[BG] Presidential Veto upon the Draft Law on Amendment of the Penal Code

IRIS 2000-3:1/30

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The President of the Republic of Bulgaria vetoed the Draft Law concerning the Amendment of the Penal Code. The public discussion of the proposed amendments centered mainly on the changes in the provisions of Chapter VII of the Penal Code regulating "offence" and "calumny" and in particular those parts of the provisions that relate directly to the rights of journalists and freedom of speech in Bulgaria.

The current Penal Code specifies penalties of up to two years imprisonment or fines ranging from 1000 to 5000 old Bulgarian leva (the equivalent of 1 to 5 DEM) for an "offence" made in public, transmitted through media, caused to, or caused by, a person in charge of, or a representative of, a public organization in his official capacity. The penalty laid down in the law for "Calumny" committed under similar circumstances, as well as calumny from which serious damages have occurred, is a jail sentence of up to 3 years.

The above provisions were strongly opposed by Bulgarian journalists and by a large majority of the Parliamentary opposition as being directed mainly against the journalists and as imposing serious barriers to freedom of speech in Bulgaria. An appeal was filed in the Constitutional Court alleging that the above-mentioned provisions of the Penal Code are in conflict with the regulation of the Bulgarian Constitution. The Constitutional Court, however, confirmed the compliance of the impugned provisions with the Constitution.

The Draft Law on Amendments of the texts concerning "offence" and "calumny" in the Penal Code was aimed at making the Bulgarian Penal Code more comparable and compliant with relevant European legislation. Thus the penalty of imprisonment was totally replaced by fines of different amounts in the provisions addressing "offence and calumny". Critics of the Draft Law insisted that the replacement of the penalty of imprisonment with fines (no matter what the amount) would encourage Bulgarian journalists to act irresponsibly.

At the same time, the Draft Law appeared to be quite unacceptable to journalists because the potential fines were disproportionate compared to the average income of Bulgarian citizens and, in particular, Bulgarian journalists. For example the Draft Law provides in relation to "offence" and "calumny" committed by, or to

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a person, in his official capacity, penalties of 5 to 20,000 BG new leva (5 - 20,000 DEM) in the case of "offence" and

- up to 30,000 BG new leva (5 - 30,000 DEM) in the case of "calumny". The minimum monthly income in Bulgaria is currently 70 DEM while the average salary is 211,47 DEM.

In the Reasons for his veto to the Draft Law, the President emphasized that he welcomed the legislative decision to replace the jail penalty by fines for "offence" and calumny". However, he pointed out that the upper limits of the fines are too high and disproportionate when compared to other penalties provided in the Penal Code and to the degree of public danger inherent in the crimes "offence" and "calumny". The Draft Law was sent back for discussion and a further vote in Parliament. The Parliament shall thereby respect the President's recommendation, namely a decrease of the fines and the introduction of a scheme that would relate the fines to the financial and family status and the obligations of the person convicted.

Presidential Decree No 15, proclaiming Reasons for sending back to Parliament for a new debate of the Law on the Amendments of the Penal Code, published in the State Gazette No 9 of February 1st 2000.

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