[HU] New Criteria for Nomination and Appointment of Media Authority's President

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Gábor Polyák
Mertek Media Monitor, Hungary

On 5 July 2013, the Hungarian Parliament adopted an amendment to Act CLXXXV of 2010 on Media Services and Mass Media. The amendment, which came into effect on 1 August 2013, modified the preconditions for nominating and appointing the President of Nemzeti Média és Hírközlési Hatóság (National Media and Infocommunications Authority - NMHH). According to the Act, the President of the NMHH - as the convergent authority monitoring the infocommunications and media sector - at the same time becomes the nominee for chairperson of the Media Council, which issues decisions involving the monitoring of media services and the media market. Therefore the amendment also has a direct impact on the monitoring of the media system as such. To become the Chairperson of the Media Council, the NMHH's president must be endorsed by a two-thirds majority in Parliament.

Previously, the Parliament modified the rules on the nomination of the president of the NMHH's president's nomination in March 2013. The objective of the March amendment was to implement the terms of the agreement between the Council of Europe and the Hungarian government into media law. The said agreement aimed to bring some critical aspects of the Hungarian media laws into line with the expectations put forth by the Council of Europe. A crucial element of the agreement and the resulting March amendment was the adoption of stricter professional selection criteria regarding candidates for the NMHH presidency. In addition to a higher education degree in either law, economics or the social sciences, candidates must have at least five years of experience "related to the public monitoring of media services or press products or the public monitoring of infocommunications", or, alternatively, must have a scientific degree related to media or infocommunications and at least ten years of experience in higher education.

The law had to be applied earlier than expected. After a serious illness, the NMHH's President, Annamária Szalai, who had been appointed for a nine-year term in 2010, passed away in April 2013. The search for a new NMHH President began with the recently-narrowed professional requirements set out in the law.

The NMHH President therefore needs to be appointed by the President of the Republic pursuant to a corresponding proposal by the Prime Minister. The Council

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of Europe also recommended the involvement of civil and professional organisations in the selection process. Pursuant to the law's text, the Prime Minister merely needs to "consider" the suggestions of such organisations, but is by no means bound by these suggestions.

The regulations fail to specify a final deadline for the nomination process. This deficiency fostered the current scenario: several organisations authorised by the law have suggested candidates who meet the professional criteria, whereas the Prime Minister has not to this day nominated a candidate. Hence, the law is open to delaying tactics depending on the political suitability of the candidates.

In May 2013, the Minister of public administration and justice took legal actions and asked the Constitutional Court for an interpretation of the March amendment. In his inquiry, the minister expressed his doubts as to whether the Parliament had the authority to adopt professional requirements concerning the President of the NMHH, an authority designated as an autonomous regulatory body in the Hungarian Constitution. The Minister also requested the Court to rule on the scope of the legislator's margin of appreciation regarding the regulation of selection criteria. Finally, he asked the Court to interpret the substance of the professional selection criteria prescribed by the law, asking specifically whether previous experience as a lawyer or a judge working on media issues may be considered public monitoring activity, and whether membership in the Parliament's media affairs committee may qualify as such. The Court found that the latter issues fell outside its competence of constitutional review. Regarding the Parliament's margin of appreciation, it found that detailed professional criteria for the NMHH presidency may be set out by law.

Subsequently, the Parliament adopted a law that transfers the authority to enact decrees from the NMHH President to the Vice-President whenever the President had failed to do so prior to the termination of his/her term of office. The president's authority to enact decrees pertains exclusively to the area of infocommunications and does not extend to the media sector. As far as infocommunications are concerned, however, the law on electronic infocommunications currently features a list of 30 items that circumscribe the scope of the president's authority to enact decrees. Presumably, the transfer of the mentioned competence to the vice-president was meant to provide for a longer viability in situations when the NMHH operates without a President.

The President of the Republic, however, did not sign the amendment, but sent it back to Parliament for reconsideration. In his assessment, the amendment violated the Fundamental Law's provision that in terms of his/her authority to enact decrees, the head of an autonomous regulatory body - such as the NMHH - may not be "substituted by a deputy whom he/she had previously nominated by decree".

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It was hereafter that the Parliament adopted the amendment of the media law that overrode the previous agreement with the Council of Europe and softened the professional criteria for the selection of the NMHH's president. Firstly, in the future any type of higher education degree will suffice to meet the legally specified criteria. The amendment also extended the range of relevant experience in public monitoring to include the positions of the current and previous media and infocommunications authority's leaders and professional staff. Related judicial and other legal activities, as well as membership in current or previous media monitoring boards is sufficient. This has significantly expanded the range of potential candidates.

On 14 August 2013, the prime minister nominated Monika Kalas as President of the NMHH.

2010. évi CLXXXV. törvény a médiaszolgáltatásokról és a tömegkommunikációról

http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1000185.TV

Act CLXXXV of 2010 on Media Services and Mass Media (consolidated version)

KIMIXX-AJFO/96812013

http://public.mkab.hu/dev/dontesek.nsf/0/1e3b904540020f33c1257b640029e0ca/$FILE/2013_704-0_inditvany.pdf

Motion of the Government to the Constitutional Court regarding the interpretation of the Media Act

2013.06.25. Közlemény az Alaptörvény 23. cikk (2) bekezdésének értelmezéséről

http://mkab.hu/sajto/kozlemenyek/kozlemeny-az-alaptorveny-23-cikk-2-bekezdesenek-ertelmezeserol

Announcement of the Constitutional Court regarding the interpretation of the Media Act

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