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Media Law in Slovakia

The Bill's Proponents on the New Press Act

In its Section 6.2 Media and Audiovisuals, the Program Declaration of the Government of the Slovak Republic defines the current government's plan to set forth a new press act in order to regulate the basic rules and relations between the subjects of information spreading process via means of communication media¹.

This point of the Declaration has been partially fulfilled when the Government approved the bill on the new press act on January 9, 2008. Following the cabinet's session on this issue, there was a **press conference** held with the **Prime Minister and the Culture Minister**. The latter Marek Maďarič has presented the novelty of the press act in the introduction of the institute of editorial confidentiality, **right of reply** and **right of supplementary information**. He claimed the act to be well balanced between the obligation of the public authorities to provide information on their activities on one side, and that of the periodicals to publicize their ownership structure on the other" The term for publishing a reply was shortened from four to three days. The Minister has reasoned the exercise of the right of reply by

¹ <http://www.culture.gov.sk/ministerstvo/programove-vyhlasenie-vlady/programov-vyhlasenie-vldy> 19.1.2008.

the same practice followed in France; although in Germany, there is a one-day term only: "The right of reply corresponds with the standard European media legislation. Actually, **there are countries like France where the right to reply refers not only to the statements of fact, but also to the value judgements. However, as far away as that issue we have not come at either.** Well, do the Slovak publishers want to live, to work in the face of the public in a somewhat other regime than those in France, Belgium, Italy, Germany? We do not see any repugnancy or controversy here" Whether the bill covered also the internet, the Minister said, that it was excluded from it on purpose, mainly in regard of the casual discussion on that issue. He mentioned the directive (apparently of the EU) "Television without Borders" that would regulate also internet and would offer the solutions to be further transposed into Slovak legislation. Robert Fico's speech at the press conference was emotive rather than tangible. He has expressed his views regarding the public legal nature of media as follows: **"I acknowledge that, I have absolutely no problem with it. I only await media, either private or public, to fulfil one of their prior commits: to inform objectively. You do not have to like us; we do not want it that way, anyway. You do not like us, so you can write in this way. But the trouble is that you tell lies. I am speaking generally now. You write lies, half-truths. You refuse to publish facts that give a clear image of the situation. And as for the Government, there are also other functions entrusted to us, not only to listen to what the opposition wants to say. We do respond to it, but the newspapers absolutely do not. They spin upon it. There is no response and that is out of the question. Thus the right of reply will be just cut out for it. Within three days the newspaper will have to write the opinion of the opposite side, too, so that a balance in casual arguments and views may exist there, too. Well, I respect the public legal nature of media and I can vouch to you that the Slovak government has no ambition to create its own media. Indeed, no ambition..."**².

² http://www.vlada.gov.sk/aktuality_start.php3?id_ele=7619 19.1.2008.

Slovak Politicians on Media and the New Press Bill

The ruling politicians declare their critical attitudes towards media, media owners and journalists regularly and very frequently. According to the Vice Prime Minister Dušan Čaplovič (Smer – SD party), domestic media do not fulfil their basic function, because they inform in a biased and discriminating manner. What is being published is not decided by the journalists themselves, but by the media owners who have the upper hand on editorial offices. What bothers him about it is that media do not inform sufficiently about facts, that is, the concrete governmental resolutions, the actual steps of the Government and Parliament and, of course, on the other hand, about the opposition. He qualified the situation in media as “unbearable”, so that sometimes he was under impression of the backtracking to the period before 1989. In Mr. Čaplovič’s opinion, the journalists do not mind the claimed changes in the press bill at all, but who does, are the very media owners. He said, a debate on the new press bill, which had already been approved by the Government, would be held in the Parliament, and he conceded there still might have come to certain changes within the draft. Taken in global terms, he considers the law to be good. Deputy Prime Minister Dušan Čaplovič even insulted journalists’ intelligence by suggesting that newspapers would “hire anyone to work with” Then he said that only a trained journalist would be worth working with. And he added: “For today’s media owners, it seems to be the most advantageous to employ inexperienced staff, so that those submit in writing what is dictated to them. We want to create a greater freedom for journalists: they should not serve the interests of those who pay them” According to him, the journalists have praised the former government and can do nothing more than criticise the present one, what suggests the fact the media are politically right-oriented³. Róber Fico has tacked to the same subject: “The explanation why the relations between government and media are strained today is plain. The media, their owners and the journalists

³ <http://www.sme.sk/c/3686608/Caplovic-v-rozhlase-obvinil-majitelov-medii.html>
19.1.2008.

themselves have never wanted this government"⁴. According to him, the journalists' reporting involves "hatred, half-truths and outright lies" Professional journalism exams must be required by journalists to demonstrate their ability to write well, as equally the apt exams are inevitable by other professions, too, like a chimney sweeper, an advocate etc.

On 28 January, 2008 the ruling opposition (SDKÚ-DS, KDH and SMK parties) asked the President of the Slovak National Council Pavol Paška to withdraw the draft on the press bill as well as the Lisbon treaty from the agenda of the January parliamentary session, because if the treaty were put to the vote, the opposition parliament members vowed to walk out and neither participate in the hearing, nor take a vote on it. That had been agreed on by the opposite-party chairmen with the intention to achieve a submission to parliament of such a draft press bill that would conform to democratic standards. According to the KDH-party Chairman Pavol Hrusovsky, for the ratification of this EU-treaty on institutional reform, there are 90 votes needed. Hence, without the opposition's support its ratification in the Parliament would not be possible⁵.

The Draft of the Media Bill

Let us see briefly what the new draft actually is about. Its novelty is in the obligation to **respect the confidentiality of the source of information**, as requested by this source. It will not be possible, of course, if the criminal procedure claims from this very source to bear testimony to an offense. The protection of the source in the Czech Press Act and in the Slovak draft of the new press bill is stated similarly, although the present Slovak Press Act from 1990 has not explicitly mentioned it. The draft on the new Slovak bill launches next to the **right of correction** also the **right of reply** and that of **supplementary information**.

⁴ R. Fico, *The Slovak Media are Also about This*, „Pravda“ 10.01.2008, p. 13.

⁵ See: SITA report 28.01.2008, 12:07, 0169, DOM – Home servis, (SITA, es;pr;nr), 200801280169.

The correction shall be published by a periodical or a press agency within three days. The publisher in the Czech Republic is obliged to edit the correction following any untrue information issued.

The reply, the written stance of the effected person in his/her own words, shall be published "in the equivalent position and the same format", even if it responded to the true statement of fact, impinging on the honour, dignity or privacy of a natural person, or the name or good reputation of a legal entity. The right of reply will not apply to evaluative commentaries. Under the draft bill the claimant shall have the right to demand the publication of a reply if an article "contains a statement of fact impinging on the honour, dignity or privacy of a natural person, or the name and good repute of a legal entity, from which the person or entity can be precisely identified". In the Czech Republic, the reply of the effected person shall be applied, if incomplete or inaccurate information has been published.

Following the application of the right to supplementary information, the editorial offices shall be obliged to publish at request the comment on **the final outcome of the case, which they have previously covered.**

The publisher and the press agency **shall not be responsible for the information provided by the public authorities.** However, they must publish it without verbal alteration. Neither will they be liable for advertising. In this sense, the draft states: "The publisher of a periodical and a press agency shall not be responsible for the content of information provided by a public authority, by a budgetary or grant-funded organisation established by them or a legal entity established by law, if this information is published in the periodical or agency news service in its original form and its processing for publication has not changed its original content"

Media shall not be liable for the truth of information published in an advert, unless it applies to their own advertising. The Czech Press Act from the year 2000, which is similar by its diction to the discussed Slovak one, just states the media shall not be liable for the content of the published advertisements.

The law proposed by the ministry of culture assesses duty for to the "public authorities" to provide information on their activities, to enable access to this information forthwith and on the basis of equal-

ity. By means of periodicals and agency news service the true, timely and impartial information to the public should be guaranteed.

The current Press Act has been in force since 1966 and thence several times amended. The new Press Act will come into effect on 1 June, 2008.

Media Organizations, Journalist Syndicates and Institutions on the Draft Bill

The President of the Medial Institute (MEI) Andrej Zmeček has sent very critical stipulations to the draft bill to the Ministry of Culture within the annotation process. He reasoned the draft bill contained several compelling factual-legal deficiencies, which would evoke, when applied in practice, the legal uncertainty about the draft bill, as for being systemless solution⁶.

Organisation for Security and Cooperation in Europe (OBSE) has warned that the draft of the Slovak press law will curb the freedom of press in the country. Simultaneously they have asked the Slovak parliament to refuse this controversial draft. The OBSE Representative on Freedom of the Media Miklós Haraszti has challenged to careful scrutiny of the amendment to ensure it will not negatively affect the independence of the press, transmitting and internet web-sites⁷

According to Zuzana Krútka, , the chairman of the **Slovak Syndicate of Journalists (SSN)**, the bill was, in spite of some of its deficiencies, in such a stage when the revise proposals might spoil it rather than improve it. "I would best prefer, if it were approved in the proposed version," the chairman said. "Namely, I am afraid mostly of the creativity of deputies"⁸. She thinks of the recent modifications as positive. "That is especially thanks to the immunization of information getting into it as well as the right to excusable failure nearly in the range we have wanted", added Krútka. In her opinion, it is to be gratifying, too, that in one place, there is the re-enactment

⁶ See: *Stipulations to the Draft on the Media Bill*, Medial Institute, 20.07.2007.

⁷ *OBSE Criticises the Slovak Press Act*, „Pravda“ 23.01.2008.

⁸ <http://medialne.etrend.sk/vsetky-media/sprava.php?sprava=5986> 8. Január 2008.

of the press law and the amendment of the Broadcasting and Re-transmission Act, so that the right of immunization of information and confidentiality of the source of information will get to all the journalists regardless of the type of media they work for. The explicit obligation to protect the source of information might be considered positive, too. But, on the contrary, the right of reply would be better defined, if it applied to expressly specified cases of the publication of inaccurate or incomplete information⁹. **The former chairman of the Slovak Syndicate of Journalists Jan Fülle** is not such an optimist either and he says the press act is for the benefit of politicians, not for that of journalists: "In the Slovak media, the situation is far from all-right, but, if the law artificially increases the natural strain between journalists and politicians, it will not solve the problem"¹⁰.

On 27 January, 2008, the Slovak Syndicate of Journalists (SSN) has officially published on its web-site the stance on the governmental draft bill, which had been put forward for approval in the National Council of the Slovak Republic. The SSN has criticised mainly the formulation of the right of reply as vague and bringing with it vastly overbroad regime of potential applicants for publication of correction. According to the SSN, the vagueness in wording as far as the extent of the reply in the draft press bill, "gives the right to demand a reply not only within the range of the published contested statements, but also of the value judgements arising from it, so in fact within the whole article." They emphasize, they are not against the right of reply, which is included also in several media legislations abroad. However, the reply "must be limited to factual statements impinging on the honour, dignity or privacy of a natural person, or the name or good reputation of a legal entity. There must be no value judgements of the person demanding the publication of the reply, nor those inherent in periodical press or agency news service." The SSN is mostly reserved regarding the provision, according to which the aggrieved person should be entitled to proportionate monetary compensation at the court. In their opinion, that provision has fash-

⁹ <http://www.orangeteleplatba.sk/dnes/news/article.dwp?level1=72460&level2=72464&article=1848900> 19/1/2008.

¹⁰ See: J. Fülle, *The Press Act is for the Benefit of Politicians and against Journalists*. "Pravda" 18.01.2008, p. 11.

ioned from the freedom of expression fictive right rather than constitutional, "seeing that, under the threat of imposition of disproportionate financial penalties, it impels a journalist to resort to self-censorship. Herewith breach of the balance occurs between the application of the constitutional right on the protection of human dignity, honour and privacy at the expense of another right, constitutional as well, on the freedom to expression and access to information" According to the SSN, the good experiences with the press act in the Czech Republic had to be utilized, seeing that the right of correction and that of reply were established in the same provision there. The SSN misses in the draft bill also the right to excusable failure, if periodicals make use of a confidential source of information. The draft should also speak of the consultative statute, reservations of conscience, censorship, journalistic activity and imprint. There is neither electronic version of periodical press disseminated through internet or internet newspaper, nor business press referred to. In the draft bill, the SSN can see some positives as warranty of the right to access information and that to protection of the source of information not only for the journalists of the print media, but also of press agencies and electronic media¹¹.

The Standpoint of Journalists

Marián Leško, the commentator of the newspaper SME, thinks that the Maďarič' s press act will make the editors-in-chief and journalists reflect by their work that by writing even the truth about someone they provide him/her the right of reply, "the right" to make of the press a wall-newspaper, hanging onto it to one's heart's content. But this is Slovakian libel rather than European standard. "The right of reply would be standard institute if it followed the resolution of the Committee of Ministers of the EU on the right of reply. The Maďarič' s bill does not stick to it, because it does not enable newspapers to refuse the reply of the effected person to the true information. **The Resolution of the Committee of Ministers of the EU states that the right of reply confines to "the correction of contro-**

¹¹ See: <http://www.ssn.sk/?id=20&num=602&lang=sk> 27.01.2008.

versial facts”, that a medium can refuse the demand for reply if it were “contrary to the legally protected interests of a third person” Such provisions are not stated in the draft bill, whereby it enables everyone “to reply”, even in a way it might entail problems for publishers. **And in the end, it comes the worst: Neither the Prime Minister Fico, nor the Culture Minister Mad’arič do veil the fact that they have approved this press act as a means of self-promotion, for the ministers and public authorities. And they have done it as a revenge for the media lying about them, writing lies and half-truths. As the Prime Minister has said, “Thus the right of reply will be just cut out for it.”** The European Resolution on the Right of Reply specifies, that “the individual concerned shall have an effective possibility for the correction, without undue delay, of incorrect facts relating him which he has a justified interest in having corrected, such corrections being given, as far as possible, the same prominence as the original publication.” And it adds: **“The term «individual» is to include all natural and legal persons as well as other bodies irrespective of nationality or residence, with the exclusion of the state and other public authorities”** In other words, pursuant to the European standards, the right of reply which the Fico’s government has approved for ministers and other officials do not appertain to them. The organs monitoring the observance of the European standards will confirm it before long. Róbert Fico expressed himself that the new press act was only the first step for the situation to become normal. In fact it is just the next step towards its normalization¹².

Peter Šabata, the editor-in-chief of the newspaper Pravda, has remarkably commented on the Prime Minister’s assertion “about the media disposing of political power” He argues that no media can embody any political opposition to the country’s ruling power. Neither they have votes in parliament, nor make decisions on public affairs: hence, they cannot have political powers at all. The media’s influence could be even significant, but it has nothing common with the political opposition. “Why, then, does the Prime Minister continually harp upon this nonsense? And why does he update his the-

¹² See: M. Leško, *The Press Act for the Benefit of the Government*, „Sme“ 11.01.2008, <http://www.sme.sk/c/3672451/Tlacovy-zakon-pre-vladu.html> 19.1.2008.

ory on hostile media by the ungrounded statements about the increase in lies and half-truths on the government's address and about the bent journalists?" poses the editor-in-chief the questions and he responds them as well: "The Prime Minister has his plan namely to abuse the public legal media and to put out of action those private ones, so that he could rule without control of the public. He cannot come totally openly forward with such an argument, so he occupies his mind with a theory of media as an enemy of the favourite government, to that the citizen's bliss is close to heart. And the Prime Minister must, of course, interfere. On the proposed press act he writes, there is nothing like that in Europe, that it is the whip on media in the hands of the politicians who will have unlimited access in the first place to the newspaper pages (compare it with the views of Marián Leško in "SME"). Namely, the law imposes to be published almost everything the politicians (and the others) will send to the editorial offices, otherwise the publishers would have to pay a fine. It happens likewise, if those do not fulfil a good deal of other duties - without the corresponding rights - imposed on press media by the new press act. The Editor-in-chief continues: "The aim to have from the Slovak Television a mouthpiece for the party Smer has already been by the Prime Minister announced. With the Lukašenko's tag, that the details are not to be the matter of concern either for the journalists or the public, which is to pay concessions for the Slovak TV (and the Slovak Radio). Even Mečiar in his worst times would not be ashamed for such dealing" Peter Šabata endeavours to outline the future, too, mentioning the experience that none of the democratic countries - and Slovakia not being an exception to it - has ever succeeded in its effort to hush the critics. Without public control, in which the independent media are just part of it, the powerful ones overstep their arrogance, their abuse of common property to self-profit and their push to claim the only right truth to such a degree, that they will be swept up by the citizens in the elections, sometimes sooner, sometimes later. The price the public will have to pay for yet another attempt of this kind could be very high, however¹³

¹³ P. Šabata, *Where the Prime Minister Róber Fico is Heading*, „Pravda“ 10.01.2008, p. 13.

The Businessmen's Views

Results from the weekly periodical Trend polls, where the businessmen expressed themselves to the draft on the new press act are as follows. To the question, "Do you agree with the draft on the press act, according to which the print media and the press agencies are obliged to provide space for a reply, regardless the published information has been true?" answered rather yes 14.9%, definitely yes 6.9%, rather not 26.7%, definitely not 41.6%, I do not know, no answer 9.9%.¹⁴ In their verbal commentary on the polling, they affirmed that it is apt to give the possibility to both sides, that everyone should have the right to react, but it should not be misused as a means of creating the missing space by politicians. There were heard even more severe statements: "It is a gross violation of the press freedom"; "The draft bill is ambiguous and it creates space for the media chicanery" "The new media act could eliminate the journalists' courage by tackling the sensitive political and economical topics and contribute to an unsound media self-censorship"¹⁵.

The Citizens' Views

On behalf of many of those, who do not understand the unconcealed pressure of politicians on media, we quote Richard Cedza in an ironising tone: Mr. Prime Minister, I am pleased by your interest in the amendment of the press act. Well, only the thought of the current one in force dating back to the period of the cheap milk and rolls evokes in me a bit of concern, that also in its case the fabrication was cheap and workpeople's one. **Why do you need yet to do such aggressive PR activities...? Why do you show by it that much scorn for journalists and media?** In the coat-of-arms of your party, there is the social democracy engraved. What is your democracy understanding as far as its content? Is not the freedom of expression, freedom of press part of it...? You demand the right of reply by means of the law. Why not? Why should I not apply the right of reply by you

¹⁴ „Trend“ 17.01.2008, p. 7.

¹⁵ Ibidem.

as well, in respond to my questions: "Who is hyena here?" "Which MPs should go to the prison?" "Let us clearly separate cockle from the wheat. Point at them with a finger and we shall obediently recoil from them all..."¹⁶.

Conclusion

Media cannot become the participants of political competition, as far as the do not stand for election; hence they have no political power, but generally have some influence. They do not decide about the business with the state property, the construction of highways or the wording of the laws. The main feature of the opinion-making periodicals should be a strict separation of its content from the business with adverts. Big companies that pay millions for advertising to the publisher should not have a chance to buy any word in the content. Respectable media are always critical towards the political power: it is one of the meanings and purposes of its existence. That is why they criticise Robert Fico any more than Mikuláš Dzurinda.

Maybe the new media law does not lay duties harming the journalists or a society. The feeling of threat of the journalists and the society seems to be evoked by the politicians who had either approved the draft on the press act in the government or commented it within the annotation process as well as after its passage in the government. There is namely an inexplicable arrogance of the ruling politicians towards media in the period when the government enjoys the countenance of the 40% of the citizens.

The final version to be approved depends on the MPs, what will look the application of law like depends on the politicians. We are yet to believe that the exercising of the new press act will diminish neither the quality of journalists' work, nor their service to the citizens and in consequence the quality of the social life.

¹⁶ R. Cedzo, *Not Only the Politician, But Also the Citizen Has the Right of Reply*. „Pravda” 25.01.2008

Prawo prasowe na Słowacji

Streszczenie

Na Słowacji istnieje prawo prasowe, które wywodzi się z lat 60 ubiegłego stulecia. Wszyscy użytkownicy rynku mediów zgadzają się, iż istnieje pilna potrzeba jego zmiany. Obecny rząd zdecydował się wprowadzić projekt nowej ustawy i uchwalić go. Szkic tej ustawy został odrzucony zarówno przez wydawców jak i przez samych dziennikarzy. Niniejszy artykuł ukazuje atmosferę panującą w społeczeństwie na krótko przed ostatecznym uchwaleniem prawa prasowego w Parlamencie.

Czego oczekuje rząd i premier od nowego prawa prasowego? Czego oczekują politycy, syndykaty prasowe, dziennikarze, biznesmeni i obywatele?