



Human Rights House
Foundation (HRH F)



INDEX
ON CENSORSHIP



Council of the Republic
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27 June 2008

Re: Concerns with the Proposed Draft Law on Mass Media

Dear Members of the Council of Republic,

We are writing to express our grave concerns regarding the draft Law on Mass Media, currently before you, which would impose restrictions on freedom of expression beyond what is permitted by international law.

The proposed draft Law on Mass Media would actually make even more restrictive what is already an unduly harsh regulatory regime for the media. Our main concerns are as follows:

The Scope of the Draft Law

The scope of the draft Law on Mass Media is excessively broad. First, the definition of “mass media information” appears to include not only information produced by traditional mass media outlets, such as newspapers and broadcasters, but also information produced by non-media bodies, such as non-governmental organisations. Second, it is not legitimate to apply the regulatory frameworks designated for the print and/or broadcasting sectors to the Internet, as courts in other countries have held.

Basic Principles

The draft Law fails to establish certain basic regulatory principles such as respect for editorial independence and diversity, contrary to international standards governing media regulation. As a result, neither the independence of editorial decision-making nor the right of the public to access a wide range of information about matters of interest, including from different media, key justifications for regulation, are guaranteed.

Content Restrictions

The draft Law imposes strict conditions on the content that may be carried by mass media outlets. For example, they are prohibited from disseminating information on behalf of non-governmental

organisations, which is clearly not a legitimate restriction on the right to freedom of expression. The bar on ‘the use of unquotable words and expressions’ is also highly problematical. These problems are particularly unreasonable taking into account the harsh regime of sanctions that applies (see below).

Independence of Regulatory Bodies

It is a well established principle of international law that bodies which exercise regulatory or administrative powers over the media should be independent of government. The draft Law violates this principle by stipulating that Council of Ministers, a political body which is part of the government, is the State governing body in the sphere of mass media.

Registration of the Print Media

The draft Law imposes a registration requirement on the print media. We view registration for the print media as an unjustifiable restriction on freedom of expression since it does not pursue any legitimate aim recognised under international human rights law and there is no practical rationale for it, unlike for broadcasting where the limited availability of frequencies justifies licensing. Moreover, the draft Law requires print media outlets to provide an excessive amount of information for registration, which is oppressive and may be abused.

Status of Journalists

The draft Law effectively elevates ethical professional principles to legal obligations. A particular problem with these obligations is that they are very general in nature, contrary to the requirement that restrictions on freedom of expression be prescribed by law. The meaning of the rules is ambiguous and susceptible to a wide range of interpretation. Violation of these obligations may entail criminal, administrative and civil liability.

Access to Information

We welcome the commitment to greater openness evidenced by the introduction of provisions regarding access to information. However, the government should enact separate legislation to implement fully the right to information. Such legislation should apply to everyone, not just to members of the media.

Sanctions

The system of sanctions set out in the draft Law is excessively general in that it fails to establish clearly who is responsible for what sort of wrong and which wrongs will lead to the different types of sanctions available. It therefore fails to conform to the international law requirement that sanctions should be clear and proportionate. In addition, it is our view that the print media should never be subject to suspension, banning or revocation of permission to publish, which are permissible sanctions under the draft media law. In our view, warnings and fines, along with the applicable criminal law for crimes by individuals, are sufficient to achieve any legitimate regulatory goals.

We add our support to the chorus of both Belarusian and international human rights organisations and media groups calling for the immediate withdrawal of the draft Law on Mass Media. We remind the Council of the Republic that Belarus has ratified the International Covenant on Civil

and Political Rights (ICCPR) and is therefore subject to the obligations in the ICCPR with respect to the right to freedom of expression.

We urge you to refuse to vote this draft into law and, instead, to undertake to engage in a democratic process of revision of the Law on Mass Media with a view to bringing it into line with international human rights law. Our organisations have considerable expertise in this field and we would be happy to provide any assistance we can to this end.

Yours truly,

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