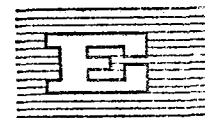
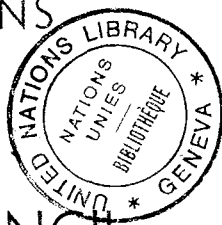


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COMMISSION ON HUMAN RIGHTS
Thirty-third session

PERIODIC REPORTS ON HUMAN RIGHTS

Reports on freedom of information, for the period
1 July 1970-30 June 1975, received from Governments
under Economic and Social Council resolution 1074 C (XXXIX)

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FRANCE

[Original: French]

[11 October 1976]

I. Concise description of general policies and significant developments during the period from 1 July 1970 to 30 June 1975, with regard to the freedom to seek, receive and impart information and ideas, through any media and regardless of frontiers

The French information regime has for many years ensured freedom to transmit information and ideas of all kinds across the frontiers, and it even facilitates their dissemination. There has been no change in over-all policy during the period under review.

With a view to facilitating the pursuit and dissemination of information concerning all parts of the world, including those areas affected by violent upheavals, the French Government proposed to the United Nations General Assembly the adoption of an international convention on the protection of journalists engaged in dangerous professional missions.

Also to be noted is France's signature of a document dated slightly later than 30 June 1975: the Final Act of the Conference on Security and Co-operation in Europe, drawn up in Helsinki, which deals with, among other things, the improvement of the circulation of, access to, and exchange of information, co-operation in the field of information and improvement of working conditions for journalists.

II. Influence of United Nations instruments on constitutions and legislation adopted and court decisions rendered during the period, for the recognition, enjoyment and protection of freedom of information

Since French legislation has, in general, reached a more advanced stage than the minimal measures envisaged in the United Nations instruments, these do not seem likely to have exerted any direct influence on court decisions during the period under review.

III. Legislative and other measures adopted during the period

The most important change in the law between 1971 and 1975 concerns the organization of French radio and television broadcasting. Although remaining under monopoly control, the provision of services has been distributed among various public bodies.

This change was brought about under the Act of 7 August 1974, an analysis of which is enclosed herewith as an extract from a report prepared for the Committee of Experts on the Mass Media at the request of the Secretary-General (Legal Affairs Division) of the Council of Europe.

So far as the cinema is concerned, attention may be drawn to Decree No. 71-46 of 6 January 1971, defining and classifying art cinemas and experimental cinemas, which are given privileged treatment for taxation purposes.

In addition, machinery to discourage the production and distribution of pornographic films, and films inciting to violence, was established by the latest Finance Bill. It includes both fiscal and financial measures (imposition of a higher rate of value-added tax, a supplementary 20 per cent levy on profits, exclusion from various concessions).

As to the press, which for more than forty years has enjoyed considerable tax relief and reduced postal charges, the French Government set up a round-table conference, attended by representatives of newspaper publishers, to study measures for improving the taxation treatment of the press. Pending the consideration by Parliament of the bill at present before it, the Government has instituted two kinds of special assistance:

- the first (Decree No. 73-268 of 13 March 1973 and Decree No. 74-1051 of 11 December 1974) concern quality newspapers with very little advertising revenue at their disposal;

- the second, designed as an economic measure (Decision of 26 June 1975) was aimed at reducing the impact of the rise in newsprint prices.

Press and information enterprises, like all others, are subject to the provisions of the 16 July 1971 Act concerning the organization of continuous vocational training in the context of permanent education of interest. In this connexion is the establishment of the Association de formation de la presse parisienne (ASFOPRES), in which press enterprises, and enterprises upstream and downstream of them, are represented.

In the audio-visual field, vocational training has been entrusted to the Institut national de l'audiovisuel (INA), a public body set up under the Act re-organizing the ORTF (cf. analysis of the Act of 7 August 1974 relating to radio and television broadcasting).

On various occasions, notably in reply to parliamentary questions, the French Government has made it known that it considers the drafting of a code of ethics for information personnel as being essentially a matter to be worked out jointly by all the professional organizations concerned. It does not want to contemplate imposing its authority in this field, but is ready to consider proposals made to it, should such proposals have arisen from a very broad consensus.

IV. Limitations upon the exercise of freedom of information

(a) Protection of the reputation, rights and freedoms of others, including protection against interference with privacy

Act No. 70-643 of 17 July 1970, for further safeguarding the individual rights of citizens, inserted a new provision in the Civil Code (article 9) according to which: "Everyone has the right to respect for privacy". It also empowers a judge, using the emergency procedure if need be, to take all appropriate measures to prevent or put an end to the invasion of privacy.

In addition, provision has been made by law for a number of punishable offences, mentioned in articles 368 to 370 of the Penal Code, with the same aim of protecting the privacy of citizens: eavesdropping or "spying" on a person "in a private place and without the person's consent" (art. 360), conserving, divulging or using sound recordings or pictures obtained fraudulently - editors and publishers being prosecuted in the first instance (art. 369) - publishing an edited version of a conversation or assembling a montage from pictures, "where it is not clearly apparent that it is an edited version or a montage, or where no specific mention is made of that fact" (art. 370).

The penalties provided for in the law are heavy, especially in cash terms: 12 months' imprisonment and a fine of 50,000 French francs. As in libel cases, proceedings can only be instituted if the victim sues.

(b) Protection... of public morals...

Decree No. 71-840 of 13 October 1971 inserts an article R.38-10° into the Penal Code, aimed at those who, unsolicited, send, distribute or cause to be distributed to homes or in public places "any prospectus, printed matter, picture, photograph or other material whatsoever offending decency". A wide range of punishable offences are covered, for the material sent or distributed need not necessarily be contrary to "morality" as defined in article 283 of the Penal Code.

Infringement is a "fourth class" offence, i.e. it is punishable by a fine of not more than 600 French francs. A prison sentence of up to 8 days may even be incurred.

With a view to protecting the consumer, a restriction has been imposed on freedom of publication by Act No. 73-1133 of 27 December 1973, which, in articles 44 et seq., penalizes misleading advertising, i.e. "false or potentially misleading claims, information or presentations when they relate to one or more of the following: the existence of goods or services, their nature, composition, essence, content and prescribed constituents, their type, origin, quantity, method and date of manufacture, properties, prices and conditions of sale..."

(c) Advocacy of and propaganda for national, racial or religious hatred or racial or religious discrimination

Act No. 72-546 of 1 July 1972 relating to the prevention of racism, institutes a new offence, that of "provoking discrimination, hatred or violence" on the grounds of a person's ethnic origin, nationality, race or religion (Act of 29 July 1881 on the freedom of the press, art.24, para. 5). It is stated that audio-visual methods of disseminating ideas are henceforth placed on the same footing as traditional methods (the written word, drawings...)(art. 23 of the same Act). Moreover, racist abuse and defamation are now punishable even if they are not aimed at stirring up hatred among the citizens or residents (new arts. 32 and 33). To give these charges the maximum dissuasive effect, it is stated that if they are aimed at stirring up hatred the offence is considered particularly serious, and the public prosecutor may institute proceedings automatically (Act of 1881, art. 48-6°).

Lastly, associations for combating racism may, in certain circumstances, institute civil proceedings (Code of Criminal Procedure, art. 2-1). Associations or groups inciting to racism, on the other hand, are disbanded by decree, on the same grounds as combat groups or private militia (Act of 10 January 1936, art. 1-3°).

Since the period under review for the purposes of this report extends to 30 June 1975, two new developments occurring shortly after that date may be mentioned pro memoria.

(1) Act. No. 75-624 of 11 July 1975 (art. 308-1 of the Penal Code) makes it punishable for a person to communicate or divulge information, known to him to be false, with the aim of making people believe that a criminal offence has been committed against persons or property.

This new offence is a restriction on the exercise of freedom of information, justified by the protection of public order (cf. Outline of Headings, IV,b).

(2) Act No. 75-617 of 11 July 1975 (Act of 29 July 1881, Act on the freedom of the press, new article 39) adds to the bans on reporting and publication which existed before (notably in slander and libel cases, in certain instances, and abortion proceedings) that of reporting and publishing evidence in paternity cases, claims for maintenance and marriage annulments.

It does not provide for these bans to be applied to publishing the "operative part" of the decisions, from which it may be deduced that the grounds for the judgement cannot be published.

This legal machinery is a restriction on freedom of information in the meaning of paragraph IV,e, of the Outline of Headings.

V.)
VI.) These headings do not call for any special comments as regards France.

Appendix^{a/}

THE MASS MEDIA IN FRANCE

I. The present system

1. The audiovisual media

For the purposes of the present report, this section will deal **exclusively** with radio and television.

The basic text now in force, which has profoundly altered the previous system, is the Act of 7 August 1974, on radio and television broadcasting.

A. General principles

The 1974 Act reiterates and clearly enunciates the two main principles that were already inherent in the previous **system**: French radio and television broadcasting is a national public service; this public service is a State monopoly.

1. French radio and television broadcasting constitutes a national public service, one that was formerly, moreover, under the direct administration of the State. Article 1 of the 1974 Act defines the purposes of this public service:

"French radio and television broadcasting, a national public service, shall undertake, within its field of competence, to meet the needs and aspirations of the population with regard to information, communication, culture, education, entertainment and all the values of civilization. Its aim is to ensure, in this field, exclusive concern for the general interests of the community.

It shall ensure equal access to the expression of the chief trends of thought and opinion. Broadcasting time shall regularly be made available to them.

It shall participate in the dissemination of French culture throughout the world.

These responsibilities carry with them the duty to safeguard the quality and lustre of the French language."

Because radio and television broadcasting is a public service, there are a number of general obligations on the administering bodies (public establishments or national companies, see below), obligations specified in the law and in the conditions of contract.

^{a/} Extract from the document of the Council of Europe: Committee of Experts on the Mass Media in France. Strasbourg, 21 June 1976 [Translation by United Nations Secretariat].

(a) Principle of equality and neutrality: This principle, already embodied in jurisprudence, is referred to a number of times in the 1974 Act:

Article 1, quoted above, specifies that the national public service "shall ensure equal access to the expression of the chief trends of thought and opinion". Article 15 establishes that broadcasting time shall be allocated to political groups and to representative professional organizations so that they may express themselves freely. In particular, during electoral campaigns, "equal broadcasting time shall be granted to parliamentary groups of the majority and to those of the opposition" (article 16, para. 4). While the Government may programme and broadcast any statements or communications whenever it deems necessary, the programmes in question must be announced as emanating from the Government (article 16, para. 1).

Article 10 requires one of the national programme companies (at the present time "France-Régions 3") to make special provision for "the programming of broadcasts for the direct expression of the various schools of thought and belief".

Article 17 requires the boards of directors of the administering bodies to ensure "the objectivity and accuracy of the information imparted and the expression of the chief trends of thought and opinion".

Lastly, the recognition of a right of reply on radio and television broadcasts (see below) also safeguards the neutrality of the public service.

(b) Principle of continuity: Under article 15 of the 1974 Act, the conditions of contract for each administering body must establish "the objectives to be achieved in fulfilling the purposes of a public service, including the development of networks and the minimum volume of broadcasting". In addition, article 26 contains provisions designed to ensure some continuity in the public service in the event of a strike: "In the event of a concerted cessation of work, the continuity of service necessary to fulfil the purposes defined in article 1 shall be ensured by the Public Broadcasting Establishment or by the national programme companies. The chairman of each body shall appoint the categories of staff or officials who are to remain on duty".

(c) Principle of openness to change: Like all other public services, the radio and television broadcasting service must be in a position to adapt constantly to developments, and more particularly to technical changes. This obligation, traditional in a public service, is also mentioned in article 15, paragraph 4, of the Act, which requires the national television companies "to promote, by the means they deem appropriate, inventiveness, creativity and the renewal of programmes".

The French public radio and television service is a State monopoly. This monopoly, which is also traditional, is defined in articles 2 and 3 of the Act of 3 July 1972, which are referred to in article 2 of the Act of 1974:

"Art. 2. The French public radio and television service is a State monopoly. Its aim, throughout the territory of the Republic, shall be:

1. to determine the programmes to be broadcast to the public or to certain categories of the public;
2. to broadcast them by all available telecommunication procedures;
3. to organize, set up, operate and maintain the networks and installations for such broadcasting.

Art. 3. Waivers of the monopoly specified in article 2 may be authorized under conditions established by decree:

1. for the broadcasting of programmes to a specific sector of the public, on the understanding that programmes relating to education and training may be determined by the appropriate ministries in that field;
2. for the closed-circuit broadcasting of programmes in private areas;
3. for experiments in scientific research;
4. in the interests of national defence or public safety.

In the cases specified in 1, 2 and 3 above, the waivers shall be granted on precarious tenure and may be revoked".

The present State monopoly system calls for three additional comments:

While it encompasses programming and broadcasting (handled respectively by the national programme companies and by public establishments, see below), it does not include the programme production sector.

The radio and television broadcasting monopoly impinges upon another State monopoly, namely, the transmission of signals of any kind, which comes under the Ministry of Postal and Telecommunication Services (Postal and Telecommunications Code, arts. L 32 to 45). Consequently, there is some co-operation between the postal and telecommunication authority and the bodies administering radio and television broadcasting; this has led, more particularly, to the establishment of a joint affiliate, the Société française de télédistribution (French Teledistribution Company), a joint stock company formed to study and test the conditions for joint operation by the postal and telecommunication authority and by the radio and television broadcasting administration of wire or cable distribution in their fields.

The State monopoly does not prohibit the existence of five outlying stations broadcasting in French from transmitters on the frontiers (Radio Luxembourg, Radio Monte Carlo, Europe No. 1, Radio Andorra and Sud-Radio), but the State has part control over these stations through SOFIRAD (Société financière de radiodiffusion - Radio Broadcasting Finance Company), a body in which the State holds 99 per cent of the shares; one of SOFIRAD's tasks is to acquire holdings in the companies operating the outlying stations.

B. Administrative organization

1. Administering bodies

Under the present system, introduced by the 1974 Act, there are a number of administering bodies which, so far as possible, operate under a legal system identical to that for enterprises in the private sector: the Public Broadcasting Establishment, the Audiovisual Institute and four national programme companies which exercise the State monopoly; in addition, there is another body: the production company. In other words, the twofold aim has been to provide for legal status as an enterprise in the private sector and for competition in a national public service that constitutes a State monopoly.

(a) The Public Broadcasting Establishment (Etablissement public de diffusion)

This is a public establishment of an industrial and commercial character with administrative and financial autonomy. Its organizational arrangements are laid down in Decree No. 74-795, of 24 September 1974, which amplifies the provisions of articles 5 and 6 of the Act of 1974.

Article 1 of this decree specifies that the purpose of the Establishment is:

"to arrange for the broadcasting of radio and television programmes in the territory of the Republic and to foreign countries, and for international exchanges;

to organize, develop, operate and maintain broadcasting networks and facilities for such programmes;

to take or promote any measures with a view to protecting the reception of broadcasts;

to conduct research into radio and television broadcasting equipment and techniques, in conjunction with, among others, the Centre national d'études des télécommunications (National Centre for Telecommunication Studies), and to participate in the establishment of standards for such equipment and techniques;

to assist, where necessary, the national programme companies and the production company provided for in the Act of 7 August 1974 in the acquisition, rental and maintenance by those companies of the equipment, so that use thereof will not jeopardize broadcasting quality;

to maintain, in liaison with the Minister for Foreign Affairs and the Minister for Co-operation, relations with international or foreign public and private bodies in the radio and television broadcasting field, for the purpose of international co-operation in radio and television broadcasting techniques and the allocation of networks and frequencies;

to engage, at the request or with the authorization of the Government, in any technical assistance or co-operation mission abroad".

The Establishment is headed by a Board of Directors, half of the members consisting of representatives of the State (eight) and the other half of

representatives of the parliamentary Assemblies (one for each of the two Assemblies), the national programme companies (one for each of the four companies) and the staff of the Establishment (two). All of the members hold office for three years, but it is specified that the representatives of the State may be removed from office at any time. The Chairman, selected from amongst the members of the Board of Directors, and a Director-General acting under his orders, are appointed for three years by decree of the Council of Ministers.

(b) The Audiovisual Institute (Institut de l'audiovisuel)

This Institute, also established under the Act of 1974, as supplemented by Decree No. 74-946 of 14 November 1974, and Decree No. 76-418 of 14 May 1976, is a public establishment of an industrial and commercial character. Under article 71 of the Finance Act of 30 December 1974, various provisions of the Act of 7 August 1974 relating to the Public Broadcasting Establishment have been extended to the Institute, more specifically, participation in the exercise of the broadcasting monopoly. The Institute is responsible primarily for keeping the archives, for research in the audiovisual field and for occupational training. Its activity also covers the history and development of means of audiovisual communication. Lastly, on behalf of the Public Broadcasting Establishment and the programme companies, it attends to international distribution in the cultural field and may also provide those bodies with technical assistance in audiovisual matters.

It is administered by a Board of Directors whose members are, in principle, appointed for three years. At the present time, they consist of four representatives of the State (three appointed by the Prime Minister and one by the Minister of Finance), a representative of the staff and two prominent persons appointed because of their qualifications. The Chairman, appointed for three years from among the members of the Board, and the Director-General, working under his orders, act as the executive.

(c) The national programme companies

These companies exercise the State's monopoly in respect of the programming of broadcasts.

The national radio broadcasting company (Radio-France) is responsible for arranging and programming radio broadcasts. It may produce broadcasts and transfer its rights over such broadcasts to third parties. It also administers and promotes orchestras, both in Paris and in the provinces.

The three national television companies (Télévision française 1, Antenne 2, and France-Régions 3) are responsible for arranging and programming television broadcasts; they may also produce broadcasts and market them. Their chairmen meet from time to time to ensure harmonized programming.

One of these national television companies, namely France-Régions 3 operates under a somewhat special system: it has to make special provision for the programming of cinematographic films and arrange broadcasts for the direct expression of the various schools of thought and belief. To that end, its Board must include a prominent person in the cultural world of the cinema and, in addition, a committee of four independent and prominent persons to assist the Chairman in broadcasts for direct expression of the various schools of thought and belief (cf. the Orders of the Secretary of State to the Prime Minister, the

Government's spokesmen, dated 7 February and 12 March 1975). This company is also responsible for the administration and development of the regional radio and television centres. Lastly, it includes the body responsible for radio and television broadcasting in the Overseas Departments and Territories (Overseas Stations Delegation: Decree No. 74-951, of 14 November 1974), and it arranges, produces and programmes broadcasts and the broadcasting of programmes on behalf of the Public Broadcasting Establishment.

These four national companies are identical in structure. They are joint stock companies under private law and the State is the sole shareholder. They are each administered by a Board of Directors with six members (two representatives of the State, a member of parliament, a leading figure from the Press, a representative of the staff and a prominent person in cultural affairs) which has the powers normally exercised by a general meeting of shareholders; it establishes the rules and regulations of the company, which are approved by decree. The members of the Board hold office for three years, and the Chairman, selected from among them, is appointed for three years by decree of the Council of Ministers.

(d) The Production Company

The Production Company, acting as a joint stock company under private law, is responsible for film and video productions which it markets, often but not exclusively, to the programme companies; the latter are nonetheless free to accept or dispense with its services.

Unlike that of the programme companies, the capital of the Production Company is not necessarily held in its entirety by the State. Apart from the State, the shareholders may be other persons under public law, national companies or semi-public companies, but the majority of the capital must be held by the public sector. In practice, it is true, a decree of 30 December 1974 authorized the Minister of Finance to acquire 99.88 per cent of the capital of a production company to be established under the name of Société française de production et de création audiovisuelles (French Audiovisual Production and Development Company).

Although it is a company under private law, the regulations of the Production Company have to be approved by decree; appointment of the Chairman and, if appropriate, the Director-General, together with any increase or reduction in capital and any transfer of shares, are subject to approval by the Prime Minister or a member of the Government appointed by him for that purpose.

2. Advisory institutions

The present system of administering radio and television broadcasting calls for a number of advisory bodies, consisting of elected officials and independent persons. These bodies are central or regional.

(a) The central bodies.

These are five in number.

First of all, the Délégation parlementaire pour la radiodiffusion-télévision française (Parliamentary Delegation for Radio and Television Broadcasting) is made up of the general rapporteurs of the finance committees of the two Assemblies, the special rapporteurs of those committees and the rapporteurs of the cultural affairs committees who are responsible for radio and television broadcasting, together with five deputies and three senators appointed to ensure balanced representation of the political groups. It is a kind of standing parliamentary committee, additional to the standing committees provided for in the Constitution; throughout the year, it exercises a right of direct or indirect supervision over the functioning of the public radio and television service. It may issue recommendations to the Government on its own initiative or at the Government's request, and must be consulted in certain cases, more particularly in connexion with waivers of the monopoly and agreements entered into between the administering bodies for the production, broadcasting and reproduction of programmes. Lastly, the delegation reports on its activities to the parliamentary assemblies and, each year, prepares a report filed with the Office of the Assemblies when the first regular session opens.

The Haut Conseil de l'audiovisuel (Audiovisual High Council) was established under the Act of 3 July 1972, the relevant provisions of which were maintained in the Act of 7 August 1974 (article 34 in fine). Presided over by the Foreign Minister or a Minister appointed for that purpose, the High Council consists of members of the National Assembly and the Senate and highly qualified persons in the cultural, artistic, scientific, technological, legal, professional, family and trade union spheres.

At the request of the Government, the High Council gives its opinion on problems relating to policy and development in the field of audiovisual techniques and on problems that may arise for the public authorities in that respect. It may also be consulted on any question by the Government, especially the ethics of audiovisual communication, certain kinds of waivers of the broadcasting monopoly and the requirements for exercise of the right of reply (see below).

The Commission pour la formation et la protection du consommateur par les moyens audiovisuels (Commission for Consumer Education and Protection by Audiovisual Methods) was established by an order of 22 December 1975, under the Prime Minister or the Minister appointed by him for that purpose. The Commission consists of a Chairman appointed by the Prime Minister, a representative of the Minister of Finance (Directorate-General of Competition and Prices), a representative of each national programme company, three representatives of the consumers, a director of the National Consumer Institute and two prominent persons appointed because of their qualifications. Its task is to give opinions on the annual agreements concluded between the programme companies and the National Consumer Institute or the Ministry of Finance. It does not play an exclusively advisory role, since it is also responsible for the arbitration, at the request of the national companies, State authorities, the National Consumer Institute or the consumer associations, of disputes arising from the use by the programme companies of their right to suspensive veto of a broadcast, as provided for in their conditions of contract.

The Comité consultatif des programmes pour les départements et territoires d'Outre-mer (Programme Advisory Committee for the Overseas Territories and Departments) assists the Chairman of the Board of Directors of the national television company (now France-Régions 3), which includes the body handling radio

and television broadcasting in the overseas departments and territories (cf. Decree No. 74-951, of 14 November 1974). The Committee consists of two members selected by each of the General Councils or Territorial Assemblies, two individuals appointed by ministerial order and two members of parliament appointed by their Assembly.

Lastly, an order of 7 February 1975 also set up, under the Chairman of the Board of Directors of France-Régions 3, an advisory committee "to give him advice on broadcasts for direct expression of the various schools of thought and belief". Appointed by order of the Prime Minister or of the Minister delegated by him, the committee consists of two members of the Council of State (one of whom acts as Chairman), two magistrates and another qualified person.

(b) The regional bodies

Each regional radio and television centre, which, as already explained, comes under a national television corporation, namely France-Régions 3, has a regional audiovisual advisory committee, consisting of leading representatives of the chief schools of thought and of the economic, social and cultural life of the region; one-third of the committee is made up of elected local officials.

3. Organs of control

- The administering bodies (Public establishments and National companies) are, in general, placed under the control of the Prime Minister or a member of the Government delegated by him for this purpose: the controlling authority, under article 14 of the Act of 7 August 1974, ensures that the monopoly is respected and sees to it that the public establishments and national companies comply with the conditions of contract and, in more general terms, fulfil their obligations as a public service.

It is this controlling authority which fixes the conditions of contract for these bodies, on the advice of the Parliamentary Delegation (cf. the Orders of 25 April 1975). It is this authority, too, which approves the statutes of the national companies and of the Production Company (cf. the Decrees of 30 December 1974). In addition, some of the decisions of the boards of directors are submitted for prior approval or may be subject to veto by the Prime Minister or the Finance Minister.

- The administering bodies are under State economic and financial control. For each organization there is a State Inspector, answerable to the Minister of Finance, who attends board meetings in a consultative capacity.

- In addition, the administering bodies are subject to inspection by the Commission of Audit for Public Enterprises. This also applies to their branches and sub-branches.

- A certain amount of control is also exercised through the advisory bodies, particularly the Parliamentary Delegation, which receives all the reports from the Commission of Audit for Public Enterprises.

- Lastly, Parliament exercises its control when it annually authorizes collection of the licence fee, at the time when the State budget is voted, and decides how money thus obtained is to be distributed (see below). This control is fairly far-reaching. The conditions of contract for the current year, the additional clauses, if any, amending the data for the following year, and comments by the Prime Minister, or the Minister delegated by him, on how each company is complying with its conditions of contract, are all appended to the Finance Bill and thus open to scrutiny by Members of Parliament.

C. Financial organization

1. Resources of the administering bodies

In the main, these resources come from the money obtained for the licence fee for the use of radio and television receivers, and from advertising.

(a) Licence fee

Although called a "redevance", this is not remuneration for services rendered, but a special levy, even though it is collected by the State and temporarily included in its budget (in a special Treasury account).

In conformity with the general statute on special levies (article 4 of the basic ordinance of 2 January 1959), it is for the competent authority to issue by decree adopted in the Council of State, regulations establishing the licence fee and apportioning its proceeds and, in particular, determining who is required to pay it and the categories of persons entitled to special rates or exemptions (these special rates or exemptions are reimbursed by the State: article 21 of the Act of 7 August 1974). On the other hand, Parliament has to authorize every year, when the State budget is voted, the collection of the licence fee for the following year.

First of all, two deductions are made from the proceeds of the licence fee, by joint decision of the Prime Minister (or the Minister delegated by him) and the Minister of Finance. The first goes to the Public Broadcasting Establishment to finance equipment for gradually extending the transmission of programmes over the whole country and abroad, and to pay for any special equipment provided for under the conditions of contract or decided upon by the controlling authorities. The second goes to the programme companies to cover expenses in connexion with new obligations for which direct financing from the licence fee during the first year of inclusion is provided for in the conditions of contract. The remainder is then divided among the programme companies on the basis of the previous year's figures and the criteria laid down in decrees issued by the Council of State on the advice of the Parliamentary Delegation (cf. Decree No. 74-1106 of 26 December 1974, supplemented or amended by the Order of 13 May 1975, the Decree of 16 June 1975 and the Order of 21 July 1975). The considerations taken into account include in particular, on the one hand, the stipulations of the conditions of contract and the quality and cultural value of the programmes, and on the other hand, the size of the audience and the company's own income. The task of assigning the proceeds of the licence fee is performed by a commission under the chairmanship of a law officer from the Audit Office, assisted by the following bodies: a special twenty-seven-member commission responsible for assessing the programme companies on the quality and cultural value of their broadcasts, and on their compliance with the conditions of contract; a public opinion research centre responsible for carrying out surveys to determine audience figures for each of the companies and to gather the views of listeners and viewers on the quality and cultural value of the programmes; and a viewing/listening panel to check the observance by the programme companies of their obligations in regard to the programmes and, in particular, to note any advertising material broadcast outside the programmes designated for that purpose. The distribution of the proceeds as so determined is submitted for parliamentary approval (cf., for 1976, the Finance Act of 30 December 1975, article 58).

(b) Advertising revenue

This comes essentially from brand-name advertising introduced on French radio and television in October 1968. At present, the basic text is article 22 of the Act of 7 August 1974 (supplemented by article 10 of Decree No. 74-1106 of 26 December 1974), according to which the length and frequency of advertising output and the corresponding volume of revenue must remain compatible with the functions assigned to the national public service. The proportion of revenue accruing from brand-name advertising may not exceed a global figure of 25 per cent of the total resources of the public establishments and national administering companies. The conditions of contract lay down the procedure of applying these principles, the French Advertising Régie (Régie française de publicité) (see below) being responsible for supervision and execution. In addition, the conditions of contract fix the maximum proportion of advertising revenue which may be earned from any one advertiser.

(c) Other income

- In addition to a percentage of the licence fee and advertising revenue, the Public Broadcasting Establishment receives a fee from the national programme companies for broadcasting their programmes and for services rendered in whatever form, as well as supporting funds, State grants and income from loans, investments, gifts and legacies.

- The Audiovisual Institute receives a contractual contribution from the Public Broadcasting Establishment, the national companies and the Production Corporation, fees for services rendered and, in more general terms, income from its own activities, including that derived from the management of the estate (property) assigned to it, and from gifts, legacies, loans and grants which may be allocated to it by the State, the local authorities or public bodies.

- The national programme companies and, above all, the Production Company, can cede their broadcasting rights to third parties and market their output.

2. Financial control

This is exercised in various ways.

- First, so far as the two public establishments are concerned, the Prime Minister or the Finance Minister may oppose the budgetary and financial decisions of the boards of directors. The income and expenditure estimates for each national programme company are transmitted to the Government for its comments.

- Parliament for its part also exercises control, not only through the Parliamentary Delegation, but also when it authorizes the collection and apportionment of the licence fee every year in the Finance Act. The financial statement for the preceding year, the provisional accounts of the public establishments and the national companies for the current year, together with the budget and income and expenditure estimates for the following year, with the Government comments thereon, if any, are appended to the Finance Bill. The operating account, profit and loss account and the balance sheet of the Production Company are also attached.

- Lastly, there are the controls already mentioned above, exercised by the State Inspectors and the Commission of Audit for Public Enterprises.

3. Taxation

Under the old system, the ORTF (Office de la Radiodiffusion-Télévision Française) was subject to normal tax law under the Finance Act of 24 December 1969 (article 67). It therefore had to pay VAT, even on income from the licence fee, despite the fact that that is a special levy, as well as company profit tax. These provisions are still applicable under the new structures set up in 1974.

D. Special matters

1. Staff participation in the administering bodies

This participation is ensured, in the first place, by the actual composition of the boards of directors, which always include staff representatives (2 for the Public Broadcasting Establishment, 1 for the Audiovisual Institute and 1 for each national company), chosen from lists of at least three names drawn up by each of the trade unions representing the staff.

In addition, the staff of the two public establishments comes under a statute laid down by decree of the Council of State (cf. Decrees of 24 December 1976, relating to the Public Broadcasting Agency, and 31 December 1975, relating to the Audiovisual Institute). The staff of each of these companies is governed by collective labour agreements concluded at the end of 1975 (in practice, in each company, one collective agreement covers technical and administrative staff and another journalists). These various instruments provide for staff participation, mainly through a works' committee operating in each of the organizations. This committee must be kept informed of, and must be consulted on, all matters concerning the organization, management and general running of the enterprise. In particular, the chairman of the board of directors reports annually to it on the activities of the establishment, its accounts for the past year, the budget for the next year and development prospects. In addition, both public establishments have joint commissions which have a say in matters of promotion and staff discipline. This role is played in the national companies by staff delegates and by joint disciplinary bodies.

2. Programming

As was indicated above, both the programming and the transmission of radio and television broadcasts are a State monopoly. Responsibility for this rests with the national programme companies (the national radio broadcasting company and the three national television companies respectively), which are wholly State-owned. As far as television is concerned, one of the national companies (France-Régions 3) must give special prominence to showing cinema films and to compiling programmes giving direct expression to various religious views and schools of thought. It is also responsible for running the regional radio and television centres and for compiling and producing programmes for overseas stations. Harmonization of the programmes of the three national companies is achieved through periodic meetings of the companies' chairmen.

(a) The programming obligations of the national companies are determined in the respective conditions of contract, which, together with any additions, are laid down by the Prime Minister or the Minister delegated by him, on the advice of the Parliamentary Delegation. Under article 15 of the Act of 7 August 1974, these conditions indicate the minimum volume of broadcasting. They determine the national company's obligations in respect of information and culture, particularly through the broadcasting of operatic, dramatic or musical works produced by theatres, festivals or subsidized cultural enterprises. They also determine its obligations as regards external activity and co-operation. They provide for minimum air-time to be given to representative political groups and professional organizations for the free expression of their views. They determine the rules governing advertising within the limits imposed by the law (see above). Lastly, they require the national television companies to promote, by the means they deem appropriate, to promote inventiveness, creativity and the renewal of programmes.

(b) In addition, the 1974 Act and the regulations for applying it impose certain obligations on the national companies. For instance, the Government may, at any time, have any statement or communication it deems fit, included in the programmes and broadcast an announcement being made to the effect that such a broadcast emanates from the Government. Moreover, the national companies are required to produce and include in the programmes broadcasts in connexion with election campaigns. Special provisions are included in the conditions of contract concerning services provided in this respect. Equal air-time must be given to majority parliamentary groups and to those of the opposition. A special text exists for presidential elections: Decree No. 64-231 of 14 March 1964 (pursuant to the Act of 6 November 1962 act), under which a national control commission, composed of members of the Council of State, the Court of Cassation and the Audit Office, must ensure that all the candidates are given the same facilities by the State, and in particular, equal access to radio and television.

(c) There are several means of ensuring the observance of these various obligations.

- Internal control: Under article 17 of the Act of 7 August 1974, the boards of directors of the national companies must satisfy themselves of the quality and morality of the programmes, and must see to it that the information broadcast is objective and accurate, and that the main schools of thought and currents of opinion are given expression.

In addition, there is a regional audiovisual advisory committee (see above) for each of the regional radio and television centres run by the "France-Régions 3" national television company. This committee can, in particular, express its views regarding the programmes.

As far as programmes for the overseas stations are concerned, the national company responsible - "France-Régions 3" - has a programme advisory committee (see above). This committee, which meets at least once a year, can be consulted by the company Chairman on any matters relating to programmes put out by the overseas stations. Every year it receives a report from the company Chairman on the achievements of the preceding year and on the general lines for the coming year's programmes, in accordance with the company's conditions of contract. The Committee may also be consulted on particular proposed broadcasts.

Lastly, for those "France-Régions 3" broadcasts devoted to the direct expression of the various religious beliefs and schools of thought, there is, as has been seen, a commission of independent individuals to advise the Chairman of the national company.

- Government control: The Prime Minister or a member of the Government delegated by him for that purpose is responsible for seeing that the national companies fulfil the requirements of their conditions of contract and, more generally, their obligations as a public service. Reference must also be made to the part played by the Commission for Consumer Education and Protection by Audiovisual Means (see above), which advises the Prime Minister.

- Parliamentary control: This control is exercised principally during the budget debate when Parliament authorizes the collection and distribution of the licence fee. In particular, the conditions of contract for the current year, the additional clauses, if any, amending the data for the following year, and the

comments by the Prime Minister, or the Minister appointed by him, on how each company is complying with its conditions of contract are appended to the Finance Bill and subjected to parliamentary scrutiny. Moreover, in apportioning the revenue from the licence fee among the programme companies, the quality of the programmes, the size of the audience and conformity with the conditions of contract (see above) are, as has been seen, taken into account.

3. Advertising output

Advertising was first introduced on French radio and television in the form of non-brand, public-interest advertising under article 2 of the Finance Act of 24 March 1951. Advertising was reserved for certain advertisers (the State, public establishments, semi-public companies or professional groupings) or for advertising campaigns to promote the consumption of a particular product (without brand-names being mentioned). These advertisements had (and still have) to be authorized by an agreement drawn up between the advertiser and the minister concerned, a certificate being issued only on the basis of an interministerial agreement between the minister concerned, the Minister of Finance and the Information Minister. Then in October 1968, brand-name advertising was introduced, with non-brand, public-interest advertising still continuing.

(a) At present, advertising is regulated, first, by the provisions of the Act of 7 August 1974 (articles 15 and 22) the instrument for applying it, Decree No. 74-1106 of 26 December 1974. These provisions stipulate, on the one hand, that the length and frequency of advertising output and the corresponding volume of revenue must be compatible with the functions assigned to the national public service (see above) and, on the other hand, that the proportion of revenue accruing from brand-name advertising may not exceed a global figure of 25 per cent of the total resources of the administering bodies (public establishments and national companies).

Every year, the national companies, the Public Broadcasting Establishment and the Audiovisual Institute calculate their revenue estimates for the following year and send them by 31 May to the Commission responsible for distributing the licence fee. Should estimated revenue from brand-name advertising exceed the maximum proportion of 25 per cent the Commission, on the basis of criteria determined by the conditions of contract and after consultation with the French Advertising Régie (see below), fixes the maximum amount of the income from advertising which each company may have. The Commission's decisions are notified to the French Advertising Régie, which is responsible for carrying them out. If, moreover, due to special circumstances, the total amount actually collected by the French Advertising Régie on behalf of the programme companies in a given year exceeds the maximum of 25 per cent for brand-name advertising, the excess is deducted - and penalties are provided for by order for failure to observe this requirement - from the resources which the programme companies are authorized to acquire in future from brand-name advertising.

(b) The conditions of contract prescribe the procedure for applying these legal provisions and regulations, and include all other, supplementary, requirements. In particular, they determine the proportion of air-time which may be devoted to advertising, the maximum proportion of income which may be obtained from any one advertiser and the duration and supervision of advertising material in the overseas departments and territories.

(c) Besides these general measures of programme supervision (see 2 above), there are two, more specific, checks on compliance with the rules relating to advertising.

- First of all, there is that exercised by the French Advertising Régie. This is a public enterprise set up after brand-name advertising was introduced on French radio and television in 1968 to manage this new commercial advertising. Under the new structures set up in 1974, its task is unchanged. The French Advertising Régie acts on behalf of the national companies and is responsible for executing the provisions of the law and of the conditions of contract and supervising their observance.

Juridically speaking, the Régie is a private limited company, its shareholders being the State (51 per cent of the capital), SOFIRAD (16 per cent), the Fédération nationale de la press française (7 per cent), the Union des annonceurs (8 per cent), the Confédération française de publicité (8 per cent) and the Institut national de la consommation (5 per cent). It has a board of directors numbering 12, including several law officers, the chairmanship at present being held by a member of the Audit Office. An advisory commission makes the selection from applications for air-time and previews the proposed films. It ensures compliance with the "code of good conduct" drawn up jointly by the Régie and the former ORTF. In accordance with this code, certain advertisements are banned, such as those for tobacco products or alcoholic drinks.

- A further control is exercised by the Commission which distributes the licence fee. This control takes place at the time of the annual review of the administering bodies' income estimates (see above) and when the income from the licence fee is distributed among the national companies. As has been seen, in making this distribution, the Commission takes into account, among other things, the way in which each company has complied with its conditions of contract. It is helped in this task by the viewing/listening panel, which is responsible, in particular, for noting any advertising material broadcast outside the programmes allocated for this purpose (Decree No. 75-477 of 16 June 1975, article 11).

ITALY

[Original: Italian]

[11 October 1976]

During the period covered by the present report - from 1970 to 1975 - the Government has promulgated important legislation embodying provisions concerning the publishing industry and new regulations relating to radio and television broadcasting.

The largely economic difficulties confronting the Italian press - difficulties which are similar to those experienced in other European countries - have been acknowledged by the Government, which in its policy statements has consistently expressed the desire to help to combat the problems faced by the newspapers by means of legislative action to ensure the increasingly free and proper exercise of the journalistic profession. The exercise of civil, political and cultural freedoms has been consolidated and expanded through the strengthening of democratic habits, as an essential condition for a free press, enriched by a wide variety of viewpoints and by the unimpeded confrontation of ideas which results in the attainment of higher cultural and social levels. The Government's determination to tackle the difficult situation experienced by the Italian press and the whole of the publishing sector took practical form in the promulgation, on Government initiative, of Act No. 172 of 6 June 1975 containing "provisions relating to the publishing industry". This Act restructures the existing legislation on the question and introduces certain amendments and improvements and a number of extremely significant new provisions. The various measures intended to assist the publishing industry comprise the granting of subsidies, loans on easy terms and other facilities connected with taxation, exchange and procedural matters; these benefits are granted mainly to the publishers of daily newspapers and periodicals.

Earlier legislative measures relating to this question promulgated during the period under consideration include Act No. 1,063 of 29 November 1971 containing measures to assist newspaper publishers during the year 1971; Act No. 307 of 6 June 1973 containing similar provisions relating to the year 1972; Act No. 307 of 16 July 1974 relating to 1973; the Decree of the Council of Ministers of 10 September 1975 relating to the appointment of the technical committee on the problems of the publishing industry; the Council of Ministers Decree of 13 December 1975 relating to the establishment of the committee on credit facilities for the publishing industry; the Ministerial Decree of 3 July 1975 designating the institutions and credit organizations provided for in articles 4 and 5 of Act No. 172 of 6 June 1975. Further legislation of interest during the same period includes the Ministerial Decree of 28 December 1972 which contains instructions concerning the application of value-added tax to the sale of newspapers, periodicals and the like; Act No. 355 of 17 July 1975 concerning the exemption of professional newsgatherers and booksellers from the responsibility established in articles 528 and 725 of the Criminal Code and articles 14 and 15 of Act No. 47 of 8 February 1948; the Ministerial Decree of 8 August 1972 amending earlier regulations concerning Sunday rest and weekly days-off; and the journalists' national labour contract of 21 March 1975. Attention should also be drawn to decision No. 199 of the Constitutional Court in 1972 declaring the constitutional illegality of article 112 of the act consolidating the public security legislation, in the section dealing with the prohibition of publications contrary to State ordinances or to the prestige of the authorities and detrimental to national sentiment.

Of particular interest during the period under consideration have been the political and legislative developments in connexion with radio and television. It is a well-known fact that Italian legislation has always reserved to the State the responsibility for radio and television broadcasts and has made provision for this through the grant of a concession to a public joint-stock company (the present RAI-TV, or Italian Broadcasting Corporation) in which the State holds a majority interest through the National Institute for the Reconstruction of Industry (IRI).

Since article 21 of the Constitution of the Republic contains a very sweeping definition of the idea of freedom of expression, the constitutionality of the so-called radio and television "monopoly" granted to RAI-TV has for some time been called in question.

In 1973, when the new postal law was being drafted, even radio and television transmissions by cable, which in the meantime had been organized by private individuals in the absence of legislation on the question, were reserved to the State "monopoly" (Presidential Decree No. 156 of 29 March 1973). After an appeal by a private party, however, the Constitutional Court, in decisions Nos. 225 and 226 of 1974, recognized the right of private individuals to organize cable television transmissions of a purely local and hence non-national character. In addition, the Constitutional Court recognized the right to install relay stations for broadcasting foreign television programmes. At present, programmes broadcast by the French "Antenna 2" by "Tele-Montecarlo", by Swiss television in Lugarno and by the Yugoslav Tele-Koper are, in fact, received in almost all regions of Italy, while in the Alto Adige region television broadcasts from German Switzerland and from Austria can also be seen.

In the meantime the Government promulgated Act No. 103 of 14 April 1975 which embodied a whole set of new regulations on radio and television. The transmission of radio and television programmes over the air or by cable on a national scale was defined as "an essential public service of pre-eminent national interest" (article 1). RAI-TV was defined as a "company in the national interest" responsible for the management of the service. But in articles 24 et seq., in accordance with the recommendations of the Constitutional Court, private individuals were given the right to install, subject to the authorization of the Minister for Posts and Telecommunications, cable television transmissions of a local nature (including adjacent districts and communes with a population not exceeding 150,000 inhabitants, with not more than 40,000 subscribers or 30 per cent of the maximum number of licences issued). Lastly, recognition was given to the right to install and operate private broadcast relay stations for foreign television programmes (articles 38 et seq.).

This was the situation on 1 July 1975. Reference should also be made, however, to subsequent developments. Between the publication of the 1974 decisions of the Constitutional Court and the promulgation of the above-mentioned 1975 Act, during the legal vacation, a number of private radio stations, especially frequency modulation (FM) stations, as well as local television stations, were in fact set up.

In 1976 a new decision of the Constitutional Court - decision No. 202 - confirming the liberal principles previously established for local cable television, granted to private individuals the right to install and operate purely local radio and television stations for broadcasting also, with the result that some articles of Act No. 103 of 1975 were abrogated.

At present many radio stations are already in operation and preparations are even being made for private television stations, a few of which have already begun transmissions.

New regulations are being prepared by the Ministry of Posts and Telecommunications in order to bring Act No. 103 of 1975 into line with the principles affirmed by the Constitutional Court and to control the exercise by private individuals of their rights concerning radio and television - an activity which will in every case require appropriate authorization, as the Constitutional Court itself has stated.

Because of this situation, therefore, Italy is among the most advanced countries as regards the recognition of the right to the freedom of expression of ideas, both through the press and through the other modern communication media.
