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The Representative on Freedom of the Media**

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## **Comments on the draft Law on the media of the Republic of Croatia**

by

**Dr Jorge Pegado Liz**

and

**Mr Andrew Nicol QC**



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## I. INTRODUCTION

The Council of Europe asked us to comment on the draft Law on the Media of the Republic of Croatia (see Appendix), with particular regard to the European Convention on Human Rights and the main Council of Europe Recommendations and Declarations in the media field.

Therefore, the basic parameters of our comments are Article 10 of the European Convention on Human Rights and Fundamental Freedoms and related provisions of the same Convention, and the following Recommendations and Declarations adopted by the Committee of Ministers of the Council of Europe

- Resolution (74) 26 on the right of reply - position of the individual in relation to the press
- Resolution (74) 43 on press concentrations
- Declaration on the freedom of expression and information adopted on 29 April 1982
- Recommendation No. R (84) 3 on principles on television advertising
- Recommendation No. R (86) 9 on copyright and cultural policy
- Recommendation No. R (94) 13 on measures to promote media transparency
- Recommendation No. R (96) 4 on the protection of journalists in situations of conflict and tension
- Recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting
- Recommendation No. R (97) 19 on the portrayal of violence in the electronic media
- Recommendation No. R (97) 20 on “*hate speech*”
- Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance
- Recommendation No. R (99) 1 on measures to promote media pluralism
- Recommendation No. R (99) 15 on measures concerning media coverage of election campaigns
- Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information
- Recommendation (2002) 2 on access to official documents
- Declaration on the provision of information through the media in relation to criminal proceedings, adopted on 10 July 2003
- Recommendation (2003) 13 on the provision of information through the media in relation to criminal proceedings

We also took account of the European Convention on Transfrontier Television adopted on 5 May 1989.

The present Law was the subject of extensive comment in its formative stages by consultants on behalf of the Council of Europe. One of us took part in that exercise. We have had regard to those comments, namely:

- a) The Comments on the Draft Public Information Law of the Republic of Croatia, by Dr J. BRAUTMETTER, A. NICOL and R. PEKKANEN (1996) (referred to below as ‘the 1996 comments’)

- b) The Further Advice, by A.NICOL (11 March 1997) (referred to below as the ‘1997 comments’). A short summary of these comments was produced in the form of a Note by A. Nicol (11 April 1997).

Our comments below in places refer to the 1996 and 1997 comments. We do not repeat all the arguments which were set out therein, but we hope that we have summarised the points which are relevant sufficiently so that a reader of this report will be able to understand our position.

From a methodological point of view we start with the comparison of the draft Law and the present Law in force.

In the first part of our comments we will start with the identification of the common provisions, then we will note the major differences.

In the second part we make some detailed comments on the new draft

We will conclude, in the third part, with suggestions and recommendations. The process which was adopted in 1996 and 1997 was creative and interactive. We hope that the present comments will be seen in a positive light and that they, too, will assist Croatia in the adoption of a law which meets European standards of freedom of expression.

## II COMPARISON BETWEEN THE DRAFT LAW AND THE EXISTING “PUBLIC COMMUNICATIONS ACT”

### In general

#### Similar provisions in both texts

COMMUNICATIONS ACT	DRAFT LAW
<u>Article 2</u> Definition of terms (2) (4) (5) (7) (8) (9) (10)	<u>Article 2</u> Definitions of terms (2) (7) (8) (11) (12) (9) (13)
<u>Article 4</u> Prohibition of restriction of the freedom of the media (2)	<u>Article 4</u> Prohibition of limiting the freedom of the media (2)

<p><u>Article 6</u> Protection of privacy (1) (2)</p> <p><u>Article 8</u> The statute (1) (3)</p>	<p><u>Article 7</u> Protection of privacy (1) (2)</p> <p><u>Article 20</u> The media statute (1) (3)</p>
<p><u>Article 9</u> Freedom of expression</p>	<p><u>Article 21</u> Journalist's right to express standpoints</p>
<p><u>Article 10</u> Journalist's right to refuse performing a task (1) (3)</p>	<p><u>Article 22</u> Journalist's right to refuse to act upon an order (1) (2)</p>
<p><u>Article 11</u> Protection of author's reputation (1) (2) (3)</p>	<p><u>Article 23</u> Protection of author's reputation (1) (2) (3)</p>
<p>Article 12 Protection of source information (1) (2)</p>	<p>Article 24 Protection of source information (1) (2)</p>
<p><u>Article 13</u> Responsibility to publish accurate, comprehensive and timely date (2)</p>	<p><u>Article 15</u> The obligation to publish truthful, complete and timely information (2)</p>
<p><u>Article 15</u> Criteria for the appointment of the chief editor (1) (2)</p>	<p><u>Article 19</u>  (1) (2)</p>
<p><u>Article 16</u> Quoting the source of information</p>	<p><u>Article 16</u> Indication of the source of information which is being transmitted</p>

<u>Article 18</u> Registration procedure (3) (4) (5) (6) (7) (8) (9) (10)	<u>Article 10</u> Registration of the press (3) (4) (5) (6) (7) (8) (9)
<u>Article 19</u> Public disclosure of ownership structure (1)	<u>Article 43</u> Publicity of ownership (1)
<u>Article 33</u> Obligation of the person making the correction	<u>Article 27</u> (1)
<u>Article 37</u> Court proceedings regarding the publication of corrections (2) (3) (7)	<u>Article 34</u> (2) (4) <u>Article 36</u> (1)
<u>Article 38</u> Appeals (1) (2) (3) (4) (5)	<u>Article 37</u> (1) (2) (3) <u>Article 38</u>
<u>Article 39</u> Review	<u>Article 37</u> (4)
<u>Article 40</u> Responsibilities of the news chief editor (1) (2)	<u>Article 35</u> <u>Article 39</u>
Penalty Provisions <u>Article 42</u> (1) – 1 (1) – 2 (1) – 4 (1) – 5 (1) – 6 (1) – 8 (2)	Offence Provisions <u>Article 51</u> (1)– 1 (1)– 5 (1)– 2 (1)– 3 (1) – 4 (1) – 6 (2)



<u>Article 43</u> (1) (2)	<u>Article 52</u> (1) (2)
<u>Article 43a</u> (1) (2) (3)	<u>Article 49</u> (1) (2) (3)
<u>Article 45</u> Register of foreign representative offices	<u>Article 53</u> Registration of foreign representatives offices
<u>Article 46</u> The limit for the adoption of the statute (1)	<u>Article 55</u>
<u>Article 47</u> The application of this Law to litigation under way	<u>Article 54</u> Application of this Law in pending court proceedings
<u>Article 48</u> Date of entry into force	<u>Article 57</u>

### **Significant differences between the texts**

#### **Ambit of application**

The “Act” was thought to regulate “*the principles governing the freedom of the press and other media of public communication*”, but the application to radio and television was left to “*final provisions*” as a “*subsidiary application*” and almost all of the provisions were mainly designed to “*written media*” and not the audiovisual.

The new “Draft” is meant to regulate, “*ab initio*” all the media, including “*radio and television, electronic publications, teletext and other forms of programme contents through the transmission of recording, voice, tone or picture*”.

#### **Definitions**

The new draft has a more detailed and wider range of “*definitions*” (points 3, 5, 6, 10 and 14).

However, at least in the translation available, there are two different definitions of “*public information*” (points 2 and 10). Point (2) appears to be concerned with the content that is disseminated through the media. Point (10) appears to refer to information which is made publicly available by official bodies. If this is not just a feature of the translation and the same term is used in the original language, the drafters might wish to consider using different expressions in the two contexts.

We are puzzled as to the purpose of distinguishing ‘public information’ (as that expression is defined in point (2)) from ‘programme contents’ (point (3)). We wonder whether the rights and obligations ought simply to relate to ‘public information’ and whether the concept of ‘programme contents’ is not superfluous.

### **General principles**

The “*draft*” introduces some new concepts and principles, such as:

- a) The concept of “*interest of the Republic of Croatia*” (Article 1 and 5)
- b) A new range of limitations to the freedom of press (Article 3 (3) and (4) and Article 15 (3))
- c) The notion of “*competent ministry*” (Article 2 (14), Article 10)
- d) The concept of “*truthful, complete and timely information*” (Article 15 (1), of the draft) instead of the “*accurate, comprehensive and timely information*” (Article 13 (1) of the Law).

These new concepts and notions may represent a major and undue interference of the political power in the freedom of press.

Firstly, the substitution of the “*government body in charge of administrative affairs in the area of public communications*” by the “*competent ministry*” means a direct interference of the ministry in the registration procedure.

Secondly, references to “*the interest to the Republic of Croatia*” (article 5) may represent an offence to Article 10 of the Convention.

Thirdly, the partial translation, in the Article 3 of the Article 10 (2) of the Convention, does not meet the necessary criteria that might justify the limitations, namely:

- the precise identifications of the restrictions,
- the proportionality of the measures,
- and the compatibility with a democratic society.

Finally, the obligation of publishing only what is true and complete information raises important questions of “*what is the truth*”, and who defines what is true and complete, introducing discretionarily and subjectivity.

Besides, the notion of “*secrecy*” and “*legal manner*” of collecting information, contribute, in a not admissible way, to introduce undue limitations and restrictions to the freedom of press.

Some other principles and notions were deleted such as:

- the responsibility of the State in promoting the diversity of the press, radio, television and of the media (article 7 of the Law),
- the possibility of “*collective agreements*” to regulate the statute of journalists (Article 7 and Article 8 (4) of the Law).

We see advantages in retaining similar ideas in the draft Law and wonder if their omission could be reconsidered.

### **Right of correction and right of response**

The draft introduces, in a correct manner, a distinct regulation for the right of correction and for the right of response. The detailed provisions are analysed below, in the speciality.

## **IN THE SPECIALITY**

### **Definition of terms (Article 2)**

The new and more detailed list of definitions is welcome. As to the different definitions of “*public information*” in (2) and (10) and the value of the concept of ‘programme contents’ see above

### **The principle of freedom of expression (Article 3)**

Article 3(2) in the translation which has been sent to us begins ‘Freedom of expression shall be based on’. The previous Law (Article 3(2)) said ‘Freedom of Expression shall *involve*’. At least in translation, there is a significant difference between the two. ‘Involve’ means ‘has as its consequence or corollary’. That aptly described what follows in Article 3(2) of the present Law. In the draft Law, most of the indented paragraphs could be similarly described save for the second which reads ‘inviolability and protection of human personality, privacy and dignity’. It is hard to see this as a consequence or corollary of freedom of expression. On the contrary, it is a series of interests which often compete with freedom of expression. Yet these interests should not always triumph over freedom of expression. We offer for consideration the suggestion that this indent might read ‘a proper respect (consistent with Article 10(2) of the European Convention on Human Rights) for the protection of human personality, privacy and dignity.’ With this alteration Article 3(2) of the draft Law, like the present Law, could also begin ‘The freedom of the media shall involve...’

As to the difficulty of simply transposing Article 10(2) of the ECHR into the draft Law, as Article 3(3) of the draft does, see above.

### **Interest of the Republic of Croatia (Article 5)**

The new Articles 1 and 5, as stated earlier, introduce the new concept of “*programme contents of interest to the Republic of Croatia*”. We find this reference strange although it is possible that our difficulty may relate to the translation. One possible meaning of Article 5 is that it sets out those subject matters on which the State itself may issue publications. If the draft is to be understood in this way, it will not impinge on the freedom of others to publish. If this is not the correct interpretation but the Article is intended to attempt a definition of publications which are in a broad sense in the public interest (or of interest or of benefit to the Republic of Croatia) we think that it is potentially dangerous. What is of the public interest is simply too diverse and too unpredictable to be encompassed in a definition of this kind. Although apparently no sanction is imposed on those who do not produce such kind of programmes, one might suspect that it might be the seed of a limitation of freedom of press, or, at least, the basis for a discrimination that might favour those who produce and transmit

such kind of programmes. If the new provision is intended to be understood in this second sense, we would suggest that it is deleted. We note that the existing Law has no comparable provision.

### **Accessibility to public information**

Article 6 is a welcome commitment to the principle of a right of access to publicly held information. However we refer to what was said in the 1996 comments paragraphs 68-70. These are still pertinent. In summary:

- the right of access is for ‘journalists’ rather than ‘everyone’ (c.f. Rec(2002)2 of the Committee of Ministers);
- the draft Law makes no allowance for the possibility that, even in the case of official or business information which should presumptively be kept secret, there may be a greater public interest in allowing access (this risks contravening the principle of proportionality referred to in Recommendation (2002) 2 Principle IV). Indeed, in this respect, the new Law retrenches on a modification which was made in the prior Law, apparently in response to the 1996 comments. The present Law provides that access can be refused to classified information if the classification has been made ‘in the interests of the public’ (see the 1997 comments para 3(c)). That phrase is omitted from the new draft. There is a limited qualification for certain public interests but only in relation to personal data (see the 2<sup>nd</sup> indent under Article 6(2));
- There is no provision for review of a decision to deny access (see by contrast Principle IX of No. Rec(2002)2). The previous Law did envisage the possibility of a review although the mechanism was to be established ‘pursuant to a special law.’
- In a further respect, the draft law retreats from the present law. Article 5(4) requires an authority which refuses a request for access to its documents to give reasons for the refusal. There is no comparable obligation in article 6 of the draft law.

### **Privacy (Article 7)**

The draft Law repeats (as far as we can see) Article 6 paragraphs (1) and (2) of the present Law. Paragraph (3) of the present Law has been omitted. That says ‘A person attracting the attention of the public with his/her own statements, behaviour, and other acts related to this person’s personal or family life, shall not be allowed to claim the same rights as regards the protection of privacy.’ This provision was itself the product of discussions between the government and the Council of Europe (see 1996 comments paragraph 72 and 1997 comments paragraph 4). The omission of paragraph (3) suggests that the legislature intends that privacy interests should take precedence over the interests of freedom of expression even though the person concerned has attracted the attention of the public to his or her private life, by their own statements, behaviour or other acts related to that person’s personal or family life. We would not expect the European Court of Human Rights to regard that as a proportionate measure. Accordingly, we would not expect such a restriction on freedom of expression to be regarded as ‘necessary in a democratic society’ or permitted by Article 10(2) ECHR.

## **Disclosure of ownership and other information (Articles 8 and 10)**

A major preoccupation of the draft is the information to the public on the financial situation, editorial orientation and ownership of media publishers.

Potentially these provisions could have a very serious impact on freedom of expression. Since publishers who have not complied with them may not publish programme contents through the media (see Article 11 of the draft Law) they will operate as a form of prior restraint. The European Court has decided that the Convention does not prohibit prior restraints in all circumstances, but it has also said that because of their very serious impact they will be scrutinised particularly closely to see whether they conform to the demands of Article 10(2) ECHR (see *Observer and Guardian v UK* (1991)). Both the 1996 comments (paragraphs 16 and 17) and the 1997 comments (paragraphs 10-11) questioned whether Croatia would be able to demonstrate that the provisions in the present Law were ‘necessary in a democratic society.’ We would add to those comments that the proposed draft Law also requires disclosure of the programme basis and editorial orientation (see draft Law Article 8(2) concerning the material which the publisher must publish once a year). It is particularly difficult to see the purpose of this provision. We would have thought that the ‘programme basis’ and ‘editorial orientation’ would have been apparent from the publication itself.

The ‘programme basis’ of the publisher is further regulated in Article 12. We are not sure that we understand the need which this provision is designed to meet. As a fetter on the publisher’s freedom of expression it could be important and we are unclear as to what the ‘pressing social need’ is that would be used to justify this restriction.

There are not the same problems with the requirement in Article 8(2) to publish once a year the ‘ownership structure, financing and financial result’. We appreciate that this requirement may assist the public to be better informed about the publisher.

## **Registration (Article 10)**

Properly paragraphs (4) (5) and (6) of Article 10, state clearly the role of the “*competent ministry*” and that it cannot interfere in the contents of the editorial orientation of media.

However we would prefer to see an independent administrative body dealing with the regulation, in general, of the media, especially taking into account the possibility of the prohibition of operation foreseen in Article 11. One of the features of the Polish system which was emphasised by the government in *Gaweda v Poland* (14<sup>th</sup> March 2002) was that the registration system was supervised by the judicial authorities. Even so, this still was not sufficient to overcome the objection as to the uncertainty of the Law.

The role of the State is particularly objectionable in Article 9(3). Article 9(1) provides that a media publisher can normally only be registered if it has a seat in the Republic of Croatia and the editor’s seat is also in Croatia. Those who cannot fulfil these conditions must obtain the approval of the government. The approval of the competent ministry will depend on whether it considers that ‘the media would significantly contribute to the development in the sphere of public information and culture.’ It is important to recall that the freedoms in Article 10(1) apply ‘regardless of frontiers’. In the Court’s judgment in *EKIN Association v France* 17 July 2001 it found a violation when a comparable French law was used to impose prior restraint on a foreign-based publisher. The Court was unpersuaded by the argument of the French

government that broader controls of foreign publishers were necessary because they would not be amenable to the criminal proceedings if they were guilty of prohibited conduct. We note that Article 9 does not appear to have its counterpart in the present Law. We recommend that Article 9 be deleted.

### **Obligation to publish truthful, complete and timely information (Article 15)**

This corresponds to Article 13 of the present Law. The 1996 comments (see paragraph 57) and the 1997 comments (see paragraph 7) recommended that that provision be deleted. We do as well. Article 10 ECHR does not contain any positive obligation for publishers or journalists to publish or write anything at all or to write or publish it in a certain way and the freedom of expression must include the correlative freedom *not* to speak or write. Of course a publisher who *does* publish something may incur liability and his defence may be undermined if the publication is incomplete or untruthful, but that is a different matter from what Article 15 appears to do, namely impose a freestanding obligation to publish truthful, complete and timely information. In any case, as the 1997 comments said, the status of what is Article 15(1) in the draft Law is unclear since a breach of this ‘obligation’ appears to attract no civil or criminal liability. The purpose of Articles 15(2) and (3) is also unclear since they refer to rights and obligations which will, we presume, be set out in other laws.

### **Publishing of necessary information (Article 17)**

Although it might represent a limitation on the freedom of press, the limited circumstances in which the power can be invoked would assist the government in justifying it under Article 10(2) ECHR. We note that the equivalent provision in the present Law allowed the government to require publication in ‘emergency situations’. The draft Law replaces that term with a list of situations which are, presumably, regarded as the kinds of emergency when such powers might be needed. We note, though, that under both the present and the draft laws, the power to require newspapers to carry these publications can only be asserted where there is a danger to life and health of the people, the security of the country or to public peace and order.

### **Responsibility of the editor-in-chief (Article 18)**

In the present Law the media publisher is made responsible for any damages inflicted on other because of his publications (present law - Article 22). The author and chief editor are then liable to reimburse the publisher if they caused the damage deliberately or by an act of gross negligence (present law - article 28). The present Law then has a list of exemptions from liability for the publisher (present Law - Article 23) which closely follow the provisions of the draft Law Article 18(3). The draft Law, by contrast, says nothing about the liability of the publisher at all. The chief editor is instead made responsible, irrespective of his intention or negligence (draft Law Article 18(2)) with, as we have said, a list of exemptions that mirrors (though not exactly) the present Law.

We are not sure whether the shift of responsibility away from the publisher is deliberate. If the publisher is intended to remain jointly responsible for any damage, then this should be clearly stated. It would be important that the defences in Article 18(3) apply to the publisher as well.

It is important that the media in Croatia understands that the new law would greatly increase the personal responsibility of the editor in chief.

The 1996 comments included a detailed analysis of the provisions then being proposed (see paragraphs 27 - 51 on what was then Article 34). The draft then under consideration evolved considerably. The 1997 comments (see paragraphs 12 - 15) addressed the later proposals. To the extent that the new draft still contains provisions which were the subject of those comments, we repeat the points which were then made. In brief summary:

- the initial condition for liability appears very broad ('if the information caused damage' - draft Article 18(3)). This appears to be irrespective of whether the publication infringed some pre-existing right (such as reputation) and is irrespective of fault or carelessness;
- Protection for reports of official meetings or public gatherings are protected but only if they are 'full' reports. Paragraph 13 of the 1997 comments said that this requirement seems to be unnecessary. The present and draft provisions only give protection if the reports have not been distorted in the editorial process. If they are fair in this sense, we would suggest that it is unnecessary for them also to be 'full' or 'complete'. Modern media laws have to recognise the modern appetite for news in short digestible pieces;
- There is a defence of consent (draft Law Article 18(3) 4<sup>th</sup> indent). It is difficult to see why this should be dependent on proof that the publication was true. If the publication was true there would appear to be a defence independent of consent (see 2<sup>nd</sup> indent). If the complainant consented to the publication, we cannot see why that should not be a complete answer to the complaint. It would seem to us to be excessive to require the editor to prove as well that the facts were true;
- The 1997 comments made the point in relation to the defence of fair comment (draft Law Article 18(3) 5<sup>th</sup> indent) that the test of public interest should be applied to the subject matter of the comment, rather than the comment itself. Freedom of expression should permit the expression of (good faith) opinions on matters of public interest even if the particular opinions are banal or boring.

The draft Law Article 18(4) provides that the defences in Article 18(3) do not apply to personal data the secrecy of which is stipulated by law, information on minors and information collected in an illegal manner. Clearly, these are all matters which States are entitled to take into account in determining where the balance comes down as between freedom of expression and the 'rights of others'. However, we question whether the interests in privacy or official secrets which are referred to in Article 18(4) should always prevail over the interests of freedom of expression, or whether Croatia would not be better placed to show that its restrictions were necessary in a democratic society if there was room for an individualised judgment by a court as to whether, on the facts of the particular case, the public interest in the particular publication prevailed over the particular privacy interest (see to similar effect the 1996 comments paragraph 44).

Further, the obligation of disclosure foreseen in Article 24 (3) may distort the application of Article 18.

**Article 19 – qualifications for appointment of editor-in-chief**

This provision mirrors the requirements in the present Law Article 15. The 1996 comments (paragraph 79) said that these provisions were contrary to Articles 1, 10 and 14 of the ECHR. The 1997 comments (paragraphs 8 and 9) maintained that position despite the response of the government. Our view also is that the same provisions in the draft Law are incompatible with the ECHR for the same reason.

**Media statute (Article 20)**

It is correct to leave to the media statute the regulation of the relationships between the publishers, editor-in-chief and journalists and the way this statute is adopted.

However, one might fear that the chairmanship of the arbitration by the representative of the competent ministry (4) and Rulebook being passed also by the “*competent ministry*” may represent an excessive and not admissible interference of the government in this matter.

We would advise the intervention of an independent administrative authority.

**Protection of sources of information (Article 23)**

This provision in the draft Law reflects the present Law Article 12. The 1997 comments (paragraph 6) observed that the phrase ‘published information or the information that he intends to publish’ was limited. It was noted that this would not extend to information held by a journalist before any decision had been taken as to whether it should be published or not. The phrase would also not, apparently, cover information which the journalist had positively decided not to publish. Yet the rationale for protecting the confidentiality of journalistic sources would apply as much in these situations. The 1997 comments said that this deficiency may have been a product of the translation into English. If it is, we apologise for repeating the point. If it is not just a question of translation, we think that this is still an aspect of the draft which could be improved.

In one respect, the new draft does add a significant qualification to the present law. By Article 24(3) of the draft Law, the journalist must disclose to the editor-in-chief data about the source of information. We doubt whether such a condition is compatible with the principle of source confidentiality which has been recognised as an important integral aspect of freedom of expression (see *Goodwin v UK*). A responsible editor is likely to want to satisfy himself or herself about the reliability of the journalist’s source in any case. However, it should be left to the discretion of the editor as to whether this judgment can be made without knowing the actual identity of the source. It is inappropriate for the legal protection of the source’s anonymity to depend on whether the journalist has disclosed the source’s identity to the editor.

**Right of correction and of response (Article 25 to 42)**

These provisions build on the present law (Articles 31-41) which already provide a scheme for the publication of corrections. The provisions regarding corrections, though, are significantly wider in two respects. The present Law (Article 34(1)) allows an editor to refuse to publish a correction if the original story was true. Of course, there may be an issue as to whether the original story was indeed correct. But this would be an issue on which the court



could adjudicate if the person concerned made a complaint. The draft Law omits that ground of defence (c.f. Article 29(2)) and says in terms (c.f. Article 25(3)) ‘The term correction shall not only refer to the correction in narrow sense, that is a correction of wrongful statements or untruthful claims in the published information, but also to the disclosure of facts and circumstances by which the affected party refutes, or with the intention to refute, significantly supplements the statements in the published text.’

The defence of truth in the present Law was added in response to the 1996 comments (paragraph 59). These observed that without such a defence, editorial freedom would be unjustifiably inhibited and a paper would be obliged either to ‘correct’ material which was true or to publish trivial qualifications to its earlier stories. To cater for the point made by Article 25(3) of the draft Law, we would suggest that Article 29(2) be amended to say that an editor need not publish a correction if the original publication was true and the proposed correction is either untrue or, if true, does not significantly affect what had previously been published.

We note that Article 29(2) of the draft is different from Article 34 of the present Law in another material respect. The present Law exempts an editor from the duty to publish a correction if any of the circumstances exempting the media publisher from liability for damages in Article 23 exist. This provision has not been carried over to the draft Law. As we understand it, the effect will be that editors can be obliged to publish ‘corrections’ to earlier publications that had been, for instance, reports of the legislature or a court (see draft Law Article 18(3) 1<sup>st</sup> indent) or which was a publication that the affected party had agreed with (see draft Law article 18(3) 4<sup>th</sup> indent). We suggest that the Government might wish to consider whether it intends this to be the position and, it should, perhaps, give more thought to the interrelationship of Articles 18(3) and 29(2) of the draft Law.

We would also suggest inserting a provision (new Article 29 (3)) stating that the editor-in-chief shall inform promptly the interested person of the reasons why he decided not to publish the correction or the response, according to Article 29 (2).

### **Criminal Offences and Penalties (Articles 49-52)**

The 1996 and 1997 comments suggested that the government consider carefully whether there was a ‘pressing social need’ for each of the criminal offences which was being created. To some extent, the penal provisions were limited further after those comments (It seems, for instance, that neither the present Law nor the draft Law penalises an editor who fails to print in full the text of a legal decision requiring the publication to pay damages). However, we repeat the concern expressed both in 1996 and 1997 as to whether it is not excessive to impose a fine of between HRK 10,000 and 40,000 on an editor who alters the meaning of a piece of information which he has published.

The setting of prescribed minimum penalties can, in particular, cause difficulties. If a breach is minor the mandatory imposition of the minimum penalty may be difficult to defend as proportionate.

### **III MAJOR COMMENTS ON THE DRAFT LAW**

#### **Structure and contents**

No special remarks on the systematics of the draft. The matters addressed are well organised and the sequence of provisions seems adequate.

However, considering that law shall only contain the basic principles and rules, it would be advisable to distinguish thoroughly what are effectively matters of law from application rules, which should be the object of regulations (not the Law).

This is mainly the case of articles 10 (2) and (3), 13 (1), 14 (1), 32 (2) and (3), 36 (2) and 38.

#### **Freedom of press and media**

Apart from the reservations already stated previously, our opinion is favourable to the new approach of the Law on freedom of press and freedom of media as foreseen in articles 3, 4, 21 and 24, and the obligation of the administration to inform truly, completely and timely on the issues from its scope of activities.

#### **Privacy**

Articles 1 (13), 7 and 15 (2) deal with the protection of privacy. We would advise to be more consistent in the characterization of the limits of the protection of privacy at politicians, high functionaries of the public administration and public figures, according to the recent draft declaration/recommendation of the Council of Europe.

#### **Information about media**

We would like to salute the very positive approach of the new Draft Law in regulating the obligation of disclosure of information about editorial orientation, programme contents and financial situation and ownership of media.

This is, in fact, one of the most positive and relevant aspects of the Draft.

#### **Truthful, complete and timely information**

The way this obligation is foreseen does not seem to meet the criteria of freedom of press, as they result from several case law of the European Court and the European Commission on Human Rights.

We would advise to go back to the wording of the existing Law (Article 13), mainly when dealing with “*opinions*” or “*value judgments*”, where it is not possible to ask the publisher to prove the “*truth*” of the statements.

## **Protection of competition**

The new Article 46 represents an effort to control concentration of the media.

Although we know nothing about the general regulation of market competition in Croatia, we would advise to think about the need of specific provisions on the concentration of media and the establishment of special criteria to define the risks of concentration or abuse of dominant positions in the freedom of expression and diversity and pluralism of information and opinions, both in horizontal and vertical concentration.

## **Right of correction and of response**

As already stated, we agree in principle with the way these two rights are regulated in the draft.

However, we would prefer not to keep the provision of Article 27 (3), as we feel that exactly the contrary is advisable. We would advise that limitations to the commentaries to correction on responses should be imposed.

## **IV – CONCLUSION**

The draft represents in general a good starting point for discussion and improvements.

However, special attention should be paid to certain suggestions and recommendations made, in particular concerning:

- the definitions of ‘public information’;
- the purpose of the concept of ‘programme contents’ (as opposed to ‘public information’);
- the absence of sufficient scope for balancing the public interest in public access to information against the claims of secrecy;
- the absence of a requirement to give reasons or a system of review when access to official information is refused;
- the changes made by the draft Law in favour of privacy interests at the expense of freedom of expression;
- the necessity for all the proposed obligations of disclosure either to the public or at the time of registration;
- the discretionary nature of the power to register foreign publishers;
- the duty to publish truthful, complete and timely information;
- the shifting of responsibility away from the publisher and the increase in responsibility for editors (in particular by taking away the requirement to show intention or negligence);

- the unduly narrow defences against claims for loss;
- the requirement that an editor be both a Croatian national and a resident of Croatia;
- the role of the competent ministry in providing a rule book for arbitration concerning the Media Statute;
- the unduly narrow scope of the protection for media sources and the condition that the source must be disclosed to the editor;
- the significant widening of the obligation to publish corrections;
- the range of criminal penalties and their size, particularly where the draft Law prescribes substantial minimum penalties;
- the lack of responsibility of the State in promoting media diversity and encouraging pluralism;
- a more precise approach to the limitation on the protection of privacy of public figures and politicians.

## Appendix

### THE LAW ON THE MEDIA

(Draft – working version)

#### I. GENERAL PROVISIONS

##### Content of the Law

##### Article 1

This Law shall regulate: general principles, publicity of ownership, rights and obligations of publishers, journalists and other legal and natural persons acting in the sphere of public information and the interest of the Republic of Croatia in that sphere.

##### Definition of terms

##### Article 2

(1) The **media** shall be the following public outlets: daily newspapers and magazines, radio and television programmes, programmes of newspaper agencies, electronic publications, teletext and other forms of daily or periodical publishing of editorial programme contents through the transmission of recording, voice, tone or picture.

Media shall not comprise books, school books, bulletins, catalogues or other holders of information publishing intended exclusively for educational, scientific and cultural process, advertising, business communication, internal operations of trade companies, institutes and institutions, associations, political parties, religious and other organizations, school papers, the Official Gazette of the Republic of Croatia, official papers of local and regional self-government units and other official releases, posters, leaflets, brochures, banners and video sites without a live picture (free information), unless otherwise stipulated by this Law.

(2) **Public information** in the sense of this Law shall be the information which is exercised through the media.

(3) **Programme contents** shall be information of all kinds (news, opinions, information, messages and other information) and other authors' works published through the media with the intention of informing, satisfying cultural, scientific, educational and other needs of the public.

(4) **Media publisher** in sense of this Law shall be every natural or legal person who publishes its programme contents through the media and participate in public information, regardless of technical means with which its editorial programme contents are published, transmitted or are accessible to the public.

(5) **Editor in Chief** shall be a person appointed by the media publisher in a manner stipulated by the Law, who is responsible for every published information in the media unless otherwise stipulated by this Law.

(6) **Journalist** shall be a person who is involved in collecting, processing, designing or classification of information for publishing through the media and is employed with the media publisher or performs journalist activities as an independent profession.

(7) The **press** shall be newspapers and other periodicals published at least once every six months, in the circulation of more than 500 copies.

(8) **Printed work** in the circulation of less than 500 copies, which is published occasionally shall be considered press if intended for distribution.

(9) **Information** shall be data, text, photograph, sketch, cartoon, movie, verbal report or other report published in the media.

(10) **Public information** shall be the information about the work, operations or information which is in possession of state administration body, local and regional self-government, judicial bodies, public institutes and companies, as well as other legal and natural persons which perform public service or duty.

(11) **Interview** shall be a conversation and statement in written or verbal form, intended for publishing in the media.

(12) **Authorization** shall be a permit for publishing, provided in written form or verbally, if there is a sound recording on verbal authorization.

(13) **Privacy** shall be personal and family life. The right to respect privacy shall primarily comprise the right to life according to one's own choice and option. It shall refer to private, family and home life, physical and moral integrity, honour and reputation, to non-publication of unnecessary and unpleasant data and unauthorized publishing of private photos, to protection from espionage and unjustified or unacceptable indiscretions, to protection from malicious use of private conversations, to protection from spreading information which were released or received from an individual in confidence.

(14) **Competent ministry** shall be the ministry which performs administrative and professional tasks in the sphere of public information.

## II. GENERAL PRINCIPLES

### Freedom of the media

#### Article 3

- (1) The freedom of expression and full freedom of the media shall be guaranteed.
- (2) Freedom of the media shall be based on:
  - freedom of the expression of opinion,
  - inviolability and protection of human personality, privacy and dignity,
  - free flow of information and openness of the media for different opinions, beliefs and for various contents,
  - accessibility to public information,
  - freedom of establishing legal persons for the performance of activities in public information, printing and distribution of press and other media from the country and abroad, production and publishing of radio and television programme and other electronic media,
  - autonomy of editors in chief, journalists and other authors of programme contents in compliance with programme basis and professional codex and
  - personal responsibility of journalists, other authors of reports and editors for the consequences of their work
- (3) Limitation of the freedom of the media shall be permitted in the interest of national security, territorial integrity or public peace and order, prevention of disorder or criminal acts, protection of health and morality, protection of reputation or rights of others, prevention of revealing

confidential information or due to the preservation of authority and impartiality of the judiciary in the manner stipulated by this Law.

- (4) Transmission of programme content in the media, which inspire or glorify ethnic, racial, religious, gender or other inequality, as well as the ideological and state products created on such basis, and which provoke ethnic, racial, religious, gender or other animosity or intolerance, inspire violence and war, shall be prohibited.

### **Prohibition of limiting the freedom of the media**

#### **Article 4**

- (1) Nobody shall have the right to influence the programme content of the media by use of pressure or misuse of their position, or in any other manner illegally limit the freedom of the media.
- (2) The court shall decide on the violations of the freedom of the media.

### **Interest of the Republic of Croatia**

#### **Article 5**

The activity of publishing programme contents shall be of interest to the Republic of Croatia when the programme contents pertain to:

- exercise of the right to public information and well-informed state of all citizens of the Republic of Croatia, members of Croatian national minorities and communities abroad and the exercise of rights of national minorities in the Republic of Croatia;
- exercise of human and political rights of citizens and regulation of legal and social state;
- preservation of Croatian national and cultural identity;
- promotion of cultural and artistic creativity;
- culture of public dialogue;
- development of education, science and arts
- protection of nature, environment and human health

### **Accessibility to public information**

#### **Article 6**

- (1) With the aim of publishing information through the media, bodies of state administration, local and regional self-government, bodies of the judiciary, public institutions and public companies, as well as other legal and natural persons who perform public service or duty, shall be obliged to provide true, complete and timely information on the issues from their scope of activities.
- (2) Information held by persons as per Paragraph 1 of this Article, shall be accessible to journalists under equal conditions. Persons as per Paragraph 1 of this Article may withhold the provision of information only in the cases when:
  - the requested information are defined in the stipulated manner as state, military, official or business secret;
  - the publishing would represent the violation of secrecy of personal data in compliance with the law, unless its publication may prevent the conduct of a severe criminal act or prevent an immediate danger to the life of people and their property;
  - an investigative or court proceeding is on-going.

- (3) The author of programme report, who received the information from the responsible person and the editor in chief shall not be responsible for the damage compensation nor held criminally responsible for the accuracy of the content of the published information. The person who provided the information shall be held responsible for the truthfulness and accuracy of such information.

### **Protection of privacy**

#### **Article 7**

- (1) Every person shall have the right to the protection of privacy, dignity, reputation and honour.
- (2) A person performing public service or duty shall have the right to the protection of privacy except in cases related to public service or duty that he performs.

### **III. RIGHTS AND OBLIGATIONS OF MEDIA PUBLISHERS**

#### **Media publisher**

#### **Article 8**

- (1) Media publisher (hereinafter: the publisher) shall perform activities in the sphere of public information in compliance with the provisions of this Law and special laws.
- (2) Stocks or shares in a company or institution performing the activities of a publisher in the sphere of public information shall have to be made out to a name.
- (3) The publisher shall independently design the programme basis of the media in compliance with the law and assume responsibility for its implementation.
- (4) The publisher shall be obliged in an appropriate, at least once per each calendar year, to provide complete information to the public about the programme basis and editorial orientation, ownership structure, financing and financial results and all other facts which are necessary for the public to assess the value of information, ideas and opinions published in the media.
- (5) While performing his activity, the publisher may comprise the drafting, that is, the production of the programme content for another publisher or technical transmitter of programme contents as well.

#### **Special conditions for the establishment and entering of printed media publishers into the court register**

#### **Article 9**

- (1) The printed media publisher may be established in the Republic of Croatia and entered into the court register as a legal or natural person if in addition to general conditions it fulfills the following special conditions:
  - has a seat, that is, permanent residence in the Republic of Croatia;
  - that the editor's office seat is in the Republic of Croatia.
- (2) Conditions as per Paragraph 1 of this Article shall not be applicable when that is agreed on in writing by the competent ministry.



- (3) Compliance as per Paragraph 2 of this Article may be provided by the competent ministry after the assessment that such media would significantly contribute to the development in the sphere of public information and culture.

### **Registration of the press**

#### **Article 10**

- (1) Prior to the beginning of the publishing of newspapers or other printed media, the publisher shall be obliged to submit a registration to the competent ministry.
- (2) The registration as per Paragraph 1 of this Article shall contain the following data:
  - company and seat, that is, the name, family name and permanent residence of the publisher,
  - name of the newspaper or another printed media
  - content particularities (politics, economy, culture, sport, etc.)
  - language, script and frequency of publishing,
  - planned average printing run,
  - company and seat, that is, the name, family name and permanent residence of the printer,
  - name, family name and permanent residence of the editor in chief,
  - data on the ownership structure of the media in compliance with this Law
- (3) The excerpt from the court register for the publisher shall be enclosed to the registration as per Paragraph 1 of this Article.
- (4) The competent ministry may not refuse the issuance of the certificate on registration of the printed media if the registration contains all data as per Paragraph 2 of this Article.
- (5) The competent ministry shall be obliged to issue the certificate as per Paragraph 4 of this Article within three days from the day the registration form was received, if the registration form contains all data as per Paragraph 2 of this Article or invite the publisher within the same deadline to supplement the registration.
- (6) If the competent ministry does not act in compliance with Paragraph 5 of this Article, it shall be considered that the certificate on registration of the printed media is issued.
- (7) The publisher shall be obliged to report any change of data stated in the registration form of the printed media to the competent ministry. The publisher shall be obliged to inform the competent ministry about the decision on the cessation of publishing of the printed media thirty days prior to the cessation of the publishing of that media, that is, on the day of the cessation of publishing of the media at the latest.
- (8) If the publisher does not publish a new issue within a period longer than six months from the day of the registration form submission that is from the day of publishing the last issue, it shall be considered that he gave up the publishing of that printed media.
- (9) The obligations of the publisher as per this Article shall also adequately apply to the programmes of newspaper agencies.

### **Prohibition of operation**

#### **Article 11**

- (1) The publisher who was not entered into the court register may not convey programme contents through the media.

- (2) The competent ministry shall prohibit with a decision the operation of a publisher who conveys programme contents through the media without being entered into the court register.

### **Programme basis**

#### **Article 12**

- (1) The publisher, depending on the purpose of the media and basic starting points of the media work content, shall establish the programme basis in compliance with this and a special law. The publisher shall be obliged to publish through the media once per year the determined programme content.
- (2) Prior to basic change or important supplement to the programme basis, the publisher shall be obliged to obtain opinion of the editor's office.
- (3) The programme basis shall be an integral part of the employment contract between the publisher and the editors in chief and between the publisher and journalists. Special rights of the editors in chief and journalists which occur as a result of changes or supplements to the programme basis shall be determined by collective agreement, general acts or individual contract.

### **Nameplate**

#### **Article 13**

- (1) The media publisher shall be obliged to ensure the publishing of the following data at the visible place of every individual holder of programme content (for example, a copy of press, television show):
  - company and seat, that is, the name and family name and permanent residence of the publisher;
  - name and family name of the editor in chief, that is, the responsible editors and names and family names of editors of individual programme groups when this is in compliance with the internal organization of the editor's office;
  - name and family name, that is, the company and the seat of the printing house and the date of print or re-print and the number of printed copies when related to the print media;
  - date of production (month and year), when related to radio and television programme.
- (2) The obligation as per Paragraph 1 of this Article shall also pertain to publishers of electronic publications performing the activity of public information in compliance with this Law.
- (3) The provision of Paragraph 1 of this Article shall not apply to holders of programme contents which are designed or multiplied in the Republic of Croatia for a foreign ordering party and are intended for broadcasting outside the territory of the Republic of Croatia.
- (4) The title, that is, the trade mark (logotype) of radio and television programme shall be published at least once during every hour of programme broadcast.

### **Obligatory publishing of other data**

#### **Article 14**

The media publisher shall be obliged to provide for a consistent publishing of the following data, in appropriate sections of each individual programme content holder:

- name and family name of the author of published reports, unless an individual author decides otherwise;
- name and family name of a person or a company, the holder of copyrights pertaining to the published programme contents, except for printed media and radio programmes;
- name of a legal or name and family name of a natural person who keeps the used cultural goods, archival material or appropriate reproduction;
- name of the media from which the programme report or an excerpt from the programme report was taken over, unless otherwise stipulated by a mutual agreement.

### **The obligation to publish truthful, complete and timely information**

#### **Article 15**

(1) The media shall be obliged to publish truthful, complete and timely information, respecting the right of the public to be informed about events, occurrences, persons, subjects or activities, as well as to adhere to other rules of the journalists' profession and ethics.

(2) The media shall be obliged to respect privacy, dignity, reputation and honour of citizens, especially of children, youth and families.

(3) The publishing of information collected in an illegal manner (with listening devices, hidden cameras, by theft, unlawful use of means of automatic data processing etc.) and of information which is legally stipulated as secret, shall be prohibited.

### **Indication of the source of information which is being transmitted**

#### **Article 16**

Along with the information transmitted from other domestic and foreign media, the media from which the information is being transmitted shall be indicated.

### **Publishing of necessary information**

#### **Article 17**

(1) In case of war or immediate danger to the independence and unity of the Republic of Croatia, as well as in case of large natural disasters, technical and technological accidents and ecological accidents and epidemics, the publisher shall be obliged to publish, free of charge and upon the request of the competent state body, proclamations and official announcements by the competent state bodies when there is a danger to life and health of people, security of the country and public peace and order.

(2) The request as per Paragraph 1 of this Article shall be submitted in a written form and it shall contain data which prove its authenticity and legal well-foundedness.

### **Editor-in-chief**

#### **Article 18**

(1) Newspapers and other periodicals, radio and television stations and news agency programmes shall have an editor-in-chief, who shall be appointed and relieved of duty by the publisher, in compliance with the law and its statute. Prior to the appointment or relief of duty of the editor-in-chief, the publisher shall obtain the opinion of the editorial board, unless otherwise stipulated by the statute of the media.

(2) The editor-in-chief shall be responsible for each published piece of information, unless otherwise stipulated by this Law. Responsibility of the editor-in-chief shall also pertain to the editorial processing of published information (the choice of title, subtitle, the text under a photograph etc.).

(3) The editor-in-chief shall not be held responsible for the compensation of damage if the information which caused the damage is:

- a precise and full report from a discussion during the session of a state administration body, body of local and regional self-government or a public gathering, or if it was transmitted from an act of the state administration, local and regional self-government, without changing its meaning by editorial processing,
- based on truthful facts or facts for which the author had a justified reason to believe that they were truthful and he undertook all necessary measures to verify their truthfulness, while there was a justified interest on the part of the public for the publishing of that information, and if the activity was undertaken in good faith,
- a photograph of the affected party taken in public or a photograph of the affected party taken with his knowledge and consent for the publishing, whereby the affected party failed to prohibit the publication, or restrict the right of the author of the photograph to use the work,
- truthful, while it ensues from the circumstances of the case that the journalist was able to determine with certainty that the affected party agrees with the publication thereof,
- based on author's value judgments, the publication of which was in public interest and if this information was provided in good faith.

(4) The cases as per Paragraph 3 of this Article shall not pertain to personal data the secrecy of which is stipulated by law, information on minors and information collected in an illegal manner.

(5) The existence of responsibility as per Paragraph 2 of this Article shall be proven by the plaintiff, while the existence of preconditions for the release from responsibility for damage as per Paragraph 3 of this Article shall be proven by the defendant.

(6) If the information has been authorized, and certain parts thereof contain evident insults or libels, the authorization shall not exclude solidary responsibility of both the publisher and editor-in-chief, if they failed to act in good faith.

## **Article 19**

(1) A person may be appointed editor-in-chief if he fulfils the following special conditions, apart from general conditions stipulated by the law and the statute of the media:

- that he is a Croatian citizen (*državljanin*),
- that he has permanent residence in the territory of the Republic of Croatia.

(2) A person who enjoys immunity from criminal responsibility may not be appointed editor-in-chief.

## **IV. RIGHTS AND OBLIGATIONS OF JOURNALISTS**

### **The media statute**

## **Article 20**

(1) Relationships between the publisher, editor-in-chief and journalists, as well as their mutual rights and obligations, shall be determined by the media statute.

(2) The statute shall especially determine the manner of journalists' participation in the procedure of appointment and dismissal of the editor-in-chief, the freedom of work and journalists' responsibility,

as well as the conditions and procedure pursuant to which the editor-in-chief, editors and journalists have the right to a resignation, along with a fair severance pay, in cases of such change in the ownership or management structure of the media which leads to a significant change in the programme basis or programme content of that media (the so-called “conscience clause”).

(3) The statute shall be adopted by the publisher and a journalists’ representative, with the prior consent from the majority of a total number of journalists from the media. Journalists shall elect their representative by a majority vote.

(4) If the publisher and the journalists’ representative fail to adopt the statute within six months from the beginning of operation of the media, the statute shall be passed, upon the request of the publisher or journalists’ representative, within three months from the day of receipt of the request, by an arbitration composed of an equal number of representatives of the associations of publishers and of the associations of the journalists’ society, chaired by the representative of the competent ministry.

(5) The minister of the competent ministry shall pass a Rulebook which shall determine the composition and procedure of the arbitration within 60 days from the day of coming into force of this Law.

### **Journalists’ right to express standpoints**

#### **Article 21**

(1) A journalist shall have the right to express a standpoint with regard to all events, occurrences, persons, subjects and activities.

(2) A journalist’s working contract may not be terminated, his salary decreased or his position on the editorial board altered because of the expression of standpoints.

### **Journalists’ right to refuse to act upon an order**

#### **Article 22**

(1) A journalist shall have the right to refuse to write, prepare or participate in the drafting of a report, the content of which is contrary to the rules of the journalists’ profession and ethics.

(2) If a journalist refuses to act upon an order because, by doing so, he would break the rules of the journalists’ profession, the employer may not terminate his working contract, decrease his salary or alter his position on the editorial board.

### **Protection of author’s reputation**

#### **Article 23**

(1) A report, in which the meaning was altered in the procedure of editorial processing, may not be published under the name of the author without his consent.

(2) The editor-in-chief shall be held responsible for a report published contrary to Paragraph 1 of this Article.

(3) If a report published contrary to Paragraph 1 of this Article damaged the reputation of the author, the author may request compensation of damage.

**Protection of the source of information****Article 24**

(1) A journalist shall not be obliged to provide data about the source of published information or the information he intends to publish.

(2) The right of a journalist as per Paragraph 1 of this Article also pertains to editors, printers, authors of books and authors of published reports who are not journalists.

(3) Prior to the publication, a journalist shall be obliged to disclose to the editor-in-chief data about the source of information as per Paragraph 1 of this Article in the manner stipulated by the statute of the media.

**V. PUBLISHING OF CORRECTIONS AND RESPONSES****The right to the correction of a published information****Article 25**

(1) Everyone shall have the right to request from the editor-in-chief to publish, without compensation, a correction of published information which violated their rights or interests. Legal persons and other organizations and bodies shall also be entitled to the right to a correction, if the information violated their rights and interests.

(2) The publication of a correction may be requested within thirty (30) days from the publication of the information, that is, from the day when the interested person learned about the publication, if, due to objective reasons, he was not able to learn about it within the provided deadline.

(3) The term correction shall not only refer to the correction in narrow sense, that is, a correction of wrongful statements or untruthful claims in the published information, but also to the disclosure of facts and circumstances by which the affected party refutes, or, with the intention to refute, significantly supplements the statements in the published text.

**Article 26**

(1) A correction must be published without changes and supplements in the same or equivalent place within the programme area, in the same or equivalent manner in which the information, to which the correction pertains, was published. A correction may not be disproportionately longer than the information, or a part thereof, to which it pertains.

(2) The Council for Electronic Media shall stipulate the rules for the exercise of the right to a correction in radio and television programmes, in a manner which is adequate to the nature of those media, but in such a manner that the provision of Paragraph 1 of this Article is respected as much as possible, as well as all other provisions pertaining to the right to a correction and response stipulated by this Law.

**Article 27**

(1) A person who requests the publication of a correction shall state the information to which the correction pertains and the date of its publication.

(2) A correction shall be published in the first edition or, if it has arrived too late, in the second edition or programme content of the media following the receipt of the correction. During the pre-electoral

campaign, a correction must be published in the first edition or programme content of the media following the receipt of the correction.

(3) A commentary to a correction or a reply to a correction may not be published together with the correction in the same edition or programme content of the media.

#### **Article 28**

(1) The editor-in-chief shall be obliged to keep records of all published programme contents for a period of at least sixty (60) days from the day of their publication and to provide an interested person, at his expense, with an appropriate copy of a particular record within three (3) days from the receipt of a written request from the interested person, at the latest.

(2) A copy as per Paragraph 1 of this Article shall be forwarded to the interested person for personal use, exclusively. No reproduction or publication of the copy without consent of the publisher shall be allowed, except within the framework of a court proceeding.

#### **Article 29**

(1) The publication of a correction may also be requested when the information was published by way of the media which ceased to operate. The authorized person may request from the former publisher or from his legal successor to provide for the publication of a correction, at his own expense, in another media which is comparable to the first one by its scope and quality of transmission of programme contents.

(2) The editor-in-chief shall be obliged to publish a correction, except in case:

- if the requested correction does not pertain to the information which the interested person invokes;
- if the requested correction does not contain facts or circumstances related to the statements about the information;
- if the publication of the correction would be contrary to the law;
- if the request for the publication of the correction was not signed by the competent person from the state body or legal person;
- if the requested correction is disproportionally longer than the information which contains statements, due to which the correction is being issued, or the part thereof to which it directly pertains;
- if the request for the publication of the correction was provided one day after the expiry of the legal deadline;
- if the request for the publication of the correction has the same content as the request for correction on the occasion of which court proceedings are being conducted due to the rejection or inappropriate manner of its publication.

#### **Article 30**

If an interested person informs in writing, within eight (8) days from the publication of the information, that he will request the publication of a correction, the editor-in-chief shall be obliged to keep a copy of the information to which the request for correction pertains as long as the court proceeding has not been completed.

#### **Article 31**

(1) If the editor-in-chief fails to publish a correction within the deadline and in the manner stipulated by law, the person requesting the publication of the correction shall have the right to file a lawsuit against the editor-in-chief before a court competent in civil disputes in the area in which the seat or permanent residence of the publisher of the media which published the information to which the corrections pertain, is located.

(2) The lawsuit may be filed within a maximum of thirty (30) days from the expiry of the deadline for the publication of a correction, or from the day when the correction was published in a manner which was not in compliance with the Law.

### **Article 32**

- (1) Court proceedings on the publication of a correction shall be resolved in an emergency procedure.
- (2) The first hearing of the main trial in proceedings for the publication of a correction shall take place within 15 days from the submission of the lawsuit before the court.
- (3) The defendant shall be obliged to reply to the lawsuit at the main hearing, at the latest.
- (4) In the summons, the court shall warn the plaintiff that the lawsuit shall be considered withdrawn should he fail to appear at the first hearing. It shall warn the defendant that a verdict may be passed even in case of his absence.

### **Article 33**

- (1) Discussion on a lawsuit for the publication of a correction shall be limited to discussion and presentation of facts related to the defendant's duty to publish the correction.
- (2) In disputes for the publication of a correction, the court shall reject the claim if it determines that the plaintiff's right or interest was not denied or if it determines that there is another circumstance due to which, according to the Law, there is no obligation to publish a correction.

### **Article 34**

The proceeding for the publication of a correction shall not be suspended by the initiation of a criminal proceeding for an act caused by the publication of the information to which the correction pertains.

### **Article 35**

In case the media editor in chief is replaced after the filing of charges, the prosecutor may alter the claim by the end of the main hearing and sue the new editor in chief instead of the first defendant. It shall not be necessary to obtain the agreement of the first defendant or the new editor in chief for such an alteration of the claim.

### **Article 36**

- (1) The court shall be obliged to pass a verdict within a maximum of three days from the conclusion of the main hearing.
- (2) The court shall forward a verified copy of the verdict to the parties within a maximum of three days from the day of passing the verdict.
- (3) Should the court accept the claim, it shall pass a verdict imposing an obligation upon the defendant to publish a correction within the deadline and in the manner stipulated by the law.
- (4) In the publication of the correction, the editor in chief shall be obliged to state that it is a statement based on the verdict and to cite the enacting clause of the verdict.



**Article 37**

- (1) Parties may lodge an appeal before a higher court against the verdict of a court of first instance within three (3) days from the day of receipt of the verdict.
- (2) An appeal shall not be forwarded for response to the opposing party. The court shall forward a timely and admissible appeal with all documents to an appellate court within two days from lodging the appeal.
- (3) The appellate court shall be obliged to decide on the appeal within three (3) days from the day of receipt of the appeal.
- (4) A revision shall be allowed against a verdict of the appellate court.

**Article 38**

The court shall immediately forward to the media editor in chief through whom a correction needs to be published, a verified copy of the effective court verdict ordering the publication of the correction.

**Article 39**

In case the media editor in chief is replaced after the verdict ordering the publication of a correction has become effective, the obligation for publishing a correction, determined by the verdict, shall be transferred onto the new editor in chief.

**The right of response to published information****Article 40**

- (1) An interested natural or legal person shall have the right to request from the editor in chief to publish, free of charge, his response to the published information mentioning his name or relating to him directly in some other manner.
- (2) The response as per Paragraph 1 of this Article shall refer to a text or message of identical nature as the published information. By way of allegations appropriate for demonstration of evidence, the response shall in essence deny or significantly supplement the allegations of facts and data contained in the published information.

**Article 41**

- (1) A response shall be published without alterations or supplements, with the exception of spelling errors.
- (2) Prior to the publication, the editor in chief shall have the right to request from the author to shorten the response.
- (3) The provisions of Article 29 of this Law shall apply to the response, and the editor in chief may refuse to publish responses which are equal in terms of contents, after he has already published the same [response].
- (4) The editor in chief may also refuse to publish a response in case the response contains false data, claims or allegations inappropriate for demonstration of evidence.

- (5) If only some data or claims are false or inappropriate for demonstration of evidence according to the opinion of the editor in chief, the editor in chief may not refuse the publicizing without the prior appeal to the author to exclude those data and claims from the response.

#### **Article 42**

The provisions of this Law in connection with the procedure for the exercise of the right to correction shall be applied in the procedure of court protection with regard to the exercise of the right to response.

### **VI. PUBLICITY OF OWNERSHIP**

#### **Article 43**

- (1) Media publishers shall be obliged to forward data on the company and its seat by 31 January of each calendar year, or first and last names and permanent residences of all legal and natural persons who have direct or indirect ownership of stocks or shares in that legal person, with the information on the percentage of stocks or share.
- (2) The competent ministry shall forward a written warning, stating possible sanctions for non-compliance with the obligation, to a legal person who fails to perform the obligation as per Paragraph 1 of this Article.
- (3) The publisher shall be obliged to publish information as per Paragraph 1 of this Article through the media, as well as in the Official Gazette.

#### **Forwarding of reports on media business operations**

#### **Article 44**

- (1) By 30 April each year, media publishers shall be obliged to forward to the competent ministry a report on the commercial operations for the previous year, an assessment on the realized share at the market, data on the marketing agencies through which more than 10% of the media publisher's transactions were realized.
- (2) Media distribution companies shall be obliged to forward data on the contracts with publishers or appropriate data on the general conditions of business operations pertaining to the distribution of electronic media programmes and general information press, the sold circulation of which exceeds three thousand copies, if this press is being sold at the market of a number of towns or counties, or exceeding a thousand copies, if it involves local market press.

#### **Obligations and limitations of the performance of distribution of local media**

#### **Article 45**

- (1) Publishers with the majority share in a press distribution company, or possessing their own press distribution company, may not refuse to take over into distribution the general informative press of another publisher who requests it, with the application of the same conditions and service costs as applied to other publishers, or for the purpose of distribution of one's own editions.
- (2) Distributors-newsvendors in the street may sell only press. Other conditions for sale through newsvendors, such as the time and location of newsvendors' sale of the press, shall be stipulated by the town or municipal council, in compliance with the law.

**Protection of competition****Article 46**

- (1) The regulations on the protection of market competition shall be applied to media publishers as well as to other legal person performing tasks related to public information.
- (2) Media publishers, as well as other legal persons performing tasks related to public information shall have the right to submit a request for the initiation of proceedings for the assessment of disruption of free market competition and of violation of legal provisions, to the body competent for the protection of market competition.
- (3) The body competent for the protection of market competition in proceedings relating to the concentration of ownership by persons as per Paragraph 1 of this Article shall co-operate with the competent ministry.

**Shares of foreign persons****Article 47**

The legally established provisions on the limitation of ownership shall also apply to foreign legal and natural persons, regardless of the country of their seat or permanent residence, unless otherwise determined by law.

**Subsidiary application of this Law to certain media****Article 48**

The provisions of this Law shall be adequately applied to the programmes of foreign press agencies, unless otherwise stipulated by a special law.

**VII. OFFENCE PROVISIONS****Article 49**

- (1) A legal person who even after 15 days from the day of receipt of the warning as per Article 43, Paragraph 2 of this Law fails to forward data as per Article 43, Paragraph 1 of this Law, shall be punished for the offence with a fine of 50,000.00 to 100,000.00 HRK.
- (2) Proceedings for the establishment of responsibility for a criminal act determined by Article 336 of the Criminal Law shall be initiated against the responsible person in the legal person as per Paragraph 1 of this Article.
- (3) Proceedings for the establishment of responsibility for a criminal act determined by Article 312 of the Criminal Law shall be initiated against the responsible person in the legal person who, with regard to Article 43 of this Law, has forwarded false data to the competent ministry.

**Article 50**

- (1) The editor in chief who, on the basis of an effective verdict, fails to publish a correction of information or fails to publish it in the stipulated manner (Article 36, Paragraph 3 or 4 and Article 38) shall be punished for the offence with a fine of 20,000.00 to 100,000.00 HRK.

- (2) The responsible person in the legal person shall be punished for the offence as per Paragraph 1 of this Article with a fine of 5,000.00 to 10,000.00 HRK.

#### **Article 51**

- (1) The following shall be punished for offence by a fine of 10,000.00 to 40,000.00 HRK:
1. the authorized person in a body of public authorities who denies a journalist information from the scope of activities of that body (Article 6, Paragraph 1),
  2. a media publisher who, prior to the beginning of the publishing of a newspaper or another public outlet, fails to report that newspaper or another public outlet to the competent ministry (Article 10),
  3. a newspaper publisher, or another press publisher, who fails to print the masthead on each copy of the newspaper or another press publication (Article 13),
  4. a publisher who fails to publish, at the request of a body of public authorities and free of charge, an announcement on extraordinary circumstances (Article 17),
  5. an editor in chief, if he significantly alters the contents or meaning of a piece of information published in a public outlet by way of editing the text, and especially by the title, (Article 18, Paragraph 3),
  6. an editor in chief who fails to keep records of all published programme contents within the stipulated time-frame (Article 28).

- (2) The responsible person in the legal person shall be punished for an offence as per Paragraph 1 of this Article with a fine of 3,000.00 to 8,000.00 HRK.

#### **Article 52**

- (1) The following shall be punished for offence with a fine of 8,000.00 to 30,000.00 HRK:
1. the media publisher who fails to indicate the source of the information taken over from other domestic and foreign media (Article 16),
  2. the newspaper publisher who fails to report to the competent ministry the change of data stated in the registration of a newspaper or other media within eight days from the day of the occurrence of the change (Article 10, Paragraph 7).

- (2) The responsible person in the legal person shall be punished for an offence as per Paragraph 1 of this Article with a fine of 2,000.00 to 6,000.00 HRK.

### **VIII. INTERIM AND FINAL PROVISIONS**

#### **Registration of foreign representation offices**

#### **Article 53**

The Ministry of Foreign Affairs shall keep the registry and perform all activities related to the registration, or erasure of registration of foreign correspondent's offices, permanent foreign correspondents and permanent employees of foreign correspondent's offices, stipulated by a special law.

#### **Application of this Law in pending court proceedings**

#### **Article 54**

The provisions of this Law pertaining to damage liability of a publisher and to the publishing of corrections and responses, shall also apply to the cases in which an effective verdict has not been passed until the day of entry into force of this Law.

**Article 55**

Within six months from the day of entry into force of this Law, the media shall be obliged to conform their work, business operations and general acts to the provisions of this Law, as well as to submit registration to the competent ministry, along with the report on the business operations for the previous year, within the same deadline, in compliance with this Law.

**Article 56**

The Law on Public Information (“Official Gazette”, No. 83/96, 143/98 and 96/01) shall cease to be valid upon the entry into force of this Law.

**Article 57**

This Law shall enter into force on the eighth day from the day of its publication in the “Official Gazette”.