



II-3.3: Hungary votes a new media law, which could infringe the charta of fundamental rights of the European Union

Lorraine Boris, Junior Editor

MAIN INFORMATION

The Hungarian Parliament voted a law on December 21st, 2010, which came into force on January 1st, 2011, according to which indirect governmental media control becomes very tight. This intervenes at the exact same time when Hungary overtakes the turning Presidency of the European Council. Hungary has now two weeks to put the law in conformity with European standards, otherwise, the European Commission will start a legal procedure against

CONTEXT AND SUMMARY

On December 21st, 2010, the Hungarian Parliament adopted two law proposals that aim at changing the supervisory regime of media in the country. The reorganization to come creates a new Media Council elected by the Parliament, and whose Chairman is directly appointed by the Prime Minister for a 9 years mandate. Since the right-winged party in power has a vast majority in the Parliament, no representative of the opposition will seat in the Media Council for at least 9 years. This new organization is supposed to emerge as the modernized head of the media supervision in the country, including both analog and electronic media. The Media Council's goal is to supervise the proper application of the December 21st, 2010, Act, especially to ensure that the information provided in the media is "balanced". The scope of the law is very large, since it aims at including every kind of media – either press, television, or internet media, as well as online media operating from outside Hungary in order to circumvent the law. Every media operator – including bloggers

- must register before the Media Council. The new media regulation authority has a strong sanction power, and can consequently impose financial sanctions up to 700.000€ for television and radio stations, 90.000€ for newspapers and websites and 7.250€ for private persons – which corresponds to one and a half years net average wage in the country. The Media Council can also decide to cut the public subsidies of a media found guilty, as well as it can suspend broadcasters for 30 days if found guilty.

The rapidity of the vote and promulgation of the law – during the last part of December 2010, as well as the suspension of several journalists who openly expressed their disapproval about it, led to a firm condemnation inside and outside the country of such a law by some organizations. In Hungary, the left-wing opposition, and the far-right appealed before the Constitutional Court, but with few chances of success since the nomination process of this Court has been changed in April, right after the elections, and that the current party in power, the Fidesz, has the majority of seats. Also, the Constitutional Court's censorship powers have been limited after it ruled against a retroactive tax on private persons. At the European level, the OSCE, the LibDem and the Green deputies of the European Parliament, Amnesty International or journalist organizations such as the European Federation of Journalists, all condemned the law as an important regression on the scale of democracy.

In a more moderate way, several European countries, including Great Britain, France, Luxemburg and Germany also condemned the law, underlining that the decrease of European standards on freedom of press highly undermines the attempt of Europe to promote a free democratic political space. They also noted that such an Act makes it harder for the Union to demand high levels of freedom of the media to neighboring countries wanting to join the Union when the intra-European

freedom is relative.

On January 17th, 2011, Neelie Kroes, the European Commissioner for the Digital Agenda deemed the Hungarian law “unsatisfactory”, after the results of the preliminary investigation led by the European Commission. The main doubts expressed by the Commissioner concerned the requirement of “balanced” treatment of information, as well as the lack of criteria guaranteeing the independency of the Media Council. On top of that, the scope of the law – which should apply to every media company operating in the country, even though its seat is in another Member State – directly violates the country-of-origin principle of the European Union. This principle specifies that media companies based in the European Union must comply to the law of their seat – and to this law only, since the European Union is constructed around the mutual recognition of the equivalence of Member States’ laws. A violation of such a principle would infringe the freedom of establishment and to provide services, real cornerstones of the European Union.

Based on these two findings, Neelie Kroes demanded to the Hungarian Vice-Prime Minister that the law is put in conformity with European standards. She indicated that the Hungarian government already indicated that adjustments would be made, and reminded that an unsatisfactory compliance would mean the start of a legal procedure from the European Commission against Hungary. Hungary defends until now the validity of the new Media organization, stating – via the High Representative of the High Authority for Media and Telecommunications Annamaria Szalai – that the criticisms expressed by foreign countries mainly resulted from a confusion between the media law, new taxes adopted to face the crisis, bank levies and pension funds related problematic. She also underlined that the previous legal organization of the media sector in Hungary was, to a certain

extent, more severe than what the new law rules.

Links with other documents in the same sector

1. See II-5.5: The Swiss Federal Administrative Tribunal ruled on July 8th, 2010, that ElCom, the Swiss energy regulator, had overridden its powers in its decision of March 6th 2009, *The Journal of Regulation*

BRIEF COMMENTARY

This new organization of the media landscape in Hungary is indeed a significant questioning of the Charter of Human Rights of the European Union. Indeed, this Charter, being part of the body of law of the European Union, applies in every Member State, bearing a higher normative value than whichever national text. Yet, the apparent misapprehension of the Charter by the Hungarian government, if justified, in its eyes, with regards to the national history, is a sign of the distention of the European standards of freedom of press – signs already perceptible in Italy and Romania, according to the European Federation of Journalists.

The new regulation structure adopted by Hungary is also an interesting case of the concentration of several powers in one single authority. Indeed, the previous existing authority was in charge of broadcasting services only – which is the case in most countries in which media regulation exists. Now in charge of every media, regardless of their nature, the Media Council certainly has an easier and stronger overlook over the entire media system, which is quite rare for a recently created authority. Because of the usual mistrust of the legislator towards the regulator, it is mostly common that the powers of a regulatory authority expand the more its authority is set on the market, and on the public mind(1).

Yet, the new Media Council, if endowed with wide-range powers, might lack the hindsight for technical specificities of different media markets – internet, the press and broadband media – and thus, weaken the accuracy of the choice of regulation over State control. All the more, the unification of the legal framework on media imposes the exact same system of rights to media activities which are distinguishable in terms of network organization, market structure and impact on the public life. Such an accumulation does difficultly prepare a fertile ground for the consideration of all market specificities, although this is one of the essential advantages of the regulator. For instance, it requires all media to be registered by the Authority, without express consideration for the difficulty of such a task for online media – especially considering the remaining porosity of the notion of media as it is in the law. Such a regulatory system is likely to create imbalances in a sector involved in the functioning of the public political life. Media regulation, because it concerns a crucial sector for public liberties, differs from the more technical regulation of certain sectors, as for instance electricity.

Yet, the Hungarian government expressed its mistrust of international criticism, by recalling the role of the specific history of the country – which is democratic since the fall of the communist bloc – and by stating that this law is perfectly legitimate – as an emanation of the Parliament. Indeed, the Fidesz, actually in power, benefits from a very large support among the population. As such, the presence of some of its members, democratically elected, in the Media Council, can be considered legitimate. Their undisputed domination of the seats of the Council is also the logical consequence of the Fidesz having over two thirds of the seats in Parliament. In regulatory authorities, the independence of the regulator is often subsumed by the fact that it is not a member of parliament – and thus, not directly elected, it should not be caught into the doldrums of conflicts of interest.

