



Cumulative Report on Debates in the “Media Law” section on the MediaForum Platform

Period: March 25 2015 – 1 March 2016

Overview

During March 25, 2015 – March 1, 2016, 9 debates were held in the “Media Law” section. The project team identified lawyers with experience in the area of media law, who could facilitate the debates in this rubric. Although this is a quite specific area, and one needs basic legal knowledge in order to provide arguments for the comments posted, the debates in the “Media Law” section included a significant number of various comments and opinions.

Topics and debate process

1. “The burdensome release of the new Law on Advertising”.

The project team decided to organize the first debate in this section around an topic that is important for the functioning of the media – the draft Law on Advertising. At that time, the draft law was pending supplementations at the Ministry of Justice, and the fact that the authorities did not organize public debates around it raised concerns with the representatives of the media. The facilitator, Tatiana Puiu, prepared the opening text and attached the draft law and the informative note to it. Lawyers, media managers, as well as one representative of the Broadcast Coordinating Council (BCC) joined the discussion. The participants underscored the need for the managers to be watchful of each amendment introduced to the draft, since advertising is a vital source of revenue for the media outlets. In addition, they agreed that the media organizations should ask the Ministry of Justice, the Government, and the Parliament to accelerate the finalization and voting on the new Law on Advertising. The facilitator highlighted that the draft should be subject to analysis in the light of corruptibility and human rights. Tatiana Puiu recommended taking into account the principle of transparency before and after the voting of the law, and organizing public debates during the finalization of the law provisions.

2. “The amounts asked for as damages for alleged defamation: who establishes their size and how?”

This is a subject which is always topical for the journalists, since there is a risk that individuals who are not covered in a favourable light in journalists' stories could ask for refutation and damages in court. Therefore, the project team decided to use a lawyer who participated in cases against journalists to explain the way of calculation of the damages that may be asked for from the media, whether or not there are any express provisions on this, what journalists may expect when somebody calls them to court. The facilitator explained these aspects and attached to the text a decision of the Supreme Court of Justice in a case against Ziarului de Garda and the civil complaints against several publishers, filed by judge Lilia Vasilevici. Journalists were invited to share their experiences related to the trials.

Journalists, lawyers, as well as people who filed cases against the media for defamation at some point, took part in the discussion. A Russian language journalist who went through a trial, said that the actual intent of people who take the media outlets to court and ask for millions of lei in damages, actually intend to “put the media down”, and that judges often tend to please them.

In conclusion, the facilitator underscored the need to introduce an expert analysis or conclusion as an evidence establishing the existence of psychic suffering and the level thereof, and quantify the size of moral damage suffered by the allegedly defamed person. In Mrs. Puiu's opinion, this would increase the trust in the judiciary, making sure the plaintiff gets fair compensation, without exaggerated sanctions. In addition, she mentioned that journalists should be encouraged to inform the public about issues of high interest.

3. “Personal data protection: reasonable or excessive?”

The topic of this debate was selected following an initiative by the Government to open the data about enterprises, held by the State Registration Chamber (SRC), which the Centre for Personal Data Protection refused to endorse. This subject has generated dissatisfaction, particularly among independent and investigative journalists, who use the SRC data and pay for it. Facilitator Olivia Partac explained in the opening text the legal provisions about personal data and those about access to information of public interest. Different people participated in the discussion, such as journalists, media managers, a member of the Central Election Commission, a representative of the Government, which promoted the initiative on opening the data, etc. Most of the participants in the discussion said it was necessary to make the data about enterprises more transparent, so that the public could be informed about the interests and business of civil servants who have access to public money.

The facilitator noted that personal data protection in Moldova is excessive. According to her, access to data about the founders of companies is normal for all countries. Olivia Partac recommended supplementing the Law on Personal Data Protection to

define explicitly what data should be public, in order to exclude abuses from authorities. “Everything that is of real public interest (rather than mere curiosity) should be public. If there is a conflict with the private interest, then both interests should be weighted and the one which is of biggest need to and has the biggest impact on the society shall have priority”, Olivia Partac mentioned.

4. “In what conditions the image of ordinary people may become a background for news?”

This topic generated 19 comments. Journalists and media consumers who took part in the discussions criticized the TV stations that use the same images as a background for different news, while sometimes the subjects is negative, which implicitly casts unfavourable light on the people who appear in the footage, being shot in the street or in other public places. The facilitator has explained the legal provisions about one’s image and attached a Factsheet by the European Court for Human Rights regarding the right to protection of one’s image.

Based on the comprehensive debate held on this subjects, Olivia Partac concluded that good faith of the media representatives is one of the solutions to avoid violation of an individual’s right to his/her own image. Another solution could be the availability of clear legal provisions, “similarly to the ones existing in the West, as well as an authority that would oversee and punish such cases”. In addition, the facilitator spoke about the need to regulate the way in which images are used, and offered as a good example to be followed the French approach, where the media has the permission to use background images from an event only in the context of a piece of news from that event.

The facilitator recommended developing some “game rules”, which would make people feel legally protected; having clear regulations about the conditions in which footage shot in the street may be used; the responsible authorities should provide advise on this not just to the managers of the media outlets, but also to the reporters in the field; the Broadcast Coordinating Council should organize a debate on this topic among professionals.

5. “Why do public institutions qualify requests for information as petitions?”

This debate has again been dictated by the status of things in Moldova, more precisely the fact that, during the said period, there were cases when public institutions refused to provide information to journalists, asking them to file a written petition and promising to get back with an answer within 30 days, according to the Law on Petitioning. Following the consultations, the project team has agreed to take this subject for a public discussion on the MediaForum, as an attempt to stop this phenomenon from expanding in Moldova. Facilitator Tatiana Puiu took the debate up and explained the difference between a petition and a request for information, bringing concrete arguments. Journalists who took part in the discussion qualified

this behaviour of the public institutions as an attempt to limit access of the media to information of public interest.

The facilitator noted in the final report that the current provisions on access to information are sometimes outdated. The Law on Access to Information was passed 15 years ago and contains confuse provisions that give room to abusive interpretation by civil servants acting in bad faith. Current regulations include not only double standards, but also some excessive terms for provision of information of public interest, the facilitator added. For instance, the current law does not oblige the institution to respond to a verbal request for information immediately or in 24 hours at the most, as it is in Romania. In addition, according to the facilitator, there is no mechanism for sending requests via email. "The provisions about the individuals who may request information of public interest are also faulty. According to the Law on Access to Information (Art. 5, par. 3), foreigners and legal entities of Moldova have no right to request official information, which is inconsistent with the EU standards", Tatiana Puiu also concluded in the final report. She recommended supplementing the Law on Access to Information and the related legislation to bring it in line with the EU legislation and the international standards.

6. "How about the presumption of innocence in this era of 'flash' news?"

This subjects, which relates to both the ethical aspect of requesting the reaction of the parties concerned by conflictual news, as well as the legal obligations of any individual to take into account the presumption of innocence when they accuse somebody publicly, has become even more topical in the past year, when the media and the public opinion was basically "shaken" by news about apprehensions, arrests, corruption cases, etc. Together with facilitator Violeta Gasitoi, the project team agreed to address this topic in the MediaForum, in order to remind journalists that they need to take into account the presumption of innocence when covering criminal matters and wishing to be the first who delivers the news. Journalists participated in the discussion and suggested various means, including correct phrases that could contribute to the observance of this legal provision.

The conclusion of the facilitator based on the discussions was that not all professionals are aware about the correct language to be used in such news. She recommended conducting some actions aimed at informing and explaining to the public and the journalists the language that should be used when a person is accused, particularly of a criminal offence.

7. "Lawfulness or unlawfulness of involvement in private life by doing shooting on the sly"

This topic was dictated by the appearance on some news portals of a video with a politician in intimate poses. The project team decided to explain the legal provisions allowing or forbidding the broadcast of such images. Violeta Gasitoi, as a facilitator, has analysed the legislation in this area and launched the debate. Most of the

participants in the discussion disapproved of the dissemination of such images, saying this is a flagrant interference in one's private life and called for setting up harsh punishments for those who commit such acts.

The facilitator has concluded that, for the most part, journalists who took part in the discussion know very well where the limit between public interest and the right to privacy is, but the debate was still useful as it contained legal explanations on this matter, and journalists were able to understand the legal reasons for some editorial decisions that so far they used to make based on ethical and common sense reasons. Violeta Gasitoi recommended explaining from time to time to journalists, through various means, "based on specific cases, what public interest means, and which information about private life may or may not be published".

8. "Photos taken over from Facebook: should we ask for the agreement of the individual or not?"

Although taking over of photos from the social media is very much spread in Moldova, the discussion did not gather too many comments. The reason may be that the facilitator brought legal arguments that such practice is against the law, since the image of any individual, regardless of the way in which it was acquired, may only be used with the consent of the latter, while the journalists using this type of images preferred to ignore this aspect in order to be able to further secure illustration of their news by taking over images from Facebook or ok.ru.

The facilitator noted that it is necessary to inform journalists about the legal side of the interference by the media or by ordinary people into the right to privacy and the copyright. "Or, in a democratic society, interference should be legal, necessary and proportional to the purpose", Violeta Gasitoi concluded.

9. "Is it necessary to make legal interventions to counteract misinformation?"

The issue of information manipulation and misinformation, which is increasingly sensitive in Moldova, was addressed through this debate, facilitated by lawyer Eugeniu Rabca. The topic came as a consequence of publication of some monitoring reports of media organisations and some case studies conducted by media experts, which showed that misinformation and information manipulation are reaching increasingly bigger proportions. The facilitator addressed this subject by making reference to some existing legal rules, as well as to the Journalist's Code of Ethics.

The debate gathered 13 comments; all participants agreed that this issue exists and is predominant in the Moldovan media; however, some were sceptical that this could be uprooted, not even through legal solutions. At the same time, the users agreed that some regulations should be developed, at least in order to reduce this phenomenon and to hold media outlets accountable; however, the answer to the quest "How?" is still to be found. The majority of participants agreed that, for the beginning, an accurate definition of the terms "propaganda", "misinformation", and "information war" should be included in the Broadcasting Code. Some participants

suggested establishing fines for dissemination of false information. The users have highlighted the need to encourage independent media institutions and to put pressure on the Broadcast Coordinating Council to oversee the observance of the existing legal provisions in order to fight information manipulation.

Facilitator Eugeniu Rabca recommended for this topic to be subject to periodic discussions within different formats (for instance, in the context of seminars, trainings with the participation of foreign and national experts) with a view to identifying viable solutions for Moldova.

Conclusions and Recommendations

The facilitators of the debate in section “Media Law” made the following recommendations:

- The draft Law on Advertising should be subject to review in the light of corruptibility and human rights;
- The transparency should be ensured before and during the voting of the Law on Advertising; during the finalisation of the provisions, public debates should be organised;
- Introduce, as evidence within trials against defamation, an expert analysis or conclusion, which should establish the existence of psychical suffering and the level thereof, and quantify the size of the moral damage suffered by the allegedly defamed person;
- Make amendments to the Law on Personal Data Protection to define explicitly what data should be public, in order to exclude abuses from authorities;
- Develop regulations to help people feel protected when their image is used by the media;
- Introduce clear regulations about the conditions under which footage shot in the street may be used;
- BCC should organise debates among professionals around the topic of using images of individuals as a background for the video broadcast on TV;
- Supplement the Law on Access to Information and the related legislation to bring it in line with the EU acquis and the international standards;
- Conduct some actions to inform and explain to the public and the journalists the language to be used when a person is accused, particularly of a criminal offence;
- Inform journalists about the legal side of the interference by the media or by ordinary people into the right to privacy and the copyright, when taking over images from social media;
- Periodically address the topic of information manipulation in the Moldovan media, within forums, conferences or other journalist meetings, as well as with the representatives of the Broadcast Coordinating Council.