis. This dissertation deliberately chooses not to describe all the media laws and regulation passed after 2000, as could be presumed from the title, because that was done by legal scholars multiple times already. Instead, we analyze the law comparatively (including law in action/practice where possible), we analyze the context, the efficiency of the laws related to media ownership and we put the findings into larger context of media capture, media systems and democratic theory.

526 ROZEHNAL, A. 2011.

527 ROZEHNAL, A. 2012.

528 This applies for example on POUPEROVÁ, O. 2010. POUPEROVÁ, O. 2012. DIBLÍK, J. VEIT, F. 2012.

4. 1. Comparative legal analysis

As stated in the methodology, the comparative legal analysis contains several steps: (1) Acquiring the skills of the comparativist, (2) Evaluation of the law in words (law in books), (3) Evaluation of law in practice (law in action) where possible, (4) Evaluation of law in minds (ideas and intentions) where possible, (5) Conclusion.⁵²⁹

4. 1. 1. Skills of comparativist

Acquiring the skills of a comparativist is easy in our case, because, as we have demonstrated in the previous chapter, Slovakia and Czech Republic do have common history of media regulation, they are in the same context of CEE and V4, historically and in the present, they are based in the same legal traditions, translation is not needed, so the only effort we needed to exercise was closer look to already familiar contexts of both countries. The context is described in the previous chapter.

4. 1. 2. Law in books

The evaluation of the law in books is carried out by comparing similarities and differences between the chosen legal points. We identified 42 legal points for the analysis. Their presence or absence in Slovak and Czech law is examined, similarly as we did in the case of old Austrian and Hungarian Press Acts. Some of the legal points are the same as in the historical analysis, but most of them are different – for the obvious reason of the major change in media landscape over the last century. We have identified five groups (clusters) of the legal points and divided them according to the topic. The majority of them we have found to be important in the literature review as defining traits of the media systems or as a potentially crucial for prevention of media capture as differentiating both countries media regulation after 2000 in the descriptive chapter. Some legal points examined are inspired by established legal indicators for media pluralism.⁵³⁰

The first group (Table 2) is related to the very basic and defining characteristics of the European media law systems, such as the constitutional protection of freedom of speech translated to the abolition of censorship, judicial oversight over the media law (in contrast to possible executive oversight), jurisdiction of the ECHR, independency of public service media from the state, etc.

⁵²⁹ Based on EBERLE, E. J. 2011. p. 57.

⁵³⁰ VALCKE, P. (et. al). 2009. p. 29 – 39.

The second group (Table 3) is aimed at the formal relationship between the state and the media, separation of political and economic power from media such as the model of public service media, the transparency rules etc.

In the third group (Table 4) we are examining specific rights or obligations of publishers, broadcasters, or journalists, such as the right to information, correction, reply, etc. This includes several legal points examining the details of the right to reply, since the differences between the two states might lie in their specificity. Especially in case of rights to reply, this had been a subject of a political debate for several years in both countries.

The fourth group (Table 5) examines the possible legal problems of journalists, such as criminal sanctions or facing a libel court case.

The fifth group (Table 6) is defined as 'other', the country-specific regulations of the shares of language or domestic music production in radios.

Table 2: Defining characteristics

Legal point	Slovakia	Czech Republic
Censorship constitutionally abolished	yes	yes
Judicial oversight over free speech disputes	yes	yes
Pluralism of the political system guaranteed by the constitution	yes ⁵³¹	yes ⁵³²
Jurisdiction of the European Court of Human Rights	yes	yes
License system for broadcasting; no license needed for the press	yes	yes

Source: Our own legal analysis.

Table 2 shows that in the defining traits of a democratic and thus pluralist media system, Slovakia and Czechia do not differ. They both have censorship forbidden in their constitutional order, both have system of judicial oversight (in contrast to possible competence of the executive), their belonging to democratic (in contrast to possible authoritarian) order is guaranteed by the constitution, in both states there is jurisdiction of the ECHR as the final instance for free speech cases and both countries have system under which the press does not have to ask for any license to start publishing, while broadcasting is under a license regime, regulated by the state. The possibility of licensing

531 Article 29 of the Constitution of Slovak Republic guarantees a freedom of assembly, including the freedom to start a political party. From Article 1 („Slovak Republic is democratic state governed by the rule of law and it is not bound to any ideology or religion“) practically guarantees plurality of ideologies and religions and the interpretations of the words „democratic“ and „rule of law“ also contains pluralism. Sources: The Constitution of the Slovak Republic No. 460/1992. BRÖSTL, A. 2010. *Ústavné právo Slovenskej republiky*. [Constitutional Law of Slovak Republic]. Plzeň: Vydavatelství Aleš Čeněk. p. 54, 57 - 63.

532 The world pluralism cannot be found in the Constitution of Czech Republic, but similarly as in Slovakia, it is implied the definition of the state as democratic and governed by the rule of law. The provisions of both examined constitutions (or their equivalent in Charter of Fundamental Rights and Freedoms), are identical.

system for radios and television is even explicitly mentioned in the Slovak constitution. In the Czech Republic, there is no such provision in the constitution.

Table 3: Separation of powers in media

Legal point	Slovakia	Czech Republic
Public service broadcasting director(s) elected directly in a parliament	yes	no
Public service news agency director elected by a body formally separated from the government (the majority of body members are elected in parliament)	yes	yes
Fair representation of various political groups in public service broadcasting management	no ⁵³³	no ⁵³⁴
Independent funding scheme for public service	no ⁵³⁵	yes ⁵³⁶

533 The Act No. 532/2010 on RTVS requires that 3 experts on TV broadcasting, 3 experts on radio broadcasting, 2 experts in economics and 1 expert on law are the members. There is no mention of them representing diverse range of political views or other backgrounds.

534 Representatives of various political parties, ex-politicians, political nominees, unsuccessful political candidates or people labeled as close to a political party, can be found in the Council of Czech Radio, but there is no legally binding system or mechanism of representation is guaranteed by the law. The Act. No. 484/1991 on Czech Radio requires the members to represent „significant regional, political, social and cultural backgrounds“, but it does not specify for instance how many of the members should be nominated by the opposition. Therefore, if the majority in parliament would choose to capture the council, they could elect people affiliated coming from different regions, social or cultural background and it would be uneasy to prove their political affiliation to one party.

535 There is a funding scheme for public service media in Slovakia – people pay „concession“ defined as a payment for public service provided by the RTVS in Act No. 340/2012 – 4,64 a month, for every person connected to the network of electricity. These have proven to be insufficient for the operation of the public service radio and television, and the state subsidizes RTVS annually for this insufficiency. There were several proposals to raise the payment, but none of them passed.

536 There is a funding scheme similar to Slovakia – the Czech inhabitants also pay concessions and there is also a debate about raising them, because there have not been raised since 2008. On the other hand, the state did not need to cofinance the public service broadcasting directly from the state budget.

media sufficient for their operation		
Direct state subsidies for public service broadcasting dependent on a political decision	yes ⁵³⁷	no
The parliament has full and undivided power over the election of members of the councils of public service broadcasters.	yes	yes
Legally defined role of public service media in online space	no ⁵³⁸	yes ⁵³⁹
Politicians banned from nominating candidates to the councils of public service broadcasters	no	yes

537 The government of Slovakia is cofinancing the RTVS every year, and it is always upon bargaining of the director of RTVS with the ministry of culture and possibly with the ministry of finance too. There is a contract between RTVS and the state guaranteeing 15 millions of euros from the ministry of culture to RTVS annually, and there are annual amendments to this contract, dependent on political bargaining. Sources: The Contract No. MK – 57/2017/M, Online: <https://www.rtvS.org/download.pl?ID=27246&hash=B5nCeihvFJEt8bIHICjb8UsWHeKqGoZW>. (Quoted on 1. 11. 2021); The Amendment No. 2MK – 92/2018/M. Online: <https://www.rtvS.org/download.pl?ID=27993&hash=N3CeplofoOAPjM5eZBAGCNPGOUZA7uUF>. (Quoted on 1. 11. 2021)

538 There is no provision in the Act No. 532/2010 on RTVS about its role on the Internet or in the online space. This is a potential legal problem, because under rule of law, an organization that is created by the state can only perform those duties that are explicitly given to this organization by law.

539 Paragraph 3, letter m) of the Act No. 483/1991 describes public service also as providing the public with information on the Internet and in applications of Czech Television.

Regulations of ownership transparency requiring disclosure of the final beneficiary of the media enterprise	no ⁵⁴⁰	yes ⁵⁴¹
Public officials banned from owning media	no ⁵⁴²	yes
The director of an antimonopoly authority is selected by the government and appointed by the president	yes	yes
The political majority in parliament has the power to select the members of the broadcasting regulatory body	yes	yes
Fair representation of various political forces in broadcasting regulatory body is guaranteed	no	no
State subsidies for commercial press exist	no	no
Tax reduction for daily press exists	yes	yes

540 There have been several attempts and proposals to force the media owners to disclose their final beneficiaries, not only companies involved in the business. The proposals have not passed, which leaves the current status quo at a state where the real owner of a medium can hide behind a chain of companies, some of them in states such as Cyprus, that are not disclosing any further information. Slovak law only requires firms to disclose the final beneficiaries if they want to be a part of public procurement or have a business with the state.

541 CzechAct No. 37/2021 Coll. On Real Owners Evidence requires all firms to disclose the real owner and the final beneficiary.

542 There is no law in Slovakia requiring the politicians to not to be the owners of media and in fact, the chairman of the parliament Mr. Boris Kollár is an owner of a commercial radio.

Cross-media ownership ban	yes	yes
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Source: Our own legal analysis.

We have found significant differences between the Slovak and the Czech law in respect to separation of politics from the media governance. In Slovakia, the director of the (merged) public service television and radio broadcaster is elected directly by politicians in parliament. In the Czech Republic, the director is elected in a Council of ČT or the Council of Czech Radio. The parliament has power over the members of those councils, but it is not one parliament, but since the third of members are changed every 2 years, it is a dispersion of power over at least two different parliamentary majorities.

The selection of the head of antimonopoly authorities is not apolitical in neither of the examined countries, to the contrary, the governments have the main word in this decision. The Czech public service broadcasters also seem to be institutionally more independent in terms of funding. The Slovak broadcaster has to undergo an annual deliberation with the government on the subsidy from the state, because the money rased by 'concessions' is chronically not satisfactory for the amount of services offered by RTVS.

In Czechia, the law requires the members of the Council of ČT and Council of Czech Radio to be of a differentiated political, social, and regional background, but the precise mechanism to achieve this is not specified in the law. Slovakia does not require members to have differentiated backgrounds. In Czechia, politicians cannot directly nominate a candidate for the Council, they select the members from a list of candidates given formally by the civic society. In Slovakia, politicians can nominate candidates and also vote for them.

All this indicates that the Czech Republic has a legal system that is more protective of the public service media from the direct influence of politicians.

The Czech law also requires more transparency on the ownership of media. The introduction of „Lex Babiš“ - an anti-conflict of interest legislation – requires politicians at least formally to give up ownership of the media. Slovakia has no such law, so politicians can legaly own media, regardless of potential conflict of interests. By 2020, the law in Slovakia did not require the media to disclose their final beneficiaries, unless they want to take part in a public procurement.

In both examined countries, it is forbidden by law to own more than one general (nonspecialized) national television or radio and there are detailed rules on their ownership of regional broadcasting, etc. In Slovakia, in addition to that, it is also

forbidden to be a publisher of a daily national press at the same time as being a broadcaster of multiregional or national broadcasting and any property connection between them is also banned ex lege. We had not found such a provision in the Czech law.

In both states there is a tax reduction for periodicals, but no other subsidies for the commercial press exist (apart from marginal subsidies for noncommercial cultural or minority publications). In neither of the examined states does the law require the fair representation of different political powers in the broadcasting regulatory body, and no such mechanism is in place. In both states, there is a politically appointed director of the antimonopoly authority.

Table 4: Specific Rights or Obligations of Publishers or Broadcasters

Legal point	Slovakia	Czech Republic
Right to correction in both press and broadcasting	yes	no
Correction limited to untruthful statements	yes	no ⁵⁴³
Right to reply in press	yes	yes
Right to reply in broadcasting	no	yes
Right to reply also for politicians	yes	yes
Right to reply limited to statement of fact, excluding opinions	yes	yes
Restriction on further editorial comments on the published reply	yes	no
Right to information for the news media from public	yes	no

543 Because there is no right to correction in Czech Republic.

institutions for timely reporting ⁵⁴⁴		
Demand for internal plurality, balance, objectivity, or impartiality in broadcasting	yes	yes
Protection of sources guaranteed by both press and broadcasting	yes	yes
Regulations on political campaign in broadcasting	yes	yes

Source: Our own legal analysis.

Despite the expectations of similarity in these specific rules of broadcasters and publishers among the two examines states, there are several differences. Slovakia grants the right to correction of an untruthful statement in both the Press Act and the Broadcasting Act of the Czech Republic in neither of them. This function is partially covered in the right to reply, granted in Czechia for both press and broadcasting and in Slovakia only for printed press and press agencies, even if this right is defined differently: as a right of a person whose honor, dignity, privacy, or good name was hurt by a statement of facts. This formulation excludes opinions. After a repeated novelization of the Slovak Press Act, it does not exclude politicians, similarly no provision excluding politicians or public officials from this right is found in the Czech law. The Slovak Press Act restricts further editorial comment on the published reply in the same volume of the periodical. Both the Slovak Press Act and the Broadcasting Act guarantee publishers and broadcasters a right to information for a timely and truthful information service for the public, from any public office or a legal person created by the law. This means that journalists do not have to wait 8 or more days for a reply, as if they would need to ask for information from a public office as any other citizen, but they can demand a timely delivery of information for their work. Czech law does not require this explicitly. Both

544 This is a special right, not the general right to information granted for the public. The news media in Slovakia are entitled to gain information faster, for timely and truthfull reporting, by the Press Act 167/2008, paragraph 3 and Broadcasting Act 308/2000, paragraph 15b.

broadcasting acts demand also commercial broadcasting to be politically impartial and objective – this means that the members of the broadcasting councils get to judge what is and what is not objective with the possibility of sanctioning the broadcaster for what they find inobjective.

Protection of a source of information is guaranteed in both jurisdictions for both press and broadcasting. However, there is a difference in the formulation. In Slovakia it is a legal obligation of the broadcaster or publisher to protect the source; in Czech Republic it is formulated as a right for them to deny information about the source from courts or other officials. In both countries, it is forbidden to broadcast political advertising.

Table 5: Possible sanctions for journalism

Legal point	Slovakia	Czech Republic
Criminal sanction for defamation	yes	yes
Possibility of a criminal sanction for defamation greater than 2 years in prison	yes	no
Criminal sanction for hate speech	yes	yes
Criminal sanction for defamation of state officials	no	no
Possibility of civil court litigation over libel	yes	yes
Limits on libel damages	no	no
Criminal sanction for denying the holocaust	yes	yes
Criminal sanction for publishing details of criminal proceedings	no	yes

Source: Our own legal analysis.

Slovak and Czech laws on possible criminal sanctions for publications are very similar. The only difference is the absence of „muzzle law“ (*náhubkový zákon*) in Slovakia that criminalizes the publication of details of a criminal procedure, for example the surveillance materials. In Slovakia, this is potentially a subject of criminal offence if it is done by a person responsible for handling classified information, or handling with personal data, but no specific regulation for journalism or publication of surveillance materials is in place. In the Czech Republic, information of public interest is exempted. Both the Czech Republic and Slovakia have a criminal defamation clause in their criminal codes. However, there is a difference between having the possibility of sanctioning defamation in criminal law and having the possibility to *excessively* sanction it. A substantial difference is found here – while the Czech Republic has the sanction at the level of the majority European states (that still have this clause in their criminal law) – up to 2 years in prison, Slovakia has the highest possible sanction for defamation in Europe – up to 8 years in prison. In both states, the person affected by the defamation can sue at civic court, and there is no legally codified cap or ceiling for the possible damages. Other criminal sanctions are also possible, for hate speech, denying the holocaust (or genocide in general, as it is specified in the Czech Criminal Code).

Table 6: Other regulations

Legal point	Slovakia	Czech Republic
Special quotas on national production in radios	yes	no
National language use regulated in the media	yes	no

Source: Our own legal analysis.

Slovakia in general has been more protective of its language, usually from a nationalist point of view. The Slovak law on the state language requires the broadcasting to be in the Slovak language, with a given range of exceptions such as the radio broadcasting for minorities or languages that are basically understandable from the viewpoint of the state

language⁵⁴⁵ (meaning mainly the Czech language). Slovakia also has compulsory quotas on domestic music played on the radios – 25 percent for commercial radios and 35 percent for public service radios.

4. 1. 3. Law in practice and Law in minds

This is an analysis of the practical application of written law to real-life situations in specific cases („*law in action*“) and intentions behind some of the laws („*law in minds*“). In the next few pages, we confront the described legal texts with the reality of their execution in the political context of Slovakia and Czechia. Therefore, where needed, cases are quoted, or at least the examples of application of the law or, where publically available, data are provided. Where appropriate, the context and purpose (intent of the legislator) is briefly discussed as well. The analysis is also divided into the 5 clusters, for a better orientation in topics.

The first group of legal points analyzed were the constitutional defining traits of the media regulation system.

The constitutional abolishment of censorship in both states is enforced and protected by their constitutional courts. In practice we do have several decisions of both courts protecting individual freedom of speech, in fact there are so many related to the freedom of speech that a separate dissertation could be written about them. Let us list only a single example from both countries. The Constitutional Court of Slovakia defined the abolishment of censorship in the following way: A publication or any other expression of an opinion cannot be dependent on the permission of state.⁵⁴⁶ In Czech Republic, there is, for example, a decision of the Constitutional court of Czech Republic in the case *Vondráčková vs. Rejžek* defining that public personalities have to withstand more criticism in media, and polemic, shocking, or even insulting and controversial statements are not generally excluded from the freedom of speech.⁵⁴⁷

There are many decisions specifically dealing with the freedom of speech, balancing it with other rights, not only at the level of constitutional courts, but on a lower level as well, since the general courts do take the decisions of the constitutional courts into account (eventhough they are not binded by them as precedents). For instance, the book about a corruption scandal *Gorila* that was preventively banned from publication by a

545 Act No. 270/1995 on State Language of the Slovak Republic. Paragraph 5.

546 Judgement of the Constitutional Court of Slovak Republic No. II. ÚS 209/08.

547 Judgement of the Constitutional Court of Czech Republic No. I. ÚS 367/03 from 15. 3. 2015.

decision of a district court, was protected by a regional court after an appeal – so the book was free to publish.⁵⁴⁸ From the above mentioned cases and also from rich literature on the subject we conclude that there is practical protection of the freedom of speech in both examined countries. It also documents that there is a functioning system of judicial oversight over free speech disputes. Conflicts over different provisions of the media law are decided by the general courts that had produced decisions solving, for example, cases of right to reply⁵⁴⁹

If the constitutional courts should fail to protect the freedom of speech, there is another instance to appeal to – the European Court of Human Rights (ECHR) in Strasbourg. The judicial decision-making of ECHR in terms of freedom of speech is so vast that a whole other dissertation would not cover all of its doctrines. This court explains the boundaries of freedom of speech, decides on questions such as when is it appropriate for the state to act against freedom of speech, etc. Its decisions are of profound importance for the domestic courts and their interpretation of the role of media and journalism, as well. For instance, the ECHR openly claims that journalism should serve a role of „public watchdog“⁵⁵⁰ - this means a legal requirement of the watchdog role of journalism in a democratic society. This court had effectively protected rights of Slovak citizens, including a journalist or their publishers or broadcasters, such as in the case of *Soltész vs. Slovakia*⁵⁵¹ or the case of *Rádio Twist vs. Slovakia*.⁵⁵² Czech Republic had less free speech cases in front of ECHR – it is not easy to explain why, only a hypothesis can be made about better domestic constitutional protection of this freedom is perhaps guaranteed by the courts in Czechia, so the citizens do not have to sue at ECHR. There were only a few cases, for example, the case of *Růžový panter vs. Czech Republic*, but the case was won by the state – the ECHR had decided that the freedom of speech is not limitless and it comes with responsibility.⁵⁵³ The only practical disadvantage of ECHR protection is the delay – a journalist (as well as anyone) can complain to the ECHR only

548 DRGONEC, J. 2013. *Sloboda prejavu a sloboda po prejave*. [Freedom of speech and freedom after speech]. Bratislava: Heuréka. p. 92.

549 Such as the judgements of the Supreme Court of Czech Republic 30 Cdo 861/2005 or 30 Cdo 2612/2006.

550 Cases *Lingens vs. Austria*, *Goodwin vs. the United Kingdom*, *Bladet Tromsø and Stensaas vs. Norway*, *Pedersen and Baadsgaard vs. Denmark*, *Von Hannover vs. Germany*, *Bédat vs. Switzerland* and many others. Source and more information: EUROPEAN COURT OF HUMAN RIGHTS. 2021. *Guide on Article 10 of the European Convention on Human Rights. Freedom of expression*. Online: https://www.echr.coe.int/documents/guide_art_10_eng.pdf. (Quoted on 3. 11. 2021).

551 ECHR. Case 11867/09 *Soltész vs. Slovakia*. Judgement of 22. 10. 2013.

552 ECHR. Case 62202/00 *Rádio Twist a.s. vs. Slovakia*. Judgement of 19. 12. 2006.

553 ECHR. Case 20240/08 *Růžový panter, o. s. vs. Czech Republic*. Judgement of 2. 2. 2012.

after exhausting all the domestic legal options – which include court proceeding and also constitutional court protection – and all these steps take years of court proceedings, and legal costs etc. The ECHR then often decides that the state should compensate the victim for the legal costs, but this often occurs only after several years spent in the courtrooms. Pluralism of the political system is a very complex issue to be evaluated in such a short space. The fact that the plural political system is a necessary prerequisite for the media system to operate pluralistically was described in previous chapters. In both political systems, the Czech Republic and Slovakia, there several political forces represented in the parliament, and the power is shared among several power centres.

The press does not need any permission from the state; this had been a defining trait of the liberal press system already in the Austrian-Hungarian Empire. In both Slovakia and Czechia, the press only needs to inform the state about publication. In broadcasting, the rules are different because the technical possibilities of transmitting a signal were limiting, and therefore the possibility of broadcasting was a scarce resource. That is the reason why the state had started to allocate this resource through a license system. Nowadays, with digital broadcasting, this argument is weakened, but there is another argument that had emerged over time, that the regulation of television is important, since the impact it has on a society is potentially great. In both countries, the license system is still in place, and the televisions and radios do really operate on the licenses from the state.

Another group of examined laws is those related to what we call 'separation of powers in media', in other words rules fostering the dispersion of power. One important dimension is the relationship between the public service media and the politics, formalized in law. It is important to note that this formal relationship has changed in 2010 in Slovakia, when the vote of the director of the public service broadcaster RTVS was moved from the Council of RTVS directly to the hands of politicians in the parliament. The politicians have not only elected three directors already, but they had also used their right to dismiss the director Mrs. Zemková for alleged misconduct to replace her by a nominee closer to the new political majority. A simple majority in parliament is needed for this step, and there are no safeguards or checks and balances. We find that this legal regime in practice allows undesirable political interference with the political impartiality of the public broadcaster. In the Czech Republic, the public service broadcasting directors are elected by a special body, created by the parliament. For us, it remains an open question whether it is this legal regime that prevented the politicians from the political capture of the public

service media, or it is different factor(s) playing the major role. For the purpose of analysing the law in action, it is satisfactory to observe that the councils really do elect the directors of public service broadcasters in Czechia, and even though there is no legally binding system ensuring the fair political representation in the councils, their members in reality are from (or are supported by or related to) differentiated spectrum of political parties. In Slovakia, a system of councils electing the directors had been in place before 2010 as well, and the results were mixed. In some cases, the councils have elected a professional manager; in some other cases, they have chosen a political nominee that preferred the role of a servant to the governmental majority typical for the state-media model rather than the watchdog role of journalism. This shows that either of the two systems can potentially be misused for the political capture of public service broadcasting. The Council of RTVS exists in Slovakia as well, but there is also no formal mechanism ensuring the fair representation of various political or social groups in place, because all members are elected solely by the simple majority in parliament. The only measure that seems to safeguard the (seemingly random) plurality in the council is the dispersion of the vote over different periods.

Another problem is the process of election of those members of the councils in both Slovakia and Czech Republic. The original idea was to have civic society represented in the councils; therefore, the civic society has the right to nominate candidates. But it is the politicians who elect the members from the given range of the candidates, so it could easily happen that a qualified candidate from the civic society is not elected, but a less qualified person with political backing is. In fact (in practice) in both Slovakia and Czechia, there are people connected to political parties in the councils. In the Czech Republic the law does not allow politicians to nominate their candidate, but the nominations through the civic organizations in reality often seems to be a veil for nominating a political candidate anyway.⁵⁵⁴

There are representants of the various political or social backgrounds in the Council of the Czech Radio and the Council of Czech Television, but we do not attribute this to the law itself stating this necessity, but to a pluralist nature of the lower chamber of the Czech Parliament and the political reality, in which the majorities in parliament had changed over time, and therefore different political parties were able to elect their representatives

554 AUST, O. 2007. Politici do Rady ČT? Ano! [*Politicians to the Council of ČT? Yes!*]. IN: *Aust.cz*.
Online: <https://archive.ph/20120529145027/http://www.aust.cz/2007-05-14/politici-do-rady-ct-ano/>.
(Quoted on 1. 11. 2021).

into the Council. We find the rule that the parliament elects a third of the council members every 2 years to be a better guarantee of plurality. However, if one political party would hold a majority in the lower chamber of the parliament for longer than 6 years, the paragraph stating that the members should come from different political backgrounds does not have to be satisfactory⁵⁵⁵ – because the politicians can choose their nominees in order to have no formal or provable relations to the party, but they could still be puppets of the politicians. Instead, a dispersion of election of the council members in between the two chambers of the Czech Parliament (created by different elections) and the President, or perhaps even allowing employees of the Czech Television and Czech Radio to elect several representatives, could be an option to safeguard at least some level of plurality. Such a model, of employees having their representation in the council, is in place in the Slovak public service news agency TASR. The employees elect one of the five members of the Board of TASR, the rest are elected in the parliament. In Czech ČTK all 7 members are elected in a parliament.

Public service media need financing mechanism that is independent from the decisions of politicians, and for that purpose, they usually do not get money from taxation (state budget is annually proposed and approved after political negotiations). Both countries have such a system of 'concessions' in place – but in Slovakia it is chronically insufficient for the services offered by RTVS and the state needs to subsidize broadcasting with at least 15 million euros each year (according to a contract between RTVS and the ministry of culture) – and often that is also not enough, so the director of RTVS negotiates with the ministry to achieve amendment of the contract. This puts the director of a desirable independent broadcaster in a position of asking favours from politicians. The negotiation is not public, so the public does not know whether there are no favours in return. Direct state subsidies that are a subject of annual political negotiations allow politicians, namely

555 Nor the paragraph stating that the civic society organizations, not political parties, are the organizations that can nominate the candidates – because the politicians that have the majority in parliament choose from the candidates proposed by the civic society, so in the end of the day, former politicians are often selected. The members of the councils were criticized to be lobbyists for political parties instead of the representatives of the civic society and there were controversies around the governing party ANO choosing only those candidates that have the same views as the party. Source: AUST, O. 2007. ČTK, HOSPODÁŘSKÉ NOVINY. 2009. Skandální, šokující, neseriózní, kritizují české osobnosti Radu ČT. [*Scandalous, shocking, not serious, Czech public personalities criticize Council of ČT*]. IN: *Ihned.cz*. Online: <https://domaci.hn.cz/cl-37724840-skandalni-sokujici-neseriozni-kritizuji-ceske-osobnosti-radu-ct>. (Quoted on 1. 11. 2021). MEDIAGURU. 2020. Do Rady ČT byli zvoleni Bradáč, Šlégr a Kysilka. [*Bradáč, Šlégr and Kysilka were elected to the Council of ČT*]. IN: *Mediaguru.cz*. Online: <https://www.mediaguru.cz/clanky/2020/03/do-rady-ct-byli-zvoleni-bradac-slegr-a-kysilka/>. (Quoted on 1. 11. 2021).

the government, to have some space to influence the behavior of the public service broadcaster and potentially even blackmail the director. Directors of public service broadcasters in Czech Republic also complain about a problem with insufficiency of the funding for the public service media (because the direct payments from the public were not raised since 2008), but only looking into the future⁵⁵⁶, and they are not subjected to this humiliating act of asking the government for money.

The Czech Television has clearly defined in the law that it can operate also online and in its own applications. RTVS does not have such a definition in law, which is a potential problem, since organizations created by law can only do what law specifically allows them to do. In reality, RTVS did start its own news website, even if it was as late as 2021. We can only guess that previously RTVS hesitated with this step because of the potential problem with the legality of funding being used for these purposes.

In Slovakia, there is no law forbidding politicians to own media, and in fact, the chairman of the Slovak parliament does own a commercial radio. In the Czech Republic, the public officials are banned from owning the media by the famous „Lex Babiš“ - a Conflict of Interests Act.⁵⁵⁷ Mr. Babiš had transferred his possession of Agrofert company, the firm behind the media enterprises, into two separate funds – in which he still has control of the property through a complex scheme of legal relations and also through his long-term colleagues from business and through his wife who is also in the structure of the funds.⁵⁵⁸ This proves that the law can be easily bypassed. 'Law in books' is satisfied with formality, but this 'law in action' analysis shows that it is not easy to force public officials to give up their media possession this way. To achieve the goal of this law, clearly a different approach would be necessary.

One of the possible ways is to require transparency of the the media ownership structure. In Slovakia, there are media with nontransparent ownership structure, such as the main tabloid daily Nový Čas – its owner is hidden behind a Cyprus-based company that does not disclose the real owner. Czech law requires all firms to disclose the real owner and a

556 MEDIAGURU. 2020. ČT má plán do roku 2024, změna financování je nutná. [*ČT has a plan until 2024, the change in financing is inevitable*]. IN: *Mediaguru.cz*. Online: <https://www.mediaguru.cz/clanky/2020/03/ct-ma-plan-do-roku-2024-zmena-financovani-je-vyhledove-nutna/>. (Quoted 2. 11. 2021).

557 Act No. 14/2017 Coll. Amending the Act No. 159/2006 Coll. on Conflict of Interests.

558 DUPÁK, J. 2020. Statuty Babišových svěreneckých fondů v plné nahotě ukázaly, jak premiér obchází zákon. [*Statutes of Babiš funds reveal how the prime minister is bypassing the law*]. IN: *Transparency.cz*. Transparency International Česká republika. Online: <https://www.transparency.cz/statuty-babisovych-sverenskych-fondu-v-plne-nahote-ukazaly-jak-premier-obchazi-zakon/>. (Quoted on 3. 11. 2021).

final beneficiary, but in reality many of them are also hidden behind offshore companies.⁵⁵⁹ This can be attributed to the newness of the regulation – the companies still have time to disclose their ownership structures by the time of writing.

In both examined states, the head of the antimonopoly authority is chosen by the government and appointed by the president in reality as well as in the written law. The aim of the law is to disperse the power to appoint this official between two agents elected by two different elections (government and president) to achieve impartiality of the office. In Czech Republic, there were political controversies around the head of the local antimonopoly office (ÚOHS) Petr Rafaj – whose appointment was the result of his previous political career and he was responsible for allowing large media ownership concentrations in the hands of oligarchs⁵⁶⁰ (or at least for not stepping in). A police investigation found large sums of money hidden in his home that are allegedly from corruption⁵⁶¹. President Miloš Zeman had an unusually active role in selecting the new director Mr. Mlsna.⁵⁶² In Slovakia, there were not many similar controversies with the director of the Antimonopoly Office of Slovak Republic, but the director is also a political nominee and it had been exposed that the director and also his deputy are close to an oligarch connected to a minor coalition party in the government of 2016 – 2020 Most-Híd.⁵⁶³ What seems to be even greater problem (or perhaps related one) is that the

559 TRANSPARENCY INTERNATIONAL CZ. 2021. Vlastnická transparentnosť českých médií není dostatečná, řada z nich se skrývá v offshorech. [*Ownership transparency of Czech media is not satisfactory, many of them hide in offshores*]. IN: *Transparency.cz*. Online: <https://www.transparency.cz/vlastnicka-transparentnost-ceskych-medii-neni-dostatecna-rada-z-nich-se-skriva-v-offshorech/>. (Quoted on 2. 11. 2021).

560 DRAGOMIR, M. 2019. p. 10.

561 ČTK. 2020. Zeman přijal v Lánech Rafaje. Výsledek schůzky hrad nechce komentovat. [*Zeman hosted Rafaj in Lány. The result of the meeting is not to be commented*]. IN: *Lidovky.cz*. Online: https://www.lidovky.cz/domov/zeman-prijal-v-lanech-rafaje-vysledek-schuzky-hrad-nechce-komentovat.A200916_155844_in_domov_litsp. (Quoted on 3. 11. 2021). NEU. 2020. Nalezené miliony byly na svatbu dcery, říká šéf antimonopolního úřadu Rafaj. [*The millions were for my daughters wedding, say the chief of antimonopoly authority Rafaj*]. IN: *Idnes.cz*. Online: https://www.idnes.cz/zpravy/domaci/ciste-svedomi-sef-antimonopolni-urad-petr-rafaj.A200728_133837_domaci_kane. (Quoted on 3. 11. 2021).

562 ČTK. 2020. Prezident Zeman jmenoval Mlsnu předsedou ÚOHS. [*President Zeman appointed Mlsna as the chief of UOHS*]. IN: *Ceskenoviny.cz*. <https://www.ceskenoviny.cz/zpravy/prezident-zeman-jmenoval-mlsnu-predsedou-uohs/1964716>. (Quoted on 3. 11. 2021). ČTK. 2020. Zeman má favorita na šéfa antimonopolního úřadu. Místo Rafaje muž od Hamáčka. [*Zeman has his favourite candidate for antimonopoly office. Instead Rafaj, a man from Hamáček*]. IN: *Blesk.cz*. <https://www.blesk.cz/clanek/zpravy-politika/656790/zeman-ma-favorita-na-sefa-antimonopolniho-uradu-misto-rafaje-muz-od-hamacka.html>. (Quoted on 3. 11. 2021)

563 TURČEK, M. 2019. Kto ovláda Protimonopolný úrad? Ľudia s väzbami na oligarchu spájaného so stranou Most-Híd. [*Who controls the antimonopoly Office? People with connections to oligarch related to Most-Híd party*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/660986/protimonopolny-urad-je-napojeny-na-oligarchov-okolo-bugara/>. (Quoted on 3. 11. 2021).

antimonopoly authorities only assess economic criteria and do not defend the need for pluralism from the perspective of protecting democracy, despite the fact that the European law allows them to step into mergers on this ground. For instance, the Czech ÚOHS is criticized for this by the local legal experts for ignoring the regulation of European Council that defines protecting media as a legitimate goal for appropriate measures to be taken by the authorities – ÚOHS does not seem to recognize media concentration as a problem⁵⁶⁴ - which in turn means that it did not step into the way of oligarchs buying and concentrating media on time. Now, the damage has already been done and breaking down the existing power and property relations might pose a more serious legal problem than preventing them.

The broadcasting regulatory bodies in both Czech Republic and Slovakia are elected in the parliament, and nominees of politicians can be found in both of them. In the case of the Czech Republic there are several former politicians, usually of formerly governmental parties, including a former minister of culture, as acting members of the Council of Broadcasting. In Slovakia, there are no politicians directly, but there are several members nominated directly by members of parliament. Among many candidates, those with political backing from current governmental parties OĽaNO and SaS were elected (they were nominated by members of parliament for these parties). This shows that the council is a quasi-political body, not a body of apolitical experts. The law does not require fair representation of differentiated political forces and in reality there are also members not connected to politics, but the political ones are identifiable and all of them were nominated by governing parties.

Regarding the cross-media ownership bans, we have found that Slovakia also forbids connections between the daily press and broadcasting. In Czech law, we have only found bans on owning more broadcasting media. In reality, the Czech oligarchs legally own several dailies and a radio (CMI owns daily Blesk, daily E15 and also radio Evropa 2, Agrofert holds 3 dailies and Radio Impuls).⁵⁶⁵ In Slovakia, such an ownership of several types of media is not legally possible, so in fact the oligarchs have found ways to bypass

564 ROZEHNAL, A. 2018. Možnosti omezení koncentrace médií. [*Possibilities of media concentration regulations*]. IN: *Pravniprostor.cz*. Online: <https://www.pravniprostor.cz/clanky/ostatni-pravo/k-moznosti-omezeni-koncentrace-vlastnictvi-medii>. (Quoted on 4. 11. 2021).

565 ČTK. 2019. Česká média si rozebrali magnáti. Podívejte se, kdo vlastní deníky, weby i televize. [*Czech media is divided among moguls. Look who owns the dailies, websites and television*]. IN: *Aktualne.cz*. Online: <https://zpravy.aktualne.cz/ekonomika/majitele-medii-v-cesku-noviny-weby-televize-kdo-vlastni/r~67160c86faff1e9ac60ac1f6b220ee8/v~sl:d84d5da5cc17ae540bb7e338b0bb1782/>. (Quoted on 4. 11. 2021).

the law – J&T Group holds the second biggest commercial TV JOJ, but it also operated a network of radios – because the official owner of the TV station, JOJ Media House, is owned nontransparently by a company residing in Cyprus. JOJ Media House also owns a company HARAD, that is an owner of another company called Radio Services – and this company provided „full services“ for three commercial radios (including producing content, selling advertising etc.)⁵⁶⁶, which were owned by formally different owners. Moreover, J&T Group was behind a transaction to acquire a daily Pravda for an unknown company called Florena, with an owner Karol Bierman – connected by business ties to J&T. However, it has never been proven who was the real owner or the final beneficiary of this daily between 2010 and 2018 and there have been speculations about a range of different possible owners. This proves that the law is not very effective.

Another group of legal points is those related to specific rights or obligations of publishers or broadcasters. The differences between the two jurisdictions based solely on the written law seem large, because the right to correction is present in both Slovak Press Act and broadcasting Act, while in Czech Republic there is no such right. In the Czech Republic, there is a right to reply in both broadcasting and press, in Slovakia it is only guaranteed in press, not in broadcasting. The formal difference is not so big when we look at the rights closely with the 'law in action' approach. Both these rights guarantee a form of remedy for someone who was either mentioned or hurt by a published information, and in both cases the information has to be either untrue or at least not complete or truth-distorting. In other words, the proof of complete truthfulness is an absolute defense of the publisher or broadcaster in all cases. And how is this right exercised? The fears and predictions that this right would cause the newspapers to be flooded by responses did not materialize. In both countries, it is rare to see anything like a correction or a reply published in a newspaper or broadcast on television. Perhaps publishers or broadcasters do not allow some of the demands for a reply and instead face the risk of going to court trial. The public has no information on how many reply requests were denied or how many of those denied ones had actually sued the publisher or broadcaster, therefore, this

566 During time, there were changes in the ownership structure – the radios were sold, acquired and sold again. The point is not to show the current ownership scheme, but to prove that it is quite easy to bypass the law in Slovakia and the owners of the media really do bypass it. Sources: KERNOVÁ, M. 2015. Reklamná sieť rádii JOJ Media House sa rozširuje. Pribudlo k nim aj Rádio Európa 2. [Advertising network of JOJ Media House is growing. They added Radio Európa 2]. IN: *Omediach.com*. Online: <https://www.omediach.com/radio/7789-reklamna-siet-radii-joj-media-house-sa-rozsiruje-pribudlo-k-nim-aj-radio-europa-2>. (Quoted 4. 11. 2021). KERNOVÁ, M. 2015. Ako je to s J&T, televíziami a rádiami? [How is it with J&T, television and radios?]. IN: *Dennikn.sk*. Online: <https://dennikn.sk/blog/222737/ako-to-je-s-jt-televiziami-a-radiami/>. (Quoted on 4. 11. 2021).

remains hidden for us as well. On the other hand, there are cases in both countries decided by courts⁵⁶⁷ – which proves that the system is functional, and in case of unjustified denial of the reply request there is an independent court to decide on this. Therefore, we conclude that in terms of law in practice, there is only a little difference between Slovakia and Czechia in terms of right to correction and reply and it lies in nuanced little differences between these two rights⁵⁶⁸ and in practice in both countries a person falsely accused or offended by untrue information, can seek remedy – and since Slovakia also recognizes the right to reply in press, the only difference in practice would be the length and scope of what would be published as correction in Slovak televisions.

Moreover, in both countries public officials are not excluded from these rights. In Slovakia, they were excluded between 2011 and 2018, but then the law was amended and politicians regained the right. In both states, the right to reply (and also correction in Slovakia) is limited to the statement of fact. This in practice means that, for example, opinion or photos are excluded – and courts have confirmed this interpretation of the law as well⁵⁶⁹. The only difference we had found is really subtle – according to Slovak law, it is forbidden to comment on the content of the reply in the same issue of the newspaper, in Czechia there is no such regulation.

There is one difference between the laws in Slovakia and Czechia that seems interesting in terms of right to information for timely reporting, defined by both the Slovak Press Act and Broadcasting Act. It creates a positive obligation of public offices to provide information to broadcasters and publishers for timely and accurate informing. In Czechia, there is no such rule. In practice, journalists in both countries require information for timely reporting from the public officials, and they use other leverages than law to get the information. When considering the consequences of the law, we do not find anything significant to document any difference in the treatment of questions from journalists based on this law in Slovakia. On the other hand, there is no empirical research to document any claims in this field. The access to information from public officials is

567 For example decisions of the Supreme court of Czech Republic 30 Cdo 861/2005 or 30 Cdo 2612/2006 and case of Penta vs. Denník N in Slovakia. DUGOVIČ, M. 2016. Penta prehrala súd s vydavateľom Denníka N. [*Penta lost the case with publisher of Denník N*]. IN: *Dennikn.sk*. Online: <https://dennikn.sk/486831/penta-prehrala-sud-vydavatelom-dennika-n/> (Quoted on 3.11. 2021).

568 For example the correction is seen as a statement of the publisher (admitting he had made a mistake) and the reply is just a statement of the affected person. Source: MORAVEC, O. 2007. Právo na odpoveď z pohľadu ústavného práva. [*The right to reply from the perspective of constitutional law*]. IN: *Časopis pro právní vědu a praxi*. No. 4/2007. Online: <https://journals.muni.cz/cpvp/article/view/7126/6496>. (Quoted on 3. 11. 2021). p. 290.

569 For example Judgement of the Supreme Court of Czech Republic No. 28 Cdo 169/2002.

guaranteed for journalists in both countries by other laws, including the both constitutions and, in the worst case, the decisions of the ECHR.

Protection of sources is also guaranteed by both jurisdictions and also by several decisions in the ECHR. The doctrine of the court in Strasbourg makes it very hard for any state to defend intrusion into sources of journalists, because the court considers the protection of their sources to be one of the cornerstones of freedom of the press.⁵⁷⁰ In the Czech Republic, there was one notable case – a military police search in Czech Television in 2011 which was later marked as unconstitutional violation of the right to protect sources. Therefore, this case did not make it to ECHR, because already the Constitutional Court of Czech Republic had decided this in favour of the source protection.⁵⁷¹ This ex post decision does not change anything about the fact that the violation had already happened. The official responsible for this unlawful search had lost his job, so this might deter further intrusions of this kind in the future.

The different formulation of the Slovak law that makes the protection of a source not a right but an obligation does not seem to have big significance in practice. We could interpret this as stronger protection – that it is not upon the decision of a journalist to protect the source, but it is an ex-lege obligation – not only protecting the source, but also the content of the information given by the source, if the source demands this protection.⁵⁷² There had been a case at the Slovak constitutional court in which a group of members of the parliament claimed that this formulation, making the protection of the source an obligation instead of a right, would be unconstitutional. The court had dismissed this claim, based on several ECHR judgements, deciding that the beneficiary of this right is the source, not the journalist and that is why it is upon the decision of the source whether he or she should be protected or not.⁵⁷³ In conclusion, theoretically in Slovakia the protection of the source is stronger, at expense of a journalist who cannot decide on this matter, but must bear any consequences from not disclosing the source. In practice, we had not examined any cases where this theoretical issue would be a decisive factor. May such situation occur, it is likely that ECHR judgments would be used for interpretation of

570 EUROPEAN COURT OF HUMAN RIGHTS. 2021. *Guide on Article 10 of the European Convention on Human Rights. Freedom of expression*. Online:

https://www.echr.coe.int/documents/guide_art_10_eng.pdf. (Quoted on 3. 11. 2021). p. 58.

571 Judgement of the Constitutional Court of Czech Republic No. II.ÚS 1375/11.

572 KEREČMAN, P. 2009. *Sloboda prejavu novinára a ochrana pred jej zneužitím*. [Freedom of speech of a journalist and protection from its misuse]. Bratislava: Slovenský syndikát novinárov. p. 29 – 30.

573 Judgement of the Constitutional Court of Slovakia No. PL. ÚS 12/09.

the law, and since those judgments are equally valid and binding for both examined jurisdictions, there is no reason for any significant difference.

In both states, the broadcasting laws demand the broadcasting to be objective, the Czech law ads balance and the Slovak law requires impartiality. In both countries, it is the broadcasting council deciding on interpretation of those words. In reality, broadcasters are sanctioned for violating this rule. It is not on every day basis, but such decisions and financial sanctions are not rare. This practice had sparked several court cases. In the Czech Republic, the Supreme Administrative Court had defended the position of Czech Television against the Broadcasting Council of Czech Republic and had reasoned that objectivity and impartiality do not mean „sterile“ information or „hypercorrect“ opinions, but the impartiality should be demanded at the level of the whole program – this allows engaged, critical and opinionated journalism under the condition of objectivity and truthfulness of the facts and if as the whole of the programme is representing a spectrum of diverse opinions, supporting the broadest possible and the most open discussion on the relevant topics.⁵⁷⁴ This judgement should prevent a very strict interpretation of the law. On the other hand, in practice, sometimes it is not discouraging for some media to pay the fine – for example, Mr. Jaromír Soukup had been sanctioned for inobjectivity and inbalance at least twice⁵⁷⁵, but he had not changed his subjective style since. There are cases in Slovakia as well, for example, a situation in which the Supreme Court of Slovakia had approved a sanction for a TV news report in which the reporter did not ask for an opinion of a party that was mentioned negatively.⁵⁷⁶

Broadcasting acts of both countries forbid political advertising if specialized law does not allow it under special occasions, meaning predominantly the election campaigns and specialized time reserved for the political advertising in broadcasting. Political advertising is not common in any of the examined states, so there is no evidence found that the ban would be violated or bypassed.

Another cluster of regulations is related to criminal offences and other legal problems that a journalist (or perhaps his or her employer) can face. The most outstanding problem from the analysis of 'law in books' would be extreme punishments for defamation in Slovakia

574 Judgement of the Supreme Administrative Court of Czech Republic No. 7 As 23/2010-73 from 5. 5. 2010.

575 ČTK. 2019. Relácia Jaromíra Soukupa dostala pokutu za neobjektivitu a nevyváženosť. [*The programme of Jaromir Soukup got fined for inobjectivity and inbalance*]. IN: *Omediach.com*. Online: <https://www.omediach.com/cesko/16069-relacia-jaromira-soukupa-dostala-pokutu-za-neobjektivitu-a-nevyvazenosť>. (Quoted on 3. 11. 2021).

576 Judgement of the Supreme Court of Slovakia No. 8Sžo/112/2010 from 20. 10. 2010.

(up to 8 years). In fact, there is no known case of a journalist being sentenced to to and sent to jail for defamation. Many of the known cases had been stopped at early stages, either by the police or by the prosecutor. There is just one known case of former journalist Lukáš Milan who was sentenced for defamation of a public official by a district court for conditional punishment of 18 months in prison, but he had appealed, and before the appeal could be decided, the General Prosecutor of Slovakia had stepped in and ordered to withdraw from the prosecution of this case – which means the end of the prosecution of this journalist. Other cases of journalists being accused of this crime ended up similarly – they had spent a lot of time being questioned by the police, by responding to allegations or alleged evidence, but in the end the cases were stopped.⁵⁷⁷ The statistics of crime reveal that defamation is not punished very often in Slovakia, in fact it was 8 persons in 2013 (5 conditional sentences, 3 financial punishments, no prison sentence) and together 48 cases between 2010 and 2014 (only one prison sentence, while the information whether this was in combination with other crimes is not provided), the Ministry of Justice of Slovakia does not keep evidence of whether there were any journalists among the sentenced people.⁵⁷⁸ This means that the extraordinary possible punishment of 8 years in prison is not applied by the Slovak courts in practice, it is not real, only a potential threat, and there are institutions that in fact stop attempts to excessively punish journalists for their work by criminal sentences.

The punishment for defamation in the Czech Republic seems to have stricter boundaries, but the analysis of the real cases shows that the situation is not very different and certainly not more favorable for journalists than in Slovakia. A recent case in Czech Republic had shown that a journalist accused of defamation can make it in front of a criminal court – a former reporter Marek Příbyl was acquitted and the judge had explained that the social harm caused by defamation is so low that as a remedy the civic trial on damages would be satisfactory, and for sentencing someone it would be necessary to prove an intent.⁵⁷⁹ There was another case of a journalist being sentenced for defamation – Mr. Martin Vokáč had been found guilty from defamation and punished by 10-month conditional sentence by three courts including the Supreme court of Czech Republic in 2015 for publication of

577 HANÁK, P. 2016. p. 245 – 264.

578 Ibid. p. 251.

579 LIGAS, A. 2021. Stíhání novináře Příbila skončilo. Žalobce se v kauze údajné pomluvy exministra Chovance neodvolal. [*The prosecution of reporter Příbyl has ended. The prosecutor did not appeal*]. IN: Ct24.ceskatelevize.cz. Online: <https://ct24.ceskatelevize.cz/domaci/3254328-stihani-novinare-pribila-skoncilo-zalobce-se-v-kauze-udajne-pomluvy-exministra>. (Quoted on 3. 11. 2021).

a story about a police commander being involved in a fight, which was not proven by investigation.⁵⁸⁰ This shows that the practice in Czech Republic might be even stricter than in Slovakia, despite the less strict written law. It is possible that the people reporting such crime seek to intimidate the journalist, to cause so-called chilling effect, to discourage the journalist from further reporting or to purely revenge, but the journalists we have asked about their experience with criminal proceedings have not admitted that they would be discouraged in any way, only that they have been more careful about legal aspects of their reporting since.⁵⁸¹

The most efficient way to intimidate journalists and their employers is to sue them in civic courts. In neither of the countries there is any cap or limit on how much anyone can ask for in a libel case. In Slovakia, there have been several notorious cases in which the courts had ordered publishers to pay large sums of money to public officials that sued the media, including, for example, the chief of the Supreme Court Štefan Harabin. He was awarded damages in hundreds of thousands of euros for a verbal injury, which was totally disproportionate compared with damages awarded to victims of crimes like rape.⁵⁸² This had led to what some journalists in our study call the real chilling effect – that some of the media started to be hypercareful on what they write about Mr. Harabin, because he had a reputation of suing the publishers and winning a lot of money, and that allegedly led to a ban on topics related to any controversies about Harabin in one of the tabloid dailies; this and other similar cases lead to serious steps in newsrooms to prevent such cases, including total cancelation of an investigative programme *Paľba* in the most popular commercial TV *Markíza*.⁵⁸³ Some of the cases where the public officials had been granted large sums of damages, were in the end repealed by the Constitutional Court of Slovakia, but that happened only after years of legal disputes of several media houses and it shows that it is uneasy if the suing side is a judge. Slovak courts, especially the constitutional court, had created and developed a whole doctrine based on many decisions in those cases, defending the watchdog role of journalism, a somehow privileged position

580 NEUMANN, O. 2015. Etike dle Babišova mediálního domu: Redaktor odsouzený za pomluvu tiskem může psát dál. [*Ethics of the Babiš media house: Reporter sentenced for press defamation can still work*]. IN: *Hlidacipes.org*. Online: <https://hlidacipes.org/etika-dle-babisova-medialni-domu-redaktor-odsouzeny-za-pomluvu-tiskem-muze-psat-dal/>. (Quoted on 3. 11. 2021).

581 HANÁK, P. 2016. p. 245 – 264.

582 BELÁKOVÁ, N. 2016. *Defamation, Privacy and Freedom of Expression. A Socio-Legal Study of the Interplay between the Slovak Personality/Goodwill Protection Regime and Journalism, 1996 – 2016*. London: London School of Economics. PhD Thesis. Online: http://etheses.lse.ac.uk/4022/1/Belakova_Defamation-privacy-freedom.pdf. (Quoted on 4. 11. 2021).

583 HANÁK, P. 2016. p. 260.

of journalists informing about matters of public interest and several other doctrines from ECHR were introduced directly into the Slovak case law.⁵⁸⁴ Recently also the European Union had recognized that so called SLAPP (Strategic Lawsuit Against Public Participation) – abusive litigation – as a danger for journalists, and it might become a banned practice Europe-wide very soon.⁵⁸⁵

In the Czech Republic, there have also been several cases in which the media was ordered to pay large sums of money as damages. For instance the case of an actor Marek Vašut, who was awarded a 1 million of Czech crowns (now it would represent almost 40 000 euros) for being labelled promiscuous and in depression by a tabloid newspaper Aha!⁵⁸⁶ This judgement was confirmed by the Constitutional Court of Czech Republic as justified.⁵⁸⁷ There were several cases since and similarly as in Slovakia, the Czech courts have also already established several doctrines, such as how the media should handle children of celebrities (case of son of singer Iveta Bartošová, decided by the supreme court). Another Czech actor Ondřej Vetchý had explained after he won such case at a court, that according to his opinion, it is general rule that if a public person sues media and wins, the media would decrease the overly critical coverage of that person.⁵⁸⁸ There had been a series of court decisions dealing especially with tabloid content on celebrities. Compared to Slovakia, the landmark cases were less political and more concerned with privacy.

A journalist, as well as any person publishing any content, can face several other criminal charges in both examined states. One of them is a charge for hate speech. Not many journalists have been charged with this crime, but there is a recent case in Slovakia – the editor-in-chief of the far-right and disinformational magazine Zem a Vek was sentenced for financial punishment of 4 000 euros for an antisemitic article. This was confirmed by the supreme court and in case he would not pay, he would have to serve 3 months in

584 Judgements of the Constitutional Court of Slovakia: IV. ÚS 302/2010, II. ÚS 191/2015 and several others. Comprehensive information can be found here: BELÁKOVÁ, N. 2016. p. 216 – 220.

585 The European Commission had lunched an initiative to combat SLAPP that is expected to result in a new European regulation. More online: <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?do=groupDetail.groupDetail&groupID=3746>. (Quoted on 16. 11. 2021).

586 ČTK. 2012. Vydavatel Aha neuspěl se stížností, herci Vašutovi náleží miliónové odškodné za články. [*Aha publisher did not succeed, must pay millions in damages to actor Vašut*]. IN: *Mediář.cz*. Online: <https://www.mediar.cz/vydavatel-aha-neuspel-se-stiznosti-herci-vasutovi-nalezi-milionove-odskodneni-za-clanky/>. (Quoted on 4. 11. 2021).

587 Judgement of the Constitutional Court of Czech Republic No. II. ÚS 1879/11.

588 PÁNEK, J. GRACH, T. 2017. Dojatý Vetchý u soudu: Bojujme za to, v co věříme. [*Emotional Vetchý at court: Fight for what we believe*]. IN: *Idnes.cz*. Online: https://tv.idnes.cz/lifestyle/dojaty-vetchy-u-soudu-bojujme-za-to-v-co-verime.V170307_155041_cas_iri. (Quoted on 4. 11. 2021).

prison. The lawyer of the defendant had claimed that the client would prefer to serve his sentence in jail⁵⁸⁹, however, eventually he had paid the sum. In Czech Republic there are many cases of hate speech at courts, predominantly committed on the Internet and not by journalists, but by people commenting or sharing their opinions on Facebook, often aimed against Islam as a religion, against Roma minority or against refugees, usually ending with a conditional prison sentence on average length of 10 months.⁵⁹⁰

A similar charge is the denial of the holocaust or genocide. In both states there are cases at courts, so the written law is applied. In Slovakia, there is no known case of a journalist denying the holocaust. In the Czech Republic, there is one case of a politician of a far-right party that was sentenced for committing this crime by publication of his party newspaper (very marginal one) and in books for a conditional sentence of 2 years in prison.⁵⁹¹

The only legal point of this group that really differentiates Slovakia and Czechia is the possibility of criminal sanction for publishing data from criminal proceedings, such as surveillance materials. This must be put into context: It is not normal for the media to publish some sort of surveillance material (video or audio footage) in a case that would be out of interest to the general public. Journalists in both countries do publish materials from criminal cases, if the case is connected to political corruption or an allegation towards an active or former public official, such as a politician. There were many cases in both states where politicians were recorded in situations they would not like to be published, and over the course of sometimes months and sometimes years those materials were published in the national media. In the Czech Republic, this media practice had led to political initiatives to stop this kind of publication, and they had adopted an amendment of the criminal procedure nicknamed the "muzzle law", in which they banned publishing evidence from criminal cases before the evidence is made public in the court. After

589 TASR. 2021. Rostas bol odsúdený na peňažný trest. Môj klient radšej pôjde na výkon trestu, tvrdí jeho advokát. [*Rostas sentenced for financial punishment. My client will prefer jail, says the attorney*]. IN: *Hnonline.sk*. Online: <https://slovensko.hnonline.sk/11872551-rostas-bol-odsudeny-na-penazny-trest-moj-klient-radsej-pojde-na-vykon-trestu-tvrdi-jeho-advokat>. (Quoted on 4. 11. 2021).

590 VEŘEJNÝ OCHRÁNCE PRÁV. 2020. *Nenávistné projevy na internetu a rozhodování českých soudů. Výzkum veřejného ochránce práv 2020. [Hate speech on the Internet and the decisions of Czech courts. Public defender or rights inquiry]*. Online: https://www.ochrance.cz/uploads-import/DISKRIMINACE/Vyzkum/47-2019-DIS-vyzkum_nenavist.pdf. (Quoted on 4. 11. 2021). p. 17 – 23.

591 ČTK. 2018. Za šíření protizidovských nálad dostal Adam B. Bartoš podmíněný trest. [*Adam B. Bartoš got a conditional sentence for antisemitism*]. IN: *Idnes.cz*. Online: https://www.idnes.cz/zpravy/domaci/adam-bartos-zide-antisemitismus-trest-soud-proces.A181101_134953_domaci_kafi. (Quoted on 4. 11. 2021).

election and changes in parliamentary majorities, the parliament had amended the law again, responding to protests of publishers, journalist organizations and politicians from abroad, and since 2011 it is possible to publish a material from surveillance if it is in the public interest, such as if it shows a public official committing a crime.⁵⁹² Since then, Czech media do publish surveillance materials on politicians, but it is upon further interpretation when is it in the public interest or not. For instance, the recordings of phone calls between then prime minister Petr Nečas and his then chief of staff and now a wife, Mrs. Jana Nečasová (formerly Nagyová). The daily Mladá fronta Dnes had published them, but was punished for doing so by the Office for Personal Data Protection of the Czech Republic, because the content of the recordings was related to their personal life. The publisher sued the office at the court, the court had cancelled the decision and sent it back for a new decision – but the court had also reasoned that even a politician has a right to privacy – and the office in its second decision only lowered the fine, but decided that the publisher has to pay the fine.⁵⁹³

In Slovakia, no law was found to directly ban this practice, but there are rules on privacy protection, so cases might be expected. Slovak media frequently publish recordings of politicians or public persons - such as an oligarch from Penta company Jaroslav Haščák debating with politicians in corruption case nicknamed Gorila, several recordings of a sentenced criminal Marián Kočner talking with then-general prosecutor Dobroslav Trnka, or even a recent video recording from a private cottage of an oligarch Mr. Miroslav Bödör showing him at meetings with former prime minister Robert Fico and discussing political matters with lawyers of several people charged with an organized crime. There had been investigations into the conduct of those public officials and also on employees of the security services or police who came across those classified materials, but no journalist or medium had been punished yet for publishing such material. Broadcasting of a recording from surveillance related to public officials is in practice protected by doctrines of the the ECHR and it was decided on a case regarding Slovakia from the 1990s – in case *Rádio Twist vs. Slovakia*, the ECHR defended the right of the radio to publish a

592 ČTK. 2011. Sněmovna schválila změkčení náhubkového zákona. IN: *Mediaguru.cz*. [*The Chamber of Deputies had softened the muzzle law*]. Online: <https://www.mediaguru.cz/clanky/2011/05/snemovna-schvalila-zmekceni-nahubkoveho-zakona/>. (Quoted on 4. 11. 2021).

593 ČTK. 2019. Úřad snížil vydavateli Mladé fronty DNES pokutu za zveřejnění Nečasových odposlechů. [*The fine for publication of Nečas surveillance was lowered for MF Dnes*]. IN: *Aktuálně.cz*. Online: <https://zpravy.aktualne.cz/domaci/odposlechy-necase-obsahovaly-citlive-udaje-mafra-za-jejich-z/r~94c73e927cb11e9a049ac1f6b220ee8/>. (Quoted on 4. 11. 2021).

recording of a private call of two public officials in public interest.⁵⁹⁴ So it is easily possible that the Czech Republic would also lose such a case if it would punish journalists for publishing such material on a public official in public interest.

Our last cluster of legal points marks those special regulations that do not fall into any other category mentioned above. Both are connected to somewhat nationalist policy. Of the states analyzed, only Slovakia has quotas on national music production on radios – 25 percent for commercial radios and 35 percent for the public service radios, played between 6:00 and midnight, and one fifth of them must be new – younger than 5 years. This policy is enforced by the broadcasting council, which has the power to approve exceptions. There have been reports in the past that the council did not approve any exceptions from the quotas, which means that a radio built on a model of oldies songs has to play new Slovak production.⁵⁹⁵

There is yet another nationalist law, the Act on the State Language, requiring the broadcasting of radios and televisions to be in the Slovak language. There are many exceptions, but some of these exceptions are quite limited. For example, it is possible to broadcast a programme dubbed in Czech language, but only if the programme was created before 1 January 2008. The law is enforced in practice quite often. The Broadcasting Council of Slovakia had sanctioned TV JOJ for Czech dubbing created after 2007, which is a violation of the law.⁵⁹⁶ This is not rare, only in 2020 there were several cases in which the council sanctioned media for dubbing in Czech language, but the sanctions are pretty low – in hundreds of euros.⁵⁹⁷

(5) Conclusions from the comparative legal analysis of the Slovak and Czech media law can be drawn that we have found several unexpected differences in the written law, but only a handful of real differences in the application of the law in real practice. From the quantitative perspective of written law („law in books“), we have examined 42 legal

594 ECHR. Case 62202/00 *Rádio Twist a.s. vs. Slovakia*. Judgement of 19. 12. 2006.

595 RADIA.SK. 2018. Kvóty ešte viac zasahujú do formátov rádií. Licenčná rada zamietla všetky žiadosti o výnimky. [*Quotas interfere to the formats of radios. The Broadcasting council declined all requests for expcetions*]. IN: *Radia.sk*. Online: https://www.radia.sk/spravy/3949_kvoty-este-viac-zasahuju-do-formatov-radii-licencna-rada-nelogicky-zamietla-vsetky-ziadosti-o-vynimky. (Quoted on 4. 11. 2021).

596 TASR. 2021. Rada pre vysielanie uložila televíziám pokuty za vyše 4600 eur. [*The Broadcasting council fined televisions for more than 4600 euro*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/896174/rada-pre-vysielanie-ulozila-televiziam-pokuty-za-vyse-4600-eur/>. (Quoted on 4. 11. 2021).

597 RADA PRE VYSIELANIE A RETRANSMISIU. 2021. Správa o stave vysielania v Slovenskej republike a o činnosti Rady pre vysielanie a retransmisiu za rok 2020. [*The report on broadcasting and the Broadcasting council for 2020*]. Online: [vyrocna_sprava_2020_final_tlac_NRSR.pdf \(rvv.sk\)](#). (Quoted on 4. 11. 2021).

points from which in 26 of them we have found a similarity and in 16 of them we have found a difference. The most important findings are what is different and how.

The basic legal characteristics of the media system are almost identical both formally (with only insignificant differences) and materially. A significant difference between the two examined states was found in terms of public service media governance – while Czechia has them both formally and materially more separated from politics, in Slovakia they are traditionally more politicized, but we cannot conclude that it is a result of the change of the system in 2010 (the vote of the director of public broadcaster was moved to parliament) – it might have been a move to strengthen the politicization, but Slovak public service media were politicized even before this move, so the politicization seems to be present regardless of the legal regime of the governance models.

What is important is the model of financing of the public service media, and in Czechia, since it is a bigger market, direct payment from the public could sustainably finance the public service, but in Slovakia that is not the case. The director of RTVS is dependent on politicians when it comes to his budget, which creates a lot of space for undesirable political bargaining and poses a serious threat to independency of the whole institution.

In both states, their broadcasting councils and also councils of the public service media are politicized as well, and many of their members seem to be nominees of the political parties, not the civil society, as the law had intended.

A difference was also found in terms of media ownership regulations: the Czech model seems to be formally a bit more transparent, while Slovakia is more restrictive in cross-media ownership rules regarding the daily press. However, in real life in both countries, the law did not prevent the oligarchs from owning whatever they want, nor the antimonopoly authorities had prevented what is described as media capture.

In terms of specific rights such as the right to correction or reply, only formal differences in written law were found, while, in fact, there is a very subtle difference in the real-life application of those rights. Otherwise, the broadcasting regulations are identical or very similar on many points.

When analyzing the differences between sanctioning journalists, we expected to find the law of Slovakia to be stricter, but this hypothesis was proven only in terms of written law, but not in its practical application. In fact, journalists on trial or even sentenced for defamation were found in the Czech Republic and not in Slovakia. The difference found in private litigation over damages was caused by different nature of the most visible cases: While in the Czech Republic there were many landmark cases on privacy versus tabloid

journalists, in Slovakia there were public officials such as judges or politicians often suing the media for money.

The Czech law seems to be stricter in its relation to journalism only in the case of publishing evidence from criminal proceedings, such as surveillance materials, which can be attributed to the so-called 'muzzle law', which causes a threat of financial sanctions for publishing such materials in Czechia, while in Slovakia no such threat was found. On the other hand, Slovakia is more nationalist in terms of protecting national culture.

Where courts had to find boundaries on interpretation of the laws, they usually arrived at very similar conclusions – perhaps because in cases related to freedom of expression, in both states the courts need to follow the case law of ECHR, which is the major unifying factor observed in our analysis.

4. 2. The economic analysis of law and its context. Are the markets oligopolistic?

In this sub-chapter, we apply the economic methods to analyze the situation on the Slovak and Czech media markets and the appropriacy and sufficiency of the current laws to the situation. We are trying to capture the change in situation in time and observe whether the law responded to it or whether the law had prevented undesirable outputs such as too much concentration on those markets. In other words, we are trying to assess the efficacy and efficiency of the legal regimes examined.

As was already explained in the chapter on methods, we are applying the Herfindahl-Hirschman Index (HHI), and then we are seeking to apply these numbers to assess the oligarchic power over the news media, to create the Power of Media Owners (POMO) indicator.

To be able to calculate the HHI of Slovak and Czech media markets in years 2000, 2010 and 2020, we first need two things: to define the relevant markets and to gain data on the shares of the main companies on those markets. As we have established already in the chapter on methods, it is important to look at the audience share, as it is done also elsewhere to measure media pluralism.⁵⁹⁸

We choose to analyze two geographical national markets divided by product (platform) in four separate relevant markets: (1) television, (2) radio, (3) daily newspapers, and (4) news websites.

598 VALCKE, P. (et. al). 2009. p. 46.

The data for the analysis were provided by the established market research company Median that monitors the Slovak and Czech markets since the 1990s and applies the same method consistently to measure the readership of the dailies or directly the market shares of the electronic media.⁵⁹⁹ From the readership of dailies we have calculated the share of the dailies on the relevant markets. From the readership data, we were able to calculate the market share of the daily newspapers in Slovakia.

Regarding the interpretation of HHI thresholds, we incline to use the thresholds from previous version of Merger Guidelines from 1992⁶⁰⁰, because, as we have explained in the chapter on methods, the media markets do need stricter interpretation of the risks.⁶⁰¹ In this chapter, we provide both interpretations, only our conclusions will be based on the stricter version. This is consistent with the Indicators for Media Pluralism framework, which demands lower thresholds for media markets in competition rules.⁶⁰²

4. 2. 1. Slovakia – year 2000

In 2000 the agency Median that provided data for this research had published 3 MML-TGI market reports. The data presented here are from the third one, reflecting the end of year 2000.

599 It is MML-TGI commercial market research for 3rd and 4th quartal of the given years 2000, 2010 and 2020. This is the only dataset that is consistent in its method over those 20 years and monitors both examined countries. Part o the data is publically available online, and large part of the data was provided to us from the Median company for non-commercial use upon a request.

600 U.S. DEPARTMENT OF JUSTICE. 1992. *Merger Guidelines*. Online: <https://www.justice.gov/sites/default/files/atr/legacy/2007/07/11/11250.pdf> (Quoted on 8. 8. 2021).

601 The more liberal interpretation of HHI thresholds in the new version of the Merger Guidelines have methodological reasons related to a new (stricter) approach to the definition of the market („...*the revised treatment of market definition principles may result in narrower relevant markets*“). Since we do not apply this stricter definion of the market, these changes of the thresholds are not relevant for this dissertation. We acknowledge that the current version of the guidelines is established, but it is still only a document issued by the government of the United States of America. In this dissertation, we are free to establish our own methods, and for the reasons explained in the chapter on methods, we decide to apply the stricter view of what is risky, dangerous and undesirable market power.

Source: WEIL GOTSHAL. 2010. *FTC and DOJ Issue New Horizontal Merger Guidelines*. Online: http://www.weil.com/files/upload/weil_briefing_anti_guidelines.pdf. (Quoted on 5. 11. 2021).

602 VALCKE, P. (et. al). 2009. p. 32.

Table 7: TV market in Slovakia in 2000 (3/2000)

TV	Market share (%) ⁶⁰³
Markíza	58
STV 1	11
Nova	11
Luna	1

Data: MML-TGI 3/2000, MEDIAN.

This is the calculation of HHI for this market: $58^2 + 11^2 + 11^2 + 1^2 = 3607$. This is, under any possible interpretation, an oligopolistic market with clear dominance of one player. Since the broadcasters were not connected through ownership, no further ownership analysis is needed.

Table 8: Radio market in Slovakia in 2000 (3/2000)

Radio	Market share (%) ⁶⁰⁴
Slovensko 1	26
Rock FM	12
Koliba	11
Fun rádio	9
Twist	5

Data: MML-TGI 3/2000, MEDIAN.

HHI calculation: $26^2 + 12^2 + 11^2 + 9^2 + 5^2 = 1047$. This means an unconcentrated market according to the standard and current interpretation of the HHI, but it would mean a moderately concentrated market according to the stricter interpretation (valid in 2000) - even though this figure is very close to the threshold of 1000, under which the market would be considered unconcentrated under any interpretation.

603 MML-TGI 3/2000. Data provided by MEDIAN SK upon request.

604 Ibid.

On the other hand, the analysis changes if performed on owners/controllers of the radio stations. The two leaders of the market in 2000 were of the public service broadcaster Slovenský rozhlas (SRo).

Table 9: Owners on the radio market in Slovakia in 2000

Owner / Controller	Market share (%)
Slovak Republic (Slovensko 1 + Rock FM)	38
Vladimír Fruni (Koliba)	11
Boris Kollár (Funrádio)	9
Andrej Hryc (Twist)	5

Source: Our own processing of the data in Table 8.

HHI calculation: $38^2 + 11^2 + 9^2 + 5^2 = 1671$. This is a moderately concentrated market under both possible interpretations. In 2000, there was a strong position for the public service broadcaster on the radio market.

Table 10: Daily press in Slovakia in 2000 (3/2000)

	Readership (%) ⁶⁰⁵	Market share (%) ⁶⁰⁶
Nový čas	25	49
Šport	7	13,72
Pravda	6	11,76
SME	5	9,8
Új Szó	3	5,88
Práca	3	5,88
Národná obroda	2	3,92

Data: MML-TGI 3/2000, MEDIAN.

605 Share of total population of Slovakia. MML-TGI 3/2000, data provided by MEDIAN SK upon request.

606 Our computation – a newspaper readership to total readership of all dailies represented in MML-TGI 3/2000.

HHI calculation: $49^2 + 13,72^2 + 11,76^2 + 9,8^2 + 5,88^2 + 5,88^2 + 3,92^2 = 2908,09$. This figure is a very high concentration according to the standard economic interpretation and an oligopolistic market according to the stricter interpretation.

The only two papers connected to each other by their publishers are SME and Új Szó (in Hungarian language). Therefore, this market does not require a new analysis of shares of owners and firms behind them; it is oligopolic in any case.

4. 2. 2. Slovakia – year 2010

The data in this section come from MML-TGI research for the third and fourth quartals of 2010, so they represent the second half of 2010.

Table 11: TV stations in Slovakia in 2010 (3-4Q)

Tv station	Market share (%)
Markíza	45
Joj	25
Jednotka	12
Doma	2
TA3	2
Joj Plus	1
Dvojka	1
Other (foreign Tvs: RTL, TV2, Nova)	6

Data: MML-TGI 3+4/2010, MEDIAN SK, Kantar Media.

HHI is: $45^2 + 25^2 + 12^2 + 2^2 + 2^2 + 1^2 + 1^2 = 2804$. This is considered to be a highly concentrated market under both possible interpretations. Foreign media are not included in the equation.

If we choose to look at the ownership, the market concentrates even more:

Table 12: The owners of Slovak TV channels in 2010

Owner/Group	Market share (%)
CME (Markíza + Doma)	47
J&T (Joj, Joj Plus)	26
Public broadcaster STV (Jednotka, Dvojka)	13
TA3	2

Source: Our own processing of the data in Table 11.

HHI is: $47^2 + 26^2 + 13^2 + 2^2 = 3058$. This is a very high concentration, and it is considered an oligopoly.

Table 13: Radio stations in Slovakia in 2010 (3-4Q)

Radio station	Market share (%)
Expres	20
Rádio Slovensko	17
Funrádio	14
Radionet total	8
Jemné melódie	7
Europa 2	6
Regina	6

Data: MML-TGI 3+4/2010, MEDIAN SK, Kantar Media.

HHI is: $20^2 + 17^2 + 14^2 + 8^2 + 7^2 + 6^2 + 6^2 = 1070$. This means an unconcentrated market under the standard criteria and a moderately concentrated market (eventhough really close to the threshold 1000 of unconcentrated) market by the stricter criteria.

If we consider that Rádio Slovensko and Rádio Regina are both public service broadcasters, then, in fact, we have a different market leader and also a different value of HHI.

Table 14: The owners of Slovak radios in 2010

Owner/Controller	Market share (%)
SRo (Slovensko + Regina)	23
Expres (Bauer)	20
Funrádio (Boris Kollár)	14
Radionet total (unknown)	8
Jemné melódie (Harad/Ladislav Reháč)	7
Europa 2 (Lagardere)	6

Source: Our own processing of the data in Table 13.

HHI calculation: $23^2 + 20^2 + 14^2 + 8^2 + 7^2 + 6^2 = 1247$. This is an unconcentrated market according to the standard economic interpretation and a moderately concentrated market under the stricter interpretation.

Table 15: Daily newspapers in Slovakia in 2010 (3-4Q)

Daily newspaper	Readership (%) ⁶⁰⁷	Market share (%) ⁶⁰⁸
Nový čas	22	38,6
SME	7%	12,28
Plus 1 deň	7%	12,28
Pravda	7%	12,28
Šport	4%	7,02
Korzár	4%	7,02
Hospodárske noviny	3%	5,26
Új Szó	2%	3,51
Avízo	1%	1,75

Data: MML-TGI 3+4/2010, MEDIAN SK, Kantar Media.

607 Portion of the general population. From MML-TGI 3-4Q/2010. Provided by Median SK upon request.

608 Our computation of the market share – percentage of the given newspaper readership to total number of all readers of daily press in Slovakia. Source of data: MML-TGI 3-4Q/2010.

Computation of HHI: $38,6^2 + 12,28^2 + 12,28^2 + 12,28^2 + 7,02^2 + 7,02^2 + 5,26^2 + 3,51^2 + 1,75^2 = 2083,96$.

According to the standard economic interpretation, this is considered to be a moderately concentrated market.⁶⁰⁹ According to the older and stricter version of the Merger Guidelines, this would be considered as a highly concentrated market.⁶¹⁰ This seems counterintuitive, given the number of competitors, but the very strong position of the market leader is the explanation.

If we would assess the market shares looking at not papers but their owners, we would find this structure of the market:

Table 16: The owners of the Slovak daily press in 2010

Owner/Group	Market share (%)
Ringier Axel Springer (Nový čas)	38,6
Petit Press (Sme, Korzár, ÚjSzó)	22,81
J&T/Karol Biermann ⁶¹¹ (Pravda, Avízo)	14,03
7Plus (Plus1Deň)	12,28
Šport	7,02
Economia/Zděnek Bakala (Hospodárske noviny)	5,26

Source: Our own processing of the data in Table 15.

609 U.S. DEPARTMENT OF JUSTICE. 2010. *Merger Guidelines*. Online:

<https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>. (Quoted on 8. 8. 2021).

610 U.S. DEPARTMENT OF JUSTICE. 1992. *Merger Guidelines*. Online:

<https://www.justice.gov/sites/default/files/atr/legacy/2007/07/11/11250.pdf> (Quoted on 8. 8. 2021).

611 J&T admitted to the transaction of acquiring Pravda and Avízo, but claimed that the owners are „clients of J&T“ - Florena company owned by Mr. Karol Biermann, a nominee of the government to the post of the director of Bratislava Airport and a person who was present during a very controversial meeting of J&T partner with Slovak minister of finance just before announcing the exchange rate of Slovak crown to Euro before Slovakia had entered the Eurozone. Sources: J&T. 2010. J&T aranžovala akvizíciu Pravdy. [*J&T arranged the acquisition of Pravda*]. Online: <https://www.jtfg.com/sk/servis-pre-media/1165609-jt-aranzovala-akviziciu-pravdy.html>. (Quoted on 8. 8. 2021). ČTK. 2008. Biernanna odvolali z funkcie šéfa letiska. [*Biermann forced to leave the job of the chief of airport*]. IN: *Pravda.sk*. Online: <https://spravy.pravda.sk/domace/clanok/158167-biernanna-odvolali-z-funkcie-sefa-letiska/>. (Quoted on 8. 8. 2021).

The HHI in this case is: $38,6^2 + 22,81^2 + 14,03^2 + 12,28^2 + 7,02^2 + 5,26^2 = 2434,84$. This is a moderately concentrated market according to the standard economic interpretation (but very close to the threshold of 2500 which is already a highly concentrated market), and according to the stricter interpretation, this is a highly concentrated market, very close to oligopoly.

Table 17: News websites in Slovakia in November 2010

News website	Visits ⁶¹²	Market share (%) ⁶¹³
Sme.sk	19 257 919	26,49
Topky.sk	14 880 915	20,47
Aktuality.sk	10 630 273	14,62
Cas.sk	8 599 569	11,83
Pravda.sk	7 746 785	10,66
Tvnoviny.sk	3 066 334	4,22
Pluska.sk	3 048 933	4,19
Hnonline.sk	2 171 557	2,99
Etrend.sk	1 497 656	2,06
Webnoviny.sk	818 441	1,13
Noviny.sk	505 125	0,69
TA3.com	468 439	0,64

Data: Gemius, November 2010.⁶¹⁴

HHI calculation: $26,49^2 + 20,47^2 + 14,62^2 + 11,83^2 + 10,66^2 + 4,22^2 + 4,19^2 + 2,99^2 + 2,06^2 + 1,13^2 + 0,69^2 + 0,64^2 = 1638,78$. This is a moderately concentrated market under both possible interpretations. If we analyze the owners, this market does not change much:

612 Monthly visits in November 2010 according to Gemius Media 2010, AIMmonitor, IAB. Provided to us upon request from the Gemius research company.

613 Our own computation, 100 percent representing the sum of all news websites listed in this Table 17.

614 This dataset seems limited and does not contain all the websites of the Slovak Internet. The big players are present.

Table 18: Owners of Slovak news websites in 2010

Owner	Websites	Market share (%)
PetitPress (RBVG, P. Vajda)	Sme.sk	26,49
Zoznam (Slovak Telekom/ Deutsche Telekom)	Topky.sk	20,47
Azet (M. Dubec)	Aktuality.sk	14,62
Ringier AS	Cas.sk	11,83
J&T (and partially Karol Bierman)	Pravda.sk ⁶¹⁵ , Noviny.sk	11,35
CME	Tvnoviny.sk	4,22
7Plus	Pluska.sk	4,19
Economia (Z. Bakala)	Hnonline.sk	2,99
Trend ((E. Klimešová, L. Hrušovský, O. Brunovský)	Etrend.sk	2,06
SITA (several shareholders)	Webnoviny.sk	1,13
I. Kmotřík	TA3.com	0,64

Source: Our own processing of the data in Table 17.

HHI calculation: $26,49^2 + 20,47^2 + 14,62^2 + 11,83^2 + 11,35^2 + 4,22^2 + 4,19^2 + 2,99^2 + 2,06^2 + 1,13^2 + 0,69^2 + 0,64^2 = 1653,49$. This is also a moderately concentrated market.

4. 2. 3. Slovakia – year 2020

Data for this section are provided by MML-TGI research for the third and fourth quartals 2020, so they represent the end of the year 2020. Where necessary, this is supplemented by a different set of data.

⁶¹⁵ J&T did not officially own the Pravda daily, but they have financed the aquisition „for their client“ Karol Bierman, who was associated with J&T. Slovak law forbids ownership of national TV and national daily. However, there were also other speculations about the ownership of Pravda daily.

Table 19: TV market in Slovakia in 2020 (3-4Q)⁶¹⁶

Tv station and its owner or controller	Market share (%)
Markíza (P. Kellner)	27
JOJ (J&T)	19
Jednotka (RTVS)	15
Other	39

Data: MML-TGI 3-4Q/2020, MEDIAN SK.

It is obvious that if „other“ televisions have 39 percent of the market in this dataset, it will be a very complex task to determine whether there is an oligopoly or not. This is the HHI calculation: $27^2 + 19^2 + 15^2 = 1315$. This would mean that under the standard economic interpretation this market is unconcentrated (close to the threshold of moderately concentrated at 1500), and under the stricter interpretation it is moderately concentrated. However, everything depends on what 'the other' means. Since there are more small and specialized televisions on the market belonging to the big players and their share is not reflected in this dataset, we assume that the real concentration on the Slovak TV market is higher than in our computation of HHI. If we look at different data from a different source, it is clear that the three big groups of TV broadcasters (after counting the small stations) really do not represent the entire market (only 57,6 percent) and there is also a category of „other TVs“ covering 37,8 percent of the market.⁶¹⁷

This mysterious category can be explained in three different ways; all explanations complement each other. First, part of this might be foreign televisions watched by Slovak audiences – predominantly Czech channels that are understandable for all Slovak speakers and Hungarian channels that dominate the Hungarian-speaking south of Slovakia. Some of these channels had significant numbers in previous editions of MML TGI, for instance, the most popular Czech TV Nova in 2000. Second, cable and satellite networks offer packages of usually 100 different channels, specialized (sports, music, regional, religion, history, nature, movies, foreign news). Third, the peplemeter

616 MML TGI 3-4Q/2020, Median SK. Online: <https://www.median.sk/pdf/2020/ZS204SR.pdf>. (Quoted on 5. 11. 2021).

617 MAXA, F. 2021. Sledovanosť TV v roku 2020: Poznáme presné výsledky. Diváci strávili pri obrazovkách viac času. [*TV viewership in 2020: The audience had spent more time in front of their screens*]. IN: *Zive.aktuality.sk*. Online: <https://zive.aktuality.sk/clanok/jhyvqke/sledovanost-televizii-v-prvyh-mesiach-coch-roka-klesli-markiza-joj-aj-jednotka/>. (Quoted on 6. 11. 2021).

measurement of the viewership is paid by the television, and many of the foreign companies do not pay for measuring their market share on the Slovak market.

What conclusions can be drawn from the knowledge that Slovak audiences watch foreign channels? One possible conclusion is that there is a lot of competition, since Slovak televisions must compete with many foreign competitors. But does it not say that there is not enough attractive production from the Slovak broadcasters? Can they possibly compete with the Hungarian channels among the Hungarian-speaking population of Slovakia? There are certainly more questions than answers, but since HHI is built to work even if we ignore many small players and include only the big ones, we consider HHI to mirror the real situation on the market pretty well.

If we choose to use a different dataset showing the smaller televisions as well to be able to compute the shares of the whole groups, owning a big channel and several smaller ones, the numbers would look like this:

Table 20: Owners of Slovak TV channels in 2020

Owner/Group	TV channel	Market share of the channel	Market share of the owner/group
Markíza Group (P. Kellner)	Markíza	19,7	26,3
	Doma	3,2	
	Dajto	3,4	
JoJ Group (J&T)	TV JOJ	13,1	20,4
	JOJ Plus	4	
	Wau	2,8	
	Jojko	0,5	
RTVS	Jednotka	7,3	10,9
	Dvojka	3,1	
	Trojka	0,5	
Grafobal Group (I. Kmotrik)	TA3	2,4	2,4

Data: PMT/Kantar Media, shares computed from the peplemeter data in 2020.⁶¹⁸

618 MAXA, F. 2021.

The HHI in this case would be: $26,3^2 + 20,4^2 + 10,9^2 + 2,4^2 = 1232,42$. Under standard economic interpretation, this is an unconcentrated market. Under stricter interpretation, this is a moderately concentrated market.

Table 21: Radio market in Slovakia in 2020 (3-4Q)⁶¹⁹

Radio station	Market share (%)
Expres	21
Rádio Slovensko	19
Funrádio	13
Vlna	9
Európa 2	8
Jemné	6
Rádio Regina	5
Other	19

Data: MML-TGI 3-4Q/2020. MEDIAN SK.

The calculation of HHI on the Slovak radio market: $21^2 + 19^2 + 13^2 + 9^2 + 8^2 + 6^2 + 5^2 = 1177$. According to the standard current economic interpretation, this is considered an unconcentrated market. According to the stricter version, this is moderately concentrated – but we note that it is closer to the bottom threshold (1000 – 1800). Another important fact is that, in reality, there are many smaller competitors on the radio market that are not included in the MML-TGI data (the 'other' category). This fact does not distort the HHI computation because the bigger players are the ones with the greatest concerns, not the small ones.

On the other hand, this is only an analysis of the individual radios, but in fact after 2020 following the liberalization of ownership rules in the Broadcasting Act, there were significant changes of the ownership, and now many of the radios have the same owner. Just for illustration, this is how the concentration on the market would look like with the

⁶¹⁹ MML TGI 3-4Q/2020, Median SK. Online: <https://www.median.sk/pdf/2020/ZS204SR.pdf>. (Quoted on 5. 11. 2021).

same numbers from 2020, but given that the owner of Expres had bought Európa 2 and Jemné and the owner of Funrádio had bought Vlna and considered that Rádio Slovensko and Rádio Regina are both under the public broadcaster RTVS.

Table 22: Owners of Slovak radios after mergers in 2021

Radio network	Market share (%)
Expres + Jemné + Európa 2	35
Rádio Slovensko + Rádio Regina	24
Funrádio + Vlna	22

Source: Our own processing of the data in Table 21.

If we calculate HHI now, it would look like this: $35^2 + 24^2 + 22^2 = 2285$. This is moderately concentrated according to the standard and current economic interpretation (but closer to the upper threshold in the range of 1500 – 2500) and highly concentrated according to the stricter rules. This demonstrates that even a small change in the media ownership rules might soon cause a big difference. Any further concentration of this market would immediately lead to an oligopolistic situation.⁶²⁰

For the purpose of further analysis, we need to establish the market power of the firms that own or connect these radios as they were in 2020.

Table 23: Owners of Slovak radios in 2020

Owner or controller of the radio	Market share
Bauer (Expres)	21
Funmedia (Funrádio)	13
J&T - Radio Services (Vlna, Európa 2, Jemné)	23
RTVS (Slovensko, Regina)	24

Source: Our own processing of the data in Table 21.

⁶²⁰ We acknowledge that there is 19% of the market uncovered by the data – they are a lot of very small and dispersed radio stations, often specialized on one type of music or content (like rock radios or a religious radio), some of them not covering the whole geographic area of Slovakia, but only some regions. Between the years 2020 and 2021, several of those small radios seized their operation which would decrease the figure of 19% if the data would be updated in 2021.

The HHI in this case is: $21^2 + 13^2 + 23^2 + 24^2 = 1715$. This is moderately concentrated under both interpretations.

Table 24: Daily newspapers in Slovakia in 2020 (3-4Q)

Daily newspaper	Readership (%) ⁶²¹	Market share (%) ⁶²²
Nový čas	14	35,89
Plus 1 Deň	6	15,38
SME	5	12,82
Pravda	5	12,82
Denník N	3	7,69
Hospodárske noviny	3	7,69
Šport	3	7,69

Data: MML-TGI 3-4Q/2020. MEDIAN SK

Calculation of HHI: $35,89^2 + 15,38^2 + 12,82^2 + 12,82^2 + 7,69^2 + 7,69^2 + 7,69^2 = 2030,74$. According to the standard economic interpretation, this is considered to be moderately concentrated market.⁶²³ According to the older and stricter version of the Merger Guidelines, this would be considered as a highly concentrated market.⁶²⁴

The press market in Slovakia is not oligopolistic. However, any further concentrations should be reviewed very carefully because there is a high risk of oligopoly in the case of mergers between the main players. Furthermore, we stress that if only political newspapers were concerned, the figure of HHI would be higher because we would exclude the Šport daily from the equation.

621 Portion of the general population that read the last issue of a given newspaper. MML-TGI 3-4Q/2020. Online: <https://www.median.sk/pdf/2020/ZS204SR.pdf>. (Quoted on 5. 11. 2021).

622 Our computation – a newspaper readership to total readership of all dailies represented in MML-TGI 3-4Q/2020. These figures are also consistent with calculations of the Antimonopoly Office of Slovakia that has to occasionally compute market shares of dailies. Source: ANTIMONOPOLY OFFICE OF SLOVAKIA. 2016. Decision no. 2016/FH/3/1/025. Online: <https://www.antimon.gov.sk/data/att/1810.pdf>. (Quoted on 6. 11. 2021).

623 U.S. DEPARTMENT OF JUSTICE. 2010. *Merger Guidelines*. Online: <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>. (Quoted on 8. 8. 2021).

624 U.S. DEPARTMENT OF JUSTICE. 1992. *Merger Guidelines*. Online: <https://www.justice.gov/sites/default/files/atr/legacy/2007/07/11/11250.pdf> (Quoted on 8. 8. 2021).

Now, we need to look at the daily press market from the perspective of the owners in 2020.

Table 25: Owners of daily newspapers in Slovakia in 2020

Owners or controllers of the daily press	Market share
Anton Siekel (Nový čas)	35,89
Penta (P1D + 45% of SME)	21,15
OUR Media (Pravda)	12,82
Mafra/Andrej Babiš (HN)	7,69
N Press (Eset and others)	7,69
Šport Press	7,69
Peter Vajda (55% of SME)	7,05

Source: Our own processing of the data in Table 24.

The HHI in this case is: $= 35,89^2 + 21,15^2 + 12,82^2 + 7,69^2 + 7,69^2 + 7,69^2 + 7,05^2 = 2126,88$. This is a moderately concentrated market under the standard criteria and a highly concentrated market under the stricter criteria.

Concerning the news websites in Slovakia in 2020, the data set from the Median agency does not contain data on online media, so we have to use the publicly available statistics, the IAB Monitor, a tool used and backed by the biggest Slovak publishers and providers of the online content, media agencies selling advertising, etc. We had to use the 'visits' metric, because with the traditional 'real users' metric it is not easy to define market shares. We have selected month November 2020 because this way it is comparable with the data on other media from the 3rd and 4th quartal 2020. We only included websites specialized in news.

Table 26: News websites in Slovakia in November 2020

News website	Visits	Market share (%)
Aktuality.sk (Ringier AS)	51 946 734	17,13
Topky.sk (Zoznam)	41 146 808	13,57
Sme.sk (PetitPress)	36 571 829	12,06
Cas.sk (FPD/Siekel)	35 755 956	11,79
Pluska.sk (Penta)	24 680 521	8,14
Pravda.sk (Our media)	22 635 848	7,47
Dennikn.sk (NPress)	18 442 986	6,08
Hnonline.sk (Agrofert/Babiš)	14 213 498	4,69
Tvnoviny.sk (Markíza/Kellner)	10 336 758	3,41
TA3.com (Grafobal/Kmotrík)	9 683 126	3,19
Webnoviny.sk (SITA/Király)	8 736 336	2,88
Startitup.sk (several shareholders)	7799162	2,57
Dnes24.sk (Swan)	7169492	2,36
Refresher.sk (Asmira)	7026733	2,31
Dobrenoviny.sk (Robert Sedlák)	7021724	2,31

Data: IAB Slovakia, IABMonitor Online, Gemius Slovakia. November 2020.

The HHI calculation is: $17,13^2 + 13,57^2 + 12,06^2 + 11,79^2 + 8,14^2 + 7,47^2 + 6,08^2 + 4,69^2 + 3,41^2 + 3,19^2 + 2,88^2 + 2,57^2 + 2,36^2 + 2,31^2 + 2,31^2 = 995,99$. This is an unconcentrated market with many competitors. There are no owners who would have more than one news website. This is the least concentrated of the Slovak media markets.

Table 27: Owners of the news websites in Slovakia in 2020

Owner/Controller	Websites	Market share (%)
Ringier Axel Springer	Aktuality.sk	17,13
Zoznam (M. Mác)	Topky.sk	13,57
Penta	Pluska.sk, 40% in Sme.sk	12,99
FPD (A. Siekel)	Cas.sk	11,79
Our media (I. Valenta)	Pravda.sk	7,47
PSIS (P. Vajda)	60% in Sme.sk	7,24
Npress (several shareholders)	Dennikn.sk	6,08
Agrofert (A. Babiš)	Hnonline.sk	4,69
Markíza (P.Kellner)	Tvnoviny.sk	3,41
Grafobal (I. Kmotrík)	TA3.com	3,19
SITA (R. Király)	Webnoviny.sk	2,88
Startitup (several shareholders)	Startitup.sk	2,57
Swan	Dnes24.sk	2,36
Asmira	Refresher.sk	2,31
Robert Sedlák	Dobrenoviny.sk	2,31

Source: Our own processing of the data in Table 26.

HHI: $17,13^2 + 13,57^2 + 12,99^2 + 11,79^2 + 7,47^2 + 7,24^2 + 6,08^2 + 4,69^2 + 3,41^2 + 3,19^2 + 2,88^2 + 2,57^2 + 2,36^2 + 2,31^2 + 2,31^2 = 1005,45$. This figure is already a moderately concentrated market under the stricter interpretation, even though it is really close to the threshold of an unconcentrated market (1000).

4. 2. 4. Concentration on Slovak media markets 2000 - 2020

Over time, the Slovak media markets have evolved with significant changes in the market structure. Table 28 shows that there is a significant decrease in concentration on the television market – which had really been monopolistic until 1996, then clearly

oligopolistic with TV Markíza having the dominant position, and only after 2000 a serious competitor started to emerge. The market seems to be dispersed in 2020, but this is mainly attributed to different foreign television channels that account for up to 39 percent of the Slovak audience. Without this factor, the market with Slovak TV broadcasters would still be oligopolic.

Table 28: Concentration on Slovak media markets 2000 - 2020

	2000		2010		2020	
	HHI media	HHI owners	HHI media	HHI owners	HHI media	HHI owners
TV	3607	3607	2804	3058	1315	1315
Radios	1047	1671	1070	1274	1177	1715
Dailies	2908	2908	2084	2435	2030	2126
Websites	No data	No data	1639	1653	996	1005

Source: Our computations of the Herfindahl-Hirschman Index on Slovak media markets.

Legend: Any value greater than 2500 is an oligopolistic market.

Partial conclusions can be made from these computations that the situation on the Slovak market with the media over the last 20 years had, in fact, headed towards more competition and less dominance of a single player. The most visible example is the Slovak television market, where in 2000 there was one clearly dominant player, in 2010 there was already a decrease on the dominant position of the main player and also a decrease in HHI, and in 2020 we can observe an entirely different picture. The market power had dispersed among more competitors, foreign televisions, cable and satellite programmes. In 2000 the most people had only a handful of channels to choose and their quality and attractivity or reach were not competitive to each other, they did not serve as close substitutes. In 2020 Slovaks can choose from dozens, routinely 100 channels, and even if we would break the market into smaller pieces (such as: 1. national general TV, 2. sport channels, 3. music channels, etc.). There is almost always a close substitute for any channel: No channel, or even more importantly no owner, has a monopoly on any of these markets. However, many of these channels are of foreign origin (and also in a foreign language), the most prevalent are the Czech channels and also Hungarian television in the southern parts of the country. This means that the Slovak market of TV production is

easier to capture than the market with audience because the audience is spread among foreign channels as well. Since there is still one strong leader of the market, TV Markíza, this poses a potential risk. If someone would capture TV Markíza and tie it with some kind of political interest, people could switch to TV JOJ or Jednotka – but those channels are already endangered by political capture, since JOJ already has oligarchic ownership, and Jednotka as part of RTVS can also easily be a subject of capture. Therefore, from an economic perspective, the Slovak TV market is not in danger, but from the perspective of political pluralism, it is absolutely vital to protect the market from any further mergers. Or, more precisely, from any further oligarchic or political influence.

The radio market shows somewhat different traits: In 2000, it had one dominant player, the public service broadcaster. However, it is important to note that the situation around year 2000 had been changing very quickly, and the market was not stable yet. In 2010 it had a new leader, a radio that only entered the market in 2000 and was not represented in the 2000 data yet – and most of the main players from 2000 did not exist anymore in 2010 (or they were sold to other owners, rebranded, and re-formated). In 2020, the market was slightly more concentrated but also more stable and not anywhere near the danger zone (moderately concentrated). However, in 2021 there were significant acquisitions of several radios by the biggest players, which created a situation of high concentration. Therefore, there should also be a review of the political dangers of such concentrations. The Slovak daily press is perhaps counterintuitively less concentrated now than 20 years ago. The main reason here is not greater competition, but a radical decline of all newspapers, including the biggest players. The dominant player, a tabloid *Nový Čas* daily, found a competitor in the tabloid market, but both declined in readership and sold printouts. The position of the market leader is still strong, but only relative to other newspapers and not relative to other media. This means that the political power of newspapers, including the strongest player, is decreasing. The danger lies in connections between different mediatypes – such as owning the powerful newspaper, popular website with news, and also other media – and in 2020 there was Penta company owning a lot of other assets, including a share in *SME* daily. In 2021 Penta had sold this share and, therefore, decreased the competition concerns. However, this market always was and still is highly concentrated, and any further concentrations must be under review from both economic and political pluralist perspectives.

The situation with news websites in Slovakia is different from the other types of media. Our analysis had confirmed that the Internet is a more competitive platform than the

traditional media – there is no clear dominant player on the market with news websites, the differences between the main competitors are not great (in terms of their market share), the market is nowhere close to high concentration. However, many of the main players are not self-starters that would just benefit from the freedom of the Internet as a new market; many of them belong to the traditional media outlets, even with oligarchic ownership. The factor mediating the dangers is the dispersion of the power on the Internet: the market is diversified, the external pluralism is in place to safeguard colorful representation of different political interests or even apolitical news.

4. 2. 5. Czech Republic – year 2000

The data for this subchapter are provided by MML-TGI, Radioprojekt, and Mediaprojekt in the third and fourth quarters 2000.

Table 29: Television in the Czech Republic 3-4Q/2000

Television channel	Viewers ⁶²⁵	Market share (%) ⁶²⁶
Nova	5 590 000	45,63
ČT1	3 605 000	29,43
Prima	2 018 000	16,47
ČT2	719 000	5,87
HBO	104 000	0,85
TV3	69 000	0,56
Hallmark	39 000	0,32
Max1	38 000	0,31
Markíza	37 000	0,30
Eurosport	31 000	0,25

Data: MML-TGI 3-4Q/2000, Median.

625 Watched yesterday, weighted. MML-TGI 3-4Q/2000. Median.

626 Our own computation, 100 percent represents the sum of all views from Table 29.

HHI calculation: $45,63^2 + 29,43^2 + 16,47^2 + 5,87^2 + 0,85^2 + 0,56^2 + 0,32^2 + 0,31^2 + 0,30^2 + 0,25^2 = 3255,33$. This is a clear example of a market with an oligopolic structure. This is even strengthened if we provide the same analysis for the owners/controllers:

Table 30: Owners of TV channels in the Czech Republic in 2000

Owner/Controller	Channel	Market share (%)
CET 21 (V. Železný)	Nova	45,63
Czech Republic (public service)	ČT1, ČT2	35,5
GES (I. Zach)	Prima	16,47
Other	Other	2,5

Source: Our own processing of the data in Table 29.

Even without the HHI calculation, it is obvious that this is an oligopolic market. This is the calculation: $45,63^2 + 35,5^2 + 16,47^2 = 3613,61$.

Table 31: Radios in Czech Republic 3-4Q/2000

Radio	Listeners ⁶²⁷	Market share (%) ⁶²⁸
Čro Rádiožurnál	993 000	16,61
Rádio Impuls	800 000	13,38
Frekvence 1	755 000	12,63
Čro 2 Praha	371 000	6,21
Evropa 2	233 000	3,90
Rádio Blaník	135 000	2,26
Rádio Vysočina	130 000	2,17
Rádio Orion	121 000	2,02
Country Rádio	119 000	1,99

⁶²⁷ Listened yesterday, weighted, MML-TGI 3-4/2000. Data provided by Median CZ upon request.

⁶²⁸ Our own computation from the total number of listeners of the listed radios.

Rádio Čas	106 000	1,77
Čro Brno	106 000	1,77
Kiss Hády	92 000	1,54
Kiss Proton	90 000	1,51
Rádio Karolina	84 000	1,41
Čro Plzeň	81 000	1,35
Rádio Černá Hora	81 000	1,35
Rádio Hellax	81 000	1,35
Rádio OK	80 000	1,34
Rádio Krokodýl	78 000	1,30
Rádio Jih	73 000	1,22
Kiss 98 fm	73 000	1,22
Rádio North Music	70 000	1,17
Čro České Budějovice	69 000	1,15
Čro Ústí nad Labem	68 000	1,14
Čro Ostrava	66 000	1,10
Čro Hradec Králové	58 000	0,97
Čro 3 Vltava	54 000	0,90
Čro Svobodná Evropa	45 000	0,75
Čro Olomouc	29 000	0,49
Čro Regina Praha	25 000	0,42
Other ⁶²⁹	1 000000	16,72

Data: MML-TGI 3-4Q/2000. Median.

⁶²⁹ There were many more small radios with ten of thousands listeners, the list in MML-TGI contains 88 radio channels plus several foreign stations. From those stations with less than 1 percent of market share we have included only the public service channels, because they are important for further analysis.

HHI calculation: $16,61^2 + 13,38^2 + 12,63^2 + 6,21^2 + 3,90^2 + 2,26^2 + 2,02^2 + 1,99^2 + 1,77^2 + 1,77^2 + 1,54^2 + 1,51^2 + 1,41^2 + 1,35^2 + 1,35^2 + 1,35^2 + 1,34^2 + 1,30^2 + 1,22^2 + 1,22^2 + 1,17^2 + 1,15^2 + 1,14^2 + 1,10^2 + 0,97^2 + 0,90^2 + 0,75^2 + 0,49^2 + 0,42^2 = 720,14$, which in an unconcentrated market. However, the results will be different if we analyze the owners.

Table 32: Radios in the Czech Republic in 2000

Owner/Controller ⁶³⁰	Radios	Market share (%)
Czech Republic (public service Čro)	Čro Rádiožurnál, Čro2 Praha, Čro3 Vltava, Čro svobodná Evropa, all the regional stations	32,38
Lagardere	Frekvence 1, Evropa 2	16,53
I. Bařka	Rádio Impuls	13,38
Kiss Group (unknown owner)	Kiss Hády, Kiss Proton	3,05
City Multimedia (P. Dvořák, K. Oubrecht, L. Nádvořník)	Rádio Blaník	2,26
Monarch/F.Vostál	Rádio Vysočina	2,17
D. Sedláček	Rádio Orion	2,02
Metromedia	Country Rádio	1,99
R. Pařizek	Rádio Čas	1,77

Source: Our own processing of the data in Table 31.

⁶³⁰ We acknowledge there might be some inaccuracies with the ownership structures of the stations, because it is extremely challenging to obtain information on precise ownership structure from 2000. The publically available information are usually on ownership structure as it was much later than in 2000, and since year 2000, there were many ownership changes. We have even contacted several of these radios, but even their information that was provided to us on their ownership structure could be incorrect due to errors in human memory, and we were unable to verify this kind of information by an objective source. So hereby we are disclaiming that these information might be less reliable than the more recent information. However, it is the ownership structure of the major players that matters the most – and of those there are reliable information.

HHI calculation: $32,38^2 + 16,53^2 + 13,38^2 + 3,05^2 + 2,26^2 + 2,17^2 + 2,02^2 + 2,17^2 + 2,02^2 + 1,99^2 + 1,77^2 = 1562,34$. This is a moderately concentrated market under both possible interpretations.

Table 33: Czech daily newspapers in 2000

Daily newspaper	Readers	Market share (%)
Mladá fronta Dnes	1 196 000	23,71
Blesk	753 000	14,93
Právo	574 000	11,38
Sport	274 000	5,43
Lidové noviny	249 000	4,94
Zemské noviny	195 000	3,87
Metro	171 000	3,40
Hospodářské noviny	133 000	2,64
Plzeňský deník	118 000	2,34
Děčínský deník	92 000	1,82
Moravské noviny Svoboda	82 000	1,63
Moravskoslezský Den	73 000	1,45
Moravské noviny Rovnost	71 000	1,41
Večerník Praha	54 000	1,07
Hradecké noviny	54 000	1,07
Ústecký deník	51 000	1,01
Haló noviny	50 000	0,99
Táborské listy	48 000	0,95
Slovo/České slovo	47 000	0,93
Other ⁶³¹	759 000	15,05

631 There is a lot of small regional or local newspapers on the list, each of them having less than one percent share on the market. From the perspective of HHI they should be irrelevant, but if some of them would have the same owners, this could cause some degree of inaccuracy in our calculation of HHI for owners. However, many of these newspapers had changed their names and owners since 2000, so it is extremely difficult to establish who exactly owned all of them in given point of time. Even authors focusing explicitly on Czech regional and local newspapers claim that due to lack of

Data: MML-TGI 3-4Q/2000. Median.

HHI calculation: $23,71^2 + 14,93^2 + 11,38^2 + 5,43^2 + 4,94^2 + 3,87^2 + 3,40^2 + 2,64^2 + 2,34^2 + 1,82^2 + 1,63^2 + 1,45^2 + 1,41^2 + 1,07^2 + 1,07^2 + 1,01^2 + 0,99^2 + 0,95^2 + 0,93^2 = 1229,24$.

This is marked as unconcentrated under the new economic interpretation of HHI from 2010 and as a moderately concentrated market under the interpretation valid in 2000.

If we look at the owners, the situation is different.

Table 34: Owners of the Czech daily newspapers in 2000

Owner/Controller	Newspapers	Market share (%)
RBVG	Mf Dnes, Lidové noviny, Svoboda, Rovnost	31,69
Vltava-Labe-Press (VLP)/ Verlagsgruppe Passau	Zemské noviny, Plzeňský deník, Děčínský deník, Moravskoslezský Den, Večerník Praha, Hradecké noviny, Ústecký deník, Táborské listy, Slovo	14,51 ⁺⁶³²
Ringier	Blesk	14,93
Borgis	Právo	11,38
Čs. sport	Sport	5,43
Metro International	Metro	3,40
Verlagsgruppe Handelsblatt	Hospodářské noviny	2,64
Futura (KSČM)	Haló noviny	0,99

data it is not possible to establish the state of horizontal concentration on Czech market with local newspapers, and the ownership structure of the Czech regional press was changing drastically precisely in the last quartal of the year 2000 or that many middle-sized or small newspapers did not get their revenue audited, so there is no exact data to establish their market shares. The same argument as with the rado market applies – the shares of the owners of the local and regional newspapers might be inaccurate, but it is the biggest players that matter the most in HHI analysis. Sources: WASCHKOVÁ-CÍSAŘOVÁ, L. 2013, p. 119 – 121. BENDA, J. 2007. p. 218.

632 VLP owned more local and regional dailies than represented in this data, that is why in fact they had larger share of the market, we just cannot accurately quantify how much larger.

Information about the owners: Waschková-Císařová⁶³³

HHI calculation: $31,69^2 + 14,51^2 + 14,93^2 + 11,38^2 + 5,43^2 + 3,40^2 + 2,64^2 + 0,99^2 = 1616,20$. This is a moderately concentrated market under any interpretation.

The problem with this calculation is that the given list of newspapers does not contain data on all the small regional newspapers, and there is an assumption derived from the literature that one company – VLP – might have had a monopoly on some of the regional markets.⁶³⁴ Therefore, the real share of VLP (owned by Verlagsgruppe Passau) is probably higher, which in turn would raise the value of HHI as well (since VLP was most probably the second strongest player on the Czech market with daily press). So, in fact, a substantial part of the 'other' newspapers might be attributed to VLP – we just do not have the evidence necessary to do so. However, even if the correct HHI were probably higher, it is unlikely that it would raise so much that it would change the evaluation of the market structure of the moderately concentrated market.

Some authors claim that this was a situation on the market just before a cartel agreement between big players came into action – just before RBVG had a deal with VGP that VGP is going to seize publication of their two national dailies Slovo and Zemské noviny to allow RBVG to achieve dominance on the market with national press, in exchange for RBVG selling all regional newspapers to VGP in order for VGP to gain dominance on the market with the regional press.⁶³⁵ However, this was finalized after 2000, and in our data we are going to see the results of these mergers only in the next examined cycle, in 2010.

633 WASCHKOVÁ-CÍSAŘOVÁ, L. 2013. *Český lokální a regionální tisk mezi lety 1989 – 2009*. [Czech local and regional press 1989 – 2009]. Brno: Masarykova univerzita. p. 119-120.

634 Ibid. p. 147.

635 Ibid. p. 128.

4. 2. 6. Czech Republic – year 2010

Table 35: Czech TV market 3-4Q/2010

TV channel	Viewers ⁶³⁶	Market share (%) ⁶³⁷
Nova	5 509 000	40,33
ČT1	3 081 000	22,55
Prima	2 705 000	19,80
ČT2	577 000	4,22
Other ⁶³⁸	1 789 000	13,10

Data: MML-TGI 3-4Q/2010, Median.

HHI calculation: $40,33^2 + 22,55^2 + 19,80^2 + 4,22^2 = 2544,86$. This is a highly concentrated market under the standard economic interpretation of HHI and an oligopoly under the stricter interpretation. The 'other' category is not counted because it is not a strong player.

If we look at the owners/controllers, the calculation changes slightly.

Table 36: Owners of Czech TV channels in 2010

Owner/Controller	Channels	Market share (%)
CME	Nova	40,33
Czech Republic (public service)	ČT1, ČT2	26,67
I. Zach	Prima	19,80

Source: Our own processing of the data in Table 35.

HHI calculation: $40,33^2 + 26,67^2 + 19,80^2 = 2735,18$. This is still a very high concentration and an indication of an oligopolistic market.

636 Viewed yesterday. MML-TGI ČR 3-4Q/2010. Median. Data provided by the agency Median upon request.

637 Our own computation, 100 percent represents the sum of all views.

638 This MML-TGI dataset does not explain what „other“ means, but most likely it represents smaller channels of the listed or unlisted providers, foreign channels, cable and satellite televisions.

Table 37: Czech radio market 3-4Q/2010

Radio	Listeners ⁶³⁹	Market share (%) ⁶⁴⁰
Rádio Impuls	1 017 000	14,09
Evropa 2	921 000	12,76
Frekvence 1	910 000	12,60
Čro Rádiožurnál	721 000	9,99
Rádio Blaník	687 000	9,52
Čro 2 Praha	354 000	4,90
Rádio Čas	250 000	3,46
Country rádio	188 000	2,60
Čro Brno	159 000	2,20
Rádio Beat	153 000	2,12
Hitrádio Orion	153 000	2,12
Kiss Morava	130 000	1,80
Rádio Petrov	110 000	1,52
Čro Ostrava	106 000	1,47
Rádio Černá Hora	104 000	1,44
Čro Hradec Králové	91 000	1,26
Čro České Budějovice	89 000	1,23
Hitrádio Vysočina	84 000	1,16
Rádio Krokodýl	74 000	1,02
Kiss Hády	70 000	0,97
Hitrádio FM Plus	67 000	0,93
Čro Plzeň	66 000	0,91
Fajn radio	64 000	0,89

639 Listened yesterday. MML-TGI 3-4Q/2010. Median.

640 Our own computation from the sum of all listeners of all radios with at least 35 000 listeners.

Fajn North Music	58 000	0,80
Čro Olomouc	50 000	0,69
Kiss Jižní Čechy	43 000	0,60
Other ⁶⁴¹	1 249 000	-

Data: MML-TGI 3-4Q/2010. Median.

HHI calculation: $14,09^2 + 12,76^2 + 12,60^2 + 9,99^2 + 9,52^2 + 4,90^2 + 3,46^2 + 2,60^2 + 2,20^2 + 2,12^2 + 2,12^2 + 1,80^2 + 1,52^2 + 1,47^2 + 1,44^2 + 1,26^2 + 1,23^2 + 1,16^2 + 1,02^2 + 0,97^2 + 0,91^2 + 0,89^2 + 0,80^2 + 0,69^2 + 0,60^2 = 787,28$, which is an unconcentrated market. Only if we analyze the shares of the biggest owners/controllers, the results are different.

Table 38: Radio owners in the Czech Republic in 2010

Owner/Controller	Radios	Market share (%)
Lagardere	Evropa 2, Frekvence 1	25,36
Czech Republic (public service Čro)	Čro Rádiožurnál, Čro 2 Praha, all regional channels	22,65
Media Bohemia (D. Sedláček, J. Neuman)	Rádio Blaník, Hitrádio Orion, Hitrádio FM Plus, Fajn Radio, Fajn North Music	14,26
Eurocast/I. Bařka	Rádio Impuls	14,09
Metro/Radio Investments (P. řahan, R. Vařkovič)	Country rádio, Rádio Beat, Kiss Morava, Kiss Hády, Kiss Jižní Čechy	7,99

Source: Our own processing of the data in Table 37.

HHI calculation: $25,36^2 + 22,65^2 + 14,26^2 + 14,09^2 + 7,99^2 = 1621,87$. This is a moderately concentrated market under both interpretations.

641 MML-TGI data contains almost one hundred stations, most of them very small and local or regional. Only those that matter for further analysis are included in the Table 37. All big players are included.

Table 39: Daily press in the Czech Republic 3-4Q/2010

Daily newspaper	Readership ⁶⁴²	Market share (%) ⁶⁴³
Blesk	1 258 000	28,98
Deník (all mutations)	834 000	19,21
MF Dnes	744 000	17,14
Právo	347 000	7,99
Metro	329 000	7,58
Aha!	239 000	5,51
Sport	230 000	5,30
Lidové noviny	181 000	4,17
Hospodářské noviny	122 000	2,81
E15	57 000	1,31

Data: MML-TGI 3-4Q/2010. MEDIAN.

HHI calculation: $28,98^2 + 19,21^2 + 17,14^2 + 7,99^2 + 7,58^2 + 5,51^2 + 5,30^2 + 4,17^2 + 2,81^2 + 1,31^2 = 1709,39$. This means a moderately concentrated market under both interpretations. However, if we look at the concentration of owners, the picture is different.

Table 40: Owners of daily newspapers in the Czech Republic in 2010

Owner/Controller	Newspapers	Market share (%)
Ringier AS	Blesk, Aha!, Sport	39,79
Mafru (RBVG)	Mf Dnes, Metro, Lidové noviny	28,89
Verlagsgruppe Passau	Deník	19,21
Borgis (Z. Porybný)	Právo	7,99
Economia (Z. Bakala)	Hospodářské noviny	2,81
Mladá fronta (F. Savov)	E15	1,31

Source: Our own processing of the data in Table 39.

642 MML-TGI 3-4Q/2010.

643 Our own computation, based on number of readers.

HHI calculation: $39,79^2 + 28,89^2 + 19,21^2 + 7,99^2 + 2,81^2 + 1,31^2 = 2860,35$. This is a high concentration according to the current economic interpretation of HHI and is an oligopolistic market structure under stricter interpretation. This level of concentration should have been prevented by the authorities.

Table 41: News websites in the Czech Republic, November 2010

Website	Visits ⁶⁴⁴	Market share (%) ⁶⁴⁵
Novinky.cz	82 332 163	31,90
Idnes.cz	55 024 188	21,32
Super.cz	40 494 871	15,59
Sport.cz	21 766 974	8,43
Aktualne.cz	14 581 216	5,65
Blesk.cz	12 472 398	4,83
Ihned.cz	5 759 329	2,23
Lidovky.cz	5 745 724	2,22
Denik.cz	5 429 194	2,10
TN.cz	3 999 428	1,55
Ahaonline.cz	3 240 551	1,26
Tyden.cz	2 627 933	1,02
Ct24.cz	1 997 757	0,77
Ceskenoviny.cz	1 125 666	0,44
E15.cz	980 983	0,38
Reflex.cz	535 742	0,21

Data: NetMonitor November 2010. SPIR.⁶⁴⁶

644 Monthly visits of selected websites in November 2010, NetMonitor. Online:

<https://www.netmonitor.cz/verejne-vystupy?page=8>. (Quoted on 10. 11. 2021).

645 Our own computation as a share of all listed news websites, based on NetMonitor, November 2010.

Online: <https://www.netmonitor.cz/verejne-vystupy?page=8>. (Quoted on 10. 11. 2021).

646 SPIR – the author of the monitoring tool NetMonitor had warned us that not every webpage on the Czech Internet is included in this data and in reality there might be webpages that are not monitored and therefore are absent from this list. However, all the main news websites seem to be included.

HHI calculation: $31,90^2 + 21,32^2 + 15,69^2 + 8,43^2 + 5,65^2 + 4,83^2 + 2,23^2 + 2,22^2 + 2,10^2 + 1,55^2 + 1,26^2 + 1,02^2 + 0,77^2 + 0,44^2 + 0,38^2 + 0,21^2 = 1864,96$. This is a moderately concentrated market according to the current economic interpretation and a highly concentrated market according to the stricter interpretation, although it is really close to the threshold of a moderately concentrated market (1800).

Table 42: Owners of news websites in the Czech Republic in 2010

Owner/Controller	Websites	Market share (%)
Z. Porybný/ I. Lukačovič	Novinky.cz, Super.cz, Sport.cz	56,02
Mafra (RBVG)	Idnes.cz, Lidovky.cz	23,54
Ringier AS	Blesk.cz, Ahaonline.cz, Reflex.cz	6,3
Centrum (Warburg Pincus)	Aktualne.cz	5,65
Economia (Z. Bakala)	Ihned.cz	2,23
Verlagsgruppe Passau	Denik.cz	2,10
CME	TN.cz	1,55
Czech Republic (public service)	Irozhlas.cz, Ceskenoviny.cz	1,21
S. Pawlowski	Tyden.cz	1,02
F. Savov	E15.cz	0,38

Source: Our own processing of the data in Table 41.

HHI calculation: $56,02^2 + 23,54^2 + 6,3^2 + 5,65^2 + 2,23^2 + 2,10^2 + 1,55^2 + 1,21^2 + 1,02^2 + 0,38^2 = 3778,42$. This is clearly an oligopolic market with one dominant player. This seems to be a proof that even an online market can easily have an oligopolic structure.⁶⁴⁷

⁶⁴⁷ Precise structure of ownership shares over the market leader Novinky.cz is officially not known, but the expert on Czech media ownership M. Vojtěchovská had explained us in email communication that Novinky was always owned by Seznam, but the content was provided by Borgis. This means that these two firms acted in a collusion and they are both behind the project of Novinky.cz. VOJTĚCHOVSKÁ, M. 2021. E-mail communication. 11. 11. 2021. 18:06.

4. 2. 7. Czech Republic – year 2020

The data are provided by Median Research and for the Internet market by NetMonitor.cz.

Table 43: Television in the Czech Republic, 3-4Q/2020

TV	Viewers ⁶⁴⁸	Market share (%) ⁶⁴⁹
Nova	3 616 000	21,76
ČT1	2 844 000	17,12
Prima	2 430 000	14,62
ČT24	949 000	5,71
ČT2	879 000	5,29
Nova Cinema	716 000	4,31
Prima Cool	632 000	3,80
Prima Zoom	582 000	3,50
ČT Sport	449 000	2,70
Praha TV	358 000	2,15
TV Barrandov	343 000	2,06
Prima Love	308 000	1,85
ČT :D	276 000	1,66
Prima Krimi	260 000	1,56
Prima Max	246 000	1,48

648 Watched yesterday, data for 3-4Q/2020, weighted. MML-TGI ČR 2020, 3 a 4. kvartál 2020. Data provided by Median company upon request.

649 Our own computation from total number of viewers of listed televisions. Total number of viewers is a sum of all the figures of viewers, acknowledging that one person views more television and so is possibly counted more times. This does not affect the computation of market share, although this calculation is different from what the agencies usually show as the market share. They include time spent watching a channel into their computation, which we did not, for the simple reason of not having this information in the dataset we have received. We suppose that our computation is equally valid, just based on a different method and this does not affect the results in any significant way. Our results are consistent with other published shares, f. e. here: MEDIAGURU. 2021. Televize v roce 2020. ČT překonala 30 procent, rostla i Prima. [*Television in 2020. ČT got over 30 percent, Prima grew as well*]. IN: Mediaguru.cz. Online: <https://www.mediaguru.cz/clanky/2020/12/televize-v-roce-2020-ct-prekonala-30-rostla-i-prima/>. (Quoted on 9. 11. 2021).

CNN Prima News	178 000	1,07
Nova 2	175 000	1,05
Nova Action	175 000	1,05
Óčko	163 000	0,98
Barrandov Krimi	136 000	0,81
Kino Barrandov	131 000	0,79
Nova Gold	124 000	0,75
ČT Art	123 000	0,74
Other	523 000	3,15

Data: MML-TGI ČR 3-4Q/2020. Median.

HHI calculation: $21,76^2 + 17,12^2 + 14,62^2 + 5,71^2 + 5,29^2 + 4,31^2 + 3,80^2 + 3,50^2 + 3,15^2 + 2,70^2 + 2,15^2 + 2,06^2 + 1,85^2 + 1,66^2 + 1,56^2 + 1,48^2 + 1,07^2 + 1,05^2 + 1,05^2 + 0,98^2 + 0,81^2 + 0,79^2 + 0,75^2 + 0,74^2 = 1129,77$. This looks like an unconcentrated market under the current economic interpretation and a moderately concentrated market under the stricter interpretation. However, if we do the analysis for the owners, the market suddenly looks different. "Other" is not counted in the calculation because it is not a specific TV station.

Table 44: Owners of TV channels in the Czech Republic in 2020

Owner/Controller	Channels	Market share (%)
Czech Republic (public service)	ČT1, ČT24, ČT2, ČT:D, ČT Art	33,22
Nova (P. Kellner)	Nova, Nova Cinema, Nova 2, Nova Action, Nova Gold	28,92
Prima (I. Zach)	Prima, Prima Cool, Prima Zoom, Prima Love, Prima Krimi, Prima Max, CNN Prima News	27,88
Empresa Media (J. Soukup)	TV Barrandov, Barrandov Krimi, Kino Barrandov	3,66
J&T and Klára Potočná	Praha TV	2,06
Mafra/Agrofert (A. Babiš)	Óčko TV	0,98

Source: Our own processing of the data in Table 43.

HHI calculation: $33,22^2 + 28,92^2 + 27,88^2 + 3,66^2 + 2,15^2 + 0,98^2 = 2795,04$. This is a highly concentrated market, even according to the liberal interpretation and clearly an oligopolic market under the stricter interpretation of HHI. It is clear that there are only three big players dominating the market.

Table 45: Radios in the Czech Republic, 3-4Q/2020

Radio	Listeners ⁶⁵⁰	Market share (%) ⁶⁵¹
Čro Rádiožurnál	937 000	16,02
Rádio Impuls	841 000	14,38
Evropa 2	766 000	13,10
Rádio Blaník	640 000	10,94
Frekvence 1	584 000	9,99
Rádio Kiss	361 000	6,17
Čro Dvojka	344 000	5,88
Country Rádio	259 000	4,43
Rádio Beat	252 000	4,31
Fajn Radio	208 000	3,56
Hitrádio Orion	143 000	2,45
Rock Rádio	114 000	1,95
Hitrádio Černá Hora	102 000	1,74
Rádio Čas	101 000	1,72
Čro Plus	98 000	1,68
Čro Brno	96 000	1,64

Data: RADIOPROJEKT 2020, STEM/MARK – MEDIAN. 3-4Q 2020.

HHI calculation: $16,02^2 + 14,38^2 + 13,10^2 + 10,94^2 + 9,99^2 + 6,17^2 + 5,88^2 + 4,43^2 + 4,31^2 + 3,56^2 + 2,45^2 + 1,95^2 + 1,74^2 + 1,72^2 + 1,68^2 + 1,64^2 = 999,33$. This is an unconcentrated market under both interpretations, although very close to a moderate concentration threshold (1000) by the stricter interpretation.

650 RADIOPROJEKT 2020, STEM/MARK – MEDIAN. 3-4Q 2020. Online: https://www.median.eu/cs/wp-content/uploads/docs/RP_prezentace_2004_v07.pdf. (Quoted 10. 11. 2021).

651 Our own computation based on RADIOPROJEKT 2020, STEM/MARK – MEDIAN. 3-4Q 2020. Based only on the number of listeners, the „average time spent“ metric is not included.

The picture is again very different if we perform the same analysis for owners or controllers.

Table 46: Radio owners in the Czech Republic in 2020

Owner/Controller	Radios	Market share (%)
Czech Republic (public service Český rozhlas)	Rádiožurnál, Čro Dvojka, Čro Plus, Čro Brno	25,22
CMI (D. Křetínský, P. Tkáč, R. Korbačka)	Evropa 2, Frekvence 1	23,09
Media-Bohemia (D. Sedláček, J. Neuman)	Rádio Blaník, Fajn Rádio, Hitrádio Orion, Rock Rádio	20,64
Ges (Ivan Zach)	Rádio Kiss, Country Rádio, Rádio Beat	14,91
Agrofert (A. Babiš)	Impuls	14,38
R. Pařízek	Rádio Čas	1,72

Source: Our own processing of the data in Table 45.

HHI calculation: $25,22^2 + 23,09^2 + 20,64^2 + 14,91^2 + 14,38^2 + 1,72^2 = 2027,26$. This is a moderately concentrated market under the current economic interpretation and a highly concentrated market under the stricter interpretation. The presence of oligarchs and their market power is notable.

Table 47: Daily press in the Czech Republic, 3-4Q/2020

Daily newspaper	Readership ⁶⁵²	Market share (%)
Blesk	700 000	24,64
MF Dnes	453 000	15,95
Deník (all mutations)	417 000	14,68
Metro	344 000	12,11
Právo	192 000	6,76

⁶⁵² In absolute numbers, counted as „read yesterday“.

Lidové noviny	180 000	6,33
Aha!	171 000	6,02
Sport	163 000	5,74
Hospodářské noviny	159 000	5,56
E15	62 000	2,18

Data: Mediaprojekt 3-4Q/2020, Median.

HHI calculation: $24,64^2 + 15,95^2 + 14,68^2 + 12,11^2 + 6,76^2 + 6,33^2 + 6,02^2 + 5,74^2 + 5,56^2 + 2,18^2 = 1414,31$. This means an unconcentrated market under the current economic interpretation, but very close to threshold 1500 of a moderately concentrated market, and under the stricter interpretation, this means a moderately concentrated market.

The picture is different if we look at the owners.

Table 48: Owners of the Czech daily press in 2020

Owner/Controller	Dailies	Market share (%)
CMI (Křetínský, Tkáč, Korbačka)	Blesk, Aha!, Sport, E15	38,58
Agrofert/Mafra (Babiš)	Mladá fronta Dnes, Lidové noviny, Metro	34,39
Penta	Deník	14,68
Economia (Bakala)	Hospodářské noviny	5,56
Borgis (Porybný)	2/3 Právo	4,49
Seznam (Lukačovič)	1/3 Právo	2,27

Source: Our own processing of the data in Table 47.

HHI calculation: $38,58^2 + 34,39^2 + 14,68^2 + 5,56^2 + 4,49^2 + 2,27^2 = 2942,82$. This is a high concentration even under the more liberal economic interpretation and a clear oligopolistic market under the stricter interpretation of HHI. Moreover, there was no daily independent of oligarchs on the market, maybe apart from the Právo daily. The antimonopoly authority should have prevented the oligopolistic structure of the market,

especially if the market leader owns both (and only) tabloids and the biggest newspaper-distribution company PNS at the same time.

Regarding the news websites, similarly as in Slovakia, we have found suitable and comparable data with the same methodology also in Czechia in the NetMonitor project. These are numbers of visitors to webists with news as their main content and their respective market shares.

Table 49: News websites in the Czech Republic, November 2020

News website	Visits ⁶⁵³	Market share (%) ⁶⁵⁴
Novinky.cz	166 703 349	25,07
Seznamzpravy.cz	115 877 497	17,43
Idnes.cz	96 681 552	14,54
Super.cz	83 738 315	12,60
Sport.cz	47 477 076	7,08
Blesk.cz	41 477 076	6,24
Aktualne.cz	32 064 181	4,82
Denik.cz	24 921 193	3,75
Lidovky.cz	10 814 746	1,63
Reflex.cz	9 744 821	1,47
Parlamentilisty.cz	7 711 561	1,16
Expres.cz	7 688 710	1,15
Irozhlas.cz	7 451 925	1,12
Echo24.cz	7 041 712	1,06
Ceskenoviny.cz	5 766 934	0,87

Data: OLA, Netmonitor.cz, November 2020.

653 OLA, Netmonitor.cz, November 2020. Online: <https://www.netmonitor.cz/online-data-ola>. (Quoted on 10. 11. 2021).

654 Our own calculation as a percent of total number of visits of all the news websites listed in this table.

HHI calculation for this market: $25,07^2 + 17,43^2 + 14,54^2 + 12,60^2 + 7,08^2 + 6,24^2 + 4,82^2 + 3,75^2 + 1,63^2 + 1,47^2 + 1,16^2 + 1,12^2 + 1,06^2 + 0,87^2 = 1439,46$. This is an unconcentrated market under the standard economic interpretation (although very close to the threshold of moderately concentrated at 1500) and it is a moderately concentrated market under the stricter interpretation. This is due to the relatively large share of the market leader and the uneven distribution of visits.

If we were to assess ownership of these websites and perform the analysis again, the results would be radically different.

Table 50: Owners of news websites in the Czech Republic in 2020

Owner/Controller	Websites	Market share (%)
Seznam.cz and Borgis (I. Lukačovič, Z. Porbyný) ⁶⁵⁵	Novinky.cz, Super.cz, Sport.cz, Seznamzpravy.cz	61,74
Agrofert/Mafra (A. Babiš)	Idnes.cz, Lidovky.cz, Expres.cz	17,34
CMI (D. Křetínský, P. Tkáč, R. Korbačka)	Blesk.cz, Reflex.cz	7,71
Economia (Z. Bakala)	Aktualne.cz	4,82
Penta	Denik.cz	3,75
Czech Republic (public service)	Ceskenoviny.cz, Irozhlas.cz	1,99
OUR Media	Parlamentnilisty.cz	1,16
Echo Media (R. Ovčáří)	Echo24.cz	1,06
Other	Other	0,43

Source: Our own processing of the data in Table 49.

HHI calculation: $61,74^2 + 17,34^2 + 7,71^2 + 4,82^2 + 3,75^2 + 1,99^2 + 1,16^2 + 1,06^2 = 4215,67$. This is a clear example of an oligopoly with one very dominant player on the market.

⁶⁵⁵ They co-own Borgis publishing house that supplies Novinky.cz with content, so we consider them to be a one player. Similarly, we do not separate shares of individuals shareholders of CMI or J&T or Penta.

In fact, they are two players acting in collusion (Borgis and Seznam). Questions should be raised to the regulator or antimonopoly authority as to why this level of collusion was not prevented for economic reasons. It is also proof that the online news market can also be captured by the oligarchs or publishers of traditional media. Only the leader, Mr. Lukačovič, runs business predominantly in online publishing, and Mr. Porbyný is a publisher of daily Právo, but everyone else in the list is a big mogul with different economical and political interests. Since 2010 there has been a significant change – a relative decrease in shares of those a media that were captured by the oligarchs and more than 10 percent increase of the others.

4. 2. 8. Concentration of the Czech media markets 2000 – 2020

Two main observations can be made from the data on concentration over the last 20 years in the Czech Republic: they were always high, and they got even higher in the last decade (apart from the TV market, which was the most concentrated in 2000).

Table 50: Concentration of the Czech media markets 2000 - 2020

	2000		2010		2020	
	HHI media	HHI owners	HHI media	HHI owners	HHI media	HHI owners
TV	3255	3614	2545	2735	1130	2795
Radios	720	1562	787	1622	999	2027
Dailies	1229	1616	1709	2860	1414	2943
Websites	No data	No data	1865	3778	1439	4216

Source: Our own computation of the Herfindahl-Hirschman index on the Czech media market. Legend: Any value greater than 2500 is an oligopolic market.

In the Czech media market, the level of concentration even in economic terms is definitely higher than desirable in any healthy market. The only platform that avoided oligopolic structure of the market over the last 10 years is the radio market, thanks to many different small diversified stations, many regional, from which some rose to compete in the national arena (such as Rádio Blaník).

The television market in the Czech Republic had started as extremely concentrated; the oligopolic structure is natural here. The concentration had decreased over the years, but not sufficiently, since the big players had defended their positions by starting smaller and specialized channels, in order to redirect the people seeking diversity from their potential competitors to more programmes of the existing and dominant players. The structure of the current TV market is still oligopolic with one dominant player, which implicates the need for a very strict view from the authorities to any further acquisitions on the market, based on existing economic criteria. In terms of risk towards political pluralism, it is extensive, it is sufficient to capture the biggest player, and the quality of democracy can be under threat. TV Nova was already bought by an oligarch, Mr. P. Kellner, but he had died sooner than his intentions with the station would be clear. If this TV falls into the hands of an oligarch seeking instrumentalization of the station for political purposes, the Czech democracy is vulnerable. In that case, the only safeguard would be the Czech Television, so its protection against capture should be an absolute priority.

The Czech market with daily press has a clear path from a moderately concentrated market to an oligopolistic structure in 2020. Even in solely economic terms, this level of ownership concentration is undesirable and risky, since its level is even higher than on the television market! Speaking of the risk to political pluralism, we can view the problem from two points of view. First, the market is almost fully captured by the oligarchs and they have political interests, which could be potentially devastating for the watchdog role of journalism on the daily press market. Second, the press reaches smaller audience than the television, and if the external pluralism is achieved (many different players with many different interests being behind those owners), the risks of the oligopolic press market are partially mediated.

The Internet seems to be relatively less captured by the oligarchs, since as a newer and more changeable market, it has generated leaders that are of less oligarchic nature. It is interesting to observe how quickly the new entrant in the market, Seznamzpravy.cz, became the second most visited news website in the country. This can be attributed to the fact that it is not really a new entrant, but a project of the existing Internet giant Seznam company. The connection in ownership between the two most visited news websites is also a notable observation, creating an unusual dominance of one player on the Internet. It shows that the Internet users switch faster between the media than, for instance, readers of dailies. Many of the readers of Mladá fronta Dnes daily had stayed with the daily even if it has fallen into the hands of A. Babiš, but the online version – Idnes.cz, had dropped

in its market share. Websites without oligarchic ownership had grown much faster, and the rapid success of Seznamzpravy.cz might indicate that there was a demand for another source of more reliable and less politically biased news. In economic terms, more than 60 percent of share of the market with online news belonging to a cartel of two biggest players, is a big problem. It might also be a problem if the plurality of information provided by them is not guaranteed. On the other hand, these are two companies whose primary business is publishing, which is less risky than the oligarchic cartels between the political, economic, and media superpowers. However, this structure of the market with clear dominance of one player is not healthy for the market for economic reasons, and it is also risky for democracy, especially if there is at least potential risk of more than 60 percent of the market falling into hands of someone with more political interests by only a single transaction.

To provide a clear answer for the research question derived from hypothesis number 1, most of the Slovak media markets are not oligopolistic in the economic terms, even though some of them are highly concentrated or even close to the oligopolic structure. In the Czech Republic, the markets have more oligopolic structure – the concentration is so high that there should be questions raised and perhaps more thorough research done into the decision-making the Czech authorities. The daily press market in the Czech Republic has an oligopolic structure with two very dominant players, while the leader of the market also owns the main distribution company. We have just proven by our analysis that the majority of Czech media markets are in fact oligopolistic.

Moreover, the political power of these dominant players has to be taken into account in further analysis, especially accounting for the fact that the same groups of owners appear in both markets.

4. 2. 9. Cross-media POMO (Power of Media Owners) calculation

Before we proceed to the calculation of the POMO indicator, we need to establish the shares of oligarchic groups on the media market as a whole. For that we need to know to how many media are the individual groups of owners connected. We examined these relations in the previous chapter and we have established the shares of media owners on the markets with radios, press, television, and news websites.

Now we need to establish how much power does, for example, J&T or Penta have in the Slovak market for all news media or Andrej Babiš in the Czech market for all news media. To do this, we need to take into account that different mediatypes or platforms reach

different shares of audience. For example, the MML-TGI research explicitly states that 30% of the Slovak population reads daily newspapers ('read yesterday'), 59% of the population listened to at least one radio ('listened yesterday') and 77% of the population watched television ('watched yesterday'). From IABMonitor it can be estimated that approximately 2 572 000 real users accessed websites on the Slovak Internet daily on average in November 2020, representing 47% of the Slovak population. We have weighted the market shares of the owners on the platform market by these percentages to get the real figure representing the true share of the audience of the whole media market⁶⁵⁶ (as it is described in the chapter on methods including the exact mathematical formula). The results are shown in Tables 51 and 52. In both tables, an interesting new figure is generated: Reach of a given group of owners. It shows how large the population of both countries is reached by the listed oligarch or owner on a daily basis. The sum of these numbers is more than 100 percent, because people consume more media a day, but it provides us with important information on how powerful is each oligarch on the media market as a whole. The figure POMO then shows how powerful the oligarchs are relative to each other (as a percentage of the sum of all their reaches).

⁶⁵⁶ For instance: Mr. Siekel has 35,82% of the Slovak daily press market. To establish the real weight of this figure, we multiplied the figure by 0,30 (because the daily press market covers 30 percent of the population) and we got a figure 10,75. This is the real reach of the daily newspapers owned by Mr. Siekel on Slovak population.

Table 51 – Power of Media Owners in Slovakia (2020)

Group	Radios		Daily press		TV		News websites		Total	
	Share in the radio market	Share of the population	Share on the daily press market	Share of the population	Share in the TV market	Share of the population	Share in the news web market	Share of the population	Reach of an owner ⁶⁵⁷	POMO
J&T	23	13,57			20,4	15,71			29,28	10,87
Penta			21,15	6,35			12,99	6,10	12,45	4,62
P. Kellner					26,3	20,25	3,41	1,60	21,85	8,11
A. Siekel			35,89	10,75			11,79	5,54	22,54	8,36
A. Babiš			7,69	2,31			4,69	2,20	4,51	1,67
Our Media			12,82	3,85			7,47	3,51	7,36	2,73
P. Vajda			7,05	2,12			7,24	3,40	5,52	2,05
I. Kmotřík					2,4	1,85	3,19	1,45	3,3	1,23
Slovak Republic	24	14,16			10,9	8,34			22,5	8,35
Bauer	21	12,39							12,39	4,79
Ringier AS							17,13	8,05	8,05	2,98
M. Mác							13,57	6,38	6,38	2,37
N Press			7,69	2,31			6,08	2,86	5,17	1,92
B. Kollár	13	7,67							7,67	2,85
Other	19	11,21	7,71	2,31	40	30,8	12,44	5,85	50,17	37,1

⁶⁵⁷ One person can be a viewer of a television, a listener of a radio, reader of a daily and a reader of a website with news, all in one day.

The largest audience can be reached in television, so the most powerful media owner in the Slovak market is the J&T Group. Important players were also P. Kellner, A. Siekel, and also the public service broadcaster RTVS. Penta holds less than 5 percent of the examined markets, but it should be noted that Penta is a dominant player on other markets that were not included in this research, such as the markets with weekly or monthly magazines, so its real power on the Slovak media market is in fact higher. A. Babiš is present as only a minor player, but the same applies to his firms – they hold many magazines that are not represented in these data, so his real power over the Slovak media market would be relatively higher if we would include markets with magazines.⁶⁵⁸

The fact that „other“ is more than 37 percent is attributed to foreign television channels watched in Slovakia, predominantly Czech and Hungarian TV channels that are not represented in Slovak data, or they are only represented as „other“ channels without specification. Also, part of this is the audience of smaller radios (regional or specialized in genre-specific music or, for instance, religion) or smaller websites than those represented in our data.

This table shows that there is cross-platform concentration in the Slovak media market as a whole. The POMO indicator shows the relative power of media owners to each other. There is no single owner of the media that would have a dominant position on the market with all information. Even if we perform Top 4 or Top 8 analysis,⁶⁵⁹ from economic perspective, it would be a competitive market with a sufficient number of actors. However, is more than 10 percent control over all information flows in the country in the hands of just one business group with political interests, a small number? If we take into account that J&T owns the second largest television and that the foreign televisions represented in the „other“ part of the data do not broadcast any Slovak news, then we might come to the conclusion that controlling more than 10 percent of all the media markets can, for example, significantly influence the result of an election. Slovakia is fortunate not to have oligarchs operating on all of the markets, even if J&T had shown in the past that it could build some form of connection with a daily press with strong online presence (Pravda daily). Such a cross-platform concentration is a significant risk.

658 The magazines are not represented because the daily reach cannot be measured and also because most of them are out of focus of this dissertation (because they are highly specialized, f. e. on hunting and fishing, running etc.). On the other hand Penta owns the most popular tabloid weekly Plus7Dní and also the only Slovak economic weekly Trend. Therefore, if weeklies would be represented in this research, Penta would score relatively higher.

659 Top 4 groups of owners do not control more than half of the market (it is 35,7 percent in Slovakia) and top 8 firms do not control more than 70 percent of the market (this value is 50,75).

Regarding the POMO calculation in Czechia, readership of the daily press in Czech Republic is 39%⁶⁶⁰, Czech radios have daily reach 59%⁶⁶¹, television is watched by 71% of Czechs every day.⁶⁶² The Internet has 5 573 100 real users every day representing 52,07 percent of the population.⁶⁶³ The share of population data in Table 52 represents the share of audience each owner is reaching daily on each platform and then it is weighted by the size of the market he is on.⁶⁶⁴

660 Mediaprojekt 3-4Q/2020. Median. Online: <https://www.median.eu/cs/wp-content/uploads/2021/02/mpk44tz04.pdf>. (Quoted 13. 11. 2021).

661 Radioprojekt 3-4Q/2020. Median. Online: https://www.median.eu/cs/wp-content/uploads/docs/RP_prezentace_2004_v07.pdf. (Quoted 13. 11. 2021).

662 This figure was provided to us by email by Mr. Vladimír Kožíšek, a director of MML-TGI research, because the Czech MML-TGI is not publically available. KOŽÍŠEK, V. 2021. E-mail communication. 13. 11. 2021. 13:13.

663 MAV. 2021. Přehled českého mediálního trhu v roce 2020. [*Czech media market overview*]. IN: *Mediaguru.cz*. Online: <https://www.mediaguru.cz/clanky/2021/03/prehled-ceskeho-medialniho-trhu-v-roce-2020/>. (Quoted 13. 11. 2021).

664 If only 39% of people read the daily press, the share of population belonging to a specified owner is computer as the his share on the market times the size of the market, for example Andrej Babiš has 34,39 percent on the daily press market $\times 0,39 = 13,41$. This prepresents how much of the population he can reach through his newspapers.

Table 52 – The Power of Media Owners in the Czech Republic (2020):

Group	Radios		Daily press		TV		News websites		Total	
	Share of radio market	Share of the population	Share of daily press market	Share of the population	Share of TV market	Share of the population	Share of the news web market	Share of the population	Reach of an owner	POM O
Czech Republic	25,22	14,88			33,22	23,58	1,99	1,03	39,49	17,87
P. Kellner					28,92	20,53			20,53	9,29
I. Zach	14,91	8,80			27,88	19,78			28,58	12,93
J. Soukup					3,66	2,60			2,60	1,17
J&T/CMI	23,09	13,62	38,58	15,05	2,06	1,46	7,71	4,01	34,14	15,45
A. Babiš	14,38	8,48	34,39	13,41	0,98	0,70	17,34	9,02	31,61	14,31
Media Bohemia	20,64	12,18							12,18	5,51
Z. Bakala			5,56	2,17			4,82	2,51	4,68	2,12
Borgis/ Seznam			6,76	2,64			61,74	32,10	34,74	15,72
Penta			14,68	5,73			3,75	1,95	7,68	3,48
Our Media							1,16	0,60	0,60	0,27
Other	1,76	1,03	0,03	0,01	3,28	2,32	1,49	0,77	4,13	1,87

In Table 52 it is evident that the level of cross-platform concentration is much higher in the Czech Republic than in Slovakia. There are several strong players on the Czech media market, and each of them controls a significant percentage of all media and therefore of all information flows (of the content created by media). In the Czech Republic, it is the state that could potentially influence the greatest audience through the public service media, and this strengthens the argument claiming that their protection from capture should be an absolute priority. Second and third place are close and they belong to the

cartel of Seznam and Borgis (that should have been prevented by the authorities based on dominance on market with online news) and to CMI group that operates on every single market and shows a large cross-platform concentration. If we would include more markets, such as press distribution or online TV, the score of CMI would be even higher. A similar case is Agrofert, controlled by Andrej Babiš. He is closely the fourth strongest entity on the market while being present on all examined markets, and if we included more markets into analysis, such as the magazine market, his POMO score would be even higher. Another owner of several media with bigger share of the total market than, for example, anyone in Slovakia, is Mr. Ivan Zach, also present on several markets. These three owners – Zach, Babiš and CMI – clearly prove that the cross-media ownership regulations do not work as intended, or they might not be satisfactory for the new situation.

If we perform Top 4 analysis of the Czech market, we find that the four biggest groups control more than 63 percent of the market with information! If this figure is higher than 50 percent, it is considered to be undesirable concentration even from the economic perspective.⁶⁶⁵ In this light, 63 percent is an alarming number. If we take fifth player into account, the five biggest power centers control more than 76 percent of the market! If we apply Top 8 analysis, the 8 biggest actors control 94,5 percent of the market. This figure is considered undesirable if it is higher than 70 percent.

From an economic perspective, this distribution of power on the market would already be a moderate concentration, from the perspective of political pluralism the crucial question is how these strong players are connected to political and other societal interests. If they are an impersonation of the collusion between the economic and political power as, for instance, Mr. Babiš, the risk of consequences for journalism and, therefore, for pluralism of information is enormous.

4. 3. Media capture analysis

In the legal analysis, we have found some institutes of the law that had worked as intended to prevent total political capture of, for instance, public service media, such as the election of only a third of their council members every 2 years. This happened to work due to the relative instability of both the Slovak and Czech political landscape and the pluralist nature of their parliaments and governments, both often consisting of several parties. In

665 VALCKE, P. (et. al). 2009. p. 73.

this subchapter, we analyse not only how the institutions are really captured, but we are also trying to imagine how they would work under an assumption that the pluralist nature of the society might one day change. For example, what would happen if only one party would govern the country for substantially long time, such as the case of Hungary – would those rules like electing one third of the council members every 2 years still prevent the total capture of the public service media by one center of power? In other words, here we are analyzing the current state of media capture in Slovakia and Czechia, but also the potential risks and dangers.

In this subchapter we analyze the media capture in Slovakia and Czech Republic according to the objectified criteria defined in the second chapter – divided into four components: (1) regulatory capture, (2) control of public service media, (3) use of state financing as a tool for media capture, (4) ownership takeover. Numeric values will be assigned to the realities in the examined states according to the evaluation criteria described in detail in chapter 2.

4. 3. 1. Regulatory capture

This section is divided into the two examined states and then their individual institutions under scrutiny. Broadcasting and antimonopoly regulators from both countries are assessed for possible regulatory capture.

Broadcasting Council of Czech Republic

Several political nominees were found among members of this body: The chairman of the Czech Broadcasting Council Mr. Václav Mencl is a former politician, long-term member of the parliament, former mayor of Czech second largest city, and is affiliated with the ODS party, which nominated him to the council as well. Vice-chairman Milan Bouška was a spokesperson of this party and was nominated by the party as well. A member Václav Jehlička was a minister in ODS-led government and a member of KDU-ČSL party and later TOP09 party (political partners of ODS). Another member of the council Mr. Ladislav Jakl was an aide to long-term ODS chairman and then Czech president Václav Klaus. Hana Dohnálková was nominated for her second term in the council by the ANO party. A member Mr. Jiří Janeček was nominated by the ANO party, as well as Mr. Daniel Köppl, Mr. Jiří Maceška and also Mr. Vadim Petrov. Mr. Ladislav Šnícl was a politician for ČSSD party, a former coalition partner of ANO. Mrs. Lenka Králová was a nominee

of the SPD party and Mr. Daniel Novák was nominated by the communist party KSČM and Mrs. Marta Smolíková by the Pirate Party.

In this case we can come to a conclusion that the political parties have divided the influence over the broadcasting regulator and there have been nominees of both governing and opposition parties elected to it. Out of 13 members, 5 are nominees of ANO party, 4 are nominees of ODS, and then 4 smaller parties each has one nominee. There is nobody clearly independent (not nominated by any party). It means that there is some pluralism in the council, but it is attributed to the tradition of pluralism in Czech politics and the changes of the political majority after each election, but it is not guaranteed by the law. If there was a party seeking total regulatory capture in power for sufficiently long time, it would not be complicated to capture this regulatory body. The evidence for this claim is self-evident looking at the current members – they have all been (except two members) selected by one governing majority, during the government of Mr. Andrej Babiš between 2017 and 2021. The strategy to secure plurality would be to introduce selection of a third of the members every 2 or even 3 years (so the chance that a different political majority elects members is increased) or dispersion of this power between different actors, such as the president or the Senate (created in different elections).

As this is not in place, but the council is still pluralist and includes the members of the opposition (even representing parties that had never been in government), it ranks 5 on our scale defined in the chapter on methods.

Office for the Protection of Competition of the Czech Republic

The chief of the office is selected by the government but appointed by the president, and these two political centers seem to really divide the power, since the role of the president was shown to be active in the latest nomination. The danger is that one of the players, this time the government, would exchange this position for something else in political negotiations and, therefore, leave the president to appoint his nominee. That would pose a significant threat to the capture of the institution. How true is this in reality, we might never know because of the nontransparent nature of the relationship between the president and the government, not commenting on crucial issues like who is going to be the director and how to solve a crisis.⁶⁶⁶ Only the simple fact that it was the president solving an

⁶⁶⁶ ČTK. 2020. Zeman přijal v Lánech Rafaje. Výsledek schůzky hrad nechce komentovat. [*Zeman was visited by Rafaj in Lány. The results are not to be commented*]. IN: *Lidovky.cz*. Online:

alleged corruption scandal of the head of the authority and then deciding who is to replace him, seems to provide a clue about the capture of this institution. Furthermore, the head of the institution with the scandal Mr. Rafaj is a former politician and he had nominated people close to his political party ČSSD to several committees, he employed aides who previously worked for both presidents that appointed Mr. Rafaj or even a lawyer close to an oligarch Daniel Křetínský⁶⁶⁷, there has been a police surveillance of his meeting with ANO politician talking about a competition case⁶⁶⁸ and he had faced many scandals before he was finally forced to step down⁶⁶⁹. Since the current director was selected by the president and previously was a deputy minister in the 2017 – 2021 government, this is seen as a political nomination, not an expert one. Some of the decisions of the authority in above mentioned cases faced criticism for being biased, and the authority seems to not reflect on the European trends, such as possible interdiction into media mergers based on pluralism argument.⁶⁷⁰ Therefore, we assess capture level 7.

This means that our assessment of overall regulatory capture in the Czech Republic in terms of media is 6 (an average value for the two institutions).

Broadcasting Council of Slovakia

Similarly to the Czech Republic, this council is not full of representants of societal groups from the civil society – to the contrary, several political nominees can be found in past, as well as today. In past there were, for instance, Mr. Milan Blaha, father of a member of the parliament for Smer party, Mr. Karol Haťapka was a nominee of SNS party, Mr. Pavol Dinka was previously affiliated with HZDS party (of Vladimír Mečiar)⁶⁷¹, Nowadays, there are members originally nominated as candidates by members of parliament for the

https://www.lidovky.cz/domov/zeman-prijal-v-lanech-rafaje-vysledek-schuzky-hrad-nehce-komentovat.A200916_155844_in_domov_litsp. (Quoted on 3. 11. 2021).

667 VALÁŠEK, L. 2019. Rafaj dosazuje na antimonopolní úřad své blízké. Rozhodují o miliardách.

[*Rafaj appoints his close people to the antimonopoly office*]. IN: *Idnes.cz*. Online:

https://www.idnes.cz/zpravy/domaci/petr-rafaj-poradci-na-uohs.A190708_173416_zpravodajstvi-hp_lva. (Quoted on 8. 11. 2021).

668 VACULÍK, R. MARTINEK, J. 2019. Faltýnovy výmluvy neobstojí, odposlechy jsou zdrcující.

[*Excuses of Faltýn are not plausible, the surveillance is devastating*]. IN: *Novinky.cz*. Online:

<https://www.novinky.cz/domaci/clanek/faltynkovy-vymluvy-neobstoji-odposlechy-jsou-zdrcujici-40273709>. (Quoted on 8. 11. 2021).

669 VALÁŠEK, L. JELÍNKOVÁ, A. 2020. Tajné schůzky, lobbisté, podivné smlouvy na byty. Šéf

ÚOHS Petr Rafaj rezignoval. [*Secret meetings, lobbyists, suspicious flat contracts. The chief of ÚOHS*

Rafaj had resigned]. IN: *Aktualne.cz*. Online: <https://zpravy.aktualne.cz/domaci/rafaj-rozcestnik/r~486eba0cfe3d11eaa6f6ac1f6b220ee8/>.

(Quoted on 8. 11. 2021).

670 OSTER, J. 2017. p. 478.

671 HZDS nominated him as a candidate for Council of Slovak Radio in 2004.

main governmental party Pavel Izrael (nominated by OĽaNO MP), Ivan Bindas (nominated by OĽaNO MP), Mrs. Lenka Jakubčová was nominated by MP for another governmental party SaS, Mrs. Anikó Dušíková and Mr. Gyorgy Batta were nominated by MP for Most-Híd in previous parliament. There are several formally independent members, but, for instance, Mr. Pavol Holeštiak served as a chief of staff for regional mayor and now a vice-chairman of Smer party. Mr. Andrej Zmeček is also an independent, even if he had previously affiliated with a campaign of Mr. Radoslav Procházka, a chairman of a short-lived party that was a minority member of the government with Smer, SNS, and Most parties. Only the chair of the council, Marta Danielová, and her vice-chair, Andrea Cocherová, seem to be independent. This means that the vast majority of the council are political nominees, but no party has a clear majority in the council. This might be attributed to one safeguarding rule: One third of the council members are elected every two years. This rule seeks to prevent total capture of the council by one government or ruling majority, but it only works if the political majority in the country would be changed in every election. We found this council to be less captured (directly) by the politicians than in the Czech Republic, but there is a lack of safeguard in law, because there is still a potential danger that the council could be captured if one majority would rule the country for more than 4 years.

On our scale of regulatory capture, this agency is 6,5 – because it is full of political nominees, their representation is pluralist and in past there were several politically biased decisions, for instance, the one related to SNS party later dismissed by the Constitutional Court of Slovakia⁶⁷². The independence of this regulatory body was also assessed by a non-governmental think-tank Ineko – it gained only 48% of points in 2020, 53% in 2019 and 49% in 2018.⁶⁷³

Antimonopoly Office of Slovakia

The director Tibor Menyhart is currently a political nominee of a then-governmental party Most-Híd (minority partner in the coalition government 2016 – 2020 and also in 2011, when Menyhart was appointed for the first time). The director has connections to an oligarch behind the Most-Híd party and had admitted that the oligarch might have helped

672 Judgement of the Constitutional Court of Slovakia no. II. ÚS 307/2014-45.

673 INEKO. 2020. *Hodnotenie nezávislosti inštitúcií*. [Independence of institution evaluation]. Online: https://institucie.ineko.sk/institucie/rada_pre_vysielanie_a_retransmisiu/hodnotenie. (Quoted on 7. 11. 2021).

him in his career.⁶⁷⁴ The decisions do not seem to be biased, but not all of them are up to current European standards – especially those on media acquisitions were never interdicted based on political pluralism, despite European Commission clearly allowing such interdiction.⁶⁷⁵ It was proven that the economic criteria are not enough in cases of media mergers and the Antimonopoly Office of Slovakia seems to not reflect on this fact. Therefore, this agency ranks 6 on the scale of regulatory capture.

This means that the overall assessment of regulatory capture in Slovakia in terms of media regulation is 6,25.

4. 3. 2. Control of public-service media

This component of media capture consists of these criteria: (a) institutional independence, (b) funding, (c) number of mutually independent public service media institutions, and (d) other factors.

(a) Institutional independence.

In the Czech Republic, the nomination and election process of the director of Czech Television and Czech Radio is formally separated from politics by the Council of ČT and the Council of ČRo. However, members of these councils are elected in parliament, one-third of the members every 2 years. As already described above, political parties push their favourable nominees despite the rule forbidding political nominations. The councils then become a political ring – as it happened with the Council of Czech Television in 2020 after 3 nominees of the government were elected and they started their campaign against the long-term director Mr. Petr Dvořák, a professional media manager, ex-director of commercial TV Nova, and current vice-president of the European Broadcasting Union. He was also criticized by the Czech president Miloš Zeman who tried to frame the director as a part of political opposition.⁶⁷⁶ The council has a right to change the director, but only from a given range of legal reasons – and some of the members attempted to find an

674 TURČEK, M. 2019. Kto ovláda Protimonopolný úrad? Ľudia s väzbami na oligarchu spájaného so stranou Most-Híd. [*Who controls the Antimonopoly Office? People with connections to the oligarch related to Most-Híd party*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/660986/protimonopolny-urad-je-napojeny-na-oligarchov-okolo-bugara/>. (Quoted on 7. 11. 2021).

675 OSTER, J. 2017. p. 478.

676 ČTK. 2020. Zeman se opřel do České televize. Je to součást opozice, řekl. [*Zeman took on Czech Television. It is a part of the opposition, he said*]. IN: *Denik.cz*. Online: https://www.denik.cz/z_domova/prezident-zeman-ct-opozice-20201111.html. (Quoted on 15. 11. 2021).

pretext to achieve this.⁶⁷⁷ This was interpreted as an attempt to capture the institution and it sparked a public demonstration against this attempt.⁶⁷⁸ There were a lot of political and legal controversies with a lot of media attention and politicians of different parties fighting over individual nominations in the council, until the main initiator of the campaign against Mr. Dvořák, Mrs. Hana Lipovská, had her mandate revoked by the parliament because of her candidacy in parliamentary election⁶⁷⁹ for the same party as Jana Bobošíková, an actor of the previous attempt to capture the Czech Television in 2000 – 2001. The politicians were unable to deal on who should replace the members of the council with terminated mandate and repeatedly postponed the vote⁶⁸⁰ - which brought the council to a situation with 6 of the 15 seats vacated and that obstructed some of the council sessions.⁶⁸¹ This is an interesting observation – the opposition had postponed the vote so long that the government was unable to elect their nominees – and thus de facto had prevented the governmental capture of this institution. The question remains whether the new majority in the parliament created by election in 2021 is going to appoint their political nominees as well or perhaps independent experts.

The events of 2020 – 2021 in the Czech Television Council show that the institution can be captured – if the government would have clear majority in parliament for sufficiently long time, it would be able to appoint its people into the council and then change the director and capture the institution. Thus, institutional independence is not fully guaranteed. However, to replace the director, it is a longer process, divided into several timeframes because one third of the council is elected every two years, there are several actors involved, and legal reasons why the director might be changed are given – so it is

677 DOLEJŠÍ, V. 2021. Rada České televize si otevřela cestu k odvolání ředitele Dvořáka. [*Council of Czech Television opened a way to push Dvořák out*]. IN: *Seznamzpravy.cz*. Online: <https://www.seznamzpravy.cz/clanek/rada-ceske-televize-si-otevrela-cestu-k-odvolani-reditele-dvoraka-147230>. (Quoted on 15. 11. 2021).

678 ČTK. 2020. Autoprotest na Kavčích horách. Lidé demonstrovali za nezávislost ČT. [*Car-demonstration on Kavčí hory. People demanded independence of ČT*]. IN: *Novinky.cz*. Online: <https://www.novinky.cz/domaci/clanek/autoprotect-na-kavcich-horach-lide-demonstrovali-za-nezavislost-ct-40342469>. (Quoted on 15. 11. 2021).

679 KOPECKÝ, J. 2021. Lipovskou odvolali z Rady ČT. Tomio, ty nejsi krysa, volal Volný, pak se rval. [*Lipovská was revoked from the Council of ČT. Tomio, you are not a rat, shouted Volný, then he fought*]. IN: *Idnes.cz*. Online: https://www.idnes.cz/zpravy/domaci/odvolani-lipovske-z-rady-ct-snemovna.A210917_100347_domaci_kop. (Quoted on 15. 11. 2021).

680 RYŠAVÁ, M. KLÍMOVÁ, J. 2021. Jednání zkrachovala. O nových členech Rady ČT poslanci opět nehlasovali. [*Negotiations failed. The parliament did not vote on new members of the Council of ČT once again*]. IN: *Ihned.cz*. Online: <https://domaci.hn.cz/c1-66932690-jednani-zkrachovala-o-novych-clenech-rady-ct-poslanci-opet-nehlasovali>. (Quoted on 15. 11. 2021).

681 MAV. 2021. Zasedání Rady ČT se kvůli nízkému počtu členů neuskutečnilo. [*Meeting of the Council of ČT did not start due to lack of present members*]. IN: *Mediaguru.cz*. Online: <https://www.mediaguru.cz/clanky/2021/08/zasedani-rady-ct-se-kvuli-nizkemu-poctu-neuskutecnilo/>. (Quoted on 15. 11. 2021).

not upon a decision of potentially just one powerful politician, but the powers are a bit more dispersed, and there are several checks and balances. Therefore, we assess the institutional independence of Czech Television and also Czech Radio (with the same system of council as ČT), by a grade 6 on our scale from 0 (total independence) to 10 (total capture).

Public service Czech Press Agency (ČTK) also has a council, but there is no safeguard of electing part of the members in different election cycles, so, in fact, the government of 2017 – 2021 had elected all of them – although 3 of 7 members were nominated by the opposition. That means that the governing majority in parliament had effectively captured the council and nominated Mr. David Soukup, a member of the governing party ANO, as the chairman of the council. A member of the council and another nominee of the ANO party Mr. Žantovský is often labelled as a disseminator of disinformation⁶⁸² - which is an unusual nomination, given the role of ČTK. The director of ČTK is its former professional journalist and was reelected in 2017 for another six years. This means that the council of ČTK might be already politically captured, but not the institution itself. Moreover, the political majority of 2017 – 2021 only has 4 members of the council, and the law requires votes of at least 5 of them to change the director. Therefore, there is some institutional independence and checks and balances, but in fact if the governing majority would decide to ignore the opposition and elect only their own nominees, there are not many institutional checks that would prevent this. Therefore, on the scale from total institutional independence to total institutional capture, ČTK scores 6,5 – only slightly more institutionally captured than Czech Television.

In Slovakia, the Council of RTVS is not fully independent of politicians because not only it is elected in parliament, following often clearly political nominations, but also some of the members of the council are connected to politics. The main governing party OĽaNO had elected their unsuccessful candidate from the parliamentary election Mr. Tomáš Caban to the Council and he is also employed under ministry of labour (governed to another coalition party Sme rodina) - so there is a potential for both political and economic influence over him. There are other political nominees in the Council as well – Mrs. Jarmila Mikušová was nominated directly by a member of parliament for then-governing

682 KADLEC, M. 2019. Petr Žantovský, docent dezinformatiky. [*Peter Žantovský, the assistant professor in disinformatics*]. IN: *Manipulatori.cz*. Online: <https://manipulatori.cz/petr-zantovsky-docent-dezinformatiky/>. (Quoted on 15. 11. 2021).

party Smer Dušan Muňko. The head of the Council, Igor Gallo, is reportedly close to an oligarch Jozef Brhel⁶⁸³, who is related to Smer party. By the time of writing, Mr. Brhel is under criminal investigation for corruption charges.

The council is not responsible for the election of the director of the single public service broadcaster RTVS – the election is more straightforwardly politicized than in the Czech Republic. The process of nomination and control of the director is a political one: the simple majority in parliament elects the director, which allows the governmental parties to select their nominees without the need to deliberate with the opposition. If there was a single-party government (as in 2012 - 2016), the leader of the strongest party could easily pick his ideal candidate and push him through the parliament with no checks or balances. Yet, there is a public process of candidates presenting their projects in front of a parliamentary committee for culture and media, where the opposition has a minority representation – so in our scale this is not a clear 10 (that would be a nontransparent nomination of the director by the prime minister or chairman of the strongest party), but 9. It is a direct political decision of potentially only one person, a great tool for political capture.

The institutional independence of the TASR agency is formally better guaranteed by the election of the director on the Board of TASR, which is elected by the parliament. The vote is then indirectly political, and one of the five members is elected by the employees of TASR. On other hand, the remaining 4 members are elected all at the same time, there is no mechanism in place that would guarantee that no single political power can take over the majority in the board. In fact, the board members elected Mr. Rezník as a director in the past and then, when he decided to run for the director of RTVS, they elected his close aide Mr. Vladimír Puchala. TASR is institutionally more independent of politicians than RTVS, but the influence to assert capture can still be observed. Our institutional capture assessment is 7,5.

The average number for Slovakia in this category is then 8,25.

(b) Funding. In the Czech Republic, funding of public service media is also guaranteed by the system of 'concessions', a fee with a firm sum set by law that flows directly from

683 TURČEK, M. 2021. Šéfovi Rady RTVS zostane už len jedna stolička. O funkciu v štátnej firme prišiel. [*Chief of Council of RTVS remains on one seat only. He lost the job in state company*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/865831/sefovi-rady-rtvs-zostane-len-jedna-stolicka-o-funkciu-v-statnej-firme-prisiel/>. (Quoted on 1. 11. 2021).

the people to the public service institutions. This means that politicians do not have to deliberate around the budgets of public service broadcasting every year. They do have power over the law, so they can raise or lower the fee, and they have not changed it since 2008. This makes the management of Czech television complain about the insufficiency of funding and the need to change the current model or to raise the sums of the fees. The financial situation of public service media in Czech Republic is then indirectly dependent on political decisions, but it is not a case similar to Slovakia – the directors do not have to beg politicians for money every year in nontransparent deliberations and therefore are financially more independent. For Czech Television and Czech Radio the grade is 5. For the Czech Press Agency, the institution itself claims that it is not financed by any state or public funds, and indeed there is no mention about any state subsidies in its annual final reports.⁶⁸⁴ The whole budget is based on selling the agency news. The law allows for financing from the state budget, but the agency did not demand any state money and claims to be independent both financially and politically. Another question is who are the clients and how many of them are public institutions – this is not published by the agency. However, we assess financial independence as very high, at the level of 1 on the scale from 0 (total independence) to 10 (total capture). The average grade for the three institutions is 3,66.

In Slovakia, the funding of RTVS is not entirely dependent on one political decision, because there is a system of 'concessions' in place that ensures that the majority of the institution's budget is directly from the people. As was already explained, this amount is regularly insufficient and the director of RTVS has to ask politicians for additional money from the state every year. This makes the institution financially dependent on political negotiations and the simple fact that this happens annually puts the institution into a position of a child that is asking the parent for a pocket money, in which the parent can say: You did not obey, you get nothing. In such a case, many activities of the institution would be halted. Therefore, our assessment is that in terms of financial independence, the Slovak system is at grade 8 – with public service media dangerously dependent on political decision.

TASR claims that the majority of its funding comes from selling their product – the agency news. In fact, half of their budget comes directly from the state budget – and

684 ČTK. Final Report for 2020. Online: https://i3.cn.cz/filedefault/1630659412_VZ_CTK_2020_final.pdf. (Quoted on 15. 11. 2021).

therefore is a subject to political decision making as it is with RTVS. For the simple reason that TASR can at least influence its own budget by selling more or better or differently priced news to actors outside government, we assess its financial independence a point lower on the scale as the public service broadcaster – at 7.

(c) Number of mutually independent public service media institutions.

There are only two mutually independent public service media in Slovakia, compared to three in Czechia. The Slovak Radio and the Slovak Television were concentrated by a politician with the purpose of easily getting rid of the nominee of the previous government on the post of the television director in 2010. The centralization is difficult to assess; RTVS has regional offices, but its management is directly dependent on the general director. In addition to this fact, there is not much decision-making activity in the regions. The TASR press agency is a very centralized institution, which sways the assessment towards grade 7 of our scale: Slovakia has two independent institutions with mostly centralized governance.

The Czech Republic has 3 public service institutions, since Czech Television and Czech Radio are separate institutions. They have centralized governance, so the grade is 5.

(d) Other factors. This is the most difficult part because it is comprised of many factors that do not have an exact base in publicly available data. Based on the criteria described in the chapter on methods, we found that the director of RTVS has clear political backing⁶⁸⁵ and at times there is a bias in favour of his political allies⁶⁸⁶, he has some clear

685 TASR. 2020. No title. IN: *Dennikn.sk*. Online: <https://dennikn.sk/minuta/1908538/>. (Quoted on 20. 11. 2021).

686 DÁVID, M. 2020. Ponaučenia z volieb: RTVS nadržovala Dankovi a Facebook nevedel stopnúť Fica ani kotlebovcov. [*What we learned from the election: RTVS favoured Danko, Facebook could not stop Fico or Kotlebas*]. IN: *Tyzden.sk*. Online: <https://www.tyzden.sk/politika/63506/ponaucenia-z-volieb-rtvs-nadrziavala-dankovi-a-facebook-nevedel-stopnut-fica-ani-kotlebovcov/>. (Quoted on 20. 11. 2021).

political adversaries⁶⁸⁷⁶⁸⁸, the critical voices were punished or pushed out⁶⁸⁹ on several occasions⁶⁹⁰ and was criticized for political bias by the international journalist organizations⁶⁹¹ as well as hundreds of other Slovak journalists⁶⁹². On the other hand, the broadcasting is not openly serving one specific party on a daily basis. It is hard to base a claim on no critical reports without a proper evidence-based study into the content of the broadcasting, therefore we cannot assess RTVS as clear 8 or higher, but there is also no evidence to support a claim that RTVS is at least partially noncaptured or critical towards Sme rodina party or SNS party previously. Therefore, we assess the place of RTVS on our scale to be between stage 7 and 8. The figure we will use for further analysis is 7,5. The TASR agency had shown symptoms of uncritical coverage and bias in favor of SNS party⁶⁹³, especially before elections⁶⁹⁴. It is hard to assess whether this is occasional or not, but there is in general less evidence for a systematic political bias than in RTVS, so we assess the capture in TASR at level 6.

The total averaged grade is then 6,75.

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- 687 RTVS. 2020. Stanovisko RTVS: Tvrdenia poslanca Čekovského sú zavádzajúce. [*RTVS statement: What MP Čekovský claims is misleading*]. IN: *Rtvs.sk*. Online: <https://www.rtvs.sk/televizia/clanky/232602/stanovisko-rtvs-tvrdenia-poslanca-cekovskeho-su-zavadzajuce>. (Quoted on 20. 11. 2021).
- 688 TASR. 2021. Parlamentný výbor riešil zistenia NKÚ o RTVS: Kristián Čekovský hovorí o zlom hospodárení. [*Parliamentary committee looked at NKÚ findings on RTVS: Kristin Čekovský speaks of mismanagement of resources*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/2254wjl/parlamentny-vybor-riesil-zistenia-nku-o-rtvs-kristian-cekovsky-hovori-o-zlom-hospodareni/>. (Quoted on 20. 11. 2021).
- 689 CUPRIK, R. 2020. Koalícia sa šéfa RTVS Reznika nechystá odvolať. [*Coalition will not get rid of the chief of RTVS Reznik*]. IN: *Sme.sk*. Online: <https://domov.sme.sk/c/22378717/koalicia-sa-sefa-rtvs-reznika-nechysta-odvolat.html>. (Quoted on 20. 11. 2021).
- 690 MIKUŠOVIČ, D. 2021. Bývalá redaktorka RTVS Senková: Keď v RTVS zistili, že ma vyhadzujú v tehotenstve, ponúkli mi peniaze za fiktívnu analýzu. [*Former reporter of RTVS Senková: They offered money for fictional analysis when they realized they are firing me during pregnancy*]. IN: *Dennikn.sk*. Online: <https://dennikn.sk/2485403/byvala-redaktorka-senkova-ked-v-rtvs-zistili-ze-ma-vyhadzuju-v-tehotenstve-ponukli-mi-peniaze-za-fiktivnu-analyzu-podcast/>. (Quoted on 20. 11. 2021).
- 691 REPORTERS WITHOUT BORDERS. 2018. RSF concerned about Slovak party attacks on public media. IN: *Rsf.org*. Online: <https://rsf.org/en/news/rsf-concerned-about-slovak-party-attacks-public-media> (Quoted on 2. 10. 2021).
- 692 BÁRDY, P. BALOGHOVÁ, B. KOSTOLNÝ, M. (et. al.). 2018. Výzva novinárov k RTVS: Verejnoprávne médiá nemožno umlčať. [*Appeal of journalists towards RTVS: You cannot silence the public service media*]. IN: *Aktuality.sk*. Online: <https://www.aktuality.sk/clanok/586017/vyzva-novinarov-k-rtvs-verejnopravne-media-nemozno-umlcat/>. (Quoted on 20. 11. 2021).
- 693 ŠÍPOŠ, G. 2015. TASR robí za štátne volebnú kampaň SNS. [*TASR is campaigning for SNS*]. IN: *Transparency.sk*. Online: <https://transparency.sk/sk/tasr-robi-za-statne-volebnu-kampan-sns/>. (Quoted on 15. 11. 2021).
- 694 KERNOVÁ, M. 2015. Agentúra TASR sa zmenila na tlačové oddelenie SNS. [*TASR agency had become a press department of SNS party*]. IN: *Dennikn.sk*. Online: <https://dennikn.sk/blog/173814/agentura-tasr-sa-zmenila-na-tlacove-oddelenie-sns/>. (Quoted on 15. 11. 2021).

In the Czech Republic, public service broadcasting directors seem to have no direct political backing or affiliation, and at some occasions the current directors were labelled as oppositional to the government of 2017 – 2021. The international organizations had warned about the political pressure from the government to the public service media, but this did not materialize into the change of their managements or capture of the institutions. In fact, public service media in the Czech Republic did criticize the government and made its members uncomfortable with their questions and topics, and another public service medium had also published a story on this. The directors of both broadcasting institutions were reelected, not replaced by nominees of the new government. From our observations, the staff of the institutions is stable, performs investigative journalism sometimes criticizing the government, but it is not openly oppositional. This fits into category 3 on our scale. For ČTK it is very hard to assess, but in general it has professional credit, its director is also not politically changed, and it is probably not the goal of the press agency to perform investigative journalism. There is no reason known to us to diverge from a category 3 on our scale for ČTK. So the overall grade for Czech public service media in the category 'other' is 3.

Therefore, if all figures are averaged, the final number for the capture of (or political influence over) the public service media in Slovakia under our criteria would be: 7,36.⁶⁹⁵ In the Czech Republic, the average figure representing the capture of public service media based on our criteria is 4,48.⁶⁹⁶

4. 3. 3. Use of state financing as a media capture tool

State advertising and advertising from the European funds (but distributed to the national media by the national governments) are analyzed, first in Slovakia and then in Czechia.

Slovakia

The schemes of government advertising seem nontransparent in Slovakia and there was analysis showing that only particular media were given the state advertising after the change of government - the winner Rádio Viva was given 271% more state advertising after the change of government, daily Pravda close to the Smer party got 41% more, an

695 Calculated as the figures from the assessment divided by the number of figures: $8,25 + 7,5 + 7 + 6,75 = 29,5/4 = 7,36$.

696 Calculated as the figures from the assessment divided by number of these figures: $6,25 + 3,66 + 5 + 3 = 17,91/4 = 4,48$.

oligarchic-owned TV TA3 repeatedly accused of imbalanced broadcasting or unethical practices got 32% more.⁶⁹⁷ Much of these money comes from the european funds – and it is the government deciding into which media to invest the advertising. The records were broken just before the elections of 2020, and the most money from the state to the media was distributed towards the televisions with the oligarchic ownership: JOJ Media Group recieved more than one third of all state advertising since 2011, TA3 got disproportionatelly more to its market share, similarly Funrádio owned by a politician from Sme rodina party Boris Kollár got twice more advertising money than the radio market leader.⁶⁹⁸ The similar results were shown by a work of Slovak investigative reporter Peter Sabo who has provided us his data⁶⁹⁹ extracted from public databases:

Table 53: State advertising money accepted by Slovak media 2018 - 2020

Slovenská produkčná, a.s.	8,494,413.42
MARKÍZA - SLOVAKIA, spol. s r.o.	5,480,800.86
C.E.N. s.r.o.	3,753,124.27
Zoznam, s.r.o.	1,863,775.99
Radio Services a.s.	1,413,689.91
Media RTVS, s.r.o.	978,368.69
FUN MEDIA GROUP a.s.	951,555.36
News and Media Holding a.s.	742,366.51
EXPRES MEDIA k. s.	720,703.98
MAFRA Slovakia, a.s.	657,030.75

697 TRANSPARENCYBLOG. 2013. Viva, TA3 a Pravda zarobili na príchode Fica II.[*Viva, TA3 and Pravda profited from the second government of Fico*]. *Trend.sk*. IN: Online: <https://www.trend.sk/blogy/viva-ta3-pravda-zarobili-prichode-fica-ii>. (Quoted on 15. 11. 2021).

698 TRANSPARENCY INTERNATIONAL SLOVENSKO. 2019. Vláda pred voľbami točí v štátnych reklamách rekordné peniaze. [*The government feeds record sums to state advertising*]. IN: *Transparency.sk*. Online: <https://volby.transparency.sk/parlament2020/2019/12/17/vlada-pred-volbami-toci-v-statnych-reklamach-rekordne-peniaze/>. (Quoted on 15. 11. 2021).

699 It is a result of his investigative work for Aktuality.sk. He had analyzed 243 contracts between the state and Slovak media companies published in the central registry of contracts between August 2018 and September 2020. The data were provided by Peter Sabo for this dissertation upon a request.

Ringier Axel Springer Slovakia, a.s.	583,191.14
Petit Press, a.s.	464,063.95
Zoznam s.r.o.	408,000.00
See & Go, s.r.o.	396,000.00
Media makler, s. r. o.	288,000.00
RegioMedia, s.r.o.	225,241.80
P E R E X, a.s.	124,480.00
DIGI SLOVAKIA, s.r.o.	120,000.00
Nový čas a. s.	101,981.99
KRATKY GLOBAL: MEDIA, a.s.	92,918.40
RADIO VIVA MEDIA s. r. o.	60,000.00
SITA Slovenská tlačová agentúra a.s.	36,000.00
Nadácia TA3, C.E.N., s.r.o.	18,000.00
Tlačová agentúra Slovenskej republiky	17,280.00
ANIMA Production s.r.o.	12,000.00
Poľnoprojekt Nitra, s.r.o	4,995.00
Grand Total	28,007,982.02

Data: Peter Sabo, extracted from the public registry of contracts Crz.sk., 2018-2020.

Slovenská produkčná is a company owned by JOJ Media House, CEN is the owner of a license for TA3 television. From these data, MAFRA Slovakia (owned by Andrej Babiš) also seems to have a disproportionate share of the state advertising, given that its biggest asset is daily Hospodárske noviny with only 7,69 percent market share on the (small) market with daily press, but has a share of state advertising comparable to the leader of the radio market Expres.

Some of the insiders attribute this large share of state advertising for Mafra to a connection between one of Mafra managers Mr. Ivan Netík and the government that was dividing the advertisement – because Mr. Netík is a former spokesperson of the minister of interior in all three Smer-led governments.

From the data assembled by Mr. Sabo over two years, it looks like estimated yearly expenditure of the state on the advertising could be around 14 million euros. That is nowhere close to the biggest advertising sectors such as banking or retail.⁷⁰⁰ Also another analysis shows that the state is not among the biggest advertisers – but there is one state company among the biggest advertisers – it is Tipos, the state lottery.⁷⁰¹

Using the point-based scale described in the chapter on methods, we arrive at this conclusion: Slovakia has no subsidies for commercial media (0 points), the media get state advertising every year (1 point), it is decided by politicians or their aides (+1), the advertising is not divided proportionally according to the market share of the media – some are overrepresented and some are underrepresented (+1), the state is not among the biggest advertisers (0), some of the advertising goes to oligarchic media that are not the most visible critics of the government (in other words, relative to other media, they are more friends than enemies of those dividing the money) (+1), but the majority of the advertising does not go to any single entity or group of owners that would have direct ties to the government (0). There is no special tax discriminating some media over others (0), there is no transparent scheme for equal competition for the state advertising (0). Slovakia scores 4 points on this scheme.

Czech Republic

Very extensive analysis of the public advertisement allocated to the media was also published in the Czech Republic by investigative journalists from Investigace.cz, a project of an NGO consisting of several journalists. They have shown that disproportional sums of money were directed from ministries of the socialist party (ČSSD) to pro-Kremlin disinformational website Parlamentnilisty.cz (under Our Media publishing house) with

700 In 2019, retail invested 359 million and banking 283 million, according to Kantar agency, quoted in PZ. TS. 2020. Lidl podľa výdavkov do reklamy v roku 2019 vedie v sektore obchod. [*Lidl leads the retail sector according to advertising expenditure*]. IN: *Strategie.sk*. Online: <https://strategie.hnonline.sk/marketing/2119822-lidl-podla-vydavkov-do-reklamy-v-roku-2019-vedie-v-sektore-obchod>. (Quoted on 12. 11. 2021).

701 ŠEVČÍKOVÁ, P. 2021. Top zadávateľia 2020. Špecializovaná príloha mesačníka *Stratégie*. [*Top advertisers 2020. Specialized supplement to Stratégie monthly*]. IN: *Stratégie*. Online: <https://n01.hnonline.sk/storage-01/e2fs/images/2021/04/06/37480712-1846-494c-9be6-b34b5084f624.pdf>. (Quoted on 14. 11. 2021).

only very limited reach.⁷⁰² In exchange, this website published more than positive 50 texts about the minister for this party that gave them the money, extensively quoted regional politicians from ČSSD (because they also received advertising also from their regional mayors).⁷⁰³ On the other hand, the most money coming from the European funds through the Ministry of Education as the biggest investor in advertising, were directed proportionally to the media with the greatest reach – like TV Nova and the Czech Television. The use of these resources was criticized by the Czech Supreme Audit Office for the impossibility of checking the efficiency of the investment in this advertisement and also for advertising European projects only at their end.⁷⁰⁴

The Ministry of Finance under Andrej Babiš personally, had sent advertising money to two radios – one of them owned by Agrofert (= Mr. Babiš) and the second owned by another oligarch Ivan Zach.⁷⁰⁵ Other ministries also did not distribute the state advertising proportionately – the ministry of foreign affairs had invested into media belonging to CMI (Křetínský) and Mafra (Babiš) – 61 percent of their advertising expenditure went to CMI.⁷⁰⁶ According to *Investigace.cz*, one of the biggest spenders was the ministry of health – that almost ignored the existence of CMI and invested 44 percent of the advertising money to Mafra and 16 percent to *Parlamentní listy* (Our Media); ministry of transport invested disproportionately into TV Prima owned by I. Zach and his TV also received more than one fourth of the advertising budget of the ministry of defense (both ministries were under ANO party). The ministry of justice (under ANO) had only invested in Mafra.⁷⁰⁷ It is interesting to observe that Czech Television or Czech Radio as the public service broadcasters got significantly less money than the private (especially oligarchic) media.

702 ČÁPOVÁ, H. KUBÁNIOVÁ, E. 2019. Státní reklama: ministerstva a jejich mediální partneři. [*State advertising: the ministries and their partners*]. IN: *Investigace.cz*. Online: <https://www.investigace.cz/statni-reklama-ministerstva-a-jejich-medialni-partneri/>. (Quoted on 12. 11. 2021).

703 ČÁPOVÁ, H. 2019. Státní reklama: Kdo také platí *Parlamentní listy*. [*State advertising: Who also pas the Parlamentní listy*]. IN: *Investigace.cz*. Online: <https://www.investigace.cz/statni-reklama-kdo-take-plati-parlamentni-listy/>. (Quoted on 14. 11. 2021).

704 SUPREME AUDIT OFFICE OF CZECH REPUBLIC. 2016. Conclusions of control no. 15/26. Online: <https://www.nku.cz/assets/kon-zavery/k15026.pdf>. (Quoted on 14. 11. 2021).

705 ČÁPOVÁ, H. KUBÁNIOVÁ, E. 2019. Ministerstvo financí. [*Ministry of Finance*]. IN: *Investigace.cz*. Online: <https://www.investigace.cz/ministerstvo-financi/>. (Quoted on 14. 11. 2021).

706 ČÁPOVÁ, H. KUBÁNIOVÁ, E. 2019. Ministerstvo zahraničních věcí. [*Ministry of Foreign Affairs*]. IN: *Investigace.cz*. Online: <https://www.investigace.cz/ministerstvo-zahranicnich-veci/>. (Quoted on 14. 11. 2021).

707 ČÁPOVÁ, H. KUBÁNIOVÁ, E. 2019. Ministerstvo spravedlnosti. [*Ministry of justice*]. IN: *Investigace.cz*. Online: <https://www.investigace.cz/ministerstvo-spravedlnosti/>. Quoted on 14. 11. 2021).

Similarly as in Slovakia, the state does not have a transparent mechanism that would allow the media to compete for advertising on equal terms. Investigace.cz had also pointed out that the decisions over the advertising money are mostly upon the head of communication department of the ministry (that is often a very close person to the minister) or upon decision of the minister. There was proven capture in the case of the website Parlamentnilisty.cz, for the other media there was no content analysis made towards the biggest advertisers, so we can only conclude that some of the ministries (not all of them) do really send money to those media that seem to be more „friendly“ to them – for example, Mafra belonging to Mr. Babiš got much more than it would be proportionate, and Seznam.cz that is more independent from politicians and has similar share of the media market as Mr. Babiš, is underrepresented as a recipient of state advertising. The state is not among the biggest advertisers, similarly as in Slovakia, it is retail and banking.⁷⁰⁸

According to our point-based scheme, the Czech Republic does not have state subsidies for commercial media (0 points), the media receive the state advertising regularly (+1) and it is decided by politicians or their aides (+1). State advertising was given disproportionately (+1) to companies that had ties to the government, such as Mafra or Parlamentnilisty.cz (+1), but the state is not among the biggest advertisers (0). The advertising money from the state are quite dispersed, majority of them is not sent to a group of owners tied with government, Mafra does not have more than 50 percent of the advertising (0). There is no discriminatory tax (0), nor any transparent mechanism for equal competition for advertising (0). Thus, the Czech Republic scores 4 points on this scale.

4. 3. 4. Ownership takeover

In this section, the HHI values for owners and also the POMO values are used to analyze the current state of the commercial media ownership takeover.

In Slovakia, the HHI values for media owners in 2020 are shown in Table 28 and they are 1315, 1715, 2126 and 1005 for the four platform markets. The average of these figures is 1540,35 (the average HHI of the Slovak media markets). Following the method described in the chapter on methods, we weight this by a number that is a result of Top 8 analysis

708 MAV. 2021. Reklamní investice do médií loni mírně rostly, nejvíce vložil Lidl. [*Advertising investment into media had grown, the biggest investor is Lidl*]. IN: *Mediaguru.cz*. Online: <https://www.mediaguru.cz/clanky/2021/02/reklamni-investice-do-medii-loni-mirne-rostly-nejvic-vlozil-lidl/>. (Quoted on 14. 11. 2021).

of the Slovak POMO indicator. This value is 50,75 percent. Therefore: $1540,35 \times 0,5075 = 781,73$. This means 3 points on the ownership capture scale from 0 to 10.

In the Czech Republic, the HHI values for media owners in 2020 are shown in Table 50 and they are 2795, 2027, 2943 and 4216. Their average is 2995,25. If we consider this with the result of the TOP 8 analysis of the Czech POMO value (94,5 percent), the calculation is $2995,25 \times 0,945 = 2830,51$. This means 7 points on the scale of ownership capture.

Therefore, the overall level of media capture in each market can be calculated as the average of the scores of each category of media capture. The figures are in Table 54.

In Slovakia, it is 6,25 for regulatory capture, 7,36 for control over public service media, 4 for state financing, and 3 for ownership takeover. On average, it is 5,15.

In Czechia, it is 6 for regulatory capture, 4,48 for control of public service media, 4 for state financing, and 7 for the ownership takeover. Therefore, the overall assessment of media capture in the Czech Republic is 5,37.

Table 54: Media capture levels in the Czech Republic and Slovakia

	Czech Republic	Slovakia
Regulatory capture	6	6,25
Control of public service media	4,48	7,36
Use of state financing as a control tool	4	4
Ownership takeover	7	3
Total (average) media capture	5,37	5,15

Source: Our own processing of data from media capture analysis.

As is apparent, both countries have similar levels of media capture. In Slovakia, the public service media are much more captured than in the Czech Republic. On the other hand, in Czechia the private media are more captured by the oligarchs.

Both countries have their media partially captured. This does not mean total capture by one subject, but partial capture by several different subjects – some degree of pluralism is observable. On the other hand, this result also does not mean media free of capture.

4. 4. Media Systems analysis

As we have already defined in the theory and methods, we are analyzing the position of Slovakia and Czech Republic on the maps of media systems with respect to the state intervention to the media (regulation or its absence). With the help of literature we have created a fourth model of media systems outside of the traditional Hallin-Mancini 3 models, the non-pluralist Eastern Oligarchic Captured Model, to be able to compare positions of Slovakia and Czechia not only within the three western models, but also to a model typical for another neighbouring region.

The role of state in both media systems is substantial. In Slovakia, the governing parties that run the state had practically captured the only Slovak public service broadcaster – its director is dependent on the current political majority, and the institution is also dependent on financial subsidies negotiated annually and decided by the ministry of culture and finance. However, the influence of the captured public service broadcaster is limited – the POMO analysis had shown that the public broadcaster reaches only 22 percent of Slovak population on daily basis and its relative strength on the market is just a little over 8 percent compared to other media groups.

In the Czech Republic, the situation is different – the public service broadcasters are more influential – they reach almost 40 percent of population daily and a state through them (as a hypothetical owner) holds the biggest share of the media market – almost 18 percent. However, the public service media in Czech Republic are less captured by the politicians, so the state (represented by the governing majority) does in fact not assert this power on the market in political terms.

The councils of public service institutions are full of political nominees instead of nominees of different societal groups, which means that Slovakia and Czechia diverge from the Democratic-Corporatist Central-North European model. Since this representation of political nominees tends to be pluralistic (even if there is no legal mechanism ensuring they really are from different political camps) and these councils are by 2021 not yet captured by single political party or majority, in terms of this criterion Slovakia and Czechia are close to Polarized Pluralist model. The political conflicts around

public service media and attempts of political groups to control them – that is also a sign of the Polarized Pluralist model typical for Mediterranean media systems.⁷⁰⁹

Slovakia also shows signs of not fully developed public service media system, since its financing is dependent on the governing politicians and therefore tends to serve the government more than to perform the watchdog role. This is also a sign of the Polarized Pluralist model⁷¹⁰, especially if it is not one party, but the puppet masters do change after elections – and with them, the behavior and also the personal staffing of the public service media.

Media capture as we have measured it does not show that Slovakia or Czechia would be a part of the Eastern Oligarchic Captured model. In fact, these levels of media capture are a hypothetical half way from the free media to those in the authoritarian model. Some degree of pluralism is present, even if it is external pluralism of some of the media being captured by political players competing against each other. Theories framing this as 'berlusconization' have some explanatory value, because it really is a typical characteristic of the Mediterranean media system.

The role of state given by the regulation is similar in the examined countries in terms of levels, but it is different in details. The Czech Republic has more extensive regulation of ownership transparency and bans on conflicts of interest, but Slovakia regulates the cross-media ownership more extensively. However, in practice, there is a lack of intervention from the authorities against breachers or bypassers of these regulations, and in fact the state had been toothless against the oligarchs controlling substantial parts of the markets. The formal regulations then look like in the Democratic Corporatist model, but their factual realization does resemble the Eastern Oligarchic Captured model with more respect to the power of the oligarch than respect to the rule of law.

The level of state intervention in the media is defined by Hallin and Mancini (among other things) also by defamation law. Slovakia and Czechia are not in the liberal media model regime (that is typical for absence of criminal prosecution for any kind of speech) and the law seems to be harsh especially in Slovakia, because it allows to punish a journalist by several years in prison, which would definitely be closer to regimes like Turkey than to any state in Europe. However, in reality this paragraph is almost obsolete, rarely used, if so, then not against journalists, and if there is a police investigation of defamation against a journalist, it is usually stopped at an early stage. If a journalist was sentenced in the

709 HALLIN, D. C. MANCINI, P. 2008. p. 159.

710 Ibid. p. 134, 153.

Czech Republic, it was only by a conditional sentence, and the journalist never went to a prison. The reality thus shows that Slovak and Czech law in practice is closer to the European models than to the eastern ones.

If we look at the criteria derived from Vartanova and Becker to describe the Eastern Oligarchic Captured Model in the theoretical chapter, we can conclude that Slovakia and Czechia do fulfill some of these criteria, such as instrumentalization of journalism (media used by the center of political power as a weapon to attack political enemies), nondesirability of journalism as a profession (young talented individuals leave for PR), Slovakia even fulfills a criterion of appointments to key positions in media management being linked to political loyalty (especially in public service media). However, these criteria are also fitting for description of reality in most of the states in the Polarized Pluralist model.

There are other criteria from Becker and Vartanova where we can discuss how much Czechia or Slovakia falls under them, such as: (a) The state being major player in the leading medium, television. It is true that in both countries the state is a player, but not the strongest player. In Czechia, where there is greater influence of public service media, the power of state over them is only very indirect – the public service mechanisms to separate the political power from the broadcasting have worked so far. (b) The media-industrial complexes exist; some media do play the role of the obedient child of oligarchs instead of watchdogs, but there are also other media that do not play this role and provide the watchdog journalism. (c) Some media are considered to be a part of the power structure, but again not all of them, there are independent media on the market and a substantial part of the audience tends to prefer them over the captured ones (for instance, leading websites with news are not connected to politicians in neither Slovakia nor Czechia).

Then, there are other criteria of the Eastern Oligarchic Captured Model that we find not being fulfilled by Slovakia and Czechia: There is no „very strong“ state influence over the media, there is some tradition of free press in history, there is a polycentric (opposed to monocentric) political regime in both Slovakia and Czechia, which in fact guarantees some plurality, journalists are not routinely prosecuted or sent to jail for their work, in fact, there is no journalist in prison; the voice of investigative journalism is heard in both countries and it has a power to influence the result of election and the change of the government. This does not happen in the Eastern Oligarchic Captured Model –

investigative journalists did not help the change of government in Russia or Turkey, but they most definitely did in both Slovakia and Czechia.

The analysis in this chapter helped establish the level of media capture in both examined countries. On the scale from total pluralism to total media capture, both have scored between 5 and 6. Even if we do not have exact scores from Russia, Turkey, or Hungary to compare them empirically, this might be done by some future research. For now, we only suppose that these countries would score significantly higher, and therefore Slovakia and Czechia are most likely to be outside of such a model. However, since some of the HHI scores had progressed towards more oligopolic markets and since there had been several capture events in both examined states since 2013, it is clear that Slovakia and Czechia had moved on the map towards the Eastern model. To quantify the move exactly we would have to have performed the media capture analysis at several points of time and we lack data and information to do so. The current figures between 5 and 6 nevertheless prove that despite this assumed move to the east, we are not there yet. The results of our analysis prove that there is at least some level of pluralism in both Slovakia and Czechia, that even if the markets are partially captured by the oligarchs or by the political groups, this might raise political parallelism and push us towards the Polarized Pluralist model – but we are still within the pluralist models and not outside of them. If we would apply several other criteria defined by Hallin and Mancini, many of these would also indicate a place of Slovakia and Czechia in the Polarized Pluralist model – for instance, so-called wild deregulation⁷¹¹ as it happened in Slovakia and Czechia in the 1990s, when some of the new commercial media started their operation without any regulations, with shady privatization etc. These results are also consistent with the newest reflections on this theory, claiming that political parallelism is manifested in a negative coverage of a political party that is opposed by a given newspaper, rather than positive coverage of the party the outlet favours.⁷¹² This description seems to fit on the situation with many Slovak and Czech news media (more research would be needed here to back this with empirical evidence).

However, from this analysis we can clearly identify those factors that are taking these examined media systems closer to the Eastern Oligarchic Captured Model – and if there is a policy goal to stay inside the western models and to keep distance from the

711 Ibid. p. 153.

712 HALLIN, D. C. MANCINI, P. 2017. p. 157.

authoritarian systems, then clear policy recommendations can be derived from this analysis. This is what we offer in the normative part of our conclusions.

Conclusion

The comparative legal analysis had shown that the Slovak and Czech media laws are more similar than different (out of 42 compared legal institutes, 26 were similar and 16 different). The core values and pillars are the same, the differences are mostly in details. Some surprising differences were found: Czechia protects its public service from political influence more efficiently than Slovakia which has given the vote of the public service media director directly to the hands of politicians; Czechia demands more transparency of ownership, but forbids less cross-ownership of media. Slovakia is more protectionist in terms of national language or cultural production. Other differences have more formal character, and in application of the law in real life there were similarities discovered even in areas formally different (such as the defamation law). This can be attributed at least partially to unifying influence of the case law of European Court of Human Rights that has jurisdiction over both examined countries and it decides free speech cases as the final instance.

The levels of pluralism are comparable in Slovakia and Czechia in terms of plurality of different media, genres, and programmes, but not in terms of ownership control.

Alarming concentration of media ownership was found in the Czech media market – more than 63 percent of all flows of information are controlled by only 4 groups, 76 percent are controlled by five biggest players, and eight biggest players have control over 94,5 percent of the market. Pluralism in the Czech media now depends only on the goodwill of those big players. If they decide to instrumentalize their media, there is very little that can be done to safeguard pluralism. The only institutional safeguard is with the largest player, the state, that can indirectly influence the level of independence and quality of the public service broadcasting. It needs to be separated from political interests and internal pluralism needs to be secured. Comparatively, the Slovak market is less concentrated, less oligopolic, and the Slovak oligarchs have relatively less power on the media market than the Czech ones, but Slovakia is also not free of their influence, and they do, in fact, control large shares of the markets.

On the case of Slovak radio market in 2020 - 2021 we have shown that even a small liberation of the media ownership regulations might almost immediately lead to significantly higher concentration of the market. The danger is that the officials deciding on this are not always aware of the possible dangers of such concentration for pluralism and democracy, nor the law requires them to consider such risks.

Since public service media in both countries have significant market shares (especially in Czech Republic) and they can serve as a balance for the rest of the market captured by the oligarchs (also the case of Czech Republic), it is absolutely crucial for the quality of pluralism and therefore democracy to protect the public service media.

We have found that the Czech Republic has better safeguards of independence for the public service media sector, not just in governance models, but also in financing. This seems to be very important: A manager elected directly by politicians that needs to negotiate with politicians over money every year cannot be an independent one. He or she inevitably has an incentive to be at least at peace with the political majority. This dependency model can be a powerful tool in media capture. It is crucial to secure the financial independence of the public service media from politicians.

Also, the model of councils electing the director of the public service media seems to be more efficient in preventing the political capture. Before we would suggest the change of law towards more decisive power for the councils, we need to fix them first, because some level of political influence over the broadcasting councils and also council of the public service media was found in both Slovakia and Czech Republic. The one legal rule that prevents the total capture of these bodies by a single political power centre is the rule that the parliament elects one third of the members every 2 years. Since in both states we have 4-year election cycles (eventhough sometimes they are shorter due to snap elections), the majority of the council or regulatory body can be theoretically captured within one election cycle. Therefore, we propose a change of this rule in order to safeguard the plural representation of different political forces and also to prevent the political capture and strenghten the independency of all bodies. The longer terms for the members of the bodies (9 years instead of 6) and the election of one third of them every 3 years would make any attempts to politically capture these bodies more complicated.

Also rules that would require total separation of these members from the party politics might be considered, since there are too many political appointees, former politicians, or unsuccessful candidates from party politics. For instance, leaving only supervisory function over the bodies to political nominees (to safeguard accountability) would be a solution. For this purpose, we would propose that anyone with citizenship in the European Union could become a member of such a body, not only a citizen of the given state. This would open such positions for more possible contestants with less connections to political or economic interests in Slovakia or Czechia.

We have found that several media markets in the Czech Republic and Slovakia are highly concentrated or moderately concentrated, but some already have oligopolistic structure. Any further concentrations might lead to creation or strengthening of oligopolies and, therefore, should be prevented by the authorities. In Czech Republic, 3 of 4 media markets are already oligopolistic - Czech television market, Czech market with printed press and also with online news have oligopolistic structure. For instance, in the market for daily newspapers, there are seemingly many players, but they are nearly all captured by the oligarchs - two biggest oligarchic companies own almost 40 percent of the market each, while the leader of the market (CMI) also owns the main press-distribution company. This level of concentration should have been prevented by the authorities, especially ownership of all the tabloid market by one player – the dominant one with the distribution company – CMI.

The antimonopoly authorities in both countries were lenient toward the media mergers and have assessed them only through the economic criteria. This was insufficient to prevent media mergers that are a threat to democracy, much more than they are a threat to the economy. In fact the authorities did nothing to prevent the undesirable concentration of power, they allowed the oligarchs to have whatever they wanted to have. There is an absolute absence of state intervention against bypassers of the laws regarding the ban of conflict of interest or cross-media ownership. The authorities could base their interdicts on European law, but they did not. Instead, the authorities became a subject of regulatory capture and had not secured the values they should have protected. They have chosen to apply only the economic criteria, not political pluralism. Therefore, authorities should start to include political power in their equations.

This is one of the most important points of this dissertation: The concentrations of ownership in both markets are not only an economic problem. It is a political problem, a problem of safeguarding pluralism as a way to protect democracy.

This is why the POMO (Power of Media Owners) indicator was introduced to show this problem in a new light, to measure the power of the main players across platforms. Cross-media ownership is rarely taken into account when the Slovak or Czech authorities assess mergers or acquisitions, they decide over calculations based on defining „relevant market“ - radio market, TV market, etc. They completely overlook the market with political information that operates across platforms. Therefore, we proposed a new tool - the POMO indicator – that helps to quantify the power of media owners over the entire media market. This tool had shown in the examples of Slovakia and Czech Republic that

it is Czech Republic that has its media more captured on the cross-platform level and that some oligarchs own a large share of each of the platform market, which makes them very powerful in terms of controlling the flow of information. This proves that the regulation of cross-media ownership is not satisfactory and needs to change. Or perhaps even a paradigmatic change is considered.

The normative goal of regulation of media ownership should change. The economic efficiency, protection from the abuse of the dominant position on the market in terms of pricing, barriers to entry, and other economic criteria are not enough anymore. Political pluralism needs to be introduced as a normative goal of the antimonopoly regulation, especially in media acquisitions. The European Commission already recognizes pluralism as a value that needs more protection in antimonopoly law. Now it is time for Slovakia and Czech Republic to recognize the same, and to introduce such changes in law that would ensure that the most important media do not fall into hands of oligarchs with political interest or connections. This would mean amending the antimonopoly rules in a way that would force the authority (the antimonopoly or a broadcasting council) to assess the political danger of an acquisition of a medium, including the connections of the potential new owner to not just politicians, but in a broader sense to oligarchic groups – firms, interest groups, etc. It is not enough to check only the formalities – because anyone can fulfill the formal obligations and bypass the law with informal connections – or those hidden behind an offshore company.

This is another important point: The legal system must be able to force the media to reveal the real ownership structure and the final beneficiaries, and if they do not reveal them, or they would show a fake formal owner, the law must be able to sanction such a behavior in a way that is deterrent enough to discourage anyone from doing so. The best recipe would be to prevent the potential non-transparent owners from achieving what they want – to prevent them from operating on the market, if they do not comply with rules. This means no more symbolic fines, no more lenient approach, but fierce enforcement of the rules and license withdrawals for noncompliers. This is described more precisely in the normative part of the conclusions.

Until now, the regulators in Slovakia and Czechia were not able to ensure transparency of ownership or control of media, which is clearly described as one of the biggest

problems for media pluralism, parallel with the above-described problem of not taking the specificities of the media sector into account.⁷¹³

In terms of media capture, we had found that the Czech private media are more captured by the oligarchs, and the Slovak public service media are more captured by the politicians. Overall, both countries show similar levels of media capture, only the character is different. On a scale from 0 (no capture) to 10 (total capture) Slovakia and Czechia are between 5 and 6 – meaning that they are more captured than uncaptured, but it is far from total capture of all media by just one player. In fact, there still is some level of pluralism – even if it might seem to be undermined, it exists, because there are more players on both media markets with relevant shares. The real danger for pluralism would be if those big players would collude, cooperate, or if they would be connected to each other by someone in their economic or political background. If one political centre would create mutually beneficial collusion with more than one oligarch behind the media, pluralism in both Slovakia and Czech Republic is under a great threat.

As a result of media systems analysis, we conclude that the recent development on the Slovak and Czech markets really did move these media systems on the map – and it was a move towards greater capture and oligarchization. We have assessed some of the criteria invented by Hallin and Mancini and we have described this move on the map as a move in south-eastern direction. However, Slovakia and Czech Republic are not part of the Eastern Oligarchic Captured model typical for Russia or Turkey. Instead, they have stabilized their position in the Polarized Pluralist model typical for Mediterranean countries such as Italy – with many media captured by individual political interests, but still in pluralist fashion, the power divided among several power centers.

However, we perceive this model of media system to be a half way between the models of more developed western models (the Liberal Anglo-American and the Democratic-Corporatist North-Central European) and the authoritarian Eastern Oligarchic Captured model.⁷¹⁴ If a country is about to decrease in the ranking of press freedom, to decrease in the ranking of quality of liberal democracy, to increase its score on the scales of media

713 VALCKE, P. (et. al). 2009. p. 32.

714 This interpretation is consistent with the original definition of the Polarized Pluralist system as a combination of authoritarian tradition of intervention and the democratic-corporatist social state, with less journalistic autonomy, more instrumentalization of media, lower degree of professionalization, history of relatively recent dictatorships, more restrictions on free speech and more sanctions on journalists. More: HALLIN, D. C. MANCINI, P. 2008. p. 117 – 151.

capture, media concentration, and in Power of Media Owners indicator, it is also likely to move on the map of media systems in the south-eastern direction. The first step is a move towards the Polarized Pluralist model, where the watchdog role of journalism is already threatened, and then if the few oligarchs owning the media are forced to collude with a single centre of political power, the system makes the second and decisive step – towards an authoritarian, nonpluralist Eastern Oligarchic Captured model. This is the real danger for Slovakia and the Czech Republic: it is hard to predict when does the moment of one strong player seizing the power occur, when will a local version of Orbán push one of the political isles to extinction to become the single dominant player.

In other words – the move towards the Polarized Pluralist model should serve as a warning, an orange light – especially if we are concerned about pluralism, quality of democracy, and the watchdog role of journalism. These three factors go hand in hand, and a move towards them would be a move against media capture and, in fact, in the opposite direction as had happened recently in CEE. The orange light is a symbol that we need to slow down and eventually stop before we drive in a situation of high risk of danger and possibly of no return.

Therefore, we proceed to propose several legal solutions that might help to hold the positions of Slovakia and Czech Republic in the western pluralist media systems and that might prevent further backsliding into more authoritarian and less pluralist models. We provide this in a special normative part of this conclusion.

Other researchers can also apply our POMO indicator to their countries and to more platforms (such as weekly, semi-weekly, or monthly newspapers or perhaps even social media⁷¹⁵). We also expect the academia to discuss the Eastern Oligarchic Captured model of media systems.

Normative Conclusions: Media Reform

Based on the theory, context, and research findings of the dissertation and also the academic literature reflected in the first chapter, hereby we conclude this dissertation into a series of normative policy recommendations for a possible reform. The goal is to

⁷¹⁵ The smaller the size of the platform market (relative to population), the smaller the effect on the results. We have decided to include the four most relevant platform markets with daily news. However, in some countries, it might be important to include weekly newspapers, for example, if they have significant influence on the political discourse (such as *Der Spiegel* in Germany). Our formulation of POMO indicator allows this extension of the analysis and in some countries we recommend future scholars to take this in consideration.

safeguard the place of Slovakia and Czech Republic and their media system within the models of Western Europe, with sufficient levels of pluralism for functioning liberal democracy and a watchdog role of journalism. In order to achieve this, there are several steps needed, mostly aiming at dispersion of power over the media and their separation from politics.

This proposal does not have a form of legal proposal because we are not the legislator. This is an academic proposal describing how a media reform should look like in Slovakia and the Czech Republic, if more pluralism should be secured and if media capture, oligarchization, and thus worsening the quality of democracy should be prevented.

By the time of writing, the Slovak Ministry of Culture already proposed a media reform, but of a different kind, covering regulation of video streaming platforms, protecting physical safety of journalists and even stronger protection of their sources, minor reform of the broadcasting council, new kind of minors protection, and more transparency of media ownership. This proposal and our dissertation are not related, the proposal of the government is not a subject of our analysis for several reasons – it falls out of scope of this dissertation since it proposed after 2020 and if it will be adopted, it is going to happen after this dissertation is finished. Nevertheless, the majority of the proposals described in this dissertation are still valid and reform is still needed, because the governmental plan does not change much of the above discussed problems.

We have divided our proposals into thematic clusters.

1. Financing the public service media.

(a) The fees paid by the people to public service media („concessions“ attached to the ownership of an electric bill of a radio or television) must be raised automatically, not by political choice. We propose fixation of the fee to retail price index (inspired by the British model)⁷¹⁶ so that the fee would react to the state of the economy and would raise annually with inflation.

2. Election of the public service director.

(a) In Slovakia, the vote should be removed from the parliament and given back to the Council of RTVS.

716 HOFFMANN-RIEM, W. 1996. p. 70.

(b) If not, then at least the dismissal of the director should have more checks and balances, such as more than a simple majority in parliament needed, perhaps involvement of a different political player such as the president in the process of nomination, election, or dismissal of the director.

3. Councils of ČT, ČRo, and RTVS.

In search of securing more internal pluralism on public-service media, a new mechanism of creation of the councils governing these institutions needs to be found. Internal pluralism is a safeguard that could prevent the institutions from being captured by any single group – with political, ideological, or any other interest.

(a) Dispersion of the power to vote members of the councils between more actors, not just one chamber of a parliament, but both chambers in the Czech Republic, the president, perhaps nominees of the regions, academia, or judicial power. There are institutions in the society that do have some degree of democratic legitimacy – such as conferences of rectors of universities (rectors are elected by the academia), the Judicial Council of Slovakia (half of the members elected by judges) – these could be responsible for nominating a member of the councils of public service media. For instance, the body of judicial representation could be legally binded to send a legal expert on freedom of speech to the council, the representation of academia could be legally binded to send an academic expert from the field of media studies. Other bodies of representatives elected in separate elections are the associations of municipalities or regions; they could have a seat in the councils too to represent an element of regional plurality.

The role and inclusion of journalist organizations should also be considered. In both Slovakia and Czechia the syndicates of journalists are not representing the majority of journalists on the market, so a legal way how to appoint a nominee of at least one major international organization for protection of rights of journalists (such as RSF) should be found. Similarly, an expert on media ethics could be nominated to the council by a self-regulatory body of the media industry. Allowing the institutions' employees to elect several of their representatives (as in the case of the TASR board) would give the voice to those who are usually the most affected by these decisions. Following the same logics, another subject that has a place in the council is a union. We propose that one seat in the council belong to the largest union inside of the public service institution. Together with the representatives elected directly by the employees, this way the institution would be granted the much needed independence, perhaps also a professional continuity. Councils

like these would be a step towards the German/North-Central European model of Democratic Corporatism, to the original idea of a council representing the differentiated actors in society, not only political parties. Councils like these would serve as a much better system of checks and balances against political capture. Subsequently, the politicians should lose the majority of nominees in the councils, such as the case of the Judicial Council of Slovakia, where politicians do not have a majority (only half of the members).

(b) If there are members of the councils elected by the parliament, we suggest to extend the terms of the members to 9 years, electing a third of the members every 3 years (to strengthen their independency of politics and increase the chance of different parliamentary majorities to elect members). These political nominees should be independent – with no direct ties to any political party, and their independence should be on the level of independence of judges.

(c) Citizens of all EU countries should be allowed to become members of these councils to open the access for people without political or other interests in the specific country, but with a professional background in broadcasting or journalism.

4. Broadcasting regulators.

(a) More dispersion of power over these bodies should be guaranteed. Their members should be elected by more than one centre of power. For instance a mechanism similar to constitutional judges might be introduced, in which the parliament would nominate twice as many candidates as there are seats and the president would pick members from these nominations. Only one-third of the members of the body should be nominated by a single political majority.

(b) Broadcasting authorities should offer any more licences to new entrants to the market only. Those already controlling at least 20 percent of the market should be ruled out of competing for licenses to run more channels (even in case of the specialized channels). The biggest players, for instance on the Czech markets, already have big shares of the market precisely because of increasing numbers of their smaller specialized channels.

(c) Citizens of all EU countries should be allowed to become members of these councils to open the access for people without political or other interests in the specific country, but with a professional background in the public service media or journalism.

5. Antimonopoly authorities.

(a) Depoliticize the selection process or bring more players into the selection to strengthen the checks and balances. The antimonopoly body should not be a place for political nominations; its director should be a professional bureaucrat with a career in antitrust law and/or economics. Therefore, the director should be selected by a group of experts and only approved by the government and the president. The group of experts could be constructed by nominees of nonpolitical bodies, such as the general prosecutor, the ombudsman, the Judicial Council, the universities, the unions, etc.

(b) Introduce pluralism as a protected value in all cases related to media and politics. The antimonopoly authorities should be forced to assess possible dangers of mergers or acquisitions on media markets in terms of political pluralism and prevent them if they pose a threat to pluralism. The policy of the European Commission must be enforced.

(c) Introduce a rule that any company on the media market with a greater than 25 percent share in any given market would not be granted permission for any further merger or acquisition related to any media market. In assessments like these, the antimonopoly authorities would need to check across platforms and markets and would be forced to check not only a share on a small, very narrowly defined „relevant market“ - but also on several other markets, to assess how powerful the company already is and whether more power is safe for the democracy. Cross-platform tools, such as, for example, (but definitely not exclusively) the POMO indicator could be used.

(d) Rules for media concentrations should be stricter than in the usual market, because standard economic criteria were proven to be insufficient to safeguard plurality. Mergers and acquisitions of the news media especially should be assessed by much stricter criteria (thresholds).⁷¹⁷ There is a plurality test in cases like these under the review of the European Commission – assessing how the diversity of views would be preserved after a merger under review.⁷¹⁸

6. Ownership regulations.

(a) Ban the cross-media ownership of the daily press and national radio or television in the Czech Republic.

717 This is consistent with VALCKE, P. (et. al). 2009. p. 32.

718 ROZEHNAL, A. 2018. Možnosti omezení koncentrace médií. [*Possibilities of restricting the concentration of media*]. IN: *Pravniprostor.cz*. Online: <https://www.pravniprostor.cz/clanky/ostatni-pravo/k-moznosti-omezeni-koncentrace-vlastnictvi-medii>. (Quoted on 4. 11. 2021).

(b) A regulation is possible that the national broadcasters with the general non-specialized channels would be forced to be publically listed on a stock market and no single owner would be permitted to hold 50 percent or more shares of a national television broadcaster.⁷¹⁹ This could serve as a check on the power, helping to prevent total capture of the most influential media in both Slovakia and Czechia. We suggest that this would only work with fully transparent ownership.

(c) The real owners and final beneficiaries of the media must be disclosed, otherwise they would lose their license. The same rules as in public procurement should apply in television and radio broadcasting. If there is any reason for maintaining the system of licensing, it is for this reason – so that the broadcasting council would have power to withdraw a license from an owner not compliant with the rules. Only the threat of such a move from the regulator would have strong deterrence effect, since national TV broadcasting is an expensive enterprise and a large share of advertising still flows into television. Losing a license would mean losing a lot of money, and this would also frustrate any other purpose for owning a television (such as for-influence).

Many of the proposals are based on the knowledge that the examined media markets are already configured (oligopolistic) and no more mergers or acquisitions can be allowed anymore. In contrast, it should be the policy goal to slow down the concentration. Thanks to the new cross-platform approach, the antimonopoly authorities and the broadcasting councils should prevent mergers with other media that are not operating on the TV market, based on the argument of political influence potentially detrimental for democracy (media capture). On the other hand, in a small market like Slovakia, it might be difficult to operate more than the existing number of TV stations, so some assessment of the economic measures still has to be in place, in order for the authorities not to force the companies to break down into inefficiency and potentially serious economic problems.

We propose to solve this problem by a regulation that would impose the stricter ownership rules only on those media a) owned by a person with connection to the political power or to the oligarchs dependent on political decisions and b) broadcasting any kind of politics-related content. This way, the stations specialized in sports or rock music or any other niche that do not have any connection to the politics, nor in terms of ownership and nor

⁷¹⁹ HOFFMANN-RIEM, W. 1996. p. 135.

in terms of content, could be able to merge based on economic efficiency argument (that would be assessed only by standard economic criteria by the antimonopoly authority). The future will also demand including the digital media in the cross-media ownership regulations. With the proposal of the POMO indicator as one of the possible tools to assess the real power or the main players, the news websites are included in the equation. A problem of global big players such as Facebook or Google controlling the majority of the advertising market must be solved on a global or at least on the international level and is beyond the scope of this dissertation.

Summary

We have identified pluralism as the decisive component in several theories: media and democracy, media capture and oligarchization, media systems, and also the economic theory of competition law. If pluralism is on decline, it indicates that the media might be captured – sometimes by the government, sometimes by media moguls or billionaires (or corporations) with political interests (or economic interests dependent on politics). This situation can be a game changer - it can push a country to a different model of media systems or even to a different model of democracy – towards illiberal, or by other words, lesser quality of democracy. We have connected these dots from several theories and we have described a fourth model of media systems – the nonpluralist authoritarian Eastern Oligarchic Captured model, similar to Russia and Turkey, but also not dissimilar to contemporary Hungary.

Before comparing Slovakia and Czech Republic to this model, we needed to set clear criteria in the area that is the topic of this dissertation: media law and regulation. The comparative legal analysis of the media law in these two examined countries had shown that they are more similar than different, both in written law and in law in practice. Some significant differences were found: The Czech Republic has a better system to protect its public service media from political influence, and Slovakia has stricter law regarding the cross-media ownership. However, we cannot conclude that these legal differences have caused the difference between these two media systems, because the Slovak public service media were vulnerable to political capture even in the past when the legal regime was similar to the Czech one, and also the Slovak cross-media ownership rules were bypassed.

The Herfindahl- Hirschman Index – a tool from economic analysis of competition law – had helped us to establish that the Slovak and Czech media markets are concentrated or oligopolistic. Measurement of the concentration over three points in time – 2000, 2010 and 2020 - had shown that it worsened in the last decade, but in fact the concentration is much higher (more oligopolistic) in Czech Republic. Then we have invented a new kind of tool: the Power of Media Owners (POMO) indicator. This tool helped us to show the relative strength of media owners across media platforms on the national market as a whole, and again it had shown that the Czech media oligarchs are more powerful than the Slovak ones. It had also shown that public service media have a very important role on the Czech media market.

The numbers from the HHI and POMO analyzes were further applied in the media capture analysis. This existing framework for such analysis was objectified and a quantitative component was brought into the analysis – scales from 0 to 10 were created and objective criteria were invented to be assigned to a specific numeric value on the scale. Then, the media capture level was calculated for both examined states, showing that they both are between 5 and 6 on the scale, which means that both countries have relatively captured media system – Czech Republic has its commercial media captured by the oligarchs, Slovakia has its public service media captured by politicians. However, both countries are still far from the Eastern Oligarchic Captured model of, for instance, Russia, because there is still a significant level of pluralism. The media systems analysis (with focus on the relationship between the state and media) has shown that both examined states are in fact closer to the traditional Polarized Pluralist model and the recent changes have brought Slovakia and Czechia closer to this system. This media system typical for the Mediterranean area is seen a half-way from the two models of developed democracies to the authoritarian model. If there is any normative goal we commit to, it is the watchdog role of journalism (important for the quality of democracy) – and if this is to be maintained, then the normative conclusion is that this backsliding down the spiral must stop, and in special part of our conclusions we recommend several policy changes, such as separation of the political power over the regulators (such as broadcasting councils and antimonopoly authorities) and also from the public service media (the financing model needs to be independent from the political decision-making, the director should not be selected by politicians, nor by a body created directly by politicians). We specify these recommendations in a part called Media Reform, proposing for example a new model of the councils of the public service media in order to maintain accountability to publicly elected officials, but different one from those holding the political majority in the national parliaments.

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