

[RS] Most of the 2009 Amendments to Law on Public Information Quashed

IRIS 2010-8:1/44

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On 22 July 2010 the Constitutional Court of Serbia decided that most of the articles of the 2009 Law on Amendments and Additions to the Law on Public Information (hereinafter referred to as the “Law”) were unconstitutional due to violation of media freedom and freedom of expression.

The Law consists of amendments made to the Law on Public Information, which were adopted by Parliament on 31 August 2009 (see IRIS 2009-8: 17/26 and IRIS 2009-9: 17/27). A month after its adoption, based on several initiatives, the country’s Ombudsman filed a motion before the Constitutional Court for an evaluation of the constitutionality of the Law. After almost a year, the Constitutional Court has established that most of the provisions of the Law are not in compliance with the Constitution of the Republic of Serbia and several international treaties that Serbia has ratified. The most significant of these are:

- The provisions that limit the founder of a public medium to being only a domestic legal entity are found not to be in compliance with the provisions of Article 50 of the Constitution which provides the freedom for anyone to establish newspapers and other forms of public information without prior permission and Articles 10 and 14 of the ECHR and Article 19 of the International Covenant on Civil and Political Rights;
- The provisions on draconian monetary fines for the media were ruled as unconstitutional because they violated media freedom and freedom of expression. In the judge’s words: “The threat of heavy fines could bring into question the survival of the media, and even more dangerously, they could lead to self-censorship, because neither the founders nor those employed in the media will be free from wondering whether they will be threatened with a fine for something that ought to be said freely.” Having in mind that the question of economic offences in the Serbian legal system is entirely regulated by the Law on Economic Offences, proscribing procedural rules that are different from the relevant law and drastically higher fines for media offences than the maxima set out by the law violates the principle of legal system unity as well as the principle of prohibition on discrimination as provided by Article 21 of the Constitution;

- The obligation to register the establishment and all changes of ownership, etc., in the Public Media Register is found to be neither in violation of the Constitution Articles 21, 50 and 83 nor Article 14 of the ECHR, but it is found that certain provisions that connect registration on the Register with a ban on publishing are unconstitutional.

Further, the Court has now initiated proceedings for the evaluation of the constitutionality of certain other provisions of the same Law. Although long awaited, this decision of the Constitutional Court is considered as a positive impetus and a cornerstone for further reform and improvement of Serbian media law and the media in general.

Ustavni sud je na 31. Redovnoj sednici odlučio o 71 predmetu, a u predmetima IU-227/06, IUI-29/09, Už- 838/09, Už- 487/09, Už- 1185/10 i Už- 2330/10 je odložio razmatranje i odlučivanje.

<http://www.ustavni.sud.rs/page/105-vesti/101642/cnt/saop%C5%A1tenje-sa-31-redovne-sednice-ustavnog-suda-odr%C5%BEane-22-jula-2010-godine-kojom-je-predsedavala-dr-bosa-nenadi%C4%87-predsednik-ustavnog-suda.sr-Latn-CS.htm>

2009 Law on Amendments and Additions to the Law on Public Information is available in the Official Gazette of the Republic of Serbia no. 71/2009

