

Hungary's Media Law Package

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The aim of this note is to provide a checklist that could be used in the upcoming scrutiny of the Hungarian media laws in the EU Commission and in the EU Parliament.

The note is based on my intervention at the Open Hearing "Freedom of Press in Hungary", organised by ALDE in Brussels, 11 January 2011.

I have added further crucial dimensions that are necessary to look at when making recommendations on Hungary's media laws.

What laws is the debate about?

It is misleading to talk only about the last one or two acts of the "media law package" (this was its official name) introduced by three individual Fidesz MPs on June 11 2010.

The Hungarian media laws consist of at least five crucial legislative acts since June 2010. All were passed in a hurry before the end of the year without any consultation with other parties and professional bodies, despite loud requests and protests by these.

These laws are built upon each other and are deeply interconnected. Each of them has its own stake in the restrictive character of the new system, while none of them would make sense in itself. This is why Dunja Mijatovic, the OSCE's media freedom representative, has asked to stop passing them and revert to a consultative way already after the itinerary of the Package was presented in June.

Here are the main pieces of law setting up the new system:

1/ **Changes to Article 61 of the Constitution**, passed July 6, 2010. The amendment removed the tenet obliging Parliament to pass a law aimed to "preclude information monopolies", that is, the obligation of the state to support pluralism; it ominously added the tenet of a "citizen's right to be provided with 'proper' or 'adequate' ('megfelelő') information about public life".

2/ **The law setting up the new Authorities**, the National Media and Infocommunications Authority (I will call it Telecom Authority) and the Media Council (MC). It was passed July 22,

2010. Already at this point, it was envisaged that from the autumn, the MC's power will be extended from the audiovisual to the print and the Internet-based media.

3/ **Prime Minister's and Parliamentary appointments** of the functionaries of the new system, August through October 2010.

4/ The law on the rights and "duties" of the press -- "**Act CIV of 2010 on the freedom of the press and the fundamental rules governing media content**". The official English shorthand is the "Press and Media Act"; in Hungary it is called "the Media Constitution" - passed November 9, 2010.

5/ The detailed sanctions, "**Act CLXXXV of 2010 on media services and mass media**" in Hungarian shorthand "the Media Law".,

Unprecedented restrictive features, violations of European standards in the media governance regime set up by the Media Law Package

The Hungarian Government claims that no part of the new laws/system is unprecedented in Europe. In fact, the main features that restrict freedom and pluralism of the media are unprecedented.

1) Unprecedented since the Communist times, **the Package, "based" on the text of the amended Constitution, obliges all media (including print and Internet) to provide 'proper' or 'adequate' ("megfelelő") news coverage:**

- a) "All media content providers shall provide authentic, rapid and accurate information on local, national and EU affairs and on any event that bears relevance to the citizens of the Republic of Hungary and members of the Hungarian nation." -- Article 13 (1), Media Constitution;
- b) "Linear and on-demand media content providers engaged in news coverage operations shall provide comprehensive, factual, up-to-date, objective and balanced coverage on local, national and European issues that may be of interest for the general public and on any event bearing relevance to the citizens of the Republic of Hungary and members of the Hungarian nation." -- Article 13 (2), Media Constitution.

These tasks are based on not one but on four legal acts: the amended Constitution; the mandate of the Media Council; the Media Constitution; The Media Law.

A universal, homogenising tasking for the media regarding news coverage content is in direct opposition to the EU Charter of Basic Rights prescribing pluralism. Actually, any "tasking" (except for the public-service media) is harming the watchdog function of the media in a democracy.

2) Unprecedented is the **single administrative media governance pyramid** set up by the new system. It would be unprecedented even if it were not operated by the ruling party alone. Whether

filled by appointment or Parliamentary "election", all Boards and posts of command are either fully occupied or mathematically dominated by the ruling party, and made into a rubber-stamp machinery, protected by strict secrecy rules. The Boards are becoming but "departments" of the Authority that is practically a Media Ministry.

Inside this pyramid, there is a "Dual Monarchy" between the Telecom Authority and the Media Authority (Media Council, or MC). Ms Annamaria Szalai is appointed to head both. After being appointed by the Prime Minister, she has the right, in one of her two capacities, to candidate or directly appoint all other decisive appointees in the system.

In Europe, only Russia's Roskomnadzor and the Belarus Ministerstvo Informatsii has the same dual-head feature (and the "pyramid").

The apology that her second job, heading the Media Council, is an independent decision by Parliament is not in line with the facts: the Parliament did not even have a choice, because the dual-head setup was outspokenly prescribed in the July 22 law setting up these institutions, and is also included as Article 125 (1) in the new Media Law:

"The President of the Authority, who is appointed by the Prime Minister, shall become the candidate for the presidency of the Media Council from the moment of appointment."

There is no other candidate envisaged in the law, neither is provided any other mechanism to candidate.

3) **The five members of the MC are all delegated by the ruling Fidesz party.** No explanation needed why this is contrary to everything that European media governance is about.

4) It is an unprecedented that **the media regulator's power is extended to all media, including both the privately owned and the public-service audiovisual media, plus the print and the Internet-based media.** This is happening in the historic moment when the digital convergence, and the abundance of channels coming with it, eliminates many of the previously still existed constitutional excuses for content control even in classic broadcasting.

5) In an unprecedented way, and contrary to all European standards, **all guarantees of the PSB's independence are systematically removed** on many levels, amounting to a re-nationalisation of PSB:

- a) The head of the MC is the only person in the system who has the power to candidate the CEOs of the PSB outlets (MTV, Hungarian Radio, Danube TV, Hungarian News Agency);
- b) in doing so, she is not obliged by any criteria or public procedure;
- c) all the PSB newsmakers are now made the employees of a Fund set up under the MC, that is, the Head of the MC is also the employer of all journalists of all PSB.

6) **Registration of all news providers (including the print and Internet-based ones) is made mandatory and a pre-requisite for starting the outlets' operations;** this is not only unprecedented inside the EU but specifically forbidden in Council of Europe guidelines.

7) **The MC can oblige the Internet Service Providers to block any internet-based news outlet as a final punishment for noncompliance allegedly committed by the outlet.** Only Turkey has a similar law but there, this is a court-based, not authority-based measure. Even Turkey has decided in December to reform this provision that recently ended up in the scandalous blockage of big international sites like YouTube.

8) In an unprecedented way, through the services of a "Media Commissioner" (an employee of the head of the MC), **the two Authorities (Telecom and MC) have the right to request any information at any time from any media outlet in the country.** The laws specifically state that no business secrets or otherwise protected data constitute an exception. Refusal to comply comes with very high fines, and finally withdrawal of the outlet's right to be distributed.

9) **The journalists and the outlets lose their right to retain the identity of their confidential sources** if the information in question was a piece of classified data; the same goes "in exceptionally justified cases" -- Article 6 (1) and (3), Media Constitution. In fact, these two cases cover all cases relevant for any investigative journalism. Although such restrictions are not unprecedented in some post-Communist democracies, nevertheless all European and OSCE recommendations are clearly against them, and it is unprecedented to introduce them in fresh legislative acts.

10) Much has been told about the **high, practically annihilating fines** that that the Media Council can levy when enforcing the law.

But equally unprecedented is the very fact that **the media authority is entitled to punish the media for coverage issues.** Such intrusion by an authority is forbidden by the EU Charter of Basic Rights.

Also unprecedented is that **the MC constitutes, next to the civil courts and the criminal courts, a third layer in the country that has punitive power over the media.** In Europe, the expectation is to go to the opposite direction: to decriminalise the handling of journalistic mistakes and letting it over to civil courts alone.

In the debate, it has so far been neglected the unprecedented **violation of the principle of rule of law** that comes with the three-level sanctioning of the media.

- a) the Media Council is empowered to punish (and before that to freely interpret!) some **new, broadly defined transgressions, the sanctioning of which has hitherto been explicitly rejected by the Constitutional Court** as going too far, being too vague, and therefore "violating freedom of speech". Some examples: "insulting" any group, any minority and any majority; "hurting" "public interests"; etc.
- b) **Contrary to the claims there is no real judicial overview** provided over these decisions (and any other decision of the MC). This is also unprecedented in the EU. The sanctioned media can only appeal to an "Administrative College", that is, to a court that is unable to look into the merit of the issues. -- See Media Law 70. § (7); 163.§ (1); 165.§ (3), and many other chapters. In these courts, any appeal would be considered only if it claims that the MC has violated the Media Law itself, such as: non-compliance with

deadlines; rules of procedure, etc. Not even the amount of the fines can be disputed, because the MC has total jurisdiction to define what constitutes a transgression, and whether it was a "light" or a "grave" transgression.

- c) **the third, new, administrative layer of punishing the media for "speech offences" can be diverging from the judicial way;** it can be utilised by the authorities even if they lose a civil and a criminal case; the MC is not obliged by these; it can have a fully diverging opinion, punish the media, while its decision only can be appealed at an "administrative court".

12) To my mind, **the single greatest danger for the freedom and pluralism of the media in Hungary lies in the arbitrary licensing provisions. An example is 55§ (1) c) and (2) of the Media Law,** but there are many more of them with similar effects. Based on these, the MC can define the media ownership landscape as it pleases.

Article 55 (1) c) says that the MC can exclude any company from participating in tenders for licences that the same MC has sanctioned for a "gross" or "grave" ("súlyos") matter in the last five years. Article 55 (2) adds that the same fate is due to any company that has a stake in the above-mentioned company, or to any company in which the above company has a stake.

Obviously any media company or investor group Europe-wide that does not want to lose profits or markets in Hungary will strongly forbid their outlets' editors to criticise the governing party or publish any spicy investigative materials. They would fear that, in response from the ruling party-dominated MC, the outlet would get a reprimand over "child protection or "advertisement rules" that could arbitrarily be deemed as a "grave matter".

Add that **there is no real judicial oversight over licensing decisions either;** the decisions of the MC cannot be scrutinised by any court regarding the merit of their decisions; only "administrative" or "procedural" complaints are possible -- see Media Law 70.§ (7) and similar ones.

Such rules in fact "outsource censorship" to the owners, and create a "perfect chilling effect" without any of the embarrassing public clashes typical for the punitive way.

Conclusions

Speaking out in favour of singular ameliorations, like "involve a few opposition figures in the Media Council" or "lower the severity of punishments", could be misleading and not producing the expected improvement in the overall quality of the package. A mere listing of problem articles could be misused. A better message could be provided by a list of problem fields descriptions and related recommendations.

The Hungarian Government should:

- give up the notion that the government's 2/3 legislative majority gives it a right to decide alone in matters of press freedom;

- start the legislation anew in parity-based discussion fora that include opposition and civil society;
 - restore the independence of media governance; remove the "dual monarchy" of the telecom and media regulator;
 - make the media governance body truly independent from government with a parity-based political composure and participation of journalists' associations;
 - make the sole aim of media governance the upholding of pluralism; put that aim back to the constitution; do not reduce the meaning of "diversity" to ownership de-monopolization;
 - media governance should be restricted to the audiovisual field; fully remove its control over the print and internet press;
 - remove any news content prescriptions, any "tasking" for the nation's media;
 - let the courts do the punishing -- go even further and remove criminalization of journalists' mistakes; leave every debate over content to civil courts;
 - restore true judicial overview by appeals to ordinary courts;
 - remove registration as a pre-requisite for operation;
 - restore independence of public-service broadcasting;
 - protect investigative journalism by protection of confidential sources
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