

INTERNATIONAL PRESS INSTITUTE

The Global Network for a Free Media



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Press Freedom Audit Report – Slovak Republic

Introduction

On 18 March 2009, IPI conducted a one-day fact finding mission to Bratislava, capital of the Slovak Republic, to meet with media professionals and discuss the press freedom obstacles faced by the Slovak media. The mission was the first in what will be a series of similar national media-environment assessments carried out in countries in the region. During the mission, IPI met with individuals representing a wide spectrum of the Slovak media, including Slovak Public Radio and Slovak Public Television, the public news agency TASR and the private news agency SITA, representatives from the Slovak Syndicate of Journalists and the Slovak Press Council, lawyers specialising in media matters and journalists from different private media and members of the IPI Slovakia National Committee. The discussions were held in a confidential manner, and focused on defamation, the broadcasting regulatory bodies, the recently-introduced ‘right of reply’, the issue of self-regulation and ethics within the media, access to official information and the potential threat of national security legislation.

Prior to the mission, a number of developments had sparked concern of a regression in press freedom in Slovakia. First, a controversial Press Act came into force in June 2008 containing problematic ‘right of reply’ provisions. Also, a civil defamation ruling against a radio broadcaster appeared inconsistent with modern interpretations of freedom of speech and media responsibility. Finally, Slovak Prime Minister Robert Fico and other politicians had noticeably increased their verbal attacks against the media, including Culture Minister Marek Mad’arič accusing publishers of lying about the abovementioned Press Act¹ and Prime Minister Fico labelling journalists “idiots”² and comparing them to “slimy snakes.”³

¹http://www.spectator.sk/articles/view/31374/10/culture_minister_scolds_media_and_defends_press_code.html (accessed 30.03.2009)

²http://www.spectator.sk/articles/view/33958/28/fico_journalists_are_idiots.html (accessed 30.03.2009)

³http://www.spectator.sk/articles/view/31432/11/ficos_post_press_code_era_has_begun.html (accessed 30.03.2009)

Slovak Media

Slovakia is home to vibrant media. The Ministry of Culture expects to register some 1350 periodicals by the end of April 2009 (the registration procedure is ongoing), 10 of which are daily newspapers – including the *Nový čas*, Slovakia’s most read daily with sales of around 150,000, and the “Berliner” format *Sme*, another popular paper with a circulation of around 60,000.

With regards to the broadcast media, the public service Slovakia Radio and Slovak Television exist in their current form since parliament established them on 24 May 1991. Both are “national, independent, information, cultural and educational public service” institutions according to §2.1 of their relative founding acts, and a council of 15 members elected by parliament governs each. A total of 126 additional television stations and 28 radio stations broadcast in Slovakia. All Slovak broadcasters are regulated by the Council of Broadcasting and Retransmission – a body of nine members also elected by parliament. Among other things, this council has the authority to levy financial penalties on broadcasters who breach the Act on Broadcasting and Retransmission.

News is also collected and distributed by Slovakia’s two main news agencies, SITA and TASR. SITA is a privately run agency, whereas TASR recently changed from being a state run agency – subordinate to the Ministry of Culture – to being a public organisation governed by a five man council, four of whom are elected by the Slovak parliament, the fifth member elected by the TASR management.

Threats to Media Freedom in Slovakia:

I. Defamation

Defamation of the state and of public representatives (§102 and 103 of the previous Penal Code No. 140/1961 Coll.) was expunged on 1 September 2002. However, criminal penalties for defamation still exist under §373 of the current Slovak Penal Code (introduced in early 2006), making it a crime for an individual to utter an untrue statement that seriously damages another’s reputation. Criminal defamation provisions were not, however, viewed as a serious obstacle to press freedom by the media interviewed during the mission.

Civil proceedings alleging defamation are causing widespread concern in the Slovak media, particularly the tendency to sue for disproportionately large damages. Extreme concern exists

within the media about the independence of the Slovak judiciary in these matters, whose verdicts are often inconsistent with the standards set by Slovakia's EU counterparts.

This is best exemplified by a case IPI reported on in November 2008, involving a lawsuit filed against Radio Viva by a Slovak Judge, Jozef Sorocina. Sorocina originally sued Radio Viva for 10 million Slovak crowns (€330,000) for a 2004 news broadcast that reported the content of an interior ministry press conference in which the minister publicly stated that Sorocina had committed fraud (at the time of the report, police were investigating allegations that Sorocina had falsified insurance documents). The entire broadcast was originally deemed defamatory by the court, even though Radio Viva merely relayed information gathered from an official source. The initial ruling was overturned on appeal, but the highest appeal court confirmed one paraphrase from the broadcast – in abstraction from the context of the original report – as “incorrect and truth distorting,” and therefore defamatory. The court awarded Sorocina 1 million Slovak crowns (€33,000).

Lawyers in Slovakia believe that such a ruling is inconsistent with modern interpretations of the responsibilities of the media. For example, in *Bladet Tromsø and Stensaas v. Norway*, the European Court of Human Rights on 20 May 1999 noted that the press should “normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the contents of official reports without having to undertake independent research.”⁴

IPI's fact-finding mission revealed that the case of Radio Viva is not an isolated example. Sorocina is currently suing at least ten different media outlets for reporting on the same press conference, originally for a combined total of around 132 million Slovak crowns (€4.38 million). Concern over the size of the lawsuits is reinforced by inconsistencies in the judicial proceedings. For example, in a number of his lawsuits against the media, Sorocina's court administration fees were waived due to his drop in earnings while suspended from professional duty as a result of the fraud investigation. This situation was not reassessed once he resumed his post. In addition, the same body of witnesses – apparently friends and family of Sorocina – is claiming to have heard the alleged reputation-damaging reports about Sorocina for the very first time in a variety of different media. This is relevant in such matters, as courts consider this when assessing the level of damages.

⁴ <http://www.echr.coe.int/eng/Press/1999/May/Bladet%20Tromsø%20epresse.html> (accessed 30.03.2009)

According to various sources, the Radio Viva ruling has had an impact on the way that work is conducted by radio broadcasters, as the borders of editorial responsibility have become blurred – the ruling is perceived to have been handed down despite the station operating well within the bounds of ethical journalism. Faith that the judicial system is equipped to deal with such situations has also been drastically undermined, with media professionals involved in cases against Sorocina viewing the European Court of Human Rights as their first opportunity to receive a fair hearing. This lack of faith is compounded by the alleged reluctance of the courts to listen to media experts in the hearings. Furthermore, given that Sorocina bypassed the media regulatory bodies and is seeking unusually high compensation, many view the lawsuits as a thinly-veiled attempt by Sorocina to enrich himself, rather than a genuine effort to seek redress for perceived damage to his reputation.

Instances of Slovak judges pursuing the media through the courts are not new to Slovakia, as the case of *Supreme Court Judge Harald Stiffel v. Sme*⁵ in December 2004, and *Supreme Court Judge Štefan Harabin (now Justice Minister) v. Pravda*⁶ newspaper in December 2002 show. However, the frequency is intensifying. Prime Minister Robert Fico is currently suing at least three media outlets. Justice Minister Štefan Harabin recently winning about €33,000 in damages from *Sme* with regards to a 2004 article underscores the severity of the threat posed by such litigiousness.

II. Broadcasting Regulatory Bodies

i. Councils on Slovak Television and Slovak Radio

Slovak Television and Slovak Radio are each governed by a 15-member body whose membership is directly elected by the National Council of the Slovak Republic (the Slovak parliament). Concerns have surfaced that nominees face little chance of election to either council without strong political support. The potential for political interference in the two public broadcasting institutions is self-evident.

The councils are tasked with guaranteeing the “unbiasedness and independence” of programming, and designating the basic strategy of radio and TV broadcasting while approving “long term” programme schedules. However, sources report that political pressure is exerted on

⁵http://www.freemedia.at/cms/ipi/statements_detail.html?ctxid=CH0055&docid=CMS1132654790541&year=2004

⁶http://www.freemedia.at/cms/ipi/statements_detail.html?ctxid=CH0055&docid=CMS1146578746385&year=2002

Slovak Radio at least, coming in two forms: “pressure on individuals at the top, tying personal politics - and pressure through ‘economics’”. Indeed, Slovak Radio has only recently attained economic independence. In previous years, the need for government loans to balance the budget left it open to political influence, according to those interviewed. In addition, the councils can, with a two-thirds majority, remove the General Director of either public radio or public television. This means that the General Director is also subject to pressure to adhere to a majority line for fear of losing his or her post.

ii. Licensing Broadcasting and Retransmission Council

The Licensing Broadcasting and Retransmission Council has jurisdiction over all broadcasting, public and private. Its nine members are elected by parliament, creating the possibility of political interference. Among other things, the council monitors editorial content of broadcast media, by evaluating its programming. Material that is considered to breach the Act on Broadcasting and Retransmission – for example, by containing illegal product placement or conflicting with the protection of minors – can and does incur financial penalties. The main concern voiced by the Slovak media comes from the lack of consistency in the Council’s decisions regarding when and when not to penalise broadcasters, leaving broadcast editors unsure of exactly what they may or may not broadcast. The fact that this results in financial penalties exacerbates the problem.

III. The ‘Right of Reply’

As mentioned in the introduction, the controversial Press Act that came into force in June 2008 includes problematic ‘right to reply’ provisions obligating newspapers to publish readers’ ‘replies’ to any article they feel has affected their reputation. This right is accorded regardless of whether or not the content of the article is factual, and the reply must be allocated equivalent space and be located in the same location in the newspaper as the original. The concern with such provisions centres on the potential “chilling effect” they could have on political criticism and articles covering public life, for fear of triggering voluminous requests to reply. Such requests also cost a newspaper valuable publication time and publication space, and represent an unacceptable infringement of editorial independence.

According to media lawyers, the language of the ‘right of reply’ provisions allows for a right of reply where a reader of an article feels that their reputation has been ‘touched’ by a particular

print article. It is not specifically stated that the reader must feel that their reputation has been negatively impacted. The vagueness of the criteria is the main concern for media lawyers.

In practice, the ‘right of reply’ has not yet proved as problematic as anticipated. There are no reports yet of self-censorship practiced in fear of the act. Nonetheless, many members of the general public and public figures alike have requested the printing of replies. One daily reports about 50 such requests since the law came into force. As requests of this nature were not received prior to the law coming into force, the effect is an increase in workload that takes up valuable publication time. The same daily reports that two replies have been printed in their newspaper in accordance with the law.

According to media lawyers, the disparity between the number of requests and the number of replies ultimately printed is largely due to formal flaws in the requests, as the law is strict in what must be included for a request to be legitimate. An approximate figure of ‘one in ten’ was given for the amount of requests that are made in accordance with the law, meaning that editors can often avoid having to print a reply – and instead use accepted journalistic means to redress the complaints.

IV. Self-regulatory Mechanisms

The only media-related self-regulatory body in Slovakia is the Press Council. It has existed in its current form since 2002 and was founded by the Slovak Syndicate of Journalists (SSN) in conjunction with the Association of the Periodical Press.

The Press Council deals exclusively with matters relating to the print media. It evaluates complaints from outside the media regarding the editorial content of newspaper and magazine articles, and complaints from within the media concerning matters such as access to information. Seven members from civil society form the council, which convenes on average once every six to seven weeks. Its decisions are measured against the SSN Code of Ethics⁷.

The Press Council received 21 complaints in 2008, and had, at the time of the fact-finding mission, dealt with three complaints in 2009 (for comparison, the Swedish Press Council – a model that is often held up as one of the world’s most successful self regulatory bodies – receives almost 20 times as many complaints annually although the country itself has only twice the

⁷http://ethicnet.uta.fi/slovakia/the_code_of_ethics_of_the_slovak_syndicate_of_journalists

population). In theory, newspapers should publish the decisions of the Press Council. The council itself admits to implementation problems. Newspapers often either refuse to publish the decisions, or publish and then criticise them. Indeed, not all media see a need for the self-regulatory body, with most of the opinion that their own internal code of ethics suffice to deal with complaints.

V. Access to Information

Legislation-based access to public information – guaranteed in Slovakia by Act No. 211/2000 on Free Access to Information – does not appear to be a problem for the media, with built-in sanctions supporting co-operation with requests. Some media reported individual problems from time to time, but these are considered problems with individuals rather than structural problems.

With respect to access to information in a broader sense, some hurdles were identified. Slovak Radio reports being denied interviews with public officials in the past, although this situation has improved in recent times. The prime minister, however, has his own set of special conditions with regards to taking part in political debates, refusing to appear in the presence of opposition politicians, therefore restricting appearances to being with journalists alone.

The public service broadcasting councils insist that discussion shows to which two or three opposing politicians were invited, but only one or two attend, should not go ahead as scheduled to avoid political bias. However, concerns were voiced among the media that this principal is only applied by the broadcasting councils in the absence of coalition politicians.

VI. Anti-Terror / National Security Legislation

The media representatives did not report any particular problems posed by anti-terror or national security legislation. As a European Union member, Slovakia is subject to EC Directive 2006/24, which requires that telecommunications data be stored for up to two years for possible use in criminal investigations. This legislation poses a potential threat to journalists' ability to protect the confidentiality of their sources. Slovakia joined Ireland in an unsuccessful attempt to have the directive annulled at the European Court of Justice, but the opposition was not based on concerns regarding media freedom.⁸

⁸<http://curia.europa.eu/en/actu/communiqués/cp09/aff/cp090011en.pdf>

Eight provisions (other than that penalizing defamation) in the Penal Code limit free speech. These include §424, which criminalises incitement to national, racial and ethnic hatred, and §338, which criminalizes the glorification of a criminal act. While these pose potential threats to media freedom, they were not highlighted by media representatives as particular causes for concern.

Recommendations

In light of its findings during its assessment of Slovakia's media environment, IPI recommends the following:

- **Remove criminal defamation provisions:** Although rarely enacted, criminal defamation provisions must be removed from the penal code. This is a general recommendation to all European Union countries and beyond, but in the EU context this is of particular relevance, as its members are held up as benchmark democracies for other countries outside the region, some of which also maintain criminal defamation and use it to silence and imprison journalists.
- **Encourage dialogue between media representatives and judges to sensitise the judiciary to media matters:** The approach taken by some members of the Slovak judiciary when dealing with matters relating to media freedom – for example, in civil defamation matters like those currently being pursued by Judge Sorocina – suggests a need for enhanced awareness of media issues.
- **Strengthen media self-regulatory bodies:** Bodies such as the Press Council need to be strengthened, and their mandate must be expanded to cover all forms of media. A point needs to be reached where self-regulatory bodies are considered the natural first port of call for those who seek to redress perceived damage done to their reputation by the media, thus providing a viable, credible alternative to civil litigation or to legislation mandating the 'right of reply'.
- **Remove the 'right of reply' from the Press Act:** The 'right of reply' provisions in the Press Act remain a threat hanging over the heads of journalists. Even if publications have not been forced to print replies to the extent originally feared, this appears to be due to formal errors in reader applications. If such errors are addressed, the chances of newspapers being inundated with requests are still high. Furthermore, the print media

regularly receives requests to have replies published. Whether formally correct or not, these still require publication time to be processed internally.

- **Ensure the independence of public sector broadcasting.** In particular, due to the concerns voiced of political pressure exerted on Slovak Radio from inside the Council of Slovak Radio, and the potential for political influence in both the Council of Slovak Radio and the Council of Slovak Television, the government must review the management structures of both organisations to ensure that the necessary safeguards and protections are in place to keep public sector broadcasting at arm's length from politics and thereby able to fulfil its mandate to provide independent and diverse information to the public.

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