

On the 25 Assertions of the Freedom House Report

The U.S. – based Freedom House published its annual report at the beginning of May 2012 whereby it evaluated the status of the freedom of the press in 197 different countries in 2011. According to the ranking of the survey Hungary's press freedom was downgraded from "Free" to "Partly Free" in 2011. The report itself explains this in four lines and a four-page draft country report is also attached. The report contains four main assertions (listed in Sections 1-4 below), whereas the supplementary country report specifies further findings. Below we wish to react only to the factually incorrect assertions and the study's findings that are based on highly debatable and questionable assertions.

1. *"Establishment of the new National Agency for Data Protection which will reduce access to information."*

The correct name of the new agency is Authority for Data Protection and Freedom of Information. The tasks of this agency also include the guaranteeing of the publicity of data of public interest. The wrong English translation of the name of the authority is misleading, since it suggests that the authority is dealing only and exclusively with data protection issues, whereas the second part of the sentence suggests that its task is to protect the data of public interest against the citizens. The guarantees of the publicity of data of public interest, defined under the Basic Law (New Constitution) as a human right, have not declined according to the new law, the regulations have not changed substantially. The assertions concerning the future activities of the new authority can only be described as a malicious assumption. The report states, without any kind of empirical evidence, that the authority will restrict the publicity of data of public interest.

2. *"A politically motivated licensing procedure resulting in the loss of the frequencies of a critical radio station."*

In the Klubrádió case - to which the report refers - an ordinary administrative procedure was conducted, which was in turn challenged by the radio station at court. As a result of the court decision, a part of the procedure has to be revisited, thus the procedure has not yet come to an end. The report should not have used past tense concerning these matters. since, as a result, Klubradio is still operating on its original frequency. Furthermore, the rules of the frequency tenders stipulated in the new media law ensure significantly more statutory guarantees. Thanks to this, contrary to the previous media law, affected parties (?) now have the right to effective judicial review against the decisions of the media authority.-

3. *"Increased reports of censorship and self-censorship, especially in the public service channels."*

The new regulations do not contain any rules that would result in censorship (i.e. official content examination prior to publication or the restriction of publication). It is hard to dispute the comments about self-censorship, since this criticism is based on improvable assumptions. However, looking at the diversity of the Hungarian media market and the multitude of voices criticizing the Government seem to prove the contrary.

4. *"Worsening economic conditions for independent media entrepreneurship."*

The economic crisis has had its impact all over the world. Newspapers go bankrupt, publishing houses are closed, etc. It would be a mistake to identify this as a uniquely Hungarian problem or to blame the Hungarian Government for these events.

5. *“In July (2010), the government amended the constitution, removing a passage on the government's obligation to prevent media monopolies.”*

The report fails to mention that the amendment made during the summer of 2010 introduced a general constitutional obligation regarding media pluralism, which at the same time was also incorporated in the new Basic Law that aims - among other things - to prevent media monopolies.

6. *“The Government consolidated media regulation under the supervision of a single authority, the National Media and Infocommunications Authority (NMHH), whose members are elected by a two-thirds majority in parliament and whose leader also chairs a five-person Media Council charged with content regulation.”*

The National Media and Infocommunications Authority does not have any members. The media market is supervised by the Media Council exclusively, the members of which are elected by the Parliament.

7. *“The law gives the head of the NMHH the right to nominate the executive directors of all public media.”*

The executive director nominees are nominated not by the President of the National Media and Infocommunications Authority but by the Media Council. However, the operator of the owner of the public media outlets, i.e. the Board of Trustees of the Public Service Foundation has the right to select from the several candidates.

8. *“Though they share a leader and consist entirely of Fidesz party nominees, the two institutions (NMHH and Media Council) are theoretically autonomous, both from the government and each other.”*

The autonomy of the two institutions is not only theoretical, but is real and guaranteed by law. The media regulatory authorities are established by law, as autonomous bodies, in most of the European countries. Some of these authorities are operating under the direct supervision of the government, a ministry or a specific minister. There is no generally adopted solution for the appointment of the members of media authorities or for the organisational structure of such authorities. However, in Europe, the members of media authorities are often elected by the Parliament, or are appointed by the head of state upon recommendation by the Parliament. The rules of the Hungarian Media Act fit into this trend and follow the former path.

Considering also that the regulation provides the opportunity of full judicial review, the above referenced nomination and election process cannot provide in any way the opportunity to one or more political parties, the Government, or the Parliament to exercise influence on the content of media services and press products.

Article 123 (2) of the Media Act also stipulates that the Media Council and its members are solely subject to law, and may not be instructed with respect to the fulfilment of their official duties. The mandate of the members is free and they cannot be removed, the latter fact being important in terms of their independence. Extensive conflict of interest rules

apply to the members of the Media Council: according to Article 118 of the Media Act, the members or their close relatives may not hold any high public offices, or local government or government positions; may not have business interests in the fields of media, advertising, or communication; may not hold political positions; may not be employed by any political party; and may not pursue any political activity in political parties.

9. *“The Media Council became officially responsible for interpreting and enforcing numerous vaguely worded provisions affecting all print, broadcast, and online media, including providers and publishers.”*

The report fails to specify which provision of the media regulation is “vaguely worded”. Those sharing this criticism usually cite as an example the protection of human dignity, however, the inclusion of this in the regulation is an obligation stemming from the European Convention on Transfrontier Television of the Council of Europe and is also present in the media laws of many other European countries. The Media Council also has a large body of previous decisions and Constitutional Court judgments to rely upon in interpreting specific sections of the law which for outside observers might seem “vague”.

10. *“In April, the Media Council ruled against the planned merger of the local holdings of Axel Springer AG and Ringier AG, owner of Népszabadság. Though the council claimed that the merger would significantly threaten media diversity, the decision was viewed as an attempt to keep the financially vulnerable paper on the market for a more government-friendly buyer.”*

The decision mentioned here served to prevent a monopoly on the media market. And the importance of this goal is acknowledged by the report as well. The planned merger would have created an excessive monopoly of opinion on the newspaper markets of several Hungarian counties. The decision did not have any political motives.

11. *“The Media Council can also fine the media service providers for “inciting hatred” against individuals, nations, communities, minorities, or even majorities.”*

The rule mentioned above imposes a restriction regarding “hate speech” and is not protecting the individuals, only social groups and communities. This rule is the consequence of the obligation of implementing the European Union directive, which contains this rule as well. It should be emphasized, that all European states prohibit hate speech.

12. *“The Media Council is called to levy fines or suspend the media service providers for “unbalanced” reporting.”*

Neither fines nor suspension can be applied according to the law in case of violation of the obligation of balanced coverage, which obligation is present in most of the EU member states.

13. *“The Media Council is called to levy fines or suspend media service providers for “immoral” reporting.”*

The rule mentioning the protection of public morals has a declarative nature, which means that it cannot be enforced by any court or authority, and this was established by the

Constitutional Court in its decision made in December 2011 as well. This rule cannot be applied in official matters against media service providers, thus obviously no sanction can be imposed in case of its possible violation either.

14. *“The fines must then be paid before initiating an appeals process.”*

Contrary to this assertion, the courts reviewing the decisions of the media authority are entitled to suspend enforcement of payment of the fines, and such suspension is performed by the courts in all cases, without exception.

15. *“Under the December 2010 Media Law, the NMHH can also suspend the right to broadcast.”*

It should be added to this assertion that this sanction is available under the Hungarian media regulation since 1996 and exists in almost all European states.

16. *“In its original iteration, the law also required that all media outlets, including online services, register with the Media Council.”*

The law never required all “online service service providers” to register. Only the online press products were required to register according to the original version of the law and also according to the currently effective version. It should be noted that the rule requiring registration, which is a general and widely applied rule in Europe, has been included in the Hungarian law right from the beginning and its constitutionality was reconfirmed by the Constitutional Court in its decision made in December 2011.

17. *“Another controversial component of the December 2010 Media Law is the system of co-regulation.”*

Some of the media law experts are actually of the opinion that the most appropriate way of regulating media is self-regulation, whereas the second best solution is co-regulation. However, self-regulation cannot be required by state instruments (legal regulations). Self-regulation did not exist in the Hungarian media previously, and nor does it exist today. Hence, the law could only provide assistance in introducing co-regulation.

18. *“License fees for Budapest-based frequencies more than doubled over the past year.”*

This assertion is not true. None of the service providers have more burdens, and frequency license fees significantly dropped for 80 percent of the media service providers thanks to the new, reasonable and predictable license fee scheme introduced by the law and thus by the media authority, 13 years after emergence of commercial media. The fees are calculated on the basis of rules generally applicable to all service providers, thus the authority cannot act in a discriminatory manner when defining the fees for the different service providers.

19. *“The ruling of the Constitutional Court adopted in December 2011 excluded print and online media from the scope of the sanctioning powers of the NMHH.”*

This assertion needs to be clarified since according to the Constitutional Court decision the content regulation of the press and the supervision of the respective rules by the authority are constitutional. Only certain rules obliging the press (among others) were declared

unconstitutional by the decision, and only in terms of the press, whereas the decision ruled that other obligations can be imposed even for the press.

20. *“The ruling of the Constitutional Court adopted in December 2011 revoked the media authority's right to demand data from media service providers, publishers and program distributors.”*

This assertion is extremely rough and imprecise. The work performed by the authority would be made impossible if the right to demand data was revoked. Only the data provision obligation outside the regulatory procedures was annulled by the Constitutional Court.

21. *“In July, a group of journalists launched a website intended to serve as the Hungarian equivalent to WikiLeaks. (...) Within weeks of the launch, the editor in chief of the website, Tamas Bodoky, was interrogated by Budapest police's organized crime division after publishing files hacked from a financial consultancy firm. Bodoky refused to reveal his source, though the police threatened to charge him with perjury.”*

The report fails to mention that as far as the protection of journalists' sources is concerned the new law represents a considerable step forward since the right to keep secret the sources had not existed in criminal proceedings previously. Nevertheless, the Constitutional Court ruled that further guarantees are missing and thus are required to be incorporated into the law by the legislator until 31 May 2012.

22. *“In 2011, the Hungarian National News Agency (MTI) became the official source for all public media news content.”*

The report fails to explain why does the monopoly of the Hungarian News Agency (MTI), regarding only public media, raise concerns and how does it pose a risk to the freedom of the press and also fails to name those international standards which define the number of sources the public media outlets are required to obtain their news content from. As a result of the economic crisis, integration and the elimination of parallel activities are widespread measures in the media market throughout the world.

23. *“By creating a central property management and production fund, the government deprived three previously independent institutions — Hungarian Television (MTV), Hungarian Radio (Magyar Rádió) and Danube Television (Duna Televízió) — of their financial and organizational autonomy.”*

Contrary to this assertion, the new regulation now, after 15 years, finally ensures the normative financing of public media as defined under law. The editorial and content independence of the different institutions of public media are also guaranteed. This independence follows from the definition of “media service” and the ownership structure of public media.

24. *“By the end of 2011, MTVA had laid off nearly 1,000 employees as part of a long-anticipated streamlining of public media. The government claims this was driven by budgetary concerns, even though the public media received a 10 percent budget increase in 2011.”*

The report fails to mention that the additional financial resources released as a result of the layoffs are used for the content produced and ordered by the public media. For example the Hungarian Television could not spend any funds on programmes in 2010 due to the decision of the previous government whereby it withdrew funds as a way of exerting influence. It should also be noted that similar layoffs were carried out in many European states as a result of the economic crisis and the changed media market circumstances. Even the Hungarian commercial media service providers were forced to perform similar layoffs.

25. *“At the end of 2011, the speaker of parliament, Laszlo Kover, banned Hungary's most popular online news portal, [Index.hu](http://index.hu), from reporting from the chamber after it posted a video mocking the government.”*

As far as we know the above mentioned journalists wanted to ridicule the Members of Parliament in general and not the Government. Certain security measures may be justified in the Parliament in order to preserve and maintain the honour and solemnity of Parliamentary work.

Budapest, 16 May 2012

[Prepared by the Hungarian National Media and Infocommunications Authority]