The New Hungarian Media Law Substantially Curtails Press Freedom

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Prepared for the South East European Network for Professionalization of Media (SEENPM) with the support of the International Freedom of Expression eXchange (IFEX)

The short story of legislation

There had been consensus in Hungary that the Act on Radio and Television from 1996 needed reform, but any media legislation required a two-thirds parliamentary majority, therefore any amendment, let alone reform had been unsuccessful in the highly polarized Hungarian political scene. This obstacle ceased after the electoral party coalition of the center-right FIDESZ and KDNP together won more than 67% of the votes in Parliament in the 2010 elections.

However, the long-awaited media reform bill was submitted without any substantial consultations or discussions, seemingly by two MPs (rather than the government itself), which made it possible to omit the legally prescribed public debate. The official submitters of the bill have never let their voice be heard in connection with the media law.

The three reform bills – one on the general content of media, one on the structure of supervisory bodies and authority, and an amendment to the Constitution of the Republic – were submitted on 11th June and two of them were passed within a rather short time, on 22 July. Pal Schmitt, then Speaker of the House but already elected as the next President of the Republic cooperated with the government by postponing his signature until the latest date possible (on 6 August, the day when previous President László Sólyom already had left office). It was expected that if Sólyom, who was a constitutional lawyer, had received the act for signature, he would have exercised his presidential right of constitutional veto and would have sent the act to the Constitutional Court. Thus, it was the new President, Schmitt, who signed the act (that he himself had signed as Speaker), thus promulgating it very quickly, within only two working days (by 10 August).

The content of the act attracted professional criticism in the summer, but little public attention. Only in December, when the final pieces of the legislative package were passed, did the Hungarian press react, attracting international attention. The Act on Press Freedom and Media Content (CIV. of 2010, hereafter: Smtv.) was submitted on 11 June and passed on 2 November, while the last part, the Act on Media Services and Mass Communication (CLXXXV. of 2010, hereafter: Mttv.) was submitted on 22 November, and passed on 21 December. This latter time span was too short to generate public discussion on a law that was 179 pages long and regulates a complex area, involving the economy, constitutional rights, public service, state aid, and other fields of law.

The objectionable content of the law

The law is objectionable in several points – its scope of regulation, its territorial effect, the vague content rules, the powers and construction of the Media Council; the Media Commissioner; the level of fines; the new structure of the public service media – to name but a few.

The law regulates printed press and online news portals (including some blogs, and audiovisual media). It prescribes a wide range of vaguely formulated obligations on media content. If the law is

violated, there are threats of prohibitive sums of fines. The Media Council is part of the Authority and its Chairperson is the same person as the President of the Authority. The Authority has wide powers of investigation, control over the public service media, and many of these powers are concentrated in the hands of one person: the President of the Authority, who is appointed by the Prime Minister. In case there is no violation of the law, the Commissioner – appointed by the President of the Authority – may lead an investigation, and report to the President of the Authority. While members of the Media Council should be delegated by all parliamentary parties, in fact they have been delegated exclusively by the ruling party FIDESZ. The mandate lasts for nine years, which is longer than two parliamentary election cycles.

To sum up, the President of the Authority and the Media Council oversee the operation of the whole media scene, have wide investigative and severe sanctioning powers including imposing high fines (up to EUR 727000, or HUF 200 million), manage and supervise public service media, and supervise the "media commissioner" who investigates in cases where the media acts lawfully (sic) – and reports to the Authority. It is not necessary for the Council to misuse its power to stifle press freedom, it is enough merely to "use" it.

The biggest concern posed by these laws is not that they will be applied consequently and cause several media outlets to close down, but that it will be applied arbitrarily and inconsequently. On the one hand, it may exercise a chilling effect over the whole media, while on the other hand, when moral panic or political interests entail, serious punishments might be applied as happened to Radio Tilos (see below). For citizens, this means unpredictability, and legal uncertainty. The effects are wider than just media law, the question may emerge in any other field of regulation: will the authority/court apply the law, or is it just symbolic?

The government and the Media Council express from time to time how the law should be interpreted according to their opinion. These interpretations are indeed less restrictive, as may be deduced from the text of the law. It would be beneficial to lay down these narrowing interpretations in a binding legal document so that they can be referred to in case of any procedure.

The scope of the law

Mttv. and Smtv. both cover linear and non-linear television, linear and non-linear radio (a;together, they are "media services" by Mttv.), as well as printed press and online news portals which are provided as economic services (named "media products" by Mttv.). For the purposes of this report, I will identify "media services" as the audiovisual media, and "media products" as text-based services, inorder to easier understand the nature of the media in question.

The original versions of the law (submitted in June) extended its power over any Internet content; the final version "limited" its online scope only to "online newspapers" and "news portals" that are provided as economic services. However, the definition of an online news portal allows an interpretation that may include blogs if they are provided as an economic service. As a Media Council member (András Koltay) expressed at a press conference on 6 of January, some blogs are subject to the law – it is to be seen within the next six months which ones.

Freedom of the press should only be restricted with a pressing reason. In the case of audiovisual media, this reason has been the traditional scarcity of available frequencies, the pervasive effect of

the media, as well as the fact that it can simultaneously reach a large audience. None of these reasons prevail for print and online media. Even for audiovisual media, such reasons are on the wane, as declared by the European Union's directive on audiovisual media – suggesting a path towards deregulation.
Text-based media have been subject to general legal rules, such as the protection of a good reputation and personal data, criminal prohibition of libel and defamation and of hate speech. Criminal defamation may be penalized by up to two years in prison in Hungary, and truth is not a defense (unless the allegation was in the public interest). The law on the protection of personal data is one of the strictest in Europe. Therefore, it cannot be stated that the Hungarian press needed to be regulated because there were no legal means to protect human rights.

Ever since censorship offices were discontinued, there have been no press authorities in the civilized world. Only audiovisual media content is supervised by an authority; print press content has been subject only to courts and general pieces of legislation, and self-regulation.

Governmental influence

The President of the Authority is appointed by the Prime Minister for nine years and the office is renewable any number of times. The Media Council is part of the Authority. Its members are theoretically delegated by parliamentary parties by consensus, and if that is unsuccessful, then by a two-thirds majority (Section 124. Mttv.). However, in reality they have been staffed exclusively by FIDESZ, the ruling party, with its own people, also for a period of nine years, and they can be re-elected an unlimited number of times. The supervisory body (Kuratórium) of public service media organizations is also elected by the Parliament, but they lost their significance after the production, property and incomes of public service media were allocated to the Media Services Supporting and Property Managing Fund (hereafter: Fund), which is supervised directly by the Media Council (Section 136. Mttv.). Executive officers of the public media organizations are appointed by both the Media Council and the Kuratórium, and all the four persons appointed have proven or declared their loyalty to the government.

In the Authority, there is only one person vested with decision-making power: the President of the Authority, Annamária Szalai. Therefore, the extended powers of the Authority lie in the hands of one person, who is appointed by the Prime Minister.

On the one hand, the long mandate could enhance independence of the office-holder, but re-eligibility has the opposite effect. In fact, FIDESZ has ensured its influence over the whole media scene in Hungary, whether printed, online, public or private, for at least nine years, regardless of its success in the following two parliamentary elections.

Powers of an almighty Authority

The Authority supervises the entire media scene. It registers text-based and audiovisual media, makes market analysis, enforces anti-monopoly rules on telecommunication market, and sanctions any violation of the law.

The Media Council is part of the Authority (Section 109. Mttv.): it "controls and enforces press freedom between the frames of this Act and those of the General Rules on Media Content (Smtv.)"; it publishes and decides frequency tenders; it monitors media content, and whether content

requirements are respected; it manages the Fund, makes market analysis and enforces anti-monopoly rules on the media market; as well as performing several other duties (Section 132. Mttv.).

The abovementioned duty of the Media Council ("controlling and ensuring the enforcement of press freedom") shows the paradox of the legislative approach. You cannot "enforce" a freedom, which can be best preserved by the non-interference of the state (except for the distribution of frequencies). The preamble of the law lists the following as goals of the law: promoting social integrity; proper operation of democratic establishment; and national, as well as cultural identity. "*Respecting the Constitution and constitutional principles, international and European norms, considering the changed circumstances due to technological development, preserving the freedom of the press and speech*", etc. are just the means to an end.

The Authority has oversized powers of investigation (Section 155. Mttv.). It can demand, view or copy any data, including *"secrets protected by law"*; it may oblige anyone, including persons who are in contact with the client or any other participant of the procedure (e.g. the witness), *"to provide data in a format defined by the Authority, suitable for comparison, as well as provide other forms of information."* If this section was not enough, the following section ensures that, in addition, the Authority may oblige *"any other person or organization to provide data."* The witness may also be questioned for any business secrets, even if he was not released from his non-disclosure obligation. Any such data acquired may also be used in other procedures. Even this has not made the legislator confident in seamlessly collecting data, therefore a new chapter title was created: "Data provision" (Section 175. Mttv.). This reiterates that the Authority may demand any form data from any person (obliged by resolution). Furthermore it may oblige businesses "*to provide data remotely from a supervision system installed on the business's premises or built in the business's procedures*". It is not known how such a system would be installed. In the event that data provision set out in the Authority's resolution fails to be performed or is performed non-satisfactorily, the Authority may impose a data provision fine, which may amount to HUF 50 million (cca. EUR 180,000) (Section 175. (8) Mttv.).

Beyond this, the Authority may levy a "procedural fine" as well – up to HUF 25million (cca. EUR 90,000); or up to HUF 1 million (cca. EUR 3,700) for natural persons, in case a person or organization which participates in the procedure (even if only loosely connected to the medium against whom the procedure started) exhibits behavior that may potentially hinder or delay the procedure. The idea itself is objectionable, but especially so are its measure and the conditions by which it is levied. The behavior does not need to be intentional, or result in the actual delaying of the procedure – only that it may potentially hinder it.

Issues that could be discussed only in court before, may be decided by the Media Council in future, such as violations of human dignity, other constitutional rights, privacy and other personal rights (Sections 14., 16., 18. of Smtv). Although the governmental communiqué held that these will be discussed only where the right of dignity is violated ("*to such an extent that the violation stretches beyond the mere offence of the individual's interests and affects public interest as well*"), the law itself does not hint to such an interpretation.

The rules on tendering for licenses empower the Media Council to interrupt and restart the tender for "*reasons of media policy*", or if the "*winner's offer does not comply with the principles and goals of the law*". This enables the Media Council to arbitrarily prolong the licensing procedure until it finds

a suitable applicant, which makes the procedure unpredictable and non-transparent. The Constitutional Court declared in its decision 46/2007. (VI. 27.) that the aspects and the deadline of evaluation, and the obligation to provide justification are constitutional requirements of the broadcasting tender's legal regulation.

The Authority may decide legal disputes between any two media outlets, if either one of them requests such procedure, although the other one does not have any option in such a case. Deciding instead of the court, the Authority effectively deprives the sued medium of the possibility of any independent court procedure, without that medium voluntarily submitting itself to its jurisdiction.

Media outlets and the Authority may conclude an "authority agreement" (Section 160. Mttv.), where the medium may assume more obligations than otherwise prescribed by law. If the agreement is breached by the medium, the Authority may enforce its content as if it were a final resolution. This contradicts the constitutional principle expressed by the Constitutional Court in its decision that the authority cannot be a signatory party and the supervisor of the agreement at the same time [ABh. 46/2007. (VI. 27.)].

Broadcasting and Media Commissioner

The so-called Commissioner's function is a real cause for concern (sections 139 to 143). He or she may investigate cases that are not illegal and do not fall under the Authority's jurisdiction (section 140). This may happen with reference to the audience's and consumers' interest, but the Commissioner may initiate a procedure *ex officio*, which makes any reference to consumers' interests derisory. In effect, this person would expand the Authority's jurisdiction to cases that are not governed by law (i.e. practically anything). This is in contradiction to the rule of law and constitutional principles, specifically Resolution 1/2007. (I. 18.) of the Constitutional Court.

Although the Commissioner has no sanctioning power in theory, he/she will possess a wide range of rights to conduct investigations, the same as those of the Authority (Section 142). He/she may even request classified information and, if the provider fails to provide the requested information within 15 days or provides insufficient or false information, the Authority, when prompted by the Commissioner, may impose fines up to HUF 50 million (cca. EUR 180,000) (Sections 142 (2) to 175 (8)). (Please note: the Commissioner may be investigating a matter that is not itself illegal!)

The Commissioner and all of his/her subordinates are appointed and dismissed by the President of the Authority, the same person who approve the Commissioner's agenda, defines the Commissioner's budget, and receives the Commissioner's report. In the report, the Commissioner should place *"a special focus on the media provider's behaviour and willingness to cooperate"* (Section 142 (9)).

Clearly, the Commissioner is not an independent legal institution; in fact, he/she is an extension of the Media Council, who may harass media market players even if no violation of the law has taken place. This contradicts the principle of the rule of law. By calling this position a "Commissioner" (which is for a term equal to "ombudsman" in the Hungarian language) and declaring that it does not have anyjurisdiction, it may appear that the investigated mediums do not suffer any damage. But first, the investigation alone has a chilling effect; second, the investigation may entail a procedural fine, or a new procedure by the Authority.

Media-constitution: content restrictions

Smtv. mainly amends other laws – therefore, it cannot even be found in the open online legal database. However, in its sections 13-20 – those detailing the obligations of the press – are not amendments but independent legal rules, often referred to by the Media Act.

These rules are objectionable from many aspects, and together with the sanctioning system of Mttv., are suitable to silence the media. It discusses questions which had only been subject to court jurisdiction before, especially in the case of text-based media such as human dignity, the protection of fundamental rights, privacy and other personal rights. These are mentioned in several places in the Smtv. (14. §, 16. §, 18. §), and Mttv. makes their control the task of the Media Council.

Obligation to provide information

The obligation to provide information is formulated in Section 13 of Smtv. and Section 12 of Mttv. The latter obliges only audiovisual media, but Smtv. text-based media, too.

The expressions "*many-sided, factual, topical, objective and balanced*" that are used to define the quality of information to be imparted, have been used in the previous Act on Radio and Television (ART), too – but they caused continuous problems of interpretation, led to arbitrary and unpredictable applications of the law, and were subject to professional criticism; its enforcement by the Complaints Commission was a failure. The complaints were predominantly politically biased and the Complaints Commission occasionally expressed irrational expectations, while openly biased channels have been flourishing (HírTv, EchoTv, ATV, Pannon Radio, etc.).

Right before the final voting, the Bill of the new media act (Mttv.) was amended so that no fine can be applied for the breach of this rule – but the Media Council may oblige audiovisual media service providers to publish an opinion that had not been represented, or the Council's statement (Section 181. Mttv.). (And the Council may not proceed ex-officio only upon a complaint.) Practically, the old – much criticised – system has been kept, almost word for word, except that the new regulation prescribes that each programme or each series of regular programmes must fulfil the obligation to be balanced. *[12.§ (2)].* The difference from the previous regime is that the obligation had been extended to non-linear audiovisual media service providers – and also to text-based media, but in this case the matters of control and sanctioning are unclear. Although governmental communication holds that these will not be sanctioned, according to Section 181. c. of the Media Act, the Media Council shall supervise the fulfilment of sections 13-20. Smtv. Therefore, its obligation is to supervise whether the obligation to inform is fulfilled, but it is not clear what the legal consequences of the breach of this obligation are. In addition, the Media Council or the Office of the Authority may apply sanctions in case of "*any violation of a rule on media regulation*" (Section 185. Mttv.) It is not clarified what is to be understood under "rule on media regulation", but according to the common meaning of the words, all rules on media belong here.

To sum up, regardless of the measure and weight of sanctions, it is against the concept of a free press that the state imposes restrictions on private media.

Protection of communities or hate speech

Hate speech is defined by Smtv. in terms so broad that they may restrict any critical statement about any person or organization. It prohibits to incite hatred, or to insult (even obliquely) any person, nation, community, any national, ethnic, linguistic or other minority, or any majority, or any church or religious group (Section 17. Smtv.). While protecting national, ethnic, linguistic or other minorities is common practice in Europe, protecting "any majority" or church, or any person against oblique or open insults goes beyond the limits of press freedom. Protecting any majority is bound to suppress minority opinions, especially because of the high fines. Although most of this section was included in the previous media act, it is – and has been – little more than a mockery of the prohibition of hate speech and discrimination. It even has precedents in Hungary: in 2003 the Radio and Television Authority (ORTT) suspended the license of Tilos Radio for 30 days (instead of the usual 30-60 minutes), for improperly joking about Jesus and the Virgin Mary on Christmas Eve. On 29 October 2010, Roma people were sentenced to 4-6 years' imprisonment for "violence against the national community", after they had attacked a vehicle of right-wing extremists who had arrived in their village with the aim of provoking an incident, although no personal injury occurred. As these examples show, there is no reason to hope that either the Media Council or the court would not apply this section against any medium in order to protect the dominant political opinion and the majority. The attitude of protecting the majority to the detriment of minority is also shown by the government's communications when it labels its critics as "enemies" or as "committing treason".

It is also not clear why churches should belong among the protected subjects. While religious identity should indeed be included when prohibiting discrimination, churches as organizations do not deserve any more protection than political parties or any other organizations. Several churches exercise significant secular influence which makes them subject to public scrutiny. Smtv. and Mttv. together threaten any medium which, performing its watchdog function, criticizes – and obliquely insults – the Catholic Church, or the Church of Scientology, with a prohibitive fine.

By protecting any minority, any majority, any person and community, practically everyone and everything is covered by the law, which makes the legal expression of critical opinions almost impossible.

Protection of journalistic sources

The scope of protection of journalistic sources has been restricted by the new laws. Previously, the Act on Criminal Procedure allowed the denial of testimony for persons whose professional rules oblige them to keep a secret [Act XIX. of 1998, Section 81. § (1) c)]. This obligation was formulated by the Press Act [II. of 1986., Section 11. § (1) b)]. (The Press Act has been replaced by the new law.)

Now, Section 6 of Smtv. says that any court or authority may oblige the journalist to reveal his or her sources, in the interest of "national security, public order, or the investigation or prevention of crimes". These interests are vague categories, especially "prevention of crimes"; they do not provide any guarantee for the protection of journalistic sources. Any crime, even defamation or libel may count here which may arise in most investigative journalistic stories.

Under the interpretation of the Media Council, "authority" does not include the Council, because its tasks are listed in the law and there is no such task as "oblige journalists to reveal their sources". However, in the view of the critiques, the word "authority" includes any authority, and if not the Council, then the (Media and Telecommunication) Authority. In addition, the Authority and the

Council have wide powers of investigation and are entitled to know any information or data, even secrets protected by law, and if hindered in that, it may impose a procedural fine or a data-providing fine (Section 175 Mttv.). The Authority is allowed to oblige not only the medium under examination, but any other person or organisation drawn into the case, to disclose such data.

Simply by entering premises and examining a journalist's notes or files, the identity of an source may be discovered, the possibility of which is enough to prevent holders of important information from sharing any with journalists.

The Act on Criminal Procedure has not been changed, but from now on its exception has become operative: *"except, if … according to a specific law, someone who is entitled to release [the other person from keeping the secret] is obliged to share the information upon the notice of court, public attorney or investigative authority."*

Prohibiting programmes

In cases of emergency, extraordinary situations, etc. the Parliament, the Defense Council, the President and the government are entitled to prohibit certain communications or programmes (Section 15. Mttv.). The first part of the section, the publicizing of certain "communications of public interest" may be reasonable (in the defined form and time, for free), but nothing may justify the prohibition of certain programmes.

Public service media

There was also a consensus in Hungary that public-service media needed reform. The public television's management, popularity, market share and independence are all problematic, and did not fulfil all the expectations of the European Commission on state aid to public-service television (with special regard to the Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting (OJ 2009/C 257/01).

The law passed in summer 2010 that amended Rttv. created a new structure: it consolidated the three public-service broadcasters into a single public foundation, and slightly amended the supervisory structure. However, with Mttv., the new Media Service Supporting and Property Managing Fund received not only all the incomes and properties of the broadcasters, but also the task of programme production, and their staff, with the exception of 49 employees each. According to previous plans, the structure would have neared European standards. The new structure is in contrast to the European Commission's expectations, because the Fund is solely supervised by the Media Council. Its director and its supervisory board is appointed by the President of the Authority which allows direct political influence (Section 136. Mttv.).

The supervisory bodies of the broadcasters: the Kuratórium (Board of Trustees), the Public Service Body and their own Supervisory Boards became superfluous, because the broadcasters themselves became ineffective. Although there is a Public Service Code which is supposed to contain the public service mandate, it is created by the Media Council, then modified by the Public Service Body (a body of 14 members delegated by churches, local governments and other social organizations defined by law), with the agreement of the Kuratórium (in which the government has the majority of members), and a regular supervision of the Code is not prescribed.

This new structure is also contrary to the resolutions of the Constitutional Court [37/1992. (VI. 10.), and 22/1999. (VI. 30.)] which held that dominant influence of political parties or the government (or Parliament) in the public service radio and television is unconstitutional. Resolution 37/1999. (VI. 10.) added that the regulation of that time was "unconstitutional because of the lack of guarantees against governmental influence". The same can be said about our new law.

Directors of broadcasters are appointed without tenders by the Media Council, upon recommendation of the Chairperson of the Council, and then elected by the Kuratórium. However, the director of the Fund which holds the real assets is appointed solely by the Chairperson of the Media Council (Section 102., 136. Mttv.).

There are no feasibility studies about the effect of the consolidation. Consolidating editorial offices is not the best tool to create competitive, independent channels that target different audiences. It is also not quite clear what tasks remain with the broadcasters, if ordering, buying and production of the public service programmes is done by the Fund, which possesses financial assets and labor force.

The biggest transformation occurred in relation to the Hungarian News Agency (MTI): it will be directed by a person who has clearly expressed his loyalty to the government; public-service media will be allowed to use exclusively MTI news (which is contrary to the principle of editorial freedom, and even of balanced coverage); MTI, while using state aid, provides its services for free to any other medium, which may be detrimental to other news agencies. This is contrary to the rules of fair competition, harmonized in the European Union.

According to the practice of the European Court of Justice, as summarized in the Communication from the European Commission on the Application of State Aid Rules to Public Service Broadcasting (OJ 2009/C 257/01), state financing of public broadcasters is only allowed if the mandate is clearly defined, explicitly entrusted to the undertaking, and the financing is cut to the tasks to be performed. An independent body should monitor the fulfilment of the mandate, as well as the expenditures, in a transparent and effective manner. Our Public Service Code is not explicitly drafted to establish a mandate (Section 95, Mttv.) and the financing is planned without respect to the tasks or actual needs. There is no provision about controlling expenditures.

Co-Regulation

In content regulation questions, the law allows co-regulation in close cooperation with the Authority, which may reclaim jurisdiction at any time it finds that the procedure of the self-regulative body does not suit the law, or the contract, or the self-regulative body is unable to enforce its decision. In these cases the Authority starts a new procedure, where it is not bound by the procedure and decision of the self-regulative body [Section 198. (2) Mttv.].

Normally, co-regulation should mean that the self-regulative body defines its own standards and sanctions, and the Authority would help in enforcing its decisions, if necessary.

The Media Council constantly controls and supervises the self-regulative body (Section 200. Mttv.) and may oblige it to provide information (Sections 195, 201. Mttv.). It evaluates its decisions one by one, and also jointly (Section 201. Mttv.). If the self-regulative body does not proceed or does not do so properly, the Council may notice the contract and start the procedure in the pending cases (Sections 195, 196, 198. Mttv.)

Territorial effect

The law extends the law's effect outside the borders of Hungary in further steps. First, it exploits the possibility offered by Directive AVMS and applies its article 2a (Sections 176-177. Mttv.). According to this, audiovisual services that have their origin in other states may be restricted if they violate the provisions on the protection of children or on hate speech.

However, Hungarian law extends this possibility to radio and text-based media (printed and online press, and possibly some blogs - Section 178. Mttv.)

The Directive further allows that if domestic regulation is stricter than other countries', foreign linear services may be subjected to domestic regulation, provided that they settled abroad with the intention to evade the domestic law, and its content is directed mainly to the member state (Article 3. AVMSD). Hungarian law entitles the Media Council to impose fines, to oblige them to publish the authority's decision, and to suspend the license, after it has asked the other member state to enforce the Hungarian law and has notified the European Commission (Section 179. Mttv.).

However, one important detail has been left out: that the member state may exercise jurisdiction over the foreign linear service provider only *after* the European Commission has approved it, within three months from notification [Article 3.1.c(d) AVMSD].

Hungarian law has extended the latter rules to radio and text-based media (printed and online press and blogs - Section 180. Mttv.) with the exception that the European Commission does not need to be notified. It is not quite clear whether the extra-territorial effect extends to third countries as well.

Radio and online content of European origin are subject to the free flow of services. According to the principle of mutual recognition, member states may not restrict the flow of the goods or services that had been produced lawfully in another state, only with a few exceptions.

Changes to the previous regulation

Several drawbacks and obsolete parts of the previous law have not been remedied by the new law, but transferred without any modification, in spite of their having been severely criticized since 1996, the date of the old law. These parts do not form part of the debate now, or only those which have become even more restrictive. Such is the obligation to provide balanced information, the rule of rectification not making exception with public political figures, or even the registration system of the printed press. What's more, these rules have been extended to online press as well, aggravating the obsolete Hungarian press regulation. The previous law at least only applied to audiovisual media. The authority had the right to impose financial penalties, but only on broadcasters using terrestrial frequencies, and the sums were defined in the broadcasting contract, expressed in a percentage of the broadcasting fee – thus, it was predictable and related to the economic strength of the broadcaster – but most importantly, it did not apply to cable television channels, printed press and online media.

The Press Act (II. of 1986, but almost entirely reformed in 1989) prescribed certain general principles (such as the reference to public morals), but did not set up sanctions, let alone an authority to control the press, therefore the law remained *lex imperfecta* and its provisions were quietly forgotten. The only practical rule of the press act was the notification system which has been

maintained, but extended to online text-based and audiovisual media, and some of the linear audiovisual media.

In addition, now Section 5. (1) of Smtv. sets out that the "*law may set registration as a condition to start publication of media services or text-based press*". This leaves open the possibility for a future amendment of the law or the passing of another law that may severely restrict press freedom.

Constructive recommendations

The way the laws had been drafted and passed, makes the whole legislative process, including the product, highly objectionable. Therefore, the right procedure should be to annul the laws without delay, and start a new, proper legislative process. However, the chances of this are slim, for political reasons. Therefore, it is worth considering what kind of amendments could make the laws more acceptable. Below, recommendations to this end are given, providing various alternatives, without the claim of drafting a coherent legal rule. One solution is to add provisions that declare some rights of the press and limit the powers of the Authority and the Media Council.

1. Text-based media

a) Printed and online press should be entirely excluded from the scope of the law. The previous press law may be revived, or not – this would result in the annulment of the notification procedure, which is recommended by some international organizations.

b) Alternatively, limiting the powers of the authority as follows: "*the Authority's jurisdiction over printed and online text-based media is limited to register those. In any other questions only the court has jurisdiction over printed and online text-based media*."

2. Fines

a) Fines should be cancelled completely, and let courts decide upon any violation of the law.

b) Alternatively, to maintain the fining scheme only in case of protection of minors and prohibition of hate speech, but the decision about violation of the law and about the extent of the fine be left to courts.

In any case, the amount of the fine should be commensurate to the income of the media service provider concerned.

c) Procedural fines and data-providing fines should be cancelled.

3. Content requirements

a) Personal rights, privacy and human dignity are appropriately protected in the Hungarian legal system, in the Civil Code, the Criminal Code and other laws, which may be enforced in court. Therefore they should be deleted from this law. Therefore, Sections 10, 13, 14, 16 and 18 of Smtv. should be deleted (obligation to inform, respect for human dignity and human rights, protect privacy). Or, these may be upheld in forms of declarative provisions, annulling the authority's power to sanction because of these (lex imperfecta).

From Section 17 (1) and (2), the following parts should be deleted ("*Media content may not be potentially incite hatred against persons, nations, communities, national, ethnic, linguistic and other minorities, or any majority, or any church or religious group*"); "persons, nations, communities", and "any majority, or any church".

4. Registration

Deletion of Section 5.(1) of Smtv. is necessary: the "*law may set registration as a condition to start publication of media services or text-based press*".

Alternatively, the "text-based press" section should be deleted at least.

5. The Telecommunication and Media Commissioner's position should be annulled.

6. Protection of sources

Delete Section 6. (3) of Smtv. (*"Court or Authority may, in exceptionally justified cases, oblige the media service provider or a person employed by it to reveal the source of information, in the interest of national security, public order or the investigation or prevention of crimes").*

Delete the last words of Section 6. (2) of Smtv., as shown below: ("*The media service provider or the person employed by it, is entitled to keep its sources of information secret during court and official procedures~~, provided that the publication of the information was in the public interest~~."*)

7. Issues of staffing and positions

In recent years, several concepts have been published about how the media supervisory bodies could be constructed so that political influence is minimized. Among the best solutions were to appoint the members by social organizations that enjoy high prestige (such as university rectors, members of academia, theatre directors, etc.). Another possibility would be to choose members by open tender, and to appoint the winners in Parliament by a qualified majority (recommendation by Péter Szente, media expert).

While qualified (a two-thirds) majority should be maintained in the selection process, instead of voting about one list, voting about each appointee should be necessary in order to avoid politicking during the selection process. In case all persons are individually weighted, there should be morel independent experts. To sum up:

a) a social organization should elect members, or select persons to be elected by the Parliament; in the latter case the voting shall be held about each person and not about the complete list of persons;

b) the mandate should not be longer than six years and should be not renewable.

8. Public-service media

Consolidation of public-service media companies may be a rational choice; but the consolidated organization must fulfil European requirements towards state aid. A clear mandate shall be given to the company, the budget shall be measured to the tasks, and the spending, as well as the fulfilment of the mandate shall be controlled by an independent body of experts. The budget shall be decided

by a body of experts as well, whose members have practical knowledge about the costs of various programme types.

If the mandate is given by channels or by media service providers, then the budget shall also be cut to the tasks of each organization.

Executive officers of the medium shall be appointed by independent boards of trustees. By "medium" we mean the organization which performs the production and editing of programmes.

Afterword

On 7th March 2011, the Hungarian Parliament passed amendments to the new media law as requested by the European Commission. The changes affect important, but not key areas of the legislation. The amendments tackle four areas of the regulation: the obligation of balanced coverage; the prohibition to openly or covertly defame any community; the possibility of imposing fines on media service providers that are settled outside of Hungary; and the obligation of registration that would be imposed on all media, including print and online models.

These amendments limit the harmful effects of the listed provisions, but do not eliminate them completely. The obligation of balanced coverage has remained, but it cannot be applied to print or online media. The prohibition to incite hatred or social exclusion against a particular community (including the majority) remains. Only the broadest: "defamation" has been deleted. It is still possible to impose fines on foreign media-service providers (if such providers have settled abroad with the primary reason of evading Hungarian law) and to apply other sanctions in other cases (obligation to publish a statement, or suspend operations). Registration is still compulsory, but not in advance, only after starting publication (however, violating *any* rule as regards registration may entail a fine of HUF 1 million or approx. EUR 3700).

Regarding the amendments, the Hungarian opposition has expressed its disappointment, and several international organizations have registered their disapproval (the Organization for Security and Co-operation in Europe, the Council of Europe, the European Parliament, Reporters without Borders, the International Press Institute, the International Federation of Journalists, and the Committee to Protect Journalists).

The reason behind the partial nature of the changes that were requested by the European Commission, compared to the volume of problems with the law, is that the European Union does not have competence in human rights or media law in general. Therefore, the law was examined only on the basis of the Audiovisual Media Directive and the Treaty's provisions on freedom of movement and freedom to provide services. The real question is whether the European Union will expand its competence on press freedoms, and perhaps on other human rights as well. This would be indeed a step towards further integration.

There is already a commissioner for fundamental rights (only having competence in areas which are already under European competence) – and the European Court of Justice could certainly judge such claims. Furthermore, the EU has been planning to join the European Convention on Human Rights (ECHR). Once it does, then ECHR would work as an umbrella, or as a guarantee for human rights decisions of the European Court of Justice. After all, Article 2 of the Lisbon Treaty referring to fundamental rights is not just an empty declaration. If the Union takes its Treaty seriously, then it

should enforce it, even if it contains only a reference to human rights and the rule of law, because the Treaty is not a soft law but a compulsory document.