**International Journal of Communications Law and Policy**
Issue 2, Winter 1998/99

# AN ANALYSIS OF MEDIA LEGISLATION: THE CASE OF SLOVAKIA

**by**

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Since November 1989 new laws have changed the legal status of publishers, broadcasters and journalists in Czechoslovakia and then in Slovakia. These laws clearly reflect the opinion of political elites on what role the media should play in society in general and consequently in politics. Therefore, it is necessary to analyse them in more detail to present the rationale for this legislation and the resulting consequences of it. The focus of this article is first of all on the general framework of media regulation and then on the regulation of the broadcasting sector. Due to the limitations of this paper as well as to the extent of legislation which may influence the media only the most important and most controversial laws which positively affected the freedom of the mass media and of speech or potentially could hinder the broader exercise of freedom of the mass media and of speech will be discussed.

The changes in the Constitution on 29 November 1989 abolished the leading role of the Communist Party and ideology in Czechoslovakia and, with regard to freedom of expression, omitted the paragraph that the entire cultural policy had to be 'directed in the spirit of the scientific world outlook, Marxism-Leninism'.[1] The first law directly related to the media was an amendment to the Press Law from 1966 which had itself been twice modified in 1968. This statute re-established the freedom of the media and *de iure* abolished limits put on the freedom of speech and of the press. The 1990 press law annulled the requirement of common ownership of all mass media (when previously only officially recognised institutions and political parties, including some satellite ones, were allowed to publish newspapers) and the above mentioned requirements, as well as legalising private publishing. It allowed private publishing with agreement of local state authorities also for foreigners. Yet, it did not limit foreign ownership of print media. For citizens of Czechoslovakia there was no requirement to acquire state approval to engage in publishing activities. The new law shortened the time required between the registration date and the start of publishing and no longer required any additional information regarding publishing itself. More importantly, it abolished reasons for refusing registration, and defined the precise circumstances in which a publisher might lose his right to publish or when a publisher might be delayed in his right to start publishing due to eventually lacking information in the registration form. In the event that the state authority would not react in time, or at all, there were no limits for starting publishing. In general it simplified the registration procedure.

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1 The Constitution of the Czechoslovak Socialist Republic, 1967, p. 19.

The law also abolished the duty of the editor in chief to verify all information to be published. Among the defects in the new law were the absence of any sanctions against state institutions which refused to give information, and the failure to guarantee the right to editorial secrecy (Sefdak 1991). This latter failure was allegedly caused by a bureaucratic mistake (Sefdak 1995, 157; Jacz 1995, 159).

In addition, the law did not address private companies and local authorities with regard to their duty to provide information. According to Drgonec (1996, 11), these subjects had no obligation to give information to journalists. This law did not remove the provision in the Constitution that radio, television and film were part of 'national property' (Sefdak 1991, Sefdak 1994). At the same time parliament also passed changes in the Civil Code, which gave citizens a right to privacy, including a right to financial compensation. However, in Slovak law anyone who says something damaging about another person must present evidence that what was said is true and is not a private matter (cf. Holländer 1993, p. 11; Drgonec 1995c, 148-151; Fico 1994, 20; Minarik 1994, 43-44; Bencik 1994, 57-58). This clause was later very often successfully used by politicians against journalists and media institutions.[2]

The philosophy of the Slovak legal system is based on a very different approach in comparison to the US system, as clearly presented in the famous decision of the US Supreme Court in the case of the New York Times vs. Sullivan (see Powe 1991). However, the Slovak legal system is different also from the Western European modern legal systems as represented by some landmark decisions of the European Court of Human Rights (see Ryssdal 1996). Neither Slovak journalists have the right to be wrong (as in the American system) nor politicians are under a weaker defence of law (as in many West European countries) in comparison to other citizens. This contrast has been noted by some Slovak justices. Thus Drgonec (1995c, 125) argues that:

First of all, there is no difference between legally respected intervention into privacy of public personality. Moreover, 'evidence of truth' is legally irrelevant, because true information can be equally the outcome of illegal intervention into privacy as false information. This results in lowering of the possibilities of the mass media to apply their control function through public opinion vis a vis public personalities.

Some cases, as will be shown later, highlight the problems that arise if ordinary citizens and public personalities are not treated differently. It will be particularly interesting to note how the European Court of Human Rights will decide in the case of Lubomir Feldek versus Slovakia (previously Slobodnik versus Feldek) and how Slovak courts will decide in the case of the Slovak government v. daily Sme [3](cf. Holina 1995, 72-74; Drgonec 1995c, 121-122 and especially

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[2] For example, when the father of Ján Earnogurský sued the daily Práca because the daily published one letter from a Jewish reader in which that person accused Pavol Earnogurský of having participated in the deportation of his family. Daily lost this case, because it was not possible to prove whether it was true or not. (Interview with Milo› NemeFek, 27 June 1996). See also Drgonec 1995c, 146-147.

[3] In the case of the Slovak government v. the daily Sme, all members of the Slovak government sued in 1996 the daily Sme because of one sentence which was taken from a speech spoken at the funeral of a murdered

Repik 1994 as well as Ryssdal 1996). Additional objections against the Slovak civil law are; that this law does not place the burden of proof on the plaintiff; as it was amended in 1995, the time in which a decision should be passed (one year); and the way the judge should decide. This latter argument simply means that if there is no 'proof of truth' presented, the judge has to decide for the plaintiff. It should be noted that many judges do not search for additional information, even though it could be significant for a particular case. In many cases the speech in question was discussed out of context. In the case of 'non-material suffering', the evidence of this often served the purpose. Furthermore, libel cases were under the jurisdiction of only one judge – a specialist, i.e. not under the jurisdiction of the senate or under jurisdiction of a randomly selected judge. Finally, the law did not recongize the difference between facts and opinions. Similarly, on 2 May 1990 the communist Criminal Law was amended, but still a number of paragraphs - defamation of the state and its leaders (102 and 103), spreading of alarming news (199), threatening of morality (205a) and libel (206) were later used against journalists on many occasions. Paragraphs 102 and 103, in particular, were often criticised at home and abroad by institutions that try to help journalists and to protect human rights in general. They were criticised because, in spite of narrowing their meaning, these paragraphs were still too vague (in so far as they focussed only on some institutions or even one figure - the President) and offered an easy means of limiting the freedom of the press (Minarik 1994; Bencik 1994). Indeed, the paragraph which related to defamation of head of the state was used quite often, especially in independent Slovakia.[4] However, Kupcova (1994) argues that in international comparison one can find even stronger legal protection of the Presidents of Germany and of Austria (but in this latter case this protection is not related exclusively to the President), and the King of Sweden; but less protection is given to the Presidents of the Czech Republic and Finland. Similar arguments can be found in Kalvodova (1995). Czech law gives protection to the Czech president in the case of libel when this is related to performance of his duties and to his overall activities. However, the Czech president pardoned probably every person who was persecuted according to this argument. Also Downing (1996, 175 note 51; cf. Mosty, 8 November 1994, p. 5) has shown some examples of abuse of the pre-transition penal code for insulting the Polish president. It can be concluded that Slovak prosecutors and courts in most cases have definitely operated in a much more liberal environment.

The paragraph against libel was often used by politicians and other people, with some success. As argued by the legal expert Palus (1996, 68), it usually took a long time to bring these cases to court and an even longer time to bring such lawsuits to their end. However, as explained above, in 1995 a new law significantly accelerated lawsuits of this kind.

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man in which Slovak Intelligence was most likely involved. In that sentence the priest blamed some political reponsibility for that murder on Slovak government. The lower court decided in favour of the members of the government.

[4] State secretary Ivan Lexa was for instance investigated in November 1993 on the basis of this paragraph. He very strongly criticised President of the Republic.

In January 1991 the Federal Parliament adopted the Charter of Rights and Freedoms. This law guaranteed the freedom of speech and the right to information in general terms. A much more controversial bill was passed by the Federal Assembly in October 1991. This, so called 'Lustration', or 'Screening' Law affected among others all journalists working in state (public) broadcasting institutions and the state news agency who had collaborated in different ways with the communist secret police or who had worked in the apparatus of the Communist Party at the district level and above, or who were members of communist private militia. The past records of all other journalists could be investigated with their previous agreement, too. This law was later illegally used by the federal intelligence agency to draw up lists of collaborators among journalists who were employed outside state broadcasting institutions and the news agency.

Some other changes in already existing laws related also to the media, e.g. other changes in Civil Code and in Commercial Law did not have significant effects on the work of journalists and the media system, because these changes were related more to ethical issues of day-to-day work of journalists. It is however true that paragraphs 260 and 261 of the Penal Code, which were designed to prevent the subversion of democracy (against support and propagation of anti-democratic movements) were later used by a senior civil servant against one newspaper which in an analogy to the present situation published a quote from Hitler's Mein Kampf. However, this was presumably more an attempt of intimidation than a real threat to that newspaper. Also paragraph 198 which was designed to prevent national and race hatred was used in some cases, particularly against the anti-semitic weekly Zmena.

In the last year of its existence Czecho-Slovakia also adopted the European Convention on Human Rights and Basic Freedoms.[5] This was an important step towards adopting European standards with respect to freedom of the media and of speech in particular. It was important because it put international treaties on human rights ratified by Czechoslovakia above Czecho-slovak law. Yet, in practice, the Constitution of independent Slovakia limited freedom of ex-pression less than the European Convention did. In preparation for independence from January 1, 1993, the Constitution of the Slovak Republic was passed by the Slovak parliament and took effect October 1, 1992. This most important law of that year was created as a very liberal con-stitution that secured freedom of the press and the right to information. Private broadcasting thus made these dependent upon eventual approval of the state authorities. In reality, this con-dition was very strictly applied.

Hence, the first three years after the Gentle Revolution saw the most important changes regarding to establishing media freedom. Nevertheless, these rights were still imperfect. For example, there is still no article in Slovak law that would punish activities against freedom of the media or speech (Drgonec 1995c, 139). Later changes were motivated by a desire to move in the opposite direction, i.e. to limit freedom of the mass media, particularly state-run 'public' broad-cast media.

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5 Announcement of Federal Ministry of Foreign Affairs No. 209/1992 Coll., 18 March 1992.

In independent Slovakia the preparation of comprehensive media legislation continued at the Ministry of Culture throughout the years 1993-1996, but no comprehensive law was discussed in the parliament. In late 1995 - early 1996 the government tried to include a draft rules which were related to ethical questions, introducing the possibility of refusing registration of newspapers and of introducing financial sanctions. The Slovak Syndicate of Journalists asked for specification of the rules limiting searching for information as well as to widen guarantees for sources of information (Forum, 7 (2), 1996). It is interesting that international comparison of media legislation shows that there were many similarities in the development of media legislation in post-communist countries (Jakubowicz 1993, 1996; Price 1995, 131-133; Sadurski 1996).

## MEDIA LEGISLATION IN BROADCASTING

Changes in regulation of the broadcasting industry were very important. Although Czechoslovakian television de facto split in three parts already in September 1990, really important changes started only with a statute passed by the Federal Assembly in March 1991. This law finally, after a long struggle and delay divided rights and duties between the federal and national governments with regard to broadcasting media, legalised a process which already had begun - private broadcasting on national levels, particularly through a specific federal law passed later in the same year and enabled the transformation of state broadcast institutions towards public service broadcasting on a national level, the first among all post-communist countries. Moreover, this law granted the right of the federal institutions to 'define rules of information policy' only after consultations with the Slovak and Czech governments respectively.

According to federal law the federal government had the right, with the agreement of national governments (Czech and Slovak), to define the basic rules governing state information policy. The national Czech and Slovak governments had the right to apply these rules of state information policy in practice, including the right to establish and control broadcasting institutions. Although Svidron (1994b, 379) argued that this law theoretically gave the right to national governments to intervene in work of 'public' broadcasting institutions even after the break-up of the federal state, in fact it has never been officially used as an argument in favour of government's right to intervene in broadcasting matters.

As a result of this division of powers in broadcasting Slovak parliament passed laws according to which both Slovak Television and Slovak Radio were established as national broadcasting institutions and defined as 'public service' institutions. The failure, however, to define the term 'public service' had consequences on the status of broadcasting institutions in next period and made confusion in legal terminology (cf. Huorka 1994, 113-114, Svidron 1994a, 102-103). The new laws explicitly stated that Slovak Television and Slovak Radio were dependent in part on the state budget. Although there is a tendency in Europe to support public broadcast media from the state budget in order to 'decommodify' them, this fact undoubtedly undermined the independence of both institutions. Even more clearly, the state's influence remained direct through election of directors of both institutions and members of their supervising bodies through parliament. Further, the assets of both 'public' broadcasting institutions were still defined as state property. It should be perhaps noted that the authors of these laws on public in-

stitutions expected that another law on financial self-sufficiency of these institutions would be passed. Further, the original idea was that the regulatory bodies would be stable and not politicised. However, the law did not guarantee stability of these broadcasting councils in spite of changes in power in parliament between elections. Consequently, already the first change in balance of power in the Slovak parliament led to expanding the number of members of broadcasting councils (Draxler 1995, 102).

Perhaps one can find some reasons for the hard-line attitude of the federal government in conflict between the federal and Slovak governments regarding autonomous Slovak broadcast institutions in different legal and cultural background of advisors. Thus, while Slovak managers of state radio argued on the basis of Austrian, German and British experience with public broadcast institutions[6], the federal government was advised by US experts (Webster 1992). The latter group of experts recommended to avoid the 'Belgian' approach of three different television networks run by three different bureaucracies. This latter proposal clearly could not be successful. This impossibility was caused by dissatisfaction among Slovaks with tough centralisation during communism as well as during the first Czechoslovak Republic.

It should be noted that paragraph four of the law on Slovak Television later caused some controversies, because it stated that Slovak Television is obliged to offer necessary broadcasting time for state organs in case of emergency and for other important public announcements. The first problems were raised after the general elections in 1992, when the new Prime Minister Vladimir Mefiar requested time for his regular speeches. The editor in chief of the news programme, who refused to give such space to the new Prime Minister, was forced to leave his job. Later, in 1995 and in 1996, the new pro-governmental director of STV refused on some occasions to give space to the President, who became the main political opponent and consequently personal enemy to the Prime Minister Mefiar. The original idea of incorporating this paragraph was to secure some space for state authorities in public broadcast media in time of emergency. The state authorities, including the president and prime minister would have been allocated some space in broadcast implicitly, or on the basis of other laws or unwritten customs, e.g. on the New Year Address (Interview with Jarmila Grujbarova, haed of the Office of the Slovak Republic for Radio and Television Broadcasting, 25 October 1996). If so, it can be argued that while editor-in chief Füle was right in his decision not to allow *regular* speeches for the prime minister, the opposite was true for the decision of Jozef Darmo, who did not allow *occasional* speeches of the president related to official state holidays or to the visit of a distinguished foreign guest.

The Federal Council for Radio and Television Broadcasting officially gave two licences to two foreign broadcasters (RFE and the BBC). Both these stations had already broadcast from transmission stations in Czecho-Slovakia with the permission of the federal government from August 1990 and October 1990 respectively (Webster 1992, 7; Svidron 1994a, 104; Smid 1994, 222). In both republics similar institutions entitled to give licences could be, however, estab-

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6 Interview with Michal Berko, 10 May 1996. Dr. Michal Berko was both 'father' of Rádioºurnál and of the idea of changing state radio to public service radio.

lished only after the introduction of new legislation. It was argued that due to many other laws on programme of the Slovak parliament, it was easier, and perhaps the only possible solution to establish a provisional independent commission in order to bestow licences before elections (Ernak 1992). Finally, this law also stated that two nation-wide channels reserved for public service broadcasters and other frequencies (including OK 3 and TA 3) should be privatised. This happened in the Czech Republic in 1993 and in Slovakia in 1995 (but real broadcasting began a year later).

In 1992, the Slovak parliament also adopted a statute which created the Council of the Slovak Republic for Radio and Television Broadcasting. This body was entitled to issue licences and to supervise both private and public broadcasting. However, already in 1991 the Ministry of Culture, which until that time was entirely responsible for issuing licences, established the Commission for Radio and Television Broadcasting (Komisia pre rozhlasove a televizne vysielanie). The first licences for private radio and television broadcasting were awarded by this board on 4 May 1991. This was shortly before the general election in 1992 and before passing a law that would give this right to a special authority. Two private independent companies were given a joint licence by this commission to broadcast the third television channel TA-3 that covered almost thirty percent of the territory and about forty-five percent of the population (Orcutt 1993, 323; Koctalova 1993). It was significant that these two companies were awarded a joint licence just weeks before parliament passed the law on the Council of Slovak Republic for Radio and Television Broadcasting, i.e. the board which was given exclusive rights to bestow licences for private broadcasting, with final approval by parliament. The government, afraid of losing in the coming elections, wanted to launch private television broadcasting as soon as possible. Therefore, it should not be surprising, as Orcutt (1993, 323) pleaded that after the general elections: "...the Mediar government (was) trying to take back the licence." Indeed, it is true that the new government wanted to take away the joint licence, but after the elections the new broadcasting Council could not take any steps to revise this decision. This was the result of the statute on the Council of Slovak Republic for Radio and Television Broadcasting which included a clause that required to respect licences which were already bestowed. However, the two companies could not agree with each other on who would have main power in decision-making and finally the term of expiration of the agreement. In these quarrels, it was argued, pressure had been brought to the licence holders of one of these groups, in attempt to take away the licence. In the end, both companies did not find any agreement and their joint licence was taken away.

Similarly contract selling to the private sector the most important printer, that prints most of national dailies in Slovakia, was annulled immediately after the elections in 1992. An explanation was given by the new Minister for privatisation, Lubomir Dolgoc: "A state monopoly has the advantage that it can be regulated; a private monopoly does not have this advantage." (Obrman 1993, 28).

It can be seen that both elements of the new government were against the idea of reducing state influence and creating an independent media sector.

In the case of public broadcasting institutions there also existed the Council of Slovak Television and the Council of Slovak Radio which have relatively more rights and duties regarding the internal management of both institutions then Council of Slovak Republic for Radio and Television Broadcasting. However, even these powers were limited, because these councils could not decide themselves to dismiss directors. After changes in the law in summer/autumn 1992, they could only propose the dismissal of director of public television and radio to the parliament. Therefore, particularly in Slovak Television directors often ignored decisions and recommendations of the Council of Slovak Television, sometimes because these recommendations were politically biased. After the general elections in summer 1992, new laws changed rules under which supervising bodies for both public institutions (the Council of Slovak Television and the Council of Slovak Radio) were created by the parliament and prolonged their terms of office. In this way the new parliamentary majority cancelled an old rule which made it more likely that the Council would be more politically diverse. Previous councils were created on the basis of nominations by every parliamentary party (one nominee for each party), the Cabinet (3 members), the Consultation Assembly (3 members)[7] and the two directors of public radio and television respectively (4 members). According to the new laws the number of members was firmly defined as nine. Also, as a result of changes in structure of parliament, directors of both public broadcast institutions were to be named by the whole body of parliament and not only by its Presidium. These amendments de facto re-established indirect, but exclusive influence of the parliament on both broadcast institutions.

In June 1993 the Slovak Parliament passed a law amending five existing statutes with regard to media. There was a very hard fight between the public radio station on the one hand and private radio stations on the other, related especially to the first paragraph and to the second article of this law. In short, both sides were interested in keeping/getting the best air waves for broadcasting and in getting biggest share in the air advertising market, and lobbying of private radio broadcasters was focused on lucrative networks of very short frequencies. Therefore, the law allocated two networks of very short frequencies to public radio and two networks of very short frequences for the private sector. It should be explained that it allowed private broadcast not only for two broadcast stations, but for a number of local and/or regional stations. Needful to say, that some of these frequencies were blocked by television broadcast until September 1, 1996. This law also stated that the second television channel ought to be used by public television and private company. In effect it meant partial privatisation at least until the end of 1998. This intention was later changed to full privatization of the second terrestrial channel of Slovak Television. According to later amendments, the second channel of public television should be broadcast via satellite. This law also confirmed a previously declared interest to privatise the third television channel. The statute also gave parliament the final right to decide who would broadcast on a national level in Slovakia. The licence was limited to a 12 years period. The Slovak government wanted to avoid a situation in which it would not be able to control who will get this licence in Slovakia (VanPdek 1996).

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[7] Consisting of various representatives of churches, cultural organisations, etc.

In 1993 the parliamentary majority passed laws which made it possible to dismiss the members of the Council of the Slovak Republic for Radio and Television Broadcasting, of the Council of Slovak Television and the Council of Slovak Radio on proposal of 15 MPs by simply majority of quorum. If one looks at this degree of political influence exercised by parliament on the creation of all supervising broadcasting bodies and on the Council of Slovak Republic for Radio and Television Broadcasting, it is clear that the idea of independent public service broadcasting was deliberately damaged in independent Slovakia. Also as a result of changes in law the way to independent television broadcasting on national level became more complicated. In an attempt in late 1993 and early 1994 to partially privatise the second channel, which covered almost the whole country and had belonged to Slovak Television, the Council of the Slovak Republic for Radio and Television Broadcasting decided to award the licence to a company called CTV. However, four of the Council's nine members criticised the majority decision as made against the law, and parliament, which had to make the final decision, did not approve giving the licence to CTV. Parliament requested to submit a new proposal, but the new proposal was also not approved (Koctalova 1994; Jovanovidova 1994, 64-67). Afterwards the Council became unable to approve any new proposal, because there were not enough members on the council between August and December 1994. A new council, created shortly after the general elections, decided with agreement of the parliamentary committee to completely change plans for partial privatisation of the second national channel. Instead, public television should start broadcasting from satellite from January 1997, and second channel should become fully privatized. This did not happen. In summer 1997 parliament did not approve giving the second channel of Slovak Television to the use of a selected private company, allegedly with strong connections to one of governing parties.

## CONCLUSION

As can be seen, from 1990 - 1992 both on national and federal level there were more than fifteen very important new statutes or modification of old ones which were related to the work of media. Since 1993, as a result of establishing new legislative rules for the media (and other spheres), new legislation with regard to the media was less frequent and had mainly three aims: firstly, to correct imperfect laws already passed by parliaments, secondly, to reflect the dismantling of the federal state and the creation of an independent Slovak Republic and, thirdly, to deepen the state's influence on 'public' media and news agency as well as attempts to reintroduce state intervention in independent print media, usually through economic laws. These last efforts were clearly visible from 1993 - 1995. For example, the Platform of the new government of January 1995 requested that public broadcasting institutions should respect the national-state, cultural and public interests of Slovak Republic. This was according to Zajac a complete turn in principle of public broadcasting institutions, i.e. from interests of the citizens towards interests of the state (Zajac 1996a, 175). The latest changes of laws on broadcasting were those passed in December 1996, according to which both directors of public broadcast institutions could be elected only for two four year terms. It was first time that the terms of these directors were limited at all. A previous idea after establishing a new democratic regime, to pass a media law that would regulate all aspects of media work despite attempts at federal level and in Slovakia, failed

(cf. Eernak 1995, Grosmannova 1993). Political elites and political parties had no real interest in passing such a law, some of the politically motivated changes of media laws described in this article support this argument. In particular, it was difficult to find agreement on such issues as freedom of the media versus responsibility of journalists as well as limits on foreign investment in Slovak media. In mid 1990s it became doubtful whether such law would be useful also from a legal point of view - enormous development in the media sector required a more elastic approach (Huorka 1994, 11-112). However, the lack of a coherent state media policy in post-communist Slovakia seems to be result of political disinterest of all post-communist governments in the creation of something that would ensure full independence of the media. This is consistent with the fact that the public broadcasting institutions were created mostly after pressure from the management of these institutions, not at the initiative of the Slovak government, and in fact against the will of the federal government.

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