Media Policy in Post-Communist Countries: Broadcasting Regulation Between Democratization and Political Instrumentalization - The Case of Poland

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Introduction

Media policy, and in particular the regulation of broadcasting, has turned out to be one of the most controversial political areas in post-communist countries. The conflicts aggravated in a way that they are now usually referred to as „media wars“. Although the mass media is a core institution of liberal democracy (Dahl 1989) and therefore requires high priority in the transformation process, the reconstruction of broadcasting from a state-controlled monopoly to an independent and pluralistic institution of public communication was delayed over years. As a consequence, broadcasting remained one of the last remnants of authoritarian rule allowing governments to use television for their own propaganda purposes.

This development appears especially surprising since freedom of communication has been at the heart of the programmatic goals of the former opposition groups in their struggle against communist regimes. Did they discard their democratic creeds once they gained power? In this paper I want to follow a more pragmatic approach explaining the choices that were made about broadcasting by the specific situation policy makers found themselves when - often quite unexpectedly - came to power. In particular, I want to show how the process and outcome of media policy is related to the actors’ specific interests in the ongoing power struggle. It is presumed that media policy in transitory situations is not only governed by normative goals, but also - maybe in the first place - by strategic goals and the resources political actors have to their disposal to reach these goals.

The study focuses on Poland which can be regarded as successful in consolidating democratic institutions. At the same time, media policy was disputed over years, and the media still suffer from frequent political instrumentalization. The emphasis of the study will be laid on the reorganization of broadcasting because it requires a broader scope of regulation than the press and consequently is more vulnerable to political interference.

The argument will be made in a primarily qualitative and narrative fashion, but will be structured by theoretical concepts as have been developed in the framework of rational choice theory of collective action. These concepts will briefly be discussed in the first chapter, followed by a discussion of what decisions have to met when democratizing broadcasting and which models of possible choices exist that may serve legislators in new democracies as
guidelines. Using these concepts broadcasting regulation in Poland will then be analyzed in more detail.

**Rational actors: strategies and resources**

In the theoretical framework of rational choice (Mueller 1993; Olson 1971) legislators are regarded as rational actors whose primary goal is the maximization of power. In order to reach this goal they must be successful in two strategic areas which evolve from the very nature of the democratic process. One area is electoral success as it is the voters who eventually decide on the distribution of power; the other one is cooperation with other actors, particularly in order to form a stable government.

Electoral success depends on the degree to which political actors are able to mobilize popular support. In established democracies, political parties do not have to persuade all their voters in every election anew. Instead, voting behaviour is highly predictable as citizens have developed an affective identification with a certain party which they usually vote for (Campbell et al. 1960). Further, political parties have established alliances with particular interest groups and other societal associations. In elections, these groups can mobilize their members to vote in line with socio-political blocs (Lipset/Rokkan 1967). Another prerequisite of electoral success is the local embeddedness of the party organisation which enables the party to lead an effective campaign as voters can be addressed more directly than by a centralized campaign (Huckfeldt/Sprague 1993).

However, in modern mass societies communication between political elites and citizens increasingly takes place through the mass media. We assume that this applies much more to new democracies because the three aspects of the predictability of the vote as mentioned above are resources that develop only over a long period of time. The weaker party identification, local party organization and interest groups are, the more political parties rely on the mass media as a substitute resource to mobilize popular support (see for the American context Polsby 1980). Thus, controlling access to the mass media becomes a central precondition for electoral success in post-communist countries. It can be hypothesized that the
more political actors are dependent on the mass media to communicate to voters, the more they aim to ensure their control over the institutions and the content of public communication.

Besides the mobilization of popular support, cooperation with other actors in the political arena is another important strategy to maximize power. In proportional electoral systems as has been introduced in all East-Central European countries winning parties usually have to find coalition partners in order to establish a sufficient majority for legislation. Coalitions are the result of complex bargaining processes where the prospective partners try to maximize their stakes by exchanging support in parliamentary votes (Laver/Budge 1993). Conversely, if this kind of logrolling does not yield optimal profits withdrawal of support can be used to put pressure on the coalition partner(s). However, stable governments cannot be built exclusively on the distribution of the booty. Rather, a minimum of ideological agreement and mutual trust between the coalition partners are a necessary resource to make effective decision making possible. Again, political parties in new democracies face particular difficulties. Since most parties have not developed a clear identity based on broad programmatic consensus, intra- und inter-party conflicts are likely to destabilize coalitions.

Considering the strategic function of mass communication, media policy in post-communist countries can be expected to be an important object of political bargaining so that the media become instrumentalized in the power struggle. Junktims with other policy areas, changing coalitions, or the perception of unfair treatment on the side of one of the players may cause a deadlock in media legislation. Finally, we expect the outcome of media regulation, especially the modus of broadcasting supervision, to reflect the actual balance of power.

Conceptualizing political actors as power maximizers is not to say that values are irrelevant. Because of their binding potential values can be an important resource; at the same time, values constrain political action as not everything which appears useful may be accepted as legitimate. This holds particularly for media policy which affects central democratic values like freedom of expression and independence of the mass media. It holds even more for media policy in post-communist countries where the newly elected political leaders took over to transform the formerly state-dominated institutions into democratic institutions. Hence, media policy will be characterized by the conflict between interests and values, i.e. between strategic and normative goals.
Broadcasting regulation: goals and instruments - Or: What has to be done?

The transformation of broadcasting into an institution of public communication that fulfills its democratic functions requires several steps of de-regulation and re-regulation. De-regulation becomes necessary in order to demise direct state-control as has been exercised in the previous regime. While under communist rule the media, especially broadcasting, served as a mouthpiece of the ruling party and was expected to be partisan in favour of the viewpoint of the working class, democratic norm requires the independence of the mass media. Freedom from political influence puts the media into a position to serve as a „fourth estate“, i.e. critically monitoring the course of the government (Gibbons 1991).

Re-regulation refers to structural reconstruction involving the formulation of new norms of performance and the implementation of new institutions that enforce the realization of these norms (McQuail 1992). In contrast to the press, broadcasting is usually subjected to a relatively high degree of regulation. Besides technical regulation, which organizes the shortage of transmission facilities, and economic regulation, which aims to prevent economic monopolization, it is primarily political arguments that legitimate broadcasting regulation (Humphreys 1996). With respect to broadcasting the traditional individualistic conception of media freedom has been extended to the „social responsibility“ approach which regards broadcasting to be obliged to provide the citizens with comprehensive information and to represent a broad diversity of opinions (Siebert/Peterson/Schramm 1963; Lowenstein/Merrill 1990).

There exist different, partly competing, models as to how these norms can be institutionalized in a new media order. Political institution building in Eastern Europe was to a large degree an import of institutional models that have been developed in Western democracies. Obviously there is only a finite number of solutions available for basic problems, for example the translation of votes into parliamentary seats, or the relationship between the legislative and executive branch (Lijphart 1993; Rüb 1994). Similarly, there exists a limited set of models of broadcasting regulation which can be assumed to have served East European policy makers as orientation when reconstructing the institutions of mass communication. These models may
then be moulded according to political interests or specific aspects of the political culture of a country. In the present study I will focus on two central areas of broadcasting regulation, namely the relationship between public service and commercial elements, and the arrangement of the supervisory bodies. In the following I will briefly discuss the main regulatory choices.

Due to its strong collectivist tradition public service, which is rooted in the idea of social responsibility, can be regarded as the basic model of broadcasting in Western Europe. The main objective of the public-service construction is to keep broadcasting independent from state influence and at the same time protecting it from economic competition. In exchange, public broadcasting is submitted to high standards of programming in order to serve informational and cultural needs (Blumler 1992). The alternative to this model is commercial broadcasting which operates like any enterprise in the marketplace. In order to maximize profits commercial broadcasting has to maximize audiences by adapting to a mean standard of taste (Noam 1991). Due to these economic constraints commercial broadcasting is subjected to only restricted programming standards. Mixed, or dual, broadcasting systems can be regarded as the third model of structural setting as it develops a specific dynamics of operation. „Structural diversification“ (Hoffmann-Riem 1996: 285) by dualization is believed to enlarge the diversity of opinions, which is a central democratic norm of public communication. Another objective is to balance the disadvantages which are inbuilt in each of the original models, in particular public broadcasting’s vulnerability towards political interference on the one hand, and de-politicization and trivialization of commercial broadcasting on the other hand.¹

The strength of public-service logic can further be varied by a combination with elements from the commercial model. This is mainly be pursued by the mode of financing. Usually, licence fees are the „natural“ source of revenues of public broadcasting, whereas advertising is the main income of commercial stations. In most Western countries public service organizations draw their income to a varying degree from advertising. The mixed mode of financing makes them less dependent on political decisions. However, with the introduction of commercial television this arrangement turned out to be a severe problem because now public

¹ It has to be mentioned that the present discussion follows normative consideration that have to be distinguished from empirical evidence. Numerous studies have shown that in Western Europe dualization did not necessarily lead to the expected effects (Pfetsch 1996).
broadcasting has to compete with commercial organizations without being released from their specific duties. The exception is the British system where from the beginning of the dual system in the 50s both segments were strictly kept separate with regard to financing. This may have contributed to the stability and health of the BBC (Voltmer 1999).

In the context of East European countries it appears quite naive to assume public broadcasting to be the guarantor of the public interest as is the dominant view in the West. While for example in Britain a political tradition of non-interference protects the BBC from political pressure, the state-media relationship in post-socialist countries is contaminated by a tradition of instrumentalization. Since the newly created public service organisations are re-structured former state-run stations, it seems to be highly unlikely that the independence of public broadcasting can be sufficiently safeguarded. Under these circumstances commercial broadcasting bears indeed the chance of a true counterpart that acts as a „watch dog“ within the media system.

The second area of regulation I want to analyse in this paper is the structure of the supervisory bodies. Again, there exist some basic models that may have served as blueprints for East European legislators. In particular, two crucial dimensions affect the political independence of broadcasting authorities. One is the mode of appointment, the other is the scope of competences (Robillard 1995).

The procedure of how the members of the broadcasting council are nominated and the resulting composition of the body determines who can exert influence on public communication. The British arrangement can be called an elitist model. The Board of Governors of the BBC is a small body whose members are nominally appointed by the queen. The members are chosen according to their expertise, rather than their political affiliation. This arrangement is regarded as largely independent from political interference as well as highly effective with respect to maintaining quality standards, although it has been criticized for its paternalism (Hoffmann-Riem 1996; Dyson/Humphreys 1988). The German and Austrian regulatory bodies are prototypes of the pluralist model. The so-called societal relevant groups - political parties, interest groups like unions, employers associations, churches, journalists’ associations etc. - send their representatives into the broadcasting councils. The idea is that representative councils are a guarantee for the diversity of
programming. The main disadvantage of the representative model is seen in oversized bodies which restrict the efficiency of supervisory activities. Finally, the French broadcasting authority until 1981 stands for a statist model of regulatory arrangement. It was the government who appointed the members of the authority thus keeping it highly dependent on political interests.

The second dimension of supervisory arrangements, the scope of competences, refers to the range of broadcasting activities falling under the supervision of the regulatory body. Supervision can be called restricted when it is confined mainly to control the economic structure of broadcasting, preventing monopolies and, occasionally, the dominance of foreign capital. Supervision is extended when it also covers programming. While all broadcasting supervision aims to guarantee basic standards of public communication, like pornography and advertising, extended supervision sets rules for specific values. The scope of competences can be classified as initiative, when the regulatory bodies actively take part in the legislative process.

Besides formal arrangements of control politicians can employ informal ways of regulation. Whether this strategy can be regarded as benevolent or dangerous for the independence of the media depends largely on the bargaining power or vulnerability of broadcasting organisations. Hoffmann-Riem (1996) shows for example that commercial broadcasters increasingly seek informal agreements with the government in order to circumvent formal regulation that would restrict their activities. On the other hand, especially in new democracies where democratic rules of the game are still weak a lack of formal regulation may encourage political actors to illegitimately interfere into broadcasting activities.

**Analytical scheme of broadcasting regulation**

The scheme in Figure 1 summarizes the discussion so far. It comprises the goals that are pursued by broadcasting regulation, the resources of the political actors to carry their proposals through, and the choices they have at hand.

-- Figure 1 about here --
In the following discussion of the transformation of the Polish broadcasting system I will, in a first step, analyze main actors that are involved in media policy making and their organizational capabilities and constraints in achieving and maintaining power positions. Popular support and electoral success of political parties will be described as well as the performance and stability of governments. In addition, I will single out the main conflicts that dominate the political process. In a second step, I will examine the controversies about broadcasting regulation, in particular privatization and arrangements of supervision. It will be discussed to what extent we can assume these debates and the finally found compromises to be determined by the actors’ strategic goals and their success in their struggle to control public communication.

The political actors in Poland: power resources and conflicts

Poland is special in many respects. More than in other East Central European countries the historical trajectories still determine today’s politics. In contrast to neighbour countries, the Polish opposition against the communist regime was carried by broad popular support, rather than an elitist group of intellectuals. Even under martial law Solidarnosc kept its mobilizing power. Facing a growing economic crisis and new outbreaks of strikes the ruling communist party (PZPR) was forced in August 1988 to approve on broad-based talks which included leaders of the opposition movement. Thus, Round Table negotiations began quite early in Poland. They took place under highly uncertain conditions as it was still an open question how the Soviet Union would respond to attempts of democratic opening. The talks between old and new elites lead to an agreement about partly free elections held in June 1989. The PZPR secured its power position by reserving 65 percent of the seats of the Sejm to itself. As a surprise for both sides all remaining seats were won by Solidarnosc.

Party organization and popular support:

However, with regard to the Polish party system Gobatchev’s famous saying „Those who are too late will be punished by life“ can be reversed into „Those who are too early will be punished by life“. Due to the early timing and the controlled nature of the Round Table negotiations the development of a differentiated party system was retarded (Kitschelt 1992).
With the decay of the PZPR in January 1990 the unifying external force disappeared and Solidarnosc split up in countless groups. Many of them still regard themselves as movements and refuse to gain the legal status of a political party. The diffuse nature of the party system can be illustrated by the right-wing electoral alliance (AWS) which was formed by not less than 36 follower groups of Solidarnosc to run for the 1997 parliamentary election.

One could assume that the heroic image of Solidarnosc guarantees broad popular support for the parties which have their roots in the former opposition. But this is not the case. Party identification is generally extremely low, and there is even an aversion against political parties which is expressed by the support of anti-party parties (e.g. Party of the Friends of Beer, PPPP) and the considerable success of independent candidates in local elections. The low electoral turnout of even less than 50 percent is another indicator for the lack of involvement (Ziemer 1997). Undoubtedly, the high expectations of the transition period, followed by deep disappointment and desoration in the face of economic hardness have contributed to political cynicism. But it is not only the citizens who lack stable party identification. Even elected representatives change party affiliation, thus contributing to the diffuse image of political parties. In addition, parties are extremely weak on the local level where non-party organizations, mainly unions, but also the church, dominate the political arena instead. The exception is the Polish Peasant Party (PSL), a former bloc party of the communists, whose membership is by far the largest of polish parties and whose organizational structures even comprise villages (Stöss/Segert 1997).

Fragmented parliament and unstable governments:

Due to the weak social ties parties have difficulties to achieve and secure power positions in parliament or government. While in stable democracies previous electoral success is the best predictor for the following election, this is not the case in most post-communist countries. In addition, Poland started with an unrestricted representative electoral system. The result was a total of 29 parties winning parliamentary seats, none of which exceeding 13 percent. In the 1993 election a five-percent barrier reduced the number of parties in parliament to seven.

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2 In the legislative period 1991-1993 123 MPs, that is more than one quarter, changed their party affiliation (Ziemer 1997:57).
3 Number of PSL-members is 250.000, followed by the Social Democrats (SdRP), which is the successor party of the Communist Party, with 60.000 members. Membership of most other parties is around 10.000.
Table 1 shows the electoral success of the main political parties in terms of parliamentary seats and government positions.

The results of the two polls following the first truly free election of 1991 reveal enormous fluctuations. After a dominance of post-Solidarnosc groups in the first election, two post-communist parties (the Social Democrats and the Peasant Party) won a landslide victory. In 1997, the pendulum swung back again, bringing the national-conservative AWS with its liberal coalition partner into power. The change rates underscore the entirely unpredictable situation of the political parties. Even the PSL cannot rely on its grass root structures as the massive losses in 1997 show. In this situation it seems quite rational for political parties to exploit their power position in government as much as they can.

Governments are characterized by a high degree of instability. The first legislative period saw three prime ministers. Each of the governments was weakened by a constant flux of party affiliation and successive resignations of ministers. The last cabinet of Hanna Suchocka included seven parties and finally failed to get the parliamentary majority for its budget proposal. The succeeding SLD/PSL-government seemed to be in a better position. However, it also had to cope with continuing crises, mainly triggered by power struggles between President Walesa and the socialist government. Three prime ministers led the government. The last cabinet included six independent ministers indicating its fragile support.

Societal and constitutional conflicts:

Similar to other post-communist countries, three cleavages characterize the political process in Poland: The first one is the issue of liberal market reforms versus a social-protectionist course of economic policy; the second one is the dispute of how to deal with the communist legacy which divides socialist and anti-communist parties; and finally opposing value preferences divide liberal Westerners from traditional nationalists. The last conflict is especially prevalent in Poland because of the high influence of the Catholic Church.

Despite of four decades of communist indoctrination Poland remained a catholic society. The close connection between religion and national liberalization gave the Catholic Church a
central role in the political opposition movement. However, after Poland’s transition to
democracy it became gradually clear that the attitude of the Church towards the new order was
fairly ambiguous. The Catholic Church could not accept the separation of Church and State by
which its influence is restricted to evangelization and charitable work. Instead, the Church
repeatedly tries to interfere into actual policy making and openly takes side in election
campaigns, e.g. in favour of the AWS in the 1997 parliamentary election. Most of all the
Catholic Church is concerned about the erosion of christian values which in the view of the
bishops is caused by Westernization and the moral indifference of democratic institutions
(Sabbat-Swidlicka 1993).

In addition, constitution building was a longlasting controversial process which only came to
its (preliminary) end in 1997. The issue of the electoral law has been already mentioned.
Another issue was the role of the second house, the Senate. While there were many voices that
preferred a unicameral system, the Senate could finally confirm its position as a regional
representation, but its legislative competences are restricted.

However, the main constitutional controversy is concerned with the competences of the
president. In 1990, a poll provided for a popularly elected president. The conflict then
accelerated by the way how President Walesa understood the office and by his ongoing
attempts to extend his powers. The conflict evolved not only between the two parts of the
executive, i.e. the president and the prime minister with an escalation when the socialist-
liberal coalition was in power, but also between the president and the parliament. The so-
clarified the presidential competences. Now the president does no longer have the right to
dissolve parliament and to nominate the members of the cabinet. However, he still appoints
the so-called power-ministers (foreign, defense, interior). He also has far-reaching power in
the legislative process. His veto right can only be overridden by a two-third parliamentary
majority.

The new broadcasting system in Poland: institutional arrangements
The first step to independent media was simple and was taken already in a very early stage of political changes. In April 1989 the participants of the Round-Table negotiations agreed upon basic democratic rights, amongst others freedom of speech. However, broadcasting legislation took much longer. In December 1992, the Sejm eventually adopted a new Broadcasting Act after three years of dispute about various proposals. In retrospective it seems that it was only a short time window when an agreement could be achieved between the highly fragmented parliamentary factions. Some months before Hanna Suchocka has taken over as the third prime minister since the election in 1991 and was able to stabilize the government coalition at least to some extent. Further, because of a closer ideological affinity President Walesa was willing to cooperate, which would certainly not have been the case with the succeeding left-wing government. It is not difficult to speculate that, if this short opportunity would not have been used, Poland would have suffered a similar deadlock like Hungary where the power struggle between different state institutions and parties obstructed the passing of a new broadcasting law until December 1995. However, the regulatory process in Poland did not come to a standstill after the bill was adopted, partly because the existing regulations reveal particular shortcomings, partly because politicians still attempt to get control over television.

The Broadcasting Act (1993/7/34) paved way to restructure the Polish broadcasting system. The transformation included three fundamental steps: the abolition of state monopoly, the introduction of a dual system, and - in fact as the first step - the creation of a supervisory body, the National Broadcasting Council (KRRT).

(1) The formerly state-owned Polish Radio and Television (PRT) was converted into a public shareholder company consisting of 19 corporations - one national television, one national radio, and 17 local radio organizations. The only shareholder is the state represented by the Minister of Finance to whom the broadcasting organisations have to present their annual budget reports. This construction implements a good deal of commercial logic into public television as it is working on the basis of the commercial code which allows the 19 broadcasting organisations to operate autonomously from central accounting (Kleinsteuber 1992; Piatek 1998). At the same time responsibility to the government leaves public broadcasting vulnerable to political pressure because the government can use acceptance of the budget as a threat to provoke compliance.
Public television is financed by mixed revenues from licence fees and advertising. PRT can use up to 15 percent of its airtime for commercials. However, due to the rapidly expanding advertising market in Poland commercial income has grown to be the main financial resource of public television. Even the terrestrial transmission of a nationwide commercial channel in 1994 has not yet led to a decline in advertising revenues. They amounted to 33.4 percent of PRT’s budget in 1992, rising to 58 percent in 1995 (Council of Europe 1997). It is an open question how competition for resources will affect Polish public television in the long run.

(2) Although the Broadcasting Act established a dual system, commercial television is more restricted in Poland than, for example, in Czech or Hungary. Foreign investment should not exceed 33 percent of the total capital of a private broadcasting station, and the majority and the chairman of the board of directors must be Polish citizens. The bill further stipulates that the program should contain at least 30 percent polish production. The National Broadcasting Council gradually even raised this requirement to 45 percent by 1996. Since the quota does not include the airtime devoted to news, sports and advertisements it can be regarded as extraordinarily high. The regulation builds up a high entry barrier in order to protect the polish audiovisual industry from foreign dominance, it also reveals particular concern to conserve polish culture against external influx. Especially programming quotas will cause difficulties in the near future as they contradict European regulation (Jakubowicz 1998).

The legalization of commercial broadcasting ended a period of lively flourishing pirate stations. In 1989 Poland had decided on a moratorium for commercial broadcasting in order to prevent exactly this illegal situation. The only exception was granted to the Catholic Church which perceived a private licence in 1989. But media entrepreneurs were not inclined to wait for an indefinite period of time so that hundreds of illegal radio and television stations started operating on a local level (Vinton 1992). Most of them finally got an official licence. The situation demonstrates that non-regulation eventually limits the scope of action on the side of the licencing authority.

(3) The KRRT, the National Broadcasting Council, is responsible for both public and private broadcasting. It consists of nine members of which four are appointed by the Sejm, three by the President, and two by the Senate. According to the 1992 broadcasting act the President also had the right to nominate the chairman of the KRRT. Term of office is six years and
cannot be expanded. Membership on political parties, interest groups and church has to be suspended for the time of office.

The competences of the Council comprise, as is usual practice, the allocation of licences and the supervision of broadcasting senders in order to safeguard pluralism. The Council also acts as an advisory body to the government in matters of broadcasting legislation. In addition, it determines and distributes licence fees to the public organisations. This construction takes public broadcasting away from direct political dependence as would be the case when parliament or government decide on this important matter. However, the more the regulatory body itself would be politicized, the more public broadcasting would become exposed to political pressure.

Each of the public broadcasting corporations has a three-partite supervisory structure. On top is the Board of Directors of which eight members are appointed by the KRRT and one by the finance minister. The Board of Directors appoints the Board of Management which is responsible for the day-to-day operation of the broadcasting station. In addition, a Programme Council is responsible to ensure pluralism and objectivity of the program. The body has consultative and advisory function. Five of its members are appointed by the Board of Directors, ten by the Sejm and the Senate. Figure 2 gives an overview of the supervisory institutions of Polish broadcasting (Broadcasting Act, 1993/7/34).

The figure illustrates that the arrangements of appointment as the decisive mechanisms affecting the policy of broadcasting are largely controlled by the power centers of the state. Consequently, the composition of the supervisory bodies is highly politicized and usually reflects the current strength of political parties. The prohibition of active political membership could not sufficiently reduce this problem so far. Recalling the basic structural models of broadcasting supervision, it can be stated that Poland neither adopted the British nor the German, so-called representative, model. The first one may have yielded too much independence to the supervisors; the latter may have been too complex - and probably pointless as long as the intermediary systems of interest groups is still underdeveloped (v. Beyme 1994). Hence, the Polish legislators gave preference to the French model, which, as
Jakubowicz (1996: 19) puts it, is „a ‘respectable’ solution that still allowed them to retain control over broadcasting.“

**Strategic interests of political actors and broadcasting regulation**

The strategic maximization of power resources of those actors who were involved in or affected by broadcasting regulation can be traced back both in the process of legislation and the final outcome. The long period of negotiations does not only reflect the overload of legislators who rather unexpectedly found themselves confronted with the task to build up new democratic institutions and therefore for the moment left the media unregulated (Jakubowicz 1995). Instead, in the three years prevailing the Broadcasting Act of 1992 several proposals were submitted by different parties, but all of them were rejected, mainly because of disagreements about the mode of appointing the members of the National Broadcasting Council. The subsequent formulas reflect basic constitutional controversies that were fought on the battleground of broadcasting legislation.

In the first draft of early 1990 the President had only a little say with appointing one member of the Council, whereas the government, Sejm, and Senate each were supposed to appoint three members. After Lech Walesa was elected for president, the number of „his“ members were increased to three, while Sejm and Senate each got the same number, whereas the government was out of the game. Finally, the Sejm was able to expand its influence (four members), while the Senate was weakened (two members), thus indicating the Sejm being twice as important as the Senate (Jakubowicz 1996). The President was placed in the middle (three members). However, Walesa only agreed to this solution after he was conceded to nominate the chairman among the nine members of the Council.

The relative weight of the Sejm in nominating the members of the regulatory body guarantees the majority parties high access chances to broadcasting. However, a doubling of their influence, which would have been the effect of additionally regarding the government in the appointing procedure, has been prevented. The ultimate influence of the majority parties depends on the simultaneous majorities in the Senate and the political affiliation of the President. However, in two out of three possible constellations the parliamentary majority
parties will dominate broadcasting supervision. Their predominance can only be overridden when the political orientation of Senate and President differ from that in parliament and both institutions join forces.

The looser of the finally agreed mode of appointment is the Senate which can be interpreted as reflecting the weak bargaining position of this institution as at the same time the continuation of the bicameral system was disputed. President Walesa was not entirely happy with the solution and tried to expand his influence at a later occasion.

The KRRT’s office term of six years can be regarded as a counterbalance to unhindered instrumentalization by the majority parties since parliamentary term is only four years. Consequently, a new government can be confronted with a Council that follows different party lines. Exactly this happened when the left-wing party-alliance won the elections in autumn 1993. About half a year earlier the KRRT had been constituted with a Solidarity dominance and acted now as a kind of quasi-opposition. This constellation of division of power in the sphere of public communication is especially likely as long as Poland’s party system is still extremely volatile and each election produces a new composition of government. At the same time, the high politicization of the Broadcasting Council together with the political parties lacking effective alternative channels of communication may contribute to frequent and massive attempts of informal interference.

The conflict about the President’s attempt to gain more control over broadcasting was triggered when the KRRT decided to allocate the only nationwide commercial franchise to PolSat, which was wholly owned by a Polish citizen, Zygmunt Solorz. Lech Walesa strongly disagreed with this decision and tried to prove that Solorz has been involved in the power structure of the communist regime. The conflict was further fueled by the competing interests of an Italian broadcaster, Nicola Grauso, who run a number of regional stations in Poland and now saw his chances for gaining a national network obstructed. When Walesa realized that he was not able to change the decision he instantly dismissed the chairman of the KRRT, Marek Markiewicz, in March 1994. Walesa argued that the right to appoint the chairman automatically comprises the right to dismiss him (Sabbat-Swidlicka 1994). Markiewicz was replaced by Marek Jurek, the leader of the Christian-National Union (ZChN), purportedly in
order to secure support in the 1995 presidential election campaign (Kaprinski 1996a). Although the dismissal could not be prevented the case was brought to the Constitutional Tribunal, i.e. the Polish Supreme Court, for consideration. As a result the Broadcasting Act was amended in June 1995 stipulating that the chairman of the National Broadcasting Council shall be appointed and recalled by the members of the Council. The occasions where the bodies that appoint the Council (Sejm, Senate, President) are entitled to recall members of the Council are confined to a few specified cases (Amendment of the Broadcasting Act 1995/142/701).

The incident can be read as part of Walesa’s struggle to set up a presidential system in Poland - a struggle that he finally lost not only in the arena of media control. The incident also illustrates a surprisingly high degree of professionalization and independence on the side of the KRRT if one considers the political background of its members. It seems that this is the reason why the political parties exert their influence primarily by controlling the governing bodies of the broadcasting organizations and by informal attempts to interfere into programming decisions. The left-wing coalition that came into power in September 1993 successfully controlled the Board of Directors of public television after opposition members were replaced by persons who are closely linked to the SLD and PSL in 1996. Maybe even more alarming is the fact that politically inconvenient shows were removed from the programme. Particular anger was caused by a number of programmes that depicted the dark sides of the communist era - and that even on May Day (Karpinski 1996b)!

As a last aspect of the interrelation between the interests of strategic actors and broadcasting regulation I want to turn to the role of the Catholic Church in the process of designing the Broadcasting Act. As has been mentioned above the Catholic Church is a powerful political actor in Poland that derives its legitimacy from its prolonged struggle against communism and the claim to be the main guardian of Polish culture and identity. In the understanding of the Church the media, especially public broadcasting, should commit themselves to christian ethics and morality. In its effort to implement this kind of specific content requirements in the Broadcasting Act the Church was supported by the ZChN (Goban-Klas 1997). In fact, besides the mode of appointing the members of the Broadcasting Council this controversy was the main reason why several proposals of the bill failed. Finally the Church was successful as the

\* By 1998, Solorz held 80 percent of PolSat, the remaining 20 percent are in the hands of a Polish media
bill stipulates that public broadcasting should „respect the Christian system of values“, further that it should „serve to strengthen the family ties“ and „to combat social pathologies“ (Broadcasting Act 1993/7/34). However, it was unclear what exactly was meant by „Christian values“. Again, it was the Catholic Church that took the initiative and in May 1993 issued a declaration by the Conference of Bishops that, amongst others, listed divorce, abortion, consumerism, pornography and crime as contradictory to those values (Gross 1993).

Many observers regarded freedom of speech seriously jeopardized by the formulation in the Polish Broadcasting Act. However, in June 1994 the Constitutional Tribunal supported the law stating that the formulation would not restrict the independence of the media as it does not include a positive directive to propagate particular values (Banks/Muller 1998). However, the victory of the Church in this matter has certainly weakened the principle of the separation of state and church.

**Conclusion**

Broadcasting regulation in Poland, as in other parts of Eastern Europe, is closely related to the general process of transition to democracy. According to Jakubowicz (1996: 19), „media laws can be analogous to mini-constitutions, reflecting the state of play in the political power struggle and the birth pains of a new governing system“. In our analysis we were able to specify this assumption in several respects.

First, it has been corroborated that political parties try to maximize their control over public communication as a substitute for alternative resources to mobilize electoral support. Thus, supervisory bodies are heavily dominated by party politics. In addition, governing parties frequently use informal ways of interfering into broadcasting activities, mainly by replacing management personnel or even putting pressure on programming decisions.

Secondly, constitutional instability proved to be another important factor that determines media policy. Democratic institutions are not established in a single act of will. Rather, institution building in new democracies is a long-term process in which certain models are
adopted in the first place, but then modified according to their actual functioning. In the Polish case it was the uncertain role of the Senate, but, above all, the disputed role of the president that was reflected in the process of formulating a new broadcasting law.

Thirdly, societal groups from outside the political system may enter the media policy arena if they are powerful enough to find support with the parties involved in the legislative process. In Poland the Catholic Church won one of its main political victories when it successfully imposed its preferences of „Christian values“ into the formal programming goals of public television.

At present, broadcasting regulation undergoes again a process of revision. Especially the construction of the National Broadcasting Board is perceived as too much politicized. After several elections the main political parties have experienced both the opposition and the government role. It became obvious that any privileges governing parties secured themselves to control public communication inevitably turned against them when they were in the opposition again. Maybe the new discussion in Poland about broadcasting regulation reveals a process of learning on the side of the actors and will finally lead to a more democratic arrangement.

References


**Broadcasting Law:**