

Ivo Ivanovski

Minister of Information Society and Administration, the
Former Yugoslav Republic of Macedonia

London, 12 August 2013

Dear Minister Ivanovski,

I am writing to you on behalf of ARTICLE 19, an international freedom of expression organization, to raise our concerns about the new Draft Law on Media (Draft Law) which contains a proposal for statutory regulation of print media in Macedonia. Moreover, a number of its provisions do not meet international standards on freedom of expression.

Our organization is concerned about the proposal of **statutory print media regulation** as we find that the authorities in Macedonia have not yet presented any relevant and sufficient reasons for the need to introduce statutory regulation of print media in the country.

We recall that although the European Convention on Human Rights (ECHR) does not explicitly prohibit statutory regulation of print media, under Article 10 para 2 of the ECHR, any interference with the right to freedom of expression must be “necessary.” According to the jurisprudence of the European Court of Human Rights (European Court), the necessity requirement means that there should be a pressing social need for the measure and that it must be proportionate to the aim pursued. If a less intrusive measure is capable of achieving the same purpose, the least restrictive measure must be applied. These guarantees were introduced in order to prevent governments from following their ‘legislative instinct’, and to make sure that the amount of regulation concerning the media is kept to a minimum. This means that the authorities should opt for statutory regulation only if self-regulation has proven inefficient.

We are concerned that these requirements are not met in the Draft law:

- The proposal for statutory regulation on print media has been made without a conclusion by independent and detailed review of the current situation that the self-regulation is ineffective in Macedonia and cannot be improved.
- The purpose of the Draft law is unclear. In Article 1, it states that it regulates the basic principles and conditions in the performance by the media of their activities, which does not provide a cogent justification for statutory regulation. We note that similar media laws in other countries expressly define their purpose as the protection of media freedom (for example, Finland’s Act on the Exercise if Freedom of Expression in Mass Media).

Apart our concerns on statutory regulation of the media, we have further concerns on the following provisions of the Draft Law:

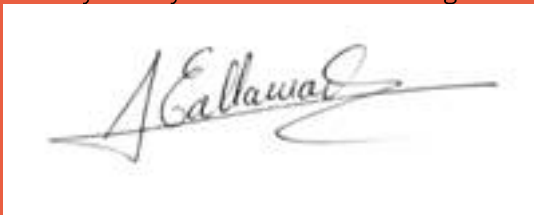
- The Draft Law designates the Agency of Audio and Audiovisual Media Services as a **print media regulator**. We consider that a self regulatory body is more appropriate to oversee and impose sanctions on print media because such a body is removed from government interference. Our concern is heightened by the possibility for political control over the Agency. In our comments regarding the draft Law on Audio and Audiovisual Media we expressed our concern about the lack of safeguards for the independence of the Agency.
- **Problematic protection of minors:** Article 6 of the Draft Law obliges print media to place a warning that it contains “pornographic content” and obliging publisher of electronic media to “prevent” minors from accessing electronic publications “with pornographic content”. The meaning of “pornographic content” is unclear because the Draft Law does not provide for a definition of it. Hence, this may be used to abusively restrict legitimate expression (in particular artistic expression). Moreover the verb “prevent” implies censoring. The burden to protect children should be on both publishers and parents. It should be primarily up to parents to decide what their children will watch (e.g. through parental control locks or password systems) and the publishers should be obliged to warn about content only. Also, it is unclear what is meant by “proper protective restrictions”.
- **Rule on restriction on media freedom is unclear:** Article 3 para 3 of the Draft Law does not safeguard media freedom even though it refers to the Constitution because the current Constitution itself does

not contain a strong safeguard for protection of media freedom. Article 54 of the Constitution does not explicitly provide that all restrictions accord with a test of necessity in line with Article 10 (2) of the ECHR.

- **Blanket prohibitions on certain expressions:** Article 4 sets out a blanket prohibition of, *inter alia*, publication of threats to national security, and incitement to violent overthrow of constitutional order. Blanket prohibitions on speech are inappropriate as they can be used to restrict legitimate expression. Under international law, all restrictions, including on the grounds listed in Article 4, should meet the three-part test set out in Article 10 (2) of ECHR. Article 4 of the draft Law does not provide that publications whose content is prohibited must meet the test of necessity and proportionality. The overbroad prohibition will have a chilling effect on the media and may lead to arbitrary restriction on legitimate expression.
- **The vague protection of sources:** Article 12 proclaims the right to protection of sources by reference to the Constitution and international law. This provision implies, and assumes, that all persons are familiar not only with the Constitution but with international law. In reality this is not the case.
- **Right to correction is not only regarding defamation:** Article 17 recognises the right to correction and reply and refers to its regulation under the Law on Civil Liability for Defamation. We note that the right to correction applies not only in cases of defamation, i.e. those affecting one's reputation. People should be able to benefit from this right to react to inaccurate factual statements in the media affecting their rights in general.
- **Insufficient protection of media pluralism:** Article 16 (dealing with protection of competition among media publishers) simply refers to "competition laws." However, we note that general competition laws are unable to guarantee media pluralism. It has been recognised that in order to protect media pluralism specific competition rules must be adopted to guarantee that media can foster public debates and provide citizens with reasonable access to a daily flow of diverse information and ideas regarding matters of public concern.
- **Fines are disproportionate:** ARTICLE 19 notes that the Draft Law does not provide for proportionality of the fines which can be imposed on the media. Fines should not endanger the existence of the media.

I call on you to re-consider the need of a statutory regulation of print media and bring the rest of the provisions of the Draft Law in compliance with international law. ARTICLE 19 stands ready to provide further support to you and the Macedonian legislators in this process.

Thank you for your attention to this urgent matter.



Dr. Agnès Callamard
Executive Director
ARTICLE 19

CC:

The Assembly of the Former Yugoslav Republic of Macedonia
The Parliamentary Commission on Transport, Communications and Environment,
The Secretariat for European Affairs of the Government of the Former Yugoslav Republic of Macedonia,
Delegation of the European Union in Skopje,
OSCE Mission to Skopje,
The Association of Journalists of Macedonia, Media Development Centre,
Macedonian Institute for the Media,
Independent Union of Journalists of Macedonia.