

The authority regulating the audio visual sector.....between legal tasks and political pressures

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Summary:

This research paper aims to highlight the reality fact of the Algerian private cable tv and its relationship with the political system in which it shows up the extent of its commitment to the principles and the professional ethics agreed about , putting light on the audiovisual authority sector which identified by the organic law of 2012 that maintained its validity and combination by demonstrating too its effectiveness and independence to perform their special duties .

key words :The authority setting . the audiovisual sector in Algeria . the private channels , information in Algeria

I-Introduction:

The issue of control is related to the development of legal and ethical frameworks that regulate the functioning of the media organization in its relations with the outside environment. If the development of the ethical framework is the task of professionals and in accordance with international recognized principles, the Munich Conference is a key reference in determining it, the second and the technical task of the media councils, which in each society is highlighted by different names such as the Supreme AudVisual Council or the Authority for Control of the AudSector. If the Western countries have experienced this experience in all its dimensions, it is still a matter for Algeria that is theoretical, practical and a matter of some ambiguity. Until the opening of the private sector came after what were known as Arab revolutions as a preventive decision by the President of the Republic in 2011, He was the one who regarded radio and television as state property in 1999, and the change of speech was compelling. The Organic Media Act (2012) was released after a series of projects left on paper, to allocate a full door to the audiovisual sector that was opened to the private sector, but with conditions and the audiovisual control committee was tasked to take over the seizure.

Through this paper we will try to identify the realities of Algeria's private audiovisual sector with a reading of the nature of its relationship with power, and to what extent can this administrative authority be considered independent in its function?

They will be presented in accordance with the following themes:

- Media Tuning: A Reading in the Concept
- The development of Algeria's audiovisual sector (legally)
- The reality of private audiovisual media in Algeria (legal status of private media organizations, their relationship with the Authority)

I.1.Theoretical description of the concept of media tuning

The concept of “the régulation” is of English origin and is used in the United States of America in 1933 after the 1922 economic crisis, where bodies were set up for market control and the smooth functioning of competition. In English, the concept is intended with us as one and is exercised by public bodies. “Any set of legal rules and bodies developed to reflect the new public policy in the economic sphere.”

In French, the concept carries more than one meaning, as some researchers distinguish between restraint and regulation only Marc Raboyen in his article, which explains the following:

“Je dis bien « régulation » ici pour souligner la distinction qu’il importe de faire
Entre deux catégories générales de gouvernance, la « régulation » et la

«réglementation » . Selon le juriste québécois Pierre Trudel, « la notion de Régulation concerne ce qui assure le fonctionnement correct d’un ensemble Complexe»; tandis que la réglementation est entendue « comme l’activité par Laquelle sont énoncées, dans des textes formels, les obligations spécifiques des Sujets de droit » (Trudel 1998 : 3-3). (On notera bien que la langue française Permet de faire cette distinction que la langue anglaise interdit, puisque cette “dernière”emploie qu’un seul mot, « régulation », pour couvrir les deux sens.)”

Legally, French legislation regulates the concept of “ways of intervening by the State to ensure social, economic and cultural legitimacy for the present and the future and in its role as Algerian legislator, defined in the Competition Act of 2008 as” any action of any nature issued by any public authority aimed in particular at strengthening and ensuring the balance of market forces and freedom of competition and lifting the restrictions that can impede access to them and their flexible functioning as well as allowing for the optimal economic distribution of market resources among its various agents “

The so-called independent control authorities emerged in the United States of America in 1889 and are known as agencies and continue to emerge in other sectors amid the circumstances of IdeendantsAgencies, independent

Special dispute when U.S. President Roosevelt interferes in the appointment of the President or members or terminates their functions, affecting the independence of these agencies. These powers are governed by laws that guarantee the effectiveness of their work.

These authorities emerged in Britain as semi-autonomous NGOs.

Its objective is to control the general facility. Quasi Autonomes Non gouvernemental organisation

The authenticity of the British model is evident through two characteristics:

_ being an individual structure, the Director-General does not chair a particular committee, but is the sole personal responsibility for its work, as opposed to the American model, as the community contributes to the length and complexity of the decision-making process.

_ decisions are subject to appeal.

In France, the legislature used the term “autonomous administrative authorities” in the Janhvi 6 1978 in the Automated Information Law on Freedoms. These authorities became increasingly frequent in the 1980s in response to new requirements regarding the role of the State and the limitations of traditional structures in responding to society’s complex and evolving problems. It identified the scope of these authorities’ interference in the media, communication, control of the market economy and protection of citizens.

In Algeria, independent control authorities are new State institutions. This is a recent experience compared to the above-mentioned models. In 1999, the first such authority was established by the legislature, the Supreme Council for Information, and the 1989 Constitution. - Which recognized multiparty pluralism and the principle of separation of powers and liberal economic orientation – Has cradled the creation and prominence of these powers, and their number is estimated

B17 Control Authority for each sector and the other, Control Authority for Written Press and Audiovisual Control Authority.

The presence of these authorities in various laws and many scholars raised the issue of their independence and their location from the other three authorities and other legal problems.

Each State had its own way of dealing with such problems, especially since the judiciary in liberal States had a wide range of freedom to exercise its authority.

Despite these mechanisms, through which the legislature tried to protect the independence of these authorities, the subject remains under intense debate, both in terms of restraint of concept and legal restraint and even in practice, and in terms of the relationship between the margin of restraint and the margin of freedoms and constitutionally guaranteed rights.

Researchers also consider that the concept of media tuning is flexible, depending on technical developments, especially the emergence of other media such as the Internet, which has opened new media platforms that have their own usage and technological specificities.

In addition to the researchers, the media professionals, in turn, addressed the issue of regulation especially since they are concerned with the matter. The French journalist, Hervé Bourges, referred to the topic in a lecture in which he called for cutting the umbilical cord between media and communication actors and the public authorities, which for years have been the supreme sponsor of the media, and were deliberately interfering, especially when it comes to heavy media (audio-visual) in order to direct it in favor of the system. He believes that the new concept of regulation does not mean the deliberate and deliberate intervention of public authorities in media sector in order to direct it or lead the actions of actors in the audio-visual communication system in a way that makes them participate in the continuity of the system. Rather, it is the regime's accompaniment and regulation of this sensitive sector without interference or influence in a way that leads to the decline and curbing of freedoms.

Besides of the creation of such new bodies in the field of audiovisual communication should come with new solutions and not a new form of the concept of restraint. Mr. Hervé Bourges considered the topic of regulating the audiovisual sector, which is a new idea in many countries, as a modern form of state intervention even in the developed countries, and the former president of the Supreme Council of Audiovisual in France explained that regulation is a new form of state intervention and mediator between public authorities, customers and the broad public, « adding that regular is summed up in four agreed words: mediation, consultation, adaptation, independence.

Addressing the French experience, where the Supreme Audiovisual council has been regulating the work of the media for 23 years, Mr. Hervé Bourges explained that one of the most important components of the policing process in France « is to sever the link between public television and the government, but this principle is regressing, including the law on freedom of communication promulgated in March 2009 deprived the Supreme Council of audiovisual in France of the authority to appoint the directors of public channels, which is now the prerogative of the President of the Republic, especially during the rule of President Sarkozy, who appointed the directors of a number of channels unilaterally.

So , the debate on the issue of regulating the audiovisual sector is attracted by many parties and is also controlled by the conditions of practice and its political and economic context. But the important thing is that the issue of regulating is necessary in all societies, and it is not only related to the private sector, but also to the public sector in a way that guarantees freedom of information and the right in the media and ensuring the good running of media institutions one the one hand, as well as ensuring a balanced media for the citizen.

I.2.Chronology of the development of the audiovisual sector in Algeria (in term of legalization) :

The problem of liberating the audiovisual sector in Algeria was not raised before 1990, when it seemed at least obvious to the existing authority and to the legislator that the media was a strategic sector that served the orientation of the political system and the National Liberation Front. The articles contained in the first media law in Algeria were explicit and indicated the matter and evidence, for example, Article One : « The media in the sector of national sovereignty. The media, led by the National Liberation Front, and within the framework of the socialist choices specified in the charter, expresses the will of the revolution and translates the aspirations of the popular masses . The media works to mobilize and organize all sectors to achieve national goals.»

The reason for the delay in the audiovisual sector in general and the public sector in particular may be this trend, as it is still seen as a political institution affiliated with the state and an official spokesperson for its name, which prevented it from performing the public service in its correct sense, as is prevalent in other societies.

The advancement of the audiovisual sector in Algeria requires a balance between the private and public sector.

As for the media law of 1990, emphasized on the freedom to issue publications, but it excluded the audio-visual sector, as while Article 14 affirms that « issuance of publications, is free... » Article 56 almost excludes the audio-visual sector and stipulates that « it is subject to distributing audio or television broadcasting quotas and using radio frequencies for licenses and a general book of conditions prepared by the administration after consulting the Supreme Media Council.

The law also referred to the establishment of a new media body, the Supreme Media Council, which was entrusted with various tasks that were specified in Article 59 of the 1990 Law, but it was quickly dissolved by a decision of the Ministry of Interior in 1993 in the context of a state of emergency and its authority was entrusted to the Ministry of Communication.

In a lecture he gave in 2005 on the occasion of World Freedom Day , Dr Brahim Brahimi believes that from a legislative point of view, giving the authority to grant licences to exploit audiovisual space in Algeria to an independent body is a revolutionary idea, but everything is destroyed when this body is dissolved in 1993.

In the opinion of the researchers, the issuance of the state of emergency law in February 1992, due to the deterioration of security made it difficult to talk about invoking the legislation regulating the media sector in its three spectrums : written, audio, and visual .-(بلعمرى، 2011 .- (2012

The legal situation remained unchanged until the issuance of Presidential Instruction N°17, which was published on November 02,1997, and all observes agreed on its importance for the world of media and communication and its perceptions.

In this introduction, the President of the Republic mentioned that communication is « a prominent feature of the modernity of the world and an essential dimension of the functioning of democratic societies . » He acknowledged the « necessity to satisfy the communication needs expressed by the population, » and this is what makes the state obligated « to define a renewed

strategy that can better embody the citizen's right to information and freedom of expression. »
To face bets and challenges, he prefers to act and give priority to :

- . Opening the media to community .
- . Reorganazing institutional communication.
- . Ridding the media of partisan influence and ensuring that they have a public service mission.
- . Organizing communication within Parliament between the executive and political parties.
- . Correcting Algeria's image abroad.

These are the axes of discussion and work that you will find their legislative translation in the new media law.(journalistes, 1996)

The year 1998 could have been a year for press freedom in Algeria, by adopting two basic laws for the media and communication sector : the media law and the advertising law, which would have allowed to strenghen media freedom and expression, clarify the relationship between public authorities and the media, and move the wheel. Advertising is based on one of the characteristics that go in the direction of developing the national press and not in the direction stifling it.(Fédération internationale des journalistes, 1997)

However, the new media law that was adopted by the government was not ratified by the National People's Assembly in its autumn session 1998, and was postponed to the spring, and thus it kept waiting at the council's desk, and the new law was expected to create a Supreme Council for Media(CSC) and by opening the audiovisual sector to the private sector, while the law on advertising is requested to end the state's monopoly on institutional advertising.(Fédération internationale des journalistes, 1998).

In year 1998 remained just a year of promises from the government, in which it postponed the adoption of laws that would grant the media creater freedom and strong protection.

The projects and promises that were given by the authority every time to men of the profession to reconsider the media law of 1990, which no longer keeps pace with developments in the media sector, whether in terms of ensuring more freedom for practitioners and protecting them, or even technically with the emergence of new forms of communication such as electronic journalism and others ones.

Among the projects that remained ink on paper, we find the media bill for year 2001, which was published in the media under the name of a law ralated to the practice of communication, which referred to the creation of a body called the Supreme Council forCommubication, and the latter has the powers to approve or prevent the issuance of periodicals and the accriditation of audio institutions Optical.

And the preliminary draft of the Information Law 2002, which referred in Chapter Three to audio-visual activity and defined it in Artical 34 as follows : « Audio-visual communication, within the meaning of this law, is placed at the diposal of the public or groups thereof, signs, images, signals, sounds or communications and whatsoever. Its nature, which does not have the status of private correspondence, is through wire and wireless communications.

This allowed the private to operate in the audiovisual sector as stipulated in Article 35, and the media practice in this sector is subject to the Supreme Audiovisual Council, which was considered as an independent authority for control and monitoring (Article42).

And the draft media law for the year 2003, which stipulated in its first article the conditions and rules of media practice within the framework of respecting the principle of freedom of the press and audio-visual communication, that is to say that it allowed the opening of the audio-visual sector with the great ambiguity surrounding the establishment and functioning of the audio-visual council.(مشروع قانون الإعلام 2001)

The reasons for not controlling the media sector in Algeria for more than twenty years are due to the lack of political governance will guarantee freedom of the media, as the citizen was considered minor and the conditions were unfavorable, and the pretext of ensuring the security of the state remained the dominant discourse among officials.

The political amendments and reforms approved by the president of the Republic, « Abdulaziz Bouteflika » in his speech after what was known in the media as the « Oil and Sugar Revolution » was an imperative matter to absorb any attempt for political change, especially since the situation in the Arab region was not stable in light of the “so-called Arab Spring Revolution.”

In this context, the 2012 Media Law drafted, which is an organic law containing 133 articles divided into twelve chapters, and the fourth chapter was devoted to audio-visual activity which dealt with this media field superficially, reduced to eight articles. In Articles 58, 59, 60, the concept of activity was defined. Audiovisual and the second chapter dealt with the audiovisual control authority, which has been defined that it has advantages and disadvantages.

What concerns us is that the law that was issued in 2012 was marked by a delay in its practical application, as well as a delay in issuing the necessary and complementary laws to its articles and this indicates the cautious handling of the authority with this sector (Blogs, social networking sites, electronic press, and others), and it seems that we are late and we are still late, not only by looking at Western experiences, but also Arab experiences, such as the experience of Moroccan channels in partnership with western media institutions, and the Tunisian and even Egyptian experience with regard to cultural channels and variety and religious and other forms of media without the political ones that Arab regimes fear.

The ratification of the audiovisual law came two years after the issuance of the organic law, and throughout that period the audiovisual sector remained legally vacant, March 2014 contains 113 articles regulating the audiovisual sector in Algeria.

And it states in its fifth article that the licensed audiovisual communication services “consists of thematic channels establishing by institutions, bodies and agencies of the public sector or legal persons subject to Algerian law and whose capital is owned by natural or legal persons with Algerian nationality”.

The word “thematic” contained in the text of the article aroused great controversy. After waiting twenty-four years, only the establishment of thematic channels was allowed. Without the possibility of establishing public channels, the text of the draft law makes the establishment of public channels a monopoly on the bodies, institutions and organs of the public sector.

The law clarifies in Article 17 that “the licensed audio-visual communication service is every thematic service of television broadcasting or radio broadcasting established by decree in accordance with the conditions stipulated in the provisions of the law”. As for Article 18, it states that “the licensed audio-visual communication services mentioned in Article 17 may include news sessions and programs according to the courier size specified in the exploitation license”.

Regarding exploitation, Article 27 states that “the duration of the granted license is set at 12 years for the use of a television broadcasting service and 6 years for a radio broadcasting service” while Article 28 confirms that “the renewal of the licenses is carried out outside the framework of announcing the candidacy by the granting authority after a reasoned expressed by the control authority , audio-visual”.

The term of initiating the exploitation of the audio-visual communication service, in accordance with Article 31, is fixed for one year for the television broadcasting service and six month for the radio broadcasting service. On the other hand, the law touches on the common provisions for all audiovisual communication services, as Article 47 states that “the general book of conditions issued by decree after that the opinion of the audiovisual control authority

determines the general rules imposed on each television or radio broadcasting service” (مشروع). (وزارة الاتصال , 2003 قانون إعلام)

Article 48 also clarifies that the book of conditions mainly includes obligations that allow “respect for the requirements of national unity, national security and defense, respect for the country’s economic and diplomatic interests, respect for the confidentiality of the juridical investigation, adherence to the national religious authority, respect for other religious references, and not violating the sacred, other religions.”

The obligations also impose “respect for the foundations and principles of society, respect for national values and state symbols as defined in the constitution, promoting the spirit of citizenship and a culture of dialogue, respecting the requirements of public morals and public order and providing diverse and quality programs”. The book of conditions stipulates the need to ensure that the specified program quotas are respected, while ensuring that at least 60 % of the programs broadcasting national programs are produced in Algeria, including at least 20% allocated annually for broadcasting audiovisual and cinematic works.

Many jurists consider that the concepts contained in this law are not specific, such as the requirement of national unity, security, respect for economic interests, public morals, national values, etc..., which may be the outlet for the authority to impose sanctions on media institutions and limit of its freedom.

I. 3. Audiovisual regulating authority:

It is an authority entrusted in accordance with Article 54 “to ensure the freedom to practice audiovisual activity within the conditions specified in this law and the legislation and regulation in force and to ensure the impartiality of legal persons that exploit the audiovisual communication services of the public sector and to ensure objectivity and transparency”. It is also called upon to “ensure the promotion of the two national languages and the national culture”. The audio-visual control authority, in order to perform its tasks, enjoys powers in the field of control, monitoring, consultation and dispute settlement that are defined by the law in its article 55. The same article indicates that the authority is charged with studying and broadcasting requests for the establishment of audiovisual communication services in addition to allocating the frequencies placed under to establish terrestrial audiovisual communication services within the frame work of the procedures specified in this law.

In the field of monitoring, the audio-visual control authority ensures respect for the conformity of any audio-visual program, whatever the means of its transmission, with the laws and regulations in force, and ensures respect for the minimum quotas designated for national audio-visual production and expression in the two national languages. It must also exercise control by all appropriate means on the subject, content and methods of programming the advertising quotas.

As for the advisory field, the authority is invited to express its opinion on the national strategy for the development of audio-visual activity and on every draft legislative or regulatory text related to audio-visual activity. The audiovisual control authority in the field of settling disputes shall also arbitrate in disputes between legal persons who use an audiovisual communication service, whether among themselves or with users, and investigate complaints issued by political parties, trade union organization and /or associations and every natural or legal person. Another notifies it of a violation of law by a legal person who uses an audiovisual communication service.

Article 57 of the law clarifies that the audiovisual control authority consists of 9 members appointed by presidential decree as follows: 5 members, including the president, to be chosen by the President of the Republic, two non-parliamentarians proposed by the Speaker of the National Assembly, and two members proposed by the Speaker of the People's National Assembly. The audiovisual control authority in accordance with Article 58 exercises its functions with complete independence, as its members are selected based on their competence, experience and interest in audiovisual activity according to the Article 59.

How can a body devoid of specialists and whose members are appointed according to a presidential decree and headed by a member chosen by the President of the Republic guarantee transparency in this sector. Especially in a country where the functions of the authorities are still practically unclear.

I. 4. Private satellite channels appeared in Algeria even before the law regulating the audiovisual sector was issued, although most of them are legally affiliated with Arab or Western foreign countries, but they target the Algerian public in their media messages. It should be noted that the channels that began to be issued successively since 2011 are not The first experience in satellite media directed to the Algerian audience, as it was preceded by channels such as Al-Khalifa TV, Mediterranean channel and Barbar TV, to name a few. Algeria witnessed a boom in private television channels and the number of channels established until September 27, 2013_ 12 channels, which began broadcasting a year ago, while other channels are preparing to launch their broadcasts. It began broadcasting from Jordan, and "Al_Nahar" channel is the first Algerian television channel of a news nature followed by "Al-Shorouk", "Al_Jazaeryia", "Hoggar", "Dzayer", "Atlas" and "Al-Moasher", in addition to the "Numedia News" channel. The television space in Algeria witnessed the launch of several independent and specialized channels, and the "Djarja" channel, directed to the children began broadcasting, and the "Samira" channel for women, cooking and fashions, and launched the "Berber Music" channel, an artistic channel interested in Amazigh music and art, which was broadcast some time ago. In addition, an advertising channel "Algeria 24" was launched. These channels broadcast news, artistic, political and social programs, but they are registered with the Algerian Ministry of Communication as foreign channels approved to work in Algeria, but they are forced to broadcast their programs from abroad: Tunisia, Jordan, Bahrain, France and London.(لحياني, 2013) The number of these channels, according to the ministry's statistics, is 43. Accreditation was granted to only five of them as foreign channels, which was considered unfair and selective in dealing with this file, as it only approved channels close to the authority and which supported the candidacy of "President Abdelaziz Bouteflika" four the fourth term, while the offices of the rest are active without a license, yet they are dealt with officially.(صابر بليدي, 2015)

As for the nature of the relationship between the authority the private audiovisual sector in Algeria, it does not differ from that relationship that it gathered with the private written press, which tried to tame it through economic and administrative pressure mechanisms, judicial follow-ups, banning publications, closing offices and others. It seems that the mentality of loyalty still prevails. Even in its dealings with this young sector, officials in the authority have, and the issue of closing the Atlas channel, as well as the Al-Watan channel, are prominent examples that translate the intention of the authority in its dealings with the heavy media.

Al-Watan Algerian channel was closed on March 12, 2014, after an order from the governor of Algiers, to direct accusation against it and harness the public force to storm the channel's headquarters in Birkhadem in Algiers on the night of March 11, 2014 and to seize and confiscate cameras and audio recording devices, in implementation of the orders of the Republic's prosecutor, who issued A document from the court of Sidi M'hamed in the capital, its content is "inspection and seizure of everything related to incitement". At the time, the director of "Atlas" channel Hafnaoui Gul, said that the authorities "exercised on us". The authority under various

reasons, “incitement” and “unprofessionalism”, “after hosting the former national prince of Islamic Salvation Army Mahalla”, in which he made sharp statements, was considered a threat to the person of the President of the Republic, because he was not allowed to establish a political party. The same thing happened with “Al-Watan” channel, when security forces stormed the channel’s headquarters in Darariyeh in the capital and proceeded to shut it down by order of the governor of the state of the capital. The Minister of Communication, Hamid Qurain, announced that the Ministry of Communication had filed a complaint against the Algerian Al-Watan channel for broadcasting the statements of a guest who insulted the symbols of the state and the Republic.

The minister pointed out that this television channel, subject to international law, which has its headquarters in Badraria (Algiers), “is operating in an illegal and illegal maner. I am well aware of what I am saying,” denouncing everything that is “excessive, offensive and harmful to the press.”(ل, 2015)

It was more appropriate to ask about the ministry’s tolerance and justice in dealing with these channels, which the minister considered illegal and illegitimate, or is the price of illegal activity synonymous with muzzling.

II - Conclusion:

To sum up, the debate on the audiovisual sector in Algeria is a debate on three levels:

The first level: it is a legal discussion that requires the actual involvement of all concerned parties in drafting and amending the laws related to this sector.

The second level: political, and it requires a real political will to ensure freedom practice.

The third level: is related to media institutions and the extent to which they respect the ethics of the profession and their belief in the citizen’s right to a balanced media.

We do not deny that the audiovisual law in itself is a first step, which should be confirmed in practice by ensuring transparency in dealing with private media organizations.

The existence of an authority to control is necessary and cannot be bypassed, but it should not turn into an authority of suppression and curtailment of liberties.

Finally, what threatens the media scene in Algeria is not the political system, but also the power of money and monopoly.

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