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「閱聽眾接近使用傳播媒體權之研究」

中英文摘要

國家通訊傳播委員會

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「閱聽眾接近使用傳播媒體權之研究」中文摘要

關鍵詞：回應報導、人格權保護、傳播自由、溝通自由、媒體自由、資訊自由、合理近用原則、公平原則、人身攻擊規則、政治評論規則。

一、概述

本研究旨在針對衛星廣播電視法修正草案第 35 條所涉及回覆權之相關規定，以德國、歐盟、美國與日本等國相關法制與實務見解為樣本，進行比較法之分析與研究，探討司法院釋字第 364 號解釋所指接近使用傳播媒體權如何落實之問題，進而檢討現行衛星廣播電視法中更正、答辯等規定如何修正。

本研究贊成參採德國平面與電子媒體均有明文且詳細規定之回應報導法制，作為我國修法之重要藍本，因為德國之相關規定與實務運作，與歐盟指令之內容，以及我國司法院釋字第 656 號解釋中陳新民大法官所倡議，重新制定回應報導法制作為媒體減壓機制之見解相近，可以作為現代民主法治國家兼顧傳播自由、被報導涉及者人格權益，以及閱聽眾知的權利滿足之重要機制。

二、確保當事人回覆權之正當性與必要性

從我國憲法本文與增修條文之規定體系，可見我國對於基本權界限之基本理念，與德國基本法相似，均明白揭示新聞自由不得無限上綱，而得在合乎憲法規定下予以限制之旨趣，且均強調人格尊嚴之保障。因此我國關於人權保障之理念與實踐有疑問時，應從大陸法體系尋求處方，其他法體系只能提供潤飾。德國經驗顯示，制定回覆權此種媒體近用權，基本上可以無憲法上之疑慮，而具備立法之正當性。

至於立法之必要性，因我國為強調人權保障，以人為主之法治國家，立法者負有保護人格權之義務下，制定限定請求權人範圍，附隨於媒體原始報導之後，賦予與媒體原始報導類似傳播影響力之回覆權，以回復因媒體報導而受波及對象之權益，應屬國家應盡之保護義務。

三、對國家通訊傳播委員會之建議

本研究團隊比較研究德國、歐盟、美國與日本關於回覆權之法制後，認為國家通訊傳播委員會作為傳播事業之主管機關，一方面負有協助傳播自由落實之義務，另一方面對於受傳播行為侵害之權利，亦負有保護之義務，欲履行此兩項本質上對立之義務，基本上應該建立可供遵循之法制，以符法治國家依法行政之要求，因此建議如下：

（一）立即舉辦歐洲回覆權法制大型學術研討會

本研究團隊認為目前我國對於回覆權議題尚缺廣泛性之意見溝通，但此議題經陳新民大法官在司法院釋字第 656 號解釋的意見書中提及可以作為「媒體減壓」之機制後，相信已能引起各界較多之注意，故建議委託機關在近期內舉辦歐洲回覆權法制大型學術研討會，廣邀國內不同留學國背景學者專家，深入分析探討以德國回應報導權為主的媒體近用權法制在我國實施之可行性、我國現行法制亟待解決之事項，以及必要之配套機制等，必要時，或邀請德國傳播法學者專家與會諮詢及討論，或派員至德國了解當地回應報導請求權施行之所有環節，藉此廣泛與深入地探討回應報導法制與媒體減壓機制之相關議題，為衛廣法以及其他廣電法之相關修正提供堅實之學理基礎。

（二）舉辦公聽會傾聽傳播業者之心聲

待國內學界對德國回應報導法制與媒體減壓機制有基本之認識，並對於此法制之引進，取得基本之共識後，建議接續舉辦多場媒體業者公聽會，以單一主題深入探討之分式，或宣導或傾聽業界心聲，以了解國內媒體自我定位為東歐/東南亞國家媒體，或老歐盟國家媒體，或者是美國媒體，以利主管機關相關政策之推動，並確保新制定或修訂法律之實際執行成效。在行使公權力之機關講究權責相符之今日，對於受憲法保障之大眾傳播媒體亦有所謂問責觀念，換言之，媒體業者無論如何要有來自有效率的自律或法律之規範，而且，只能擇一或者兼採，而不得兩者規範均無，或均無效率。

四、 對衛星廣播電視法修正草案第35條之見解與修正建議

（一）肯定以保障人權為主要之立法目的

草案規定停止播送、更正與答辯等之行使，與現行法以及歐洲媒體法之規定相同，均以受媒體報導影響之當事人或利害關係人為限，並非人人皆得行使之制度，應可定位為保障相關人士權利之規定，則單純認為播送內容有錯誤之閱聽眾，應尚無此權利，但若是當事人或利害關係人，則因播送內容之錯誤必然損及其人格之同一性，因此有保護其權益之必要。

在重視個人人格權利保障之今日，強化被報導者面對媒體報導時的人格權保護，為國家保護義務之實踐，因而具有正當化之理由，作為立法與修法之主要目的，並無疑義。這些保護被報導者人格權益之規定，得同時具有促進個人言論自由實踐所需之知的權利滿足，以及健全傳播秩序之功能，在符合憲法第 23 條規定之要件時，亦得成為限制傳播自由之合憲法律。

（二）肯定限定義務人之範圍

草案以播送之節目在境內為決定義務人之要件，不僅是境內衛星廣播電視事業，境外衛星廣播電視事業分公司或代理商，只要在境內播送節目，符合規定要件亦有適用。此規定無論是從被涉及者之權利保護，或者從閱聽眾接收以及傳播秩序之維護觀點，均值贊同，蓋不論播送行為人或者播送節目之製作人為何人，

只要有播送之行為在我國境內出現，即產生相同之效果，因此採屬地主義的規定，並無疑問。播送他人製作節目者，因其有選擇播放與否之自由，履行法定之播放回覆內容，係就其播放行為負責，而在法律規定下，亦無侵害製作人著作人格權之虞。

至於回覆權之義務人，以所播送之節目被直接涉及者認為有爭議，因而必須在報導之後進行善後工作者為限，而非任何從事播送行為之媒體在沒有相關當事人反應情況下，即有此項義務。如此規定與限定權利人之規定，相互呼應，亦顯示此項法制是以保障被報導者為主要目的，係國家落實保障人權義務之表現，而非建立國法所想像之理想傳播環境，形成國家干預傳播自由。

（三）慎思集中規定三種異質法制

有異於現行法將更正與答辯分開規定，本修正草案將請求停止播送、更正或答辯三者規定在一起，有欠妥當，蓋停止播送與更正主要都是針對不實之事實陳述，都有禁止媒體之原始報導繼續發生效力之作用，但答辯與回應則只是在媒體原始報導之外，讓當事人有機會現身說法，提供閱聽眾另一個判斷之依據，並未禁止媒體原始報導之播送以及剝奪媒體再次報導之權利。

再者，現行衛廣法第 30 條規定之「要求衛星廣播電視事業更正」，其意義不甚明確，考量我國之風土民情，在法律無額外特別明定下，該條規定有可能是指當事人督促衛星廣播電視事業進行更正，若是如此，則無法像德國之回應報導制度般，讓當事人之現身說法「原汁原味」地呈現，而是媒體被迫自己作更正，此則與德國法之「更正」（Berichtigung）較接近，後種解釋雖然仍是由當事人起草更正之內容，但也有強迫媒體承認錯誤，捨棄原來的錯誤報導，而以後來正確的內容取代。相較之下，第一種解釋不僅要求媒體認錯，還要媒體「自認罪狀、自書己過」，而不是像德國那樣，只消極地接受當事人的更正稿而已。

（四）訴訟程序規定應更精準

修正草案增訂向法院聲請假處分或定暫時狀態之處分之規定，用語與用意欠明確。倘若此處係仿德國法則草案用語即應更改，強調是準用聲請假處分「程序」或準用定暫時狀態處分之「程序」。果若如此，較不易引起誤解之用語，亦應是準用簡易訴訟程序，以表示民事法院之審理為終審性質，事後沒有再進行實體審理之可能，否則只是暫時性之非終局決定，不僅當事人不愛，媒體亦不願遵守，空有規定而已。倘若草案此處之用意，真的是要讓當事人取得假處分之名義，可以請求法院強制執行，則規定更正、答辯與停止傳播等三個異質的制度一體適用，亦有未妥之處。

（五）建議師法德國

審酌我國當前的傳播生態，媒體之言論尺度不可能反趨嚴格，但無論如何，言論發表者必須忠於事實，為自己之言論負責，應是多數之共識，因此強烈建議仿效德國立法例，關於衛星廣播電視法修正草案第 35 條之規定，首先應確定更正與答辯兩項用語之真正意涵，再者決定我國是否要限縮當事人或利害關係人回覆權行使之範圍，若要採德國模式，則限縮只能針對媒體播送內容之事實陳述部

份進行「更正回應」，且更正回應稿由當事人或利害關係人自行撰寫，媒體在請求符合法定要件時，必須照單全錄，只得附帶說明，「更正回應為當事人或利害關係人對本台某某報導之見解，不代表本台之見解」等中立性質之內容，若媒體欲對更正回應內容表示相反之意見，則應遵循更正回應之模式進行。倘若要保留答辯之制度，即不限制當事人或利害關係人回覆權行使之範圍，乃是對於具事實陳述性質之媒體報導，賦予權利人更正回應權，而對於具意見發表性質之媒體報導，賦予權利人答辯權。

最後，對於法院救濟程序之規定，應明定當事人或利害關係人得訴請民事法院準用簡易訴訟程序，終局地命電（視）台播放當事人或利害關係人之更正回應與答辯圖文，讓爭議雙方之見解，快速且公平地呈現在閱聽眾面前，並由閱聽眾自行判斷爭議事件之是非曲直，強調更正回應或答辯之目的，均不在於要求媒體接受當事人或利害關係人之陳述或論點，而在於提供閱聽眾另一個消息來源，媒體依據法院之命令僅單純地、中性地播送。

ABSTRACT

Key Words: Right of Reply, Protection of the Personality Right, Freedom of Communication, Media Freedom, Freedom of Information, Reasonable Access Rule, Fairness Doctrine, Personal Attack Rule, Political Editorial Rule

Right of Access to the Media for Audience

This project has made a comparative legal analysis on the legislation and case law relating to the right of reply to the media in Germany, the United States of America, Japan, the European Union, and Taiwan as well. The U.S. right-of-reply law is in a state of retrenchment, because freedom of the press occupies a preferred position in American society. Japan has to a large extent incorporated the U.S. media law into its own legislation. Taiwan's legal system is basically built upon the Continental European legal concepts. Due to sharp differences and potential conflicts between the U.S. law and Continental European laws, Taiwan can learn little from both American and Japanese experience concerning the right of reply to media reporting. As a result, the authors come to the conclusion that the right-of-reply legislation in Germany and other western European countries is more appropriate for Taiwan to follow.

Article 5(1) of the German Basic Law guarantees freedoms of speech, journalism, and broadcasting. These freedoms however may be restricted constitutionally by means of general laws, the law for protection of the minors, and the law aimed at securing reputation under Article 5(2) of the same. In Taiwan, Article 11 of the ROC Constitution provides that all nationals are entitled to the freedom of speech, lecturing, writing, and publication. Similar to the German Basic Law, all freedoms and rights guaranteed constitutionally may be restricted by law, if there is a necessity for prevention of infringement upon the freedoms of other persons, for avoidance of an imminent crisis, for maintance of social order, or for advancement of public welfare.

Inaccurate or offensive statements harmful to the dignity and reputation of the

person portrayed in news reporting are not uncommon. Libel suits are generally costly and time-consuming though. The media industry notably has long been short of effective self-regulation in Taiwan. The audience and advertisers also have failed to supervise the operation of the media. More significantly, the right of reply legislation may create opportunities for the media industry to carry out reform on improving the quality of news reporting.

German communication law provides only the right of reply to a person or body concerned in a factual statement made in the work, while the right of correction is derived directly from the its Civil Code. The existing Taiwanese electronic media law also grants to the interested person a right to correct inaccurate statements (“Geng Cheng”), as well as a right to answer or rebut offensive opinions (“Ta Pien”). Under the draft amendment of Article 35 of the Satellite Broadcasting Act (hereinafter “the draft Amendments), any person whose interests have been damaged by satellite radio or television broadcasting may, within 20 days after broadcasting, make a request for suspension of broadcasting, correction of inaccurate statements (“Geng Cheng”), or response to offensive statements (“Ta Pien”).

The prime motivation behind all the above three options is promotion of accuracy in the broadcasting media. Both the right of suspension and the right to correction, however, aim at restraint of broadcasting the original material considered to be incorrect by the aggrieved person. The exercise of these two rights implies that the concerned media at least must admit, or are forced to admit, a certain extent of misconduct or mistake in handling their questioned broadcast. The right to response or reply in turn only enables the concerned person to tell his side of story on a particular issue, so as to avoid potential biased judgment by the audience. Its exercise does not necessarily depend on the falsity of a statement, or on any wrongdoings of the media in connection with the challenged broadcast. It is worthy noting that the right of response does not prevent the media from further broadcasting the original material, nor from publishing a parallel statement with the response. Given the different nature of the respective option, a doubt arises as to how the three options can be operated in the same manner.

Provisional remedies, including a provisional injunction and an order to maintain a temporary status quo, are incorporated into Article 35 of the draft Amendment to

secure effective enforcement of the above three rights, in cast that the concerned media refuse to comply with the reply or suspension request. The failure of these provisions to distinguish the right of response from the right of correction, and from the right of suspension, may bring about the same difficulty in practice as mentioned above. German experience indicates that any speedy realization of request to give an answer would fail if the proceedings were burdened with the elucidation of the question of truth.

Since the exercise of both the correction right and the suspension request requires evidence to prove some falsity of the broadcast and the least of misconduct by the media, the provisional remedies, with a major procedural characteristic of promptness, are obviously not suitable for their speedy enforcement. The authors doubt that the draft Amendment might have confused the accelerative procedures for judging the media refusal to correction, reply or suspension requests, with the provisional remedies usually designed to secure an effective enforcement of a claim in the future. If so, the better solution is to employ the summary proceeding, as provided in Chapter III of the ROC Code of Civil Procedure, to deal with the refusal to comply with the right-of-reply request, and leave the correction or suspension request, if to be available for the audience in the future, to recourse to the ordinary judicial process.

In sum, the authors strongly recommend the ROC legislature to adopt the German law on the right of reply for the person affected by media reporting. The approach would require the legislature at the outset, to clarify the Chinese wording ambiguity between “Geng Cheng” (correction) and “Ta Pien” (response or reply). If “Geng Cheng“ carries the same meaning as the English “correction,” the second step is to provide that the content of the correction text must be prepared by the requester, and the correction right can apply only to factual statements, so as to be in line with the German law. Meanwhile, the right of “Ta Pien” (reply) should be further defined to apply to offensive opinions in order to distinguish with the right of “Geng Cheng.” As to the right to suspend a broadcast, the authors suggest the ROC legislature to delete the relevant provision relating to the right, in consideration of its harsh restraint on the media’s editorial autonomy. Finally, the authors recommend the introduction of a summary proceeding, rather than the provisional remedies, into the Act for deciding whether the media’s refusal to comply with the reply request is justifiable, on application of a legitimate claimant.