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Analysis of the drafting, enactment and implementation process of Act 26.522 on Audiovisual Media Services: Drifting away from an ideal

Abstract

In the last decade, organisations and movements in several Latin American countries that had been working towards the democratisation of communications for a long time have brought about reforms in the laws governing the media, with mixed success. This research aims to assess Act 26.522 following the proposal by Oszlak and O'Donnell. Thus, an analysis is conducted on the issues added to the agenda, the decision-making process, the implementation of action plans and the assessment of the impact upon the media system. The analysis also approaches the actors involved in the policy-making process aiming to determine the power each of them held. The last phase described is particularly important, as it intends to take stock of the implementation process of the Act until the end of the second term in office of Cristina Fernandez de Kirchner, in December 2015. The findings suggest that the debate having such an impact on civil society can be construed as one of the most important achievements of this public policy. However, evidence is also found of a progressive loss of intensity of the initial goals identified by key players in the process, such as the Government and the Coalition for Democratic Broadcasting.

Keywords

Policy-making, Argentina, 26.522 Act, Public Policies, Social actors

1. Introduction

In the last decade, organisations and movements in several Latin American countries that for decades had been working towards the democratisation of communications have brought about reforms in the laws governing the media. Almost all proposals focus on the right to communication as a catalyst for the freedoms and rights attached to communication (freedom of speech, access to information), as a human right on the same level as the right to health and to education, and as a

necessary condition for democracy and the development of peoples (MacBride & Unesco, 1980; Moraes, 2011).

During the 80s and 90s, regulations governing broadcasting in Latin America were adapted to the new global macroeconomic scenario and to privatisation and re-regulating policies (Mestman & Mastrini, 1996) as demanded by market forces. In Latin American countries, regulations were brought into line with private sector demands, thus favouring concentration, technological convergence and foreign capital inflows.

There is extensive literature on the Argentinian case focusing on the drafting process of Act 26.522 (Baranchuk, 2010; Busso & Jaimes, 2011; Córdoba, 2011; Guzmán, 2011, 2012; MacBride & Unesco, 1980; Moraes, 2011; Rodríguez, 2011), its potential as a democratising agent (Becerra & Mastrini, 2011; Loreti, 2011) and the deficiencies afflicting the implementation process (Becerra, 2014; Marino, 2014; Marino et al., 2015). Nonetheless, no works have so far approached this Act in a broad manner based on an analysis of the whole process.

This research aims to analyse the drafting, enactment and implementation process of the Act on Audiovisual Media Services, this process being the result of a public policy that comprised activities, decisions and measures adopted by political authorities at the time and prompted, among others, by the actions undertaken and discussions held by civil society.

With this in mind, this paper analyses the processes followed to add public issues to the public agenda, the planning and decision-making concerning public actions and the implementation of action plans, as well as the assessment of the impact of these specific public policies upon the media in Argentina. This work also examines the actors involved in the policy-making process aiming to define the power each of them held.

2. Methodology

The analysis of public media policies has traditionally been approached from a wide range of perspectives within the field of social science, therefore becoming a multidisciplinary field of study in Sociology and Political Science, Law or Economics. Such analysis has grown into a discipline in Social Science itself in two specific fields of research –one of a instrumental or prescriptive nature, and another one with a more analytical approach, focusing on the causes and consequences of public policies rather than searching the best options and the drafting of policies as Lasswell (1951) suggested. The latter, being the closest approach to this research, seeks to understand and explain the actions undertaken by public and private actors based on theoretical approaches drawing from Social Sciences. As stated by Oszlak and O'Donnell (1981), a nation-wide policy is a stance adopted as a result of simultaneous decision-making processes by one or several state bodies, which means that such stance is not homogeneous, univocal or permanent. Instead, it comprises a set of initiatives –whether explicit or implicit– which at a given time in history and in a certain context can lead to a predominant state-wide position. The analytical proposal made by said authors goes beyond the sequential analysis of public policies and instead elaborates on the idea that such policies stem from complex processes that involve a number of actors and which, when analysed, explain State “au concret” (Pardioleau, 1989) or “in action” (Jobert & Muller, 1987).

The aim is to study the context where public policies arise, context being “an ensemble of factors extrinsic to the specific subject of study (“state policies”) that is essential to understand, describe and explain said subject and its impact upon other variables” (Oszlak & O'Donnell, 1981: 21 – own translation). As a result, three levels of context have been determined, the analysis of which is essential:

a) Level one, comprising the social process concerning the way the issue was raised, addressed and solved.

b) Level two, concerning the “agenda of issues”, i.e. the ensemble of issues regarded as problems by society at a given time in history;

c) Level three, involving knowledge on social structures, which allows analysts to determine beforehand the potential actors involved in an issue and which resources they could mobilise. In this regard, a comprehensive analysis of public policies in retrospect requires the recreation of actions undertaken by public authorities. The goal is to analyse the relationships, alliances and conflicts between the actors involved in the political process under analysis, along with the ways and forms of representation established. The analysis aims to determine who is involved in each specific policy and to what effect. Even though this proposal was brought forward over three decades ago, it is still in use as a basis to analyse public policies in Argentina (Mastrini, 2013).

To begin the analysis, public policies will be regarded as a process, i.e. as an ensemble of decisions made and actions undertaken by several actors, both public and private, for the purpose of solving a clearly circumscribed problem of a public nature. This perspective therefore focuses on analysing the actions, both at an individual and collective level, undertaken by the actors involved in the different stages of a public policy. As a result, the contents and institutional features of a public action –dependent variable– are construed as the result of the interaction between political-administrative authorities and social groups which prompt and/or suffer the negative impact of a specific collective problem – independent variable.

This paper builds on the assumption that the policy-making process influences the type and contents of the policies adopted. In other words, it assumes that the features of the discussion, drafting and approval process concerning regulations, the actors involved and the types of interaction between them determine its results. The main research hypothesis is that discussions in civil society based on the political and social context in Argentina contributed to an increased participation of actors in policy-making processes that resulted in the enactment of the concerned regulation.

The methodological approach to this study sides with the critical line of thought, “theoretically oriented and responsive to the overall relationship between social systems and the mass media” (Wolf, 1987: 14 – own translation), as opposed to the so-called administrative school of thought, basically of an empirical-functional nature.

As for the techniques put into practice during the research process, and since this is a non-experimental study (Exeni, 1998), the main technique used is historical-documentary research, in its classical intensive form (Duverger, 1976).

As for data collection instruments, this mainly being a literature-based study, the basic tools used were data sheets. For this purpose, a data sheet was prepared in order to systematise the process carried out to characterise and assess actors.

So as to conduct an exhaustive analysis of the data proposed, the following tools were used:

1. Legal texts, both obsolete and in force, that refer to the media regulation in a broad sense.
2. Minutes of sessions held at legislative chambers.
3. Literature providing an overview of the context where the recent debate on media public policies has taken place.
4. Literature and statistical indicators to assess the media system prior to the creation of the regulation under study.
5. Documents prepared by the wide range of social actors during the drafting, enactment and implementation processes.
6. In-depth interviews with field experts.

3. Level one: Background. Agenda building and social construction of the issue

The social coordination process regarding the demand for media democratisation in Argentina became relevant after 2001, when several social organisations whose scope for intervention did not include communication started to consider it essential to further their own presence, visibility and legitimacy in the public sphere (Segura, 2011).

From then on, during the first decade of the 21st century, we have observed three different phases according to the radicalism of the media system reform proposals brought forward by social organisations with regard to their production conditions (Segura, 2011).

The first phase started further to the 2001–2002 crisis and ended by May 2003. During this phase, communications became of remarkable importance in the ideas and actions undertaken by social movements and intervention experiences in the media increased substantially, as part of a strategy to adapt to the existing ground rules (Segura, 2011).

The second phase, between 2003 and 2008, involved the institutional restoration of the State further to the political, economic and social crisis in 2001–2002, the relative demobilisation of actors involved in the previous phase and the widespread return of politics to institutional channels (Segura, 2011).

In 2004, the Coalition for Democratic Broadcasting (CRD) was created as a social force made up by fragments of groups representing different interests that were at odds with the prevailing pro-monopoly interests. Over 300 social organisations, including unions, federations and trade associations, cooperatives, universities, human rights groups, community and commercial media and indigenous peoples had been demanding the abolition of the broadcasting act enforced during the dictatorship ever since the restoration of the Rule of Law. As a result, the Coalition brought forward in 2004 the so-called “21 Points for Democratic Broadcasting” (Busso & Jaimes, 2011)¹, one point for each year democratic broadcasting had been neglected.

The 21 Points for Democratic Broadcasting were presented publicly on 27 August 2004, on the Day of Broadcasting, in a programme broadcast by Radio Nacional and several university and community radios simultaneously. By the end of 2004, the Coalition arranged a meeting with then President Néstor Kirchner which eventually was never held, but which did give rise to a meeting with then Secretary to the Presidency, Oscar Parrilli, and Secretary of the Media, Enrique Albistur. Back then, opportunities for the proposal to be heard were rare, even though it was increasingly reaching spheres where it could be substantially furthered. One year later, in May 2005, further to the enactment of Decree 527/2005 that passed a 10-year extension of the broadcasting licences awarded to large media groups, the Coalition went into a crisis.

Califano (2011) also points out the evolution of Néstor Kirchner’s policies during his office, emphasising Decree 527 as a turning point since it did not only postpone the possibility of letting radio and television broadcasting licences expire in the country and examining the actions undertaken by license holders, but it was also passed unilaterally, bypassing any kind of parliamentary or public discussion.

This particular relationship between President Néstor Kirchner and media companies could be summarised in two stances. On the one hand, his enduring rejection to the intermediation of journalists, accused in several occasions of failing to understand his message and replaced by direct communication by means of speaking at public events or in recorded, public addresses that came to be known as “el atril del asesino” (Reinoso, 2007) – literally, “the killer’s lectern”. On the other hand, amidst quite a contradictory discourse, to

¹ The “21 Points for Democratic Broadcasting” are available at:
<http://www.telam.com.ar/advf/imagenes/especiales/documentos/2012/11/509435587ec92.pdf>

say the least, his support to the *status quo* by means of regulations favouring large media conglomerates.

In addition to Decree 527/2005, Act 25.750 on the “Preservation of Cultural Assets and Heritage”, also known in Spanish as “ley Clarín”, had been previously enacted on 4 July 2003. This Act, which was first drafted under President Eduardo Duhalde, had already been preliminarily approved by the Chamber of Deputies and was the first provision on broadcasting that was definitively adopted under President Néstor Kirchner. Nonetheless, also during Néstor Kirchner’s administration, Act 26.053 was enacted, reforming section 45 of Act 22.285, that separated access to radio and television broadcasting licenses from the need to gain profits. This new possibility for non-profit actors to obtain broadcasting licenses finally gave in to a demand claimed for decades by civil groups.

In December 2007, Cristina Fernández de Kirchner came to power as President of Argentina further to a landslide victory by her political party, Frente para la Victoria, with 44.9% of votes. The third phase began in March 2008 (Segura, 2011). This phase was characterised by political confrontation; in this context, communication and the media were added to the government agenda “against a backdrop of unprecedented confrontation with the media and of mobilisation and social debate on the issue, which compelled the media to inform about themselves” (Segura, 2011: 94 – own translation).

The beginning of this third phase could be considered, to a certain extent, a consequence of the events that took place only some months into her office. Opportunities arouse (Tarrow, 1997) for the reform of the Broadcasting Act to be added to the government agenda when the Government openly confronted some of the most powerful media groups in the country –namely Grupo Clarín and La Nación– with regard to a conflict known in Argentina as the Farm Crisis (“crisis del campo”, in Spanish²) (Mochkofsky, 2011; Shmidt, 2013; Sivak, 2013). As a response to the governmental decision to raise export taxes on soy and sunflower and to establish a sliding-scale taxation system upon such (Resolución 125/02), roadblocks in 2008 were the starting point of a long-standing conflict with the four bodies that represented agricultural and farming companies in Argentina.

This conflict will go down in history as a turning point in the relationships between the Government and the media, particularly Grupo Clarín whose relationship with Cristina Fernández de Kirchner had been friendly until then (Kitzberger, 2011). Some sources, however, believe that the relationship with the media had been failing for some time (Becerra & Mastrini, 2011).

Ever since the conflict started, Grupo Clarín had remained by the side of agricultural sectors, which showed on the construction of the President’s public image on a daily basis. “In general, it can be noticed that, beyond the differences between state and civil sources in the coverage by Clarín, voices supporting agricultural groups prevailed” (Reinoso, 2007: 29 – own translation). From this moment on, the need for legislation governing the media under democracy finally became a part of the political agenda.

The Coalition gained visibility again when, on 16 April 2008, President Cristina Fernández de Kirchner held a meeting with several members of the organisation in the midst of the Farm Conflict. According to Segura (2011), from this moment the Coalition developed a two-fold, unprecedented activity:

“To have direct influence on executive branch officers and National Congress policy-makers to take part in the drafting process of the bill, and, on the other hand, to influence public opinion and to reach consensus on the need to amend the broadcasting act and to do so as prescribed in the 21 Points.” (Segura, 2011: 101 – own translation).

² As pointed out by Marino during the interview held in November 2014 in the framework of this research, the main shareholders of Grupo Clarín have strong interests in the country’s agricultural sector.

The Government, in an attempt to encourage a new regulation, designated Gabriel Mariotto, a journalist, professor and Dean of the School of Social Science in the Universidad Nacional de Lomas de Zamora, as the director of COMFER (Federal Broadcasting Committee) and was entrusted with the coordination of experts that were to draft the bill along with him. This group, with the aim to draft a bill based on pluralism and human rights, contemplated the 21 Points for Democratic Broadcasting as guidelines into which the bill provisions could delve.

On 18 March, the National Executive Office presented the bill at the Teatro Argentino de la Plata. It was then agreed that the bill would be subject to consultation in Participative Forums for Public Consultation throughout the country³. These bodies assessed the official proposal, and criticism and contributions to amend the bill were collected. Both during the drafting period and the public consultation phase, a number of talks and debates were organised at the request of several sectors of society (Baranchuk, 2010).

4. Level two: Agenda of issues and political setting

During this period, legislative elections were held on 28 June 2009, the result of which fell short of the expectations of the National Government. Frente para la Victoria registered a clear decline in voters, although it still narrowly emerged as major political force in light of the fragmentation of its opposition. The main parliamentary groups were changed on 10 December.

Many believed that these results would be the end of the Act on Audiovisual Media Services. Others fought for the bill to be submitted to Congress before the new elected members of parliament and senators came into office on 10 December. The Government decided on this second possibility. As a result, Kirchnerism motivated a fast-track legislative process⁴ to sidestep the stances taken up by the opposition, which suggested that the processing of the bill should be held off until the new members of parliament came into office.

The Committee on Communications and IT, as agreed in the meeting held on 3 September 2009 with the Committee on Budgets and Finance and the Committee on Freedom of Speech, agreed to submit the bill to a public hearing. During the plenary session of Committees, also attended by the director of COMFER, Gabriel Mariotto, it was agreed to hold several public hearing sessions with 34 votes in favour and 24 against, mainly by the opposition members who instead supported the proposal made by President of the Committee on Freedom of Speech, Silvana Giúdice.

Most of the 198 interventions that were held in the end –out of over 300 initially registered⁵– during those four days supported the bill, while a few organisations requested changes or criticised the proposal.

On 14 September, President Kirchner announced in a press conference⁶ that the bill would no longer authorise telephone companies to take part in the audiovisual media business, one of the most controversial points that was severely criticised by Government-aligned groups.

³ Unabridged contributions by the Public Consultation Forums are available on this file:

<http://web.archive.org/web/20120310014614/http://www.afsca.gov.ar/web/blog/?p=2666>

⁴ Both the full text and the parliamentary process of Act 26.522 are available for consultation at this link:

<http://www.hcdn.gob.ar/proyectos/proyectoTP.jsp?exp=4232-D-2009>

⁵ The full list of entries and documents received by the plenary session of Committees is available at:

http://www.comunicacionselectronicas.com/downloads/audiencias_publicas_diputados_LeySCA/ponencias_Ley_SCA.pdf

⁶ The press conference by President Kirchner on the draft bill on audiovisual media services is available at:

<http://www.caserosada.gob.ar/informacion/archivo/21379>

On the following day, the majority report –with amendments, five dissenting opinions– and four minority opinions –also with amendments– were signed during the meeting of the Committee on Communications and IT, the Committee on Budgets and Finance and the Committee on Freedom of Speech. The most controversial matters on the bill which were subject to changes in the majority report were the features and the structure of the enforcement authority, the restrictions for telephone companies to the enter audiovisual media business (already announced by the President) and the review period for licenses. The majority report, with 57 votes in favour, included amendments to 101 out of the 157 provisions in the bill, some in form and some of substance. Most of these changes were proposed by the Socialist Party, as well as Solidaridad e Igualdad, Encuentro Social, Partido Popular and Proyecto Sur. As a result, around 200 amendments were made to the bill presented by the Executive Office so as to include the proposals brought forward by the centre-left opposition in order to rally their support.

On 16 September, the bill was submitted to the plenary session of Congress⁷ and, after a lengthy meeting in the absence of the remaining opposition who avoided discussions by leaving the chambers, the bill was passed with 147 votes in favour, 3 against and 1 abstention. On Monday 21 September, the bill with its preliminary enactment was submitted to the Senate.

On 2 October, the Government succeeded at collating the signature of the report which enabled the scheduling of a special session on 9 October for the purpose of processing the draft bill. The report was signed by the majority of the ruling party senators and some allies, with Frente de la Victoria Senator of Jujuy, Guillermo Jenefes, President of the Committee of Systems, Media and Freedom of Speech, partly dissenting with the majority report⁸.

In the early morning of 10 October, the Act was passed with 44 votes in favour to 24 against. The Act was enacted and published in the Official State Gazette of the Argentine Republic on that same date. As pointed out later on in this paper, the greatest achievement of the drafting and enactment process of the Act on Audiovisual Media Services was that it succeeded at stirring up social debate on the monopoly and oligopoly in media concentration and the power relations that build up between the media (Potolski, 2013).

5. Level three: Definition and assessment of actors

First and foremost, the role played by the National Government under President Cristina Fernández should be highlighted. In March 2009, the draft bill⁹ was presented while debate was encouraged in several regions in Argentina in the framework of discussion forums that managed to get citizens involved in the process. This legal instrument was a major innovation, as for the first time a draft bill was subject to public opinion so its contents would not be manipulated or misinterpreted, aiming to provide citizens with deeper explanations on an activity that had never been discussed before.

The pro-government political forces at this point took the demands set forth in the 21 points drafted by the Coalition for Democratic Broadcasting in 2004 as the basis to conduct a regulatory change in the media system in Argentina. These 21 points had been, on the other hand, presented and discussed with citizens in the framework of initiatives such as the organisation and/or participation in seminars, discussion forums, conferences and talks throughout the country in a wide range of settings (universities, trade unions, headquarters of territorial organisations, etc.). As pointed out by Córdoba (2011), these actions eventually

⁷ The transcript of the Parliamentary Session is available at: <http://www.hcdn.gob.ar/secparl/dtaqui/>

⁸ The Special Session transcript can be downloaded from the Senate website at: <http://www.senado.gov.ar/parlamentario/sesiones/>

⁹ The draft bill presentation speech by President Cristina Fernández de Kirchner is available in full at: <https://www.youtube.com/watch?v=i8EmN5qj5vE>

compensated the denial of this issue by large media and created a space for widespread, horizontal debate and information on this matter, therefore enabling citizens to become a significant political force in the policy decision-making process.

As a matter of fact, there are two significant issues that Córdoba (2011) describes as factors that helped actors resonate with each other: firstly, all of them had previously been involved in legal and/or political actions which, at different points in history, demanded amendments to the broadcasting legislation during the dictatorship, mostly to no avail; secondly, some members of the Coalition acknowledged to have taken part in international forums such as the World Summit on the Information Society and the World Social Forum.

Throughout the process, the distinctive feature of collective action that defined the Coalition was its propositional rather than accusatorial nature. Most of the documents drafted by the Coalition during the policy-making process are available in the book by Busso and Jaimes (2011). These documents include the 21 points proposed in 2004, but also the 21 contributions to the draft bill, as well as several communications and letters submitted to national government authorities.

The Participative Forums for Public Consultation (*Foros Participativos de Consulta Pública*) were the result of an action undertaken by COMFER and were held during four months further to the presentation of the draft bill of the Act on Audiovisual Media Services.

The National Alternative Media Network (RNMA, by its Spanish acronym) was also a key actor during the policy-making process. Alternative media took part in discussions and debates and, ever since the draft bill was announced, they pointed out its obstacles to achieve the democratisation of communications, the assurance of plurality and the access to means of expression. The RNMA also argued that the official bill was insufficient to fight media monopolies and it particularly emphasised the lack of mechanisms that actually were in the interest of community, popular or alternative media. (RNMA, 2009).

Another social movement that aimed to dissociate from the polarisation brought about by the discussions on the new Act was made up by government opponents that joined in under the slogan “Ni K, ni Clarín, queremos la ley ya”.

The ruling party senators also played a significant role in the course of events. The bill and its preliminary approval by Congress was submitted to the Senate at a time when President Julio Cleto Cobos was in charge of the Executive Office, as replacement for President Cristina Fernández de Kirchner. As a result, the interim president of the Senate, José Pampuro (pro-government) diverted the bill to two Committees: the Committee on Budgets and Finance, presided by Fabián Ríos, and the Committee on Systems, Media and Freedom of Speech, presided by Guillermo Jenefes (both presided by and made up by a majority of Frente para la Victoria members), ensuring that favourable terms and reports would be submitted to the plenary session. This first political move was not well received amongst policy-makers and even gave rise to detractors within Kirchnerism.

The Association for Civil Rights (ADC) was another remarkable actor during the drafting process. It took part in the consultation process for the drafting of the Act on Audiovisual Media Services by submitting its proposals to the Federal Authority for Audiovisual Media. Recommendations focused on two key matters that had been the subject of attention by the ADC in the past: on the one hand, the integration and designation of enforcement authorities (directorates within the Federal Authority of Audiovisual Media Services and of RTA S.E.) and, on the other hand, the distribution of official publicity in audiovisual media as per reasonableness and fairness criteria.

The INADI (National Institute against Discrimination, Xenophobia and Racism), a decentralised body aiming to ensure equal rights for all people who are discriminated for any reason, was another actor that openly expressed its support to the regulatory changes in audiovisual media. In addition, some opinion leaders that expressed support to the new regulations were Víctor Hugo Morales, Sandra Russo, Eduardo Aliverti, Alejandro Dolina

and Martín Sabbatella, at the time the leader of Nuevo Encuentro and since 2012 the President of the Federal Authority for Audiovisual Media (AFSCA).

On the other hand, further to it being expressly included in the bill, the Catholic Church expressed its support to the bill and became an important actor on the government's side. Even the archbishop of Mercedes-Luján and President of the Episcopal Commission of Social Communication, Mgr. Agustín Radrizzani, took part on Thursday, 10 September (in the midst of the parliamentary discussions on the new Act) in the public hearing on the draft bill and declared that it was of vital importance that discussions were conducted in a reasonable manner so they would allow plural participation of citizens and avoid the tampering of information to benefit a few.

By definition, some sectors were against not only the discussions on the draft bill but also on the potential changes such would imply for the audiovisual media scene. Some of the most representative parties to such sectors were the following:

1. Media groups (Kitzberger, 2011): Clarín, La Nación, Perfil, Grupo Uno, Cadena 3, América, Grupo Prisa, Telefónica, Editorial Atlántida.
2. Business and commerce chambers that group media owners at a national level: ADEPA (Association of Argentinian Journalism Bodies), ATVC (Argentinian Association of Cable Television), ARPA (Association of Argentinian Private Broadcasters), ATA (Association of Argentinian Television and Radio Broadcasters), CEMCI (Employers' Commission of Independent Communication Media), which also groups several bodies: AAER (Argentinian Association of Magazine Editors), ADIRA (Association of Regional Newspapers of the Argentinian Republic), AEDBA (Association of Buenos Aires Newspaper Editors), ATA (Association of Argentinian Television and Radio Broadcasters), ATVC (Association of Cable Television) and ARPA (Association of Private Argentinian Radio Broadcasters); and at an international level, the Inter American Press Association (SIP) and the Organization of American States (OAS).
3. Journalists and/or opinion leaders: Joaquín Morales Solá, Mariano Grondona, Luis Majul, Jorge Rial, Fernando Bravo, Susana Giménez and Mirta Legrand.
4. Politicians supporting a wide range of currents which, in many cases, ended up defending opinions contrary to proposals made by their own party at different points throughout this democratic period.
5. Mesa de Enlace Agropecuaria, which had promoted agricultural lockouts in 2008 and was conducting a lockout on the commercialisation of agricultural products when the bill on audiovisual media services was presented: SRA (Argentinian Rural Society), the CRAs (Argentinian Rural Confederations), CONINAGRO (Limited Agricultural Intercooperative Confederation) and the FAA (Argentinian Agricultural Federation).

At an international level, there were several critical fronts. The first one was the Inter American Press Association, a body that grouped newspaper owners throughout the American continent.

The Act on Audiovisual Media Services was also criticised by the Special Rapporteur for Freedom of Expression within the Organisation of American States which in its 2009 report admitted that the legislative reform initiated with the enactment of the Act on Audiovisual Media Services was a significant step forward in the country, but eventually pointed out significant deficiencies both during the policy-making process and in the final text included in the regulation (OAS, 2010).

In spite of the aforementioned criticism, two of the strongest supporters both of the drafting process and the enacted regulation were, respectively, Frank La Rue, UN Rapporteur on Freedom of Expression, and the Supreme Court of Justice of Argentina. The former supported the grounds upon which the regulation was being drafted and openly

expressed his satisfaction with the public consultation process conducted prior to the bill being submitted to Congress (Busso & Jaimes, 2011)¹⁰.

On the other hand, the Supreme Court of Justice revoked on 15 June 2010 the decision by the Federal Chamber of Mendoza that had suspended the new act on audiovisual media services as a result of the claim brought forward by the member of parliament Enrique Thomas.

Despite this decision by the Supreme Court, on 6 December 2012, the day before the date scheduled by the Supreme Court for the expiration of the protective measure favouring Grupo Clarín, the judges in Chamber 1 of the Civil and Commercial Federal Chamber extended the protective measure that had been suspended by virtue of section 161 of the Media Act “until a final decision is ruled in this regard”. Some days later, on 14 December 2012, the federal judge of Civil and Commercial Court no. 1 ruled that the sections challenged by Clarín were constitutional. As a result, the judge ruled the act as a whole to be constitutional and overruled all previous protective measures.

However, the legal battle did not end until October 2013 when the so-called “underlying matter” (“*cuestión de fondo*”) was finally solved. Marino (2014) pointed out, with regard to the escalation of legal action, that the events occurred as chess moves in a three-player game – the Government, Grupo Clarín and different jurisdictions: Civil and Commercial Court no. 1, the Contentious-Administrative Court and the National Supreme Court of Justice.

6. Analysis of the implementation process of the Act

When studying the implementation of the Act on Audiovisual Media Services, Marino (2014) distinguishes three phases in the debate, enactment, litigation and implementation process of the Act: the first phase, known as “implementation biased by external causes” (November 2009 to December 2011); the second phase, “implementation biased by combined causes” (from the beginning of the second term of office of Cristina Fernández de Kirchner until the ruling of the National Supreme Court of Justice was pronounced in October 2013), and the third phase, “adaptation (and biased implementation)” which takes places from the Supreme Court decision and retains some of the features of the preceding phases.

Indeed, the implementation of the Act on Audiovisual Media Services started by the end of 2009 with the incorporation of the Federal Board for Audiovisual Services and the Federal Enforcement Authority (AFSCA). In 2010, the AFSCA scheduled the registration of all operators providing broadcasting services and workshops were held on how to plan and manage the media. However, three of the main media groups –Clarín, Ick and Vila– lodged an action for protection of constitutional rights or guarantees (*recurso de amparo*) to have section 161 of the new Act on Audiovisual Media Services suspended. Section 161 provided for a one-year period for media owners to adapt to new license restrictions: ten free television licenses, three audiovisual signals within the same area and twenty-four cable companies. In May 2012, the Supreme Court pronounced its judgement¹¹: the Court ordered to maintain in force the protective measure suspended as a result of the implementation of section 161 of the Act on Audiovisual Media Services for a thirty-six month period as provided by the National Federal Chamber for Civil and Commercial Appeals, applicable from the date when the measure had been ruled, meaning that the protective measure would expire on 7 December 2012, also known as 7D (Corte Suprema, 2012).

As a result, 7D became a key political goal for the Government with regard to the adaptation by Grupo Clarín.

¹⁰ A video with some of his declarations is available at: <http://www.youtube.com/watch?v=OKyUd7rfXvE>

¹¹ The judgement is available online at: <http://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verDocumentoByIdLinksJSP.html?idDocumento=2692992>

**Analysis of the drafting, enactment and implementation process of Act 26.522 on Audiovisual Media Services:
Drifting away from an ideal**

However, the date arrived and the Chamber for Appeals pronounced an order to extend the term of the protective measure. Nonetheless, some days later, on 14 December, judge of the Contentious-Administrative Court Horacio Alfonso ruled in favour of the constitutionality of the sections challenged by Clarín and petitioned for the measure to be lifted again.

Chart 1. Escalation of legal action further to the enactment of the Act on Audiovisual Media Services

DATE	ACTION	EFFECT
December 2009	Grupo Clarín claimed several sections in the Act to be unconstitutional before the Chamber. Beginning of the process called “Av. Clarín”.	Grupo Clarín was granted a “protective measure” that suspended the application of sections 161, 41 and 48.
December 2010	Action was taken before the Courts in the Provinces of Mendoza and Salta to petition the Act on Audiovisual Media Services to be suspended.	Protective measures by provincial chambers suspended the enforceability of the Act throughout the country.
July 2010	The National Supreme Court of Justice suspended the enforceability of protective measures granted by provincial chambers.	The Act on Audiovisual Media Services came back into force, excepting the sections challenged by Grupo Clarín.
July 2010	First ruling by the National Supreme Court of Justice ordering the Chamber to establish a reasonable term for the protective measure to expire.	Discussion on deadlines, delay in final decision.
May 2011	The Chamber established a 36-month term which was expected to come to an end by December 2013.	Distinctive application of deadlines for Grupo Clarín. Expiration of deadline was postponed to December 2013. Delay in final decision.
May 2012	The National Supreme Court of Justice established that “36 months” was a reasonable term but it was not well calculated and it instead expired on 7 December 2012.	Redefinition of terms for “7D Campaign”. Implementation delay.

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November 2012	The National Supreme Court of Justice urged the Judge to rule on the constitutionality matter.	Escalation of legal action. Implementation delay. 7D was not such.
December 2012	The Civil and Commercial Chamber no. 1 (CABA) declared sections to be “partially unconstitutional” (there were some aspects of sections 45 and 48 that hindered the concentration of licenses).	Escalation of legal action. Implementation delay.
July 2013	The National Supreme Court of Justice received the dossier and submitted it to the Attorney General.	Escalation of legal action. Implementation delay.
August 2013	The National Supreme Court of Justice held public hearings.	Last instance prior to the ruling.
October 2013	The National Supreme Court of Justice declared all sections in the Act on Audiovisual Media Services to be constitutional.	Full enforceability.
November 2013	Grupo Clarín presented an Adaptation Plan.	Adaptation in progress.

Source: compilation based on Marino (Marino, 2014: 85-86).

Beyond the legal battlefield, in 2011 the tender specifications for 220 nationwide digital terrestrial television licenses were published (Resolución 685/2011 and Resolución 686/2011). Even though these tenders did not come to fruition in the end, they showed that the execution of the Act was far removed from its original essence for two main reasons. Firstly, such tenders were announced without a previous Technical Plan and without a National Comprehensive Development Plan for Digital Television, which is especially important for digital television tenders and enhanced the uncertainty regarding the date when the expected 33% of the radio spectrum frequency reserved for non-profit organisations would be finally fulfilled.

On the other hand, said tenders established a bidding price that in Buenos Aires ranged between 40,000 and 140,000 pesos, which at the time was a major obstacle not only for less well-resourced non-profit organisations but also for small-sized commercial production companies, an issue that is in direct conflict with the overall spirit of the Act on Audiovisual Media Services.

Ever since the approval of Act 26.522 until 2012, its effect was only visible in the allotment of licenses to municipalities, provinces and universities (which does not mean that such had started or were in the position to operate); it also materialised in tenders for low power radio signals in some provinces and in the promotion of contents as per federal

criteria that were regularly announced by the National Institute of Cinema and Audiovisual Arts (INCAA).

Subsequent research (Marino et al., 2015) reviewed the procedure followed for the awarding of such funds through tenders called Fondo de Fomento Concursable para Medios de Comunicación Audiovisual (FOMECA). In addition, an analysis was also conducted on the progress regarding the granting of licenses, authorisations, permits, acknowledgements and awards that the Federal Authority for Audiovisual Media Services (AFSCA) had been managing ever since the Act was approved, specifically those that correspond to the media managed by non-profit organisations. One of the main conclusions was the lack of tenders and awards in the areas where the unauthorised media were the most common.

Another controversial issue regarding the application of the Act on Audiovisual Media Services has to do with the adaptation process initiated by several media conglomerates, an issue that once again proves that the actual enforcement of the act is far removed from the goal for which it was intended (Becerra, 2014). During the period designated by Marino (2014) as phase three in the implementation process of Act 26.522, Clarín managed for the administration period of Cristina Fernández to end without fully executing an adaptation process. During an interview with said author given in November 2014 in the framework of this research, it was said:

“[...] What are the advantages for the Government? The conflict benefited the Government in political terms, contributing to the image as “the advocate for social issues, community media, etc. against corporations”. This is how the political discourse was built. If you ask Kirchnerists why the Act failed to be applied, they will argue that corporations imposed themselves over the democratisation of the Act. However, when you take a deeper look you will see that it was actually a combination of both, as it was convenient for the Government to maintain this adversary until the end of the term of office.” (Own translation)

Along these lines, substantial changes were not made either in the production of national contents in recent times, even though the Act on Audiovisual Media Services establishes quite high emission allowances that could contribute to revitalise the production industry of audiovisual contents throughout the country.

Over five years after the Act was passed, the changes in the media system were certainly not very noticeable. Even though television channels, cable signals and AM and FM radio broadcasts began to distinguish between formal contents in their programmes and “advertising”, the most important matters included in the regulation with regard to democratisation, pluralism and diversity are yet to be implemented.

In the end, the democratising potential of Act 26.522 is undeniable when looking at the previous media system structure in the country. In addition, its discussion process has been praised in several occasions as a role model in policy making. However, the most critical issues are clear when analysing the implementation of the regulation, showing how current implementation is gradually drifting apart from the ideals proposed in the beginning.

7. Conclusions

The main contribution of this paper is a summary of the drafting, enactment and implementation process of the Act. This approach to public policies on communication, related to the works by Dror (1971), Lasswell (1951) and Meltsner (1972), sought to understand and explain the actions undertaken by public and private actors. With this approach, public policies are mostly understood as dependent variables, the result of the consolidation and balance between forces that make up the system (Dunn, 1994; Dye, 1976; Majone, 2001). Thus, the purpose was to define, building on the hypothesis of this paper, the role played by the

different actors in the drafting of this policy, the effectiveness –or lack thereof– of the Act and whether the process was democratic.

The foremost achievement arising out of the Act on Audiovisual Media Services is that it succeeded at stirring up discussions on the protection of audiovisual media services and at integrating it in State policies on communications. Another important aspect is the distinctive nature of the definition, discussion and enactment process of this Act, developed against a backdrop of confrontation with large media groups and surrounded by unprecedented social and political mobilisation and debate. However, as pointed out by recent research (Becerra & Mastrini, 2011; Potolski, 2013; Shmidt, 2013), one of the main achievements of the drafting and enactment process of the Act on Audiovisual Media Services is the fact that the debate regarding the media and the regulation thereof managed to penetrate in Argentina's social fabric.

One major concern that arose during the analysis of the power relations established between the different civil society actors in a policy-making process is in evidence when revising the instruments used by large media conglomerates which use their lobbying capacity in their own interest. As a matter of fact, further to the study of the policy-making process, it can be construed that the essence of the Argentinian Act did not really change much since its initial draft until its enactment. However, we must point out that it was first designed based on a civil society proposal: the 21 points for democratic broadcasting. As a result, although some authors suggest that the confrontation between Cristina Fernández's government and Grupo Clarín was the main reason why a new media act was brought forward in Argentina, without the 21 points for Democratic Broadcasting proposed in 2004 and without the pressure and the endeavours made by these civil society organisations, this new regulation could have had very different results.

At this point, we wondered whether the Act on Audiovisual Media Services encouraged social debate precisely because executive authorities had already contemplated this regulation as a democratic act or whether social debate was instead influenced by the fact that, owing to the pressure made by the opposition, some months earlier the administration under Cristina Fernández had failed to carry forward the reform on agricultural export taxes.

We can conclude that, indeed, the main hypothesis discussed in this paper is confirmed, as experiences such as that of the Coalition for Democratic Broadcasting suggest that it is possible to build up social forces capable of taking a stand against the interests of large commercial players and instead champion other interests that redress political, economic and social imbalances in a country. Nonetheless, the Argentinian case can also be construed as a warning on the extent to which institutions can further a cause that is widely supported by society in the pursuit of its own interests and not those of the general public. To achieve full democracy, pluralism and diversity in the media in Argentina, it will be essential to continue ensuring permanent discussion spaces so media movements continue to arise.

Considering the changes that have occurred in Argentina in recent times, the social movement stemming from the actions by the Coalition for Democratic Broadcasting still has a long way ahead.

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