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HISTORY OF THE CZECH PRESS LAW

A MISSING DEFINITION OF PUBLIC INTEREST - THE OBSTACLE TO THE NEW MEDIA LEGISLATION IN THE CZECH REPUBLIC?

by
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Czech media law consists of several Acts pertaining to different press, radio and television activities, most of which were adopted during the past nine years. However, one of them, the Press Law was originally adopted on 25 October 1966, i.e. the Czech media and journalists are still governed by an Act which is more than 30 years old.

Quite recently, on 19 August, the newly elected Czech parliament approved the programme statement of the sixth Czech government formed after the collapse of communist regime in Czechoslovakia in 1989.

The programme statement includes a promise to "ensure drafting of complete media legislation... compatible with EU conditions," among others to adopt the new media law applicable to the press and electronic media (radio, TV).

So Miloš Zeman's minority Social Democrat cabinet, the first leftist government in the Czech Republic since 1989, is going to be another government trying to get rid of the only remaining part of the Czech media legislation which originated in the totalitarian past.

A. Looking Back to History

History of any media legislation reflects the general history of a given country or society. Czech press law is no exception of the rule.

Prior censorship applied to the press was abolished in 1862 by the law of the ancient Austrian Hungarian Empire. The prior restraint was replaced by many subsequent punishments of anybody who would have been trying to disturb the public order or to oppose the authority of the state.

The Czechoslovak state, which came into being from the ruins of the defunct Austrian-Hungarian Empire in 1918, and which declared the freedom of press in its Constitution according to the French model, was not able to create a single comprehensive press law.

Instead of this, the new state of Czechoslovakia has carried on with the practice of the old regime, based on the old law with new amendments, regulations and bylaws (e.g. on libel, on

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right of correction, on distribution of the press etc.). The most repressive instrument against the freedom of press was created in 1923 by the Act on the Protection of the Republic (50/1923). Fortunately, this law could be applied only in a case of emergency.

During the German occupation of Czechoslovakia the press and journalists were completely submitted to state authorities, a practice which has been replicated once again, after the Communist takeover in 1948 when Act No. 184/1950 (on the publishing of periodicals) stipulated that "publishing of periodicals... cannot be a subject of private entepreneural activity." and Act No. 185/1950 (on the Union of Journalists) decided that the profession of journalists can be exercised only by members of the state controlled Union of Journalists; both acts abolished the former press legislation.

In contradiction to the Communist constitution of 1948 censorship was secretly introduced by the government regulations in 1952-53, when the office of Administration of Press Surveillance had been set up for prior control of printed material under the pretext of safeguarding state secrets in the Cold War atmosphere.

The liberal sixties tried to put an end to the lawless state in media legislation. The new Press Law was passed initially on 25 October, 1966. In 1968 this Act was amended twice. The first amendment came during the nation's reform movement, commonly known as the Prague Spring, when censorship was officially abolished. Later, following the August invasion of the Soviet-led Warsaw Pact troops, the Press Law was amended for the second time when censorship was "temporarily" re- instated on September 13. The reintroducing of censorship was one of the key conditions included in the so-called Moscow Protocols, which Alexander Dubcek was forced to sign at the time under heavy pressure from Moscow.

B. The Press Law after the 1989 Velvet Revolution

The very last amendment of the Press Law was passed on March 28, 1990. The 1990 amendment did not change the basic structure or scope of the original Act because several useful principles, eg the right to reply and correction, were included in the original 1966 version, even though they were not applied in the politically biased legal system of former Communist Czechoslovakia.

In the field of print media, however, the amendment has changed the former licensing of any publishing activity into a simple procedure of mere registration.

While the structure of Press Law No 81/1966 remained the same, the fundamental amendments of Act No. 86/1990 involved the following Articles:

In Article 1, section 1, that refers to the constitutional right to freedom of expression for all citizens, the following sentence was withdrawn:

"This right (to express an opinion) serves to the versatile development and promotion of their personality, and at the same time to strengthening and development of the socialist society."

In Article 1, section 2, that describes the nature of mass media as a device for implementing the freedom of expression, the following sentence was omitted:

"These means (mass media) are of common (social) ownership and shall not be a subject of private entepreneural activity."

Article 2, referring to the mission of mass media in the socialist society and stressing among others the prominent role of the Communist Party in the state, was completely deleted.

Article 4 was completely rewritten, because in the original text the publishing activity was restricted only to "political parties, voluntary social organizations, state organs, science and culture institutions as well as economic and other organization for fulfilling their societal missions." The new wording says that any Czechoslovak legal person is entitled to publish the periodicals.

Article 7 changed the authorizing nature of registration procedure and left out any provision which could serve as a pretext for rejecting the registration, e.g. "the absence of guarantees on ability of periodicals to fulfil its social mission" etc.

The famous "censorship" Article 17 underwent several metamorphoses already in 1968. While the original text of 1966 created a legal base for prior censorship, and for the existence of the "Central Publishing Administration Office," the amendment passed on 26 June 1968 replaced the original wording with strict and clear provisions:

- Censorship is inadmissible.
- Censorship means the imposed infringement, by any state authority, of the freedom of expression in speech and/or in pictures, and of the dissemination of ideas through the media of mass information. Thereby, the judiciary of prosecutor and the courts are not affected.

On 13 September 1968, after the August 68 Soviet occupation of Czechoslovakia, this amendment was "temporarily invalidated" by Czechoslovak Parliament. The "temporary period" turned out to be 21 years long, until the Velvet Revolution of 1989.

Article 21 which originally reserved the distribution of periodicals to the organization approved by the state was changed to the provision: "The way of distribution of periodical is decided by publishers."

Nearly all the remaining Articles have been left intact with only small modifications incorporated. Article 3 which defines the terms of the "periodicals", "mass information media" and "information" remains unchanged.

Some provisions of the law are still useful, like Article 19 on the right to correction of untrue statements; some of them are outdated, and their wording sounds archaic now, like the Head 4 (Articles 13-15) on co-operation of media and state organizations, according to which "the state organs and organizations as well as the science and culture institutions and economic organizations shall adopt the position .....on the important socially useful proposals, recommendations and incentives published in periodicals ...in one month... after being explicitly notified of them...". Not to speak about the Head 8 (Articles 22-26) where the law explicitly mentions the

"interest of the socialist state" and the necessity to protect "the socialist cohabitation of Czechoslovak citizens."

C. Pros and Cons of the Provisionality

When evaluating the effects of the existing press law on the current media and journalism we can meet a wide spectrum of opinions ranging from the negative attitude towards any law governing media in general, and the press in particular, to the idea that the deregulation of the press made by the 1990 amendment should have been reversed with a view to introducing greater responsibility of Czech media.

No wonder, that the former opinion is advocated mostly by the media itself, and that the latter one is defended by the authorities. Nonetheless, the fact that the new Czech democracy has been able to live so long with the originally totalitarian press law indicates the viability of the law. Though the current press legislation was not a big assistance to development of the democratic media policy, it did not harm the democratic media development either - after removing all the restrictive provision from the original version.

Therefore the relative absence of stricter rules can be considered as an advantage of the present state. Moreover, a guarantee against irresponsibility of the press was installed into the Civil Code in March 1990. When changing the Press Law, the Federal Assembly amended simultaneously Article 13 of the Civil Code (Act No. 87/1991), which concerns the respect for personal integrity. Two new paragraphs were added to the provision dealing with a citizen's right to seek redress from any unlawful deprivation of his or her right to personal integrity. The first declared the plaintiff's right for financial satisfaction or compensation if the damage in respect of honour or esteem in society's eyes has been particularly grave and harmful. The second paragraph assigned the decision, as to the sum of financial compensation, to the courts of law.

In spite of the fact that the Czech Penal Code incorporates the offence of libel (pomluva), few citizens use the Penal Code to initiate legal action (no financial compensation, only the prescribed penalty for the offender). Nearly all "libel cases" since 1990 have been adjudicated according to the Civil Code. It is very common now for the plaintiffs to seek six to seven-digit sums as financial compensation.

On the other hand, there are many good reasons why the press law should be redefined very profoundly. Firstly, the outdated formulations and provisions with no use in the present political system lower the authority of the law and of the media legislation as a whole.

Secondly, many legal terms have to be defined more precisely and in conformity with other legal norms (e.g. with the new broadcasting law, trade law etc.). One example of many: there is no clear assignment of responsibility to the editor-in-chief and to the publisher. According to the law both are responsible, however, the obligation to publish the correction or legitimate reply is to be met by the editor-in- chief only. Therefore publishing the correction has been blocked several times by the publisher who claimed that the court decision was binding only to the editor-in-chief, and not to him.

Last but not least, there are plenty of other problems as to the relations between media and society which are permanently discussed and waiting for the normative solution. The new press law could serve as a basis for such a discourse.

D. Many Attempts with No Result

In the early part of 1990, the judicial and journalistic communities believed that the new press law would be drafted shortly after the June 1990 general elections. They believed that a complex solution of media legislation could be attainable. This complex solution should comprise of:

- "media law" establishing the framework of journalistic activities
- "broadcasting law" abolishing the state monopoly of broadcasting
- so called "competency law" decentralizing the media authority of the federal state in favour of Czech and Slovak parts of the federation.

The course of events in 1990-1992 events overran the idea of "complex solutions" and in some respect anticipated further developments. The pressures from different segments of society, not to mention the special pressure groups, were so intense, that the priority was given not to the basic, essential or useful legal norms but to the legislation which was badly needed to respond to urgent necessities.

The Czech-Slovak tensions influenced very much this initial stage of drafting media law, and the initial "complex solution" disintegrated in the cluster of particular, sometimes even not mutually compatible, bills.

At the end of the federal Czechoslovakia (which solved the issue of dividing "media competencies") only the Broadcasting law 468/91 brought new quality to the media legislation enabling the existence of new private broadcasters. No general "media law" which would substitute the old press law was passed by the end of 1992 that terminated this very ambitious and enthusiastic period. Besides, separation of Czechoslovakia was already *fait accompli* at the time and introduction of any important federal law was considered an infringement on the internal affairs of the future independent states.

Speaking of history of the press law only (see Annex "Chronology...") we can recognize three serious attempts to adopt new press law, each of them has been of different nature.

The first one, let's call it the "Calfa" draft, bore several paternalistic features. It tried to regulate the mass media as a whole, both the print and the audiovisual, including advertising activities. The registration procedure was described in details not too far away from a red tape practice. What was of utmost annoyance to journalists, was their presupposed duty to allow the interviewee to check the whole of the interview before it was published. No wonder that nobody tried to resuscitate this draft after it died due to negligence at the time of Czechoslovakia separating.

The second "Tigrid" draft (according to the name of Minister of Culture Pavel Tigrid) was of a more liberal nature. The special registration rule was abolished, the publisher was put on the same level as a shoemaker or any other licensed serviceman. However, during the drafting process there were several collisions between interest groups involved, and the draft changed its content several times when shuttling between the government and parliament.

At the end, the conflict between journalists who had strong lobby in the parliament, and the government authorities concentrated on two issues: the access to government-held information, and protection of sources. The government tried to erase both articles handling the issues. On the other hand, journalists tried to secure for themselves the privileged access to any sources, and opposed the right to reply stipulated in the ministerial draft. In their opinion a too generously conceived right to reply could have led to a never- ending and boring exchange of opinions.

The mutual wrangling between administration and legislature lasted more than one year, and in the meantime, the general election was approaching. As usual, any controversial issue, especially those which could have impact on media and journalists, had no chance to be proceeded in the pre-election time. And this was the end of the "Tigrid" draft which fell through in the spring of 1996.

After the 1996 election, a special department for mass media policy was eventually organized at the Ministry of Culture, because problems with defective media legislation, in both print and electronic media, became more and more compelling. The legislative work became more systematic and professional.

The product of this new approach is the latest, still pending, draft of the Press Law. Its principles were approved by the caretaker Tošovský government last May. In comparison with its predecessors, this "ministerial" draft is leaner, focused on the essential problems, and left out some controversial issues or themes which are going to be governed by other laws (e.g. the Freedom of Information Act).

E. Defining Public Interest as a Remedy?

When trying to find out why so many attempts at drafting new press law were doomed to failure it is necessary to take into account that media are not able to extricate themselves from the general cultural, political and economic environment, from the actual mood as well as from the general standards of behaviour in the given society.

What was striking to me when I have been observing media law development in the past, especially in years 1995- 1996, was an incapacity to overcome the narrow particular interests (of government officials, of media, of publishers, of journalists), to communicate opinions and to participate in a discourse that could lead to a solution favourable to general, common, public interest.

The history of drafting press law is a history of power plays, of intense lobbying aimed to overthrow the opponent, not to make a deal with him. Those who live in postcommunist societies are not surprised by such behaviour that is still the standard in many areas of our life.

The missing platform which could serve as a meeting point of different perspectives, approaches and standpoints is the category of public interest. The inability to recognize or to define the public interest was also behind the introduction of crippling amendments to the Czech Broadcasting Law (which would deserve an extra study).

The problem is that public interest is nothing what is rigidly and precisely defined forever, the content of public interest is often vague and determined also by the moral values, aspiration and desires of a given society.

The problem is that public interest is a permanent quest for new answers and solutions.

The problem is that public interest is the consensual category that presupposes the discourse, the communication, the public sphere. The totalitarian political systems did not educate their citizens that way.

The problem is that the category of public interest (in disguise as the interest of working class) was misused by the former totalitarian regime for abridging human rights and personal freedoms.

No wonder that citizens in postcommunist societies adopt a reserved attitude towards the category of public interest. Unfortunately, when the people conserve their passive and indifferent attitudes towards the question of common interest, the consequence is that what is beneficial for the society, what is of the public interest, is usually decided by people in power, whether they are represented by a strong charismatic leader or by a party that claims a leading role in the society.

Unfortunately, that was also the case of the Czech Republic with a strong charismatic leader Vaclav Klaus and his Civic Democratic Party which promised to find simple and painless solutions.

Fortunately, the heyday of strong leader Vaclav Klaus' glory is coming to the end. The people are disappointed because the promised paradise of simple answers turned out to be just a fata morgana.

Let's hope that these people find a way to reassess some prevailing opinions of the past eight years, among them, that the public interest would not need a discourse, because any debate would bring unnecessary obstacles, and is superfluous, because public interest could be simply defined as a sum of individual interests.

And what does it mean for the future of the Czech media or media law? I hope that the past development was another lesson to the Czech public. For instance the lesson that the media competing without any rules don't bring quality and diversity, but is steering toward concentration and monopoly power which can endanger the openness and plurality of mass communication in a democratic society.

Therefore the rules set by the media legislation are of such great importance.

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