# European Commission for Democracy through Law: Opinion on media legislation in Hungary

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At its 103rd Plenary Session on 19-20 June 2015, the European Commission for Democracy through Law (Venice Commission) of the Council of Europe adopted its Opinion on Hungary's media legislation, the so-called "media package". The Commission had been asked to provide such an Opinion by the Parliamentary Assembly of the Council of Europe (PACE) in January 2015, in particular to identify provisions which pose a danger to the right to freedom of expression (see IRIS 2015-4/2).

The 27-page Opinion discusses two particular laws which form part of the "media package", namely Act CLXXXV of 2010 on Media Services and Mass Media (see IRIS 2011-2/30), and Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content (see IRIS 2011-1/37); and also new tax laws on progressive tax on advertising revenue for media (see IRIS 2014-8/26). At the outset, the Commission notes that these "extremely lengthy" laws regulate "virtually every aspect of the media sphere", and its Opinion only identifies "key elements" which "should be given priority for revision".

The Commission examined a number of issues, including (a) content-based regulations, (b) sanctions for illegal media content, (c) rules on balanced news coverage, (d) protection of journalistic sources, (e) composition and power of the media regulator, (f) the public service media, (g) the so-called "National News Agency", (h) rules on political advertising, and (i) advertisement taxes. The Opinion contains detailed discussion of these issues, and the Commission made a number of major recommendations, including: first, on content based-regulations and sanctions, the Opinion argues that certain provisions are "dangerously broad" and "should be removed", such as the prohibitions on speech "offending religious or political beliefs". Moreover, other provisions on speech violating "constitutional order" and hate speech "should be amended in order to ensure that the courts interpret those provisions narrowly".

Second, on the media regulator, the Opinion states that the "rules governing election of the members of the Media Council should be changed to ensure fair representation of socially significant political and other groups and of the media community in this body. The method of appointment and the position of the Chairperson of the Media Council/the President of the Media Authority should be

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revisited in order to reduce concentration of powers and secure political neutrality of that figure". Third, the Commission noted that the provision on making the National News Agency the only authorised news provider for public media was "to be repealed as from July 2015", and recommended further amendments to "permit individual public service media to choose its own news sources, or even set up its own newsroom". Fourth, in relation to advertisement taxes, the Commission noted that a new tax had been created on "media's advertising revenues, with taxation levels increasing according to the volume of net turnover (i.e. overall sales figure) and with the highest rate of 50% having been set for incomes exceeding HUF 2 billion (about EUR 6,5 million)". It also noted that the European Commission had opened an investigation on whether the tax "complies with EU state aid rules", and that a separate application had been made to the European Court of Human Rights (ECtHR) over the tax. The Commission stated that while it did not want to "prejudge conclusions" of the European Commission and ECtHR, it was (a) "comforted by the undertaking on the part of Government to shortly change this progressive tax with a fixed rate taxation which, additionally, has a threshold so as to protect the smaller media companies from carrying the burden", and (b) "welcomes the willingness of the Hungarian authorities to reform Act XXII and encourages them to adopt a scheme of taxation which would distribute the fiscal burden in a non-discriminatory manner and avoid excessive taxation of the media sector which is already in economic distress".

Finally, in addition to its recommendation, the Commission also acknowledged "the efforts of the Hungarian government, over the years, to improve on the original text of the two Acts, in line with comments from various observers including the Council of Europe, and positively notes the willingness of the Hungarian authorities to continue the dialogue".

***European Commission for Democracy through Law (Venice Commission), Opinion on Media Legislation (Act CLXXV on Media Services and the Mass Media; Act CIV on the Freedom of Press, and the legislation on taxation of advertisement revenues of mass media) of Hungary, 22 June 2015, Doc. No. CDL-AD(2015)015.***

http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)015-e

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