

Broadcasting Regulation vs. Freedom of Expression and Editorial Independence

A Contradictory Relationship?

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Abstract

This article discusses the relationship between forms of broadcasting regulation and the principle of freedom of expression. The argument is that there always is a tension between how to regulate the media through administrative and political measure on the one hand and how to secure a free independent broadcasting media on the other.

By referring to the report of the arguments of the Norwegian Freedom of Expression Commission and the subsequent new freedom of expression article in the Norwegian constitution the author maintains that the only reasons for regulating broadcasting can be found in that frequencies are a limited resource, or in arguments that have to do with safeguarding a plural and independent media situation against the threat of monopolisation and 'corporate' censorship.

The article ends up by identifying six possible threats to an independent broadcasting situation: The state; the courts; commercial owners; advertisers; sources; networks of actors.

Key Words: broadcasting regulation, freedom of expression, editorial independence, the regulatory system in Norway, threats to a free and independent broadcasting situation

Introduction

The principles behind freedom of expression in a democracy can be summed up in the following points: 1. Everyone has the right to express oneself freely in the medium of one's choice. 2. This implies the right to access, receive and disseminate information, ideas and messages of all types regardless of border, through all communication systems and media – be they oral, print or electronic. 3. The media shall enjoy editorial independence from undue influence from both state and corporate actors.

On July 14 2004 the then newly established British communications regulation authority – Ofcom – presented a consultation document on its proposal for a Broadcasting Code. Section 2, point 2 of the document states:

Broadcasting and freedom of expression are intrinsically linked. The one is the life blood of the other. Nowhere can that tension between the right to freedom of expression and its restriction be more acute than in drawing up a Code which seeks to regulate broadcasting. (Ofcom 2005)

This is an interesting and statement coming from a broadcaster regulator because there have been few discussions of how to make broadcasting regulations compatible with a fundamental adherence to freedom of expression within regulatory frameworks.

The perspective of how broadcasting regulation relates to the principle of freedom of expression has never really been central to the discussion of why it is necessary to regulate this sector. In her overview of the regulatory regime in Norway from the 1980s and onwards Trine Syvertsen (Syvertsen 2004) does not emphasise this aspect, but it is possible to maintain that it is indirectly present in the discussion of the relationship between the state and the regulator organs. Looking back at the situation when the Nordic public service broadcasters enjoyed a monopoly, it was only the hard economic liberals who questioned the situation also in the perspective of freedom of expression. When the monopolies were dissolved around 1980 (in Norway in 1982), the discussions leading up to the dissolution of the monopolies were only marginally concerned with whether a state broadcasting monopoly could be said to be in line with the fundamental principles of freedom of expression. Rather, the debate to a large degree was centred on the need for building a commercial broadcasting sector and to open up the airwaves to local communities and organisations in the form of community broadcasting. In addition technological developments in relation to cable and satellite broadcasting were used as arguments for breaking the monopoly. There were, however, very few concerns raised about whether to regulate a whole media sector as such could be said to be compatible with fundamental principles of freedom of expression. Regulation was regarded as necessary because it constituted a way of administering limited natural resources in the form of frequencies.

Trine Syvertsen (2004: 17 ff) has identified four types of arguments for how to regulate the media in general and broadcasting in particular. The first is linked to cultural politics. The second concerns media business interests. The third is based on consumer politics. And the fourth has to do with competition regulation.

One of the most important arguments used to defend a continuous regulation of the broadcasting sector in the digital era has been related to cultural policy considerations. This is clearly the case in Norway and other Scandinavian countries, but also a general trend in Europe. The public service principles that were the basis of regulation in Europe in the era of limited frequencies both for the state owned public service corporations and the private commercial ones with special privileges (the British ITV system and similar) are now to be continued in order to secure cultural pluralism in the sector. In addition come the European demands for a certain percentage of European or national programming. One can sympathise with such a policy as an attempt to strengthen the European and national cultural industries and agree that it is important to counter the American dominance particularly in TV-entertainment.

The interests in regulating and stimulating broadcasting as a business have been pronounced at a European level, particularly as a means to strengthen European media industries – TV, film, and, to a certain degree, music. Thus the focus of the EU directive *Television without Borders* (originally from 1987, revised in 1997 and continued in a proposed *Audiovisual Media Service Directive* 2006) emphasises both the business interests of European audiovisual industries and as cultural aspects of regulatory regimes (European Commission). Thus it is possible to argue that the reasons for regulating media industries are based more on cultural arguments rather than strict economic considerations.

These arguments are also related to concerns over consumer politics where regulation exists in order to protect the audience from advertising that is deemed to be offen-

sive and harmful. Examples may be commercials for tobacco and alcohol, gender discrimination advertising, political commercials etc. In addition measures to protect the general audience against violence and pornography may be viewed in such as perspective, and outcome is the so-called watershed policies, where certain programmes are not shown till after children are supposed to be in bed.

Competition regulation has as its aim to protect the market from the formation of strong monopolies and other results of a free media market that might form a threat to pluralistic media. Thus in relation to this form of regulation one is up against three different forms of partly contradictory interests. Firstly regulation is supposed to promote fair competition between different media businesses, and see to that marked mechanisms are not unduly hampered. Secondly regulation has as an objective to prevent one or a few actors from creating a situation of strong market dominance or monopolisation, even if this development has its bases in market competition. Thirdly to regulate competition and prevent monopolistic ownership is aimed at securing a multiplicity and plurality of voices in the public sphere. Thus also in this context we have to do with a culturally based argument for regulation.

Seen in the perspective of a principled stand on freedom of expression all these regulations may be problematic, because they do imply in some form or other interference in the total editorial independence of the broadcaster and thus constitute a form of a priori control with the content, because the “provider” does not have full control of what is presented to the public. This is for instance very much the case when it comes to provisions for securing quotas of national or European programmes on TV. But it may also be argued in the case of political advertising, as well as aspects of the way that ownership control is practiced in Norway.

Is Regulation a Form of Censorship?

Concerns over whether one can and should regulate broadcasting differently from other media have rarely been raised. It has up till now been generally accepted that broadcasting regulation is not in conflict with fundamental freedom of expression issues. Now, however, with digitalisation we are facing a situation where the arguments for regulation on the basis of limited frequencies no longer hold water. If there is to be regulation in the future it must be based on other arguments and considerations. In the debate over whether to regulate or not, the principle of freedom of expression is perhaps the most fundamental.

Consequently the issue of broadcasting regulation and a principled view of how this practice is to be viewed in relation to what constitutes freedom of expression figured prominently in the report of the Norwegian Freedom Expression Commission (NOU 1999:27.)¹ The commission regarded it as a paradox that one type of media were to be regulated differently from others. If the same form of regulatory regime were to be used in relation to the print media for instance it would have been considered to be in breach of fundamental principles of freedom of expression. In its deliberations the commission sought to come up with proposals that implied that freedom of expression principles ought to be practiced in a media neutral manner. To have special provisions for some media, and not for others, might in itself put freedom of expression in peril.

The commission treated the question of broadcasting regulation in Chapter 7.² There are reasons to believe that the views of the Commission have had their effects already the following year when the Ministry of Culture and Church Affairs issued its White

Paper on media policy in 2001 (St.melding. nr 57. (2000-2001). Her it is stated that to regulate the media raises particular problems regarding freedom of expression and the free role of the media in relation to the political authorities, In view of such considerations it may be principally unacceptable that the political authorities themselves enforce the regulations that control the media (St.melding. nr 57. (2000-2001) Chapter 4.).

The Commission treated the issue of broadcasting regulation as part of their discussion of prior control with utterances, that is, in its most drastic form, synonymous with direct censorship. This indicates how serious the issue of broadcasting regulation may be regarded in relation to freedom of expression principles. The prohibition of all forms of prior censorship is the basis for all legislation concerning freedom of expression. Citizens have the right to make their own decisions concerning what information and messages they wish to communicate to others. All reactions to possible infringements must come a posteriori, after the expression has been uttered and only through court procedures, never as administrative measures. The principle of subsequent accountability is fundamental and must be kept separate from where the boundaries to the right to freedom of expression are to be drawn. The debate over where the boundaries shall be drawn must take place in full openness. If an utterance is declared unlawful this must be made known in an absolutely transparent manner so that the citizens themselves are informed about the reasons for the declaration of a ban on that particular utterance in order for public to be able to form their opinions about the issue. This is a principle that often is overlooked in relation to the practice of temporary injunctions against the media by courts of law (See later in this article).

It is, however, necessary to distinguish between censorship of individual utterances on the one hand, and control that is the result of the collective total of utterances in the public sphere or in one particular medium on the other. It is this matter that enters the debate when we deal with broadcasting regulation, where concerns regarding limited access to a natural resource such as frequencies play a role. In this context consequences for cultural and democratic diversity might also be taken into consideration. The problem about broadcasting regulation is: regardless of all good arguments in favour, it nevertheless constitutes a form of prior control. Concessions for the right to issue newspapers, publish books or magazines would be in breach of the Constitution, and would be regarded as being in conflict with the rules of any democratic system. In addition in Norway, NRK (Norsk Rikskringkasting) – the state public service broadcaster – is the only broadcaster that has a legal right to broadcast. This is set out in the Broadcasting Act. All other broadcasters need a concession. In principle this is a ban on anyone except for the NRK and a few other licensees to use the broadcast media. If we were to apply the same principle to the print media it would mean that only a limited number of publishers would have the right to publish newspapers, magazines and books. Such a system has not been legally possible in Norway since the passing of the Constitution in 1814.

There exist two sets of rules in relation to the regulation of broadcasting: One for the operation of a broadcasting company, and one for the transmission of the signals. Both types of regulation potentially constitute a form of prior control by the state of the content of radio and TV transmissions, even if it does not involve direct editorial interference. The first form of regulation directly concerns broadcasting content by stipulating what type of programming is desirable and being within the framework of the license. As this is a form of control that specifies rules for what content that in principle should be transmitted – cultural, linguistic, types of programmes for different audiences etc., it is a complex issue.

The second form of regulation does not directly pertain to a freedom of expression issue, as it does not deal with the content of what is being broadcast, only with issues of a technical character. It concerns regulation of telecommunication and the operation of the net itself. However, as there are certain moves in several countries to merge telecommunication and broadcasting regulators into one body, this distinction might in the future not be as clear-cut as it in general is now. Examples are Ofcom³ in Britain and ICASA⁴ in South Africa.

In addition there is a tendency that telecommunication companies now also operate as broadcasters. The activities of the Norwegian telecommunication company Telenor is but one example of this development. The company has ownership interests in a number of satellite channels and has entered into agreements with the commercial public service TV channel TV2 about rights to transmit football matches. The same tendency is also clear in relation to the convergent activities of other telecom companies as well as cable and online companies. It is obviously an issue that is absolutely central in relation to the development of Internet and phenomena such as webcasting etc. As long as the regulation only is concerned with the distribution of limited resources such as frequencies and access to the net, one cannot classify this as being contrary to freedom of expression principle, but as soon as it moves into other areas, it becomes problematic. The principle of transparency is, however, fundamental in this as in other regulatory contexts. All forms of regulation must take place in absolutely open manner and be conducted by an organisation independent of the State, not by an administrative authority of the State.

Freedom of Expression and Infrastructural Considerations

As regards various forms of control with broadcasting, maybe one of the most principally difficult issues is that individual broadcasters are treated differently. In order to illustrate the problems arising from this I will use the situation in Norway as an example. As referred to above the Broadcasting Act stipulates that the state public broadcaster the NRK with its two national TV-channels, three national radio-channels plus specialised radios, and various Internet services has the legal right to broadcast. All others must apply for a license to broadcast, which is granted by the Ministry. Some broadcasters are regarded as public service broadcasters and subject to particular rules in relation to the license – TV 2, and the radio channels P4 and Kanal 24. They also enjoy important privileges such as access to the national terrestrial net. Others again are purely commercial broadcasters that transmit their programmes by cable and satellite – in Norway this is the case for TVNorge and TV3. Furthermore there are the different Pay-TV channels, in one of which Telenor is a prominent owner. In addition there are local and community broadcasters – with a background in organisations as well being commercial. Different rules and regulations apply for the different types of broadcasters. With the coming of digital broadcasting and a competitive situation where the differences between the broadcasters will diminish, it is a question whether it is reasonable to continue to have different regulatory regimes for the different broadcasters.

If broadcasting is to be regulated, there are some principles that must be observed. Regulations must be prescribed by law, and not be contrary to the principles laid down in the second paragraph of Article 100 of the Norwegian Constitution.⁵ Any limitations, that is also regulations of media, must be tested “(...) in relation to the grounds for freedom of expression, which are the seeking of truth, the promotion of democracy and the

individual's freedom to form opinions" (The Norwegian Ministry of Justice & The Norwegian National Commission for UNESCO (2005): 14).

In the Norwegian case broadcasting regulation may be applied in accordance with the last paragraph of Article 100, which states: "The State authorities shall create conditions that facilitate open and enlightened public discourse." (The Norwegian Ministry of Justice & The Norwegian National Commission for UNESCO (2005): 14). This paragraph ensures that it is the responsibility of the state to secure that citizens as individuals and in groups enjoy a situation where they are able to express their opinions and receive information in a well-developed public sphere. This may serve as a ground for giving particular responsibilities to public service broadcasting and to establish rules that prevent monopolised ownership of the media. The State should promote the development of broadcasting in a manner that furthers diversity, and does not impose restrictions that may inhibit the growth of the sector. This implies that broadcasting regulation may be in accordance with the principles of freedom of expression only as far as such regulations promote freedom of expression, and are "(...) transparent, accountable, proportionate, consistent and targeted only at cases where action is needed." (Ofcom. (2004)).

In the international debate over the relationship between freedom of expression and regulation of broadcasting there are some aspects that always are being highlighted as being fundamental. Regulation must be in the public interest. It must be constituted in such a manner that it cannot function as a possible tool for state control of the broadcasting sector. At the same time it should prevent commercial interests from growing to be too dominant. All forms of regulation imply a balancing act between the interests of citizens coming together as a public and having the right to receive as varied a range of programmes as possible, catering for all interests (Article 19 (2002)). This means that the promotion of diversity and pluralism must be a central element of all forms of broadcasting regulation. Diversity presupposes that there exist many and different types of independent broadcasters that provide programmes that represent and express the interests of society as a whole. Regulation must thus promote both the audiences' right to be able to choose between many forms of broadcasting and programming as well as the competition between the broadcasters. This will serve the public both as citizens in a democratic polity as well as their interests as consumers of commodities, services, entertainment and information.

On the one hand a policy of regulation must thus both restrict tendencies to monopolisation and promote the interests of an inventive and lively broadcasting sector. Thus it may be necessary to institute ownership regulations that prevent media conglomerates to develop into monopolies, which represent a risk of 'corporate censorship'. Thus it may be necessary to intervene in the market in such a manner that pluralism is not undermined by a concentration of economic and symbolic power. On the other hand the regulation must not be so strict as to prevent opportunities for investment in broadcasting. This implies that ownership regulations must not stifle the possibilities for further growth and development. The measures should take into account the need for the broadcasting sector as a whole to develop and be economically viable. This is of particular importance in an era of convergence where there is a need for investment in new platforms.

Whether this form of ownership regulation is to be covered by special laws for the media sector or only be subject to regular competition laws is debatable. In some countries such as Norway there is ownership regulation for the news-media (newspapers and broadcasting), but not for other media. And the legislation does not apply to the public broadcaster the NRK. In other countries the regulation only covers broadcast media and

telecommunications e.g. South Africa. In yet other countries such as Denmark there are no special provisions for the media, they fall under the general competition regulation.

All forms of broadcasting regulation should respect the principle of editorial independence. All decisions of what to broadcast and what types of programmes that are to be transmitted is the sole responsibility of the broadcasters and should be made on the basis of independent professional criteria. It is up to the broadcasters, not the government, nor regulatory bodies, nor commercial entities to decide over the content and programming of the broadcasts. This applies both to general policies and specific attempts at interfering in programmes, such as demanding that the broadcaster serves as a voice for the government, especially at election times. Internationally there are unfortunately many examples of this.⁶ It is not for government or anyone else to promote a certain way of covering important events. Nor should the broadcasters be obliged by the state or economic powers to carry specific forms of programming that are contrary to the ethos of editorial independence. Broadcasters should respect and act according to the fundamental rules of media ethics such as they are expressed in journalistic codes of conduct. Freedom of expression and editorial independence presuppose ethical responsibility.

Threats

There are six instances that potentially may constitute a threat to the freedom and editorial independence of broadcasters. First there is the government and possible sanctions vested in the state in the form of licenses, regulatory decisions and laws that go against the principles of freedom of expression and information – such as public secrecy acts. Secondly, there are the courts, which may stop programmes prior to being aired. Thirdly, commercial owners that demand high economic returns on their investments may unduly influence programming. Fourthly there are advertisers and producers that may threaten with economic sanctions or try to influence the productions and contents. Fifthly sources may try to define how programmes are to be focused and try to influence what is being broadcast. And finally there exist more diffuse possibilities of undermining editorial independence in the form of networks and the double roles of actors in the broadcasting sector. Below follow reflections on these six challenges to editorial independence.

1. Broadcasters must be free from all forms of interference, and be independent of direct state, political and commercial influence in the programming. Broadcasting content should be the sole responsibility of the broadcaster's editorial staff. The content and programming must never be subject to prior control or censorship, neither from state authorities, nor from any regulatory institutions or supervising bodies. However even countries that usually are regarded, as beacons of freedom of expression do not totally adhere to these principles.

The threats of state interference must be countered by establishing strict rules for the separation of the state interests in the ownership of the public broadcaster and the control over authority that is to give licenses and concessions for broadcasting. The granting of licenses and the supervision of the broadcasting sector must be conducted in a manner that ensures independence and transparency, and without any form of doubling or confusion of roles and tasks. The situation in Norway as regards this issue is unclear indeed. In Norway it is the Ministry of Culture and Church Affairs that is the owner of the public service broadcaster, which grants licenses to all other broadcasters, even if they in re-

ality are competitors of the state public service broadcaster. This is in breach with the principle of an open and fair and transparent process when it comes to granting broadcasting licenses. Furthermore it is the Ministry, which appoints its board of directors of NRK. In 2006 the new board had a former Minister of Culture from the governing Labour Party as its chair, and the immediate predecessor to the present minister as its Vice-Chair. This means that the relationship between the Ministry and the Broadcaster informally, if not directly formally, is too close. The connection between a Ministry and the editorial leadership of the broadcaster is often complex, and does not always in principle confirm with a strict separation of functions. Sometimes it is formulated as part of the duty of the board of directors of the broadcaster to oversee that the remits stated in the public service license are being fulfilled. But this is to grant the board some form of editorial responsibility. In Denmark for example the board of the Danish state-owned public service broadcaster has such duties.

The powers of the regulator must be provided for in the legislation that establishes the authority. Regulatory bodies should be formally accountable to the public through Parliament rather than a minister. All processes of issuing and overseeing of concessions should be transparent. Decisions that affect individual broadcasters should be subject to the principles of administrative justice and be accompanied by written reasons. In line with the principles of freedom of expression legislation, all supervision of regulatory bodies is only to deal with broadcasts already transmitted (*a posteriori*) and should never try to influence individual editorial decisions.

As regards this issue the situation in Norway is far from being in adherence with the principles laid out above. It is the task of the Norwegian Media Authority, which is an administrative body, placed under the Royal Ministry of Cultural and Church Affairs to oversee all regulations in relation to media ownership and film control. The Authority also processes applications for broadcasting licenses for local radio and television, and satellite broadcasting. Furthermore it monitors advertisements and sponsorship in broadcasts, and impose sanctions for transgressions of rules (Medietilsynet Homepage). The problem here is of course that The Media Authority is not an independent organ, it is an administrative body under the Ministry. And the way it implements and makes its decisions is according to a government department's administrative practice and thus not entirely transparent.

2. If there have been transgressions of any rules or regulatory principles they must be judged after the controversial programme has been broadcast, not prior to it. It was this important principle, which was at the centre of interest when the Norwegian public service broadcaster the NRK in October 2005 decided to broadcast an investigative documentary about a spectacular attempt at bank robbery in the city of Stavanger. The court was still hearing the case at the time. The programme had prior to being transmitted been brought to the Oslo tribunal for interlocutory (temporary) injunctions, that is the court for enforcement of claims.⁷ The tribunal decided to stop the programme and banned NRK from transmitting it. It was a ruling based on among others the interests of the attorney general and on the protection of the safety of one witness. The court decision was made in a closed hearing and the parties of the case and their lawyers were instructed not to divulge anything about the court proceedings. It is clear that this a form of prior control that has many aspects that resemble outright censorship. There is furthermore reason to believe that if it had been a report in any other medium than TV – print or radio – the injunction against the programme would not have been passed. Con-

sequently the NRK televised the programme, and was later brought to court for contempt and fined a considerable sum. The decision was appealed to a higher court⁸, which refused to hear it. But the case was appealed to the Supreme Court who on March 15 2007 decided that it was wrong of the Tribunal for interlocutory injunctions to stop the programme. This ruling must be interpreted as strengthening of the freedom of expression in Norway, and particularly within the area broadcasting.

3. The threat from commercial ownership interests to editorial freedom is a complex issue, particularly as there in many countries – including Norway – exist different regulatory rules for different broadcasters and different financial models. This means that competition between the broadcasters is not even, and this may prompt owners to demand that a certain type of popular programmes should be prioritised over others aimed at narrower audiences. Pressure from owners may also come in the form of demands for higher profits, which again may have as a consequence that the broadcaster aims at transmitting programmes that attract high revenues in the form of much advertising and that are cheap to produce. Entertainment is prioritised over critical journalism. The uneven competition may be particularly acute when the public service broadcaster, which is financed through license fees, also enters into the commercial market in the form of attracting sponsorship and establishing pay per view channels in the new digital environment. Such developments may squeeze the commercial public service broadcaster's revenue, particularly if this broadcaster also has to compete with commercial channels that do not have to fulfil public service remits. This is the situation in Norway, and the question remains how one is to regulate the field in the digital future. If one is to adhere to infrastructural requirements of Article 100 of the Norwegian Constitution, it should be the total broadcasting sector that should be subject to some sort of public service demands or none. To maintain a system with dissimilar regulatory practices for different broadcasters may create conditions for commercial pressures that in the end might undermine the principle of editorial independence for the sector as a whole.

4. It is not so easy to identify the potential threat to the editorial freedom of broadcasters that may issue from advertisers. It is, however, possible to view the situation from two perspectives. One is the direct influence that is related to certain programmes being sponsored in a manner that does not make it absolutely clear who pays for the production, and what is the relationship between the broadcaster and the sponsor. This is an area that internationally is full of infringements. Secondly there is the tendency that certain programming concepts attract more advertising than others, and this again influences editorial decisions of what type of programmes to produce and transmit.

5. As regards the influence from sources there is a tendency in broadcasting as well as in other media to seek a lowest common denominator for newsworthiness and for how to cover an event. In such situations both sources and the attention given to the event by interests outside and inside the media are often very strong. Examples of this tendency are particularly pronounced when it comes to international TV-news coverage of major conflicts and crises like the wars in Afghanistan and Iraq. In these cases American sources and government media strategies contributed to the way the conflicts were covered by TV-journalists from all over the world. One example had to do with the footage from the action in Iraq provided by American sources, another was the practice of embedded reporters (Thusu e.a. 2003). In a way what I have described above is but

one extreme example of how strong professional actors try to influence news-coverage in general by trying to filter and form what type of stories that reaches the news, and in what format. These actors often represent strong financial or political interests.

6. The sixth type of threat to editorial independence is linked to how central staff members of the broadcasters participate in informal or formal networks that might influence the content of certain types of programmes. This may for instance be the case in relation to the coverage of entertainment and music. Another example is how programme hosts may be a form of “permanent” free-lancers who double by also serving as information agents for certain big events, which they then again cover directly themselves, or influence how these events are being covered by using their contacts inside the broadcasters. One Norwegian example is how the PR-responsible person for a big music-festival in Kristiansand also double as the programme host for a popular morning radio show where there were several reports about the same festival. Such practices undermine the legitimacy of broadcasters as independent media. They are also obviously counter to the principles of good practices laid down by the Norwegian media organisations in their system of self-justice.⁹

Conclusion

The discussion above is intended as a contribution to throwing light on the very complex relationship that exists between broadcasting regulations in theory and practice on the one hand and the principle of freedom of expression on the other. There can be no doubt that looked upon from an absolutely strict freedom of expression perspective to regulate broadcasting for other reasons than the administration of limited resources in the form of frequencies constitutes a form of prior control that is contrary to the fundamentals of freedom of expression. It is necessary to ensure the independence of broadcasters from possible government control, and refrain from treating broadcasting any differently from other media.

However, if one takes into the consideration the sixth paragraph of the Norwegian Constitutional Article 100, it is possible to regard broadcasting regulation as being compatible with the traditional liberal emphasis on freedom of expression. The paragraph makes it possible to establish a regulatory framework that would ensure that there was a plurality of independent broadcasters. It is consistent with a view of that the market left to it self is not necessarily capable of creating conditions that promote freedom of expression and diversity in the broadcasting sector. Therefore regulations that secure a system of independent public service broadcasting will be in line with the principles of media freedom.

It is, however, important to always bear in mind that seen from all perspectives broadcast regulation and freedom of expression is an uneasy relationship fraught with contradictions.

Notes

1. The commission was set up in 1996 by the Ministries of Justice and Culture with the mandate to go through all aspects of the issue of freedom of expression and come up with a new proposal for the freedom of expression article in the Norwegian Constitution. The commission delivered its report in 1999.
2. In the English version, this chapter has unfortunately been drastically abbreviated.

3. As it is stated on the Ofcom website: "Ofcom is the independent regulator and competition authority for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services." <http://www.ofcom.org.uk/>
4. "ICASA is the regulator for the South African communications sector, responsible for the regulation of broadcasting and telecommunications services. ICASA was established by the Independent Communications Authority of South Africa Act No 13 of 2000." <http://www.icasa.org.za/Default.aspx?Page=2>
5. I use the Norwegian Constitution as an example here, but the principles are the same for all democratic Constitutions.
6. As I in the past couple of years have been involved in researching media and democracy in Africa, I would just point out that it is quite common that African governments use the public broadcasters to blatantly promote their views during election campaigns.
7. In Norwegian legal parlance – "namsretten".
8. Lagmannsretten – in English legal parlance this is synonymous with 'the High Court' in civil cases, and 'the Crown Court' in criminal cases.
9. That is: Vær varsom-plakaten (Code of Ethics of the Norwegian Press) and Redaktørplakaten (Rights and Duties of the Editor).

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