

Radio Regulation in Portugal: a contribution to the study of a decision-making process

Susana Santos*

Abstract

Between 1987 and 1988 were approved two radio laws in Portugal, reflecting two different political atmospheres: law no. 8/87, a left-wing supported law, and law no. 87/88 supported by the right-wing in the parliament. Both laws were concerned with privatization and liberalization of radio. The first law (8/87) was concerned with regulation aspects such as the restriction of property to prevent concentration. The second law (87/88) ended the process of liberalization of the radio. The purpose of this paper is to study the decision-making processes and the key players involved in bringing these two laws about. It pays special attention to the political system and the parliamentary debates of that period. Its main goal is to identify political and external actors (radio groups, lobby groups, etc.), main themes and arguments, and the negotiation strategies that resulted in the acceptance of the proposals.

1. Analyzing the Discourse and Studying the Parliamentary Debates

Between 1987 and 1988 were approved two radio laws in Portugal: law no. 8/87, dated 11 March 1987 and law no. 87/88, dated 30 July 1988. Both laws had the purpose of opening the waves to the private initiative. In this short period, a long discussion which had started in the seventies was solved. From one side, was the only national private radio station, Radio Renascença, propriety of the Catholic Church, with special privileges obtained with the Concordata between the Portuguese state and Vatican state. Radio Renascença wanted a new FM licence, of national coverage, in order to reach other public segments with new radio programmes, specially the youngsters. In the other side, were hundreds of radios, the so called "free radios", which combined amateurs and professionals who wanted to get a local licence to their projects. In addition to this legal dispute, Radio Commercial, a nationalized [1] radio station, financially healthy was desired from several economic groups of media. The radio was nationalized in 1976, after the Portuguese Revolution, the newspapers were also nationalized.

The two laws indicated opponent directions: the first law was approved in a political minority context and reflected the left wing majority on Parliament; the second law, the only regulated, was approved in a different political atmosphere, the first right wing majority on Parliament. The first law (8/87) was concerned with regulation aspects, such the restriction of property to prevent concentration, the creation of a regulatory council (Conselho da Rádio) with mandatory powers and the equal treatment of professional and amateur's projects. The second law (87/88) represents an inflexion on the government worries; the new right wing majority is more interested in maintaining the privileges of the public and the catholic radios and in assuming the control of the liberalization process, changing the status of the regulatory council from a mandatory to an optional one. This law finishes a process of liberalization of the radio, and marked a new period on Portuguese media landscape, after the radio, private television channels appeared in 1991 (SIC and TVI).

* CIES-IUL, Centre for Research and Studies in Sociology, University Institute of Lisbon Lisbon, Portugal, susanacsantos@iscte.pt

The purpose of this paper is to study the decision making process, in other words, what were the reasons for the success of 87/88 law instead of 8/87 law, how the lobby groups worked, what kind of resources they managed, what kind of networks emerged, who were the main actors, when and where were they transformed to authorized agents (Bourdieu, 1982). In this paper I focus my attention on the political system using the parliamentary debates of that period as a source for my content analysis. The main goals are: a) identification of the political actors; b) identification of the external actors (radio groups, lobby groups, etc.); c) identification and analysis of the main themes; d) identification and analysis of the core arguments; and e) the negotiation strategies that conduced to the acceptance of the proposals.

Methodologically speaking, existing studies on parliaments and parliamentary activity¹ have given precedence to quantitative analysis, using questionnaire surveys carried out simultaneously in various countries (Van Deth et al., 2007). Intensive analyses are generally complementary, allowing the studies to be framed within the local diversity. The main impact of relegating qualitative analysis to a position of less importance is the absence of and/or lack of knowledge about everyday parliamentary work in the studies on parliaments (Leston-Bandeira, 2004). The option taken by the large comparative studies paints the big picture but prevents us from discovering what an MP's work is like, how political decisions are taken, what forms the arguments and discourses take, how the rules constrain parliamentary activity, how political strategies are assembled – basically, what is said and how it is said in politics.

Political speeches represent the greatest expression of parliamentary work. In their oratorical skills, MPs have their best weapon to enter the political and ideological fray with their adversaries. That not only includes what is said but how and to whom it is said. When delivered, the speech carries the speaker's linguistic skills within it, i.e. his or her abilities to appropriate and appreciate a topic and convince listeners. We may therefore speak of a linguistic habitus that explains the class habitus of the speaker, of a mastery of the practice that is externalised in the mastery of the language and the ability to use the right language in every social situation. As Pierre Bourdieu states in his book, *What speaking means*, "Utterances are not only (or are only exceptionally) signs that are meant to be understood or deciphered; they are also *signs of wealth* that are meant to be evaluated and appreciated and *signs of authority* meant to be believed and obeyed" (Bourdieu, 1998: 54).

The symbolic effectiveness of a speech is extremely important in parliamentary work. Even if MPs belong to minority parliamentary groups, every time they speak they have the opportunity to maximise the potential of their discourse. However, symbolic effectiveness is certainly not only measured by the speaker's oratorical skills. According to the author: "We see that all the efforts to find – in the specifically linguistic logic of the different kinds of argumentation, rhetoric and style – the source of their symbolic effectiveness are doomed to failure as long as they do not establish the relationship between the properties of the discourse, the properties of the person who pronounces them and the properties of the institution that allows that person to pronounce them." (Bourdieu, 1998: 99) Accordingly, we may understand that the authority and effectiveness of MPs' discourses are not only measured by their rhetorical skills but also, and especially, by the weight of their parliamentary groups within the Assembly of the Republic and their parties' weight in society.

At the level of discourse, insults and acts of naming (the naming of groups or organisations to call for their defence or an attack etc) are used as a means of marking positions in the debate, of drawing closer or establishing a greater distance, and of constructing and defining identity in relation to others. A good example of shared identity building is the greatest chance of understanding among left wing parties, only possible if they share a common imaginary of values that form the habitus of the left-wing politician, such as liberty and equality. This is quite different from the habitus of the right-wing politician, with points of reference such as authority and the market.

¹ Recent examples of studies carried out in Portugal are: Freire and Viegas (2009), Leston-Bandeira and Freire (2005), Freire (2001), Viegas and Faria (2001).

The political discourse in an assembly is removed from the idea of conversation, although it is based on the principle of interaction. The sharing of a set of characteristics such as hesitations, questions, moments of anticipation should be understood in different ways. In a political speech, these ways of speaking are used with their own meanings, given that the speaker's interlocutor is not an individual but the group of individuals in the assembly and the group of possible spectators who attend the debate. What is expected is not a reply or an understanding of the meaning of the speaker's words but the marking of a political position, the act of keeping adversaries at a distance, the search for causes and the logic of the superimposition of discourses. Every speaker wants his or her speech to be the one that has the greatest impact, the one that is the most talked about and the one that has the longest lasting effect.

2. The Political Discussion on Law 8/87 – The law on Radio Station Licensing

The law that allowed radio broadcasting to be opened up to private enterprise through the licensing of new frequencies was discussed in Parliament between 1983 and 1988. The instability of the government, combined with the difficulty that Parliament had in discussing and approving legislation in good time meant that the first law on the licensing of radio stations was only approved in 1987, after four years of unsuccessful discussions. The reach of the law was not limited to radio: what was at issue was the initial legal framework for opening up the media to the private sector, i.e. the possibility of discussing whether private television was constitutional.²

Three key events marked the discussion that took place during the IV Parliament. In the first place, the ministerial order that the Under Secretary of State Anselmo Rodrigues signed at the end of the III Parliament. This order, dated 3 October 1985, was signed a few days before the elections, by a caretaker government. It granted two licences (one to RDP – the public radio service – and the other to Rádio Renascença – the property of the Catholic Church) for a period of 15 years, without the need for a tendering procedure, and without the knowledge of the Assembly of the Republic. The order prevented any other radio station from competing for a national FM licence.

In the second place, the creation of the Radio Council. The Radio Council's mission was to supervise radio station licensing and issue a binding report on whether a licence should be granted or not; it was composed of members of various organisations (trade unions, consumers, MPs etc) and operated with the Assembly of the Republic. With the Radio Council, the intention was to move from a state-controlled model, in which the government was exclusively responsible for licensing and supervision, to a co-regulatory model, in which groups with interests in the sector acquired an active voice in the licensing process.

In the third place, the approval of Law 8/87 with the votes of the left wing in Parliament, after the request for the withdrawal of the government's proposal. The law revoked the earlier Under Secretary of State's order and stipulated that frequencies should be assigned on the basis of a tendering procedure. Furthermore, all interested parties (including RDP and RR) should submit the documentation and wait for the results of this procedure.

The discourse analysis is centred on three extremely important political moments: (1) the vote on the final reading of the legislation, Parliamentary Bill 20/IV, on radio station licensing, on 22 December 1986; (2) the social consequences of the approval of the Radio Law, discussed in the period before the order of 6 January 1987 and (3) the presidential veto, discussed in Parliament on 11 and 12 February 1987, and the re-approval of AR Decree No. 61/IV on radio station licensing, with the obligation that it be newly promulgated by the President of the Republic, Law 8/87 of 11 March.

²The Portuguese Constitution of 1976 and the 1st Constitutional Review (1982) prohibit private television stations.

The goals of this analysis are: (1) to identify the main topics of the debate; (2) to identify the political players and their positions; (3) to identify and analyse the main arguments for each topic; (4) to identify the main actors outside the discussion, whether called on or not, and the forms in which they acted; and (5) the strategies for negotiating, discussing and accepting the proposals. For this purpose, I drew up an analysis grid for the topics, where the discourses were registered according to a strategy of opposition. The topics selected give exhaustive coverage of the three political decision-making moments mentioned above, though, for reasons of the flow of the text, they are not presented chronologically.

2.1. The Arguments on the Issue of the Media: Identification of the Actors and the Strategies for Action

The main points in the arguments regarding the media concerned the Radio Council and pluralism. The controversy surrounding the Radio Council revolved around two issues: the secondary importance that government action would receive in the licensing process, given the need for a binding report from the Radio Council, and the constitution of the council itself. According to Law 8/87, the latter should fall within the jurisdiction of two different bodies: the Council of Ministers (the Cabinet) and the Radio Council. It was the Radio Council's responsibility to issue the final licensing report, which, when negative, was binding and could not be countermanded by the Council of Ministers.

For the parties sitting on the right³ in Parliament, the idea of a council with binding powers put the action of the government in a secondary position, i.e. one that was subordinate and dependent on a body created by the Assembly of the Republic, though operating independently. The parties on the left⁴ had a rather different interpretation of the Radio Council. According to them, the assessment of radio projects and the assignment of frequencies should fall within the jurisdiction of a body that was independent of the political powers. Its independence of the executive powers would guarantee unbiased choices and operate as a mechanism of democratic control.

If the existence of a radio council with binding powers was a reason for disagreement between the political parties, its composition and the choice of members were even more so. According to Article 17 of Law 8/87, the Council consisted of: i) a member of the judiciary; ii) five MPs; iii) two individuals nominated by the government; iv) a member of the journalists' trade union; v) a member of the trade union associations for telecommunications workers; vi) a member of the Portuguese Society of Authors; vii) an individual representing consumers and viii) a member of the National Association of Municipalities.

As the composition shows, the criticism of a party-political takeover hardly seems justified, given that only five of the thirteen members are MPs, elected under Article 17 (b) "according to a full-list system of proportional representation and d'Hondt's highest average method" (Diário da República [Government Gazette] 1st Series, No. 58, of 11 March 1987, p. 988). For the CDS, not only was the possible politicising of the body at issue but also the interference of the trade union associations in the licensing process

The inclusion of members nominated by the trade union associations, who cannot represent the workers' professional interests in this case, has a specific intention that is not neutral. (Gomes de Pinho, CDS, 12 February 1987, DAR [Diário da Assembleia da República / Journal of the Assembly of the Republic] 1st Series, No. 43, p. 1714)

At the other end of the scale, the PS had high hopes of the Radio Council, believing that it was witnessing the birth of a plural and innovative body adapted to the new realities of free

³The CDS (Social Democratic Centre) and PSD (Social Democratic Party). At the present time, both parties belong to the EPP (European People's Party).

⁴The PS (Socialist Party), PRD (Democratic Renewal Party, which ceased to exist in 2000) and PCP (Portuguese Communist Party).

enterprise, a body that, for these reasons, would be the founder of a new idea of media regulation (Bertrand, 2002)

The Radio Council was conceived as a parallel (though not identical) body to the Press Council and the embryo of a future national audiovisual council. It is an innovation that deserves the applause of all those who strive – or say they strive – for an open and plural society founded on free enterprise and creative freedom. (Voting declaration of the Parliamentary Socialist Party, 22 December 1986, DAR Ist Series, No. 26, p. 1116)

The argument for radio pluralism was based on the discussion of the impact of Law 8/87 on future radio stations. According to those defending it, the new law was one that, on account of the possibility of extension to a variety of new radio projects, guaranteed pluralism of access both to radio frequencies and to broadcasting and reception. The criticisms stressed, precisely, the bureaucratic nature of the law, which was seen as making access and the freedom to carry out their work more difficult for the new radio stations. For other critics, this bureaucratic content was, similarly, a “repository of the supervising ministry's prejudices”, which obstructed the freedom of private enterprise: in applying operating criteria close to those of the public service it prevented the private activity from operating.

2.2. The Arguments Regarding the Catholic Church: Identifying the Actors and Strategies

The Catholic Church played a great and, to a certain extent, unexpected role in the discussion and final vote on the radio legislation. For the church, the opening-up and liberalisation of the airwaves was both a challenge and a risk. On the one hand, from the viewpoint of a clear strategy of pre-emption, it had the chance to expand its transmitter network and win new listeners. For this to happen, a great deal depended on the creation of the new station – RFM: hence its insistence, in its relations with the earlier and present governments, that it should receive its own licence. On the other hand, the opening-up could result in a squeeze on its audiences and its ability to attract advertisers, by turning the duopoly into a competitive market (Picard, 1989, 2002), with unforeseeable consequences.

The news that Law 8/87 had been approved and the licence granted by the Under Secretary of State Anselmo Rodrigues had been rescinded put Rádio Renascença and its shareholders, the Patriarchate of Lisbon and the Bishops' Conference, in a clearly delicate position – back at square one. They responded immediately by publishing articles in the national and regional printed press condemning the Assembly of the Republic and the MPs responsible for passing the new law and by promoting a wide range of activities among the people with the aim of inciting them to organise themselves against the new law. The extent of the protest was reported within the Assembly of the Republic

It is highly regrettable that, on these issues, an attempt is being made to wage a kind of 'holy war' in the hope of engaging the authority and prestige of institutions that deserve our full respect in an indefensible cause, based on the worst arguments, in a climate of incitement to rebel against the government, the rule of law, and democratic institutions. (Carlos Brito, PCP, 12 February 1987, DAR Ist Series, No. 43, p. 1717)

and in the press, as can be seen in José António Saraiva's editorial in the *Expresso*⁵ of 14 February 1987

With its battle against the Radio Act, waged without quarter over a period of many weeks, the Church has demonstrated the power and influence that it retains in Portuguese Society thirteen years after 25 April⁶. (...) The Church is managing to take its message to all parts, make an important part of public opinion aware of its cause, convince various political leaders to review their positions... (Expresso, 14 February 1987)

⁵The weekly newspaper with the highest circulation in Portugal and great impact among the political elites.

⁶ The date of the revolution that brought in a democratic system.

The alarm created by the church was compared to other moments of great tension between the church and the state, e.g. the occupation of the Rádio Renascença transmitter in 1975 (Santos, 2005) – during the PREC⁷ – or the consequences of the law separating the church and the state in 1911. The case made by the church and its old and new supporters rested, above all, on the second example. It awakened the idea of a new “religious question” by comparing the new radio legislation to Afonso Costa's intentions⁸ to expel the Catholic Church, as an organisation, from Portuguese territory and free the Portuguese from Catholic beliefs.

The labelling of the Radio Law and its apologists as enemies of the church and instigators of a new “religious question” was not only exploited by the Catholic hierarchy but also by the political parties that voted against it. According to an MP from the PSD, the main reason for the Socialists' political position on the new law was the presence of masonry within the PS. Another PSD MP put the PCP and PS in the same ideological basket, declaring that it was their tradition to attack religious freedom

As is their tradition, the PCP and PS once again reject the interference of the Catholic Church in the cultural lives of peoples. Hence their desire to silence Rádio Renascença. (Correia Afonso, PSD, 12 February 1987, DAR Ist Series, No. 43, p. 1713)

The response of the Communists and Socialists rather defended religious freedom and, consequently, the Catholic Church and its action. The PS gained advantage from putting itself behind the church and the Patriarchate in 1975 (Santos, 2005), in the disagreement between a group of workers supported by the trade unions and far-left groups and the management of the radio and its owners. But if the Socialists called on the members of the church to remain calm, arguing that their position defending the Catholic Church in the past was in accordance with their position of support for the new law, they still had a few jibes at the church hierarchy: they noted that, for the citizens, the good relationship between the church and the *Estado Novo* (New State) had led to a loss of freedom. They stressed the fact that, at that time, the church did not use its voice or its power as an authorised agent (Bourdieu, 1986) to respond to dictatorial political power. The CDS took the church's side, invoking the Concordat signed between the Portuguese state and the Vatican in 1940. According to those in the centre, respect for the Concordat and the religious freedom conferred by the Constitution were sufficient arguments for the special treatment and the need for the state to guarantee the church's activities among the faithful, using the necessary means – in this case, the granting of a nationwide FM frequency.

3. Conclusion

Study of the strategies of the different social groups that participated in the controversy over the liberalisation of radio has provided a better understanding of the decision-making processes. First of all, comprehension of the strategies in the abundance of their forms, from the arguments to the movements for political action and inaction, has allowed a sharper analysis that stresses the dynamic nature of the decision-making. As these dynamics were inter-penetrated by social groups and actors combining not only different interests but different positions in the social systems, they generated unforeseeable solutions.

Secondly, the actors' ability to gain access to decision-making positions can be seen as a crucial factor in the outcome of the process. But it is not just a question of ascertaining that the different actors on the stage possess unequal resources and capitals in a given situation, in this case Parliament, the heart of decision-making. Rather, it should be stressed that these capitals are transformed in the various spheres in which they are used – Parliament, public opinion – and

⁷ The Ongoing Revolutionary Process, which began on 25 April and ended on 2 April 1976, with the adoption of the Constitution of the Republic.

⁸ Afonso Costa, Justice Minister of the Republic 1910-1911 and, later, prime minister three times over: 1913-14, 1915-16 and 1917.

that, sometimes, a more fragile position in one situation, as in the case of the Catholic Church, may reinforce its position in another social field.

Finally, examination of the liberalisation of radio in Portugal has allowed us to see how the different social systems intermingle, and to appreciate the dynamic character of their borders where, for example, economic and political or religious and social aspects intersect (Teubner and Febbrajo, 1992). However, the plasticity of the systems and their limits does not prevent the movement of internal differentiation or autopoiesis (Luhmann, 1995) – a fundamental condition for an increase in the complexity of every social system and the birth of new social systems, on the principle of recognition of/withdrawal from every action.

References

- Bertrand, C. J. (2002). *Media Ethics & Accountability Systems*, transaction Publishers, New Jersey, 2nd edition.
- BOURDIEU, P. (1986). “La force du droit. Eléments pour une sociologie du champ juridique”, *Actes de la recherche en sciences sociales* No. 64, September 1986, pp. 3-19.
- BOURDIEU, P. (1998). *O que falar quer dizer*, Lisbon, Difel. (Portuguese translation). (1999). *Language and power*, Harvard University Press.
- FREIRE, A. (2001). *Recrutamento parlamentar: os deputados portugueses da Constituinte à VIII Legislatura*, Lisbon, STAPE:MAI.
- FREIRE, A., Viegas, J.M.L. (2009). *Representação Política – o caso português em perspectiva comparada*, Lisbon, Sextante Editora.
- (1987). *Journal of the Assembly of the Portuguese Republic*, Ist Series, No. 26, p. 1116.
- (1987). *Journal of the Assembly of the Portuguese Republic*, Ist Series, No. 43, p. 1714.
- Leston – Bandeira, C. (2004). *From legislation to legitimation – The Role of Portuguese Parliament*, London and New York, Routledge.
- LESTON-BANDEIRA, C., FREIRE, A. (2005) “Internalising the lessons of stable democracy: the Portuguese Parliament” in LESTON-BANDEIRA, C., *Southern European Parliaments in Democracy*, London and New York, Routledge.
- LUHMANN, N. (1995). *Social Systems*, Stanford, Stanford University Press.
- Picard, R. (1989). *Media Economics. Concepts and Issues*, Newbury Park, California Sage.
- Picard, R. (2002). *The economics and financing of Media Companies*, New York, Fordham University Press.
- Santos, P. B. (2005). *Igreja Católica, Estado e Sociedade, 1968-1975 O Caso Rádio Renascença*, Lisboa, Instituto de Ciências Sociais.
- Teubner, G., Febbrajo, A. (1992). *State, law and economy as autopoietic systems: regulation and autonomy in a new perspective*, Milan, Dott. A. Giuffrè Editore.
- Van Deth, J. W, Montero, J.R., Westholm, A. (2007). *Citizenship and Involvement in European Democracies. A Comparative Analysis*. London: Routledge.
- VIEGAS, J. M. L., FARIA, S. (2001). *As mulheres na política*, Oeiras, Celta Editora.