



## EBC AT THE MERCY OF THE GOVERNMENT — ANY GOVERNMENT

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**Abstract:** This article reveals how the legal nature of Empresa Brasil de Comunicação (EBC), a state-owned communications company linked to the Federal Government, favored the interference of the Executive Power. To do so, it recapitulates its creation, between 2007 and 2008, and examines how its design left loopholes for the edition of administrative measures in order to control it. Without independence both on management and on journalistic agenda, the EBC was subject to the predilections of the Presidency, both under Lula (until 2010) and Dilma (2011-2016), as well as, much less discreetly, under Michel Temer (2016-2018) and Jair Bolsonaro (since 2019). Based on the analysis of aspects of legislation and practical cases, the article demonstrates that the legal nature of the EBC, an entity of indirect administration whose management is entirely controlled by the Executive, seemed to be incompatible with the ideals of democratic public communication.

**Keywords:** EBC; Public communication; Democracy; Legislation.

### 1 Introduction

Empresa Brasil de Comunicação (EBC) was born from a Provisional Presidential Decree (or Medida Provisória, MP) published in 2007, which promoted the merger of two old institutions dedicated to communication. The first of them, Radiobrás, with about 1,200 employees, was a federal public company that controlled Agência Brasil, Radioagência Nacional, the important Rádio Nacional of Rio de Janeiro, and TV Nacional of Brasília (an open signal and programming broadcaster) with a cultural and public profile, similar to TV Cultura, in São Paulo), NBR (a TV broadcaster dedicated to covering the acts of the Federal Executive Branch) and some other AM, FM and shortwaves radio stations. The other one was the traditional TV Educativa of Rio de Janeiro (TVE), linked to the Roquette Pinto Foundation, with approximately more 1,200 employees, which also controlled Rádio MEC, in Rio, which played classical music, and an educational television in Maranhão. Radiobrás was a state-owned company, historically subject to the Federal Government; TVE, a Social Organization with a touch of autonomy.

The Provisional Presidential Decree (MP) that placed the two under the same command, in a single entity, won the number 398 and was published on October 9, 2007. In fact, the MP did not create anything, it only authorized the Federal Government to create Empresa Brasil de Comunicação, EBC, which would then be responsible for TV Brasil, which resulted from the

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merger of TV Nacional with TVE. In fact, MP 398 got off to a rocky start. Not having been approved in its first sixty days of validity, it was extended for another sixty days, in December 2007, until it was accepted by the Legislative Power.

Born that way, EBC grew up with a defect of origin, as will soon be seen. The authors of the MP had before them the opportunity to end the corrupted communication structures of the authoritarian State (Radiobrás had its roots in the military dictatorship, hence the subservience that has always characterized it). They could inaugurate a renewed institution, along the lines, even if merely close, of more modern organizations, such as those that manage German, French, Swiss, British or American public broadcasters. They had the option of designing a public-law foundation and rejected the alternative.

But this was not the only alternative for an entity with more autonomy. Its creators could, for example, design a non-profit, private-law organization that would have a council of civil society representatives in its control. They could have reserved seats for the Federal Executive on that council, taking care to greatly reduce government interference. They didn't want to go there either. They could also have followed the model of the Padre Anchieta Foundation, which manages TV Cultura in São Paulo. It is true that, in the case of this foundation, the State government maintains absolute control over the entity's destinies, by official and unofficial means. But even so, the Padre Anchieta Foundation, in terms of autonomy, is incomparably superior to the EBC.

Among all the possible alternatives, the choice was made to give the EBC the nature of a state-owned company, in the mold of the old Radiobrás, with a few modifications that turned out to be inexpressive or insufficient.

## **2 A Radiobrás without “eira”**

It was a serious mistake. By opting for the structure of a state-owned company – in which power is exercised by a board of directors and an administrative council, both made up of representatives appointed by the Executive (Presidency of the Republic and ministries) –, the Palácio do Planalto, which sent the MP to Congress, did nothing more than create a reissued Radiobrás.

It is true that some management instruments implemented by the EBC, such as an ombudsman and a board of trustees – well intentioned by reserving fifteen of the twenty seats to civil society and proposing to seek representation by race, gender and sexual orientation, although only regional representation and the multiplicity of professional experiences were contained in the law that created it – they would, at least in theory, have the power to oxygenate decision-making instances and ensure what was called, at the time, “diversity” and “plurality of voices” in the programming. It was not enough. In a short time, especially with the exchange of tenants at the Palácio do Planalto, such instruments proved ineffective, perhaps insignificant, becoming, at

the end, mere institutional makeup.

Not even TVE, with habits a little more attached to culture than to government, was able to positively influence the prevailing mentality at EBC – perhaps because it was headquartered in Rio, while the new company established its epicenter in Brasília. In this way, the organizational culture of the old Radiobrás remained practically unchanged. With all its vices and flaws.

The custom of flattering the authorities in the Esplanada dos Ministérios continued (BUCCI, 2008). The common behavior of speaking well about who is on top remained unchanged. The main change in the new season was outside the EBC: as the rulers said they were leftists, and imagined themselves more democratic than their predecessors, the orders from the Planalto for the new company were, so to speak, almost always less authoritarian. Whether by mistake or naivety, whether deliberately or purposefully, the nature of the bonds of obedience has remained unchanged. This was the most terrible illusion of the much-publicized reform of public communication in the Lula government: its agents imagined that, by putting the old structures and the old servile mentalities to fulfill the orders emanating from a power that had the desire to be "progressive", they would be creating a new public communication, a public communication of a new kind. Unfortunately, there was nothing new there – and this melancholy truth showed its full face under the Temer government and then under the Bolsonaro government.

With the Provisional Presidential Decree (MP) 398, the Lula government, then in the first year of its second term, intended to show the image of a modern public communication. In those times, more advanced sectors of civil society called for a reform in this sector. The way in which federal and state authorities used and abused the public communication equipment within their reach to practice self-promotion – hidden or openly – was shown to be incompatible with a mature democracy. It was necessary to change. MP 398, however, has changed virtually nothing.

There were hits. The most evident of these was to merge Radiobrás and TVE of Rio de Janeiro into a new institution, capable of centralizing operations that were previously dispersed, if not superimposed and redundant. The merger complied with the principle of economy and was guided by administrative rationality. It also seemed right to propose a new television channel, TV Brasil, dedicated to the production and dissemination of content of a public nature, not guided by official offices, as was the rule in the NBR. Furthermore, what was seen was the perpetuation of practices that referred to old authoritarian rubble. EBC was born with the look of a retreaded Radiobrás. Even in the name. If the old state-owned company was founded in 1975 under the name Empresa Brasileira de Comunicação, its replacement was called Empresa Brasil de Comunicação: a Radiobrás without the suffix "eira".

### **3 Subordination to Secom, in flagrant conflict of interests**

When the MP that created EBC was suggested to the Presidency of the Republic, the explanatory statement, signed by the ministers Franklin Martins (Department of Social

Communication – Secom), Dilma Rousseff (Casa Civil – Executive Office) and Paulo Bernardo (Planning), spoke of “concern present of guaranteeing the autonomy of the new company, through the creation of institutional mechanisms to protect it from the two sides that could constitute threats: subordination to government guidelines and conditioning to strict market rules”. These were words in line with a developed democracy. However, these words had no practical translation. Both the MP and the EBC Statute, presented by Presidential Decree number 6,246, of October 24, 2007, did not give effect to that “concern”.

As for the lack of independence, progress is almost nil. Just look at how the “EBC's top management and guidance body” is composed, that is, the Administrative Council (see Articles 14 and 15 of the Statute and Articles 12 and 13 of the MP). As in all other state-owned companies, this council holds the management command in the company. Of the five members, the minister of the Department for Social Communication of the Presidency of the Republic appoints two. The third is the company's CEO, appointed by the President of the Republic. The other two come from the Ministry of Planning and the Ministry of Communications. This council is responsible for electing and removing the directors of EBC, with the exception of two: the CEO and the general director, both appointed directly by the President of the Republic. With this council, there can be no doubt about the notorious fact that the EBC would be unable to break with "subordination to government directives."

Nor the board of trustees, made up of fifteen representatives of civil society, a staff representative and four representatives of four ministries, would have the tools to do so. It should be noted that the fifteen representatives of the civil society were also appointed by the President of the Republic, so that, although ostentatious, this board of trustees had no way of ruling anything, as would become evident in the following years. Although this board was authorized – only by an absolute majority – to impute a vote of no confidence to the directors, something more than exceptional and very improbable, his advisory functions had nothing to do with deliberation. They were, rather, decorative.

To make matters worse, EBC was linked to the Department of Social Communication of the Presidency of the Republic (Secom), whose minister assumed the prerogative of appointing the chairman of the Administrative Council, the highest governing body of the state-owned company. The institutional link between EBC and the Presidency of the Republic went against the best principles of public communication. Let us remember that Secom, in 2008, was not an organization with cultural purposes. Far from it: its duties revolved (and still revolve) around the defense of the immediate interests of the Presidency of the Republic. Secom was (and still is) responsible for managing the Federal Government's advertising, that is, the purchase of advertising space in private media. It handled (and still does) the press office for the Presidency of the Republic, working to promote a favorable image of the president.

According to the canons of journalistic ethics, a body dedicated to press consultancy and

to buy advertising in press vehicles should not oversee a public company which should report objectively. The purposes and methods of press relations – in public or private bodies – are not compatible with the purposes and methods of journalism. Anyone who says otherwise ends up, even if inadvertently, confusing public opinion. By appointing the chairman of the EBC Administration Council, Secom has naturally turned into a conflict of interest with its ministry status. If the Lula government really wanted a journalistic EBC, it could not have linked the company to the Presidency of the Republic. Public and independent journalism – an activity that exists, with brilliance, in several democracies – would not be able to prosper within a structure so close to the Presidency of the Republic. It wouldn't have and, as history has shown, it didn't.

In 2020, also by Provisional Presidential Decree (MP 980/20), the Bolsonaro government transferred the command of EBC to the Ministry of Communications, but did not reduce the Planalto's dominance in its administration. On the contrary: by politicizing the Ministry of Communications, the government accentuated its dominance. In democratic States, public broadcasters have much more affinity with the area of culture than with areas in charge of the Presidency of the Republic's agenda. In Brazil, the movement takes place in the opposite direction.

In the first four years of its existence, under the presidency of journalist Tereza Cruvinel, EBC tried to follow a less state-owned and more public line. The quality of TV Brasil's programming took an unmistakable leap, showing attractions far superior to those seen until 2007. But, as for transforming EBC into a set of truly public broadcasters (TV and radio stations, in addition to Agência Brasil, on the Internet), this was never achieved. There was a wall. The reason for this wall was, from the beginning, very clear. The highest instance of EBC and TV Brasil was not within themselves: it was in the Palácio do Planalto. According to Article 19 of the Law 11,652 from April 7, 2008 (which implemented the MP of 2007), what was already expected was established. It was up to the Presidency of the Republic to appoint the company's CEO and the general director. This mechanism, just this one, would be enough for the definitive diagnosis.

In its legal nature, EBC never sheltered, in the form of law, what democracies learned to call public broadcasters. In companies of public, but non-governmental nature, which manage public broadcasters, such as the British BBC, or the German ARD, or the Swiss RTS, there is an independent board, without subordination to any State authority, which fulfills the function of ensuring management autonomy. EBC does not have devices that ensure the same distance. EBC, on the contrary, is entirely linked to the governmental machine, with clear traces of subordination. A subordination that, although not expressed in the law, is undeniable. EBC manages stations such as TV Brasil which, at least until the Dilma Rousseff government, broadcasted some typical programs on public broadcasters, which indicates a less government-oriented intention. In its legal basis, however, it is nothing more than a state-owned company – it belongs to the state – a state-owned company, since its management is subordinate to government authority.

Worse still: it was born in charge of operating and producing government communication.

Until the end of Michel Temer's government, that is, until the end of 2018, there was a specific television channel, within EBC, in charge of this programming: NBR. Indeed, the eighth article of Law 11,652 of 2008, entrusts the company of "providing services in the field of broadcasting, communication and related services, including the transmission of acts and matters of the Federal Government", in addition to "carrying out other related activities, assigned to it by the Department for Social Communication of the Presidency of the Republic". The text is explicit and, also explicitly, makes it clear that EBC is directly subordinate to the Palácio do Planalto. It is legally subordinate to an authority that is external to it, and this authority – originally Secom and, more recently, the Ministry of Communications – has the mission of taking care of the image of the Federal Government. Therefore, EBC is an organic part of the Palácio do Planalto's strategy to build and preserve the Government's good image. This in no way corresponds to the requirements of public broadcasters. The least that can be said is that EBC defined itself as an unstable hybrid of two antipodean vocations: the speech of those who created it promised public communication, like the American PBS, while the letter of the law forced it to provide government promotion services, on the line of the radio program A Voz do Brasil.

#### **4 How Michel Temer's government put an end to the utopia**

For those who still had doubts, the government of Michel Temer, which was established after the controversial *impeachment* of Dilma Rousseff in 2016, came to bury them all. In the early days of the Temer government, Empresa Brasil de Comunicação, at the time with an annual budget of around 750 million reais, five times greater than that of Fundação Padre Anchieta, underwent every type of intervention.

On May 17, 2016, the President of the Republic, who was still in the position as an interim, dismissed the EBC's CEO, journalist Ricardo Melo, in an abrupt and disrespectful manner. Melo had taken office on May 10th and, according to one of the innovations of law 11,652, of April 7, 2008, he was invested with a four-year term. In defense of his rights, he filed a lawsuit in the Supreme Court (STF) to regain his post.

On June 2, STF Minister Dias Toffoli determined, by injunction, the return of Ricardo Melo to the presidency of the EBC. He survived there for three months. On the same September 1st in which Michel Temer took office on a permanent basis, after the vote in the Senate that consummated the *impeachment* of Dilma Rousseff, the new president of the Republic edited the MP 744/2016, which amended the law that regulates EBC and dismissed Ricardo Melo again – now once and for all – and summarily extinguished the EBC ombudsman and the board of trustees.

The objectives of the MP are contained in the explanatory statement, signed by the ministers Eliseu Padilha and Dyogo Henrique de Oliveira at the time:

It is intended to link EBC directly to Casa Civil [Executive Office] of the Presidency of the Republic, to extinguish the Board of Trustees, a consultative and deliberative body, and to change the wording of art. 19 of Law No. 11,652 of 2008, in order to clarify that the term of the EBC's CEO is improper, that is, he is among those that are subject to dismissing, and to promote formal adjustments resulting from changes made to the structure of the Presidency of the Republic recently through MP No. 726, of May 12, 2016. (...)§ 2 of art. 19 of Law No. 11,652 of 2008, establishes that the term of office of the CEO will be four years. However, contrary to what the hasty reading and literal interpretation of the MP may indicate, despite the word "term" being present, the EBC President can be dismissed by the President of the Republic at any time (BRASIL, 2016, [np])

The justification for the extinction of the Board of Trustees was speed. “The extinction of the Board of Trustees is due to the need to streamline decisions within the scope of EBC, in compliance with the principle of efficiency”, states the document (BRASIL, 2016).

It didn't take more than a stroke. As the structuring of EBC had this gap, it was through it that the Temer government put to rest all the public communication rhetoric that still existed within the company. EBC was not a company of public and non-governmental pretensions, it was just a subservient state-owned company – and so it continued to be. In fact, that's how it got worse. A lot worse.

But EBC was a hybrid of two vocations, let's not forget. Therefore, there was an internal debate. The company stirred. Both the Executive Board and the Board of Trustees issued repudiation notes on May 13 against Ricardo Melo's resignation and his replacement by a new president.

“The appointment of a new CEO for EBC before the end of the current term will violate a perfect legal act,” wrote the Board of Executive Directors (EBC, 2016a). The note went on stating that the dismissal also violated a "fundamental principle of the rule of law, as well as one of the specific principles of Public Broadcasting, related to its autonomy."

The note from the Board of Trustees invested in a similar line:

(...) In order to preserve its autonomy in the development of public communication, EBC is also endowed with legal provisions present in article 19 of Law 11652/08 that grant a mandate to its CEO who, once appointed, cannot be removed unless by the agent's own will or serious disrespect for the legal dictates that govern his functions and responsibilities, and only by deliberation of the Board of Trustees (EBC, 2016b, np).

The concern with the episode reached international instances. On June 24, 2016, the UN and OAS rapporteurs for freedom of expression spoke out about the interference in EBC and highlighted the need to avoid setbacks in communication. “We take note of the concerns expressed by the government about the economic situation of EBC,” said David Kaye, UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. “However, these concerns do not justify interference in the administration of a national public broadcaster and, in particular, in its journalistic work” (UN AND OAS RAPPORTEURS FOR

FREEDOM OF EXPRESSION, 2016, no page).

Edison Lanza, Special Rapporteur for the Organization of American States for Freedom of Expression, recalled that international standards determine that States must ensure that public broadcasting services function independently of governments. “This means guaranteeing their administrative autonomy and editorial freedom,” he said (UN AND OAS RAPORTEURS FOR FREEDOM OF EXPRESSION, 2016, no page).

Finally, on October 7, 2016, after the termination of the Board of Trustees through the MP 744, it was the turn of the Federal Public Ministry, through the Federal Attorney for Citizens' Rights, to publish a technical note reiterating the warnings made by the UN and OAS rapporteurs. The note from the Federal Public Ministry (MPF) (2016) has fourteen pages and responds mainly to MP, which, "on the pretext of 'streamlining decisions within EBC', introduced several changes in the company's structure that directly affect its autonomy and possibility to carry out its institutional functions independently of the government and the market" (p. 4).

The MPF note points out unconstitutionality detected in MP 744, some of which are formal. "The urgency or relevance, a double constitutional requirement for issuing provisional measures, is not present in the case under examination", says the text (p. 6). Then, he advocates a public communication system not subservient to the government:

As a result of the structural weakening produced, the space for the practice of "censorship of a political, ideological and artistic nature" is opened, both by defining the editorial line and programming in the perspective of the interests of government officials, as well as by silencing voices that dare to diverge from the government. (...) How can the EBC directors, without the Board of Trustees and without the guarantee of the mandate of the CEO, resist the pressures of the Executive Power? (...) The MP 744/16, deconstructing EBC, especially with the extinction of the Board of Trustees and the mandate of its directors, annihilated the concrete experience of implementing a public system in the country. The institution of a system that is public, alongside a state and a private one, has been the model adopted in the main democracies to ensure the pluralism of ideas through the diversity of sources (...). (p. 8-9).

To no avail. The intervention in EBC was consummated on March 1, 2017, with the sanction of Law 13,417, which amended Law 11,652 of 2008 in order to incorporate the content of the MP of 2016, then added by two novelties: EBC started to respond to the Casa Civil, and no longer to Secom; and, in place of the extinct Board of Trustees, with twenty members, the Editorial and Programming Committee was created, with eleven. The term was reduced from four to two years.

The climate within the company has deteriorated a lot. One of the signals came on the talk show *Sem Censura*, which was broadcast live on TV Brasil. On November 23, 2017, one of the guests was actor Pedro Cardoso, well known for the role of Agostinho Carrara in the series *Grande Família*, aired by Rede Globo from 2001 to 2014. That night, part of the network's staff was on strike for wage adjustment and against the suppression of labor rights. Before going to the



studio, Cardoso spoke with employees who kept vigil in front of the building. When the presenter asked him the first question, he replied like this:

I apologize to you, but I'm not going to answer this question or any other question, because when I got here today, I found a company that is on strike, and I don't participate in programs in companies that are on strike. (...) I have the greatest respect for all of you, those who are at a standstill, those who are working and those who are here. But, in front of this government that is ruling Brazil, I am convinced that the people who are on this strike are probably right. So I'm not going to talk about the subject I came to talk about, or any other. And what I also came to know, when I arrived here, is that the president of this company, which belongs to the Brazilian people, made extremely inappropriate comments about what a colleague of mine would have said, in which the presence of African blood is visible on the skin. (...) So, if this company, which is the home of the Brazilian people, has a person in the presidency who speaks against this, I cannot talk about the subject I came here to talk about. (...) I apologize. I will stand up out of respect for the strikers and leave (CARDOSO, 2017, no page).

The changes imposed on EBC were all legal. They took place and proceeded within the regulatory framework established for the company. Before Temer, the Planalto could do anything – but they believed that they acted to make the governmental communication more public. With Temer, the Planalto could also do anything – but they intended to make a communication that one day they imagined it could be public more governmental. Legal frameworks, however, were not violated. What was violated by Temer was a project, not consolidated by law, which flirted with a communicational utopia independent from the State. It all disappeared into thin air.

Without breaking the law, Temer's measures hurt all good manners, and ran over a more airy culture that was being tried at EBC. The changes he imposed took place without public consultations or internal debates, contributing to foster legal and professional insecurity within the company. The effects most commonly suffered by journalists were editorial, with the suppression of reports criticizing the Federal Government, and job-related, through the dismissal or non-renewal of contracts with professionals who diverged from Michel Temer's administration.

Tereza Cruvinel, who had been president of the company, was one of the journalists dismissed. She was a commentator. Then, journalists Paulo Moreira Leite, Luís Nassif, Sidney Rezende, Paulo Markun and Leda Nagle were dismissed. The justification, in all these cases, was the need for budgetary readjustment, reinforcing the explicit argument that EBC wasted a lot of money — as well as the implicit argument that the governments that ran it until 2016 favored political allies.

Another journalist whose contract was not renewed was Laurindo Lalo Leal Filho. A retired professor at USP's School of Communications and Arts (ECA-USP), Lalo was the EBC's first ombudsman, from 2008 to 2010, a function that ended in 2016 along with the Board of Trustees. For ten years, he had hosted the program Ver TV, in which he discussed television programming in the country.

Lalo was one of the participants in the seminar “The challenges of public communication in Brazil”, mediated by Camilo Vannuchi at ECA-USP, on May 17, 2017. Organized by the Academic Center Lupe Cotrim and the National Forum on Communication Rights, the debate had three other journalists also present: Rita Freire, president (repealed) of the EBC Board of Trustees; Eliane Gonçalves, reporter for Rádio Nacional and representative (repealed) of the EBC workers on the Board of Trustees; and Ana Cláudia Mielke, coordinator of Coletivo Intervezes, a social organization for the democratization of communication. “What guarantees the fact that it is public is the distance from the State that created it”, said Lalo, highlighting the independence of the Board of Trustees as a determinant in the conduction of the content produced by EBC:

The State gives the boost, but, at the same time, creates mechanisms within the company so that the society can participate in it and guarantee autonomy in relation to the State. (...) When it is very close to the State, it ceases to be public and becomes state-owned (OS DESAFIOS DA COMUNICAÇÃO PÚBLICA NO BRASIL, 2017, no page).

Rita Freire used the word “dismantling” to refer to changes in the company and reiterated the board's commitment to ensuring a multiplicity of voices in the construction of EBC. “We started this process of dismantling EBC with the illegal act of someone claiming the chair of the country's president,” she said (OS DESAFIOS DA COMUNICAÇÃO PÚBLICA NO BRASIL, 2017, no page). The first president of the Board of Trustees appointed by the society, and not by the government as before, Rita said that the “dismantling” was preceded by an “intense campaign” with the objective of weakening the structure of EBC and making “terrorism”. “The workers went to work and thought that the next day they might no longer have a job, that EBC might cease to exist.”

The presence of a reporter who still worked at EBC allowed the audience to hear reports about the company's backstage after the “dismantling”: “The interference in the contents happened before”, recognized Eliane Gonçalves (OS DESAFIOS DA COMUNICAÇÃO PÚBLICA NO BRASIL, 2017, without page). “But we had the Board of Trustees to go and say: ‘look, there is interference in the content.’” According to her, the attempt to influence the news in previous governments was not comparable to what was observed after the intervention. “It’s impossible to stop the custom of appraising who is on top overnight. It’s constructed. But we had structures that were being set up to appeal.” Eliane also mentioned episodes of more or less explicit censorship:

Suddenly you start to discover that facts like a march on March 8th are not interesting for radio. Suddenly there was no space, or suddenly they forgot to call the reporter who is going to come in live. Then you discover that that assembly of aeronauts that is going to decide for a general strike cannot be called a general strike. “Can you just say that they are going to fight for the salary campaign?” What? On the eve of a strike, don't you have to tell people that they have to change their plane tickets, that they won't have a plane? “But then you can't use the wording general strike?” (...) A few days ago, a colleague who was called to review the Temer government, did not only have the text

completely changed by the manager (...) the person used her authority and said 'you're going to put on your face in this text that is not yours'. (...) Violence, to the point where the head of Agência Brasil here in São Paulo was fired because he sent a reporter to cover the MTST camp in front of the Presidency of the Republic. (...) And this has happened without us being able to have the structures that we had before to appeal (OS DESAFIOS DA COMUNICAÇÃO PÚBLICA NO BRASIL, 2017, no page).

In the history of public communication in Brazil, the idealization of editorial independence has always been closer to utopia than to the legal framework. In institutional routine, but in exceptional episodes, editorial independence was not put into practice, not even at EBC. However, it is unlikely that anyone would disagree that the company, from 2007 to 2016, was moving towards a more qualified and more democratic public communication. The problem is that progress was too slow and did not translate into a new legal framework and a new organizational culture.

The Temer government's interference in EBC took on the shape of an announced death. For many, it was clear that the company would not resist pressure from the Executive. Over ten years, the reduction in subservience in relation to the government was due more to the assumption that the incumbents – first Lula and then Dilma – would not impose a gag on anyone. It was as if there was no need to formalize independence. It was as if, in the prevailing illusion, the future could not hold any surprises. It was as if a president with an authoritarian profile could never again take possession of the Palácio do Planalto.

In this sense, it is curious to note that several authors already warned about the risk of dismantling long before the impeachment of Dilma Rousseff, in 2016. “EBC faces several challenges for its consolidation as a public communication company, which go beyond programming, but reaches the improvement of its legal-institutional model and its management”, wrote Márcia Detoni (2015, p. 148). “EBC project has contradictions and insufficiencies that are a reflection of the limits of the communication policy now being carried out in the country”, said Luana Bonone (2015, p. 47). “The model of nomination by the President of the Republic is still a structural obstacle to the independence of the Council, since, even in a subjective and non-formal way, it gives the nominees a kind of link to the Federal Executive”, observed Jonas Valente (2013, p. 272). Eugênio Bucci issued the same alert several times, as he did in the book *O Estado de Narciso*, published in 2015:

At any time, under the most personal justification or under the most idealistic pretext, the prerogatives may be called into action, which will bring down the effort to create and maintain editorial independence. (BUCCI, 2015, p. 114).

## **5 The Bolsonaro government and its policy of destruction**

As of 2019, what was “dismantling” became destruction. Still on the campaign trail, during 2018, the future president Jair Bolsonaro had sometimes said that he would privatize EBC,

as it did not give more than “a trace of audience”.<sup>3</sup> There were also promises of extinction of the company. However, as soon as he took office, attitudes took a different line. The Planalto summit made it clear that it would no longer extinguish EBC. General Carlos Alberto dos Santos Cruz, then chief minister of the Secretary of Government, officially and publicly declared that EBC would continue, albeit with reformulations.

No wonder. A government made up of obsessive political propaganda activists would not ignore a large-scale communication tool like that. Bolsonarism would not throw EBC away. I wouldn't close it at all. As for privatization, the best thing to do would be to wait. Quickly, the Bolsonaro government learned that it could use the manipulation of the media to its advantage. The subservience that had been useful to the Lula, Dilma and Temer governments could also come in handy for the Bolsonaro government. The governmental culture would follow the same, although its vectors had to be reoriented, moving from a moderate left, perhaps ashamed, to an extreme right without any rash.

In the moment we conclude this article, the state-owned company is experiencing its moment of greater institutional precariousness, subject to excesses that have completely ended the dividing line between advertising and information of public interest. Of the ideals that led some journalists willingly to support the 2007 MP, at the beginning of Lula's second government, there is nothing left. Of the dreams that the state-owned company could become an achievement in public communication of excellence, only ashes remained.

What is projected from this thanatic fantasy (a fantasy moved by Thanatos, inspired by an obsession with death) – which the current government pronounces and enunciates – is a communication that is not politically correct in the field of rights and that proves to be politically regressive (and oppressive) in the field of customs: soap operas without gay kisses, schools without sex education, teenagers with no libido and parents with four shotguns stored in their wardrobes. God above all.

It is hardly surprising that, in April 2021, the allocation of 3.2 million reais was announced in the purchase, by EBC, of the broadcasting rights for TV Record's telenovela *Os Dez Mandamentos*, to be shown on TV Brasil. An unsustainable choice in all senses, not only due to the imperative of the secular state, which a state broadcaster should obey, but mainly due to the absence of arguments to justify the use of this money – or any public money – in the purchase of a product that is commercial, private, previously shown and made for profit, resulting in more profit for the producing company, without generating new jobs, without democratizing access to national or regional culture, nor promoting representativeness or plurality of themes, regions,

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<sup>3</sup> After winning the second round and before taking office the politician insisted on his purpose. See “Bolsonaro diz que vai extinguir ou privatizar a TV Brasil, criada por Lula” (Bolsonaro says he's going to extinguish or privatize TV Brasil, created by Lula). Blog Notícias da TV, by Daniel Castro, at UOL. 29 Oct 2018. Available at: <https://noticiasdatv.uol.com.br/noticia/televisao/jair-bolsonaro-diz-que-vai-extinguir-ou-privatizar-a-tv-brasil-criada-por-lula -23012>. Accessed on April 6, 2021..

genres, creeds or contents. No justification at all.

Where is EBC going? It's impossible to know. Maybe they'll be able to cut it up and then sell it in pieces, in the bowl of souls, to private investors. Maybe they'll let it starve. Perhaps, in a twist of the political scene, some spark will survive. If so, hopefully future generations won't make the same mistakes. I hope they will be able to establish a precise regulatory framework to ensure the establishment of a truly public communication, which is sorely needed – and sorely missed – for Brazilian democracy.

## **6 Conclusion**

As is clear from the recapitulation of the history of the legislative arrangement that gave rise to the legal body of Empresa Brasil de Comunicação, EBC, there is no compatibility between its nature as a state-owned company controlled by a Administration Council directly appointed by the Executive Branch and the parameters of editorial and administrative independence requirements required by democratic standards of public communication. MP 398, of October 9, 2007, effective in Law 11,652, of April 7, 2008, did not give the institution a legal and organizational nature that would protect it from the pressures coming from the Federal Government and that would create organic ties between it and the civil society, as seen in the main references of public communication in the democratic world, such as the British BBC or the German ARD. On the contrary, in line with the format already established in the former Radiobrás, the ties of government control remained intact, both in the composition of the Administrative Council and in the criteria for appointing the managing executives.

The creation of the Board of Trustees, made up of representatives of society, although appointed by the Presidency of the Republic, opened a breach that alleviated the harshness of subordination. In this sense, the advent of the Board of Trustees can and should be taken by scholars as a meritorious and consistent airing in accordance with the purposes of public communication. Despite the success, the results were not enough to invert the logic of governmental-state communication, such as that practiced at Radiobrás at least until the beginning of the first Lula Government, in the direction of an informative, independent, plural and critical communication. Remember that the Board of Trustees had some prerogatives — such as oversight of editorial quality and the possibility of a censorship vote against the company's management — which, in practice, were insufficient, almost ineffective.

During the second Lula Government (2007-2010) and the Dilma Rousseff Governments (2011-2016), the interference of the interests of the Palácio do Planalto on EBC was not harsh, since there was a coincidence of editorial positions between the top of the public company and the top government. Subordination was clear, but not hostile or harsh. The programming was to the liking of the Government and the latter, in turn, was to the liking of the company's journalistic and administrative staff.

Institutional and functional frictions revealed their edges only in the early days of the Michel Temer Government (2016-2018). During this period, after failing in an administrative attempt to remove the newly established president of EBC, who had a formal term for another four years, the Temer government did not need much time and work to edit a new MP (MP 744/2016), which ended the term of the president and extinguished the Board of Trustees. As the EBC's journalistic and administrative culture had not changed, as it did not develop roots of independence rooted in civil society – and not in the State –, all it took was a stroke for the Palácio do Planalto to put down the entire utopia of an institution of public communication that would sprout from within a state-owned company. The dream didn't come true. The project failed. The legislation reserved the power in EBC for the people placed there, directly by the Executive Power, within the Administrative Council. The government, even in the years of greater enthusiasm with the hopes of public communication, had remained intact – inscribed within the company's organizational chart and in its effective, albeit undeclared, subordination bonds to the Government. Finally, all that was needed was for the Michel Temer Government to redefine EBC's internal rules. In essence, it was a public company (an indirect administration entity) linked to the Government. In essence, it remained so. There were only made minor, peripheral adjustments and, with them, made explicit the total subordination, which had previously been shrouded in ambivalence and progressive rhetoric. Critics may say that that government acted with brutality and disrespect towards the company – and will have arguments to that effect – but, at the same time, there is no denying that previous governments, which declared themselves committed to creating a true public communication institution through a regime of editorial and administrative independence, did not build the necessary legal framework for such an ambitious mission. The precarious legislation left open the bridge over which the Palácio do Planalto had free access to the company's destinations. Through this same bridge, the authoritarianism of the Temer government traveled at will. Was there resistance? Yes, there was. But they were fleeting, tenuous, ephemeral. There was nothing to do.

More recently, the truculent measures of the Bolsonaro Government, initiated in 2019, only confirm the diagnosis outlined in this article. Palácio do Planalto benefits from EBC according to the agenda of interests that suits it best, treating the institution as if it were nothing more than a private producer of sounds, texts and images to carry out party propaganda for the Presidency of the Republic.

It is evident, finally, that when the creation of an organization that would take forward non-partisan and non-governmental public communication in Brazil was on the agenda, its defenders and sponsors made mistakes by not endowing it with a legal nature that clearly stipulated the frontiers of independence. EBC was never an institution controlled by society. It was, all along, a state-owned company commanded by the Federal Government. Therefore, Michel Temer and Jair Bolsonaro found almost no barriers to demote it as they demoted it.

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