

The role of the press in Singapore

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1. Introduction

The last few decades, Singapore's leaders have constructed a refined press control system. The purpose of this paper is to explain how Singapore's complex legal structure gives effect to the press as an institution playing an essential role in maintaining the political *status quo* of Singapore.

In most countries, the press functions as the fourth power in a state. In order to fully exercise this role, it needs to be able to serve as a *check and balance*. Therefore, it should be protected from the executive power of the state. In reverse, the Singaporean model implies the need for protection of the executive power from the press.

2. Legislation

2.1. Constitution

Article 14 of the Singaporean constitution provides for a right to freedom of expression and freedom of the press. This constitutional right is only granted to Singaporean citizens. The parliament has to “consider” if the restriction on the right of freedom of expression is “necessary or expedient”. Except if there is proof to show that the parliament has not “considered”, there is no judicial review.¹

The constitution of Singapore was written in 1950, and went into force in 1960. Based on the constitution of Malaysia, it represents a mid-twenties century view of the role of a constitution meaning that the parliament should be protected rather than human rights.

When reading the constitution literally, it seems that the government can do whatever they want because of the absence of a proportionality test. Consequently, there is no balance to prevent the extreme in theory. But, in 2010, the Court of Appeal decided that actions taken by the executive or legislation passed by Parliament are not in accordance with the constitution when those acts are completely absurd or arbitrary.² This decision constitutes a recognition of the fact that the leadership cannot do whatever they want by introducing some kind of last resort. Until today, the Court hasn't applied this principle although the defense used it in several cases. Therefore, it is imaginable it will only be applied in extraordinary circumstances.³

¹ C. Sek Keong, “The courts and the ‘rule of law’ in Singapore”, *Singapore Journal of Legal Studies* 2012, 224-225.

² Court of Appeal, 2010, *Yong Vui Kong v Public Prosecutor and another matter*.

³ J. Tsen-Ta Lee, “Protecting human rights: the approach of the Singapore Courts”, *Singapore Public Law Blog*, 2015.

2.2. The Newspaper and Printing Presses Act

The main legislation which currently controls the printed press in Singapore is the *Newspaper and Printing Presses Act* (NPPA).

a. License system

Laws which regulate the local press have continuously been a part of Singapore's legal system. Before the enactment of the NPPA in 1974, the local printed press was regulated by the *Printing Presses Ordinance* since 1920, later called the *Printing Presses Act*. Issued by the colonial government, this Act stated that all printing press and publishers had to apply for an annual license. The last few decades, the NPPA underwent several finely tuned legislative amendments.

According to the Act, the permission from the Minister is needed to print and publish a newspaper in Singapore.⁴ The Minister can grant, refuse or revoke in his discretion any permit subject to conditions, if there are any. He may direct the language of the newspaper as well.⁵

Furthermore, the NPPA made it obligatory for newspaper corporations to be publicly listed. The corporations are mandated to create management shares and ordinary shares. In particular, the management shares are strictly regulated. This category of shares has two hundred times more capacity of voting power than the ordinary shares have. Only citizens and companies of Singapore are able to own management shares. In case of approval to any person by the Minister, no newspaper corporation shall refuse to accept the handover of management shares to this person. However, appeal to the president is possible, who decides ultimately.⁶ Hence, this is a purely executive decision in which judicial review is excluded.

Additionally, each individual or corporation that owns voting shares may possess a maximum of five percent in a Singapore newspaper corporation. As a result of this, the ownership of voting shares cannot create any influential control over newspaper corporations.⁷

b. Singapore Press Holdings

Today, the leading media corporation is the Singapore Press Holdings (SPH). SPH owns all general circulation newspapers in the country's four official languages: English, Chinese, Malay, and Tamil. In fact, the national printed newspaper of Singapore is the Straits Times in English language.⁸

Although the political leadership does not own SPH, it is strictly supervised by the government. Numerous examples demonstrate the amount of government links to SPH. Since 1 January 2003, the CEO of SPH has

⁴ Article 3, 1 NPPA.

⁵ Article 21, 3, a NPPA.

⁶ Article 10 NPPA.

⁷ T. Hang Tey, "Confirming the freedom of the Press in Singapore: a "pragmatic" press for "Nation-Building"?", *Human Rights Quarterly* 2008, 889.

⁸ W. Bokhorst-Heng, "Newspapers in Singapore: a mass ceremony in the imagining of the nation", *Media, culture and society* (24) 4, 559-560; C. George, "A Primer on Singapore Government and the Media", *Freedom from the Press*, <http://www.freedomfromthepress.info/resources.html>.

been Chan Heng Loon who used to be a Permanent Secretary in the Transport Ministry.⁹ Additionally, Chua Lee Hoong who is one of the Straits Times main political columnists, declared being an ex-staff member of the Internal Security Department.¹⁰

c. Foreign Influences

Foreign funding

In order to prevent manipulation by foreign individuals or corporations, the NPPA governs foreign funding of local newspapers. Foreign funding is only possible with a prior approval of the Minister. Such an approval can uniquely be given based on a genuine commercial interest.¹¹ Furthermore, each director of a newspaper corporation must be a Singaporean citizen.¹² During the parliamentary debates in 1974, preserving peace and stability in Singapore were the main argumentations for these regulations.¹³

Foreign publications

This legislation seemed to be insufficient to overcome the growing spread of foreign publications in Singapore. They report on numerous local issues considered to be internal political affairs. The executive power stated that as the sales numbers of foreign newspapers have increased, their number of readers did as well. Therefore, they should be controlled in a similar way as local newspapers. However, the NPPA of 1974 did not regulate foreign newspapers owned, managed and controlled by individuals and corporations outside of Singapore.¹⁴

Consequently, new legal measures had to be taken in order to exclude unwanted foreign influences. This constellation resulted in an amendment of the NPPA in 1986: "The Minister may by order published in the *Gazette*, declare any newspaper published outside Singapore to be a newspaper engaging in the domestic politics of Singapore".¹⁵ According to parliamentary preparations the *ratione legis* of the amendment, is to limit the distribution of these publications which benefit from the engagement in Singapore politics.¹⁶

"Domestic politics"

The exact meaning of 'domestic politics' is not explained explicitly in the NPPA. However, the Court of Appeal interpreted the notion broadly in the case of *Dow Jones Publishing Co (Asia) Inc. v. Attorney General* in 1989:

⁹ Article 19, "Freedom of expression in Singapore", London, 2005, 23 and 32, <http://www.sph.com.sg/about-sph/board-of-directors/>.

¹⁰ Eric Ellis, Climate control in the Singapore Press", *The Australian*, 21 June 2001.

¹¹ Article 19, 2 NPPA.

¹² Article 10, 1, a NPPA.

¹³ Parliamentary debates 1974, 913-914.

¹⁴ M. Gopalan, "The law society of Singapore: destined to forever hold its peace?", *Singapore Law Review* 2010, 3.

¹⁵ Article 24, 1 NPPA.

¹⁶ Parliamentary debates (1986) 319, 370.

“In the context of Singapore, domestic politics would, in our view include the political system of Singapore and the political ideology underpinning it, the public institutions that are a manifestation of the system and the policies of the government of the day that give life to the political system. In other words, the domestic politics of Singapore relate to the multitude of issues concerning how Singapore should be governed in the interest and for the welfare of its people. In this broad sense, the political, social and economic policies of the government of the day are part and parcel of the domestic politics in Singapore.”

The practice of *gazetting*

The amendment made the practice of *gazetting* legal. *Gazetting* is the enforcement of restrictions on the distribution of foreign publications through declaring them to be involving in Singapore’s national politics. Foreign newspapers which have been *gazetted* are for example the Asiaweek, The Economist and Time Magazine. The reproduction of these *gazetted* foreign newspapers is only possible upon approval of the minister.

In 1990, the legislation on the distribution of foreign newspapers was tightened again by another amendment of the NPPA. When applying for a permit in Singapore, these newspaper corporations are obligated to submit themselves to the Singapore jurisdictional system. Consequently, Singaporean courts have the right to hear any dispute that may arise. In addition, they should assign a person in Singapore to accept service of any notice or legal process on behalf of the newspaper corporation. They should also provide a deposit in order to meet any costs arising out of legal actions taken against the newspaper.

Also in 1990, foreign newspapers are required to obtain a certificate from the Minister in order to be allowed to distribute in Singapore if they have more than 300 copies per issue.¹⁷

2.3. Broadcasting Act

The Broadcasting Act contains a platform- and technology-neutral principle which enabled the Media Development Authority (MDA) to introduce a license system and regulations for online content. As a result of this, any website which discusses domestic political issues must be registered.

The MDA which functions under the Ministry of Communications and Media monitors the registration, and can ask immediate removal of material which considered to be against “public interest, public order or national harmony” or to offend “good taste or decency”. Furthermore, registration requires posting a monetary bond, paying fees and undergoing annual registration. After registration it’s not possible to receive any foreign funding.¹⁸

¹⁷ Article 23 NPPA.

¹⁸ T. Lee, “Internet Control and Auto-regulation in Singapore”, *Surveillance & Society*, 81-82; Media Convergence Review Panel, Media Convergence Review Final Report, 2012, <http://www.mda.gov.sg/RegulationsAndLicensing/Consultation/Documents/Media%20Convergence%20Review/Media%20Convergence%20Review%20Final%20Report.pdf>.

3. Litigation

3.1. Defamation Laws

Defamation includes a false statement that has the capacity to damage the reputation of an individual, company, product or whole nation. Spoken defamation is called slander, and any other form of defamation is called libel. In Singapore, the Defamation Act and the Penal Code are the relevant laws dealing with defamation.

According to the penal code, the punishment for defamation constitutes an imprisonment of two years and/or fine.¹⁹ In order to quantify the damages, courts take the nature, the gravity, the standing of both parties, and the extent of publication into account.

The last few decades, large amounts of damages have been granted by the Singaporean Courts against foreign press publishers. Moreover, they were found liable in defamation actions brought against them. Until today, no foreign press publishers have ever effectively defended a defamation claim brought in court by Singaporean political leaders. There seems to be more pressure of defamation claims on the foreign press than on the local printed press. Because of the organization of the press' ownership this is expected.

A lot of the cases concern Lee Kuan Yew (16 September 1923 – 23 March 2015) who was the first Prime Minister of Singapore, governing for three decades.²⁰ The jurisprudence of Singaporean courts seems to focus on maintaining the reputation of public men, and promoting the public's image of their leaders.

The jurisprudence of the European Court of Human Rights (ECHR) requires that politicians are more tolerant of criticism. The Court considers this to be necessary in order to serve the interests of freedom of expression in a democratic society. However, in Singapore there is an 'equal' protection to politicians and private citizens. The position of the Singaporean courts is inspired by the old British position which consists of the traditional tort law, rather than the modern UK system which is inspired by the ECHR.

3.2. Contempt of Court Bill

When a remark is published that scandalizes the court or which damages its credibility, it constitutes a contempt of court under common law. Common law is based on case law developed by the Singaporean courts. Consequently, the degree of punishment was left completely to the judges' discretion.

The last few decades, there were many claims against foreign publishers because of their harsh remarks on defamation judgments by the Singaporean courts.²¹ Up to now, the heaviest sanction for contempt of court has been six weeks of jail and a fine of \$20,000 SGD. In 2010, Alan Shadrake, a British author

¹⁹ Sections 500, 501 and 502 of the Penal Code.

²⁰ Case of LKY v. Davies and others, 1989; Case of the International Herald Tribune, 1994; Case of LKY v. Vinocur and others, 1995; Case of the Economist, 2004.

²¹ Attorney-General v. Pang Cheng Lian and others; Attorney-General v. Wain and others; Attorney-General v. Lingle and others.

scandalized the court by casting doubt upon the judiciary's impartiality, integrity and independence in his book "Once A Jolly Hangman: Singapore's Justice In The Dock".

Until recently, contempt of court was not codified under Singaporean written law. However, on Monday the 15th of August 2016, the judgments of previous cases were crystallized by the passing of a new bill. During the parliamentary debates about this Contempt of Court Bill, some MP's declared their concerns about the fact that the new law will disallow people from discussing any judicial trail because of the broad and vague wordings.

However, Minister of Law, K. Shanmugam pointed out three benefits of introducing this new law. First of all, it clarifies the notion contempt of court. More precisely this crime consists of scandalizing the court²², sub judice²³ or disobedience²⁴. The passing of the bill makes the crime of contempt of law in accordance with the general principle of *nulla poena sine lege*.²⁵ This principle requires that criminal law should be codified in written law. As a result of this, the public benefices of a clearer understanding of the crime contempt of court.

Secondly, it adds regulation concerning the punishment of contempt of court, meaning it introduces limits on fines and prison sentences. According to the new Bill, offenders can get a fine up to 100,000 SGD and/or a jail sentence up to three years for cases involving the High Court or Court of Appeal. Concerning other courts, the punishment consists of a fine of up to 20,000 SGD and/or jail of up to 12 months.

Finally, the new regulation will improve the enforcement these decisions.

4.Recent trends

4.1.Local bloggers

Until not long ago, mostly foreign press was brought to court for breaching defamation laws or for committing the crime of contempt of court. However, as a result of the advent of social media use, local online press is being brought to the Court as well. In particular, local Singaporean bloggers have faced increasingly punitive action for criticizing the government.

On the 17th of December 2015, Singaporean blogger Roy Ngerng was condemned by the Supreme Court ordering him to pay 150,000 SGD of damages for defamation to Prime Minister Lee. Roy Ngerng published an article on his blog accusing the prime minister of incorrect use of state pension funds.

In this case, the court determined that the right to file for defamation overrules the Roy Ngerng's right to freedom of expression. Although Roy Ngerng was exchanging views on a matter of public concern and the plaintiff was a public figure, the Court accepted the plaintiff's cause of action for defamation.

²² This involves attacks on the integrity of courts, for instance by alleging that judges are biased.

²³ Prejudicing ongoing court proceedings by commenting on the guilt or innocence of the parties involved, or by commenting on the facts of a case that the court is trying to establish.

²⁴ Disobeying court orders such as when a man refuses to pay his former spouse alimony despite a maintenance order from the court.

²⁵ Translation: "no penalty without a law".

In late March 2015, 16-year-old blogger Amos Yee uploaded a video on YouTube criticizing Prime Minister Lee Kwan Yew shortly after his death. His charges fall under the Singapore Penal Code and under the Protection from Harassment Act. On the 12th of May, the court found Yee guilty, and sentenced him to four weeks in jail.

At the moment, Amos Yee faces six charges of intending to wound the feelings of Muslims and Christians as a consequence of his blog posts and uploading movies on YouTube. Two additional charges consist of the failing to report to the police office for investigations.

4.2. Role of ASEAN?

The ASEAN Human Rights Declaration of 2012 clearly reaffirms the provisions of the Universal Declaration of Human Rights. Apparently, ASEAN member-states agree on the principle of equality for all, however, the application of this concept in practice causes more discussion. Concerning the freedom of the press, there are no public statements.

Additionally, ASEAN member-states' levels of economic prosperity and their political systems as well as their engagement towards democracy differ greatly.²⁶ They don't feel the need to comment each other on the latter.

5. Conclusion

The specific press control system in Singapore has changed the press into a political institution. The press plays a constructive role in society, instead of a watchdog role. Their function is to report solely the facts by pointing these out. As a matter of fact, most of Singaporean press corporations get their facts from government statements without posing any further questions.

Moreover, the leadership is convinced that the press shouldn't play an investigation role. In 2009, Singapore's highest court stated that the media is thought to have "no special role beyond reporting the news", with there being "no room... for the media to engage in investigative journalism which carries with it a political agenda".²⁷

Most of all, this approach by the government is set into practice by ownership rules and the composition of the management board as mentioned above. However, by doing this, the printed press might lose credibility of the Singaporean population. Since the online press is technically more difficult to supervise, there is a lower degree of preventive control. Therefore, this constitutes a pressure upon traditional printed media to be more open to different ideas as well.

Besides that, printed newspapers are businesses that need advertisers in order to ensure their existence. As a result, credibility is important so that the newspaper companies won't lose advertisers because of a drop of the amount of readers.

²⁶ G. Clarke, *Northwestern journal of international human rights* 2012, 6.

²⁷ A. T. Kenyon, "Investigation Chilling Effects: News Media", *International Journal of Communication* 4 (2010), 445.

In May 2016, about 31 000 SGD has been raised by blogger Roy Ngerng in order to pay damages to the prime minister.²⁸ Prior to this, he received about 81 000 SGD by fundraising in order to pay his legal fees. Many Singaporeans have shown their support for Roy to stand up and speak up. Consequently, there is no doubt that this topic is in the Singaporean people's mind, and citizens might expect better consideration of their concerns. In addition, generational changes might change freedom of the press for the better as well since future generations get more educated and are being exposed to different ideas.

Finally, there is also an international pressure. In January 2016, numerous states shared their concerns regarding the use of regulations to restrict the right to freedom of speech, and regarding bringing human rights defenders and government critics to trail during Singapore's Universal Periodic Review at the United Nations Human Rights Council.

²⁸ <https://thehearttruths.com/2016/05/19/defamation-funds-update-19/>

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