



Summary of the decision of the Constitutional Court of Hungary on the Media Laws in 2011 by the Hungarian Civil Liberties Union

Decision n. [1746/B/2010](#)

The Constitutional Court (CC) struck down parts of the Media Laws. The Media Laws adopted in late 2010 consists of the Act CIV of 2010 on Freedom of the Press and on the Basic Rules Relating to Media Content, and the Act CLXXXV of 2010 on Media Services and Mass Media. The two laws are operational together, they add up to a complete new media regulation that contains the rules concerning the written press (printed and on-line), the linear and on-demand audiovisual content (TV, radio), and the public broadcast.

The Constitutional Court's decision only focuses on questions relating to the written press (with the exception of source protection). The Court did not address large structural parts of the new media regulation system such as the centralized media supervisory board; the question of its independence; the heavy sanctions that the Media Council is entitled to use; the lack of structural independence of the public broadcast etc.

Hereafter, there are the important points of the decision in details.

1. Parts of the Media Laws' administrative content regulation that explicitly banned some contents are unconstitutional with regard to the written press (ie. an administrative body, the *National Media and Telecommunication Office*, is charged to oversee these rules). These unconstitutional content rules are the followings: *the defense of human dignity* (ie it is forbidden for the press to publish contents that offends human dignity); *defense of constitutional order*; *defense of privacy*; *the right to retract an interview*. The CC declared that these vague content rules aim to protect constitutional values, that are already widely defended by other laws, hence the media laws would create symmetrical legal procedures. Interestingly enough, the CC did not find other explicit content regulation unconstitutional on the same ground, such as the ban on hate speech, the defense of human rights etc, notwithstanding these are also widely protected already in the legal system.

2. The CC annulled part of the laws that governed journalists' source protection. The Media Laws demanded journalists to demonstrate that their right to source protection represents an overriding public interest. That was in sheer contrast with what the European Court of Human Rights ruled for numerous times, the gives priority to the journalists' source protection. The CC also declared that the Legislative should enact further guarantee for the source protection of journalists.

3. By the same token the CC annulled one article that provided an intrusive inspection right to the media authority. This unchecked inspection power of the authority endangered the right to secrets, including source protection of the press and the media. To be highlighted that these parts of the ruling, concerning journalists' source protection and the right to secrets goes beyond the realm of the written press .

4. Extending on the previous point, the CC also annulled the rights of the so-called Press Complaint Commissioner to which the Laws accorded intrusive inspection power to interfere with internal life of the media. The Commissioner had rights that enabled him to muddle with the editorial lines of the press in case of complaints, notwithstanding the complaint did not show any unlawfulness.

5. The Court declared constitutional the compulsory administrative registration system for all media service providers, including the written press, which is a prerequisite for the launch of an exercise of press. The Court deferred to the Parliament in question of state administration of the press provided it does not result in arbitrary rules for the press.

End note: the Constitutional Court failed to explain the reason why it narrowed down the scope of its analysis on content regulation to the written press, or why cherry picked those questions, notwithstanding dozens of valid petitions were filed with the Court to declare unconstitutional the Media Laws' almost each and every article (including the petition of the Hungarian Civil Liberties Union). For some parts of the ruling, the CC left several months for the Parliament to comply with the ruling, so those parts of the law shall remain in force until the 31st of May, 2012.