

**REPORTERS
SANS FRONTIERES**
POUR LA LIBERTE DE L'INFORMATION

Secrétariat International

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Paris, 31 July 2012

Dear Members of Parliament,

Reporters Without Borders, an international organization that campaigns for freedom of information, wishes to inform you of its profound concern over draft law n° 11013, presented to Parliament last week, which is designed to amend the criminal code and the code of criminal procedure regarding defamation.

It is more than 10 years since the Ukrainian Parliament decriminalized defamation. When it adopted its new criminal code in January 2001, Ukraine took an encouraging first step towards greater protection for freedom of expression, which is indispensable for democratic debate.

Draft law 11013, presented by Vitaly Zhuravskiy, a member of the Party of Regions, and aiming to recriminalize defamation, is a dangerous backward step. We believe its adoption would be a serious blow to freedom of the press.

The penalties for which the bill provides are harsh indeed. Sections 145.1.2 and 145.2.2 state that information deemed to be defamatory or insulting “published openly in the media” would be liable to a fine of between 500 and 1,500 times the minimum wage of the individual concerned (i.e. up to approximately 14,000 euros) or a sentence of between one and two years’ community service, and even, in the case of defamation, suspension from work or a ban of between one and three years on “occupying certain positions or carrying out certain activities”.

Paragraph 5 of section 145.1 provides for a possible prison sentence of between three and five years if the defamatory act “damages the health” of the victim.

Such penalties are clearly disproportionate and in breach of article 10 of the European Convention on Human Rights as interpreted by the European Court of Human Rights in Strasbourg.

The lack of clarity surrounding the definition of defamation, which the bill describes as “disseminating false information, insulting the honour and dignity of a person or damaging his or her reputation”, arouses fears of abuse resulting from varying interpretations.

Criminal proceedings could be taken against journalists for publishing articles on the activities of politicians or influential businessmen. Where journalists face imprisonment for publishing investigative stories, this puts the very operation of an independent media under threat.

These provisions are in breach of article 19 of the International Covenant on Civil and Political Rights, to which Ukraine is a signatory. The United Nations Human Rights Committee, an independent body that oversees the application of the covenant, said in its General Comment No. 34 in July last year that defamation laws “must be crafted with care” to ensure that they comply with the test of necessity and “that they do not serve, in practice, to stifle freedom of expression” and that “imprisonment is never an appropriate penalty” for press offences (paragraph 47).

International experience has shown that making those responsible for press offence criminally liable helps to create an atmosphere of intimidation that is likely to discourage journalists from tackling sensitive subjects. The European Court of Human Rights condemned Turkey on 5 April 2011 for interfering in the work of the writer Fatih Tas, ruling that the penal nature of his conviction was likely to discourage him from contributing to public debate on issues affecting the life of the community.

Mr. Zhuravskiy says he took his inspiration for drafting the bill from neighbouring Russia, which approved a law on 13 July recriminalizing defamation. We should like to remind members of Parliament that this was condemned by the Organization for Security and Co-operation in Europe (OSCE) and that it seriously damaged that country’s international reputation.

Reporters Without Borders urges you to abandon this bill, which appears to us to be repressive, punitive and counter-productive.

While we understand the government’s desire to do all it can to protect Ukraine’s citizens, we have serious doubts about the spirit of this law, which seems to be aimed at curbing the independent media and encouraging self-censorship on the part of journalists.

I thank you for your consideration of this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Olivier Basille', written over a circular stamp or logo.

Olivier Basille
Secretary General, Reporters Without Borders