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Human Rights and Democracy Violation Early Warning *Weekly Newsletter* No. 43

Does the new Information Law abolish media freedom in Serbia?

At its Aug. 31, 2009 session, the People's Assembly of the Republic of Serbia passed the amended *Law on public Information* (hereinafter: LoPI) whose provisions provoked much turmoil in the public even before its adoption. It also caused bad blood in the ranks of the ruling coalition: since some of its member-parties refused to support the LoPI, the Government had to lobby for support among opposition parties and MPs. Unable to secure sufficient support and faced with a wave of public protest, the Government postponed the vote until late August.

The amended Law comes on this Sep. 8, 2009 into force.

One of the key objections argued that there had been neither a public nor any form of expert debate on the draft; not even a month's recess set until parliamentary support was mobilized, was used to organize any substantial and structured debate. However, this objection was raised with much loudness by the very persons, groups and parties who had supported Serbia's 2006 Constitution, which was imposed not only without public debate, but without making its text public prior to the vote in Parliament as well. It is for these reasons that this objection did not carry the desired weight: if the Constitution was allowed to „pass“ in an identically undemocratic manner, why should any other law placed below it in the hierarchy of legal instruments?

Despite the harsh vocabulary used to condemn the LoPI in a flood of media reports, one cannot resist the impression that its text has in fact been read by only a few of those who criticize it: having launched a full-fledged campaign, they often resort to the usage of terms such as „dictatorship“ or „death of the media“. Paradoxically, those who have during the 1990s devastated the media scene in Serbia as propagandists, war mongers and hardcore nationalists, are now at the helm of that campaign. They include **Nino Brajović** and **Milorad Vučelić**, and are flanked by the Chairwoman of the Association of Journalists of Serbia (UNS) Ljiljana Smajlović, who was until recently Editor-in-Chief of the (partly Government-owned) *Politika* daily, appointed by the **Koštunica** Government. **Rade Veljanovski**, a lecturer at the Belgrade Faculty of Political Science, should also be mentioned: having authored the previous LoPI, his reaction to the amended bill seemed somewhat personally colored, probably due to the fact that it was drafted without his participation. Having



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presented himself as the only „authorized“ writer of all media law texts -- past and future alike -- he had not been „consulted“ this time.

It is therefore necessary to analyze LoPI's both good and bad aspects in a sober and responsible manner, void of emotions and unnecessary politization.

It is apparent that LoPI is conceived in a way which renders it correspond not with the media and public information in general, as much as turning it into a tool for punishments and financial sanctions it provides for.

Founding of the media

The amended LoPI stipulates that media can be founded only by a domestic legal entity (physical persons are thereby excluded), which is then entered into a Registry run by an authority in charge of registering businesses. The Minister in charge of information will elaborate a more precise procedure such Registry is to be run in. The amended LoPI retains the old bill's provision that domestic and foreign legal entities and physical persons can be founders of legal entities that found media, but only a domestic legal entity can act as a founder of media.

The right to dispose of media

LoPI expressly forbids disposal of the right to media¹ and of the right to publish media, and considers contracts to that effect null and void. However, it does not provide for any other punitive measures in cases of media disposal which goes against the law. Nevertheless, the question of conformity of this limitation of the right of disposal with the law and the Constitution is to be posed.

Media Registry

In cases when media is published/broadcast without being entered in the Registry, as well as in cases when media begins being published/broadcast under the same or a name similar to one deleted from the Registry, or has ceased to exist or being published/broadcast, the competent Commercial Court shall – on the Public Prosecutor's motion – pronounce the **measure of temporary**

¹ In Serbia it has become numerous media owners' standard practice to liquidate their highly indebted firms and continue publishing the media under the auspices of a newly incorporated one.



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suspension of the said media's activity. This measure's emergency character is secured by the Commercial Court's obligation to pronounce **the measure of temporary suspension within 12 hours following the Public Prosecutor's motion, pending final judgement.** In a nutshell, this means that an infringement of these rights on the owner/publisher's part almost automatically (within 12 hours) ensues temporary suspension.

In cases of such infringements relating to the Registry, **the owner/publisher shall also be fined between 1,000.000.00 to 20,000.000,00 RSD²,** whereas a court will also pronounce the punitive measure prohibiting further publishing/broadcasting.

The person designated by the owner/publisher as responsible shall be fined 200,000 to 2,000.000 and be punished by the court with the prohibition to perform certain duties. It should be underlined that the LoPI seems not to provide for the possibility that the court pronounces the said measures: **it is obliged to pronounce them.**

The authority in charge of the Registry is obliged **to issue each owner/publisher's monthly account statements quoting the balance of the monetary part of their capital,** as well as **a review of all media owned/published by any owner/publisher. Such** review shall be submitted to a **law enforcement authority** which shall notify the competent Ministry within three days of all cases of all fines collected by means of law enforcement.

Presumption of innocence

Violations of the presumption of innocence, defined as „if a person is designated in a media as a perpetrator of a felony or crime punishable by law, or pronounced guilty or accountable prior a final judgement ruled by a court or another competent authority“, the following punitive measures are foreseen:

The **owner/publisher** of the media in question shall pay fines amounting to **25% to 100%:**

- **of the total value of sold circulation of** a print media delivered to distributors on the day the incriminated information was published, or **of the total value of advertising space in that particular issue;**

² €1 equals RSD93.5.



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- **of the value of advertising space in electronic media on the day the program containing that information was aired;**

If the violation of the presumption of innocence principle was committed on a **front page or in lead announcements of news broadcasts**, the owner/publisher shall be punished:

- **by a fine in the amount corresponding to a grand total of the circulation delivered to distributors over a period of seven days beginning with the day of the incriminated information's publishing, as well as the value of advertising space in that media sold over that period, for print media;**

- **by a fine which corresponds to the value of advertising space sold over the period of seven days beginning with the day the incriminated information was broadcast by an electronic media.**

A **responsible person** designated by the owner/publisher, as well as a **responsible Editor** shall be punished for this transgression by a fine amounting **200,000.00 to 2,000.000,00 RSD**.

Violation of the rights of minors

If rights of underaged persons are violated, only **owner/publisher** shall be punished, and not a responsible person or an Editor.

However, the amended LoPI stipulates that, **if these transgressions are committed for the first time, the court shall pronounce a suspended sentence and the protective measure of that sentence being published.**

Although presumption of innocence established in such a way was indeed a provision which caused for most of the resistance by journalists and media, and that it was frequently quite incompetently interpreted as insult or libel and even as subject of value judgments which could lead to the suppression of media, it is necessary to point out that the provision pertaining to presumption of innocence was copied in full from the existing Law on Information (Article 37). However, until now it had a declarative character, set forth as a principle. Now, with the introduction of stricter penalties before the Commercial Court in procedures for commercial offenses, it acquires a new meaning. Namely, the penalties are set too high, while the court, when it comes to commercial offenses, cannot deal with determining of violations of the principle of presumption of innocence, but can only determine that someone who is subject of



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writing or suspicion of involvement in certain affairs was not declared guilty in a final judgment before a court of law.

It is important to emphasize that the same Chapter of the previous Law contains the provision which bans hate speech – a clause which is also of a declarative character. However, the new changes of the Law do not embrace any penalties for dissemination of hate speech and discrimination, so therefore hate speech still remains a stipulation in the LoPI which shows that it does not represent a socially dangerous occurrence. Sanctions against those who systematically lead campaigns of hatred and harangues are not foreseen, and neither are sanctions for campaigns of libel, which represents one of major problems, given the fact that, other than great damages caused against certain persons that way, there is no efficient mechanism of protection from orchestrated propagandist articles. Victims of such campaigns are mostly pro-European politicians, representatives of some NGOs and intellectuals who stand out from generally accepted stereotypes.

Penalties for Offenses

Finally, the **penalties for offenses** which existed in the previous Law were only **increased** if:

- 1) a media is published without imprint or if the imprint does not have the prescribed form and contents or is printed in an inappropriate way;
- 2) the editor-in-chief is not appointed, if the editor-in-chief does not simultaneously act in the capacity of responsible editor, if a person who enjoys immunity of responsibility is appointed editor-in-chief, i.e. a person without residence on the territory of the Republic of Serbia;
- 3) if it does not fulfill the obligation to store and safeguard its records and files;
- 4) if it fails to make its records and files available, as stipulated by the provisions of this Law.

The founder will have to pay, 1,000.00000 and 10,000.000.00 RSD, instead of the current fine of between 100,000.00 and 1,000,000,00 RSD, whereas



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the responsible person will pay a fine ranging from 100,000.00 and 1,000.000.00 instead of the hitherto 10,000.00 to 200,000.00 RSD.

Instead of the penalty of 30,000.00 to 200,000.00 RSD, the responsible media editor shall be fined with a penalty between 100,000.00 and 1,000.000.00 RSD,

whereas the founder with a penalty between 1,000.000.00 and 10,000.000.00 RSD

- 1) if it fails to publish the reply, correction, subsequent information on the outcome of the criminal procedure, i.e. the verdict, upon the court decision, or fails to publish it within deadlines and in a manner stipulated by this Law;
- 2) if it conditions the publishing of the response, correction, subsequent information on the outcome of the criminal procedure, i.e. the verdict, with the payment of the compensation.

These changes of the amounts of fines for the disrespect of said commitments seem justified, given the aim of establishing responsibility in the media, although the question of the amounts may be raised.

* * *

A part of the enumerated provisions of the new Law may be considered desirable and even justified, whereas the other part represents a significant limitation of freedom of expression and public information, which primarily pertains to the provisions regarding the registry of media and measures which the court is obliged to take, such as the banning of activities etc. The ban on disposal of a media is unconstitutional and has no justification.

Presumption of innocence stands as a principle, but the manner in which the sanctions are prescribed, their amounts and, finally, the appointing of the Commercial Court as authorized to determine whether the presumption of innocence was violated, indicates that this area was organized this way in order to provide the authorities with control over the media, rather than to protect the citizens from arbitrariness and false accusations.



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It should be underlined here that the high sums of money collected from publishers/owners as fines will not be used to compensate the damaged persons: as these monies will be paid into the state budget, the question of their expedience and purposiveness seems to be justified from that viewpoint as well.

Finally, the LoPI provision that ensure emergency procedures and urgent damage compensation in cases of violation of certain media discrimination bz distributors represents a clause that should indeed be welcomed.

Outlook:

This Law failed to achieve the necessary balance which should ensure that freedom of expression and public information should not be taken as an absolute and unlimited right (which in Serbia, has turned into a dangerous weapon used by different centers of power), and that, at the same time, new legislative solutions do not lead to unjustified "suffocation" of the freedom of expression and right to public information, which, at this moment, represents an objective jeopardy.

Finally: failure to stipulate clear and strict sanctions for dissemination of hate speech which represents the greatest jeopardy to the freedom of expression – but also for the functioning of all democratic institutions in Serbia – shows that this government has not adopted the Law with the aim to protect the basic values in society, but rather in order to protect its own political interests.