

Media Legislation and Media Policy in Slovakia: EU Accession and the Second Wave of Reform

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SUMMARY

This article examines changes in Slovak media legislation during the accession period leading up to the joining of the European Union in May 2004.

After providing a summary of the evolution of EU broadcasting policies, the authors first review the politicized nature of media development in Slovakia during the first decade of the post-communist experience, most importantly the private ownership of print media and a dual system of private and public broadcast media. The legacy of the restricted democracy that characterized the first five years of the independence of Slovakia was a commitment by the opposition at that time to civil society. The Council for Radio and Television Broadcasting, with EU guidance, prepared three laws, adopted by the Slovak parliament in 2000-01, which created the current legal media framework. Slovakia not only adopted the legislation required for EU accession, but at the same time it also advanced media regulation in other areas. The Slovak experience suggests the important role of consultation and consensus in designing media legislation. The evolution of new media technologies confronts both Slovakia and the EU with new challenges in regulation. The bases for all new Slovak policies are reflected in the National Policy for Electronic Communications, approved in 2003. The changes in Slovakia in media policy and administration related to EU accession should be seen as part of a larger process of media reorganization in Europe. They involve greater marketization, a two-tiered broadcasting systems and a changed definition of public broadcasting, trans-border ownership, globalization, and, more recently, a dramatic change in the technology and style of communication.

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Key words: media legislation, access period, Slovakia, European Union

Introduction

The collapse of communism across East Central and Southeastern Europe at the end of the 1980s promised fundamental transformations: political democratization, economic transformation and state and nation building. It also introduced basic challenges for the media system. The end of the communist party's leading role created a vacuum in the control and direction of the media. Political parties, governments, private businesses and the public sought to promote their interests during the process of transformation. Media redefined their relationships with the public and the nation, a process complicated in some instances when states subdivided. The media agenda remained highly politicized (Gross, 2003).

As a result, the legal system for Slovak media went through fundamental changes in the early 1990s and significant but not so crucial changes in the late 1990s. The first legal changes in the media section resulted from the fall of the communist regime. Later changes related to Slovakia's EU integration efforts. In the intervening years, minor changes in media legislation were driven by internal political struggles, business-led attempts at privatization of some parts of the media sector (especially public television's second channel) and some necessary "technical" improvements in existing legislation.¹ During this era, Western monitors noted a number of efforts to harass freedom of the press.

In other words, media legislation during the "Mečiar era"² became a major political tool in attempts to influence media output, especially by Slovak public television, through financial penalties, limiting access to advertising and necessary technical equipment, by denying broadcast licenses or by personnel purges in public media and supervisory councils.

A number of people, some of them allied with Mečiar, tried to establish private national television stations, more often with commercial rather than political motives. In all of these attempts, politics played at least a covert role. Some of the proposals suggested privatizing one of the two channels of public television. The first almost national private television station – Markíza – was established in late 1996. The establishment of the Markíza TV station helped deprive Mečiar of his sought-after broadcast monopoly (Ballentine, 2002, pp. 98-99).³ The growth of local TV, especially in larger cities, also limited the Mečiar monopoly (Ivantyšin, 2000) as did local and particularly regional radio stations. Slovak Public Radio succeeded in retaining some independence and providing alternative opinion (Minárik, 2000). All attempts to privatize one of the two public television channels failed.

The new government of Mikuláš Dzurinda, chosen in elections in 1998 that ousted Mečiar, employed legal procedures to replace partially politically-compromised members of the Councils of Slovak Television and Radio. This helped reduce significantly the extent of politicization of broadcast regulation.

The EU & Broadcasting

As the European Union has expanded, its criteria for membership have expanded from procedural questions to criteria of substantive democracy, including media pluralism and provisions for public broadcasting (Pridham, 1999, p. 21). EU policy in recent years has been divided between a commitment to liberalizing the market and a desire to preserve social, cultural and political diversity (Wheeler, 2004). Countries emerging from communist rule were presented with alternative models of media regulation both by the United States and by states already members of the EU (Harcourt, 2003).

Broadcasting was principally a matter of national policy making until the 1980s, but as early as 1974 the European Court of Justice ruled that broadcasting did fall under the Treaty of Rome, which had given birth to the EU. In the early 1980s, the European Communities shifted their approach to broadcasting from an economic focus to a cultural one, a change facilitated by the issue of transborder satellite broadcasting. In 1982 the European parliament passed a resolution on broadcasting, followed by the policy document, "Television Without Frontiers," in 1984. This in turn was followed by a Television Directive in 1989 – Television Without Frontiers (89/552/EEC) – which aimed to define standardizing measures, and eliminate national restrictions. The "Television Without Frontiers" directive was amended in 1997 (Directive 97/36/EC), to say that half of the programming shown on European television should "where practical," be made within in the EU.

Television was seen as a causal connection between the media and the creation of a European identity. EU officials have also been concerned about the relative weakness of European television companies within the global marketplace (Davis, 1998, p. 80). This reasoning supported the idea of opening intra-community frontiers to national television programs with the idea of creating a single European market for broadcasting through the principle of regulatory tolerance vis-à-vis the quota issue, advertising, and copyright. This also explains why the EU regulations do not differentiate between national and European quotas of programming, but accept only European production quotas, which, of course, include national quotas. However, these European quotas are so broadly defined in the EC directive that they can include almost all programs – including sports, not just movies or cultural production in the narrow sense. For example, European production can include current affairs discussion programs, but not news reports. In other areas, such as protection or the advertising of alcohol, national measures stricter than EU directives can be applied. Perhaps the best approach would be to adopt the already existing classification system of an EU country. This, however, does not mean no room remains for national traditions in regulations.

The first successful effort to launch a European channel (under the European Broadcasting Union) was Europa TV (1985-86), followed by Eurosport (1989) and Euronews (1993). The following principles, which also applied to Slovakia, guide the regulation of electronic communications in the EU.

Regulation of content is separate from the regulation of networks. The regulation of networks deals with the way information, data and contents are distributed,

while the regulation of contents applies to distributed electronic communication services. In the case of the horizontal approach to regulation, whether one distributes telecommunication broadcasting services or other services does not matter. The same principles of technical regulations must be applied. In the case of the vertical approach to the regulation of content one must differentiate according to type of services, particularly possible new types of services in the market from digitalization and interactive communication. Therefore, various levels of regulation will be applied. In addition, this development could possibly lead to the convergence of regulation authorities (Telecommunication Authority, Council for Broadcasting and Retransmission, and the Post Office).

A combination of the European Convention on Transborder Television (ECTT), adopted by the Council of Europe in 1989 and the European Commission Directive, "Television Without Frontiers" (as modified) (hereafter Directive TWF) created a coherent legal framework for television broadcasting and the freedom of television services in Europe in the 1990s. The most important difference between the two is that while the ECTT is applied in the transborder context, Directive TWF is binding for domestic and transborder programs inside EU member states. Neither the ECTT nor Directive TWF deals with the technological aspects of broadcasting in a political way. Both deal exclusively with the regulation of television broadcasting for the broader public.

Media Regulation in Slovakia before the Accession Process

The end of the communist system meant the initiation of steps toward freedom of expression, the beginning of marketization in the media, and incorporation into a global system of communications (Jakubowicz, 2004, p. 56). In Czechoslovakia, of which Slovakia was then a part, the constitutional amendment of November 29, 1989, abolished the leading role of the communist party and ideology. The earlier clause, now deleted, had stated that the entire "cultural policy" of the country had to be led in the spirit of a "scientific world outlook," that is, Marxism-Leninism. In this way, freedom of speech and of the media was established not only *de facto*, but also *de iure*.

The first statutory legal change directly related to the media was an amendment to the Press Law in March 1990. The Press Law, originally passed in 1966, had been modified twice in 1968. The 1990 change re-established *de iure* individual freedom to publish the printed press. The amendment also annulled the requirement of institutional ownership of all media. Previously, only officially-recognized institutions and political parties were allowed to publish newspapers. Private publishing was thus legalized. Foreign ownership of the press was allowed with the permission of local government authorities. Citizens of the then Czechoslovakia were no longer required to obtain state approval to engage in publishing activities. Publishers simply had to register with the state, a requirement that still exists. If state or local state authorities do not respond to the registration promptly, or act at all, permission to publish is automatically granted. This amendment abolished the previous list of reasons for refusing registration. Precise circumstances in which a publisher might lose the right to publish or when a publisher

might be delayed in the right to start publishing due to missing information on the registration form were stated. Among the defects in the new law were the absence of any sanctions against state institutions that refused to give information to those who sought it and the failure to guarantee the right to editorial secrecy (which was claimed a few months later in the Code of Ethics of the Slovak Syndicate of Journalists).

Law 468/1991 set basic conditions for a dual system (public and private) of broadcast media. Although often amended, this law remained in effect for nine years, when it was replaced by Law 308/2000. However, only Law 166/1993 made possible the real conditions for the development of a dual system of broadcasting in Slovakia. The law split the frequency spectrum between the Czech and Slovak Republics and defined transmission frequencies for public broadcasters.

The legal regulation of public radio and television channels, which had been adopted in 1991 (Laws 254 and 255) were replaced, after some partial changes, with a completely new laws in 2003 –for public radio Law 619 and in 2004 for public TV Law 16. The second Dzurinda government (2002-) promised to propose solutions to questions of public broadcasting, although opponents asserted the government simply wanted to prolong its influence (Kollár, 2003). These news laws on public radio and television, passed in 2003 and 2004, establish a new body, the Supervisory Council, which supervises financial and business operations, alongside the existing Council of Slovak Television and Council of Slovak Radio. More important for the independence of public media was the transformation of ownership rights in favor of the public media. Other changes, such as the selection and election of directors by the media councils – and not by parliament – also took effect.

Media Regulation During and After Accession

Slovak governments since 1998 have been largely successful at integrating into Europe, in part because the Mečiar governments' actions had forced his opposition to become active advocates of civil society (Pridham, 2002), p. 214). They have been less successful at damping the Mečiar legacy of political-business corruption, postcommunist partocracy and nationalism, and of shifting from an authoritarian media system to one emphasizing social responsibility, that is, from one representing primarily the government to one attending primarily to the interests of the public (Harris, 2004). For the media this has meant walking a tightrope between privatization and public service, which has variously been defined as serving the public interest, or providing what interests the public. The concomitant creation of a European public sphere – where supranational elites communicate – part of the process of European integration, could diminish diversity by among other things, crowding out the national public space and engender a nationalist reaction by Mečiar partisans and threaten the changes accomplished so far (Schlesinger 1999; Rollet 2001). A philosophical debate in Slovakia over the need for a comprehensive media law further complicates this process. Partisans of a legal solution argue that the lack of such a law indicates that the country also lacks a clearly conceptualized state media policy. Opponents of such a policy argue that not only should

government action in this sphere be minimized, but also that legal limits inhibit rapid adjustment to changing technological possibilities as well as policy choices for future governments.

Although officially the Ministry of Culture was responsible for the accession process in the media field, in practice the Council for Radio and Television Broadcasting was mostly involved in this process in the media field since the late 1990s because of the Council's more experienced staff. The EU bodies in media affairs had first established contact with the Ministry of Culture of the Slovak Republic, according to the usual practice. The *acquis communautaire* contains little about cultural issues other than the media, in particular about the audiovisual field.

A situation report required in the first phase simply compared Slovak media legislation with EU directives in this field. On the basis of this comparison, necessary and possible changes in Slovak media legislation were suggested. Twice yearly reports on implementation of the *acquis communautaire* were requested by Brussels authorities in this field throughout the negotiations. In addition, the EU authorities issued evaluation reports of particular areas on a regular basis. It is useful for countries to follow these reports in order to avoid delays and mistakes in the accession process.

In 1999-2000 the Council for Radio and Television Broadcasting or other state bodies prepared three draft laws, which parliament adopted in 2000 and 2001. Slovak authorities consulted with the European Commission team about these drafts. These laws, plus amendments, have created the current legal media framework. Although the accession process created the main reason for adopting new media legislation, it also provided the opportunity for developing additional media regulation, not actually required for the accession process.

It should be noted that regulation of broadcasting is separate from the regulation of telecommunications, which are governed in Slovakia by two independent regulatory bodies: the Council of Radio and Retransmission and the Telecommunication Authority. In 2003-04, some discussion took place about merging both regulators in one regulatory body. These two bodies could still be merged in the near future.

Content regulation policies seek to ensure the protection of media and cultural pluralism, support for cultural and language diversity, protection of children and youth, protection of human dignity, protection of consumers and the protection of copyright and related rights. The Anti-Monopoly Office deals with fairness in competition, concentration of businesses, unfair dominance in the market and with upholding the rules of market competition. However, market dominance (not to be confused with a monopoly) is not forbidden in Slovakia generally, including the media market. The Anti-Monopoly Office is interested only in cases of the evident abuse by companies of their dominant position in the market.

Law 308/2000, "On Broadcasting and Retransmission," mainly implemented Directive TWF in the Slovak legal system. The Council of Broadcasting and Retransmission supervises the application of this law in the Slovak Broadcasting sector. How have all these legal changes been achieved? How has the Slovak legal framework for the media field accepted the *acquis communautaire*?

Firstly, Law 195/2000 defined status and roles of regulatory body in telecommunications, i.e. Telecommunication Authority. In addition, this law set basic conditions for partial liberalization of telecommunications market.

As mentioned, Law 308/2000 made Slovak media legislation compatible with the directive TWF, including its amendment, an important legal change. This law fully superseded some previous media laws (468/1991 and 160/1997) and partially superseded others (e.g. 166/1993). Public as well as private broadcasters, including independent associations of broadcaster, achieved consensus on the fundamental legal regulation. Among the important legal changes is the legal right to a license that until then was not a right, but only an option (or possibility). EU directives have not complicated every aspect of Slovak media legislation. For example, cable re-broadcasters now must only register rather than ask for a broadcasting license.

The European Commission monitoring reports included no serious or “fatal” objections. A minor linguistic problem arose since Directive TWF did not employ some terms used in the Slovak context. A problem developed with the one-sided legal form of license forms because license conditions were not stated in a taxonomic (precise, binding) way, but was rather of a technically-administrative nature. These legal transactions therefore did not appear to EU reviewers to be real business or official agreements among partners. In other words, from the point of view of the *acquis communautaire*, these licenses were not sufficiently formulated. All these issues have been successfully resolved. Legal conditions remain to be fulfilled in the case of license seekers who voluntarily take on specific obligations, such as the ratio of programs broadcast in the public interest.

Objection – or rather concern – was initially expressed about the relatively limited professional staff and budget of the Council for Radio and Television Broadcasting, but the Council prior to 2001 used this opportunity to improve its legal independent status in the new law.

In general, this accession process in the media field transpired without serious problems because as already mentioned, both the ECTT and Directive TWF are to large degree identical legal regulations and secondly, some regulatory conditions were already adopted in Slovak media legislation before 1998. Negotiations were not easy at that time. Private television broadcasters obviously wished conditions as liberal as possible, while state authorities wanted as much regulation as possible.

For example, private television broadcasters wanted very liberal policies on advertising breaks, while state authorities demanded more restrictions. Similarly tough negotiations concerned the total amount of advertising on public television. The management of public Slovak Television not surprisingly was more determined to win some regulation than representatives of private television broadcasters, e.g. the right to stay that the showing of the correct time “was sponsored by...”

That the Council for Radio and Television Broadcasting (as it was known at the time) became a member of EPRA – the European Public Regulatory Authorities – already in 1996 further explains the limited number of problems in the accession process. This useful consulatory body is affiliated with the Council of

Europe. Therefore, Slovak regulatory authority was well informed about the opinions of other regulatory bodies. Some possible controversies which could have arisen were thus solved before the accession process began, which provided enough time for the adoption of new conditions for broadcaster that had to submit a new application form with required data.

Law 308/2000 already has been amended twice. The first change was technical, defining more precisely the jurisdiction of Slovakia and the EU (i.e. the EU Commission) in this field, the result of the first contacts with the European Commission. The second change improved sanction mechanisms and their effective application to broadcaster. Before the adoption of Law 308/2000 there were significant limitations on the sanctions available to the Council for Broadcasting and Retransmission. For example, the Slovak Supreme Court issued a bureaucratic or judicial delay of a sanction by the Council against a broadcaster; the Council had to stop its legal action against the broadcaster. An amendment to 308/2000 made it possible for the Council to apply real sanctions in serious cases of breaches of the law related to such issues as the protection of children and youth, human dignity, election campaigns, etc. In these cases the Council can now apply a harsher or higher level of sanctions, i.e. fines. In addition, the amendment provided an additional three months for the Council to act if the Supreme Court returned the decision to the Council for formal sanctions. The amendment also significantly shortened the time for Council decisions. The original one year and three year periods were cut to six months and one year, respectively, ensuring prompt rulings by the Council.

Repeated serious breaking of the law by broadcasters could not previously result in revocation of their licenses. That was possible only in cases where the broadcaster repeatedly broadcast pornography or in some similarly serious way broke the law. If broadcasters did not follow license requirements, they faced only fines or other sanctions, not loss of license.

The amendment to Law 308/2000 also made more transparent the regulation of advertising, teleshopping, sponsorship, protection of children and youth, protection of human dignity, the right to correction, access to information, access to important events, support for European and independent production, and anti-concentration measures.

In 2001, the Slovak parliament passed an updated law on advertising, which set new criteria for so-called deceptive advertising and comparative advertising. As far as broadcasting is concerned, most advertising regulation derives from Law 308/2000. In principle, responsibility for broadcasting deceptive and comparative advertising falls on the shoulders of business or advertising companies, not the broadcasters (Grujbárová 2003). Although Slovak media legislation has been only slightly changed, a fundamental change has taken place in the copyright law, which incorporates seven EU directives.

Current Slovak media legislation guarantees free movement of program services, regulated by a minimum of rules, which guarantee conditions for the development of European production in line with European audiovisual policy. Some important differences remain in the media legislation among EU member countries. For example, the "right to reply" is incorporated in the Czech legal system

while the Slovak legal system contains only a “right to correction.” Some differences exist even in terminology. For example, while Czech regulatory legislation uses the term “state authority,” Slovak media regulatory legislation employs the term “regulator.”

The Slovak experience suggests the important role of consultations and attempts to find consensus on key issues. In principle, if a developed regulatory framework, including regulatory authorities already exists, and their decisions are respected by the major partners, few problems are likely to arise in implementing EU regulations in the media field. Two or three experts, including one lawyer and one media expert, should be included in the negotiating team that deals with the European Commission in the chapter on culture and the media. This is not so much about representation as it is about hard work in preparing materials for competent negotiations. Equally important is not to change members of the team unnecessarily.

Challenges Ahead

EU regulation is faced with new challenges. Until now the subjects of regulation have been common program services, i.e. broadcasting. Multimedia services (including video auditory, on line TV or teletext) provide new challenges. It will be impossible to apply the same high level of regulation as in standard broadcasting. The most important challenge to regulation will be information society services, e.g. new media services, such as e-commerce, on-line banking and on-line databases (Grujbárová 2003, p. 7). The only conditions in this field so far are set by the E-commerce Directive. The bases for all new Slovak policies in this field are partially reflected in the National Policy for Electronic Communications, approved by the government in March 2003, a follow-up to the Telecommunication Policy of the Slovak Republic 2000-2002.

In the broader framework, preparations for new rules in the regulation of broadcasting in the EU were undertaken in 2003-2004. The main issue was whether this new or updated directive should deal only with standard (“traditional”) broadcasting services or if it should also cover new media services, and if so, respectively whether it will include various levels of regulations for these types of services. Broadcasters pushed to allow more time for advertising in broadcasting because they face difficult business challenges. Discussion also addressed the right to current affairs programs and access to important events. The problem is that the right to brief news was dealt with only in the ECTT. Therefore, national governments have developed different rules. In addition, minor press agencies and small broadcasters objected that no law or directive guarantees their rights to important events. Thus, these small broadcasters are not able to offer really independent news. Another unresolved issue concerns the purpose of television broadcasting and radio broadcasting. While television broadcasting is understood as a public service, radio broadcasting is seen as just a service, suggesting different regulatory approaches to these media.

Some challenges concern the work of regulatory authority, which seems to lack a media market conception. Most importantly, regulators pay insufficient attention

to the consequences of regulatory measures. In other words, many small broadcasters – especially radio broadcasters – who already find it difficult to survive on the small market, can survive. Slovak authorities, historically accustomed to a centralized system of government (whether in the Habsburg Empire or in Czechoslovakia), seem to be satisfied with possible future directives.

All of these challenges outlined in this study must be faced against the backdrop of continued debate over the proper role of public service broadcasting, maintaining cultural quality and defending the interest of the nation. Technology, market power, and the changing media landscape are raising questions across Europe about the regulation of public broadcasting (Betzel & Ward, 2004).

The changes in Slovakia in media policy and administration related to EU accession in the end should be seen as part of a larger process of media reorganization in Europe. They involve greater marketisation – which countries to the west underwent a decade or two ago, two tiered broadcasting systems, a changed definition of public broadcasting, trans-border ownership, and globalization, and more recently, a dramatic change in the technology and style of communication.

Slovakia, like the other countries of the region, must ensure that it can provide the independent expertise that will use the opportunities of a European public sphere and communication while retaining an autonomous and diverse Slovak public sphere, where government and political interference remain at a minimum.

ENDNOTES:

- ¹ By itself the legislation often sounded quite proper. For example, Law 321/96 defined the mission of Slovak Television as to serve the public by the creation and broadcast of programs “established on the bases of democracy, humanizing ethics, truthfulness, independence, professionalism and legality.” How the laws were applied did not always correspond to their goals (Ferko, pp. 131-32).
- ² The Mečiar era refers to the several governments of Vladimír Mečiar, 1992-98, interrupted briefly by the interim government of Jozef Moravčík in 1994.
- ³ Pavol Rusko, who leads the ANO political party and who founded Markíza, did invite Mečiar to his wedding, but the shifting contours of Slovak political alliances occasionally produce strange bedfellows.

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Ivanka Litvajová, Department Head, Department of Communication Media & Protection of Copyright at the Ministry of Culture of the Slovak Republic, 10 January 2005.

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Medijsko zakonodavstvo i medijska politika u Slovačkoj: Ulazak u Europsku uniju i drugi val reformi

SAŽETAK

Članak analizira promjene u slovačkom medijskom zakonodavstvu tijekom perioda pristupanja Slovačke članstvu u Europskoj uniji u svibnju 2004.

Nakon sažetog prikaza razvoja politike emitiranja u Uniji, autori raspravljaju o ispolitiziranoj prirodi medijskog razvoja u Slovačkoj tijekom prvog desetljeća postkomunističkog iskustva, prije svega privatno vlasništvo tiskanih medija i dvojni sustav privatnih i javnih medija. Naslijeđe djelomične demokracije, koja je postojala prvih pet godina slovačke neovisnosti, bila je obveza opozicije prema tadašnjem civilnom društvu. Vijeće za radio i televiziju, pod vodstvom Unije, pripremilo je tri zakona koja je slovački parlament usvojio 2000. i 2001. godine, i koji predstavljaju trenutni medijski okvir. Slovačka ne samo da je usvojila zakone potrebne za pristup Uniji, nego je istodobno unaprijedila medijsku regulativu u

drugim područjima. Slovačko iskustvo pokazuje važnost savjetovanja i konsenzusa u kreiranju medijskog zakonodavstva. Evolucija novih medijskih tehnologija suočava Slovačku i Europsku uniju s novim izazovima u regulaciji medija. Temelj svih budućih slovačkih medijskih politika vidljiv je u Nacionalnoj politici za elektronske komunikacije, koja je usvojena 2003. godine. Promjene u slovačkoj medijskoj politici i administraciji vezane uz Uniju dio su šireg procesa reorganizacije medija u Europi. One uključuju veću okrenutost tržištu, dualni sustav emitiranja, redefiniranje javnog emitiranja, prekogranično vlasništvo, globalizaciju, i nedavna, dramatične promjene u tehnologiji i načinu komuniciranja.

Ključne riječi: medijsko zakonodavstvo, proces pristupanja, Slovačka, Europska unija