



INTERNATIONAL PRESS INSTITUTE
Global Network for a Free Media
www.freemedia.at

PRESS FREEDOM AUDIT REPORT
CZECH REPUBLIC

IPI Mission 13 – 14 May, 2009

Introduction

On 13 and 14 May 2009, a delegation from the International Press Institute (IPI) visited Prague, capital of the Czech Republic, to meet with media professionals and discuss press freedom obstacles faced by the Czech media. The fact-finding mission was the second in a series of national, media environment assessments carried out in the region.

In March, IPI carried out a similar mission in Slovakia.

During this mission, IPI met with individuals representing a wide spectrum of the Czech media, including editors and journalists from private print and online publications, a publisher, media specialists, and the Czech News Agency (CTK). The confidential discussions focused on defamation, broadcasting regulatory bodies, the efficacy of self-regulatory mechanisms, and access to official information.

The Czech media remains vibrant and diverse, although as in other countries print publications, competing with free online news and entertainment, have suffered declining sales and advertising revenue; some 20 Czech publications closed in the first quarter of 2009.

The newspaper market is dominated by nine national dailies, although most are owned by foreign companies. Some 80 regional and local papers are published in the Czech Republic. Czech TV and Czech Radio, each dominant in their respective broadcast markets, are funded by licensing fees in conjunction with commercial activities. Altogether there are around 300 FM stations and 71 television broadcasters. Czech radio operates seven stations, of which three operate nationally. Czech TV operates two stations, CTV1 and CTV 2, which, along with private stations TV Prima and TV Nova, account for 90% of the television market.^{i,ii}

Shortly before the IPI mission to the Czech Republic, the introduction of legal provisions involving limitations on publishing the content of police wiretaps and other information relating to criminal investigations had sparked concern in the Czech Republic, generally known to have a very positive and open media environment.

I. Recent Legal Amendments Regarding Wiretapping and the Identities of Individuals Involved in Crimes

On 1 April 2009, two controversial amendments to the Czech Penal and Criminal Procedure Codes entered into force. Under these new provisions, it is illegal to publish any data obtained from police wiretaps, as well as to publish information indicating that wiretapping has occurred. In addition, it is illegal to publish information about individuals involved in certain crimes, unless the individual provides his or her consent. The restriction applies to both victims and perpetrators. Violations are punishable by sanctions including fines of up to 5 million Czech crowns (koruna) (approximately €180,000) or imprisonment of up to five years. The amendments provide no exception for any violations carried out in the public interest.

All of the media representatives IPI spoke to highlighted these amendments as grounds for strong concern. Most, however, also felt that the provisions had largely well-intentioned origins, and that there had been some need to curb media voyeurism with respect to crime victims, especially underage victims. Some voiced concern about the possibility that the changes reflected a promotion of Interior Ministry interests. However, all agreed that, regardless of original intentions, the outcome was flawed in a variety of ways.

More specifically, comments focused on several problematic aspects of the amendments. First, the amendments were widely criticized as being poorly drafted, in that they were so unclear that members of the media did not know exactly what they would mean in practice. One editor pointed out that, for example, a strict interpretation of the law would theoretically prohibit reporting on allegations of domestic violence by a politician against his wife. In fact, under the current provisions, if the Prime Minister were shot, it would be illegal to report it without his permission. Several media representatives suggested that, in fact, the Ministry of Justice had itself already violated the provision regarding the identity of crime victims, demonstrating that it was a difficult law to adhere to.

In addition, the sheer magnitude of the possible penalties was considered a major problem, especially given that everyone felt strongly that nobody should go to jail for such violations. The representatives were also concerned that fines would be administered through a government office, rather than by the courts. As of 1 April, the Office of Personal Data Protection (Úřad pro ochranu osobních údajů - UOOU) is permitted to impose financial penalties as an administrative matter. The UOOU's decisions may, however, be later reviewed by the courts. When a violation is treated as a crime, it will be decided by the courts.

Several editors and publishers pointed out that they did not know whether, in the case of a violation, the editor, author or publisher of the article would be deemed responsible. (According to a spokesperson for the Office of Personal Data Protection, as far as administrative torts are concerned, the journalist, publisher or both can be fined; of course, only natural persons can be penalized in criminal proceedings.)

Editors and publishers also commented that it is impossible to give reporters clear guidelines on how to avoid violating the law, because information relating to many different types of crimes is protected. The time pressures of a news room, it was noted, require snap decisions that are difficult to make given the vague nature of the new law. Several editors expressed unease about assigning their reporters to cover stories that would place them at risk of incurring harsh penalties, including prison time. The overwhelming consensus was that the new law would lead news outlets to self-censor stories that clearly fall within the public interest.

Finally, the process through which these provisions were approved was criticized as deeply flawed, especially as it involved little opportunity for public debate. Problematic language was allegedly inserted at the last minute with little publicity, as the amendment, originally drafted by the Justice Ministry, made its way through the Chamber of Deputies — one person commented that the controversial changes appeared to have been “snuck in.”

The strong response to the new provisions represented an unusual moment of Czech Republic media solidarity, with about 15 editors-in-chief of various dailies and weeklies meeting to coordinate their response to the measures. In April, as United States President Barack Obama and other European Union leaders met at a summit in Prague, seven newspapers ran an open letter, addressed to the visiting delegates, drawing attention to the dangers of the new law. In May, sixteen editors-in-chief and the president of the Czech Syndicate of Journalists signed a letter to interim Prime Minister Jan Fischer, urging him to change or repeal the new law.

Several editors also saw the new law as a possible tipping point in relations between the media and politicians generally, with several media representatives sensing the beginning of increased governmental efforts to reign in the media. A few editors noted that politicians had

increasingly threatened to change the Press Law - legislation that the media views very positively for its broad protection of freedoms. Others pointed out that soon after the controversial provisions were introduced, a prohibition on taking photographs in front of the entrance door of Parliament was suddenly enforced, although this practice had not been deemed problematic over the past 20 years. Many felt that this development marked an important opportunity to send to the government a signal that the media would not tolerate more interference.

Journalists also noted that, historically, leaked tapes have been published as evidence of government corruption. These were usually handed to journalists by police officers who had initiated an investigation but were then stopped from pursuing it further, prompting the frustrated officers to leak them to the media instead. In these cases, it was emphasized, the matters were of public interest, and not merely wiretaps made public for the sake of revealing private information about ordinary citizens.

Several journalists also mentioned that it was difficult to publicize the issue, since such efforts could easily be dismissed as the media behaving in its own self-interest, instead of acting on behalf of the public - whose right to information was being compromised. Some journalists pointed out that members of the public might assume that the issue related only to tabloids and might thus not be averse to some restrictions.

There has been some attempt to repeal or alter the law, but these efforts have seen little success as yet, largely because the Czech Republic is currently led by an interim government under Prime Minister Jan Fischer until June 2010.

Thirty-four senators, led by Senate Deputy Chairman Petr Pithart, have filed a challenge before the Constitutional Court, but since the legal process can take months, if not years, media representatives saw little promise in this endeavour.

In May, several members of the Chamber of Deputies drafted an amendment to the new legislation that would create an exception for cases in which the information from or about wiretaps was disclosed in the public interest, and in particular if it related to politicians. However, the Chamber rejected a proposal to discuss the bill in June, causing speculation that the proposed legislative changes will not be made until a new government is formed.

There was some relief that interim Prime Minister Jan Fischer expressed discontent with the provisions, but many emphasized that he lacked the power to actually change them. A group of experts coordinated by Human Rights Minister Michael Kocab was established to discuss possible revisions, although the prime minister had said that changes will be left for the next cabinet.

However, early October elections were cancelled, leaving the current set of parliamentarians to govern until scheduled elections in June 2010. As a result, proposed changes to the law drafted under Human Rights Minister Michael Kocab will be discussed and voted on by the current government.

At the time of this writing, proposed amendments to the law from the Human Rights Ministry have been added to the parliamentary agenda for discussion at its upcoming session. The proposal adds an exception for the disclosure of information that is in the public interest, and limits the number of crimes to which the privacy law applies. Fines for individuals would be lowered to 200,000 CZK from 1 million CZK, and very high fines of up to 5 million CZK for

media outlets would be lowered to 1 million CZK. However, criminal penalties including jail time remain.

II. Independence of Councils in Charge of Public Media Entities

Under the Broadcasting Act of 17 May 2001 (No. 231/2001 Coll.), Czech TV and Czech Radio are subject to regulation by the Council for Radio and Television Broadcasting, otherwise known as the Czech Broadcasting Council (CBC), which consists of twelve members, all of whom are elected by the lower chamber of Parliament. In addition, Czech TV and Czech Radio are each regulated by their own additional council, the Czech Television Council (CTC) and the Czech Radio Council (CRC). These are independent of the CBC.

One senior media representative noted that the laws governing the Czech News Agency (CTK), the CTC and the CRC all stipulate that council members must not be influenced politically. However, it was noted that council members are often seen as extensions of political parties. The balance of appointed council members was, though, generally considered “fair.”

The Czech TV Council was repeatedly described as a heavily politicized body, which represents political interests rather than the public interest - its official mandate. Since 2001, it has been governed by fifteen members. Candidates for membership are nominated by organizations; any that are “in the public life” are entitled to make such nominations. The list of nominees is presented to an election committee within the Chamber of Deputies (the lower house of Parliament), which creates a shortlist. The chamber elects or repeals members, who each serve a six-year term, with a third of members elected every two years. The ultimate

composition of the council was said to largely mirror the power balance within parliament itself.

One editor noted that NGOs involved in the appointment process often have very close ties to Parliament. As a result, IPI was told, there is a sense that parliament actually controls appointments, which are strongly politicized.

The Czech TV Council is also said to be vulnerable to political pressure due to a legal provision that allows Parliament to remove any council repeatedly found to have failed in its service to the public. During the so-called Czech Television Crisis of 2000 - 2001, Parliament recalled the entire Council and appointed new members, who promptly selected a new director-general, Jiří Hodač. Many members of the public, as well as journalists at the broadcaster, protested against what they considered overt political intervention damaging the independence of Czech TV. For a time, factions within the station aired competing broadcasts. The crisis was resolved after Hodač's resignation, which he claimed was due to health reasons, and after extraordinary meetings of the Chamber of Deputies and the Senate resulted in changes to the CTV Council election procedure and other amendments to the Act on Czech Television.

Czech TV Council director-generals are reportedly placed under considerable pressure. In fact, Jiří Janeček was identified as only the second director-general to have survived the entire six-year term. He was re-elected this year.

Three media representatives noted that the funding structure used for public television made it susceptible to influence. The station is supported by fees paid by the public, but the fees are set by Parliament and have remained the same since 1997.

The quality of programming was generally lauded as high-quality, critical and independent. It includes criticism of Czech TV itself. Though public radio was seen as somewhat less critical than public TV, both were seen as producing better quality content than their private counterparts.

Some concerns were voiced about the Council governing the Czech News Agency (CTK), with membership said to largely reflect the main political parties of parliament. Nonetheless, there were no allegations of overt attempts to politically influence the agency's content, and in fact CTK representatives did not feel that they were under political pressure. It was noted that CTK's financial independence plays a large part in this freedom.

III. Defamation

By and large, defamation laws were not considered to be a major threat to press freedom in the Czech Republic. However, defamation is still criminalized under Article 49 of the Simple Offenses Act, as well as under articles 154(2) and 206 of the Penal Code.

One expert noted that efforts to abolish criminal penalties for defamation gained momentum in 2006, when a proposal for a new criminal code emerged, but failed. However, civil defamation proceedings are perceived as the greater threat, especially given the absence of a limit on possible damages. These caused particular problems during the 1990s, when a new clause was inserted, giving plaintiffs a right to compensation for a violation of their right to privacy. Courts, new to setting damages, repeatedly imposed unreasonably high penalties.

Some of the media representatives IPI spoke to suggested that defamation was not a widespread threat, and that there was no sense that the judiciary either singled out the media for harsh punishments or lacked an understanding of media issues.

However, the editor-in-chief of one publication expressed exasperation at repeated civil defamation lawsuits, almost exclusively initiated by politicians and businessmen. He noted that his publication had won a large majority of the cases, particularly once they reached the Constitutional Court. But he also emphasized that the process was time-consuming. Constant lawsuits also placed pressure on him, he added, because he did not want to cause concern over financial consequences for his publisher, who was described as being very supportive of the publication in such situations. The editor felt that the frequency of lawsuits, often instigated over trivial matters, constituted a form of harassment, particularly as his publication and others regularly print corrections and replies when a mistake has been made.

IV. Self-Regulation

The Czech Syndicate of Journalists is a professional association for journalists - whom it defines as professionals whose main source of income is their journalistic work. The Syndicate also accepts journalism students and retired senior journalists. In 1998, the organization published a Code of Ethics, and in the same year established an Ethics Commission responsible for addressing complaints from the public. In addition, its members are often consulted on media matters by judges.

A sizeable majority of the media representatives spoken to by IPI felt that the organization was ineffective in representing their interests. Many noted that the Ethics Commission consisted largely of media professors, as opposed to active journalists, adding that its opinions often seemed out of tune with the reality in which the media operates.

Criticism from the Commission therefore has little effect on the media, which does not see its decisions as coming from colleagues. In fact, one individual described the Syndicate's membership as essentially consisting of "members of the older generation and university students," many of whom joined for the benefits accompanying such membership, and not because of a genuine desire to represent media interests.

Several media representatives said that the Syndicate was simply "quiet" for a long time, meaning journalists were left with the impression that it was not an organization of much relevance to them. One representative mentioned, for example, that the organization was unable to provide statistics or information regarding media subjected to defamation lawsuits, as apparently the organization made no effort to track or involve itself in such matters.

A few media professionals mentioned that it had become somewhat more active lately, organizing conferences and issuing occasional statements. For example, the syndicate was identified as having spoken out against the recent wiretapping law, as well as for more transparency in the purchase of a large publishing company.

When asked how the Syndicate might improve, most journalists expressed pessimism. Several representatives voiced the opinion that the organization's reputation had diminished to a level at which no amount of restructuring could restore sufficient respect for it to have meaningful input. Others suggested that the most beneficial move would be to replace the largely academic membership with members who are active journalists in touch with the current day-to-day challenges faced by the media.

The Syndicate's poor reputation amongst most full-time journalists is unfortunate, given that several media representatives expressed strong interest in participating in such a body. Some representatives acknowledged that self-regulation is necessary, and that more solidarity would be useful. Several cited the new gag law as an example, highlighting the need not just for consolidated action on behalf of the media, but also for effective self-regulation to prevent legislative intervention in the future. However, they were of the opinion that a majority of the local media did not see a need for such efforts. Also, some representatives noted that individual publications and organizations have their own internal mechanisms and structures to address possible ethical breaches.

Without an effective, widely-respected joint self-regulatory mechanism in place, standards vary widely.

V. Other Issues

Access to Information

Access to official information was, generally, not viewed as a major obstacle for the media in the Czech Republic. As one journalist put it, obtaining information from the Government is an "eternal struggle" for the media everywhere; in the Czech Republic, the situation was "not ideal, but it works." Governmental websites, for example, were identified as generally containing useful information. The media representatives also all praised the Right to Information law, which was introduced as a result of strong involvement by a U.S. senator, as a very well-drafted piece of legislation. A few also complimented the Czech judiciary for interpreting it broadly and in favour of governmental transparency.

The few problems that were identified were considered either individual issues or the result of bureaucratic sluggishness, rather than systemic. A few mentioned that governmental bodies

are occasionally seen as trying to avoid providing information by relying on, for example, contractual partners' right to confidentiality, claiming they would breach that right if they handed over copies of the contracts.

Several representatives noted that journalists are often able to obtain documents unofficially, making official requests unnecessary. One representative, however, pointed out that perhaps journalists should think more critically about why certain documents were being leaked to them, and treat such information with sufficient scepticism.

Finally, several journalists mentioned that some government offices had demonstrated considerable good will towards the media. Specifically, they lauded the Foreign Ministry for introducing off-the-record meetings with the media, during which it provides journalists with background information on particular issues. These worked, the journalists noted, because they were based on mutual trust.

Right of Reply

The right of reply is generally respected by publications and not viewed as a problem, because replies need not be published if the contested statements are true. A few representatives, though, noted that requests for apologies and corrections were frequent, and often ultimately involved court proceedings. Again, these usually involved politicians and their advisors, and again, verdicts largely came out in favour of the publications. However, going through the process repeatedly was described as time-consuming and frustrating because a high percentage of complaints are reportedly filed in response to opinions, as opposed to statements of fact.

In fact, some of the media professionals IPI spoke to believed that the number of lawsuits brought by politicians had affected media content, particularly of private radio and TV stations, with investigative programs cancelled in favour of programming about celebrities. Public TV and radio programs apparently still do try to tackle investigative pieces, although it was noted that public radio is less critical of the government than public television. Overall, however, the content of both Czech TV and Czech Radio was described as good, and it was noted that public broadcasters continue to produce critical documentaries. In fact, after one highly critical segment was recently broadcast, the editors at public television received letters expressing surprise that it had been aired, including from editors at other stations who readily admitted they had stopped trying to push such programs, suggesting instances of self-censorship.

Conclusion

In general, the media in the Czech Republic are able to report and comment freely under broadly-worded press freedom protections in the Press Law of 2000. Despite the challenges faced by traditional news outlets in the wake of the global financial crisis, and as technology changes the way the public consumes news, the media in the Czech Republic remain, overall, diverse and robust.

Unfortunately, as one of the editors with whom IPI spoke pointed out, the Czech Republic's sound reputation for press freedom can also pose a danger: Legislative restrictions can be passed with little comment from international observers.

It was also noted that, in recent years, the influence of civil society groups in the Czech Republic has been substantially weakened as a result of creeping democratic apathy. As a

result, the media's role in fostering transparency is more important than ever. At the same time, the media is left to defend its own freedoms.

The recent "muzzle law," which bans the disclosure of information about certain types of criminal investigation as well as the publication of information about or derived from police wiretaps, sends a worrying signal that respect for an independent press is on the decline in the Czech Republic. In fact, several of the media representatives IPI interviewed saw this piece of legislation as a possible turning point for relations between government officials and media. One journalist noted that soon after the law was implemented a law banning photographs at the entrance of Parliament was suddenly enforced, and that legislators had threatened to change the much-lauded Press Law.

Many media representatives feared that the government, having successfully banned the disclosure of wiretaps, will now try for ever-increasing restrictions on the news media. Several journalists expressed fears about the future of press freedom if, after elections currently slated for June, the Social Democrats (CSSD) form a government with the unreformed Communist party. It was noted that reining in the media seemed to be the only policy that generated consensus between parliamentarians from all parties.

Although Interim Prime Minister Jan Fischer agreed in May that there is cause for the new legislation to be amended, it has been left to the next government to make any specific changes. However, parliamentary elections were recently postponed from October 2009 until June next year.

Political parties seriously committed to a free media should work together to amend or repeal the wiretapping law, and ensure that the next government does not further infringe upon the public's right to the free flow of ideas and information.

IPI Recommendations

- Amend the law banning the disclosure of wiretap information and information from certain criminal investigations to include broad protections for journalists reporting on matters of public interest, particularly the activities of political figures and government bodies.
- Repeal legal provisions that punish press offences with prison sentences.
- Repeal outdated laws criminalizing defamation.
- Maintain the strong protections guaranteed under the current Press Law.
- Journalists must strengthen self-regulatory mechanisms as an important step toward preventing statutory regulation of the media.
- Politicians must stop using civil defamation lawsuits to harass publications and journalists.

ⁱ *Media statistics taken from:* Smid, Milan. "Media Landscape-Czech Republic." European Journalism Centre. http://www.ejc.net/media_landscape/article/czech_republic/. Accessed 22 July 2009.

ⁱⁱ *Media statistics taken from:* CIA World Factbook. “Czech Republic.”
<https://www.cia.gov/library/publications/the-world-factbook/geos/EZ.html>. Accessed 22 July 2009.