[HU] Decision of the Constitutional Court on New Media Laws

IRIS 2012-2:1/25

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On 19 December 2011 the Constitutional Court delivered a decision on the new Hungarian media laws (Decision 1746/B/2010. AB). In its decision the Court annulled several provisions and established the need for further legislation.

During 2010, as it is widely known, the Hungarian Parliament adopted a series of acts, thus it created a new legal and institutional framework of media regulation (see IRIS 2010-8/34). The most important elements of this legislation were:

- Act CIV. of 2010 on Freedom of Expression and on the Basic Rules of Media Content (Media Constitution; see IRIS 2011-1/37); and

- Act CLXXXV. of 2010 on Media Services and Mass Media (Media Act; see IRIS 2011-2/30).

Although the new Acts have been amended several times since their adoption (see IRIS 2011-5/100 and IRIS 2011-3/24), certain elements of media regulation have remained the subject of widespread debates in the following months (see IRIS 2011-4/7). The recent decision of the Constitutional Court touched upon some of these issues.

The main findings of the Court can be summarised as follows:

- The Constitutional Court has established that in the case of written press and websites the protection of certain values (such as human dignity, the rights of persons interviewed, human rights and the right to privacy) in an administrative way can be deemed unnecessary and/or disproportionate. The notion "administrative way" refers in the judgment to any legal procedure other than proceedings by the court. It also implies the procedures of the media authority, but this is not explicitly mentioned by the text. On this basis the Court has excluded these kinds of media from the scope of the Media Constitution from 31 May 2012. However, it should also be noted that the Court has not found the regulation of the written and internet-based press in itself unconstitutional.

- Furthermore, the Constitutional Court has annulled the provision of the Media Constitution that generally referred to the public interest as a condition of the protection of journalists' sources. At the same time the Court also expressed the

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need for additional procedural safeguards in cases when authorities seek information about journalistic sources. The Parliament is obliged to establish these guarantees by 31 May 2012.

- The Court also stated that the powers of the *Nemzeti Média és Hírközlési Hatóság* (National Media and Telecommunications Authority - NMHH) to oblige entities within its jurisdiction to provide data for its procedures has to be synchronised with the legal protection of confidentiality, most notably with regulations guaranteeing client-attorney privilege and the protection of journalists' sources of information.

- The Media Act has established the institution of the Media and Telecommunications Commissioner as an ombudsman-like official attached to the NMHH. The role of the Commissioner is to handle complaints related to media content or telecommunications services submitted by members of the public. Although the opinions of the Commissioner are not legally binding, such complaints can be formulated on a wide basis. The Court has found that there is no constitutional reason for enabling the Commissioner to proceed against media service providers and publishers in this order. On these grounds the Court has annulled the regulation relating to the functions of the Commissioner from 31 May 2012.

In general, the decision of the Constitutional Court has called the Parliament to revise the Hungarian media regulation in a number of issues and to adopt the necessary changes to the existing legal framework by the end of this May.

1746/B/2010. AB határozat

http://www.mkab.hu/admin/data/file/1146_1746_10.pdf

Constitutional Court, Decision 1746/B/2010. AB

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