

Joint position paper to the High Level Group on Media Freedom and Pluralism created by the European Commission on the Hungarian Media Law and its Application

by the

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Executive summary

We welcome and concur with the Hungarian Constitutional Court's recent decision to annul four key areas of the Hungary's new media legislation. However it is our position that the Court's ruling does not address critical aspects of the legislation that pose a fundamental threat to media freedom and pluralism in Hungary. We therefore urge the High Level Group on Media Freedom to examine a number of additional issues related to Hungary's new media laws and media regulation system.

As noted, several provisions of the media laws were examined and found unconstitutional by Hungary's Constitutional Court on 19th December 2011. But the Court left many of the most problematic elements untouched. The most significant of these are the appointment system and the competences of the Media Authority and its Media Council. The Media and Telecommunication Authority and its Media Council were created by the Act on Media Services and Mass Communication (Act CLXXXV of 2010), a key piece of the new media law "package" passed by Hungarian lawmakers in 2010. The chairperson and all four members of the Media Council have been appointed, nominated and elected by Hungary's governing majority. The chairperson of the Media Authority and of the Media Council, former Fidesz MP Annamária Szalai, was directly appointed by Prime Minister Viktor Orbán. The Media Council chairperson and its members serve indefinitely renewable nine-year terms. According to an amendment passed by lawmakers after the close of Hungary's EU presidency in July 2011, members of the Media Council may only be replaced by a two-thirds majority vote. This amendment, in effect, means that the chairperson and its members will likely never lose their mandate because they can only be replaced if new members are elected by a two-thirds majority vote—a rare situation in Hungarian politics.¹

The Authority and the Media Council, and specifically their joint chairperson, have an excessively broad scope of competence over Hungary's media regulation system. This body controls all aspects of Hungary's media landscape, including awarding broadcasting licenses, monitoring content and program requirements, and sanctioning media for violations to the new media laws. It has become increasingly evident that the Media Council lacks the political independence necessary to safeguard a free and independent media in Hungary. Rather, this body acts as an extended arm of the Hungarian Government, with powers practically equal to a ministry. This is reflected not only in its partisan composition but also by a number of its recent decisions, which not only favour the political right's economic interests but also diminish media pluralism in Hungary.

In December 2011, the Media Authority awarded the frequency used by Klubrádió to an unknown company with no broadcasting experience. The Authority issued the tender for an all-music radio station, making it clear that Klubrádió cannot continue its operation in its present form unless it transformed its programming into a "light" radio station. The rules on tender procedures for broadcasting frequencies allow the Authority to arbitrarily apply the laws. The evaluation of the bids was not transparent.

¹ Although the law provides for delegation by consensus, if that is unsuccessful, then with qualified majority, and a parliamentary vote by qualified majority, Fidesz did not negotiate with the opposition and applied its qualified majority to carry elect its appointees. An amendment in August 2011 ordered that the mandate ceases when the new members and Chairperson are elected. This may be prevented by a political force which owns one third of the votes. As it is likely that Fidesz and its supporting parties will remain influential even after several elections – especially if the recently passed electoral law, which favours Fidesz, remains in force – it is quite likely that the present members will not lose their mandate after the nine years have lapsed.

As a consequence of the decision, there are no national left-liberal radio stations remaining in Hungary. The remaining news or talk radios represent the rightist political opinion and/or belong to Fidesz-related interest groups (Lánchíd, Info Rádió).

It should be emphasised that the Klubrádió decision is part of a long-term strategic plan by the Fidesz party and pro-Government media companies to dominate the mainstream media. The underlying mission of the media laws and of the Media Council is to assist Fidesz in carrying out its established goal of acquiring control of the media scene, through both legal and economic means. There has been a general belief on the political right that there is a leftist prevalence in the Hungarian media, and the intention to change this has been expressed by Government officials on several occasions.²

The law does not define cross-ownership rules, which poses a serious risk to the diversity of information sources and media pluralism, particularly with regards to the domestic media market trends. This has enabled Fidesz-friendly and right-wing media to dominate Hungary's media landscape. Radio Lánchíd, which is bound to the rightist political parties, won a national radio frequency (Class FM) and several local frequencies through its sister companies. Companies related to Fidesz are regularly attempting to buy one of the big national commercial television stations. Another company related to Fidesz bought one of the biggest, freely distributed daily newspapers, *Metropol*.³ At the same time, the Media Council recently prohibited the merger of Axel Springer and Ringier publishers, a decision that was neither supported by professional arguments nor made using a sound methodology or with transparency. This decision has threatened the future of one of Hungary's largest national newspapers, *Nepszabadság*, a liberal daily owned by Ringier.

In addition, Hungary's new media laws have drastically restructured the country's public media system in ways that pose serious threats to its diversity and independence. This issue was also not addressed by the Hungarian Constitutional Court's decision. All property, employees and funding of the public service media companies have been aggregated into the Programming Service Support and Property Management Fund (hereafter: the Fund), which is indirectly controlled by Ms. Annamária Szalai, in her role as chairperson of the Media Council. The Fund's overall management, including its director and vice-director, are controlled by the Media Council.⁴ The Fund is accountable to the Media Council, while it is not accountable to either the Board of Trustees or the Public Service Body of the public service provider companies. As a result of these changes, news coverage by Hungary's public media has become biased and untrustworthy, and has lost its credibility.

While more funding has been allocated to operate it than ever before, its managing decisions are intransparent. The public service media became dysfunctional from all aspects: from the aspect of serving the public, from the aspect of prudent management and from the aspect of political independence.

Hungary's national news agency, MTI, offers its news content free of charge to other media outlets. This has given MTI—an agency headed by a right-wing editor nominated by the Media Council chairperson and who has openly professed his allegiance to the Government—a distinct advantage in the market, as economically-challenged online news portals are unable to afford to buy news from independent agencies.

Although the international attention has temporarily discouraged the Media Council from using its competences to its full potential, there are already obvious signs of self-censorship, de-politicisation and conformity, primarily in Hungary's national commercial television. The media laws have had a significant "chilling effect" on all media — as editors and journalists are fearful of the high fines and sanctions. Hundreds of public media journalists have been dismissed as part of that sector's restructuring, and a number of notable

² Among others, a book written by Imre Kerényi, now Prime Minister's Commissioner, „*Media-Balance*” discusses that the establishment of a media balance that reflects election results by law is an urgent policy task. http://www.booker.hu/konyv/media-egyensuly_kerenyi_imre/

³ http://hvg.hu/itthon/20111227_Polyak_Gabor_mediatorveny_egy_egy_eve – in Hungarian.

⁴ §136 Mttv.

editors of the most popular online sites have also left their positions under unknown circumstances.⁵ Hence, critical media coverage of the Government's policies is increasingly rare.

The Orban government has dramatically changed the public law environment in Hungary. All fundamental laws have been changed, including the Constitution, and all institutions that would provide necessary checks-and-balances have either been eliminated, replaced and/or re-staffed with Government-friendly figures. The judicial system and the national bank are no exception. After several retrospective acts were passed, legal security became very questionable. These measures have dramatically eroded the essential institutions of Hungary's democracy and have further eroded the public's trust in its democratic institutions, including the media.

As a recent study shows, Hungary's media laws are not consistent with other media laws in Europe, despite the Hungarian Government's claims to the contrary.⁶ Although some minor elements of the media laws were amended in March 2011 after the European Commission found several provisions did not comply with EU norms, the most problematic elements of the media laws were left intact.

We, as signatories to this paper, believe that it is necessary for the European Union to define and protect the core principles of media regulation and press freedom at the European level. This would provide an important guarantee against attempts by governments of EU-member states to control the media. The European Union is more than just an economic union. It is based on an agreement among member states that there are common human rights and freedom of expression values and principles to which all member states are bound. The foundation of democratic society and of a democratic European community is based on free speech and the free flow of information. Europe has a Parliament elected by its citizens, yet ensuring media freedom for all its citizens is yet to come. We urge the Committee to support our ongoing efforts to safeguard this fundamental right in Hungary.

Budapest, 19 January, 2012

5 (Founders Balázs Weyer and Péter Nádori were fired from Origo in September, Péter Novák in January 2012. Peter Uj, an iconic journalist and blogger and founder of the Index.hu (the first internet news portal in Hungarian) left Index in September. The circumstances were unknown in all cases).

6 See, "Hungarian Media Laws in Europe: Assessing the Consistency of Hungary's Media Laws with European Practices and Norms," the Center for Media and Communication Studies (CMCS), Central European University, www.cmcs.ceu.hu.