Commissioner for Human Rights: Opinion on Hungary's Media Legislation

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On 25 February 2011, the Commissioner for Human Rights published an opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media. The two main issues that are discussed in the opinion relate to encroachments on the freedom of the media and problems concerning the independence and pluralism of the media.

In the second half of 2010, the Hungarian Parliament amended existing media-related provisions and issued new legislation on the freedom of the press and the fundamental rules regarding media content, as well as on media services and mass media (see IRIS 2010-8/34, IRIS 2010-9/6, IRIS 2011-1/37, IRIS 2011-2/3, IRIS 2011-2/30 and IRIS 2011-3/24). The opinion of the Commissioner offers insight into his concerns about these recent developments. Since the Hungarian authorities have declared their willingness to participate in dialogue, the opinion intends to assist in bringing the Hungarian media law into compliance with international obligations.

Therefore, the first part of the opinion focuses on provisions in the Hungarian media law that are seen as incompatible with Article 10 of the European Convention on Human Rights (ECHR) and its interpretation in the case law of the European Court of Human Rights (ECtHR). Apart from this, the Commissioner finds that the legislation as a whole in several aspects fails to guarantee foreseeability, impartiality and proportionality of application.

The first concern in this regard relates to Article 13 of the Hungarian Press and Media Act 2010 on the information and coverage that shall emanate from all media providers. According to the Commissioner, this content-regulation in advance by subjective and vague criteria could impair the important watchdog-function of the media. Moreover, the foreseeability criterion of Article 10, paragraph 2 ECHR has not been met by the insufficiently precise criteria of Article 13. The Article is considered to run counter to the letter and spirit of Article 10 ECHR.

The next concern regards the imposition of sanctions on the media by Article 187 of the Hungarian Mass Media Act 2010. The Commissioner emphasises that any form of sanction imposed on journalists, even minor ones, could lead to self-

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censorship. The press is then hampered in expressing critical views in contribution to the public debate. Especially provisions such as Article 187, that impose a stricter penalty after repeated infringement, are problematic. Therefore, the Commissioner recommends that this Article be abolished. Existing instruments in the Hungarian legal order could be relied on instead.

Pre-emptive restraints on press freedom in the form of registration requirements, contained in Articles 45 and 46 of the Mass Media Act, constitute the third concern. Even though Article 10 ECHR does not prohibit in its terms the imposition of prior restraints on publications, the Commissioner reiterates that print-media and internet-based media should be excluded from registration requirements given their role as watchdogs of democracy.

The final issue mentioned in the first section of the opinion concerns the exceptions to the protection of journalists' sources, as listed in Article 6 of the Press and Media Act. The Commissioner points out that the foreseeability requirement of Article 10 ECHR is not met by the overly broad exceptions, which invite state abuse. Furthermore, no procedural safeguards are foreseen, as required by Article 10 ECHR.

The second part of the opinion identifies four problems relating to the independence and pluralism of the media.

The first concern mentions the weakened constitutional guarantees of pluralism. The amended Article 61 of the Constitution of Hungary eliminates parliament's duty to pass laws precluding information monopolies. The Commissioner recommends that pluralism be more expressly enshrined in the letter and spirit of the Constitution, as well as in national practice.

The lack of independence in media regulatory bodies is listed as the second concern. The provisions regarding the appointment, composition and tenure of existing media regulatory bodies, included in Articles 124 and 125 of the Mass Media Act, require amendment, as they lack "the appearance of independence and impartiality".

The third concern regards Article 102 of the Mass Media Act and the lack of safeguards for the independence of public service broadcasting. The Hungarian provisions run counter to Council of Europe standards, by giving the President of the Authority and Media Council far-reaching powers and control over public service media.

The opinion concludes with a discussion on the absence of an effective domestic remedy for media actors subject to decisions of the Media Council. The competent administrative court may only review decisions in the light of the media legislation itself. This makes Articles 163-166 of the Mass Media Act irreconcilable with

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Articles 6 and 13 ECHR.

The Commissioner concludes that the large amount of problematic provisions in the Hungarian media legislation requires a wholesale review of the package. He emphasises that the body of Council of Europe standards should be taken as a guide in this task.

Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media, CommDH(2011)10, Strasbourg, 25 February 2011

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