

# 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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We, the signatories to this paper request the High Level Group on Media Freedom and Pluralism to create principles on media pluralism and press freedom at the European level. We think that principles with compulsory effect on Member States would provide a guarantee against authoritarian governmental attempts to control the press. After Fidesz government has replaced the Constitution of the Republic and all institutions of checks and balances (despite the protest of opposition), no domestic legal protection remained against laws violating the democratic principles in Hungary. As their amendment requires two-thirds majority, even a new parliamentary majority may be in a difficult situation when changing these laws.

Some important, though partial changes happened in the law, first upon pressure of the European Commission, then by the Hungarian Constitutional Court. However, the law's fundamental logic remained untouched. The basis of this regulation is a very powerful, Fidesz-dominated authority, completed with public (or: state) media system subordinated to it.

Still, the law's main logic remained untouched, and it does not provide adequate safeguards against undue state interference in the freedom of the press and media pluralism.

Several decisions of the Media Council have shown that it lacks the political independence necessary to safeguard a free and independent media in Hungary. The structure of public service media allows governmental influence on both its personal and its programming decisions.

## Political dependence of the Hungarian Media and Telecommunication Authority

The Authority and its Media Council, created by the Act on Media Services and Mass Communication (Act CLXXXV of 2010, hereafter: Mttv.) are controlled by the governing Fidesz party. Although the law prescribes a two-third majority of votes in parliament for the council members to be elected, **all four members have been nominated by Fidesz** and elected by the two-third governmental majority. Not only are they delegated for **nine years**, which overarches more than two regular parliamentary cycles, but Fidesz may be able to prevent their removal in the future, as **the members lose their mandate only when the new members get elected.**<sup>1</sup>

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<sup>1</sup> §216 (8) Mttv. This amendment was passed in August 2011.

The Chairperson of the Authority and of the Council, former Fidesz member Ms. Annamária Szalai, has been directly appointed by Prime Minister Viktor Orbán.<sup>2</sup> She, in her function as **Chairperson of the Council**, may be **replaced only when her successor is elected by Parliament's two third's majority**.

Annamária Szalai's powers enable her to effectively shape the most important decisions relevant to the media system. The Chairperson's political independence is not provided for under the current regulation.

Annamária Szalai as the Council's chairperson **has significant powers over the public service broadcasters too**.<sup>3</sup> She appoints, dismisses and remunerates the Director of the Programming Service Support and Property Management Fund (hereafter: Fund). The Fund may be considered "the public service media company", because it disposes over the employees, the property and the funding of the public service broadcasters Hungarian Television, Hungarian Radio, and Danube Television, now united in one administrative unit.

The Authority and the Media Council have significant and material control over the media scene and the programs of each broadcaster through the distribution of broadcasting licences and monitoring program requirements.

The rules on tender procedures for broadcasting frequencies allow the Media Council to **prolong the closing of bids for a given frequency as long as there is a bidder that catches the authority's taste**. In fact, the authority may terminate the tendering process at any time if "by its own consideration, the media policy aspects [...] cannot be ensured by completing the tender procedure." The evaluation criteria are not laid down by law, and there are further tender rules that allow the authority to arbitrarily apply the laws.

The complete exclusion of the opposition from the media authority's operations makes it **impossible even to monitor the preparation and justification of decisions**.

## Public Service or „State” Media

What we should rather call „state media”, is **under political supervision**, serves the governing party's political goals and tries to shape public opinion in favour of Fidesz' ideology. Although the law provides for four separate public service **companies** (including the national news agency) and their Board of Trustees, Supervisory Board and Public Service Body, these formations have no influence on the operation of the public media. In fact, **all property, incomes and staff have been aggregated into the Fund. The Fund's director is appointed, dismissed by Ms. Annamária Szalai, chair of the Media Council**, and his remuneration is defined by her as well. **The Fund's management and vice-director are also controlled by the Media Council**.<sup>4</sup> **The Fund is accountable to the Media Council**, while it is not accountable to either the Board of Trustees or the Public Service Body.

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<sup>2</sup> In its function as Media Council chairperson, she must be elected by Parliament – but she may exercise all rights except for voting even before election. §111 (2) Mttv.

<sup>3</sup> §136 (11) The total employers' competence over the director of the Fund – including appointment, defining the salary and allowances, and employer's notice – is exercised by the Chairperson of the Media Council. ("Az Alap vezérigazgatója feletti teljes munkáltatói jogkör – ideértve a kinevezést, a munkabér és juttatások megállapítását, továbbá a munkáltatói felmondást is – a Médiatek elnöke gyakorolja".)

Scandals follow each other: Daniel Cohn-Bendit's press conference was **falsified** so as to injure Cohn-Bendit's reputation. The editor of the report got promoted.<sup>5</sup> In another affair, previous chief-judge's head was blurred in reportage of an event organised by him on 3rd December 2011.<sup>6</sup> As a result of this scandal, several employees and ex-employees gave video testimonies about how they were openly instructed to deliver the news so that they are favourable to the Fidesz government.<sup>7</sup> About a dozen employees of the public television started a hunger strike which still lasts in form of a demonstration at the time of writing this paper.

Approximately 1000 people were dismissed from the public service television. Reorganisation may be a good idea, however, the **pattern of the dismissals show political bias**, and the dismissals appeared to be **in negative correlation with the journalistic quality**. Several very highly esteemed journalists, reporters were dismissed.

Public service media news provide hardly any coverage of the anti-government protests, such as the demonstration on 2nd of January. In the Klubrádió affair its coverage consisted only from the official statement of the Media Council.

The national news agency, **MTI now operates as the single concentrated newsroom for public service television in Hungary**. Public media **must buy news exclusively from MTI**, which publishes its news online for free, and offers media service providers to download and republish them. By now, public service media has lost the remainder of its credibility.

### After the Constitutional Court decision: the big picture did not change

The Hungarian Constitutional Court's long-awaited decision annulled some important parts of the media laws, while it **left several other problematic parts untouched**: among others the delegation system and the competences of the Authority and its Media Council (the Media Council is not even mentioned in the text).<sup>8</sup> The powers of the Authority over printed and

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4 §136 Mttv.

5 The false report is still available at the public service television's website, ([http://videotar.mtv.hu/Videok/2011/04/01/20/Cohn\\_Bendit\\_megfutamodott\\_a\\_kinos\\_kerdesek\\_elol\\_Budapesten.aspx](http://videotar.mtv.hu/Videok/2011/04/01/20/Cohn_Bendit_megfutamodott_a_kinos_kerdesek_elol_Budapesten.aspx)) as is the original, uncut version at an independent news portal ([http://indavideo.hu/video/Daniel\\_Cohn-Bendit\\_1](http://indavideo.hu/video/Daniel_Cohn-Bendit_1), [http://hvg.hu/itthon/20110408\\_papp\\_daniel\\_cohn\\_bendit](http://hvg.hu/itthon/20110408_papp_daniel_cohn_bendit)). See also (in Hungarian): [http://nol.hu/archivum/a\\_manipulalt\\_cohn-bendit\\_riport\\_keszitoje\\_lett\\_a\\_kozmediumok\\_uj\\_hirfonoke](http://nol.hu/archivum/a_manipulalt_cohn-bendit_riport_keszitoje_lett_a_kozmediumok_uj_hirfonoke)

6 The event was a press conference organised by a civil organisation presided by ex-chief judge Zoltan Lomnici. According to leaked information, Lomnici was considered a persona-non-grata on screen, because he criticised the government's judicial reform.

7 <http://www.noltv.hu/video/4053.html>, <http://www.noltv.hu/video/4045.html>, <http://www.noltv.hu/video/4049.html> (in Hungarian)

8 1746/B/2010 Constitutional Court decision.

online press were left untouched as well, including the rules of registration and sanctioning. However, in absence of the content requirements, the latter is narrowed to registration and supervision of market dominance.

Several other provisions were examined and **found constitutional**: such the **obligation to register, even for printed and online press**, and the theoretical possibility of **restricting the protection of journalistic sources** (merely more details were required). In addition, most changes take effect only from 1st of June, 2012.<sup>9</sup> This is particularly inexplicable, considering that the law was passed within a few weeks, and stepped into effect within little more than a week.<sup>10</sup>

The Court **did not respond to objections against the election mechanism of the Authority and the Media Council**. The **construction of the public service media** was also objected without any resonance (although that is clearly unconstitutional according to previous CC decisions). The **vague content restrictions** in the Act on Press Freedom and Certain Basic Rules of Media Content (Smtv.) which are still applicable to audiovisual media and radio were left untouched as well. The Court did not examine whether the **extremely high fines** were constitutional, or whether the **tendering rules** were transparent and fair.

It is alarming that the Constitutional Court left several important parts of the submissions unanswered especially that from 1st January 2012, **ordinary citizens are not allowed to submit cases** to the Constitutional Court – only the government, a quarter of the Parliamentary representatives and the ombudsman are entitled to bother the Court with initiatives.<sup>11</sup> What's more, **a fine may be levied to an applicant** (beyond the obligation to paying the costs) if he or she misuses his or her right to application.<sup>12</sup>

The Court may have ignored certain questions because it was very difficult to reach a majority among the judges, which has been filled up by six new members by Fidesz in 2010 and 2011.<sup>13</sup> According to the new law on Constitutional Court, all submissions by individual

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9 The public interest condition on the protection of journalistic sources is an exception.

10 The Court's only reasoning in this aspect was, that if it annulled the effectiveness of the Media Constitution on printed press as such with an immediate effect, that would affect the rules on rectification. However, passing the rules of rectification in its same form again, perhaps placing it back to the Civil Code where it was, would be very easy for the legislator (the latter movement would require only a simple majority) and it certainly does not require half a year's delay.

11 Ordinary citizens only if they suffer a personal harm because of an infringement of their constitutional rights.

12 § 54 (2) of Act CLI of 2011. on Constitutional Court

13 Fidesz government amended the rules on the election of Constitutional Court judges in 2010 so that they are nominated by a committee that represents the parliamentary ratios. (Earlier, each parliamentary group could delegate one member into the committee.) In 2011, they raised the number of judges from 11 to 15 – this made it possible, that they delegate altogether six members (two in 2010, to complete the number of judges to 11, and four in 2011.) Some of the elected persons did not even qualify to the legal criteria (e.g. were not distinguished legal scholars, like Istvan Stumpf, a political scientist and earlier Chancellery minister of Viktor Orbán. Another judge, Istvan Balsai was member of the Parliament in the Fidesz party when he was elected and resigned of his membership.

citizens vanished on the 1st of January, the same day that a Basic Law instead of the Constitution stepped into effect.

The issues tackled by Constitutional Court are:

1. The Smtv's effect on printed and online written press is ineffective from 31st May 2012.
2. It declared it unconstitutional that public interest was a condition of protection of journalistic sources. This is the only provision which is annulled with an immediate effect. It also obliged the legislator to give a list of causes which might serve as reasons to reveal journalistic sources, and add procedural guarantees that the rule is applied in line with the European Convention of Human Rights and its case law.
3. The post of a Media-Commissioner was annulled from 31st May 2012. The Commissioner has the right to investigate without any reason and report to the Authority.
4. The Media Council is not entitled to oblige media service providers to reveal data (§175 Mttv.) outside of an official procedure. This annulment is immediately effective.

## How and why Klubrádió lost its frequency

After Klubrádió has lost its frequency, **no other news or talk radio, which is critical of the government, has remained.** The Media Council published a tender for Klubrádió's frequency setting out that the applicants should offer mainly music, and not more than five minutes news per hour, primarily local news. It became clear that Klubrádió in its present form will not be able to continue its operation on the same frequency. At the same time two other frequency tenders were published with the same conditions. This proves that **the Media Council did not intend to maintain any talk-news radio on the media market,** and intended to push out Klubrádió or the style it represents. As a consequence of the decision, the dominant format of the local radio market of Budapest will be the music radio without significant news services now.

Klubrádió is **a news and talk-radio** with an audience counting 500 000 from 10 million, it **used its frequency for 12 years.** It discussed political questions and public issues in most of its airtime, had a public service character, and was critical with the government.

The **remaining news or talk radios represent the rightist political opinion and belong to Fidesz-related interest groups** (Lánchíd, Info Rádió) or are part of the governmentally controlled state radio (Kossuth).

The decision fits into a strategic plan to **gain media-dominance by the governing Fidesz party** and the companies financially adjacent to it. This strategy has achieved to effectively control all information that is imparted to the mass audiences, which means practically the control of the whole mainstream media.

The **winner** of the tender was a company founded in February 2011, with a capital of one million Forints (appx. 3000 Euros) and **no broadcasting experience**. Its owners or CEO were not available for the press until now and the company was **not found at its premises**.<sup>14</sup> Its CEO has been director to more than a dozen smaller companies, several of which were liquidated.

**The evaluation of the bids was not transparent and controllable.**<sup>15</sup> The difference between the evaluations of subjective criterion (programme plan) was just enough to decide the tender. The evaluation of the objective criteria (licence fee, Hungarian music, local news) did not leave any consideration for the Media Council but the evaluation of the subjective criteria could be arranged to any final result.

**As a consequence of the decision, pluralism on the radio market significantly decreased.**

### **Domination of the media market with the help of the Media Council**

The Media Council prohibited the fusion of Axel Springer and Ringier publishers. The decision is **not sufficiently supported by professional arguments, and not published. Market definition and the definition of a media service provider with significant powers of influence were both voluntary** and ignorant of foreign examples. Particularly alarming is that the Media Authority did not even try to support its decision by professional analysis.<sup>16</sup>

Radio Lánchíd, which is bound to the right-wing ruling political parties, won several local frequencies. Companies related to Fidesz regularly attempt to buy one of the national commercial television stations. Another company clearly related to Fidesz bought the biggest, freely distributed daily newspaper Metropol.<sup>17</sup>

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14 [http://nol.hu/belfold/20120114-egyre\\_titokzatosabb\\_autoradio](http://nol.hu/belfold/20120114-egyre_titokzatosabb_autoradio),  
[http://hvg.hu/itthon/20120114\\_klubradio\\_roxy\\_radio\\_szeremi\\_nora](http://hvg.hu/itthon/20120114_klubradio_roxy_radio_szeremi_nora)

15 The call for tender set out several aspects of evaluation: among them the obligation to provide predominantly Hungarian music, *primarily local news*, and the price. The winner radio („Autoradio”) offered much higher **fee** than the other applicants (75 million vs. 55 million HUF), a sum which is held **unrealistic** by observers of the Hungarian radio market, where several music radios had to shut down recently, others request regular payment postponements from the Authority. (While, unrealistic business plan is a **cause for exclusion** from tender, according to § 59. (3)b) of the law.) Klubradio received only one point less in the tender than the winner Autoradio (65 vs. 66 points). The Media Council officially responded to the outcry alleging that Klubrádió „intentionally” submitted a „spectacularly” weak application, adding the constant international and domestic pressure weighted on them to give frequency to this particular radio.

16 It was acquired by researchers Mihaly Galik and Artemon Vogl in a freedom of information procedure. The final decision of the Competition Authority was not delivered because the applicants withdrew their application.

17 [http://hvg.hu/itthon/20111227\\_Polyak\\_Gabor\\_mediatorveny\\_egy\\_eve](http://hvg.hu/itthon/20111227_Polyak_Gabor_mediatorveny_egy_eve) – in Hungarian.

**The law does not provide for cross-ownership restrictions**, in contrast to the previous regulation. This poses a risk to the diversity of information sources, particularly with regards to the domestic media market trends.

The **hidden mission of the Authority and the Council is to help Fidesz carry out its strategy to acquire control of the media scene both by legal and by economic tools**. There have been a general belief on the political right that there is a leftist prevalence in Hungarian media, and the intention to change this by policy measurements have been expressed several times.<sup>18</sup>

The raised international attention may have **discouraged the Media Council** from using its competences to its full potential, but as the political campaign gets more heated, this consideration may become less important. Nevertheless, signs of **self-censorship, depolitisation and conformity** are obvious primarily in national commercial television.

### **Government's statements about correlation with European media laws proved untrue**

The Central European University's Center for Media and Communication Studies (CMCS) carried out a research which finds that **Hungary's media laws are largely inconsistent with the cited European practices and norms**. The study was triggered by a **statement of the Hungarian government which took European countries as examples and precedents of the Hungarian regulation**.<sup>19</sup> On 10<sup>th</sup> of January, the Council published a blog entry in which it attempts to disqualify the research.<sup>20</sup> The writing is a good example of how the Council identifies itself with the government. The Council's representative has been defending the regulation from the beginning of its existence.

### **The situation in a wider context: democracy and rule of law**

The partiality of the Authority is reflected in its decisions and its official communication. Not only does it **favour the political right's economic interests**, but its decisions **diminish plurality in the media landscape**. **It is an extended arm of the government, practically equal to a ministry**, which is revealed every time when they react to the critiques relating to the media laws.

The Constitutional Court's decision was just enough to signal that the objections raised by domestic and international experts, civil groups, political forces, European institutions were

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<sup>18</sup> 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/](http://www.booker.hu/konyv/media-egyensuly_kerenyi_imre/)

<sup>19</sup> [https://cmcs.ceu.hu/sites/default/files/field\\_attachment/news/node-27293/Hun\\_Media\\_Law\\_\\_Executive\\_Summary.pdf](https://cmcs.ceu.hu/sites/default/files/field_attachment/news/node-27293/Hun_Media_Law__Executive_Summary.pdf)

<sup>20</sup> [http://mediatanacs.blog.hu/2012/01/10/a\\_kozep\\_europai\\_egyetem\\_kalandjai\\_a\\_magyar\\_mediaszabalyozassal?mid=5762](http://mediatanacs.blog.hu/2012/01/10/a_kozep_europai_egyetem_kalandjai_a_magyar_mediaszabalyozassal?mid=5762)

not unjustified – but it did not tackle fundamental principles of the legislation. New rules on the Constitutional Court prevent that the claims may be successful at a later point in time.

The Orbán-government changed the **totality of the public law environment**. **All fundamental laws were changed**, including the Constitution; **all institutions that would provide checks and balances were either re-staffed or replaced** with new institutions to disguise re-staffing. The judicial system was reformed so that the highest, most experienced judges were forced to leave into pension, and the judicial governing body was restaffed. After this, we thought that the „transformation” has finished. But just the following day, manipulation with the National Bank started.

In this legal environment, there is no reason to believe that the Media Council, the Authority and their Chairperson will not **exploit their powers to the full potential**. The total **occupation of the public media** is a good example of this. **Fidesz attempts to control the media scene both by legal and by economic tools**.

Although the internet is relatively free, the lack of resources and the narrowing circle of news sources (after the national news agency acquires market dominance) put the news portals in a difficult situation. MTI’s free delivery of news creates a competition disadvantage for those portals that would buy news from independent agencies.<sup>21</sup> Enigmatic resignation of chief editors signals that **the online market may be in transformation as well**.<sup>22</sup>

The Hungarian legal system is not capable to protect the principles of freedom of expression any more. The European Court of Human Rights proceeds only upon concrete violations, and does not weigh whole laws against its principles on theoretical bases. The European Union is a smaller community than the Council of Europe, with a relative cultural homogeneity among its Member States. This implies that it would not be undue interference into Member State’s internal affairs to **set up enforceable rules of the rule of law and of freedom of expression, such as the actual independence of authorities, the limits of an authority’s powers, transparency of all actions of the authorities, ownership concentration**. An **independent, impartial and transparently managed public service television** should be considered as part of democracy, which is a fundamental value of the European Union and a basic expectation from all Member States.

The signatories to this paper find that the definition of certain **principles of media regulation and press freedom** at a European level, with compulsory effect on Member States, would provide a **guarantee** against authoritarian governmental attempts to control media.

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21 [http://hirszerzo.hu/hirek/2011/5/16/20110516\\_ingyenes\\_mti](http://hirszerzo.hu/hirek/2011/5/16/20110516_ingyenes_mti)

22 Notable editors of the most popular online sites have left recently, without giving an explanation (Founders Balázs Weyer and Péter Nádori were fired from Origo in September, Péter Novák in January 2012. Péter Uj, founder of the Index.hu and iconic journalist and blogger left Index in September. The circumstances were unknown in all cases).[http://www.kreativ.hu/media/cikk/novak\\_peter\\_tavozik\\_az\\_origotol/](http://www.kreativ.hu/media/cikk/novak_peter_tavozik_az_origotol/);  
[http://nol.hu/belfold/menesztettek\\_weyert\\_es\\_nadorit\\_az\\_origobol/](http://nol.hu/belfold/menesztettek_weyert_es_nadorit_az_origobol/);  
[http://index.hu/belfold/2011/09/05/uj\\_peter\\_tavozik\\_az\\_indexot/](http://index.hu/belfold/2011/09/05/uj_peter_tavozik_az_indexot/)



The European Union is more than just an economic union. **The basis of responsible citizenship is free speech and the free flow of information.** Europe has its directly elected Parliament and its citizens, but ensuring the free media for all its citizens is yet to come.

Budapest, 17 January, 2012

Links to further information:

<http://mertek.eu/en/article/the-media-act-one-year-later>

<http://mertek.eu/en>

[http://www.seemo.org/hungary/files/Bayer\\_Media%20Law\\_IFEX\\_ENfinal220311.pdf](http://www.seemo.org/hungary/files/Bayer_Media%20Law_IFEX_ENfinal220311.pdf)

<http://www.medialaws.eu/hungarian-constitutional-court-repeals-parts-of-media-constitution-and-media-law/>

<http://www.medialaws.eu/hungary-a-popular-talk-radio-loses-its-licence-to-a-music-radio-%E2%80%93-layoffs-at-the-public-service-media/>

<http://www.medialaws.eu/the-hungarian-media-council%E2%80%99s-resolution-about-changing-its-own-code-of-procedure-raised-criticism-among-media-lawyers-and-opposition/>

<http://www.medialaws.eu/why-hungarys-media-law-is-still-unacceptable-despite-amendments/>

<http://www.medialaws.eu/civil-indictment-against-the-hungarian-government/>