



Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
Miklós Haraszti

010/08

Vienna, 18 January 2008

Mr. Jan Kubis

Minister of Foreign Affairs of the Slovak Republic

Your Excellency,

I am writing to you to express my concerns about the draft Slovak Press Act.

The current draft contains sections that would severely restrict editorial independence, and would thereby go against Slovakia's international commitments to protect media freedom.

I ask your Government to withdraw the law from Parliament in its current form. I am also offering my Office's expertise to review the draft law before it is eventually presented to Parliament. A legal review could analyze the law's compatibility with international standards and commitments, and offer recommendations, while fully respecting the Parliament's ultimate responsibility for any legislation.

The draft Press Act, which I studied in two unofficial English translations, not only fails to approach the role of the media from the viewpoint of the public interest in editorial freedom. Its main aim seems to be to tighten the limits of press freedoms, and broaden the scope of journalism's legal restrictions.

The document is not compatible with Slovakia's international commitments and standards, including the European Court of Human Rights' case law. Let me mention a few key elements of compatibility that are not served or even mentioned by any provision of the draft: the State's and the judiciary's duty to maintain pluralism; the must for public personalities and for legal – especially governmental – entities to endure harsher-than-usual criticism, even good-faith factual mistakes.

I find two chapters in the draft Press Act especially worrisome.

- **Chapter 6** would ban publishers from putting out information in ways that belittle, excuse, or approve the promotion of wars, cruel and other inhuman actions, or the use of narcotics. It would also ban a similar handling of information on 'hate', based, for example, on religion, faith, political or other thinking, or any other position.

This chapter would seriously damage society's right to get information on issues of public importance. Every each word of this provision is undefined and vague – for example the terms 'information', 'promotion', 'belittling', 'hate', etc. As a result, the provision can be arbitrarily used to restrict even the mere reporting on events, facts, or opinions regarding such behaviours. This clearly transgresses the speech limitation barriers accepted by democracies and international human rights courts.

It is especially objectionable that the draft would authorise a Government Ministry to determine ‘violations’ of Chapter 6, and levy fines for them. Thereby, the executive branch would be allowed to judge on social and political content of publications, and curb in fact pluralism and freedom of speech, editorial freedom, and the public’s right to know. The publishers can appeal against these administrative fines only to an administrative court that could cancel the verdicts only based on violations of the formalities of the administrative procedures. Thus the judiciary branch would be practically excluded from a consideration of the merits of the claims (and the restrictive measures) by the executive branch – and all this happens in a matter that is at the heart of freedom of expression.

- **Chapter 11** would oblige publishers to allow a *response* from any natural person or legal entity if this person or legal entity finds that the published “fact statement” impacts their honour or dignity. This wording is about any fact statement, regardless if it is true. The untrue ones must be remedied by *corrections*, covered by Chapter 10. Failure to publish the response will be punished with a financial compensation, payable to the requester.

As every opinion contains a factual component, this obligation to publish responses would practically allow for the sanctioning of opinions.

This approach contradicts the accepted democratic principle that an obligation to publish corrections applies only in cases when journalists committed factual mistakes that could violate one’s personality rights. Opinion, except for agitation to crimes, is a protected type of speech in democracies.

In a pluralistic democracy, laws, except the ones about public-service broadcasting, can not be used to boost “objectivity” in media outlets by forcing them to carry replies to all criticism. Laws can not aim to homogenize the content of the space retained to express opinions, or enforce editorial impartiality.

While it is welcome to require so-called internal pluralism in public-service broadcasters, and oblige them to provide for complaints mechanisms, governments must protect the uninhibited external pluralism – their right to bias, if you wish – of the private print media outlets. The reason is that the print press is not a so-called scarce medium, like broadcasting is; hence, there is no justification for restricting bias in their particular selection of opinions, or, which is the same, forcing them to publish complementary views.

If passed in its current version, the Press Act would justify politicians’ limitless and arbitrary access to publicity over the heads of editors who, after several cases of application of this provision, would not dare anymore to cover public life or publish articles containing any type of political criticism.

Your Excellency,

Since you have played a key role in promoting OSCE values, I am sure that you will agree with me that governmental attempts to curb the media would endanger media democratization, a process that has only recently started in Central Europe, and that needs our strong commitment and daily support. Only independent and free media can act responsibly and fulfil their role to inform the people about issues of public importance.

I hereby kindly invite your Government to co-operate with my Office, by allowing us to submit to your authorities a legal review with recommendations prior to the debate of the draft Press Act in Parliament.

My Office will issue a press release on the above request in the coming days.

Availing myself of this opportunity, please accept, Your Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Miklós Haraszti', with a long horizontal flourish extending to the right.

Miklós Haraszti



*Minister of Foreign Affairs
of the Slovak Republic*

Ján Kubiš

unofficial translation

Bratislava January 2008
Ref.: 200.124/2008-KAMI

Dear Representative on Freedom of the Media,

I confirm the receipt of your letter dated 18 January 2008, in which you express your concerns regarding the new draft Slovak Press Act.

Above all I welcome your proposal to review the draft law by experts of your Office. I would like to confirm that Slovakia will carefully listen to the opinions and arguments of your experts, which, I hope, will stem primarily from the realities within the European Union and its Member States.

However, I do not understand, why it was necessary "to break into an open door." Beyond this, prior to expert consultations you issued the press statement in which you published your objections. In addition, I received your letter at the same time as your press statement was issued, which I do not consider correct. If this procedure was meant as an instrument of pressure, I do reject it. If this is a way how to draw attention to the activities of your Office, it is in my view misplaced. I presume that the success of the OSCE institutions consists in the number of successfully argued cases, not in the number of press statements. Only the consultations considering the arguments of both sides, not the messages through the media, can bring us to desirable results.

Dear Representative, I would like to appeal to you, in the spirit of your proposal, to urgently arrange contact with the authorities of the Ministry of Culture of the Slovak Republic responsible for the draft law, in which we are ready to assist you. Prospective consultations should take place as soon as possible, as the National Council of the Slovak Republic will review the draft law during its upcoming session starting next week.

Sincerely

Signature

Mr. Mikós Haraszti
Representative on the Freedom of Media
Organisation for Security and Co-operation in Europe
Vienna