[PL] Amendment to the Press Law

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The Standing Committee of the Council of Ministers is currently considering the draft of 27 January 2010 amending the Act of 26 January 1984 on Press Law (with subsequent amendments). It has already passed public and intergovernmental consultations. For a long time the need to establish a new Press Law regime has been pointed out. The existing provisions are out of date in many respects, inter alia they refer to institutions that no longer exist.

The proposed changes are quite broad. The Draft includes inter alia changes in the definitions of “press”, “journalist”, “redaction”, amendments referring to the authorisation of statements quoted by journalists, amendments on journalists’ professional secrecy, new provisions on the registration of a journal or periodical and amended provisions on the right to correction.

The Draft defines “press” as periodical publications which do not form a closed and homogeneous whole, appearing at least once a year, having a regular title or name, current number and date and, in particular: dailies and periodicals, agency news, bulletins, radio and TV programme services. “Press” also includes each and any mass medium that exists or may be created in the course of technological progress, provided that they disseminate periodical information through printing, vision, sound transmission or other technique, including forms of electronic documents.

The new definition of “press” is not very different from the existing one; it rather aims at clarification of doubts that might arise under the existing definition (e.g., clarification that electronic editions of dailies or periodicals are covered as well). It was further clarified that materials not being the subject of redactional editing such as e.g., blogs, electronic mail, websites used for the exchange of user-generated content, private websites and internet forums are not covered by the notion “press”.

The proposed definition of “journalist” formally bonds its activity with the requirement of working for and on behalf of an editor and being employed by the editor either on the basis of Labour Law or under a Civil Law contract. Currently a journalist should either be employed by the editor or should work for and on behalf of it. Hence, the proposal defines “journalist” more narrowly. That has a limiting impact on the scope of persons who can enjoy journalists’ rights.

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The Draft provides a new proposal of organising press activity. Today publishing of a daily or periodical requires registration in the District Court. The judiciary explained that this obligation also concerns daily or periodical on-line productions (provided they fulfil the general requirements of the definition “daily”/“periodical”). The Draft proposes to keep the general registration obligation for printed dailies and periodicals and - for those published in an electronic form - it introduces a voluntary registration procedure. The justification in the Draft explains that in consequence of the voluntary registration of an electronic daily or periodical, the rules of the Press Law would apply to these. It would depend on the editor to decide whether the electronic daily or periodical is to register and therefore enjoy the benefits provided by the Press Law (e.g., right to journalists’ secrecy), or not (and in consequence organise its activity outside the Press Law regime).

Still, it can be noted that such interpretation may be challenged as the registration procedure of an electronic daily or periodical should not influence the general rights and obligations of journalists and the press as such. Fulfilling the registration procedure is not a prerequisite for qualification as press and being covered by the Press Law. As presented, the concept of voluntary registration of an electronic daily/periodical and its actual meaning raised some doubts. The Supreme Court in its decision of 2007 (IV KK 174/07) separated the understanding of “press” from the registration procedure, stating that the purpose of registration of dailies and periodicals is the protection of consumers - ensuring that the press title they receive is in fact a title that they want to acquire or to get to know and, secondly, the protection against unfair competition (protection of the existing press title).

The Draft specifies that the provisions on registration of press do not concern radio and television broadcasting, as these are subject to different legal provisions (Broadcasting Act). The current provisions of the Press Law are not precise in this respect, although in practice, being the subject of clarification by academic commentaries, they do not raise doubts. The other Press Law provisions apply to broadcasting organisations' activities unless otherwise stated in the Broadcasting Act.

The Draft proposes to abandon the concept of the right to reply and to keep the right to correction. Currently the Press Law envisages both a right to reply and a separate one to correction, although the distinction between them is not always clear-cut. It is understood that correction (defined as “to the point and factual correction of untruthful or imprecise news”) can refer only to facts. Currently the notion “reply” is defined as “a factual reply to a statement endangering personal goods”. Generally, the reply can be understood as a statement being a reaction to a statement endangering personal interests, such as human dignity; the reply can provide critical commentary, opinion, polemic and - as explained by the judiciary -

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it can refer both to opinions and facts described in the press material. The Draft proposes to keep only the concept of the right to correction. It defines "correction" as a formal denial or introduction of a reservation regarding untruthful or imprecise news appearing in the press. Upon application by an interested natural person, legal person or other organisational unit, the editor-in-chief of a relevant daily paper or a periodical is obliged to publish, free of charge, to the point and factual correction.

The Draft proposes also new rules on the right to authorisation; the amendments to the current regime are a response to journalists' opinions expressed during the public debate; the deadlines to provide authorisation are shorter and the understanding of the notion of "authorisation" is narrower.

Projekt ustawy o zmianie ustawy - Prawo prasowe (z dnia 27 stycznia 2010 r., skierowany pod obrady Komitetu Stałego Rady Ministrów)

http://neob.mkidn.gov.pl/media/docs/proj_ustaw/10.pdf

Draft of 27 January 2010 amending the Act of 26 January 1984 on Press Law

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