

**How national parliaments legislate the media in CEE:
The adoption and implementation of media legislation in the Czech
Republic, Romania and Slovakia**

*A fieldwork report of the ERC-funded project on Media and Democracy in Central and
Eastern Europe*

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This report outlines the main findings of the fieldwork conducted in March 2013 as part of the Media and Democracy in Central and Eastern Europe project (MDCEE) in the Czech Republic, Romania and Slovakia. Investigating the processes of legislating the media, the report is based on data gathered primarily from semi-structured interviews with local elites involved in various roles in the processes of adopting and implementing media legislation, as well as with experts in the field of media regulation. Secondary sources, particularly media coverage, legal databases, institutions’ websites and annual reports, as well as existing studies, were also used to complement and cross-check information provided by the interviewees, and to enable a more complex overview of the issues studied during the fieldwork.

¹ We would like to thank our interviewees for their time and openness, as well as for facilitating meetings with other potential interviewees. Many of the interviewees also provided us with further valuable material for this report. All errors remain ours.

1. Research objectives and methodology

Research objectives

In the past twenty-odd years, the field of mass media in Central and Eastern Europe (CEE) has undergone numerous, often contrasting legislative changes. The findings of the first two years of the Media and Democracy in Central and Eastern Europe (MDCEE) project suggest that, while pursuing different political and business interests, political elites have repeatedly adopted legislation that undermined the media's ability to effectively perform its democratic functions. This research was designed to further our study of 'the legislature and the media' within the MDCEE framework. Focusing on three countries in the region – the Czech Republic, Romania and Slovakia – this report firstly outlines the main legislative changes in the sphere of traditional media since 1989. Particular attention is devoted to the key battles relating to media legislation, together with the positions of various political and external actors.

It goes without saying that media legislation influences the role of the media in a democracy. In Youm's (2008, 290) words, 'the role of the law, whether libertarian or authoritarian, in shaping or being shaped by journalism is undeniable.' In order to better understand the nature and the content of the legislative provisions, as well as their underlying logic and rationale, this report also investigates the processes of adoption and implementation of press and broadcasting legislation in the three countries. Attention is paid to domestic actors as well as to external actors such as the European Union at the international level, and to institutional structures and mechanisms at various domestic levels where media legislation is formulated and implemented. The research identifies the actors able to influence policy-making in this area, their interests, the degree of authority and the powers they enjoy, the venues at which they operate and the way they shape legislative outcomes. MDCEE research so far suggests that the interaction of formal rules and informal practices is one of the most problematic issues affecting media performance in CEE.² We thus focus on the formal institutions and mechanisms involved in the adoption of media legislation, such as procedural rules, as well as on the informal ones. The influence of informal processes on the formulation of media legislation is particularly difficult to discern. Yet, Štětka's research from the second year of our project, on the example of media/telecommunications market regulation, shows that the intertwining of politics and

² See Štětka, Václav. 2012. "State, Market and the Media: Qualities of public administration and market regulation in Central and Eastern Europe." Online. Accessed 5 August 2013. http://mde.politics.ox.ac.uk/images/stories/documents/stetka%202012%20report_final-formatted.pdf and Örnebring, Henrik. 2012. "Elites, Democracy and the Media in Central and Eastern Europe." Online. Accessed 5 August 2013. http://mde.politics.ox.ac.uk/images/stories/documents/ornebring%202012%20report_final-formatted.pdf

business in the form of regular lobbying or of even more shadowy economic structures can be highly influential in the legislative process.³

The experience of countries in CEE suggests that the process of implementing laws in the field of the media is far from straightforward. In the words of Jakubowicz and Sükösd (2009, 23), Western regulatory frameworks transplanted to CEE legislative orders ‘often turn into a Potemkin village: they satisfy merely formal criteria while their essence is misinterpreted and misused in the interest of political and economic elites’ (Jakubowicz and Sükösd 2009, 23). In this research, we thus also focus on the regulatory authorities that oversee the implementation of broadcasting and press legislation. We explore their organisational structures and their powers, as well as the pressures they face when interpreting and monitoring the application of legislation. We also pay attention to the courts, which can play an important role in promoting or undermining the implementation of particular legislation.

The following section outlines the methodology we employed. The report proceeds by presenting the initial findings of our fieldwork and then draws some tentative conclusions and proposes ways in which this research can be taken further.

Methodology

The Czech Republic, Romania and Slovakia were selected for analysis because of the different sizes of their media markets and also the fact that they represent Central and Eastern European countries that have become part of the European Union at different times. The Czech Republic and Slovakia joined the EU in 2004, while Romania became a member in 2007. These differences may draw attention to a broader set of important issues when examining media policy-making. Also, data could be gathered in the local language of each of these countries. Speaking in their native language put interviewees more at ease and allowed for the conveying of more nuanced information than would have been possible in English. Since translations of the numerous legal and official documents, parliamentary proceedings and media coverage are generally not available in English, we were at the same time able to gather important evidence to complement and cross-check the interview findings. Selecting these three countries for analysis thus enabled us to gain a deeper understanding of the issues than looking fleetingly at all ten countries under study by the MDCEE project.

Following the main data-gathering method of the MDCEE project, semi-structured interviews were employed to investigate the processes and actors involved in adopting and implementing media legislation in the Czech Republic, Romania and Slovakia. Interviews were sought with local political, administrative and civil society elites and with regulators as well as experts in the field of media regulation. The interviews were conducted in Oxford, Prague, Bucharest, Sibiu and Bratislava in February and March 2013 by the authors of this report (for a full list of interviewees see Appendix 1).

³ See Štětka, Václav. 2012. “State, Market and the Media: Qualities of public administration and market regulation in Central and Eastern Europe.” Online. Accessed 5 August 2013.
http://mde.politics.ox.ac.uk/images/stories/documents/stetka%202012%20report_final-formatted.pdf

All Czech and Slovak interviews, bar one, were transcribed and analysed thematically. Due to a technical error, the recording of one Czech interview was lost. This interview was analysed on the basis of a summary written immediately after it was conducted, which was complemented by the interviewee's comments. The Romanian interviews were not recorded because we expected the interviewees to be more open if they knew their words were not being preserved. Instead, notes were taken during the interviews and subsequently transcribed and analysed thematically. For several interviews, a second meeting also took place to further explore the findings from the first interview.

The evidence gathered for this report comes primarily from the policy experts interviewed and the main stakeholders involved in the adoption and implementation of media legislation. The interviews proved to be extremely valuable and have provided us with some insights regarding the law-making process in the field of the media and their regulation. This report presents first-hand data on media legislation processes in the Czech Republic, Romania and Slovakia since 1989. To allow for a more complex overview of the issues, to provide factual and contextual information, and to crosscheck information conveyed by the interviewees, secondary sources were also used. These included institutions' websites, the texts of laws, legal databases, official documents, parliamentary proceedings, media coverage of these processes and existing studies.

2. Initial results

The following sections offer an overview of selected findings from the interviews about the processes of adoption and implementation of media legislation in the Czech Republic, Romania and Slovakia. Being of an exploratory nature, this study does not aim for a detailed, comprehensive analysis of the issues considered. The report strives to map the field, to systematise information and to identify key tendencies and patterns. These will aid further investigations and open new ground for an improved understanding of media policy-making in Central and Eastern Europe. First, we briefly summarise the main findings that we consider deserve to be pursued in further research. Second, we provide more comprehensive evidence on each of the issues, as well as an overview of the relevant post-1989 legislative changes and attempts at changing media legislation in the Czech Republic, Romania and Slovakia.

The report finds profound differences between the cases of Slovakia and the Czech Republic, on the one hand, and the case of Romania, on the other. These differences may stem from several sources, and are certainly also related to Slovakia's and the Czech Republic's common history. Also, the different dates of accession to the EU may account for further differences between the countries. To give just a flavour of these differences, we can mention that Romania does not have a press law, nor – as this research has found – will it have one in the future. Thus, many provisions that are included in the press laws in the Czech Republic and in Slovakia are included in various other laws in

the case of Romania. Therefore, this report includes a comparative discussion of Slovakia and the Czech Republic and continues with further discussion of Romania in a separate section. Each of the three country studies follows the same structure and methodology.

2.1 Main findings

Volatility of media legislation and the most controversial legislative proposals

Media legislation in the Czech Republic, Slovakia and Romania has undergone many, often contradictory, changes since 1989. In particular, the broadcasting laws and public service media legislation in Slovakia have suffered from high volatility. This research suggests, however, that this does not seem to be an unusual phenomenon compared with other areas of legislation in these countries. An overview of the main legislative changes to press, broadcasting and public service media legislation is included in Appendix 2. Our findings indicate that the relatively high volatility of media legislation has been primarily a result of the lack of a systematic, consistent and conceptual state media policy which would clearly define the long-term public interest in the media sphere and measures for its promotion. As a Slovak interviewee explained, ‘this state has not had a media policy for twenty years; not in relation to how to control the media, but in terms of how it actually envisages the operation of the media environment’ – a media policy ‘which would create the legislative environment based on some systematic conception’⁴ Similarly, the former Chair of the Czech Broadcasting Council argued that ‘a comprehensive media policy simply does not exist here. And I am sure that it never existed.’⁵ This lack of a medium- or long-term strategy is, however, very much in accordance with developments in other areas of policy-making in these countries. Moreover, as suggested by a Czech respondent, it may not be very dissimilar from the state of affairs in Western European countries like Austria, for instance.⁶

The absence of a thought-out media policy that would support the development of a healthy media environment seems to stem from the decision-makers’ general lack of understanding of media issues. Demonstrative of this is the alleged reaction of Václav Klaus, the former Czech Prime Minister, when asked in the mid-1990s to explain his government’s media policy by a member of the Broadcasting Council, an institution that, according to the law, implements the state media policy. To this Klaus allegedly answered: ‘Media policy? What is that? I cannot define it.’⁷ The often conflictual relations between politicians, on the one hand, and the media and journalists, on the other, may further

⁴ Personal interview with Miroslav Kollár.

⁵ Personal interview with Václav Žák.

⁶ Personal interview with Václav Žák.

⁷ Personal interview with Milan Šmíd. See also Šmíd, Milan. 2010. “Nová vláda – starý přístup k mediální politice“ [New Government – Old Approach Towards Media Policy]. *Louč*, 13 July 2013. Online. Accessed 6 August 2013. <http://www.louc.cz/11/2220713.html>

explain certain patterns of media legislation development. Considering the media to be highly influential in shaping public attitudes and often deeming media coverage unjustly critical of their own actions, many politicians have developed an antagonistic relationship with the media. As a result, they have seen no reason to introduce a media policy that would create stimuli for an optimal functioning of the media environment. A Czech media expert and journalist put it in the following terms:

Unfortunately, the experience of the past twenty years shows that all the [Czech] political representations have lacked a vision of the role of the media in society, not understanding why the state should have a long-term, consensual media policy, why it [the state] should be interested in the functioning of the media, which they have for long considered as their enemies.⁸

Thus, rather than adopting laws that would support the state's vision of public interest in the media sector, decision-makers generally simply respond on an *ad hoc* basis to changing circumstances in the media landscape, to various scandals or to conflicts with the media. In the words of one Czech interviewee, media legislation is 'considered a way of redressing some current problem.'⁹ In the words of one Slovak interviewee, the drafting of media legislation thus always 'depended on the quality or skills of the concrete people who prepared legislation, and on their responsibility to examine what impact it will have on the environment.'¹⁰ Although such an approach is not unusual in other areas, it does not assist the democratic performance of the media, particularly given that the respondents regarded the level of media expertise of decision-makers and some civil servants as insufficient. One expert thus argued in relation to Slovakia that since 'the structure of the media environment is created *ad hoc* by individual laws', which are 'often incoherent', the process of adoption of media laws 'confuses the [media] environment rather than anchoring it systematically.'¹¹ Many interviewees pointed out that the most substantial amendments to broadcasting legislation (highlighted in bold in Appendix 2) in the Czech Republic and Slovakia were triggered by technological developments in the audio-visual sector, mainly in relation to digitalisation, together with the need to transpose new European legislation. It should also be noted that the broadcasting and public service media laws had to be amended in 1993 and shortly thereafter in response to the division of Czechoslovakia since new national regulators and institutions had to be established.¹² Various scandals and crises in public service media institutions have also been a source of changes in media legislation. Other, smaller amendments in broadcasting legislation have been a result of proposals usually put forward by parliamentary Deputies to deal with partial issues such as the age-suitability of particular television programmes.

⁸ Personal interview with Milan Kruml.

⁹ Personal interview with Milan Kruml.

¹⁰ Personal interview with Zuzana Mistríková.

¹¹ Personal interview with Miroslav Kollár.

¹² Personal interview with Zuzana Mistríková.

The lack of a conceptual or systemic vision of media policy also seems to have allowed decision-makers to amend media legislation, at least in part, in accordance with their and other actors' various political and business interests. One Slovak expert did not doubt that various Slovak Ministers of Culture had tried to 'tackle problems in the media environment.' However, he suggested that 'another different dimension is always associated with the expert solution, which eventually shapes the end result.'¹³ This, for instance, explains the frequent changes in legislation following a change of government that we can almost regularly observe in the three countries. As described by one Czech expert, 'a narrow party-political point of view takes in many cases precedence in legislation adoption – it is then no surprise that a change in political constellation brings about extensive amendments of various legal norms.'¹⁴

Given the often antagonistic relationship between politicians and the media, decision-makers have at times attempted to control or stifle the media through the adoption of laws. The evolution of the Slovak public service media legislation suggests the attempts of different governments, with some exceptions, to control Slovak Television particularly through state funding and management selection procedures. The lack of expertise and of thorough consultation with all interested parties to explain the objectives and potential impacts of legislation, and even apparent attempts to muzzle the privately-owned media, have often led to large-scale protests by various domestic and international actors. The Press Acts adopted in the Czech Republic and in Slovakia in 2000 and 2008 respectively were among the most controversial legislative proposals and will be discussed in detail below. Among other controversial laws were the so-called 'Muzzle Act' in the Czech Republic¹⁵ and the 1995 and 1997 proposals of Vladimír Mečiar's government to increase VAT on the 'commercial' print media. Similarly, in Romania Ioan Ghise unsuccessfully proposed a new press law as a weapon against his own opponents in the media.

¹³Personal interview with Miroslav Kollár.

¹⁴ Personal interview with Milan Kruml.

¹⁵ The so-called 'Muzzle Act' (Law No. 52/2009) came into force on 30 March 2009. The Act amended the Criminal Code, the Act on Misdemeanours, and the Act on Protection of Personal Data. Since it was not strictly part of the media legislation, it was not a topic of the interviews and will not be discussed any further in this report. The Act prohibited the media from publishing the names of specific litigants in court cases without their explicit consent. It was originally designed to protect victims of crime, but was considerably extended, on the proposal of a Deputy in the Lower Chamber of the Parliament, in response to media revelations on the basis of police wiretaps, particularly concerning the lobbying practices of a former Minister of the Interior. The Act completely forbade the media from publishing police wiretaps and thus dramatically reduced the possibilities of investigative journalism, especially in cases involving politicians, who were often linked to suspicions of lobbying and political corruption. Non-compliance with the law was punishable by up to five years' imprisonment or a heavy fine. The Act was heavily criticised by the domestic journalistic community and publishers, as well as by various international actors such as the International Press Institute and Reporters without Borders, and attracted the interest of the EU. Due to continuing protests, the Act was amended in June 2011 to allow journalists to publish information from police wiretaps if this was in the public interest.

Information about the law and its criticism can be found on: <http://prisonforjournalists.com/EN/about-the-law/>. Also see Němec, Jan. 2011. 'Náhubkový' zákon změkčíme, souhlasili poslanci' [We Will Soften the 'Muzzle' Law Deputies Agreed]. *Aktualne.cz*, 6 May 2011. Online. Accessed 20 August 2013. <http://aktualne.centrum.cz/domaci/zivot-v-cesku/clanek.phtml?id=699444> and Straková, Naďa. 2009. "Český náhubkový zákon projednáván v institucích EU" [Czech Muzzle Law Discussed in EU Institutions]. *Aktualne.cz*, 6 May 2009. Online. Accessed 20 August 2013. <http://aktualne.centrum.cz/zahranici/evropska-unie/clanek.phtml?id=636542>

Media legislation in the Czech Republic and Slovakia

Domestic actors and processes involved in the adoption of legislation

Governments, represented by the Ministries of Culture, various Parliamentary Committees, individual Deputies, Presidents, and in the Czech case the Senate, are the main domestic actors legislating on the media in these two countries. The findings in this report also highlight the fact that, apart from these formal actors, other stakeholders in the process of creating legislation include various lobby groups of media owners and business interests closely connected to political parties. Both countries adopted similar formal legislative processes. The legislative initiative, i.e. the right to introduce bills, rests with the Ministries of Culture, with individual Members of Parliament or groups of MPs, and in the Czech Republic also with the Senate as well as with a representative body of a self-governing territorial unit.

In Slovakia, the Ministry of Culture figures primarily as the sponsor of major media bills. Our findings suggest that the Ministry sometimes proposes more controversial media legislation amendments through Deputies.¹⁶ Individual Deputies also seem relatively frequently to have ambitions of changing media laws. This is often part of the political agenda of individual Deputies and is not necessarily aimed at improving conditions in the media environment. Typical bills proposed by Deputies have included those on changes of age-suitability for broadcast programmes and on quotas of Slovak music to be played on radio stations. One of the interviewees explained this activity of Deputies in the following terms: ‘Simply everyone understands sport and culture.’¹⁷ These partial proposals put forward by Deputies are often of low quality and are only rarely adopted by Parliament.¹⁸ This is one aspect in which Slovak media legislative processes do not seem to differ from those in Romania, as also explained in the section on Romania.

In the Czech Republic, the Ministry of Culture became the key actor in proposing media legislation only in the late 1990s. Media policy in the former Czechoslovakia was within the remit of the federal government, with the separate national governments possessing only limited powers. After the division of Czechoslovakia in 1993, the Czech Ministry of Culture had the authority only to legislate on the printed press, and not on radio and television broadcasting. A special committee of the Chamber of Deputies of the Czech Parliament, officially called the Permanent Committee for Mass Media, was thus established to deal with media policy. The Ministry of Culture gained the legal authority to prepare state media policy only in 1996.¹⁹ Many important broadcasting law amendments in the Czech Republic have thus been proposed by Parliament. One Czech interviewee estimated that

¹⁶ Personal interview with Miroslav Kollár.

¹⁷ Personal interview with Zuzana Mistríková.

¹⁸ Personal interview with Miroslav Kollár.

¹⁹ Personal interview with Milan Šmíd. See also <http://www.louc.cz/10/2210608.html>

almost half of all laws adopted by Parliament had arisen from proposals by Deputies.²⁰ In contrast, there have been only a few attempts by the Upper Chamber, the Senate, to change media legislation, of which most have been unsuccessful.²¹

The interviewees suggested that the quality of proposals varied and often depended on the particular individuals responsible for their preparation. Several respondents from both the Czech Republic and Slovakia believed that media legislation should be drafted in discussion and cooperation with media experts and all interested parties, and that a bill should reach Parliament only after incorporation of their suggestions.²² Such mechanisms were viewed as crucial for several reasons. Firstly, this would improve the quality of media legislation, since lawmakers might not always anticipate every effect of a proposed norm or might not appreciate every aspect of a proposed solution. Such discussions would thus provide valuable feedback for lawmakers. This was deemed very important by many of the respondents because they felt that the expertise of civil servants at the ministries and their understanding of media issues was often insufficient. One Czech interviewee suggested, for instance, that at the Czech Ministry of Culture media legislation was prepared by legal experts who not only changed it too often, but were not very aware of the practical problems faced by the media. As a result, he characterised media legislation in the Czech Republic as a ‘conglomeration’ of different norms that would need to be rebuilt from scratch.²³ The Slovak respondents felt, while acknowledging the existence of exceptions, that in the past eight years or so the competence and professionalism of civil servants at the Slovak Ministry of Culture had diminished.²⁴

Naturally, lawmakers can never incorporate every suggestion from different interested parties, since these are often contradictory. In the words of the former Slovak Prime Minister, Iveta Radičová, ‘this is impossible, [if this were the case] an unenforceable, internally totally contradictory law would be created.’²⁵ Nonetheless, the sponsor of a bill should explain its stipulations to interested parties, who perhaps did not understand these and could feel that their interests were threatened by the law. Lawmakers should harmonise the relevant interests and adopt a law, which, according to Radičová, ‘will not be discriminatory to any target group.’²⁶ This would in turn ensure support for the bill from interested parties. As explained by Zuzana Mistríková, the former Director of the Media Section at the Slovak Ministry of Culture:

When I worked for the Ministry of Culture, I dare say at that time I had more or less all those who understood it [media issues] best. Yet, I would never dare prepare a law without discussing it with those whom it concerned. And not just because of feedback... but because I am convinced that ... [even] when I

²⁰ Personal interview with Václav Žák.

²¹ Personal interview with Milan Šmíd.

²² Personal interviews with Milan Kruml, Zuzana Mistríková and Iveta Radičová (5 February 2013).

²³ Personal interview with Milan Šmíd.

²⁴ Personal interviews with Miroslav Kollár, Zuzana Mistríková and Pavol Múdry.

²⁵ Personal interview with Iveta Radičová, 5 February 2013.

²⁶ Personal interview with Iveta Radičová, 5 February 2013.

had around me people who were able to identify 99% of issues... you cannot force such an important norm onto someone. Well, of course you can... but then we are where we are.²⁷

According to several respondents, such a process of drafting media legislation could thus reduce the number of substantial amendments made to media bills by Parliament and prevent conflicts and protests against their adoption.²⁸ Mistríková argued that, when proposing media bills, deputies often did not discuss the bill with the media segment concerned, occasionally triggering conflicts. According to Mistríková:

Usually this results in a war. Since even if it is a good idea that really wants to solve a problem, which it is not always the case, if it is not done well, then in the whole context it can cause terrible disaster. It then ends with those wars when you try for the bill to be brushed off.

Although both countries adopted formal mechanisms designed to ensure that the proposals of experts and target groups were taken into account during the legislation drafting stage, the interviewees argued that whether this happens in practice varies depending on particular individuals and parties in power. Bills are formally subject to a consultation process before reaching Parliament. During this process different state authorities (primarily ministries), civil society and interested parties (publishers' associations, media owners and/or journalists) can submit their suggestions and amendments. In general, the respondents felt that, with a few exceptions, this had in recent years not been the case in relation to media legislation. In the words of a Slovak expert, 'The problem of this country is that expert authorities are really not respected and thus most of the time in the last 10-15 years media laws were, in my opinion, not prepared in a competent manner.'²⁹ This lack of consultation had been even more striking in the case of Romanian legislation on the media, as is best explained by an analysis of the Criminal and Civil Codes.

The processes of preparation of the Czech and Slovak Press Acts may serve as prime examples of the point discussed above. The laws were prepared by the respective Ministries of Culture, in both cases during the terms of office of governments that were characterised by their antagonistic relationship with the media, and largely without the proposals of publishers, experts or civil society being incorporated into the bills. As a result, both laws triggered extensive protests from domestic and international actors. Importantly, and similarly to the Romanian experience, both Press Acts were only adopted after several unsuccessful proposals. Another example mentioned by Slovak interviewees was the introduction of the Act on the Radio and Television of Slovakia,³⁰ which merged the two public service institutions into one as a result of dire financial situation of Slovak

²⁷ Personal interview with Zuzana Mistríková.

²⁸ Personal interviews with Milan Kruml and Zuzana Mistríková.

²⁹ Personal interview with Miroslav Kollár.

³⁰ Act No. 532/2010 Coll.

Television. The consultation process lasted three days,³¹ leaving little space for expert discussions, and the law itself was adopted in shortened parliamentary proceedings that lasted less than a month.

After the consultation process, and discussions and approval by the Cabinet, a bill is introduced in the national Parliaments (the Lower Chamber of Deputies in the Czech Republic). The rules governing parliamentary proceedings in the Czech Republic and Slovakia are also comparable.³² Bills go through three readings or discussions in the plenum before adoption by Parliament. At the first reading, the sponsor introduces the bill to the Deputies for general discussion. At this point it is not possible to introduce amendments. Parliament may return the bill to its sponsor for revisions; decide not to carry on discussing the bill; or decide to discuss it at a second reading. If the Deputies decide to move the bill to a second reading they also assign the committees by which it will be discussed. Every bill has to be discussed by the Committee for Constitutional and Legal Matters, to ensure that it is not in conflict with other laws. Media bills are usually also assigned to the Media Committee and, depending on their nature, to others as well. One of the committees coordinates the work and harmonises all their proposals. The sponsor of the bill participates in the discussion in the committees, offering explanations and justification for the bill. With approval from the committee, other actors, such as experts or representatives of the interested parties, can also participate. Each committee produces a statement in which it proposes to adopt or not to adopt the bill; the statement also includes amendments agreed upon by its members. If the bill is discussed in several committees, the coordinating committee also produces a common statement. If the committee proposals are contradictory they must be harmonised on the basis of further discussions. The committee statements are not of a binding nature for Deputies in the plenum, but serve purely as recommendations. Nonetheless, as a former MP argued, Deputies usually adopt committee proposals of a legislative-technical nature *en bloc*.³³ Each individual Deputy can also propose amendments to the bill. For an amendment to be discussed, the proposing Deputy must gain the signatures of at least 15 other Deputies in support. The plenum then deliberates and decides on the amendment proposals. Unless Parliament decides to return it to the sponsor for revisions, the deliberations on the bill continue in a third reading, where only technical and linguistic amendments can be proposed. After the deliberations, the Deputies either pass or reject the bill as a whole.

In the Czech Republic, after a bill is passed in the Chamber of Deputies, it is discussed in the Senate in a single reading. First, expert discussions take place in the committees. Since ‘the committees are aware that the Chamber of Deputies endorses Senate amendments as a whole, the Senators often propose only such amendments that have a chance to be adopted by the Chamber of

³¹ “Krajcer pripúšťa, že pripomienkové konanie k RTS mohlo byť dlhšie” [Krajcer Acknowledges That Consultation Concerning RTS Could Have Been Longer]. Medialne.sk, 27 October 2010. Online. Accessed 6 August.

<http://medialne.etrend.sk/televizia-monitoring/krajcer-pripusta-ze-pripomienkove-konanie-k-rts-mohlo-byt-dlhsie.html>

³² See the website of the Czech National Parliament at <http://www.psp.cz/sqw/hp.sqw?k=331> and the Parliamentary proceedings of the Slovak National Parliament at http://www.nrsr.sk/web/Static/sk-SK/NRSR/Doc/zd_rokovaci-poriadok.pdf

³³ Personal interview with Zuzana Mistríková.

Deputies as a whole.³⁴ If the Senate approves the bill in its entirety or decides not to deliberate on it, the bill reaches the President. If the Senate rejects the bill or passes amendments, the bill has to be discussed again in the Chamber of Deputies, where the Deputies can overturn the Senate's veto by an overall majority of their votes (101).

Since the Slovak National Parliament only has a single chamber, after the adoption of the bill in Parliament it is considered by the President. Presidents in both countries can either sign the bill or return it to the (Lower Chamber of) Parliament, together with their reasoning for doing so. Deputies can break the President's veto by an overall majority of votes (101 in the Czech Republic and 76 in Slovakia).

In relation to the adoption processes in Parliament, our findings indicate that the Deputies are quite active in proposing amendments to bills during the plenary discussions. The various amendments are often contradictory. As explained by Iveta Radičová, as a result of discussions in committees, the government sometimes prepares amendments to media bills, which are later proposed by Deputies. At times the number of proposals is so large that, according to Radičová, 'those leading the parliamentary procedure have problems counting the numerous deputy proposals and avoiding contradictory proposals.'³⁵ Many interviewees also suggested that, with few exceptions, the level of expertise on media issues among Deputies in the two countries was rather low, which may partially explain why Deputies propose contradictory amendments. One Czech interviewee, for instance, drew attention to the fact that during the plenary discussion on the 2007 Digital Amendment to the Broadcasting Act, over 300 amendments were proposed by Deputies. He added that it was clear from the plenary discussion and the proposed amendments that the Deputies 'did not know what they were voting on.'³⁶ The lack of expertise also seems to apply to the members of the respective Media Committees. In the words of a Slovak expert, 'I have been going there for ten years and I can count on the fingers of one hand the people who are not even media experts, but who would understand it at least a little or were at least so open that it is possible to talk to them and who would have the interest to understand it...'³⁷ Another Slovak expert argued that the willingness of Deputies and committees to try to understand media issues varies depending on the individuals in each case. For instance, the Chair of the designated committee discussing the 2006 amendment to the Slovak Broadcasting Act relating to electronic communications understood that it was rather demanding and extensive in nature. He thus organised on behalf of the committee a number of expert commissions, which explained the issues to the Deputies.³⁸ According to Milan Kruml, Czech Deputies are not experts in the area of mass media. In contrast to Germany or the UK, the parliamentary factions do not usually have experts on media issues who would be able to prepare the faction's statements on a bill or who

³⁴ See the website of the Chamber of Deputies of the Czech Republic: <http://www.psp.cz/sqw/hp.sqw?k=331>

³⁵ Personal interview with Iveta Radičová, 26 February 2013.

³⁶ Personal interview with Václav Žák.

³⁷ Personal interview with Miroslav Kollár.

³⁸ Personal interview with Zuzana Mistríková.

would prepare a high-quality media bill.³⁹ Zuzana Mistríková commented on the preparation of party statements by the respective experts from each faction in the following words: ‘I am not saying that it is not like that... again, I am convinced that some topics go on like that [sic] in the Parliament. Yet, I do not think that it is the majority of them.’⁴⁰

Our findings suggest that, in addition to the formal processes discussed above, less formal practices promoting different political and business interests also play an important role in the making of media legislation. We identified two kinds of informal practice. Firstly, lobbying by different interest groups, typically media owners, seems to occur at all the different stages of adoption of media legislation; that is, at the ministry level, in Parliament as well as during implementation. This kind of informal influence was identified by respondents as not dissimilar - if perhaps more prevalent - from practices in Western democracies, where lobbying aimed at influencing political decision-making in favour of the interests of business and other interest groups is considered a common practice. Secondly, our research suggests that at times more shady relations between shadow business structures and/or rich oligarchs and politics also influence the legislation process affecting the media. In this regard, Iveta Radičová argued that, as a result of the non-transparent privatisation processes in the post-communist countries, a so-called ‘oligarchic democracy was established’. In Radičová’s words:

An “oligarchy” was created in the society, in the sense of interconnections between new owners of property and politicians. This “oligarchic democracy” produced a visible part of power – the Government and the Parliament, and an invisible part of power – the “economic oligarchy”... it really meant a creation of a new establishment and power, invisible but very strong power in society based on networks and concrete political decisions.⁴¹

These informal relationships, however, seem to be more pervasive in policy areas other than the media.

As Václav Žák suggested, in contrast to Western Europe, the process of maturing or gradual evolution of electronic media legislation never occurred in the post-communist countries. Instead ‘legislation making got under lobbyist pressures.’⁴² Žák further indicated that, rather than expert discussions, the primary external actors influencing media laws in the Czech Republic were lobbyists, since ‘the legislative process is *de facto* in their hands.’ Žák also believed that, in comparison to Germany or the UK, the influence of lobbying was much stronger in the Czech Republic, where ‘politics loses to the media [owners].’⁴³ Concerning the nature of lobbying of different media owners

³⁹ Personal interviews with Milan Kruml.

⁴⁰ Personal interview with Zuzana Mistríková.

⁴¹ Personal interview with Iveta Radičová, 26 February 2013.

⁴² Personal interview with Václav Žák.

⁴³ Personal interview with Václav Žák.

in the Czech Republic, one expert indicated that this largely worked through persuasion during informal lunches with various MPs. He added that some MPs shared the neo-liberal values of limited regulation and were thus receptive to lobbying on owners' interests. Others, it would seem, simply wanted to do 'the right thing'. Although these cannot be excluded, there is little direct evidence of more shadowy or corrupt practices.⁴⁴ Milan Kruml argued that media owners lobbied not only the Ministry of Culture, prior to or during the process of legislation drafting, but also tried to influence individual MPs.⁴⁵ The respondents did not agree on the influence of lobbying in the Czech Senate. Milan Šmíd, for instance, believed that the Senate was not under the sway of lobbying pressures as much as the Chamber; it therefore rather exercised checks and balances on the latter's decisions.⁴⁶ In contrast, in Václav Žák's view, lobbyists who were unsuccessful in the Chamber of Deputies tried to lobby the Senate.⁴⁷ Concerning informal influence in the Chamber of Deputies, Václav Žák argued that, in the majority of the cases, media bill proposals and amendments to bills from Deputies, which were then proposed by the ministry, were written by lobbyists. To illustrate this point, Žák used his experience with the drafting of the 2001 Czech Broadcasting Act, which had to be adopted before the Czech Republic's accession to the European Union. According to Žák, various lobbyists were present at a meeting organised by the then Minister of Culture with the aim of drafting the new legislation, where he was invited as an expert. In Žák's words:

There sat a full room of lobbyists, from a director of a commercial television to directors of commercial radio stations to the directors of public service radio and television etc. They were reading the European [Television without Borders] Directive, trying to understand what the terms in the European Directive mean. So the discussion about media legislation making in the Czech Republic looked like this.⁴⁸

The resulting governmental bill, which tried to harmonise the audio-visual legislation with the EU Directive, was heavily criticised in Parliament as 'a police law' and consequently withdrawn. Due to the time pressure on harmonising the legislation, Deputies across parties thus came to an agreement on a bill introduced by a group of Deputies, which was adopted as Law 231/2000 Coll. – the Broadcasting Act. In the words of Žák, the Deputies 'simply sat down and, based on the Television without Borders [Directive], wrote the fundamental law. They tried to weaken it as much as it was possible.'⁴⁹

Lobbying also seems to be prevalent in the processes of adopting media legislation in Slovakia. In the words of Iveta Radičová, 'lobbies and interest groups always have discussions with different

⁴⁴ Personal interview with Milan Šmíd.

⁴⁵ Personal interviews with Milan Kruml.

⁴⁶ Personal interview with Milan Šmíd.

⁴⁷ Personal interview with Václav Žák.

⁴⁸ Personal interview with Václav Žák.

⁴⁹ Personal interview with Václav Žák.

deputies and try to put their own visions and changes to the law. And if they find somebody who agrees...⁵⁰ Our findings suggest that lobbying is done by managers and owners of the media. As in the Czech Republic, this form of informal influence via persuasion seems to occur at all levels, independently of the political parties in power. Pavol Múdry, the former Director of the privately funded SITA news agency and current Chair of the International Press Institute of Slovakia, described lobbying practices at governmental level:

There are different influences as well as lobbying. I cannot hide this. We would go, I used to lobby all the time for TASR not to be state [news] agency with state funds because this is absolutely unacceptable in the market that someone has state funding and someone does not. This has never been successful. We did the same with the copyright law... We fought that for 7-8 years. It did not matter whether there was a right-leaning or a left-leaning Government. We would go and lobby. Publishers go, broadcasters go.... So we talk but they do not always let us advise them.⁵¹

Múdry also described how lobbying works in parliamentary committees:

There are approximately 15 members of the Media Committee and you try to talk to them so that they embrace your idea. That is how it is done. That is a normal function of lobbying as everywhere else. You try to explain it to them so that they have arguments. And then it is up to the people how they understand it and how they convey it [in the plenum].⁵²

Múdry further added that, even if MPs adopted the ideas of the different interest groups and propose amendments in Parliament, they often either were unable to interpret these or added their own ideas, which were contradictory to the original interests.

It would seem that in Slovakia owners of the audio-visual media are in a better position to transpose their interests into legislation through lobbying. As explained by Miroslav Kollár, this relates to the power of individual players. Since the Slovak press, as opposed to the electronic media, has long suffered from low circulation and falling readership figures, the influence of publishers is relatively low. Moreover, according to Kollár, 'all politicians feel that they understand television. All want to see themselves there, thus television owners have good cards when they want to bargain things for themselves.'⁵³ Kollár further argued that, given the lack of expertise among civil servants and MPs, it might be easier for the interest groups to transpose their interests into legislation. In Kollár's words, 'they simply have money at their disposal that can pay for top lawyers, who can write it [legislation] for them as they need. And they play a monumental expert power play against the civil

⁵⁰ Personal interview with Iveta Radičová, 26 February 2013.

⁵¹ Personal interview with Pavol Múdry.

⁵² Personal interview with Pavol Múdry.

⁵³ Personal interview with Miroslav Kollár.

servants and politicians.’⁵⁴ He described the ways in which media owners influenced the adoption processes in the following terms:

Sometimes they respond *ad hoc*, if someone takes the initiative to solve some partial area in a way that does not suit their business. Thus naturally they react and try... they always find a carrier ... Depending on how the political cards are cast they can be initiators themselves;... that is they take the [legislative] initiative through the Ministry. If this is not successful, or the political cards are cast in a different way, they break it in the Parliament.

Given the media ownership structure in Slovakia, it would seem that the financial group J&T is the main external actor informally influencing media legislation in Slovakia.⁵⁵ J&T is a Slovak investment group that is successfully involved in many state procurement and privatisation projects. Allegedly, J&T has connections to the SMER-SD party of Robert Fico and wields strong influence over the Slovak political scene. J&T owns a national television channel and the largest broadcasting operator, and supposedly stands behind a national newspaper.⁵⁶ The group was mentioned by several respondents in connection with the more shady informal practices, particularly in relation to the adoption and implementation of the 2007 Digital Amendment of the Broadcasting Act. In this regard Pavol Múdry claimed that ‘this was the other type of lobbying, which more precisely is a lobbying of owners of big corporations, financial groups etc. We know a lot about it but we cannot prove it.’⁵⁷

International actors and processes

International actors have also played an important role in the adoption of media legislation in the Czech Republic and Slovakia. The Council of Europe (CoE), the Organisation for Security and Cooperation in Europe (OSCE), the World Trade Organisation (WTO) and various non-governmental organisations (e.g. European Broadcasting Union, International Publishers Association) as well as national governmental departments in a number of other countries (e.g. US Agency for International Development, UK Department for International Development) were particularly influential in the drafting of media legislation in the early years of transformation (Harcourt 2003). The European Union’s *acquis communautaire* has become especially important since the accession negotiations in the late 1990s. The EU has been directly influential in audio-visual media legislation, since individual countries had to transpose into their own national legal orders the Television without Borders Directive as well as the subsequent directives dealing with electronic communications, audio-visual

⁵⁴ Personal interview with Miroslav Kollár.

⁵⁵ Personal interview with Miroslav Kollár.

⁵⁶ See Czwitkovics, Tomáš. 2010. “Perex má nové predstavenstvo bez Biermanna. Zatial” [Prex Has New Executive Board without Biermann. For Now]. *Medialne.sk*, 6 April 2010. Online. Accessed 20 August 2013. <http://medialne.etrend.sk/tlac-spravy/perex-ma-nove-predstavenstvo-bez-biermanna-zatial.html>

⁵⁷ Personal interview with Pavol Múdry.

services on demand and digitalisation. Our interviewees agreed that the EU creates a framework for media legislation. This framework operates primarily via the different EU directives that the member states must transpose and implement in their own legal orders. Since EU legislation has already been through several negotiation rounds at the European level, in the words of a Slovak expert, it safeguards ‘the basic principles on which a normal, democratic society is founded.’⁵⁸ If national legislation is in conflict with, or if a state fails to implement a directive, it faces the risk of a fine or lawsuit being filed against it at the European Court of Justice. Thus, member countries do generally try to comply with EU legislation. One interviewee suggested that the civil servants at the Ministry of Culture took great care that Czech media legislation complied with ‘Lex Euro’.⁵⁹ In the words of another Czech interviewee, this framework protected against the adoption of ‘totally absurd’ legislation.⁶⁰ On the other hand, another expert suggested that, due to the lack of civil servants with expertise in the media environment, CEE countries typically were not able to formulate their own national interests in negotiations at the European level or to translate these into legislation. On the question of negotiations about issues that member states disagreed on, the same expert believed that, with a few exceptions, ‘our countries typically are not able to explain the problem that it causes in the given country.’⁶¹

At the same time, our respondents acknowledged the key role played by national policy-makers, often influenced by lobbyists, when transposing EU media legislation into the legal orders of their own countries. A Slovak interviewee argued that, despite the obligation to transpose EU Directives, ‘politicians, and especially their civil servants, can dodge them very skilfully.’⁶² Václav Žák, who took part in the drafting of the Czech 2001 Broadcasting Act, asserted that EU legislation ‘provides a framework. The problem, however, is how the framework is used. Then here, of course, it is used so... that they [lobbyists] try to maximally blur it and even weaken it.’⁶³ A Slovak expert claimed that ‘the European legislation determines the direction in a way, but ultimately it depends only on how systematic the legislative process is on the national level.’⁶⁴ A recent example, critically viewed by several Slovak experts in this regard, concerned the transposition of the EU Audio-Visual Media Services Directive in 2012. According to one respondent, the latest amendment to the 2000 Broadcasting Act

is an example [of the way in which] ultimately it is always up to the national implementer; that is, the ruling political elite of the day how they deal with it ... Given which ruling elite was in power,

⁵⁸ Personal interview with Zuzana Mistríková.

⁵⁹ Personal interview with Milan Šmíd.

⁶⁰ Personal interview with Milan Kruml.

⁶¹ Personal interview with Zuzana Mistríková.

⁶² Personal interview with Pavol Múdry.

⁶³ Personal interview with Václav Žák.

⁶⁴ Personal interview with Miroslav Kollár.

in my opinion, they implemented it in a way that turned it on its head – instead of liberalisation they tied up the environment even further.’⁶⁵

The Directive envisaged the implementation of a new regulatory framework affecting broadcasting activities and their use of the new information and communication technologies. The Directive considers audio-visual media services as ever more important for ‘societies, democracy — in particular by ensuring freedom of information, diversity of opinion and media pluralism — education and culture.’ Hence, the proposed framework was supposed to ‘ensure optimal conditions of competitiveness and legal certainty for Europe’s information technologies and its media industries and services, as well as respect for cultural and linguistic diversity.’⁶⁶ Since the issue is very sensitive, the Directive left member states a lot of room in its implementation. Slovakia transposed the Directive into its own Broadcasting Act, granting the competence to regulate audio-visual media services to the Broadcasting and Retransmission Council. Several Slovak experts took the view that this was problematic in terms of supporting competitiveness and legal certainty in this sector as envisaged by the Directive, not least because the Council’s interpretation of the Broadcasting Act suffers from inconsistencies. Moreover, as Zuzana Mistríková warned, the amendment could prompt businesses providing audio-visual media services to move their headquarters to neighbouring countries with more liberal regulation: ‘this kind of business, if it is to become subject to regulation, will move twenty kilometres behind the borders. Thus you will not achieve what you wanted to achieve...’ As further explained by Mistríková:

You suddenly realise that in a country whose only chance, similar to Estonia, is to go with some creative industry... We were the first to have flat rate taxes – an absolutely ideal way to [promote] this type of business in Slovakia... because we will not be producing cars forever. Yet, you kill it with such a folly, due only to the lack of understanding of some person ...’⁶⁷

Since European law lacks competence with regard to press legislation, the EU does not directly interfere in this area by compelling a member state to change contested legislation. As Iveta Radičová explained, ‘the possibility of EU institutions to change something at the level of national states, which is in absolute competence of national states, is weak. There is no way for the EU to pressure the government.’⁶⁸ Instead, the EU and other institutions monitor media legislation and offer feedback,⁶⁹ often proclaiming a media bill to be worded in a non-standard manner and thus indirectly persuading the member state to amend it. Despite the limitations of EU influence on changes in media legislation

⁶⁵ Personal interview with Miroslav Kollár.

⁶⁶ 2010/13/EU Audiovisual Media Services Directive. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

⁶⁷ Personal interview with Zuzana Mistríková.

⁶⁸ Personal interview with Iveta Radičová, 26 February 2013.

⁶⁹ Personal interview with Iveta Radičová, 26 February 2013.

in CEE, many interviewees expressed their gratitude for the framework that the EU provides. In the words of Václav Žák: ‘Thank God for the framework’. Commenting on the ‘weird period’ in relation to the recent democratic developments in the Czech Republic, Slovakia, Poland and Hungary, one Slovak expert argued that, in relation to media legislation, in ‘ 90 percent [of cases] the European legislation rules founded on some constant principles, which are fundamental and enforceable by Europe, ... keep the backbone so that total follies do not happen in these countries’.⁷⁰

Implementation: *de jure vs. de facto*

Media legislation in Slovakia and in the Czech Republic does comply with EU law and with the democratic standards found in advanced EU democracies. Nonetheless, respondents overwhelmingly agreed that implementation was lagging. The former Slovak Prime Minister, Iveta Radičová, asserted: ‘I dare claim that our laws are good.’ She added, however, that the problem in general was with the implementation of legal rules: ‘once it fails with the civil service, second time it fails with local government, third time it fails with judges...’⁷¹ Our findings suggest that policy-makers do not adopt media legislation that clearly appears to breach democratic principles. Instead, as a result of the above-mentioned lack of expertise and the influence of various vested interests, vaguely formulated laws are adopted, leaving room for interpretations favourable to those interests. Zuzana Mistríková argued that lobbying and the shadier relations between businesses and politics in relation to legislation were ‘reflected in the fact that you try to keep the legislation as general as possible, or in case there is some utilitarian interest, as toothless as possible ... so that the grey zone remains large enough for you to be able to find your way in it.’ She, however, did not think that this would apply extensively to media legislation.⁷² Describing the practices of lobbyists, Václav Žák claimed:

I would not say that lobbyists behave completely like dogs suddenly let off a leash... They are also sensible. They just create a space like a grey zone, in which it is not too apparent... the way they [adapt] the [legal] text... Since words familiar from EU directives can be found there, it seems that everything is all right. However, the interpretation and the way it is used is really different.⁷³

In societies where informal practices often take precedence over ‘playing by the rules’, where regulators are weak and the actions of various state administration authorities are poorly coordinated, such ‘toothless’ laws can be misused. Illustrating this point with regard to the Czech Broadcasting Act, Václav Žák asserted that the Act ‘was gradually brought to such a state that it became impossible

⁷⁰ Personal interview with Zuzana Mistríková.

⁷¹ Personal interview with Iveta Radičová, 5 February 2013.

⁷² Personal interview with Zuzana Mistríková.

⁷³ Personal interview with Václav Žák.

to regulate with it. Lobbyists crafted the norm so that it would be impossible to regulate with it and, if needed, they would win [potential] lawsuits.⁷⁴ Zuzana Mistríková described the implementation of media legislation in the following terms:

Naturally, you cannot completely divorce media legislation and its implementation from society, in which it has become customary to abuse rules... The same people work in media as those who do business. Thus when it became natural for the President, the Parliament and Government to abuse rules when needed, why wouldn't business people do it? Hence, it is rather about the political quality and certain social quality in regards to the approach towards the rules of the game.⁷⁵

Similarly, in relation to the influence of informal practices on the implementation of media legislation in Slovakia, Miroslav Kollár argued that 'sometimes the law itself is not sufficient for them to win the game, but through it they create conditions that will enable them to manage the [implementation] process further.'⁷⁶ The implementation of the 2007 Digital Amendment to the Slovak Broadcasting Act would seem to have been an example of the above-mentioned practices, which, however, met with resistance from a regulator. Upon a proposal of the Government, in December 2008 Parliament removed the Chairman of the Telecommunications Office, Branislav Máčaj, due to his poor management of the public tender to choose the digital broadcasting operator. In response to his removal from office, Máčaj asserted that 'it was a gross and unprecedented political interference with the standing of an independent regulatory authority'.⁷⁷ He argued that factors other than the public interest were behind his removal from office: 'Unfortunately, financial interests of powerful business groups standing in the background were also in this case stronger than the public interest.'⁷⁸ According to Máčaj, the conditions of the public tender proposed by his office provided scope for more competition in the media market. This would also have meant dividing the advertising market between more television channels. He accused the ruling party, SMER-SD, and the J&T financial group of interference with the public tender. He alleged that national private television broadcasters desired a convenient model of transition to digital broadcasting that would prevent the entrance of a new competitor to the market, in return for which they had promised not to criticise the government before the 2010 elections. Government and broadcasters rejected all these allegations.⁷⁹

⁷⁴ Personal interview with Václav Žák.

⁷⁵ Personal interview with Zuzana Mistríková.

⁷⁶ Personal interview with Miroslav Kollár.

⁷⁷ "Parlament odvolal šéfa Telekomunikačného úradu" [Parliament Removed the Chairman of the Telecommunications Office]. 2008. SME, 4 December 2008. Online. Accessed 6 August 2013. <http://www.sme.sk/c/4208608/parlament-odvolal-sefa-telekomunikacneho-uradu.html#ixzz2bMcROUdV>.

⁷⁸ Krajanová, Daniela. 2008. "Vážny presvedčil vládu: Máčaj padá" [Vážny Persuaded the Government: Máčaj Falls]. SME, 27 November 2011. Online. Accessed 6 August 2013. <http://www.sme.sk/c/4195429/vazny-presvedcil-vladu-macaj-pada.html#ixzz2bMagtEng>

⁷⁹ "Parlament odvolal šéfa Telekomunikačného úradu" [Parliament Removed the Chairman of the Telecommunications Office]. 2008. SME, 4 December 2008. Online. Accessed 6 August 2013. <http://www.sme.sk/c/4208608/parlament-odvolal-sefa-telekomunikacneho-uradu.html#ixzz2bMcROUdV> and

Broadcasting Councils

The main regulators of the media sector in the Czech Republic and Slovakia are the respective Broadcasting Councils and courts. Press Councils also operate in Slovakia and the Czech Republic. These are the organs of press self-regulation, but are widely considered to be less than influential, with their decisions generally not respected by the press. Our findings indicate that the roles and organisational structure of the Broadcasting Councils in the Czech Republic and in Slovakia are similar. As successors to the Czechoslovak Television and Radio Broadcasting Council, they are the administrative bodies representing the state in each country in the regulation of radio and television broadcasting. Like its federal predecessor, the Slovak Broadcasting Council has nine members. The Czech Council's membership was extended to 13 members in 1996, allowing the political opposition to recommend four Council members.⁸⁰ The members of both Councils are appointed for a six-year term on the nomination of the respective parliaments. The Offices of the Broadcasting Councils employ legal experts and assist the Councils by carrying out tasks related to their organisational, personnel, administrative and technical activities, as well as to the implementation of their decisions.⁸¹

The Councils are responsible for the implementation of the broadcasting laws. In both cases, allocation of broadcasting licences in a co-called 'beauty contest' was initially arguably the most important function of the Councils.⁸² The allocation of licences lost its importance after the analogue switch-off in the two countries, and our interviews therefore focused on the Councils' other functions. The Councils are still responsible for interpreting and monitoring the implementation of the Broadcasting Acts, including decisions on complaints about breaches of the law by political broadcasts accused of violating the principles of 'objectivity and balance' and the sanctioning of broadcasters for failing to comply with advertising rules. Interviewees in both countries agreed that the decisions of the Councils suffered from incoherence and inconsistencies, were unpredictable and lacked any detailed justifications that would help broadcasters avoid breaching the law in future. Moreover, many of their decisions were either not respected by the media or overturned by the courts after appeal. According to the former Chair of the Czech Broadcasting Council, during his term in office 90% of decisions by the Council were overturned by the courts on appeal.⁸³

Krajanová, Daniela. 2008. "Vážny presvedčil vládu: Máčaj padá" [Vážny Persuaded the Government: Máčaj Falls]. SME, 27 November 2011. Online. Accessed 6 August 2013. <http://www.sme.sk/c/4195429/vazny-presvedcil-vladu-macaj-pada.html#ixzz2bMagtEng>

⁸⁰ Personal interview with Milan Šmíd.

⁸¹ See the website of the Broadcasting Council of the Slovak Republic: <http://www.rvr.sk/en/> and the website of the Broadcasting Council of the Czech Republic: <http://www.rtv.cz/en/>

⁸² In its decision, the Council was supposed to take account of particular facts about the broadcasters and the 'quality' of their projects, such as the transparency of a broadcaster's ownership relations, the contribution of a radio or television station to the existing diversity of the market and to local programme production, etc. See Štětka, Václav. 2012. "State, Market and the Media: Qualities of public administration and market regulation in Central and Eastern Europe." Online. Accessed 5 August 2013. http://mde.politics.ox.ac.uk/images/stories/documents/stetka%202012%20report_final-formatted.pdf

⁸³ Personal interview with Václav Žák.

The Czech experts mentioned, for instance, a controversial decision of the Council regarding the Czech version of the TV show Big Brother. In October 2005, the commercial channel Nova TV was fined 5 million CZK (167,000 GBP) for breaching Section 32(1g) of the Broadcasting Act. This section stipulates that broadcasters must not air between 6am and 10pm programmes that could endanger the physical, mental or moral development of children and youth.⁸⁴ The respondents viewed as problematic the fact that the Council was late in imposing a fine on the television channel – only after several weeks of the programme being broadcast – and had not previously issued a warning, as stipulated in the Broadcasting Act. According to Milan Kruml, the problem was that no discussion whatsoever had occurred in the Czech Republic about the suitability of the show. He contrasted the situation with that in Germany, where a discussion between experts, civil society and the regulator had taken place about what was acceptable to broadcast on such a show before it was aired. In his opinion, the decisions of the Council were too conservative and did not help the development of the media environment.⁸⁵ Similarly, in a 2005 article, Milan Šmíd was critical of the Council’s decision, arguing that ‘the television and the public have the right to know to what exactly ... the regulators objected.’ Šmíd added that the mission of the regulator was to interpret the general text of the law and to specify its interpretation according to the concrete conditions of each case. By doing so, ‘it establishes the criteria for future behaviour and decisions of those concerned.’⁸⁶

Our findings suggest that the problem with the Councils’ decisions stems not solely from the system of party appointments or from the influence of different partial interests, but also from the organisational structure, membership and responsibilities assigned to the Councils by law. In the words of Milan Kruml, the issue with the Czech regulator ‘is not an individual failure of the Council and its members, but the status and mission designated to it by the law – in my opinion, the fault is thus not with the Council itself but with the way the law understands the regulatory body.’⁸⁷ The respondents viewed as problematic the fact that the Councils were responsible for making decisions and fining broadcasters for breaching the objectivity and impartiality of programme content. The former Chair of the Czech Broadcasting Council, for instance, argued, that due to the lack of efficient professional self-regulation,

the state has started to take up certain competencies, which should actually not belong to a liberal set up. Thus the Radio and Television Broadcasting Council *de facto* interferes with and sanctions content, which almost approaches censorship under a certain ... more extreme interpretation.⁸⁸

⁸⁴ See also Šmíd, Milan. 2005. “Pokuta ve starém stylu” [Old-fashioned Fine]. Louč, 7 October 2005. Online. Accessed 20 August 2013. <http://www.louc.cz/06/1541007.html>

⁸⁵ Personal interview with Milan Kruml.

⁸⁶ Šmíd, Milan. 2005. “Pokuta ve starém stylu” [Old-fashioned Fine]. Louč, 7 October 2005. Online. Accessed 20 August 2013. <http://www.louc.cz/06/1541007.html>

⁸⁷ Personal interview with Milan Kruml.

⁸⁸ Personal interview with Václav Žák.

Since it is difficult to prove the breach of these principles in court, many of the Czech Broadcasting Council's decisions have been overturned.

The interviewees in both countries also commented on the Council members' lack of expertise or understanding of the media environment and of the law, resulting in inconsistent decision-making. Lawyers in the Council Office in both countries prepare draft statements comprising legal justifications for each decision of the Council. Several respondents, however, argued that the Council members, who were selected from the ranks of various professions unrelated to the media, often made decisions that were in stark contrast to the statements. As a result, the Council regularly issues contradictory decisions on identical cases. The former Chair of the Czech Broadcasting Council, Václav Žák, argued that 'the Council is designed in an unfortunate way.'⁸⁹ He further explained that its Office 'prepares the background material and thirteen amateurs discuss them. And that is an absolute catastrophe because they frequently do not respect the law.' Žák thus concluded that one could hardly expect consistent decision-making from the Council.⁹⁰ Another expert described the decision-making of the Slovak regulator similarly. According to him, following a complaint, the Office experts 'prepare a draft statement, which is legally justified, and "comrade" Council members are with a blink of an eye able to decide differently by 180 degrees depending on whom it concerns and what interest is involved. It [the decision] goes back to the Office, which has to change its own argumentation so that it can justify the Council's decision.'⁹¹ In the words of another Slovak interviewee, 'unfortunately, media illiterates enter the decision-making and they change the decisions prepared by experts.'⁹²

Given the above, several respondents suggested that the Councils should be radically remodelled or abolished, with their competences assigned to new institutions with a professional membership that understood the media and the law.⁹³

The judiciary

The role of the judiciary in influencing media legislation seems to vary between the two countries. In the Czech Republic, courts, and particularly the Constitutional Court, were believed to have played a rather positive role in relation to the freedom of the media. The decisions of the Broadcasting Council are subject to judicial review if appealed by media defendants. Since 2003 all such cases are adjudicated by the Supreme Administrative Court of the Czech Republic. The interviewees suggested that, like the Council's decisions, the judicial decision-making had also been plagued by inconsistencies and formalism. As the former Chair of the Broadcasting Council, Václav Žák

⁸⁹ Personal interview with Václav Žák.

⁹⁰ Personal interview with Václav Žák.

⁹¹ Personal interview with Miroslav Kollár.

⁹² Personal interview with Pavol Múdry.

⁹³ Personal interviews with Miroslav Kollár and Milan Kruml.

explained, ‘the problem is that courts decide in three-member senates and there are many judges. Thus even if you have the same case and this goes to two different senates, there is a high probability that you will get two different decisions.’⁹⁴ However, the respondents also acknowledged that the Supreme Administrative Court had been very important in consolidating case law, although, it would seem, not completely successful.⁹⁵ Thus, while still plagued by inconsistencies and controversial decisions, the interviewees agreed that judicial decision-making involving broadcasting content was gradually improving. For instance, Václav Žák described what he called ‘an absurd decision’ by the Supreme Administrative Court regarding the Council’s ruling concerning live text messages aired as part of a political programme on television. Since one of the text messages comprised demonstrably false information, the Council fined the TV station. The Council’s decision was overturned by the Court after the station pleaded that it could not verify the truth of all text messages in real time and that it was not responsible for the content of the messages. In Žák’s opinion, the Court thus ultimately ruled that broadcasters were not responsible for what appeared on screens.⁹⁶ At the same time, he argued that ‘the courts are definitely in better shape than the civil service. The civil service is subverted also because we do not have a law on the civil service. Owing to that the state is governed by political dilettantes. That is a catastrophe. The courts, however, try to whip it into shape.’ Further, he added that judicial decision-making ‘is generally approaching some convergence over the years.’⁹⁷

Slovak respondents regarded interpretation of legislation by their courts in a more negative light. Slovakia seems to suffer from poor law enforcement due to the courts’ case overload and the resulting lengthy proceedings. Considered particularly problematic was judges’ lack of understanding of media issues and their decision-making, often perceived as politically motivated, in civil defamation cases involving media defendants. Moreover, judicial decision-making in defamation cases, especially in the lower courts, suffers from inconsistencies and unpredictability. There was a feeling in Slovakia that ‘protection of personality’ legislation had often been misused. Talking about the influence of the various informal interests, Zuzana Mistríková argued that:

legislation is abused rather than... Hence you do not need to transpose it in the law, it is rather... Press Law in the United Kingdom can have three pages and everyone understands it. Press Law in Slovakia can have three pages and the reality will be absolutely different. You will go to court with the same lawsuit in the UK and you will win. You will go with the same lawsuit to court in Žilina and you will get a 1 million fine.⁹⁸

⁹⁴ Personal interview with Václav Žák.

⁹⁵ Personal interview with Milan Šmíd.

⁹⁶ Personal interview with Václav Žák.

⁹⁷ Personal interview with Václav Žák.

⁹⁸ Personal interview with Zuzana Mistríková.

The trend of filing defamation lawsuits against critical media intensified in 2008. Leading politicians, including the then Prime Minister, Robert Fico, and the President of the Supreme Court, Štefan Harabin, were awarded damages ranging from 8,000 to 49,500 Euros.⁹⁹ The filing of defamation lawsuits by politicians declined in 2011, with Robert Fico retracting or settling several of his lawsuits with the media. But since 2012 judges, prosecutors and lawyers have become the primary claimants.¹⁰⁰ Several interviewees drew attention to defamation lawsuits recently filed against a national newspaper by eight members of an association of legal professionals, including solicitors, four judges of the Slovak Supreme Court and the then acting General Prosecutor. All of these had objected to an article describing a meeting of their association where, among other things, one of the members, according to photographs published in the paper, allegedly wielded a replica gun and impersonated a killer who several months before had shot himself and six others in the Slovak capital. The eight claimants sued the newspaper for a total of 940,000 Euros in damages.¹⁰¹ It goes without saying that the award of such high damages could lead to self-censorship among journalists. In the words of Pavol Múdry, Slovakia had ‘problems with implementation. And that is in the heads of people, judges in particular. And a judge always “passes the ball” to another judge. Unfortunately, this is how it goes in Slovakia. We have a huge problem with that. It leads to self-censorship.’¹⁰²

The situation in Slovakia is particularly striking in comparison with that in the Czech Republic, where identical Civil Code ‘personality protection’ provisions govern defamation lawsuits. Czech politicians and judges very rarely sue the media, and their success in litigation is even less frequent. The interviewees suggested that the explanation for the differing experience of journalists in the two countries lies in the composition of and pressures within the judiciary and in the sensitivity of the two societies towards abuses of law. The Slovak respondents found it problematic that judges who presided at political trials in the 1970s and 1980s were allowed to remain in the judiciary.¹⁰³ The sense was that such judges ruled the independent and powerful judiciary, allowing new members to join their ranks only if they were willing to conform to established ways.¹⁰⁴ Some judges, most notably the former Minister of Justice and the current President of the Supreme Court, had themselves become successful litigants in defamation cases against the media. There was a perception among the interviewees that some politicians and judges understood that defamation lawsuits could be an effective means of financial enrichment. One Slovak respondent argued that ‘the second increase in

⁹⁹ See Bureau of Human Rights, Democracy and Labor. 2010. “2009 Human Rights Report: Slovakia.” Online. Accessed 5 September 2013. <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136057.htm>

¹⁰⁰ Personal interviews with Miroslav Kollár and Pavol Múdry.

¹⁰¹ Personal interviews with Pavol Múdry and Miroslav Kollár. See also Prušová, Veronika. 2013. “V Bonane vraj vraha nehrali. Právnicki pýtajú miliónové odškodné” [Allegedly They Did Not Impersonate the Murderer. Lawyers Request Million in Damages]. SME, 24 February 2013. Online. Accessed 5 September 2013. <http://www.sme.sk/c/6713798/v-bonanne-vraj-vraha-nehrali-pravnici-pytaju-milionove-odskodne.html>

¹⁰² Personal interview with Pavol Múdry.

¹⁰³ Personal interviews with Pavol Múdry and Iveta Radičová, 5 February 2013.

¹⁰⁴ Personal interview with Pavol Múdry

these things [lawsuits] came with Harabín.’ He implied that judges and politicians ‘know that they can make money on it.’¹⁰⁵

Moreover, there have been examples of judges who refused to conform to the orders of their superiors and who subsequently suffered workplace harassment. Such examples were perceived as possibly deterring other judges from not conforming to established norms. In the words of one respondent, ‘they have examples [demonstrating] that when they take the liberty of behaving decently – that is to go against the flow – the environment simply has tools that it does not hesitate to use to liquidate them professionally and as people. Moreover they have the ... examples of ... judge Lauková,¹⁰⁶ Juraj Majchrák,¹⁰⁷ etc. So they say to themselves, “will I end up like this?”’¹⁰⁸

Commenting on the recent defamation lawsuit discussed above, Miroslav Kollár suggested that the fact that judges and politicians were able to file and win such lawsuits was partially down to the ‘developments in the country’, because in ‘a normal country they would at least know that they have no chance to succeed with it. Respectively, they would know that when they file such lawsuit, they are finished in their profession, because this cannot be done in a decent society.’¹⁰⁹ The Czech commentator Milan Kruml indicated that the apathy of the Slovak public towards abuses of legislation targeting the media might stem from the deep societal divisions between supporters and ‘enemies’ of the Slovak state, rooted in the era of Prime Minister Vladimír Mečiar. In Kruml’s words, ‘in this era, an idea of the media as a hostile, disruptive element that will use every opportunity to smear, defame and liquidate “decent” politicians, who do so much for the people was rooted.’ According to Kruml, ‘in such a situation the society is willing to accept a change of law directed towards a greater repression of the media; it is even more forgiving of tendencies leading to constraining freedom of expression.’¹¹⁰ In contrast to the situation in Slovakia, Czech judges generally avoid apparently politically motivated decisions, because these would become the subject of fierce public discussions. At the same time, Czech judges and politicians tend not to file lawsuits against the media because it is unlikely that these would be successful and could even harm their reputations. According to Kruml,

¹⁰⁵ Ibid.

¹⁰⁶ In 2009, Judge Lauková claimed that her superior had tried to improperly influence one of her decisions. Allegedly, she received a note from her boss asking her to release an individual charged with involvement in human trafficking. The judge refused to do so and shortly thereafter was transferred from the court’s criminal department to the civil law department. She then became ill and while on sick leave was stripped of certain bonuses by her court superiors, who alleged that her sick leave was not genuine. Soon thereafter, Lauková died. In 2011, the Slovak political ethics watchdog, the Fair Play Alliance, posthumously awarded Lauková a White Crow Award for possessing the ‘courage to defend the independence of judges despite political pressure and personal harassment.’ See Balogová, Beata. 2012. “Filmmaker Faces Prosecution.” *The Slovak Spectator*, 1 November 2012. Online. Accessed 4 September 2013. http://spectator.sme.sk/articles/view/48084/2/filmmaker_faces_prosecution.html

¹⁰⁷ Judge Majchrák was a known critic of the Supreme Court President, Štefan Harabín, and critical of conditions in the judiciary. After several months of repeatedly being subject to disciplinary proceedings initiated by Harabín, who requested that Majchrák be stripped of his position as judge, he resigned his post. In April 2011, Judge Majchrák committed suicide. According to his family members, his conflict with Harabín contributed to his decision to take his own life. See Tódová, Monika. 2011. “Juraj Majchrák: Dlhšie bojovať nedokázal” [Juraj Majchrák: Unable to Fight any Longer]. *SME*, 23 April 2011. Online. Accessed 4 September 2013. <http://www.sme.sk/c/5862979/juraj-majchrak-dlhšie-bojovat-nedokazal.html>

¹⁰⁸ Personal interviews with Pavol Múdry and Miroslav Kollár.

¹⁰⁹ Personal interview with Miroslav Kollár.

¹¹⁰ Personal interview with Milan Kruml.

‘the situation in society is such that once a politician gets before a court, even as plaintiff, it will damage his reputation.’ As a result, nowadays Czech politicians attempt to ‘find a different weapon against the media... Rather than [legal] paragraphs they choose a different method – permanent discrediting by pointing to mistakes, personal interests and hostility of individual journalists, [their] non-ethical behaviour, ties with economic and political entities, etc.’¹¹¹

Notwithstanding the above, the respondents agreed that, since 2008/2009, the situation in Slovakia had gradually improved since there had been several decisions of the Slovak Constitutional Court, as well as of the lower courts, that accorded greater protection to freedom of expression than to ‘personality rights’. An important, albeit less publicised, judgement concerning Internet discussion fora was mentioned by one interviewee. A regional court overturned an earlier judgement of a district court. The original decision had required a small web portal to publish an apology and pay damages of 5,000 Euros to a local businessman for defamatory statements posted by anonymous users in a discussion forum on that portal. The portal was also required to delete the defamatory comments. The regional court overturned the original judgement, ruling only that the comments should be deleted. The court reasoned that, since operators of web portals were not responsible for anonymous comments by their users, the portal in question had not infringed the claimant’s personality rights. The decision was generally viewed as positive news for online freedom of expression, since damages awards could potentially mean liquidation for small web portals.¹¹² To conclude, in the words of Miroslav Kollár, ‘The situation is thus not black and white, even if the situation in the judiciary is as it is.’¹¹³

The 2000 Czech Press Act

After several unsuccessful proposals, two of which reached Parliament only to be rejected by the Deputies,¹¹⁴ a new Press Act was adopted in March 2000. Commenting on the adoption process, Milan Kruml wrote in 2000, ‘The battle of the press law amendment is over. The Chamber of Deputies ... adopted by an overwhelming majority the version that no longer includes stipulations that had been the subject of severe criticism of journalists and publishers.’¹¹⁵ In contrast, Václav Žák, was not so optimistic in his appraisal. Discussing lobbyist pressures, Žák claimed that ‘when, for instance,

¹¹¹ Personal interview with Milan Kruml.

¹¹² Personal interview with Miroslav Kollár. See also “Súd rozhodol, že weby musia mazat’ urážlivé príspevky” [Court Decided That Web Portals Must Delete Offensive Contributions]. *Pravda*, 26 April 2012. Online. Accessed 2 September 2013. <http://spravy.pravda.sk/domace/clanok/174193-sud-rozhodol-ze-weby-musia-mazat-urazlive-prispevky/> and “Prevádzkovateľ stránky nenesie zodpovednosť za príspevky, rozhodol súd“ [Website Operator Is Not Liable for Contributions, Court Decided]. *Živé.sk*, 26 April 2012. Online. Accessed 2 September 2013. <http://www.zive.sk/prevadzkovatel-stranky-nenesie-zodpovednost-za-prispevky-rozhodol-sud/sc-4-a-300785/default.aspx>

¹¹³ Personal interview with Miroslav Kollár.

¹¹⁴ “Nový tiskový zákon média asi zaskočí” [New Press Act Will Probably Surprise the Media]. 2000. *Hospodárské noviny*, 8 March 2000. Online. *Factiva*. Accessed 2 September 2013.

¹¹⁵ Kruml, Milan. 1999. “Trnitá anabáze tiskového zákona” [Thorny Anabasis of the Press Act]. *Mladá Fronta Dnes*, 10 December 1999. Online. *Factiva*. Accessed 2 September 2013.

the government attempted to write or have written quite a decent press law, such a wave of resistance arose that [it] blocked the Parliamentary process.’¹¹⁶

The Bill was prepared and proposed in late 1998 by the Ministry of Culture, led by Minister Pavel Dostál during the minority Government of Miloš Zeman, the then leader of the Czech Social Democratic Party (ČSSD). In late 1998/early 1999, the Czech Government was under pressure from the EU to promptly adopt new media legislation as part of the country’s accession negotiations. After years of neglect and unsuccessful proposals under previous governments, the Czech Republic was behind schedule. The Ministry of Culture thus reportedly hastily prepared media bills. Drawing on expert opinion, an article called the preparation of media legislation ‘a necessary provisional arrangement.’¹¹⁷ In the opinion of the then Chair of the Association of Private Broadcasters, the delayed adoption of amendments to media legislation was a result of the lack of professionalism at the Ministry of Culture. He claimed: ‘we wasted the time we had for preparation of new laws. We are now preparing them hastily.’¹¹⁸

The Government’s Legislative Council did not accept the Ministry’s original proposal, recommending fundamental revisions in January 1999. According to the Deputy Prime Minister and Chair of the Legislative Council, Pavel Rychetský, ‘If the law was adopted in this form, the Czech Republic could not fulfil its international obligations, for example in relation to prohibition of spreading and publishing of pornography and racist print publications.’ The Deputy PM further argued that a press law ‘should not merely serve the protection of the mass media’, but should also ‘ensure effective protection of individuals.’ Further, he claimed that the proposal did not take into consideration the state of emergency, for instance, when control of the press was needed at least in relation to the protection of state secrets.¹¹⁹ Rychetský concluded that, in its proposed form, the bill was ‘not acceptable, [it was] extremely liberal – so liberal that it was unprecedented.’¹²⁰

In response to the decision of the Legislative Council, the Minister of Culture claimed that the Bill drew on the proposals of the previous caretaker government. As the Minister explained, ‘I assumed that it is my duty to respect its decision – I did not suspect that the newly constituted Legislative Council intended to endow it with sanctions.’¹²¹ The Minister was also quoted to say that he ‘will fight for the Bill, as he proposed it in Government, until the end.’ He continued: ‘If Mr.

¹¹⁶ Personal interview with Václav Žák.

¹¹⁷ Potůček, Jan. 1999. “EU tlačí na vládu, aby konečně přijala mediální zákony” [EU Presses Government to Finally Adopt Media Laws]. *Lidové noviny*, 11 January 1999. Online. *Factiva*. Accessed 2 September 2013.

¹¹⁸ *Ibid.*

¹¹⁹ “Tiskový zákon k přepracování” [Press Act to Be Revised]. 1999. *Hospodářské noviny*, 11 January 1999. Online. *Factiva*. Accessed 2 September 2013.

¹²⁰ Cited in Šmíd, Milan. 1999. “Tiskový zákon a česká politická elita” [Press Act and the Czech Political Elite]. *Britské listy*, 22 June 1999. Online. Accessed 2 September 2013. <http://www.britskelisty.cz/9906/19990622d.html>

¹²¹ Potůček, Jan. “Úředníci ministerstva kultury se dál lopotí s přípravou tiskového zákona” [Officials of the Ministry of Culture Still Toil Away with the Preparation of Press Act]. *Lidové noviny*, 18 January 1999. Online. *Factiva*. Accessed 2 September 2013.

Rychetský does not like my proposal, I do not like his comments.¹²² Before submitting the Bill to the Cabinet in May 1999, the Ministry actually revised it by including so-called hate speech stipulations, outlawing the spreading of racism, fascism and pornography in the press and providing for sanctions on such actions.

In the words of Milan Šmíd, by so doing, the ‘social democratic custodians of good morals inserted in the text of the Bill a time bomb, which was impossible to overlook.’ In 1999, Šmíd argued that the original proposal prepared under Dostál, was ‘a minimalist compromise’, which seemed to have a chance of being adopted after nine years of failed attempts.¹²³ Naturally, not all interested parties had been completely satisfied with the stipulations and they wanted their interests to be further projected in the Bill. Some, for instance, desired a definition of journalist in the law, while others argued for the institution of a concept of pardonable error. There were also discussions about the right and/or duty of protection of a source and the exact stipulations of the envisioned right of reply.¹²⁴ The journalistic community, as well as the Minister, were reported to reject an automatic right of reply, which would institute an obligation for the media to carry a response from every person who felt offended by information published. The Minister argued that the Czechs ‘are a nation of graphomaniacs; the media, like the readers, are only just becoming cultivated (sic). It could harm both sides.’ The Editor-in-Chief of a respected weekly added that ‘the law must formulate exactly when and under which conditions it is possible to request a reply,’ in order to prevent abuse.¹²⁵ The Czech Syndicate of Journalists was reportedly more critical of the envisioned proposal as a whole. The Chairperson, Irena Válová, argued that ‘the law is bad from the first to the last letter,’ and that ‘it would be possible to contemplate it as an amendment of the current law, but it would be a bad amendment anyway.’¹²⁶

Thus, by inserting the provisions in this way and without consultation, the Ministry and its proposal became the subject of heated and often emotional criticism from journalists and publishers as well as media and legal experts, even before the Bill was discussed by the Cabinet. Gradually, other domestic and international actors, including opposition politicians, became vocal in their criticism of the Bill. The Chair of the Czech Association of Publishers, Jan Šusta, argued that, even though the Bill had been formally drafted in cooperation with different working groups, including publishers and representatives of all political parties, the final draft that reached Parliament incorporated hardly any comments from stakeholders, the Legislative Council or experts. Šusta indicated that the Government

¹²² Cited in Šmíd, Milan. 1999. “Tiskový zákon a česká politická elita“ [Press Act and the Czech Political Elite]. *Britské listy*, 22 June 1999. Online. Accessed 2 September 2013. <http://www.britskelisty.cz/9906/19990622d.html>

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Pavel Dostál and Karel Hvižďala, respectively, cited in Potůček, Jan. 1999. “EU tlačí na vládu, aby konečně přijala mediální zákony” [EU Presses Government to Finally Adopt Media Laws]. *Lidové noviny*, 11 January 1999. Online. *Factiva*. Accessed 2 September 2013.

¹²⁶ Cited in Potůček, Jan. “Úředníci ministerstva kultury se dál lopotí s přípravou tiskového zákona” [Officials of the Ministry of Culture Still Toil Away with the Preparation of Press Act]. *Lidové noviny*, 18 January 1999. Online. *Factiva*. Accessed 2 September 2013.

acknowledged the Legislative Council's detailed statement concerning the shortcomings of the proposal. Nonetheless, it only instructed the Minister of Culture to revise the proposal in cooperation with the Deputy PM, for which several working meetings at the Deputy PM's office with the representatives of the Ministry of Justice were deemed sufficient. Šusta added that the Ministry of Culture was not interested in the conclusions of a day-long conference of legal experts on press law, where the proposal was also discussed. The reason for this was that the Bill was by then ready and to be discussed by the Cabinet a few days later. In his opinion, this Press Bill was the worst among all those proposed since 1989.¹²⁷

The main proponents of the Bill, Deputy PM Rychetský and Minister of Culture Dostál, argued that it had been prepared in accordance with the laws of other EU countries.¹²⁸ Its critics, on the other hand, feared that the envisioned law could limit press freedom. In a statement, the Czech Union of Publishers argued that the adoption of the Bill would essentially constitute an introduction of 'prepublication censorship' and that it could 'easily become a covert tool of competition struggles in the media environment.'¹²⁹ Editors-in-chief of respected dailies and weeklies also viewed the adoption process and the Bill with suspicions. The Editor-in-Chief of the daily *Mladá fronta Dnes* (Young Front Today), thought that 'the preparation of the press law seems like the preparation of a law against the freedom of the press.'¹³⁰ The Editor-in-Chief of the weekly *Respekt* (Respect) claimed that 'it is obvious that the main aim of all the versions and ideas behind the press law, which were produced under the government of Miloš Zeman, is to curb the freedom of expression.'¹³¹ The International Federation of Journalists (IFJ) and the World Association of Newspapers and News Publishers (WAN) also shared the concerns of the Czech journalists. The IFJ argued, for instance, that 'it would be alarming if (the proposal) was adopted'.¹³² An American journalist who used to work for the Czech News Agency, Jeremy Bransten, commented on the proposal in the following terms:

The whole bill is full of contradictions and [it can be] easily misused by a state, which could strongly limit the freedom of the press. Its main problem ... is a totally fundamental thing: the freedom of expression is understood as something the state kindly lends to some publishers or

¹²⁷ Šusta, Jan. 1999. "Jak to bylo se špatným tiskovým zákonem" [How Was it With the Bad Press Act]. *Lidové noviny*, 2 June 1999. Online. *Factiva*. Accessed 2 September 2013.

¹²⁸ Cited in Müller, Jan and Petra Hanáková. 1999. "Návrh ministra míří na svobodu slova" [Minister's Proposal Aims at Freedom of Expression]. *Lidové noviny*, 26 May 1999. Online. *Factiva*. Accessed 2 September 2013.

¹²⁹ Unie vydavatelů denního tisku. 1999. "Tiskový zákon - třetí a poslední kolo?" [Press Act – Third and Final Round?]. *Hospodarske noviny*, 18 May 1999. Online. *Factiva*. Accessed 2 September 2013.

¹³⁰ Petr Šabata cited in Potůček, Jan. 1999. "Šéfredaktoři mají obavy o svobodu tisku" [Editors-in-Chief Are Concerned About Freedom of the Press]. *Lidové noviny*, 22 March 1999. Online. *Factiva*. Accessed 2 September 2013.

¹³¹ Petr Holub cited in *ibid.*

¹³² Cited in Drda, Adam. 1999. "Dobrá zpráva z ODS" [Good News from ODS]. *Lidové noviny*, 22 June 1999. Online. *Factiva*. Accessed 2 September 2013.

media under strict conditions. Freedom of expression is, however, the basic right of each citizen, which can be limited only in the most urgent case...¹³³

Even though the Bill was to a great extent based on previous governmental proposals, numerous opposition politicians also expressed concerns about its impact on freedom of expression. During the parliamentary discussion, one politician, for instance, asked whether the Bill did not constitute ‘a desire and a need to muzzle the media’, other asserted that ‘it is a bullying attempt to sanction a hitherto freely formed press environment.’¹³⁴

Some critics went as far as rejecting the need for any press law whatsoever. A representative of the Czech Syndicate of Journalists argued that ‘if such a law should be adopted, it would be better to have no law.’¹³⁵ Before the Bill reached Parliament, the former PM and leader of the conservative Civic Democratic Party (ODS), Václav Klaus, claimed he was convinced that the governmental Press Bill should be rejected by the Chamber of Deputies because ‘the Bill is bad, but also because we need no Bill.’ Klaus argued that the lawmakers should also abolish the old Press Act altogether, since he saw ‘no reason for a special law, if all potential issues are better dealt with through general laws.’ At the same time, Klaus distanced himself from ‘the over-sensitive response of some journalists, who cry in front of the nation about some threat to freedom, while they are pursuing their own, very partial, interest.’¹³⁶ A few days later, the ODS Executive Council rejected the governmental Press Bill, since it considered it ‘a manifestation of unnecessary state regulation.’ Moreover, the Council was convinced of the need to abolish the press law.¹³⁷

While the criticism of publishers, journalists and opposition politicians may be seen as exaggerated, hysterical and pursuing the actors’ own partial interests, it needs to be assessed in the light of relations between Czech politicians and the press. Prime Minister Zeman had repeatedly ‘called the Czech journalists "manure and scum, amateurs and graduates of schools for retarded people"’. Zeman also claimed: ‘I deeply despise amateurs. I see lots of amateurs around me and the greatest concentration of amateurs I see among the political and economic commentators of our (sic) press, our radio and our television.’¹³⁸ In the words of Jan Culik, an independent Czech journalist and academic, ‘Zeman's displeasure may be the result of the fact that most of the Czech media assume a

¹³³ Cited in Dolanský, Lukáš and Jan Lipold. 1999. “Sněmovna schválila tiskový zákon, podstatně jej však upravila” [Chamber of Deputies Adopted Press Act, Substantially Amending It, However]. *Idnes.cz*, 7 December 1999. Online. Accessed 2 September. http://zpravy.idnes.cz/snemovna-schvalila-tiskovy-zakon-podstatne-jej-vsak-upravila-p6y-domaci.aspx?c=991207_150948_domaci_lsd

¹³⁴ Miroslava Němcová and Jiří Karas respectively, in the plenary discussion during the Bill’s first reading in the Chamber of Deputies. See Chamber of Deputies website <http://www.psp.cz/eknih/1998ps/stenprot/015schuz/s015203.htm#r2>

¹³⁵ Irena Válová, cited in Potůček, Jan. 1999. “Šéfredaktoři mají obavy o svobodu tisku” [Editors-in-Chief re Concerned About Freedom of the Press]. *Lidové noviny*, 22 March 1999. Online. *Factiva*. Accessed 2 September 2013.

¹³⁶ Klaus, Václav. 1999. “Prohlášení Václava Klause k tiskovému zákonu” [Statement of Václav Klaus on the Press Act]. *Lidové noviny*, 18 June 1999. Online. *Factiva*. Accessed 2 September 2013.

¹³⁷ “Ranní přehled - Z politiky” [Morning Overview – From Politics]. 1999. *České tiskové přehledy*, 21 June 1999. Online. *Factiva*. Accessed 2 September 2013.

¹³⁸ Culik, Jan. 1999. “Press Freedom under Threat.” *Central Europe Review* 1(3), 12 July 1999. Online. Accessed 2 September. <http://www.ce-review.org/99/3/culik3.html>

critical attitude towards his government.’ According to Culik, a confidential government report on the Czech media revealed that, rather than seriously analysing the media, the government would only record whether the media wrote favourably or critically about its members.¹³⁹ Commenting on the apparently hysterical claims about an endangered free press, a publicist summed up the concerns of many of the Bill’s opponents:

In the Czech Republic press freedom is respected after all and democratic parties, which will protect it in their own interest, are in power ... But will they always be in power? The steady rise of the Communist Party suggests that anything can happen in the Czech Basin. What is more, from a recent post-communist experience we know that even a serious political party is capable of liquidating an independent newspaper, when it suits it and when it has the opportunity. Finally, at the helm of the government sits a man, for whom journalists are “scum” and “gutter” and at the helm of the Chamber of Deputies is his political partner, who for a change sometimes considers them “the greatest enemies of mankind”.¹⁴⁰

Three provisions made the Bill particularly controversial – the envisioned right of reply, and the hate speech provisions, coupled with sanctions for their breach. While the experts were concerned about the hate speech provisions, the debates between journalists, publishers and politicians revolved mainly around, but were not limited to, the vague formulations of the right of reply. Minister Dostál advocated the right of reply provisions, arguing that ‘freedom of expression should not threaten the freedom of another individual’ and that courts should have the final say in decisions about this.¹⁴¹ The critics of the law among journalists and publishers, in contrast, feared that the provision could render newspapers no more than boring ‘information journals’ that citizens could have difficulty in understanding,¹⁴² or that it could even lead to censorship. The main issues with the proposed stipulations lay in the fact that claimants whose reputation, dignity or privacy were infringed by an article were granted the right to request a reply even to truthful statements. The request could remain anonymous, and publishers were not to be allowed to comment on a reply or reject it if statements were false, contravened the law or good morals, or even if the original statement was merely a true reproduction of court proceedings. Critics also pointed to the fact that the provisions confused the rights of reply and of correction; that there were no limitations on the content of replies; and that replies were not to be restricted, as they should have been, to publication in a form and space

¹³⁹ Ibid.

¹⁴⁰ Drda, Adam. 1999. “Tiskový zákon jako klacek na novináře” [Press Act as a Stick [to use on] Journalists]. *Lidové noviny*, 26 May 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁴¹ “Vláda chce usměrnit svobodu slova” [Government Wants to Regulate Freedom of Speech]. 1999. *Hospodářské noviny*, 27 May 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁴² Kruml, Milan. 1999. “Kabinet schválil návrh nového tiskového zákona” [Cabinet approved Press Bill]. *Idnes.cz*, 27 May 1999. Online. Accessed 2 September 2013. http://zpravy.idnes.cz/kabinet-schvalil-navrh-noveho-tiskoveho-zakona-f5j-/domaci.aspx?c=990526_002836_domaci_pch

equivalent to those of the original statement.¹⁴³ The discussions were rich in accusations of unprofessionalism and bias, and attempts to muzzle the media. Substantial factual discussion attempting to balance the interests of the different stakeholders and reach agreement on the important issues regarding freedom of expression and personal freedoms was almost non-existent.

One article, for instance, argued that ‘newspapers full of press releases of individuals and institutions, boring and grey’ could become the reality if the Bill was adopted. Since the Bill allowed a reply even to truthful statements that had offended someone, according to a media expert, ‘newspapers would not take risks and would rather publish non-problematic articles or press releases.’¹⁴⁴ The WAN also ‘found unacceptable the stipulation that guarantees of the right of reply of a person whose honour, dignity or privacy is infringed, even if the original report is true.’¹⁴⁵ A leading daily, *Hospodářské noviny* (Economic News), for instance, claimed that the government Bill was an attempt to nationalise part of the media space, not a measure for ‘personality protection’ against untruthful information, since that already existed. The daily believed that the right of reply provided ‘an option to comment on information about oneself at the expense of someone else.’ The paper also feared that, since the ‘Bill does not require a reply to relate to the content of a challenged article’, the adoption of the Bill might result in an ‘absurd’ situation where newspapers might be forced to publish long, irrelevant or promotional responses from politicians or businesses.¹⁴⁶ Many opposition politician shared the fears of the media. One argued in Parliament that ‘it paves the way in the media for all graphomaniacs and all exhibitionists, particularly among politicians, who always have something to say or at least add.’¹⁴⁷ However, another opposition politician and then Chair of the Parliamentary Media Committee was convinced, that ‘the law, particularly the institution of a reply, will not lead to clogging of the media with replies of those who feel offended. It will undoubtedly be used only rarely.’¹⁴⁸

Another concern voiced by the Bill’s critics related to the fact that journalists would not be able to comment on published replies, which could be detrimental to readers who ‘would read corrections and replies without a possibility to find out to which case they relate.’¹⁴⁹ The Syndicate of Journalists stated that ‘despite the fact that a journalist published a truthful statement, the Bill even grants the

¹⁴³ See “Tiskový zákon jako znárodňovací dekret” [Press Act as a Nationalisation Decree]. 1999. *Hospodářské noviny*, 11 June 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁴⁴ Kruml, Milan. 1999. “Kabinet schválil návrh nového tiskového zákona” [Cabinet approved Press Bill]. *Idnes.cz*, 27 May 1999. Online. Accessed 2 September 2013. http://zpravy.idnes.cz/kabinet-schvalil-navrh-noveho-tiskoveho-zakona-f5j-/domaci.aspx?c=990526_002836_domaci_pch

¹⁴⁵ “Ranní přehled - Z politiky” [Morning Overview – From Politics]. 1999. *České tiskové přehledy*, 14 June 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁴⁶ “Tiskový zákon jako znárodňovací dekret” [Press Act as a Nationalisation Decree]. 1999. *Hospodářské noviny*, 11 June 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁴⁷ Vlasta Parkanová cited in “Poslanci podpořili tiskový zákon” [Deputies Gave Support to Press Bill]. 1999. *Lidové noviny*, 8 July 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁴⁸ Ivan Langer, cited on a website dedicated to the 2000 Press Act: “Ne! Tiskovému zákonu” [No to the Press Act]. Accessed 2 September 2013. <http://eldar.cz/antitiskovy/citavy/index.html>

¹⁴⁹ Kruml, Milan. 1999. “Kabinet schválil návrh nového tiskového zákona” [Cabinet approved Press Bill]. *Idnes.cz*, 27 May 1999. Online. Accessed 2 September 2013. http://zpravy.idnes.cz/kabinet-schvalil-navrh-noveho-tiskoveho-zakona-f5j-/domaci.aspx?c=990526_002836_domaci_pch

right to publish a wholly subjective reply, which it bars comments on. It is impossible to agree with that.’¹⁵⁰ The editors-in-chief of several large dailies reportedly regarded the ban on comments as unconstitutional.¹⁵¹ *Hospodářské noviny* argued that ‘the government knows that nowadays it cannot afford direct censorship without risking ostracism of the country from the democratic community. Hence, it tries indirect forms of pressure. Even if the Press Act were adopted in Parliament, it does not stand a chance at the Constitutional Court. But it is probably worth a try for the government.’¹⁵² Numerous opposition politicians were also of the view that the proposed right of reply represented an attack on the free press. The leader of the liberal party, the Freedom Union (US), Jan Ruml, also argued that ‘the Press Act can only operate as censorship’, which he fundamentally rejected. Senator Žantovský, from the Civic Democratic Alliance (ODA), considered the law ‘as an attack on press freedom and the foundations of democracy’ in so far as it granted ‘all officials the right to publish a reply to previous reports regardless of truthful information’.¹⁵³

In contrast, the Deputy PM advocated the right of reply as a means of promoting free expression for everyone and repeatedly publicly justified the proposed provisions, citing the existence of similar stipulations in other European democracies. In Parliament he argued:

What exists here is freedom of expression, the right to freely gain and distribute information. Press freedom is only ... one modality of the freedom of expression. Who possesses freedom of expression? Who do we want to grant it to? To everyone. Modern European theory of what constitutes the right of reply says that the right of reply is a part of freedom of expression, since this cannot belong only to one part of the population. The right to free expression needs to belong to everyone.¹⁵⁴

Yet, as many commentators pointed out, in his interpretation of other countries’ laws he did not always present all the facts.¹⁵⁵ In a series of articles, Rychetský also accused journalists of an unprofessional approach to the Press Bill and argued that they feared pluralism of opinions, and were forgetting that freedom of expression was guaranteed to all in a democratic society.¹⁵⁶ He claimed, for instance, that ‘Czech journalists fear that “everyone” will be able to write in “their” newspapers,

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² “Tiskový zákon jako znárodnovací dekret” [Press Act as a Nationalisation Decree]. 1999. *Hospodářské noviny*, 11 June 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁵³ Cited in “Opozici se tiskový zákon nezamlouvá” [The Opposition Does Not Like the Press Bill]. 1999. *Hospodářské noviny*, 27 May 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁵⁴ Pavel Rychetský in the plenary discussion during the Bill’s first reading in the Chamber of Deputies. See Chamber of Deputies website <http://www.psp.cz/eknih/1998ps/stenprot/015schuz/s015212.htm>

¹⁵⁵ Šmíd, Milan. 1999. “Tiskový zákon a česká politická elita” [Press Act and the Czech Political Elite]. *Britské listy*, 22 June 1999. Online. Accessed 2 September 2013. <http://www.britskelisty.cz/9906/19990622d.html> Also “Rychetský vybral ze zákona jen rozinky” [Rychetský Picked Only Raisins from the Bill]. 1999. *Hospodářské noviny*, 22 June 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁵⁶ Cited in “Rychetský vybral ze zákona jen rozinky” [Rychetský Picked Only Raisins from the Bill]. 1999. *Hospodářské noviny*, 22 June 1999. Online. *Factiva*. Accessed 2 September 2013.

but their arguments reveal fear of plurality of opinions,' adding that 'the critics seem not to have respect for the basic principles of a law-abiding state.'¹⁵⁷ He further argued that 'journalistic attacks on the Press Bill smack of Bolshevism.'¹⁵⁸

Although the government largely justified the right of reply by the need for plurality of opinions in the press and the right to information, some of their assertions also indicated other latent objectives. The Prime Minister, for instance, argued that 'the press should reflect the views of the public and that it should be plural (sic).' To do so, it should comprise argumentations for different alternatives, not just uncritically advocate a single acceptable alternative.'¹⁵⁹ The PM also advocated the right of reply of politicians in the following words:

I do not take the right to an opinion, I do not take journalists' right to commentary, but if politicians should not become hunted game, they should have the right of reply; and journalists should have the same responsibility towards their profession that politician controlled by the electorate have.¹⁶⁰

Zeman was also reported to have maintained that the government wanted to have the option to 'push as many replies through to newspaper pages or to broadcast programmes', so that not enough time would remain for news.¹⁶¹ Since this would result in an outflow of readers and audiences and mean financial ruin for media outlets, some journalists feared that the Bill was aimed at damaging the independent media. According to *Hospodářské noviny*, it was clear that the law was 'not aimed only against the media politically inconvenient for the current government. The opposition will have the same opportunity to economically destroy the media politically tolerant to the government.' Thus, all the media 'that will point to the links between economic and political interests across the parties' or 'all the really independent media' would be in danger.¹⁶²

Although the envisioned hate speech provisions featured less in public discussions, experts warned against their potential abuse. Article 6 (previously 5) stipulated publishers' responsibility for the content of periodicals, stating that it must not be in contradiction with the Czech constitutional order, including supporting and spreading violence, intolerant opinion, racism or pornography. Article 21 stipulated that if publishers breached their obligations under Article 6, anyone could request in a

¹⁵⁷ Cited in "What Do Journalists Fear? – Rychetsky." 1999. *CTK Business News*, 11 June 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁵⁸ Rychetský, Pavel. 1999. "Z novinářských útoků na tiskový zákon tří bolševismus" [Journalistic Attacks on the Press Bill Smack of Bolshevism]. *Mladá fronta Dnes*, 10 June 1999.

¹⁵⁹ Cited on a website dedicated to the 2000 Press Act: "Ne! Tiskovému zákonu" [No to the Press Act]. Accessed 2 September 2013. <http://eldar.cz/antitiskovy/citaty/index.html>

¹⁶⁰ Zeman in the plenary discussion during the Bill's first reading in the Chamber of Deputies. See Chamber of Deputies website <http://www.psp.cz/eknih/1998ps/stenprot/015schuz/s015209.htm>

¹⁶¹ Zeman cited in "Tiskový zákon jako znárodňovací dekret" [Press Act as a Nationalisation Decree]. 1999. *Hospodářské noviny*, 11 June 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁶² "Tiskový zákon jako znárodňovací dekret" [Press Act as a Nationalisation Decree]. 1999. *Hospodářské noviny*, 11 June 1999. Online. *Factiva*. Accessed 2 September 2013.

court of justice monetary satisfaction of between 100,000 and 3 million CZK in favour of the state; and in the case of a repeated breach of the publisher's obligation a temporary closing down of the given publication.¹⁶³ Experts feared that the vague formulations of Article 6, coupled with the sanctions in Article 21, could 'reduce independence of the media' or even lead to 'censorship'. Monika Rahim, for instance, argued that 'it is not precisely stipulated what exactly the law considers as unacceptable' content and that 'such a vague formulation cannot be found in any other EU member state.' Like Helena Chaloupková, a solicitor specialising in media law, Rahim was alarmed by the stipulation that 'anyone could sue the publisher, not only the state prosecution service, as it was to date.'¹⁶⁴

Another solicitor, Veronika Nerudová, claimed that the 'absurdity of that solution is obvious and the far-reaching possibility of misuse of such provision in battles among competitors or for revenge.' According to Nerudová, anyone suing a paper for breaching the Constitutional order could request monetary satisfaction in court from any publisher, not only if the content propagated racism, child pornography or xenophobia. They could also do so if, among other things, the paper's content unjustifiably infringed someone's privacy, reputation or dignity, breached copyright law, or the right of an individual's free choice of occupation or preparation for it, or the right to do business freely, or even the right to a favourable natural environment. What is more, anyone could request the above, regardless of whether the publisher's actions directly harmed them, or were dangerous for the whole of society or just for a particular individual. Nerudová added that if, despite the fine imposed, a publisher breached Article 6 again, any individual could request a temporary halt to the publication of the given paper or its public dissemination in the Czech Republic.¹⁶⁵ The Czech Union of Publishers was also concerned about this.¹⁶⁶

Milan Šmíd also argued that, in light of Article 21, the vagueness of Article 6 'acquires an ominous significance.' He questioned what 'inciting intolerance' meant and what criteria the courts would select to assess this. He questioned whether the then President and former dissident Václav Havel did not support such hatred, as he had been refusing to negotiate with a group of people with a certain political opinion – the Communist Party.¹⁶⁷ In the same vein, Adam Drda, a journalist, questioned whether publishing assertions that a particular political party was 'an incompetent party

¹⁶³ Šmíd, Milan. 1999. "Tiskový zákon a česká politická elita" [Press Act and the Czech Political Elite]. *Britské listy*, 22 June 1999. Online. Accessed 2 September 2013. <http://www.britskelisty.cz/9906/19990622d.html> Also Nerudová, Veronika. 1999. "Vládní návrh tiskového zákona je legislativně přinejmenším podivný" [Governmental Press Bill is from the Legal Point of View Strange at the Least]. 1999. *Mladá Fronta Dnes*, 11 June 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁶⁴ Cited in Müller, Jan and Petra Hanáková. 1999. "Návrh ministra míří na svobodu slova" [Minister's Proposal Aims at Freedom of Expression]. *Lidové noviny*, 26 May 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁶⁵ Nerudová, Veronika. 1999. "Vládní návrh tiskového zákona je legislativně přinejmenším podivný" [Governmental Press Bill is from the Legal Point of View Strange at the Least]. 1999. *Mladá Fronta Dnes*, 11 June 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁶⁶ Unie vydavatelů denního tisku. 1999. "Tiskový zákon - třetí a poslední kolo?" [Press Act – Third and Final Round?]. *Hospodarske noviny*, 18 May 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁶⁷ Šmíd, Milan. 1999. "Tiskový zákon a česká politická elita" [Press Act and the Czech Political Elite]. *Britské listy*, 22 June 1999. Online. Accessed 2 September 2013. <http://www.britskelisty.cz/9906/19990622d.html>

that would take us (sic) ten years back' could be considered as spreading 'political intolerance'. He also drew attention to the possibility of abusing the provisions: 'And to make matters worse, every person whom a newspaper currently annoys can seek this fine (referred to in the proposal as "compensation" for the state). If, within three years, the publisher violates Article 5 again, anyone can seek a temporary ban of up to one year on the naughty newspaper.'¹⁶⁸

In response to the above concerns, the Deputy PM maintained that 'sanction for the media must be included in the press law because the Civil Code does not allow [us] to penalize publishers as legal entities.' He also maintained that it was better for everyone to sue the newspapers than just for the state prosecutors.¹⁶⁹ Like many others, Šmíd was not convinced by these arguments. He wrote: 'I am not a lawyer, but something tells me that the objective of the law should primarily be to prevent the writing of racist articles – and natural persons do that – rather than stopping a periodical. If all authors spreading racism were punished consistently (we already have laws for that), there would be no reason to close down *Republika*¹⁷⁰.'¹⁷¹ Rychetský further claimed that the Bill dealt effectively with potential misuse of the sanctions against the media, since the proposal to instigate court proceedings would incur a charge, which the unsuccessful claimant would have to pay.¹⁷² Šmíd dismissed the above argument, considering it 'as if it came from a different world.' In contrast, he claimed that due to 'the fierce competition in the sphere of the media, in which hundreds of millions are at stake, a potential loss of some 50-100 thousand in a lost case, which could in the case of success liquidate one's competitor' seemed like 'peanuts'.¹⁷³ Another media expert, Jan Jiráček, also thought that the sanctions on hate speech articles could be abused 'to penalise inconvenient periodicals.'¹⁷⁴

Finally, some of the critics of the Bill also questioned the impartiality of Czech courts in adjudicating cases concerning violations of the Act by the press. In the words of a commentator: 'However, what if the Czech judiciary has not yet completely recovered from its Communist-serving past? Do not some of its decisions create such an impression, [particularly] in cases in which, for instance, Mr President and the so-called Beneš decrees are the protagonists?'¹⁷⁵

¹⁶⁸ Drda, Adam. 1999. "Tiskový zákon jako klacek na novináře" [Press Act as a Stick [to use] on Journalists]. *Lidové noviny*, 26 May 1999. Online. *Factiva*. Accessed 2 September 2013.

¹⁶⁹ Ibid.

¹⁷⁰ According to Kruml, the critics of the bill believed that adopting a law to solve a concrete problem which society currently cannot deal with was 'short-sighted'. The issue at hand was finding a way to effectively penalise the xenophobic paper *Republika*. See Kruml, Milan. 1999. "Kabinet schválil návrh nového tiskového zákona" [Cabinet approved Press Bill]. *Idnes.cz*, 27 May 1999. Online. Accessed 2 September 2013. http://zpravy.idnes.cz/kabinet-schvalil-navrh-noveho-tiskoveho-zakona-f5j-/domaci.aspx?c=990526_002836_domaci_pch

¹⁷¹ Šmíd, Milan. 1999. "Tiskový zákon a česká politická elita" [Press Act and the Czech Political Elite]. *Britské listy*, 22 June 1999. Online. Accessed 2 September 2013. <http://www.britskelisty.cz/9906/19990622d.html>

¹⁷² Ibid.

¹⁷³ Ibid. In Šmíd's opinion, the ruling Social Democrats did not understand that modern press laws in democratic countries were not designed to protect 'morals'. He writes: 'Contemporary press laws primarily guarantee freedom of expression and the independent existence of publications. Only secondarily do they remind journalists of their responsibilities.'

¹⁷⁴ Kruml, Milan. 1999. "Kabinet schválil návrh nového tiskového zákona" [Cabinet approved Press Bill]. *Idnes.cz*, 27 May 1999. Online. Accessed 2 September 2013. http://zpravy.idnes.cz/kabinet-schvalil-navrh-noveho-tiskoveho-zakona-f5j-/domaci.aspx?c=990526_002836_domaci_pch

¹⁷⁵ Drda, Adam. 1999. "Tiskový zákon jako klacek na novináře" [Press Act as a Stick [to use] on Journalists]. *Lidové noviny*, 26 May 1999. Online. *Factiva*. Accessed 2 September 2013.

In light of the controversy, the Minister of Culture, showed a willingness to discuss the provisions in the Chamber of Deputies. The Ministry even asked the Council of Europe for an expert statement on the Bill. The expert analysis concluded that some of the contested stipulations of the Bill were not outright undemocratic, but that they were vaguely and ambiguously worded.¹⁷⁶ As a result of the CoE statement and the fierce domestic opposition to the Bill, it was substantially amended in the Mass Media Committee of the Chamber of Deputies.¹⁷⁷ Disregarding the Senate's minor recommendations, the Chamber adopted the Press Act on 22 February 2000. In relation to rejecting the Senate amendments, an MP for the ODS party claimed that 'some of the Senate's proposals went directly against the "philosophy" [spirit] of the Chamber of Deputies' version.'¹⁷⁸ After being signed by President Václav Havel on 1 March 2000, the Act came into force as Law No. 46/2000 Coll.¹⁷⁹ The operation of the Act was not regarded by our interviewees as problematic.

The 2008 Slovak Press Act¹⁸⁰

There are considerable similarities with the Czech case in the developments around the conflict accompanying the adoption of the Slovak Press Act by the nationalist-populist Government coalition of Prime Minister Robert Fico, the leader of the social democratic Smer-SD party. The Act was only adopted in 2008 after around 20 different proposals had been unsuccessful. In the words of the former Chair of the Slovak Association of Periodical Press Publishers, Milos Nemecek, the position of the Association in the struggles over the different proposals 'was never so strong as to enforce a new law, but it was always strong enough to prevent attempts to adopt any new law proposal by the Government which would have been unfavourable to us.'¹⁸¹

The Act attracted large protests from domestic as well as international journalists, publishers, media watch organisations and the Slovak centre-right political opposition. Reminiscent of the 'media wars' of the semi-authoritarian governments led by Vladimír Mečiar, all national dailies save one came out with blank front pages in protest before the Act was discussed in Parliament and after it was signed by the President. Among the starkest international critics was the OSCE's Media Freedom Representative, Miklos Haraszti, who exchanged several official letters with the Slovak authorities. The US Embassy in Bratislava, together with the Congress Helsinki Commission, voiced their concern over the Act's adoption to the Slovak Ministry of Foreign Affairs. The European

¹⁷⁶ "Poslanecká sněmovna projedná tiskový zákon asi v prosinci" [The Chamber of Deputies will probably Discuss the Press Act in December]. 1999. *Idnes.cz*, 19 October 1999. Online. Accessed 5 August 2013. http://zpravy.idnes.cz/poslanecka-snemovna-projedna-tiskovy-zakon-asi-v-prosinci-pa6-/domaci.aspx?c=991010_230736_domaci_pch

¹⁷⁷ Personal interview with Milan Kruml.

¹⁷⁸ Ibid.

¹⁷⁹ See Chamber of Deputies website: <http://www.psp.cz/sqw/historie.sqw?o=3&t=245>

¹⁸⁰ This section is largely based on the unpublished M. Phil Thesis of one of the authors (Belakova 2011).

¹⁸¹ ek, cited in Štětka, Václav. 2010. Slovakia – A Country Report for the ERC-funded Project on Media and Democracy in Central and Eastern Europe. Online. Accessed 5 August 2013. http://mde.politics.ox.ac.uk/images/stories/documents/slovakia%20report_updated_aug12_final.pdf

Commission also made some critical statements in relation to the Press Act. The controversy around the Act occurred at a time when Slovakia was about to ratify the Lisbon Treaty. The opposition, led by the SDKÚ-DS party which had brought Slovakia into the EU, threatened to sabotage the ratification unless more consensus was reached on the controversial provisions of the Act. As suggested by Iveta Radičová, then a Deputy for SDKÚ-DS, the EU pressure was perhaps not as pronounced as in the case of Hungary in 2010 because the EU's priority was the ratification of the Lisbon Treaty. According to Radičová, 'the Lisbon Treaty was very important. For our colleagues in the EPP,¹⁸² the position of SDKÚ-DS to link the Press Law to the Lisbon Treaty was not understandable. The priority for them was the Lisbon Treaty. Their stance was: "Please, solve this problem at home later... and now show a clear position towards the Treaty."' ¹⁸³

As in the case of the Czech Act, the government and the coalition politicians argued that the Slovak Act complied with democratic standards in advanced European democracies, that it sought to strike a balance between press freedom and personal rights, and that it provided a means for individuals to defend their reputations. The Act's opponents did not accept this argumentation and called it undemocratic and unacceptable. The controversy revolved around the provisions anchoring the rights of reply and correction, and the hate speech stipulations, with the former attracting much more fierce, and at times much more emotional, public debate. Iveta Radičová summarised the conflict around the Press Act as 'a fight around three points.' In Radičová's words,

The first one concerned the right of reply. It did not matter whether the information to which a claimant requested a reply was true or not. That was unacceptable. The second point concerned sanctions towards the media. And the third point concerned the fact that politicians and public opinion makers had two possibilities to react to the information in the media. They could request both a reply and a correction. And there were many other small issues.¹⁸⁴

Summarising the Act's seven most disputed stipulations, the blank newspaper pages published in protest, simply read: 'Reply: The Seven Sins of the Press Act'.¹⁸⁵ The Act's 'sins' included allowing replies to truthful information; providing the right of correction to information that offended no one; allowing a double sanction by granting corrections and replies to the same information; making publishers liable for replies and corrections contrary to law and public morals; providing the right of reply to state and other public authorities; disallowing editorial comment on replies; and imposing fines (monetary compensation for claimants) for unlawfully rejecting replies.

¹⁸² The European People's Party to which SDKU-DS belongs.

¹⁸³ Personal interview with Iveta Radičová, 26 February 2013.

¹⁸⁴ Personal interview with Iveta Radičová, 26 February 2013.

¹⁸⁵ "Biele strany denníka SME" [Blank Pages of Daily SME]. 2008. *SME*, 28 March 2008. Online. Accessed 5 September. <http://www.sme.sk/c/3795845/biele-strany-dennika-sme.html>

The most frequently disputed stipulation of the Act was that it granted a right of reply regardless of whether the offending information was true, false, misleading, or truth-distorting. According to Miloš Nemeček, the ‘publishers feared that since every person subject to critical reporting would perceive it as impinging on their reputation, they would be obliged to publish replies to true but uncomplimentary information. This could create scope for abuse and limit editorial freedom’ (cited in Belakova forthcoming). Despite the government’s assurances that the law was aimed at ordinary citizens, the Act’s opponents feared that newspapers could become ‘flooded’ with replies and corrections, particularly from politicians who would gain free and unlimited publicity. This concern was also reflected in the 2011 amendment to the Press Act under the Government of Iveta Radičová. As Radičová explained, the main aim was to ‘secure a normal, standard functioning of the media’. The lawmakers attempted to prevent a situation where the media would ‘become discussion contributions of politicians from different political parties,’ and where citizens would ‘be bombarded with a swarm of replies and statements of public officials, for which the media would be forced to make space.’¹⁸⁶

The opponents also warned against the ‘chilling effect’ of the

Haraszti, for instance, wrote in January 2008,

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.¹⁸⁷

Another contentious point was the hate speech stipulations. Article 6 (previously 5) provided that periodicals could not, among other things, contain information that promoted violence or incited hatred based on sex, race, skin colour, ethnic or social origin, genetic characteristics, sexual orientation, language, religion or faith, political or other opinion, membership of a national minority, property, gender, class, disability or age. For breaching these provisions, the Ministry of Culture could impose fines of up to 200,000 SKK (5,600 GBP). The critics were concerned that, due to its vague formulation, the provision created a large scope for abuse by the Executive, which, rather than a court, could impose sanctions on the media for information which it deemed to be inciting political intolerance. Tom Nicholson, a prominent Slovak-Canadian journalist, questioned whether articles

¹⁸⁶ Personal interview with Iveta Radičová, 5 February.

¹⁸⁷ . 2008. “A Letter from Mr Miklós Haraszti to Mr Jan Kubiš, Minister of Foreign Affairs of the Slovak Republic, on the Draft Slovak Press Act.” *The Organisation for Security and Cooperation in Europe*, 18 January 2008. Online. Accessed 4 September 2013. <http://www.osce.org/fom/30525>

about the crimes of Communism ‘propagate’ Communism.¹⁸⁸ Commenting on this provision in his letter to the Slovak Foreign Minister, Haraszti stated that ‘every and each word of this provision is undefined and vague.’ As a result, he believed that the provision could be ‘arbitrarily used to restrict even the mere reporting on events, facts, or opinions regarding such opinions.’ According to Haraszti, ‘this clearly transgresses the speech limitation barriers accepted by democracies and international human rights courts.’ The OSCE Media Freedom Representative found it particularly ‘objectionable’ that the proposal would authorise a ministry to determine violations of Article 6 and to impose fines for these. He claimed that ‘thereby, the executive branch would be allowed to judge on social and political content of publications, and curb in fact pluralisms and freedom of speech, editorial freedom, and the public’s right to know.’¹⁸⁹

Publishers thus advocated that these sections be omitted from the Press Act, arguing that these issues were already governed by the Criminal Code. They also proposed that independent courts should decide on violations of and fines for those sections. The Ministry of Culture, however, did not at first accept these objections, maintaining that only natural persons, as opposed to legal entities such as publishers, could be criminally liable. Moreover, the Ministry pointed to the fact that such provisions were already part of the Broadcasting Act.¹⁹⁰

Under intense pressure from the EU and other international and domestic actors, the Government agreed to a partial compromise during the second reading of the Bill in Parliament. Rejecting all opposition amendments, the Parliamentary Media Committee endorsed a proposal by a Smer-SD Deputy, which removed the hate speech provisions and slightly amended the sections on rights of reply and correction, limiting replies to ‘the statement of facts that deny, complement, add detail to or explain’ the original statement of fact contained in a periodical. Moreover, the injured parties would only be entitled to demand monetary compensation from 1,659.69 to 4,979 Euros. By allowing the press to eventually reject most of the requests, the amendment prevented the ‘flooding’ of newspapers by politicians’ replies, as feared by the Act’s opponents (see Belakova forthcoming). In Radičová’s opinion, the amendment was at least partially a result of international pressure. She also believed ‘that it was a question of time that the Government would silently change the law.’ She added, however, that ‘this would not happen immediately because it is very complicated to interpret it to the citizens. After claiming that this is the best thing, it is very complicated to say: “Sorry, this was

¹⁸⁸ Nicholson, Tom. 2008. “Navrhované právo na odpoveď a úloha výkonnej moci podľa expertov nepomáhajú médiám ani občanom. Svet vidí tlačový zákon ako nedemokratický” [Proposed Right of Reply and the Role of the Executive Do Not Help Media or Citizens According to Experts. The World Views the Press Act as Undemocratic]. *SME*, 4 February 2008. Online. Accessed 5 September. <http://www.sme.sk/c/3711005/svet-vidi-tlacovy-zakon-ako-nedemokraticky.html#ixzz0mBx6pXkF>

¹⁸⁹ . 2008. “A Letter from Mr Miklós Haraszti to Mr Jan Kubiš, Minister of Foreign Affairs of the Slovak Republic, on the Draft Slovak Press Act.” *The Organisation for Security and Cooperation in Europe*, 18 January 2008. Online. Accessed 4 September 2013. <http://www.osce.org/fom/30525>

¹⁹⁰ Kernová, Mirka. 2007. “Maďarič vydavateľov nepotešil” [Maďarič Did Not Make Publishers Happy]. *SME*, 19 November 2007. Online. Accessed 5 September 2013. <http://www.sme.sk/c/3593059/madaric-vydavatelov-nepotesil.html#ixzz2e2H4Xtix>

a mistake.”¹⁹¹ According to the then Director General of the Mass Media Section at the Ministry of Culture, the Government agreed to omit the hate speech provisions because they intended to incorporate liability of legal entities in an amendment to the Criminal Code.¹⁹²

However, the coalition Government refused to accept any other interference with the Bill. According to the Deputy whose proposal was endorsed, doing so ‘would interfere with the intentions of the Ministry of Culture.’ He added that ‘in that case, even the current Act from 1966 would be better.’¹⁹³ As a result, the day after the changes in the Bill were announced, the Slovak dailies came out with blank front pages listing the ‘seven sins of the Act’, while the opposition parties continued arguing that they would sabotage the vote on the Lisbon Treaty. In response, various coalition politicians and Government representatives defended the Bill, condemning the media and the political opposition for an unprofessional approach to the Act, and for pursuit of partial interests and denying democracy. An article by a Smer-SD MP, Miroslav Číž, is demonstrative of this argumentation. Číž stressed that the Press Act and the proposed right of reply were not in conflict with democracy or freedom of expression. In contrast, he wrote, ‘the right of reply extends freedom of expression to all citizens of Slovakia. Moreover, the Press Act balances freedom of expression and the right to protection of personality.’ He added that ‘the Press Act and democracy do not stand against each other today. Today, the freedom of the owners of media corporations and the right to free expression of citizens stand against each other. If someone (sic) is on the side of ordinary people, it is the new Press Act together with the right of reply.’ Číž argued that the Government had prepared ‘a law [that] should protect citizens against distorting and false information, on which the tabloids feed and which can often destroy human lives.’ At the same time, the MP claimed that the law was ‘not just about politicians or celebrities, who can somehow find a space in the media for [their] defence.’ The Act ‘was primarily about ordinary people and their fundamental constitutional right to free expression.’ Číž condemned the action of the political opposition, asserting that ‘the political game which the opposition has started is about the interests of media corporations, not about the interests of ordinary people.’ He explained that ‘nowadays, media corporations possess enormous power and they do not want to lose [it]. The opposition only helps to lobby for this particular interest of theirs.’ Finally, commenting on the most contentious stipulation of the Act, granting replies to factually correct statements of fact, Číž argued: ‘No absolute truth exists ... To allow citizens to present their views of reality cannot be in contradiction with democracy. In contrast, such a possibility strengthens the plurality of views, and this is what democracy is primarily about.’¹⁹⁴

¹⁹¹ Personal interview with Iveta Radičová, 26 February 2013.

¹⁹² Personal interview with Nataša Slaviková, cited in Belakova 2011.

¹⁹³ Ján Podmanický cited in Augustín, Radoslav. 2008. “Mediálny výbor posunul do pléna tlačový zákon” [The Media Committee Sent the Press Bill to the Plenum]. *Mediálne.sk*, 26 March 2008. Online. Accessed 5 September 2013. <http://medialne.etrend.sk/tlac-spravy/medialny-vybor-posunul-do-plena-tlacovy-zakon.html>

¹⁹⁴ Číž, Miroslav. 2008. “Demokracia nie je mediokracia” [Democracy is not the Rule of the Media]. *HNonline*, 28 March 2008. Online. Accessed 4 September 2013. <http://hnonline.sk/c1-23612560>

In April 2008, the Press Act was adopted in Parliament without further changes and signed by the President. The Act was subsequently amended by the Government of Iveta Radičová, resolving most of the contentious issues. The Act thus ceased to be a pressing concern of the Slovak journalistic community. Although the major concerns of its critics had not materialised before the 2011 amendment, the contention around the Press Act has to be assessed against the background of the adoption process and the relations between the media and politicians. Independent Slovak media have always tended to be critical of the pursuits of Slovak governments. In the words of Iveta Radičová, ‘there has always been an open fight between the Prime Minister or the Government on the one hand and the media on the other.’¹⁹⁵ Most critical was the period of media wars during so-called Mečiarism in the 1990s, when the government used various means to muzzle inconvenient media. The relationship between the press and the Fico Government was plagued by mutual antagonism from the outset. The media were suspicious of Fico’s coalition partner, Mečiar, and of pledges to roll back the neo-liberal reforms. The often-hostile coverage of the Government’s socio-economic policies and reporting of clientelism and cronyism resulted in complaints of biased reporting on the government’s activities. The PM would verbally attack journalists and accuse them of serving organised interests and acting as a political opposition (Kužel 2010). In April 2007 it became apparent that the Government perceived press reporting as a problem requiring a solution. Recognising the ‘growing amount of false, biased and truth-distorting information published about the government’, noticing the ineffectiveness of the existing legal instruments and the breaches of ‘the fundamental right of the public to access objective information’, the Cabinet announced the possible introduction of a right of reply in the envisioned Press Act (Glendová 2007). Publishers, journalists and the opposition interpreted the Act as an effort to ‘chill’ the media and secure favourable reporting of its activities.¹⁹⁶ As explained by Iveta Radičová,

Fico is a populist who worked together with Mečiar and Slota in Government, with HZDS and the Slovak National Party, the governing parties during Mečiarism in the 1990s. Thus it was no surprise that this kind of politics returned. ... It was a combination of nationalistic, populist and autocratic powers together. Nobody expected anything different in the Press Law than they prepared because of the value system of the coalition parties.’¹⁹⁷

The Act had thus become the centre of a heated controversy even before the Bill was on the table.

¹⁹⁵ Personal interview with Iveta Radičová, 26 February 2013.

¹⁹⁶ Personal interview with _____, cited in Belakova forthcoming.

¹⁹⁷ Personal interview with Iveta Radičová, 26 February 2013.

Media Legislation in Romania

*'The liberty of the press means that you are free to leave whenever you don't do what I ask you to.'*¹⁹⁸

General characteristics of the media landscape in Romania

Volatility of legislation has been relatively high in Romania as well, but this study has not identified an unusually high volatility compared to other areas of legislation. An overview of the main legislative changes to each of the important laws is included in the appendix. The research conducted for this report suggests that there is no consistent, thought-out media policy in Romania. However, this is not an unusual outcome for Romanian policy-making more generally, nor does this stand in stark contrast to policy-making on the media in other countries. What stands out in policy-making on the media and in its regulation is the rather slow pace at which laws have changed, to the extent that some laws, such as the regulation of Romanian National Television and Radio, have remained unchanged. We provide an overview of some of the most prominent characteristics of the media landscape in Romania and concerning the legal culture in which legislation of the media is being drafted, passed and implemented. Several cases of laws regulating the media are then presented and analysed.

A strained relationship between journalists and the political sphere

The relationship between journalists and the owners of media trusts, especially of commercial outlets, has been complex and has continually changed since 1989. This is well captured by Peter Gross, who identifies 'either bad relationships between the media and journalists or relationships in which the media are subordinate to politicians'.¹⁹⁹ Part of this duplicity was revealed in the interviews conducted for this report. Some interviewees suggested that the relationship between politicians and journalists was generally conflictual. Especially during very recent years, journalists have seemed content with parliament and government passing as little legislation as possible. The reason for this, as interviewees suggested,²⁰⁰ was to ensure that politicians would not try to find a way to regulate and coerce their profession. Moreover, the rather slow pace at which legislation has changed has been greeted as a positive development in the case of some laws, as we will explain in the next sections.

A latent *conflict between politicians and journalists* became visible in almost every interview. This antithetic relationship seems to be the rule of the game in some areas of Romanian press and broadcasting. All interviewees presented the law-making process as a bargaining game in which lawmakers, be they members of parliament or - as is the case very often in Romania - of the

¹⁹⁸ Sorin Ovidiu Vantu, owner of the Realitatea Media Trust, quoted by several interviewees, including Mircea Toma.

¹⁹⁹ Peter Gross 2008.

²⁰⁰ Personal interview with Ioana Avadani and Iulia Niculae.

government, were trying to restrict journalists while, on the other hand, politicians seemed to need the protection of a more restrictive legislation.²⁰¹

Nevertheless, this relationship between politicians and journalists turned out to be more complex. This is the reason why, when conducting research for this report, we considered that one step forward in understanding this relationship was to include an analysis of the connections between journalists, their managers and the owners of their companies. In this respect, we consulted secondary literature on the matter and have found that in several instances the same person has taken both the role of the owner as well as that of the journalist. This has strengthened the role of the journalist-owner in the relationship with politicians. Some prominent journalists, such as Sorin Rosca Stanescu, Cornel Nistorescu and Ion Cristoiu, have also become heads of commercial media outlets. These new managerial positions have strengthened their status as managers, VIPs, and opinion leaders and made them very influential. They have become a filter through which ‘any political initiative, politician, party or societal group has to pass in order to be known and recognised’.²⁰²

Another version of this relationship between journalists and politicians reveals politicians as media owners. This also raises a key question regarding the independence of the press since in this relationship journalists easily become submissive to politicians.²⁰³ The analysis of the relationship between employers and employees also shows journalists to be completely devoted to their employers. It is not surprising in this context that one of the interviewees remembered Sorin Ovidiu Vantu, owner of the media outlet *Realitatea* and one of the important stakeholders in the Romanian media market, saying that he expected his media organisation to behave like his Audi: “It has to respond to my commands. If I turn the key right, it’s on, if I turn the key towards the left, it’s off”.²⁰⁴ Hence, these multiple roles point towards the complexity of these relationships which are closely followed in the analysis of law-making in the region.

Main Legislative Processes

At least three processes of legislation-making during the last 20 years need to be analysed closely: the inability of governments to change the law on public television, the abolished press law and, most interestingly, the debate about the Civil and Criminal Codes.

This section on Romania assesses legislation that has been passed (and implemented), but also gives an account of some *unsuccessful legislative proposals*. The discussion on these unsuccessful changes seems more necessary and much more interesting in the case of Romania in comparison with

²⁰¹ Very good overviews of the legislative changes concerning the media are provided in the *Freeex* yearly reports compiled by Active Watch Romania. These are available online at: <http://www.activewatch.ro/ro/freeex/>. Accessed September 3, 2013.

²⁰² Coman 2010.

²⁰³ Coman 2008.

²⁰⁴ Transcripts of Sorin Ovidiu Vantu’s discussions with different political actors and journalists, made available at: <http://www.ziare.com/sorin-ovidiu-vantu/stenograme/stenograme-din-dosarul-vintu-vezi-discutiile-cu-sefii-realitatea-si-cu-liderii-politici-1049471> Accessed September 10 2013.

Personal interview with Mircea Toma.

the Czech Republic and Slovakia. This does point to Romania's media legislation lagging behind that of the other two countries. As the following section of the report points out, unsuccessful legislative changes do not have to be understood as a negative development, but may be seen rather as an effective way for some of the stakeholders in the field to maintain a *status quo* that is beneficial to some of them. This is a conclusion we reached after analysing a few of these unsuccessful attempts at reforming media institutions, which were also explicitly referred to in interviews. We will refer to several attempts at changing relevant laws and the reasons that might explain this lack of success from the interviewees' point of view, as well as from the perspective of relevant NGOs in the field, most prominently the Centre for Independent Journalism and Active Watch.²⁰⁵ But, before proceeding with a detailed analysis of these legislative changes, we shall briefly mention a few characteristics of the legal culture in Romania during the time covered by our analysis of media legislation. We expect that legal culture will have a mediating role in the process of legislation making and implementation.

Understanding Legislative Changes in the Romanian Legal-Cultural Tradition

This section presents some relevant characteristics of Romanian legal culture as perceived from a perspective of sociology of law and comparative law. The aim is to describe the background against which legislative deliberation and implementation take place. We provide some details on this, given our understanding that, since legal rules alone cannot provide enough information for us to comprehend the significance of laws, we need to further contextualise their relevance. We thus focus on the way in which laws – rules, practices, institutions and doctrine -- are embedded in the broader culture of the country. The question that arises is how these laws become accepted in the particular legal cultures,²⁰⁶ how they move from being discussed and passed to being implemented and becoming part of society. We discuss this in more detail with reference to the provisions referring to media in the new civil and criminal codes.

Also, in the particular case of Romanian laws regulating the media, Peter Gross talks about how Romania's press is burdened by laws, regulations and handling by its owners that are inimical to its independence and professionalism.²⁰⁷ One of the main sources for these problems is identified as the legal support for Romania's media. Freedom of the press was one of the core issues in negotiations for Romania's membership of the EU and it is still being monitored by EU Commission Reports. Of special significance in this discussion are, again, the provisions regarding defamation, insult and assault.

²⁰⁵ Personal interviews were conducted with Mircea Toma and Ioana Avadani respectively. We also rely on some of the documents drafted by these two organisations during recent years.

²⁰⁶ Cotterrel 2006

²⁰⁷ Peter Gross 2008.

Legislation Making

A strong reliance on emergency ordinances has characterised Romania's post-communist law-making. The political system in Romania since 1989 has been characterised by strong governments and weak parliaments. This can also be explained by the bicameral structure of parliament, in which the two chambers, the Chamber of Deputies and the Senate, are in turn the decisional chambers. This overlap of attributes has made the law-making process very cumbersome. The two chambers represent the same constituency. This, coupled with a peculiar semi-presidentialism, has strengthened the role of the government as law-maker. Peter Gross (2008, p. 133) also talks about this peculiarity when discussing legislation on the media: 'The extant culture does not permit the real separation between the legislative, the executive and judiciary, despite its codification in the constitution, and this is why the state could still play a potentially negative role.'

Further strengthening this point, the Romanian Center for European Policies, a think-tank, also highlights the fact that the parliament 'does not participate in the formulation mechanism for positions in European affairs. It is rather informed than consulted'.²⁰⁸ This somewhat consultative role of Parliament is also visible in the processes of making legislation on the media in Romania. The process of EU integration has strengthened the role of the government even more. Moreover, in European affairs especially, Government Decision 115/2008 specifies that all the Council's written conclusions must be submitted to Parliament 'for information after an agreement was reached at the central government institutions level'. There is no mention of a formal participation by the legislature in the process. At the lower level, the Commission sends to Parliament a list of position papers (general warrants) in order to check if there is any parliamentary feedback. So, even at the formal level, it is the government that plays a very important role.

Implementation of Legislation

Ensuring a successful implementation process for laws requires a functional institutional framework in which clear sanctions can be imposed if laws are not being implemented. Peter Gross (2008) argues that the freedom of the press is not yet institutionalised in juridical, institutional and cultural terms in Romania. He argues that the Romanian media are developing in a culture in which the notion of social responsibility is lacking.

Moreover, in this respect, a recent article describes how in 2003 Romania adopted the law on transparency in the decision-making process of public authorities in an attempt to create a more open,

²⁰⁸ Ghinea Cristian, Dinu, Dragos & Tanasache Oana. 2010. *The Romanian Parliament Enters the EU. The Challenge of Being an Active Actor in Europe*. Romanian Center for European Policies. Available online in English, http://crpe.ro/v2/en/wp-content/uploads/2010/12/crpe_policy_memo_no.18_engleza.pdf. Accessed August 15 2013.

transparent, accountable, and predictable government.²⁰⁹ The article shows that the implementation of procedural transparency in Romania's rural areas is low and in many cases local public authorities comply only 'for the record' with the provisions of the law. The authors identify a limited administrative capacity at the local level, coupled with differences between urban and rural areas, as well as resistance to change within the bureaucratic machinery and passivity on the part of citizens.

It emerges from research on the media so far that there are differences between the stipulations of the laws and their implementation. Given that each law is being implemented through the use of other regulatory mechanisms, the more difficult part of the legislative process has been the implementation rather than the enacting of the law itself.²¹⁰ Therefore, what makes a 'good law' is precisely these mechanisms of implementation. This is relevant to the extent that these mechanisms of implementation influence the application of the law more than anything else. This is *the subtlest way to influence policy-making*.

This significant difference between *de jure* and *de facto* is traced carefully. This shows that the key to our question will lie not only in the legislation *per se*, but in the way in which it is implemented. This finding is not at all surprising, given that research in other areas, such as the set of rules against corruption,²¹¹ has revealed that the laws that exist to fight corruption are in accordance with European and international legislation. However, the problem lies at the level of implementation and at the level at which legislation should be internalised. Therefore, this report analyses the laws that establish the existence of different relevant institutions, but also looks at the laws that regulate the implementation of the relevant legislation. More details regarding the cumbersome implementation process are offered.

Judiciary, Parliament and Government

Parliament vs. Government

Another important specificity of law-making on the media in Romania is the fact that the legislative process is plagued by *reliance on emergency ordinances*. The use of an emergency ordinance implies little if any consultation with stakeholders. This process has sometimes drawn the attention of NGOs, such as in the case where the Government decided to use this procedure in the adoption of the Civil and Penal Codes. The Codes are also deeply intertwined with the media law-making process, since specifications of the Codes regulate the right to free speech.

The use of emergency ordinances by successive Governments is rather surprising, given that one would expect media legislation to need to go through a process of deliberation. The appendix

²⁰⁹ Dacian, Dragoş, Bogdana Neamtu, Cobarzan, Bianca. 2012. "Procedural transparency in rural Romania: linking implementation with administrative capacity?" *International Review of Administrative Sciences*, 78: 134-157.

²¹⁰ Ghinea and Mungiu-Pippidi 2010, in the *Mediadem* report, also stress this aspect.

²¹¹ Cimpoca 2009.

showing the relevant laws and the way in which these have been passed and amended shows that more than 50 percent of the legislation on the media was passed by relying on emergency ordinances. The expectation is that the media will not be the most burning issue on the agenda of a government. Especially in the case of media legislation, such a lack of consultation can easily make the headlines in newspapers. One example of the government using an emergency ordinance to push forward legislation was the adoption and implementation of the Civil and Criminal Codes. Parliament had transformed itself into a voting machine; the judiciary, nevertheless, turned out to be extremely important to the process.

The Judiciary

Regarding the implementation of laws, we also refer in the following to the role of the judiciary in safeguarding the way in which the laws are transposed and protected. We refer to some cases of judgements concerning defamation, insult and calumny that are representative of the role of the judiciary in real terms. One of the most important positive rulings, i.e. in favour of a journalist, regarding defamation, was that against Safta Criste, the wife of the former General Prosecutor of Romania, Mircea Criste. We cross-checked the information provided on this subject with two sources, Active Watch,²¹² and Malin Bot, the journalist who won this law-suit,²¹³ and have found out the following: Safta Criste, the wife of the former General Prosecutor of Romania, lives in the city of Timisoara in Western Romania and started a defamation law-suit against a journalist in 2009. The journalist had published negative articles about her involvement in real estate dealings in Timisoara. The information published by the journalist led to the imprisonment of some of the people involved, but not of Safta Criste. The judge, Loredana Bratiş, decided in 2010 to start collecting evidence of calumny and insult. In 2011, the Timisoara Tribunal decided that the evidence was insufficient and demanded that Safta Criste pay a fine of 104 million Lei. Nevertheless, many journalists rely on the European Court of Human Rights. Some journalists have won cases against the Romanian state in recent years.²¹⁴

²¹² “Lawyer Florin Kovacs says that those who harass have to pay for their deeds” [Avocatul Florin Kovacs: Cei care hartuiesc trebuie sa plateasca], January 19 2011. <http://www.activewatch.ro/ro/freeex/avocatul-florin-kovacs-cei-care-hartuiesc-jurnalisti-trebuie-sa-plateasca-scump-pentru-asta-factura-de-astazi-104-milioane/>. Accessed September 2 2013.

²¹³ “Those who harass the media have to pay”. <http://malinbot.wordpress.com/2011/01/19/avocatul-florin-kovacs-%E2%80%9Ecei-care-hartuiesc-jurnalisti-trebuie-sa-plateasca-scump-pentru-asta%E2%80%9D-factura-de-astazi-104-milioane/>, January 19 2011. Accessed September 2 2013.

²¹⁴ “The journalist Sorin Bugan has won a process at the ECHR against the Romanian state”, February 17 2013.

<http://www.medierenet.ro/2013/02/17/sorin-bugan-jurnalist-a-castigat-un-proces-la-cedo-impotriva-statului-roman/#.UimRVWRhRRw>. Accessed August 15 2013.

Romania Libera, May 2010: <http://www.romanialibera.ro/actualitate/justitie/ziaristi-vs-romania-la-cedo-186093.html>

Domestic actors and processes involved in legislation adoption – the cases of the most relevant institutions

This report highlights the fact that, apart from political parties, other stakeholders in the process of creation of legislation include rich businessmen who are closely linked to political parties. This report sometimes refers to these stakeholders, mostly in their role as *employers*. Journalists are referred to in their role as *employees*. Two other important groups able and willing to influence legislation on the media are NGOs and advertising companies. Their roles are also scrutinised in this report. A quite surprising finding is that a political party does not always behave as a unitary actor. On the contrary, some members of political parties decide to propose legislative changes to existing legislation in order to fight their own opponents in the media or in the political battlefield. Unsurprisingly, many of these attempts are not successful.

The Romanian Press Law

The most prominent case of an unsuccessful attempt at changing legislation in Romania is that of the *press law*. Romania used to have a press law, which was passed in 1974. This law was not invoked after 1989, even though it was still in force. It was eventually abolished in 2012. The reason why the law was not amended, but abolished seems rather self-evident to professionals in the field: ‘no civilised democratic country has a press law, except for a few; there’s no need for it. In France they had a press law from the 1980s and in Italy they have a law of the journalist ... but that’s it.’²¹⁵ Several legislative proposals for a new press law have been registered, but these proved unsuccessful. There have been individual attempts by politicians to pass a new press law. These proposals stemmed from personal desires to enact new legislation, such as that of the controversial Ioan Ghise (PNL) or Silviu Prigoana (PDL). There have been 14 unsuccessful attempts to pass a new press law.

In May 2011, a debate on the possibility of passing a new press law took place in the Senate. The President of the Senate Human Rights Commission, Gyorgy Frunda (UDMR), insisted on the necessity of a Press Law in Romania because of the need ‘to bring some order in this domain, which is sometimes too free and provokes personal prejudices.’²¹⁶ The leader of the Liberal Party in the Senate, Puiu Hașotti, also took part in the debate and argued that: ‘if this press law is indeed necessary, then it should be framed by journalists.’ Frunda further sustained his argument by stating that all representatives of political parties supported press freedom and the elimination of censorship, but that the citizen also needed to be protected from abuses of the media. Senator Emilian Francu of the Liberal Party argued for the adoption of a professional status for journalists: ‘It does not seem fair to me that anyone can call himself a journalist’. He added that people generally trusted more those

²¹⁵ Personal interview with Ioan Onisei.

²¹⁶ “Romania needs a press law”, May 2011, http://economie.hotnews.ro/stiri-media_publicitate-8637328-gyorgy-frunda-romania-este-nevoie-lege-presei.htm. Accessed October 10, 2013.

whom they perceived as professional journalists. One representative of NGOs (Activewatch) argued that ‘there is a temptation of politicians to want to take control over the media. These temptations will always exist and these will be formulated [in a] more or less civilised [manner].’ The rationale for such a press law was the fact that lawsuits between journalists and politicians could last several years under the current legislation. A new press law would also help journalists and would promote the jurisprudence of the European Court of Human Rights (ECHR), Frunda argued. NGOs pledged themselves in favour of self-regulation for the media. All the information on and the minutes of this debate have been made available by the Romanian press agency, Mediafax.

The fact that the law was not passed is not an unusual outcome, given the role of Parliament as a gatekeeper for legislation making. With regard to the press law specifically, journalists and representatives of NGOs interviewed for this report seemed rather pleased with this outcome: ‘Why would we need even more regulation; don’t we have enough?’, Ioana Avadani²¹⁷ asked during an interview. The fact that the old Press Law was abolished was considered a step towards becoming more European. Many interviewees seemed to perceive everything that was European as essentially positive. This satisfaction on the part of journalists and NGO representatives with less regulation might at first seem surprising. One would expect them to be the one set of actors most interested in having a press law. Several interviewees, however, suggested that more regulation would mean less freedom for their profession. They seemed to fear that politicians would try and introduce specific requirements that would impact on their ability to write and broadcast freely.

In the following, we provide some snapshots of important developments regarding legislation-making in Romania. We provide empirical evidence of how different stakeholders referred to in our introduction are able to influence law-making in Romania.

Romanian National Television (TVR)

The law on TVR dates back to 1994 (Law No.41/1994), with some minor amendments made in 2001 (544/2001). Since 2001 numerous attempts to pass a new law on National Television have failed. At the beginning of the 1990s, TVR had a monopoly over broadcasting. Therefore, it used to have a more important role in the Romanian media landscape. Its relevance, and thus also its political appeal, have decreased significantly during the last ten years, according to one of our interviewees, one of TVR’s former General Directors.²¹⁸ The evidence we gathered concerning TVR seems to point to its *changing role*. The National Television seems to have lost much of its appeal to the public and consequently to politicians and there are manifold reasons for this. Nevertheless, given its preferential treatment by legislation, it is *still a relevant actor*.

²¹⁷ Personal interview with Ioana Avadani.

²¹⁸ Personal Interview with Andi Lazescu.

The distribution of media services in the audio-visual sector is carried out through cable operators who ‘have the upper hand’²¹⁹ nowadays. Therefore TVR’s competitive advantage of reaching almost anywhere in the country is no longer a significant one. Almost every household, including in rural areas, has access to cable TV. Before the crisis, the cable operators’ market was sizeable considering the size of the Romanian economy. Therefore, it was no surprise to learn that 6,000 jobs have been lost since 2007.²²⁰ Also, in the context of the economic crisis, advertising has dropped by 80 percent in terms of value. This was a particularly significant drop. Hence, income from state advertising has become more important than before. This increasing reliance on funds from the government for advertising purposes is the reason why we include below a section on public procurement and advertising.

In the following we will point to some developments concerning the role of TVR in the landscape of media broadcasting in Romania. These developments may explain the reasons why the legislation regulating TVR has not changed during the last ten years.

Between 1992 and 2002, the successor party of the Romanian Communist Party, the FSN, later PDSR and now renamed PSD, was influential in the management of Romanian National Television. This meant state control. At the same time, ownership of the other TV stations also meant censorship. After 2002, with the rise of more national commercial television stations, TVR became less of a priority. At the beginning of the 2000s, given the improving economic prospects in Romania at large, things started looking better. Many of our interviewees seemed to suggest that media production had become less of a priority at TVR and that things had worsened after an initial improvement in the mid 2000s: ‘there’s not much production anymore’.²²¹ This information was cross-checked with information provided yearly in the *Freeex* reports and in reports by CJI.

Between 2007 and 2012 TVR remained an important player for diverse of reasons. *Informal practices* meant that gifts or employment within TVR were offered in return for favours. This explains the existence and persistence of entire family clans within TVR, almost by default a very good employer for the profession.

A development more related to the practice of the law than to the law itself is the fact that the report regarding the activity of TVR is only read in electoral years. This practice is so deeply embedded in the functioning of the Romanian public broadcasting scene that it is no longer even questioned.²²² Thus it comes about that Presidents of the National Television are replaced with each electoral cycle. The same applies to the National Radio, but this has less of a stake given its lower leverage. The reason why the heads of TVR and of the Radio are replaced is that these stations have been losing money for years. This is publicly acknowledged as a matter of fact ‘every time the head

²¹⁹ Freeex Report 2010 and 2011.

²²⁰ CJI Report 2012.

²²¹ Personal interview with Andi Lazescu.

²²² All interviewees referred, when faced with this question, to this embedded practice.

of the television needs to be changed', i.e. after elections. This practice is criticised publicly by politicians from the entire political spectrum, but the practice persists.

One interesting question remains, concerning the reasons why, given its changing relevance, political parties would still be interested in having control over TVR. The *political influence* of TVR is now lower because 90 percent of households have access to all other TV broadcasters. Nevertheless, an example showing the strong linkages between the media and political institutions is the fact that one person, Claudiu Lucaci, is Head of the News Department at TVR. Lucaci was spokesperson of the government from 2001 to 2003 and subsequently head of the country's diplomatic mission in Los Angeles. This shows the clear politicisation of the National Television. Its *economic influence* has decreased because the money and resources it used to be able to absorb and redistribute have decreased. TVR used to be, as some interviewees suggested, a useful tool for parties to collect public money for their party's interests. TVR still has some relevance for *personal issues*, for example for employment of family members.

Despite this allegedly decreasing relevance of Romanian National Television, all attempts to depoliticise the institutions have failed. Raluca Turcan (PDL), Chair of the Media Committee in the Chamber of Deputies, drafted a new version of the law on TVR, but the attempt to pass this failed. Her own party did not support her proposal. Surprisingly enough, both leftist (PSD) and rightist (PDL) parties have shown some rhetorical commitment to changing the law regulating the functioning of the National Television. This law has not been changed, even though it was high on the agenda as early as the 2004 election campaign (more details are included in Appendix 2). We can only speculate on why this is the case. One interviewee invoked one plausible reason, namely the fact that there is some competition between politicians as to 'Who's on TV most?'²²³ - and TVR is a good avenue for this purpose, but private television stations can be better. Understanding how private television stations can be important requires a better understanding of legislation on public procurement. Newspapers and broadcasters can earn money illegally from political institutions through public media institutions such as TVR or through various processes such as *marketing and advertising*, which a law on public procurement was intended to regulate.

The Law on Public Procurement and journalists' unions

The law on advertising is another important law that does not explicitly refer to the media, but the media is a key actor in the relationship regulated by this law. The mechanism through which public procurement becomes essential to journalists, according to several of our interviewees, is that advertisements paid for with public money can be used by the government to keep journalists and media outlets friendly towards it. Public procurement becomes a sort of unofficial payment that is made to the respective newspaper or broadcaster. Hence, the law on public procurement needs to be

²²³ Personal interview with Andi Lazescu.

better understood. Several amendments to this law also show its importance. Details are included in an appendix of the four amendments to Law No. 337/ 2006. Public procurement is almost exclusively regulated by emergency ordinances. The most important changes in legislation have been carried out by relying on emergency ordinances (see Appendix 2).

Journalists as employees

It used often to be the case that journalists moved into public relations (PR) agencies after ‘burning out’, but fewer people have been absorbed by this sector during the recent more difficult financial years. It was during this time that journalists became activists. The notion of journalists having become activists makes it easier to understand the conflictual relationship between politicians and journalists. The *activist journalist* is, almost by definition, no longer objective; he represents some interests and hence is prone to conflicts with the opposing party.²²⁴

At the same time, the legislative and institutional framework for protecting journalists (for example from becoming activists) is still in its infancy; a journalists’ association does exist and has provided a very advantageous sectoral agreement for employees in the media business more generally, but this is so advantageous that it is almost to journalists’ disadvantage because it cannot be possibly observed, Ioana Avadani explained during an interview.²²⁵ Therefore, individual journalists are weak when faced with media owners, especially in the case of those employed by commercial stations. Legislation to protect *the journalist as an employee* exists, but is hardly ever properly implemented. One employee association has been organised: MediaSind.²²⁶ With the help of the European Federation of Journalists, this union was formed in 2004 and is intended to protect journalists in their role as employees.

International actors and processes

Another important source of changes in legislation on the media has been the international legislation promoted through various international organisations. The EU *acquis communautaire* was especially relevant during the time period close to Romania’s EU accession in 2007. The European Convention on Human Rights, international publishers’ associations and international NGOs have also been a source of changes in legislation on the media that will be mentioned in this report.

In 1993, *the Human Rights Convention (HRC)* was adopted in Romania. This was an important development for legislation on the media because the HRC contains two provisions which are important for journalists active in the country: the right to free speech and the right to a reputation. The convention was ratified in 1993 but was fully enforced only ten years later.²²⁷ Journalists were

²²⁴ “The politics of editorial journalism requires stupid readers” [Politica editoriala te vrea prost]. November 2012, <http://www.cji.ro/?p=2702>, Accessed October 10, 2013.

²²⁵ This came out of interviews with both Ioana Avadani and Mircea Toma.

²²⁶ Romanian Federation of Journalists, www.mediasind.ro

²²⁷ Personal interview with Mircea Toma.

therefore able to rely on the Human Rights Convention when accused of calumny. The concept of calumny is differently defined in the HRC from in the existing Romanian legislation: an alleged victim has to show that the journalist had bad intentions when writing or broadcasting material about the victim. Romania had around 1,000 cases at the European Court of Human Rights between 1996 and 1997, and more than 900 of these concerned allegations of calumny and insult. According to NGO representatives, international conventions are of great help to journalists. So journalists have all kinds of vehicles at their disposal but these are not always visible and they are not always aware of them.²²⁸

Media policy has been intensely and officially influenced since 2007 by Romania's membership of the European Union and also, before that, through the country's adoption of the *acquis* in the lead-up to accession (as referred to in more detail in our overview of legislation, above). Since Romania became a member of the EU, the reports published within the framework of the EU Cooperation and Verification Mechanism have further influenced debates on media legislation as well as the law-making process itself. In January 2013, the EU Cooperation and Verification Mechanism published its analysis of journalists attempting to influence the judiciary by publishing calumnious reports about important stakeholders.²²⁹

The emergence of an entire institution to regulate communication and broadcasting is closely linked to the activity of the European Commission (EC). The EC started an infringement procedure against Romania in 2009 because of the lack of independence of the National Authority for Regulating Communication. Another complaint was filed against the Communication Ministry because it both had a regulating role and was at the same time a shareholder in Romtelecom and Radiocom. In order to halt this infringement procedure, the Government adopted an emergency ordinance establishing a new authority, ANCOM (Emergency Ordinance No.22/2009). Under the terms of this emergency ordinance, ANCOM is under parliamentary control and the President of the agency is named by the two chambers of Parliament, not by the Romanian President.

National Audio-visual Council of Romania (CAN)

The broadcasting council is referred to in Romania as the National Audiovisual Council. We decided to keep the literal translation, as used on the official website even though this makes comparison with the Czech Republic and Slovakia more difficult. CAN is the state media regulating institution in Romania. Similarly to the situation in Slovakia and the Czech Republic, CAN represents the state and its role is to ensure that existing legislation on the media is properly implemented. CAN also has the power to enact smaller laws to ensure the implementation of the laws enacted by parliament. The members are appointed by the Romanian Parliament, with three nominations by the Senate; three by the Chamber of Deputies; two by the President of Romania; and three by the government. This more

²²⁸ Personal interview with Mircea Toma.

²²⁹ Progress report under the Cooperation and Verification Mechanism (CVM) for Romania, 28 January 2013.

balanced structure of CAN has made it one of the most respected media institutions. CAN also carries out studies of various developments in the media, such as its study of the extent of religious broadcasting.

Two key laws for the functioning of CAN are the Broadcasting Law, passed in 2002 and amended several times thereafter, and the National Broadcasting Code of 2006, which has remained the most important law in this regard. This document was publicly discussed, which was considered by the media industry to be a very positive development. The National Council of Broadcasting also has the power to enact secondary legislation. Once Parliament has passed a law, it is the role of CAN to pass secondary regulations regarding the media. Law No. 402/ 2003 further strengthens the role of CAN; for example, CAN can decide to cancel emission rights of broadcasters that promote terrorism or racial or religious hatred.

The largest fine ever imposed by CAN was on the television broadcaster OTV - 63,000 Euros and an interruption of broadcasting for ten minutes during prime time. CNA also decided in March 2012 that OTV would only be allowed to broadcast for a further six months due to its having promoted a political party outside an electoral campaign. This party was the populist PPDD, whose head is Dan Diaconescu. The decision was declared unconstitutional in May of that same year.²³⁰ Other fines have been imposed for the unsatisfactory protection of children, pornography and violent verbal attacks. Kanal D, Antena 1 and Antena 3 have been fined extensively.

The Civil Code and the Criminal Code

In the following we provide a chronological overview of the important debates and their main actors in the processes of drafting, passing and implementing the new civil and criminal codes in Romania. Interestingly, Peter Gross also includes a discussion of the Criminal Code when analysing media laws in Romania.²³¹ The debate regarding the changes in the civil and criminal codes that were passed in 1968/1973 has been a hot topic during the last 20 years. The debates regarding the need for new codes and also for procedural codes, (so in total four codes) started in 1993, when the successor party of the Romanian Communist Party, PSD, was in power and dominating both the Chamber of Deputies and the Senate, as well as building its government. In 1993 the Chamber of Deputies rejected the amendments to the codes proposed by its own judicial commission. Already, in the incipient phase of these discussions, it was clear that opposition to change did not always come from a different party, it could come from within the same party, and external actors also had the power to influence law-making on the media.

²³⁰ “The Constitutional Court suspended the decision to shorten the license for OTV” [Curtea Constitutionala a declarat cererea de suspendare a deciziei CNA neconstitutionala], May 11 2012. http://economie.hotnews.ro/stiri-media_publicitate-12226776-curtea-apel-suspendat-decizia-cna-injumatatire-licentei-otv-sase-luni-cererea-otv-anulare-deciziei-cna-judecata-29-mai.htm. Accessed August 15 2013.

²³¹ Peter Gross, 2008.

The Chamber of Deputies started working on the codes again in September 1995, when a group of 123 Deputies asked for a new discussion of the codes that directly affected journalists. Also in 1995, Prime Minister Adrian Nastase (PSD), again brought discussion of the codes to the fore. However, the new legislative proposal for the codes prompted a strong reaction from the Director of Reporters Sans Frontieres in Paris, Robert Menard. He addressed an open letter to President Ion Iliescu, asking him to reject Articles 205, 206 and 239 of the proposed criminal code in order to protect press freedom. The articles included in this version of the codes and directly affecting the activities of journalists were Articles 168, 205, 206, 236 and 238. These referred to defamation, insult or assault, which were treated as criminal offences. According to Menard, this would confer too much protection on politicians and public administrators. The main criticism of these codes was that they would legitimise the existence of a special class of individuals who would not have to bear public responsibility, and would thus restrict press freedom in a fundamental way. This is also what Gross (2008) pointed out. Discussions of the codes began again after general elections in 1996, and it was only ten years later that changes began to be made.

In 2006 a new law was adopted to modify the Criminal Code (Law No. 278/2006). The *Minister of Justice*, Monica Macovei, an independent politician supported by President Traian Basescu, proposed the law. This law excluded insult and calumny, as well as all defamation references, from the Criminal Code. These were to be treated as civil offences, according to this new law (Art. 1, paragraph 56). However, at the beginning of 2007, the *Romanian Constitutional Court* declared the changes envisioned by ‘Macovei’s law’ to be unconstitutional. Representatives of NGOs considered this decision a cowardly act. This was pointed out by two of our interviewees, who referred to this law as being one of the trademarks of the Minister of Justice.²³²

The explanation provided by the Constitutional Court was that including calumny and insult in the Criminal Code was considered the only way to protect an individual’s dignity. The reform-minded Minister of Justice was not able to get the law passed, given the strong political opposition. The change would have left members of parliament more vulnerable, so they were able to protect themselves by not allowing this law to take effect. The Constitutional Court acted in their interest.²³³

In January 2008, the Judicial Commission of the Chambers of Deputies adopted an amendment (Art. 168/1) to the Criminal Code. The provision of this change was that the broadcasting of false data affecting national security or Romania’s international relations with other states would be punishable by a prison term of between one and five years. This amendment was proposed by the Social Democrat Eugen Nicolicea. NGOs opposed this change, firmly arguing that Romania already had legislation on these issues. Furthermore, ‘Romania’s international relations’ was a fuzzy concept and thence difficult to include in the criminal code. This proposal was withdrawn. Again, the bargaining between representatives of different political parties and the media as a whole becomes visible.

²³² Active Watch *Freeex* Reports, 2000-2012

²³³ Personal interview with Mircea Toma.

At the beginning of the 2009, the Government sent some proposals for a new Civil and Criminal Code to Parliament for adoption in an emergency procedure. On 22 June 2009, the Government of Emil Boc (PDL) took responsibility for the new civil and criminal codes. The Liberal Party (PNL) declared its opposition to these.²³⁴ This led to a very strong reaction from public opinion represented by 22 NGOs. This was arguably the most visible reaction of civil society in the past 20 years, except for the campaign against gold-mining with cyanide. The critique was that the Codes had not been publicly discussed, nor were there any impact studies on the new proposals presented. The whole process gained significant media coverage also because some of the articles receiving most criticism were very ‘close to home’ for journalists. The two important provisions of this Code referred to the right to free speech and protection of privacy as well as to calumny and insult.²³⁵ The stated aim of the new Codes was to protect private life as opposed to the public interest. *Calumny* and *insult* were included as criminal acts in the new Criminal Code. This had a strong symbolic significance for journalists (for further details see Articles 70 of the Code, as well as 71, 72, 73, 74 and 75).

The question was whether this should form part of the Criminal or the Civil Code. Two commissions were set up. Civil society organisations refused to cooperate on the Bill, claiming that the relevance of the Codes required a more thorough public discussion. Later in 2009, the new Civil and Criminal Codes were discussed and subsequently passed as an emergency ordinance, with many of the provisions first included in the Criminal Code deleted and dealt with in the Civil Code. Insult and defamation were deleted from the Criminal Code, but a new regulation was introduced, referring to the protection of private life. The Civil Code also included references to journalism, notably a mandatory right to reply. This was expected by journalists and NGOs to have a strong impact on free speech. Having to publish a reply had been declared unconstitutional in Great Britain and in the US. This was expected to be under the jurisdiction of the Broadcasting Council.

President Traian Basescu, who had considerable leverage over the Government of his own party (PDL), was hoping that the Government would pass the Codes as soon as possible. Newspapers were reporting on EU pressure on the Executive to adopt the new Codes before the publication of a new report within the EU Verification Mechanism. The reaction of public opinion, and of NGOs particularly, is well captured by the website especially designed for this campaign: www.opriticodurile.ro (stop the codes).

In August 2010, Romania’s General Prosecutor appealed to the High Court of Justice, asking for clarification regarding the provisions on insult and calumny. He was alleging a non-unitary application of the law. The appeal by the General Prosecutor was motivated by the fact that the decriminalisation of insult and calumny had been declared unconstitutional by the Constitutional

²³⁴“The Government takes responsibility in front of the Parliament for the civil and criminal codes”[Guvernul isi asuma raspunderea in fata parlamentului pentru codurile civil si penal] <http://www.hotnews.ro/stiri-esential-5848459-guvernul-isi-asuma-luni-raspunderea-parlament-fata-codurile-civil-penal.htm>, June 22, 2009, Accessed August 29, 2013

²³⁵ Personal interviews and extensive discussions on the topic with Mircea Toma and Ioana Avadani.

Court. Therefore, different courts were ruling in accordance with different provisions. As a result of the appeal, calumny and insult would not again become criminal.

A working group was established in 2011, under the supervision of the Council of Magistrates, with the aim of supporting the implementation of the new codes. This working group includes representatives of lawyers and judges, as well as of civil society organisations. The judge Adrian Neacsu, a member of the Superior Council of the Magistracy, has explained the difficulties of preparing legislation to facilitate the implementation of the new codes enter.²³⁶ The initial plan was for both to come into force at the same time. However, given administrative hurdles, as we have also pointed out when discussing the legal culture in Romania, the dates had to be changed and the Criminal Code has not yet come into force. The Chamber of Deputies, which is the decisional chamber for these laws, voted on the adoption calendar. This was also a *political* decision, as pointed out by Neacsu.

So, years after the hasty adoption of the Criminal and Civil Codes, it is envisaged at the time of writing that the new Criminal Code will come into force in February 2014. The current Criminal Code came into force in 2011 (Law no. 71/2011 amending Law no. 287/2009). Therefore, until the new Criminal Code comes into force, the old provisions remain valid. This is probably one showcase example of legislation-making on the media in Romania: it relies heavily on emergency ordinances, EU pressure to change legislation seems to be in the background all the time, and the implementation phase is laborious and sometimes never complete. The judiciary has also played a significant role. Moreover, this also exemplifies very clearly the tension between politicians and journalists.

3. Conclusions

This report aimed to explore the interestingly complex world of policy-making on the media in three countries: the Czech Republic, Slovakia and Romania. We have identified a very complex interplay between the executive, the legislature and the judiciary in drafting, passing and implementing legislation. Each of these institutions has been able to influence legislation on the media, but not always in its textbook role. It is not always the case that the politicians drafting legislation are part of the legislature; the executive runs the legislative agenda in Romania most of the time. The formal process of drafting a bill and discussing it in commissions and in parliament (in each chamber of parliament in the cases of the Czech Republic and Romania) is not always a priority, especially when laws with higher stakes, such as the civil and criminal codes in Romania, need to be passed. The

²³⁶Adrian Neacsu. May 2011. Despre data intrarii in vigoare a Noilor coduri [About the dates when the codes will enter into force]. Online. <http://www.juridice.ro/146680/despre-data-intrarii-in-vigoare-a-noilor-coduri.html>. Accessed September 3, 2013.

specialist committees in the Ministries of Culture still draft legislation, but the extent to which these texts are adopted only points to the *marginal influence of those committees*, as the cases of the Czech Republic and of Slovakia have shown.

Representatives of NGOs seem to be more able to influence policy-making. Business interests are relevant, but the ways in which these are represented in the legislation-making process is not always transparent, as the discussion on lobbying has shown in the cases of Slovakia and of the Czech Republic.

This report has shown in some considerable detail how legislation on the media is drafted, passed and implemented in the three countries studied, and we think it is safe to conclude that the policy-making agenda for legislation on the media is run by politicians. Nevertheless, a rather surprising finding of our study is that a political party does not always constitute a unitary actor. On the contrary, some members of political parties decide to propose changes to existing legislation in order to fight their own opponents in the media or on the political battlefield. Unsurprisingly, many of these attempts are not successful. At other times, well intentioned politicians lack the support of their own party for reforming different media institutions – a prominent example being Raluca Turcanu (PDL) in her failed attempt to pass a new law on the national television in Romania.

We also noted a rather conflictual relationship between journalists and politicians. This did not seem surprising. What was more puzzling, though, was the ways in which individual MPs had tried to get their points across by proposing legislative changes to their own benefit, such as was the case with two Romanian MPs trying to force through a press law. The contentious Slovak and Czech Press Acts were also widely seen as measures intended to enable politicians to gain unlimited free publicity or even to muzzle the media. At times the consultation process in the phase of drafting legislation, especially with key laws, seems less important.

Also interestingly, as the case of Romania has shown, not only do changes in legislation point to the ability of some of stakeholders to get their wishes and expectations translated into legislation. Lack of change can sometimes point towards a successful ability to influence policy-making by retaining the *status quo*. This has certainly been the case with the failure to pass legislation on the media that was aimed at depoliticising Romanian National Television. The late adoption of the Slovak Press Act has also demonstrated that publishers may not always be able to get their interests into a law, but may be strong enough to prevent the adoption of a law that goes against these. The volatility of particularly public service media legislation in Slovakia has shown the ease with which legislation on the media can be amended in each electoral cycle.

This report has opened avenues for further research in at least three respects. Firstly, further studies should be devoted to understanding the reasons behind the rather different processes of legislation-making in these three countries, most interestingly to the different outcomes on the press law. Secondly, further research should enrich the empirical data by including more country cases in the analysis. The theoretical and methodological parts of this report would allow for a more complex

comparison. And thirdly, a broader empirical database would also allow for more systematic analyses, in possibly quantitative frameworks, in order to better test the validity of our hypotheses and conclusions.

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Integrated Automatized System of Legal Information of the Slovak Republic:

<http://jaspi.justice.gov.sk>

APPENDIX 1 List of Interviewees

Czech Republic

Milan Šmíd	University lecturer and media expert, Charles University, Prague, involved in preparing the first Czechoslovak Act on Radio and Television Broadcasting in 1991	Prague, 20 March 2013
Václav Žák	Former head of the Czech Broadcasting Council	Prague, 20 March 2013
Milan Kruml	University lecturer, Charles University, Prague, and media analyst currently working for the public Czech Television, formerly employed by the Czech commercial TV Nova	Prague, 18 March 2013

Slovakia

Iveta Radičová	University lecturer, Comenius University, Bratislava, former Prime Minister of Slovakia and former Minister for Labour, Social Affairs and Family	Oxford, 5 and 26 February 2013
Zuzana Mistríková	Media expert, former Deputy in the Czechoslovak Parliament and former Director General of the Media Section at the Slovak Ministry of Culture	Bratislava, 15 March 2013
Miroslav Kollár	Research fellow at the Institute for Public Affairs, and former Director of the Slovak Television Council	Bratislava, 15 March 2013
Pavol Múdry	Head of International Press Institute (IPI), Slovakia and former Director General of the commercial news agency SITA	Bratislava, 13 March 2013

Romania

Ioan Avadani	Director of the NGO Centre for Independent Journalism: www.cji.ro	Oxford, three interviews, February and March 2013
Mircea Toma	President of Active Watch, Press Monitoring Agency	Bucharest, 18 March 2013
Ioan Onisei	Member of the mass-media commission of the Chamber of Deputies; member of broadcasting supervisory board	Bucharest, 21 March 2013
Andi Lazescu	Former President of Romanian National Television; President of the Grupul pentru Dialog Social (GDS) Iasi.	Bucharest 22 March 2013
Iulia Niculae	Advertising Industry	Bucharest, two interviews, March and April 2013

APPENDIX 2: Main press and broadcasting legislation and its amendments in the Czech Republic, Romania and Slovakia, 1989-2013

Czech Republic

Area of law	Law	No. of amendments	Amendments and main issues	
			Amended by Laws No.:	Main issues
Press Law	Press Act (communist) Law No. 81/1966 Coll. (in force 8 November 1966 – 14 March 2000) * repealed by new Press Act No. 46/2000 Coll.	2	- 86/1990 Coll.	Censorship, the leading role of the party and the socialist role of the press abolished. Freedoms of expression and the press as well as freedom of information for citizens guaranteed. Czechoslovak citizens and legal entities allowed to publish periodicals. Foreigners allowed to publish periodicals with agreement of local state authorities. Simplified registration procedure. Period between registration and actual start of publication shortened, additional information about publication itself no longer required, precise circumstances in which publisher may lose his right to publish defined, etc. Duty of publisher to verify all published information abolished. Stipulation regarding 'editorial secrecy' or duty to protect information sources repealed (allegedly by a bureaucratic mistake).
			- 160/1999 Coll.	Repealed stipulation that state organs and institutions could provide editors with certain information, which was not to be published, in order to keep the latter well informed.
Press Law	Press Act, Law No. 46/2000 Coll. (in force from 14 March 2000) <ul style="list-style-type: none"> ▪ in contrast to previous Press Law regulated only the press ▪ among other things introduced provision for reply and supplementary information, while abolishing provision for correction ▪ publishers responsible for content of periodical with the exception of truthfulness of advertisements ▪ stipulated conditions for application to register of periodicals ▪ stipulated right to protection of sources 	5	- 302/2000 Coll.	Minor changes regarding sending of obligatory printouts of each issue of a periodical to different state institutions.
			- 320/2002 Coll.	Minor changes regarding sending of obligatory printouts of each issue of a periodical to different state institutions and abolition of District Offices.
			- 227/2009 Coll.	Minor semantic change regarding information to be sent about each periodical for record-keeping purposes (registration) to Ministry of Culture.
			- 281/2009 Coll.	Minor change regarding publishers paying for sanctions following adoption of new Tax Code.
			- 142/2012 Coll.	Minor change regarding information that state organs can use from Basic Citizen Registry when fulfilling their duties regarding sanctions for publishers under the Press Law.

	* adopted during term of minority left-wing Government of PM Miloš Zeman thanks to so-called Opposition Agreement			
Broadcasting Law	<p>Act on Radio and Television Broadcasting Law No. 468/1991 Coll.</p> <p>(in force 22 November 1991 – 4 July 2001)</p> <ul style="list-style-type: none"> ▪ abolished state monopoly of radio and television broadcasting and introduced dual broadcasting system ▪ stipulated conditions for allocation of broadcasting licences to commercial licence holders ▪ stipulated obligations of broadcasting licence holders concerning content etc. ▪ licences to be allocated by decision of Federal Broadcasting Council ▪ stipulated structure, membership and functions of Federal Broadcasting Council (nine members, following the French example) ▪ no conditions imposed on foreign investment or on ownership concentration 	10	- 597/1992 Coll.	Czechoslovak Television, Czechoslovak Radio and Czechoslovak News Agency ceased to exist on 31 December 1992. Their property divided between new Czech and Slovak institutions. Other stipulations concerning radio and television broadcasting following the division of Czechoslovakia on 1 January 1993, e.g. decisions about allocation of licences and transmitters to private broadcasters to pass to the relevant institutions of the new states.
			- 36/1993 Coll.	Further stipulations about allocation of transmitters, licences etc. to private broadcasters on the territory of the Czech Republic following the division of Czechoslovakia.
			- 253/1994 Coll.	Minor changes. Cable network operator to provide the public service broadcaster on request with information about participants in cable network concerning payment of TV and radio licence fees. Law stipulated fines for failure to do so.
			- 40/1995 Coll.	Implementing EU directives on approximation of laws, regulations and administrative provisions of Member States concerning misleading advertising; changed stipulations about what kind of advertising was permissible and rules about inserting advertisements into broadcasting (e.g. which programmes cannot be interrupted by advertising, periods between advertisement blocks etc.).
			- 237/1995 Coll.	Minor changes following amendments to copyright law.
			- 301/1995 Coll.	Extensive amendments, among other things allowing commercial cable and satellite broadcasters to avoid licence conditions - now only obliged to register with Broadcasting Council. Obliged licence holders to inform Broadcasting Council about changes concerning ownership of other media, e.g. press outlets, and/or mergers with other companies (media ownership concentration rules). Prohibited subliminal advertising and prescribed that all TV broadcasters to display the logo of their TV station.
			- 135/1997 Coll.	Changes to time that can be allocated to radio advertising and to quota allocated for subtitles for persons with hearing disabilities. Changes to stipulations about broadcasting licence change. N.B. Number of Broadcasting Council members increased from 9 to 13.
			- 46/2000 Coll. (Press Law)	Introduced rights of reply and additional information in relation to TV and radio broadcasting. Stipulated rules regarding requests and broadcasting of replies and additional information, obligations of broadcasters, situations when requests may be rejected as well as judicial procedure for requesting broadcast of unlawfully rejected

	* adopted by Federal Czechoslovak Parliament ** repealed by new Broadcasting Act No. 231/2001 Coll.			replies and additional information.
			- 121/2000 Coll.	Minor change following adoption of new copyright law.
			- 39/2001 Coll.	Following amendment of Law on Czech Televisions, repealed Article 9 on special obligations and competences of public service broadcasters.
	Act on Radio and Television Broadcasting Law No. 231/2001 Coll. (in force from 04 July 2001)	27	- r1/c120/2001 Coll.	Announced and corrected a typo in the Act.
			- r1/c138/2001 Coll.	Announced and corrected a semantic mistake.
	<ul style="list-style-type: none"> ▪ more comprehensive law that regulates the sphere of television and radio broadcasting and transposes EU Directive on Television without Frontiers as part of Czech Republic's accession process ▪ Details functions, selection etc of Radio and Broadcasting Council (previously regulated by a separate law, now repealed) 		- 309/2002 Coll.	Minor changes following Civil Service Act (N.B. changes to come into force on 1 January 2015).
			- 274/2003 Coll.	Minor change following Act on Protection of Public Health. Broadcasters now obliged to provide required air time to state authorities also in case of an urgent announcement concerning public health.
			- 341/2004 Coll.	Among others changes, stipulations concerning advertisements, subliminal advertisements and teleshopping. Minor changes to conditions for broadcasting licence applicants.
			- 501/2004 Coll.	Minor amendment following adoption of Administrative Code.
			- 626/2004 Coll.	Minor change following reform of public finances in the sphere of remuneration.
			- 82/2005 Coll.	Minor change.
			- 127/2005 Coll. (Act on Electronic Communications)	Technical change following adoption of Act on Electronic Communications, which transposed EU directives on electronic communications.
			- 348/2005 Coll.	Reduced time allowed for advertisements and teleshopping on air each day, added detail and further stipulates rules on advertising and teleshopping.
			- 235/2006 Coll.	Mainly technical amendments concerning electronic communications and digital switch-off. Deals, for instance, with conditions for allocating digital licences., Transposed EU legislation on electronic communications and partially prepared legislation for digital switch-off
	* adopted during term of minority left-wing Government of PM Miloš Zeman thanks to so-called Opposition Agreement		- 160/2007 Coll.	Broadcasting Council to monitor international cooperation in the area of consumer protection in accordance with Regulation (EC) No 2006/2004 of the European Parliament and the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (Regulation on consumer protection cooperation). Council can ban and impose fines for unlawful actions by broadcasters in the sphere of consumer protection.

			- 296/2007 Coll.	Minor change following amendment of bankruptcy law.
			- 304/2007 Coll.	Quite extensive technical amendments concerning digital switchover.
			- 124/2008 Coll.	Minor changes regarding documents to be provided to Broadcasting Council by applicants for broadcasting licence following amendment to law on Criminal Register.
			- 384/2008 Coll.	Minor change after amendment of law on sign language.
			- 196/2009 Coll.	Changes to definitions of national and regional radio and television broadcasting, changes to stipulations on programme networks, changes to stipulations about radio and television broadcasting ownership (ownership concentration rules) with the aim of securing plurality of information in local and regional radio and television broadcasting.
			- 227/2009 Coll.	Minor change following amendment to Act on the Basic Register.
			- 132/2010 Coll.	Major amendment following adoption of Act on Audio-visual Media Services on Demand that transposed Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007, amending Council Directive 89/552/EC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (the "Audiovisual Media Services Without Frontiers" Directive.)
			- 153/2010 Coll.	Some changes following amendment of Act on Electronic Communications.
			- 302/2011 Coll.	Introduced fee from broadcast advertisements payable to State Fund for the Support and Development of Cinematography. Total time allocated for broadcasting advertisements on Czech Television channels CT2 and CT4 cannot exceed 0.5%. Official date for digital switch-over is set for 11 November 2011.
			- 420/2011 Coll.	Minor change following amendment to law on criminal liability of legal entities.
			- 458/2011 Coll.	Minor changes to conditions to be fulfilled by applicants for broadcasting licence concerning unpaid tax, following amendments to tax and insurance laws (N.B. comes into force on 1 January 2015).
			- 142/2012 Coll.	Minor change concerning information that Broadcasting Council can use when fulfilling its function under the law, following amendment to law on the Basic Citizen Register.
			- 275/2012 Coll.	Minor change following move to direct presidential elections.
			- 406/2012	Broadcasting Council can enact acts implementing legislation in the field of radio

			Coll.	and television broadcasting and audio-visual media services on demand to the extent authorised by this Act. Broadcasters obliged to ensure that volume levels of advertisements and teleshopping do not exceed a limit enacted in the relevant Act of the Broadcasting Council.
			- 496/2012 Coll.	Changes concerning proportion of advertisement profits that broadcasters must pay to State Fund for Cinematography following adoption of Act on Audio-visual works and support for Cinematography.
Public Service Media Law	Act on Czech Television Law No. 483/1991 Coll. (in force from 1 January 1992) * adopted by Czech National Parliament Chamber of the Czechoslovak Republic	12	- 36/1993 Coll.	Property of Czechoslovak Television on the territory of the Czech state became the property of Czech Television. Czech Television became the legal successor of Czechoslovak Television in terms of copyright of works produced on the territory of the Czech state. Czech Television temporarily to broadcast on channel intended for private broadcaster, until the latter starts broadcasting. The legally permitted limit for advertising on that channel is 7% of all programming each day. Minor change in the competences of the Director of Czech Radio –must seek prior approval of Council of Czech Radio, e.g. for transferring property of Czech Radio.
			- 253/1994 Coll.	Minor semantic change concerning ‘television fees’ (i.e. licence fee paid by citizens for receiving television broadcasts) following division of Czechoslovakia.
			- 301/1995 Coll.	Czech Television granted two television channels (broadcasting circuits).
			- 39/2001 Coll.	Major amendment following so-called ‘television crisis’. Changes to functions given to Czech Television by law. Changes to selection of members of Council of Czech Television. Members selected by Chamber of Deputies and nominated by civil society organisations. Membership term of Council extended from 5 to 6 years on a rotation basis. Conditions set for members of Council to safeguard their impartiality. Council to choose and dismisses Director General of ČT. Council decision to dismiss Director General of ČT must be justified in writing and made public within 7 days, and law stipulates dismissal conditions. Chamber of Deputies approved (new) Code of Czech Television, stipulating principles of public service broadcasting and what constitutes breach of these. Council Supervisory Commission established to assist Council in monitoring financing of Czech Television.
			- 231/2001 Coll.	Minor change following adoption of new Act on Radio and Television Broadcasting.

			- 82/2005 Coll.	Quite an extensive amendment stipulating remuneration rules for members of Council of Czech Television. Changes to reasons for dismissal of Director General. Stipulations concerning accountancy rules related to CT.
			- 127/2005 Coll. (Act on Electronic Communications)	Technical amendment stipulating changes regarding digital broadcasting and production of multimedia works by Czech Television within the public service multiplex. States that Czech Television is the operator of public service multiplex and stipulates content conditions etc. of multiplex. Amendment followed adoption of Act on Electronic Communications which transposed EU directives on electronic communications
			- 304/2007 Coll.	Technical amendment concerning digital switchover. Ties Czech Television profits from airing advertisements to specific purposes e.g. financing of State Fund for Support of Cinematography.
			- 384/2008 Coll.	Minor change following amendment of law on sign language.
			- 132/2010 Coll.	Stipulates that at least 2% of all broadcast programmes must be produced in Czech sign language or simultaneous translation into Czech sign language must be provided for persons with hearing disabilities. At least 10% of all broadcast programmes to be available for persons with visual impairment. Amendment following adoption of Act on Audio-visual Media Services on Demand which transposed Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007, amending Council Directive 89/552/EC on coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (the "Audio visual Media Services Without Frontiers" Directive).
			- 153/2010 Coll.	Technical amendment concerning digital switchover.
			- 302/2011 Coll.	Partially technical amendment. New functions of Czech Television as set out by law to be provision of audio-visual services on demand and provision of information on its internet websites and its online application. Changes to stipulations prohibiting advertisements in Czech Television broadcasts. Profits from advertisements on the second channel, CT2, to go to State Fund on Culture. Profits from the sports channel, CT4, to finance production and broadcasting of sports programmes on CT.
	Act on Czech Radio No. 484/1991 Coll. (in force from 1 January 1992)	7	- 36/1993 Coll.	Property of Czechoslovak Radio on the territory of the Czech state to become the property of Czech Radio. Czech Radio to become legal successor to Czechoslovak Radio in terms of copyright of works produced on territory of Czech state. Minor change in competences of Director of Czech Radio – must seek prior approval of Council of Czech Radio e.g. for transfer of property of Czech Radio.

* adopted by Czech National Parliament Chamber of the Czechoslovak Republic	- 253/1994 Coll.	Minor semantic change concerning 'radio fees' (i.e. licence fee paid by citizens for receiving radio broadcasts) following division of Czechoslovakia.
	- 301/1995 Coll.	Minor amendment reducing broadcasting time on Czech Radio that can be allocated to advertisements from 1% to 0.2%.
	- 135/1997 Coll.	Stipulates maximum advertisement time on radio broadcasting to 3 minutes of daily broadcast time on national Czech Radio channels and 5 minutes on each regional channel. Allocated advertisement time unused on any of the channels not to be used on other channels.
	- 192/2002 Coll.	Major amendment to the Act Czech Radio. Changes to functions of Czech Radio as set out by law. Changes to selection of members of Council of Czech Radio. Members to be selected by Chamber of Deputies and nominated by civil society organisations. Membership term of Council members extended from 5 to 6 years on a rotation basis. Conditions set for members of Council to safeguard their impartiality. Council to choose and dismiss Director General of ČRo. Council decision to dismiss Director General of ČRo to be justified in writing and made public within 7 days, and law stipulates conditions for dismissal. Chamber of Deputies approved (new) Code of Czech Radio stipulating principles of public service broadcasting and what constitutes breach of these. Council Supervisory Commission established to assist Council in monitoring financing of Czech Radio.
	- 127/2005 Coll.	Technical amendment stipulating changes regarding digital broadcasting and production of multimedia works of Czech Radio within public service multiplex. Amendment followed adoption of Act on Electronic Communications which transposed EU directives on electronic communications.
	- 196/2009 Coll.	Council of Czech Radio to elect Director and Vice-Directors from among its members. Council also empowered to dismiss them. Stipulates rules concerning remuneration and bonuses paid to members, Vice-Directors and Director of Council of Czech Radio.

Source: compiled by Nikola Belakova from www.zakonyprolidi.cz and <http://aplikace.mvcr.cz/sbirka-zakonu/>

Slovakia

Area of law	Law	No. of amendments	Amendments and main issues	
			Law amended by Laws No.:	Main issues
Press Law	<p>Press Act (communist) Law No. 81/1966 Coll. (in force 8 November 1966 – 1 June 2006)</p> <p>* repealed by new Press Act No. 167/2008 Coll.</p>	6	- 86/1990 Coll.	<p>Censorship, leading role of the party and socialist role of the press abolished. Freedoms of expression and of the press as well as freedom to information for citizens guaranteed.</p> <p>Czechoslovak citizens and legal entities allowed to publish periodicals. Foreigners allowed to publish periodicals with agreement of local state authorities.</p> <p>Simplified registration procedure. Period between registration and actual start of publication shortened, additional information about publication itself no longer required, precise circumstances in which publisher may lose right to publish defined, etc.</p> <p>Duty of publishers to verify all published information abolished.</p> <p>Stipulation regarding ‘editorial secrecy’ or duty to protect information sources repealed (allegedly through a bureaucratic mistake).</p>
			- 186/1997 Coll.	Changes to stipulations regarding registration of periodicals. Ministry of Culture to conduct registration of national periodicals, Regional Offices to conduct registration of regional periodicals, and District Offices to conduct registration of local periodicals. Register of printed press to be a public document.
			- 187/1998 Coll.	Stipulated duty of publishers to ensure that periodicals do not contain information that breaches election campaign rules (elections to Slovak National Parliament, regional elections and referenda) as well as sanctions for their violation.
			- 46/1999 Coll.	In addition, publishers must not publish information that breaches Presidential electoral campaign rules.
			- 227/2000 Coll.	<p>New duty of publishers regarding content of periodicals and sanctions for its breach. Publishers obliged to ensure that periodicals do not contain:</p> <p>a) Information that propagates war or describes cruel, or other inhuman actions in a way that belittles, excuses or approves it;</p> <p>b) Information that propagates the use of narcotics or describes the use of narcotics in a way that belittles, excuses or approves of it.</p>
			- 535/2003	Regional and District Offices no longer to conduct registration of periodicals, which

			Coll.	was now sole responsibility of Ministry of Culture.
	<p>Press Act (democratic) Law No. 167/2008 Coll. (in force from 1 June 2008, adopted by nationalist-populist coalition Government led by Robert Fico)</p> <ul style="list-style-type: none"> • State organs and institutions obliged to provide publishers with truthful, timely and comprehensive information about their activities • Publishers have duty to protect their sources • In addition to right of correction, introduced (controversial) rights of reply and supplementary information • Publishers to be liable for content of corrections, replies and supplementary information (but cannot refuse to publish these except under limited circumstances) 	1	<p>- 221/2011 Coll. (in force from 1 September 2011, amended by the Radičová Government)</p>	<p>Publishers no longer liable for truthfulness of information contained in corrections, replies and supplementary information. Publishers no longer obliged to publish information about their ownership structure periodical's first issue of each year. Publishers not obliged to publish corrections, replies or supplementary information if doing so would result in committing a crime or an administrative offence, or if doing so would contravene good (public) morals. Publishers not obliged to publish replies or supplementary information if doing so would contravene rights and legally protected interests of third parties. Claimants able to request reply only to factual statements that are incorrect, incomplete or truth distorting. Publication of reply repeals right of correction to the same factual statement. Public officials no longer granted right of reply. Claimants no longer granted right to request in court monetary satisfaction for unlawful refusal to publish corrections, replies and/or supplementary information.</p>
Broadcasting Law	<p>Act on Radio and Television Broadcasting Law No. 468/1991 Coll. (in force 22 November 1991 – 3 October 2000)</p> <ul style="list-style-type: none"> ▪ abolished state monopoly on radio and television broadcasting and introduced dual broadcasting system ▪ stipulated conditions for allocation of broadcasting licences to commercial licence holders ▪ stipulated obligations of broadcasting licence holders concerning content etc. ▪ licences to be allocated on decision of Federal Broadcasting Council ▪ stipulated structure, membership and functions of Federal Broadcasting Council (9 members, following the French 	12	<p>- 597/1992 Coll.</p> <p>- 166/1993 Coll.</p> <p>- 325/1993 Coll.</p> <p>- 212/1995 Coll.</p> <p>- 220/1996 Coll. (Act on Advertising)</p> <p>- 160/1997</p>	<p>Czechoslovak Television, Czechoslovak Radio and Czechoslovak News Agency ceased to exist on 31 December 1992. Their property to be divided between the new Czech and Slovak institutions. Other stipulations concerning radio and television broadcasting following division of Czechoslovakia on 1 January 1993, e.g. decisions on allocation of licences and transmitters to private broadcasters to pass to relevant institutions of the new states.</p> <p>Other changes following division of Czechoslovakia concerning allocation of transmitters and spectra to Slovak Television and Slovak Radio as legal successors of Czechoslovak Television on the territory of Slovakia. Competence of broadcasting licence allocation for commercial broadcasters now to be in hands of Slovak Radio and Television Broadcasting Council.</p> <p>Minor change. Increase in permitted advertising by public service broadcaster following Act on the 1994 state budget.</p> <p>Minor change following law on TV and radio licence fees.</p> <p>Minor change following adoption of Act on Advertising.</p> <p>Minor change stipulating procedure for appeals against decisions of Slovak Radio</p>

	<p>example)</p> <ul style="list-style-type: none"> ▪ no conditions imposed on foreign investment or on concentration of ownership <p>* adopted by federal Czechoslovak Parliament ** repealed by new Broadcasting Act No. 308/2000 Coll.</p>		<p>Coll. (Act on the Slovak Radio and Television Broadcasting Council)</p> <ul style="list-style-type: none"> - 283/1997 Coll. - 187/1998 Coll. - 233/1998 Coll. - 46/1999 Coll. - 255/1999 Coll. - 227/2000 Coll. 	<p>and Television Broadcasting Council on granting or prolonging of licences, or on fining broadcasters. Appeals now to be filed before Slovak Supreme Court.</p> <p>Minor change following adoption of Act on collective administration of rights in accordance with copyright, stipulating that broadcasters are obliged to secure a contract with organisations administering collective rights.</p> <p>Minor changes concerning restrictions on broadcasting before parliamentary elections, following amendment of electoral law.</p> <p>Minor changes concerning restrictions on broadcasting before local elections and referenda, following amendment of electoral law.</p> <p>Minor changes concerning restrictions on broadcasting before presidential elections, following amendment of electoral law and move to direct presidential elections.</p> <p>Changes stipulating that broadcasting licences are not transferrable to other natural persons or legal entities, even after original business or part of it has been sold or ceased to exist.</p> <p>Broadcasters obliged to ensure they do not propagate use of drugs etc. on air. Sanctions for failing to do so doubled from 5 million Slovak Crowns to 10 million.</p>
	<p>Act on Broadcasting and Retransmission Law No. 308/2000 Coll. (in force from 4 October 2000)</p> <ul style="list-style-type: none"> ▪ a more comprehensive law that reacts to technological developments in the broadcasting and retransmission sectors, and which transposes EU Directive on Television without Frontiers as part of Slovakia's accession process ▪ radio broadcasting licences to be allocated for 8 years instead of previous 6 ▪ details procedures for allocating and withdrawing licences ▪ details functions, selection etc. of Broadcasting and Retransmission Council ▪ Introduces right of correction to broadcast information 	<p>20</p>	<ul style="list-style-type: none"> - 147/2001 Coll. (Act on Advertising) - 206/2002 Coll. - 610/2003 Coll. (Act on Electronic Communications) - 289/2005 Coll. 	<p>Changes concerning airing of advertisements following adoption of Act on Advertising.</p> <p>Gives Broadcasting and Retransmission Council right to impose fines without prior caution or warning in cases of broadcasting without licence or transmitting without registration, when broadcasters breach electoral campaigning rules, when programmes harm human dignity and other basic human rights, or endanger the physical, mental or moral development of juveniles. Sets time limits for Council's decisions.</p> <p>Act on Electronic Communications transposed EU directives on electronic communications and repealed prior Telecommunications Act, which was amended by Broadcasting and Retransmission Act.</p> <p>Minor changes (a few sentences) concerning obligations of broadcasters in sphere of protection of human dignity and juveniles. Adds further stipulation that broadcasters must not air programmes that depict 'scenes of violence'. Broadcasters must ensure that programmes are labelled according to their suitability for each age category – in</p>

* adopted by first coalition Government led by Mikuláš Dzurinda			addition to 7, 12 and 18 years, new 15-years category stipulated. Fines at lower end of range imposed by Broadcasting and Retransmission Council reduced.
	- 95/2006 Coll.		Minor change (one sentence) concerning obligations of broadcasters in sphere of protection of human dignity. Adds further stipulation that broadcasters must not air programmes that depict sexual intercourse.
	- 121/2006 Coll.		Introduces provision for complaint against breach of Broadcasting and Retransmission Act. Such a complaint can be filed by natural persons or legal entities to the Broadcasting Council, which is obliged to discuss within 90 days of receipt (with exception of anonymous complaints or those that not filed in accordance with the law). Broadcasting Council now allowed to sanction breach of law by suspending broadcast of part or whole of a programme. Council may instruct broadcasters to air a notice about their breach of the law. Council to devise and publish universal system of programme labelling according to suitability for different age groups.
	- 13/2007 Coll.		Minor change stipulating permitted volume levels for broadcast advertisements and teleshopping.
	- 220/2007 Coll. Act on Digital Broadcasting		Major changes following adoption of Act on Digital Broadcasting, which transposed EU directives and prepared legislation for digital switch-off.
	- 654/2007 Coll.		Change in renewing of previously granted digital licences – deadline after which these would cease to exist extended.
	- 343/2007 Coll. (Audiovisual Act)		Amendments following adoption of Audiovisual Act, which, among other things, stipulates rules concerning age-suitability of individual programmes. Broadcasting and Retransmission Council no longer responsible for formulating these rules.
	- 167/2008 Coll. (Press Act)		Following adoption of new Press Act, new articles stipulating obligation of state authorities and institutions to provide broadcasters with truthful information about their activities needed for timely and comprehensive information to public. Protection of sources stipulated as an obligation not a right.
	- 287/2008 Coll.		Minor changes concerning broadcasting within a news programme of an event to which another broadcaster has purchased the rights. Minor changes concerning renewing of licences for shorter period than previous 12 years.
	- 516/2008 Coll. (Audiovisual Fund Act)		Changes reducing maximum limit on advertising from 3% to 0.5% of all broadcast time per day. Also reduced maximum limit on advertising within coverage of sport and cultural events from 10% to 2.5%.
	- 77/2009 Coll.		Minor change following amendment of Act on Narcotics, stating that in addition to

				previous stipulations programmes cannot propagate psychotropic substances.
			- 318/2009 Coll.	Following amendment of State Language Act, Broadcasting and Retransmission Council can now impose fine on broadcasters if they fail to use the state language in their programming in accordance with the State Language Act.
			- 498/2009 Coll.	Major changes triggered by transposition of EU directives on the audiovisual media services on demand to Broadcasting and Retransmission Act.
			- 532/2010 Coll.	Minor changes following adoption of Act on Radio and Television of Slovakia stipulating merger of Slovak Television and Slovak Radio into one institution.
			- 221/2011 Coll.	Minor changes following amendment of Press Act. Broadcasters no longer obliged to broadcast correction if doing so would be against the law or contravene (good) public morals or legitimate rights of third parties.
			- 397/2011 Coll.	Minor change allowing broadcasters to air advertisements constituting up to 1% of all daily broadcasting for one further year – until end of 2012.
			- 342/2012 Coll.	Quite extensive changes following transposition of EU Directive 2010/13/EU (Audiovisual Media Services Directive) to Broadcasting and Retransmission Act.
Public Service Media Law	Act on Slovak Television Law No. 254/1991 Coll. (in force 28 June 1991 – 1 February 2004) <ul style="list-style-type: none"> ▪ legalised (<i>de facto</i> already functioning) public service Slovak Television ▪ defined its functions ▪ introduced Slovak Television Council, its selection, term of office, functions etc. ▪ Council to be an organ of Slovak Television ensuring objectivity and independence of its programming. * adopted by Slovak Chamber of Deputies of Czechoslovak Parliament ** repealed by Act on Slovak Television No. 16/2004 Coll.	7	- 482/1992 Coll.	Changes to number, selection and dismissal process for members of Slovak Television Council and to membership term length. Council now to have 9 members (previously more – one for each political party in the Slovak Parliament, 3 selected by the Slovak Government, 3 selected by a consultation body and 4 by Director of Slovak Television.) Membership term increased from 4 to 6 years (one third of members to change every 2 years).
			- 166/1993 Coll.	Minor change: members of Slovak Television Council can be dismissed by simple majority in Parliament based on a motion filed by at least 10% of MPs
			- 82/1995 Coll.	Membership of Slovak Television Council now remunerated, as opposed to being an honorary function as previously.
			- 321/1996 Coll.	Changes to nomination procedure for members of Slovak Television Council. In addition to relevant parliamentary committees, MPs, Council and professional and civic groups in the cultural sphere can nominate members. Council now to approve remuneration of Director, whose salary is now stipulated as twice that of an MP. Term of office of Director set at 4 years, and same individual can be re-elected for two consecutive terms.
			- 335/1998 Coll.	Changes to term of office of members of Slovak Television Council – reduced from 6 to 4 years. Term of office of members under previous legislation to cease on the day this amendment came into force.
			- 418/2003 Coll.	Amendment allowing Slovak Television to participate in certain business activities.

			- 442/2003 Coll.	Slovak Television no longer directly connected to state budget and will cease to have its own chapter in budget.
<p>Act on Slovak Radio No. 255/1991 (in force 28 June 1991 – 1 January 2004)</p> <ul style="list-style-type: none"> ▪ legalised (<i>de facto</i> already functioning) public service Slovak Radio ▪ defined its functions ▪ introduced Slovak Television Council, its selection, term of office functions etc. Council to be an organ of Slovak Radio ensuring objectivity and independence of its programming <p>* adopted by Slovak Chamber of Deputies of Czechoslovak Parliament * repealed by new Act on Slovak Radio No. 619/2003 Coll.</p>	6		- 483/1992 Coll.	Changes to number, selection and dismissal process for the members of Slovak Radio Council as well as to length of membership term. Council now to have 9 members (previously more – one for each political party in the Slovak Chamber of Deputies, 3 selected by Slovak Government, 3 selected by a consultation body and 4 by Director of Slovak Radio.) Membership term increased from 4 to 6 years (one third of members to change every 2 years).
			- 166/1993 Coll.	Minor change: Members of Slovak Radio Council can be dismissed by simple majority in Parliament based on motion filed by at least 10% of MPs.
			- 83/1995 Coll.	Minor changes following division of Czechoslovakia. Membership of Slovak Radio Council now remunerated as opposed to being an honorary function as previously.
			- 321/1996 Coll.	Changes to nomination procedure for members of Slovak Television Council. In addition to relevant parliamentary committees, MPs, Council, and professional and civic groups in the cultural sphere can nominate members. Council now to approve remuneration of Director, whose salary is now stipulated as twice that of an MP. Term of office of Director set at 4 years; same person can be re-elected for two consecutive terms.
			- 335/1998 Coll.	Changes to term of office of members of Slovak Radio Council – reduced from 6 to 4 years. Term of office of members selected according to previous legislation to cease on day this amendment came into force.
			- 442/2003 Coll.	Slovak Radio no longer directly connected to state budget and to cease to have its own chapter in budget.
		<p>Act on Slovak Television No. 16/2004 Coll. (in force 1 February 2004 – 31 December 2010)</p> <ul style="list-style-type: none"> ▪ Slovak Television Council to have 15 members selected by Parliament for 6 years, one third of members to changes every 2 years ▪ Nominations can be filed by a larger group of civil society organisations ▪ Slovak Television to be partially financed by licence fees, profits from advertising and transfers from state budget. ▪ Director General to be selected for 5 years 	8	
	- 220/2007 Coll. (Act on Digital Broadcasting)			Changes following adoption of Act on Digital Broadcasting. Slovak Television to broadcast programme services covering whole territory of Slovakia (as defined by law) on at least two analogue circuits until digital switch-off, but latest until end of 2011. Slovak Television charged with broadcasting at least four content services within public service multiplex.
	- 343/2007 Coll. (Audiovisual Act)			Minor change following adoption of Audiovisual Act – Slovak Radio charged with depositing certain audiovisual works.

	<p>*adopted by second (centre-right) coalition Government led by Mikuláš Dzurinda **repealed by new Act on Radio and Television of Slovakia No. 532/2010 Coll.</p>		- 68/2008 Coll.	Minor changes following amendment to law on licence fees. Licence fee to be paid not only based on ownership of TV or radio set, but by every household connected to the electricity grid and by employers with at least three employees.
			- 70/2008 Coll.	Minor changes following amendments to law on state treasury.
			- 516/2008 Coll. (Audiovisual Fund Act)	Slovak Television to pay 5% of its overall profits from advertising and teleshopping into the Audiovisual Fund every year.
			- 312/2009 Coll.	Introduced so-called contract with the state. Contract between state and Slovak Television to be signed for five years, whereby Slovak Television to be committed to realise certain projects, produce and broadcast certain programmes in public interest etc. In return, state to be committed to providing a financial contribution from state budget. Exact level of state budget contribution to be set (renegotiated) every year.
			200/2010 Coll.	Slovak Television obliged to air Slovak national anthem once per day between 23:30 and 00:30.
	<p>Act on Slovak Radio No. 619/2003 Coll. (in force 1 January 2004 – 31 December 2010)</p> <ul style="list-style-type: none"> ▪ Slovak Radio Council now to have 15 members selected by Parliament for 6 years, one third of members to change every 2 years ▪ Nominations can be filed by a larger group of civil society organisations ▪ Slovak Radio partially financed by licence fees, profits from advertising and transfers from state budget. ▪ Director General selected for 5 years <p>*adopted by second (centre-right) coalition Government led by Mikuláš Dzurinda **repealed by new Act on Radio and Television of Slovakia No. 532/2010 Coll.</p>	7	- 587/2006 Coll.	Changes concerning selection of Director General and conditions a successful candidate must fulfil. Among other things, candidates must now submit a project on management and development of Slovak Radio. More detailed stipulations on selection procedure, for instance if no candidate is selected by at least two-thirds majority of members of the Council of Slovak Radio.
			- 220/2007 Coll. (Act on Digital Broadcasting)	Slovak Radio obliged to broadcast at least six programme services, out of which at least three to cover whole territory of Slovakia (as defined by law) as opposed to five, as stipulated previously.
			- 343/2007 Coll.	Minor change following adoption of Audiovisual Act – Slovak Radio charged with depositing certain audiovisual works.
			- 68/2008 Coll.	Minor changes following amendment of law on licence fees. Licence fee to be paid not only based on ownership of TV or radio set, but by every household connected to the electricity grid and by employers with at least three employees.
			- 70/2008 Coll.	Minor changes following amendments to law on state treasury.
			- 312/2009 Coll. (some articles were to come into force on 1 January 2011. However, by then the new Act on	Introduced so-called contract with the state. Contract between the state and Slovak Radio to be signed for five years, whereby Slovak Radio to be committed to realising certain projects, producing and broadcasting certain programmes in the public interest etc. In return, the state to be committed to providing a financial contribution from state budget. Exact level of state budget contributions to be set (renegotiated) every year.

			Radio and Television had come into force)	
			- 200/2010 Coll.	Obliged Slovak Radio to air Slovak national anthem once per day between 23:30 and 00:30.
	<p>Act on Radio and Television of Slovakia No. 532/2010 Coll. (in force from 1 January 2011, adopted by centre-right coalition Government led by Iveta Radičová)</p> <ul style="list-style-type: none"> ▪ Slovak Radio and Slovak Television to be merged into Radio and Television of Slovakia ▪ Stipulated changes to functions of, membership and functioning of Council, General Director etc. of the new institution ▪ Contract with state and licence fee to remain as sources of RTVS financing 	3	- 397/2011 Coll.	So-called contract with state as a means of financing Radio and Television of Slovakia from state budget abolished and licence fee paid by citizens abolished in favour of financing public service broadcaster through a set percentage (0.142%) of state budget every year.
			- 340/2012 Coll.	Changes concerning financing of Radio and Television of Slovakia. Contract with state to finance public service broadcaster and licence fee paid by citizens reintroduced.
			- 547/2011 Coll. (come into force on 1 January 2014)	Minor change following amendment of accountancy laws.

Source: Compiled by Nikola Belakova from <http://jaspi.justice.gov.sk/>

Romania²³⁷

Area of law	Laws	No. of amendments	Amendments, main issues and actors involved		
			Law amended by Laws No.:	Main issues and actors' influence	
<i>National Council of Audiovisual (CAN)</i>	Law nr. 504 from 11 July 2002, organic law *This law regulates functioning of CAN, the most important supervisory board for the media.	6		Law established National Audiovisual Council in Romania as an autonomous public institution governed by a Council of 11 members. Members to be appointed by Romanian Parliament, based on the following formula: 3 nominations from Senate; 3 from Chamber of Deputies; 2 from President of Romania; and 3 from Government.	
			Law no. 521/2002	Changed name of <i>National Authority for Regulating Communications</i> to <i>Ministry of Communication and Information Technology</i> .	
			Law no. 402/2003 modifying and amending Law no. 504/2002	Further strengthens role of CAN; for example, CAN empowered to decide on cancellation of emission rights of broadcasters that promote terrorism or racial or religious hatred.	
			Emergency Ordinance, no. 123/2005	This law modified copyright law for broadcasters.	
	Emergency Ordinance. no.3/2006 *Decision no. 187, April 3, 2006, Regulation Code for the Audiovisual				CAN adopted a new audiovisual regulation code. This decision comprised all previous decisions of CAN and all its regulations - a systematized collection of decisions.
			Decision no 194 from February 22, 2007 from April 3, 2006.		New decision modifying decision 187/2006 containing minor changes.

²³⁷ Unsuccessful legislative proposals are also included in the case of Romania since these are more relevant than in the cases of Slovakia or of the Czech Republic.

	<p>Directive 2007/65/EC</p> <p>*of the European Parliament and of the Council of 11 December 2007 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities</p>			<p>Amends Law no. 504/2002</p> <p>Adopted European Directive on Audiovisual Services; complemented existing law on Television without Borders and allowed for switchover to digital television.</p>
	<p>2007: Regulation code of the audiovisual, article 73.</p>			<p><i>Broadcasters not to broadcast TV shows moderated or produced by parliamentarians, representatives of public administration, of the presidential administration or of people with high rank in political parties or their spokespersons.</i></p> <p>Law no. 516 of 13.06.2007 introduced an exception to this law for artistic and cultural broadcasting.</p>
			<p>Law no.364/2007</p>	<p>Audiovisual code changed at beginning of 2007. Most important change was 'law of the three thirds' - government and opposition to be covered by 60 and 40 percent respectively of broadcast time dedicated to politicians.</p>
				<p>At the end of its mandate in November 2008, the Tariceanu government (PNL) prepared an <i>emergency ordinance to modify the audiovisual law</i>. This ordinance included switch to digital television. However, the law was not passed.</p> <p>In November 2009, a new law was passed. This translated the law for product placement (commercial products in the editorial space), as well as providing for the length and flexibility of these commercial ads. The same law increased the fines that CAN could impose, practically doubling both minimum and maximum fines to 10,000 and 200,000 respectively.</p>
			<p>Law no. 116/19 May 2008 amending Art. 89 of Audiovisual Law no. 504/2002</p>	<p>At the beginning of 2008 CAN proposed a new project for the Audiovisual Law, concerning in particular the ownership structure in the media sector. According to this provision, one investor would not be allowed to own more than 50% of a second audiovisual enterprise.</p>

			Emergency Ordinance no. 181/2008	Changes to Audiovisual Law 504/2002, significant changes brought about by this emergency ordinance. Many of these changes were part of the adoption of the <i>acquis communautaire</i> . Two examples were: Law guarantees the right of reception of European and Romanian broadcasters. Law forbids advertising of medical products or treatment that can only be obtained with a medical prescription.
			Law no. 330/2009	Law concerning salaries of personnel paid from public funds.
	Decision no. 220, February 24 2011 * regarding code for regulation of the audiovisual			New code for regulation of the Audiovisual adopted in February 2011. This new code brought further improvements to the law, including advertising rules: placing products, improvement of rules regarding non-commercial communication, child protection, protection of human dignity, protection of one's own image, right to one's own protection; Advertising of medical services also liberalised through this new code.
			Emergency Ordinance no. 19/2011	Law concerning changes of normative acts in domain of electronic communication
	Emergency Ordinance no. 25/2013			Government headed by Prime Minister Victor Ponta revised Law 504/2002 through this emergency ordinance. Law concerned advertising and aimed to stop intermediaries from purchasing publicity without making the beneficiary of the advertisement known. Also cut into the budgets of media agencies. Expected to have a strong negative effect on small advertising companies, with possible monopoly effect for large agencies.
National Television	Law no. 41, June 17th 1994 *concerning functioning of Romanian Society for Radiobroadcasting and the National Television Society	2		Established Society for Radio and Television in Romania. Defined these as public and autonomous, "serving the national interest". Defined TVR and National Radio as under parliamentary control.
	Law nr. 544, October 12th 2001 *concerning free access to public information			
			The new law has not been passed yet.	The discussion about depoliticising TVR had already started in 2004, with the intent of changing Law 41 of 1994.

			It is still being debated.	<p>By 2007 all proposals for structurally modifying Law no. 41 of 1994 concerning functioning and organisation of National Television and Radio had been unsuccessful.</p> <p>Consequence of not having a new law for the National Television had become visible by 2007, when a politician, Alexandru Sassu, was named the new General Director of TVR.</p> <p>In March 2010, the activity report of TVR for 2008 was rejected by Parliament. Alexandru Sassu (Vice-President of PSD before becoming General Manager of TVR), as well as entire Administrative Council, had to resign.</p> <p>Then Prime Minister Emil Boc (PDL), announced that PDL was planning to depoliticise the National Television. Opposition leader Victor Ponta (PSD) also declared his support.</p>
<i>Press Law</i>	Law no. 3/1974 * Press Law in the Socialist Republic of Romania	1		
				Law initiative withdrawn after being initiated by a liberal senator, Ioan Ghise. He had proposed a law (L162/2011) for the <i>profession of journalism</i> , providing that a journalist could only carry out his profession if he/she possesses a journalist card.
	Directive no. 443/2012 *abolishing the Press Law			Law to abolish Law no. 3/1974.
<i>Public Procurement</i>	Emergency Ordinance 34/2006 *Regarding Public Procurement			Law for promoting competition between economic actors; to be treated equally and in non-discriminatory fashion.
	Emergency Ordinance no. 19 of March 7, 2009 *regarding certain legislative measures for public procurement	2		<p>In 2009 the government amended Emergency Ordinance 34/2006 regarding public procurement.</p> <p>In this way, public procurement, of both services and goods, could be done directly by a state authority when the value of the goods did not exceed 15,000 euros. Under the law of 2006, the threshold had been 5,000 Euros. This was strongly criticised by civil society organisations because, in the broadcasting domain, advertising contracts could be offered directly to a company of the government's choice with no obligation to use the online system for public procurement if value of the contract did not exceed 15.000 euros.</p>

	Emergency Ordinance nr. 76/2010 * published on July 2 nd 2010			New emergency ordinance changed threshold again from 20,000 to 15,000 Euros. ²³⁸
<i>Criminal and Civil Codes</i> ²³⁹	Law no. 278/2006	1		In 2006 a new law was adopted modifying the Criminal Code. Law 278/2006 proposed by Minister of Justice. Excluded insult and calumny, as well as all defamation references, from the criminal law. These to be dealt with as civil offences. Stipulated in Art. 1, Para. 56 of the law. However, at the beginning of 2007, the Romanian Constitutional Court declared the changes unconstitutional. The reason for declaring this law unconstitutional was that it was considered to be the only way to protect a human dignity.
			Proposal to revise Art. 168/1 of the Criminal Code	In January 2008, the judicial commission of the Chamber of Deputies adopted an amendment to Art. 168/1 of the Criminal Code, providing that an individual could be punished by being sent to prison for between 1 and 5 years if false data was broadcast which affected national security or Romania's international relations with other states. This amendment was proposed by the social-democrat Eugen Nicolicea. NGOs opposed the change, firmly arguing that Romania already had protective legislation on these issues. Furthermore, the issue most tackled was the fact that 'Romania's international relations' was a fuzzy concept and therefore difficult to include in the Criminal Code. Proposal was withdrawn.
			2009 Emergency Ordinance	At the beginning of 2009 the government put to Parliament some proposals for a new Civil and Criminal Code. These were meant to be debated as a matter of urgency and passed as an emergency ordinance. This led to a very strong reaction from NGOs, which was one of the most visible reactions in the past 20 years. The critique was that the codes had not been publicly discussed, nor were there any impact studies on the new

²³⁸ For a detailed analysis of advertising purchased with public money, a report is available from the Centre for Independent Journalism at www.cji.ro, available in Romanian, "Relații economice între mass-media și autoritățile publice" [Economic Relations between the media and public authorities.] Bucharest, 2010.

²³⁹ References to the Criminal Code and to the Civil Code in this appendix only include the provisions relevant to the media.

				<p>proposals presented. President Traian Basescu was hoping that the government would get the codes passed as soon as possible in order for these to be included in the EU progress report.</p> <p>After these consultations, insult and defamation were taken out of the Criminal Code, but a new regulation referring to protection of private life was introduced.</p> <p>The Civil Code also includes references to journalism, including a mandatory right to reply. This was expected by journalists to have a strong impact on free speech. Compulsory publication of a right to reply had been declared unconstitutional in Great Britain and in the US. This was expected to be the jurisdiction of CAN.</p>
	<p>Decision no. 8/2010, October, of the High Court of Justice. *decided that Articles 205, 206, 207 of the criminal code are not valid.</p>			<p>In August 2010, Romania's General Prosecutor appealed to the High Court of Justice for a decision on the provisions for insult and calumny, asking for a unitary application of the law.</p> <p>The appeal of the General Prosecutor was motivated by the fact that the decriminalisation of insult and calumny had been declared unconstitutional by the Constitutional Court. Therefore, some courts considered it still to be a criminal offence. The result of the appeal was that calumny and insult would not again become criminal.</p> <p>Regarding the new Criminal and Civil Codes, even though the government compelled Parliament to adopt these through the emergency ordinance, their implementation was delayed for a long time. They are expected to come into force in January 2014.</p>