

Report

On the International Conference Entitled “The Current Challenges of European Media Regulation”

(Budapest, Hotel Corinthia Szálló, 17th December 2013)

and

The 2-Day Round-table Organized within the Framework of the Cooperation between the National Media and Infocommunications Authority and the European Council

(Budapest, Hotel Corinthia Szálló, 10th-11th December 2013)

1. The Antecedents of the Events

The National Media and Infocommunications Authority and the Council of Europe agreed on launching a professional cooperation project in early 2013. The objective of the cooperation is to gain in-depth knowledge about each other’s activities. Both the Council of Europe and the Media Council attach importance to ensuring the conformance of the practical application of Hungarian media regulations with the relevant European recommendations and standards. The agenda of the first day of the two-day (10th -11th December) round-table talks focussed on the issues related to public service broadcasting, while on the second day the participants discussed the problems related to the regulation of the media. The closing event of the 2013 programme was the international conference (17th December).

2. The Round-Table Talks on Public Service Broadcasting (10th December 2013)

Besides the experts of the Council of Europe, the participants of the round-table discussion held on the first day included the executives of the public service media (the Media Service Support and Asset Management Fund, the Hungarian Television, Duna Television, the Hungarian Radio and the Hungarian News Agency), the members of the Media Council and the representatives of the National Media and Infocommunications Authority as well. The morning session was entitled “The European Standards on the Management of Public Media Services”. The round-table session was hosted by András Koltay, member of the Media Council; the first presentation was held by Tim Suter, expert of the Council of Europe. Tim Suter – who had been in the employment of the BBC for many years – was the leader of the group of experts that had prepared the recommendation of the Council of Europe on public service media governance. The expert of the Council of Europe declared that one of the most important specifics of public service broadcasting is independence. This independence means professional (editorial) and institutional autonomy as well as the freedom of the executive bodies of public service broadcasters from political and other influences, the exclusive direction of their activities at serving public service tasks, and all this in an environment where the transformation of state-owned broadcasters to public service broadcasters, the adaptation to market conditions and the adoption of new technologies are still ongoing. During the second part of the presentation Tim Suter described the recommendations of the Council of Europe on public service broadcasting wherein the European organization presents a three-tier model. The first level of this model features independence (financing, appointment, regulation) and accountability (to whom, why, how and when). The second level consists of efficient management (the efficient utilisation of resources and capacities), while the third level consists of the culture of public service, the most important elements of which are transparency, openness and responsibility. In an answer to one of the questions following the presentation Tim Suter admitted that he was aware that there exist no public service

broadcasters that meet the expectations formulated in full, however, it is indispensable that all broadcasters strive to achieve these. The second presenter of the morning session, Levente Nyakas, head of the Institute for Media Studies reviewed the regulations of the European Union related to public service broadcasting. In the presentation he placed special emphasis on the communication of the European Commission on the support of public service broadcasting. The speaker stressed that the revenues provided to public service broadcasters for the performance of their public service tasks must be clearly separated from revenues from other (e.g. commercial) sources. Public service and commercial broadcasters operate in the same market; the state funds provided to the former must not result in any distortions of the market. It was this fundamental principle that Michael Wagner, the legal director of the professional association of public service broadcasters in Europe, EBU, reflected on in his afternoon presentation when he said that the vast majority of public service broadcasters in Europe do have commercial revenues, however, this is not a measure of their success. The market-leader ORF has no commercial revenues at all as the Austrian laws prohibit such, while the Polish public service broadcaster which is almost exclusively commercially funded is much less successful. In reply to a question Michael Wagner said that EBU formulates no expectations whatsoever towards its members in respect of the sources of the funding of their operations or the proportion of commercial revenues versus state support. Having briefly summarized the features justifying the existence of public service broadcasters (the representation of European values, quality programming, diversity, the provision of impartial information, the increase of the general knowledge of society), the legal director of EBU provided several practical examples of the successful operation of European public service broadcasters on the emerging new media platforms. At the end of his presentation Michael Wagner briefly described the agreement concluded between EBU, the group of Hungarian public service broadcasters and the Media Service Support and Asset Management Fund. It is this group membership that enables EBU to treat Hungarian public service broadcasters as a single unit, although naturally the Hungarian public service broadcaster members of the group remain autonomous broadcasting organisations and possess independent editorial responsibility in respect of their news programmes. In the second presentation of the afternoon, Marek Bekerman, lecturer at the University of Salford and a former correspondent for the BBC World Service, spoke about the independence and accountability of public service broadcasters and briefly described the British model of public service broadcasting. An interesting part of the presentation was the description of the relationship between the regulatory organ of audiovisual media services, Ofcom, and the British public service broadcasting system. Ofcom may take measures against BBC in instances of violations against the regulations on content provision, the protection of minors and personality rights as well as when the public service broadcaster's treatment of religious contents is inappropriate. Marek Bekerman presented the model of the management and supervision of BBC and analysed several cases that could arise in the practice of any European broadcaster (the paedophilia accusations against Jimmy Savile, the Entwistle resignation, the enormous compensations to managers). In the closure of the day's session, András Koltay sketched the system of Hungarian public service broadcasting and its connections with the media authority. In his presentation he explained that the purpose of the legal act adopted in 2010 had been to create a system that fully ensures the independence of public service broadcasting via organisational and, especially, financing regulations that preclude the possibility of undue influencing. The system prior to 2010 had, in several aspects, overcomplicated the management and supervision of public service broadcasting and paralysed its operation. A practical example of this cited by András Koltay was the fact that the Hungarian Television had had no president for a period of over two years. Although it is still far from simple, all things found their proper place in the new structure: state and civic supervision are clearly defined and the tasks are set forth in the Public Service Code.

3. Round-Table on the Principle of “Smart” Regulation (11th December 2013)

The morning round-table of the second day was hosted by attorney Márk Lengyel, media law expert. The first presenter of the day was Eve Salomon, who had worked for a long time for Ofcom and its legal predecessor and is currently dealing with regulatory issues, too. At the beginning of her presentation she stressed that nobody is born to be a regulator and regulatory work is not taught anywhere. There are, however, certain basic principles which help this work and improve the performance of the authority. The “smart” regulator poses the following questions:

- Is it really necessary to do anything?
- If yes, should this “something” be regulation? Are there any other alternatives?
- Can it be implemented in the most efficient manner possible?
- Do the advantages outweigh the drawbacks?
- What are the risks?
- Can the desired result be achieved at a minimum cost?

To look at it from the other side: “bad” regulation jeopardizes important freedoms by causing too much cost, undue bureaucratic burdens and hindering innovation.

“What other options are there,” Eve Salomon asked. One possible solution is that the regulator does nothing. Further options are training and providing information, maintaining the operation of sound market relations, applying financial incentives and, finally, self- and co-regulation. Eve Salomon also discussed the principals of ‘smart’ or ‘better’ regulation as adopted by the European Commission and other countries, including the UK. She explained in detail the principle of ‘proportionality’ and how ‘risk based regulation’ works in practice. Krisztián Gáva, deputy secretary of state of the Ministry of Public Administration and Justice responsible for public law legislation remarked that the fundamental principles described by Eve Salomon had been incorporated in the new Hungarian legislation in 2010. The second presenter of the morning, Sándor Udvardy, university lecturer and consultant to the Constitutional Court, described the Court’s interpretation of the principle of proportionality. According to this interpretation, basic rights (e.g. the freedom of expression) may be restricted if such restriction is required to ensure the prevalence of another basic right. Even in such a case the restriction must be proportionate to the desired objective; it should be capable of achieving it and should be minimally restrictive. Sándor Udvardy admitted that there is a factor of uncertainty inherent to the system of the Constitutional Court; discretion is always complex, since both the advantages and the drawbacks embody values. The consultant to the Constitutional Court presented this complicated Constitutional Court test using real-life examples. Using the example of the Vajnai vs. Hungary case he compared the Constitutional Court test related to the prohibition of the symbols of despotism with the contents of the decision of the European Court of Human Rights.

The afternoon session of the round-table talks focusing on the principle of “accountability” was hosted by Joan Barata, Principal Adviser to the Representative on Freedom of the Media, Organization for Security and Co-operation in Europe. The Principal Adviser who had previously been employed by the Catalan regulatory authority spoke about the interrelationship between independence and accountability. The authority is required to publish its decisions according to a pre-set order, including the circumstances of each decision (i.e. the decision passed by the authority as well as the facts upon which it was based). The

authorities shape the public sphere not only when passing decisions on issues of content regulation, but also when deciding about frequency licenses, for example, as this defines what voices may go on air. There exist other possibilities for the supervision of the work of the authorities, too: public consultations enable the authority to acquaint itself with the opinion of the sector under its supervision and to give an account of its own work. Joan Barata said that most authorities prepare a detailed report of their work during the year and submit it to the parliament. He also said that he considers it important that the authorities be able to publish their practice of the interpretation of the law in order for the market actors to acquaint themselves with it in advance. The second presenter of the afternoon session, András Lapsánszky, legal director of the National Media and Infocommunications Authority reflected on the closing words of the presentation of Joan Barata and said that, apart from the exceptions provided for by law, according to the decision of the Constitutional Court the regulatory authority may not issue any advance interpretations of the law, as this could influence the decisions of the parties without their being aware of whether the legal interpretation of the authority is applicable or not in any specific case. Another important argument against advance directives and legal interpretations is that no legal remedy is available against such. Hungarian media law allows the National Media and Infocommunications Authority to provide recommendations in three instances: in respect of classification, product placement and children's blocks.

Following this András Lapsánszky examined the relationship between the Act on the General Rules of Administrative Proceedings and Services and the Media Act.

The two-day event organised by the Council of Europe and the National Media and Infocommunications Authority was closed with the brief summary of András Koltay. The member of the Media Council thanked the work of the presenters and the support provided by the Council of Europe, EE Grants and Norway Grants which had contributed to the deeper understanding of the European standards.

4. The International Conference Entitled “The Current Challenges of European Media Regulation”

At the start of the conference the moderator of the event greeted the participants and thanked the Council of Europe for its support and the participants for their presence. Following this, Madame Tove Skarstein, Norway's ambassador to Budapest briefly described the main tasks, objectives and operational framework of the sponsors of the event, Norway Grants and EEA Grants.

The first part of the conference, the morning session entitled “News Service and Regulation” started with the opening presentation of Balázs Weyer, chairman of the journalists' self-regulatory body, the Forum of Editors-in-Chief. According to Weyer self-regulation is a regulatory form with broad foundations that is able to efficiently regulate the complicated ecosystem of the media, however, the role of the state within this ecosystem requires definition. It is increasingly difficult to provide legal answers to the challenges of content regulation, primarily because within the increasingly globalized markets the role of national functions is shrinking. With the emergence of global actors, many publishers are struggling to survive and make profits. The independence of the media is based on its ability to realize profits, Balázs Weyer pointed out. Global platforms such as Google and Facebook acquire a significant portion of the revenues of the media while only minimally contributing to content generation. The lack of a paid content generation model not only means that revenues are

shrinking, but also that the link between the media and the community is weakening, while the value chain between content generation and sales is becoming increasingly complicated. Due to the aforementioned causes it will be necessary to define who qualifies as a journalist and what qualifies as media, concluded the Chair of the Forum of Editors-in-Chief.

The first contributor to the panel discussion following the opening presentation, Ildikó Fazekas, secretary-in-chief of the Advertising Self-regulatory Body, proposed that the self-regulation of the advertising industry could serve as a paradigm for other areas, too. Advertising and the media go hand in hand; suffice it to say that the majority of the revenues of the media come from the advertisements. Ildikó Fazekas also recounted that during a meeting with Robert Madelein Director-General of the European Commission, Directorate General for Communications Networks (DG Connect) the director-general had told her that the European Commission was investigating the opportunities and future directions of self-regulation, which is not regarded as self-regulation any more, but as private regulation. Concluding her contribution Ildikó Fazekas said self-regulation is an effective regulatory form as is perhaps best shown by the example of the United Kingdom, where the self-regulatory body pronounces judgement on some 30,000 complaints each year.

Péter Nádori, chairman of the Association of Hungarian Content Providers emphasized in his contribution that in the interest of authenticity it is very important to define just who qualifies as a journalist. Previously the printed press was regarded as the authentic source of information, by today, however, the definition of the concept of 'journalist' is increasingly complex. Accordingly, Nádori did not offer any definition himself, but stated that true journalists are definitely recognizable.

If everybody is a journalist, then nobody is a journalist, said Gábor Gerényi, a former journalist of the news portal Index.hu, adding that if journalism has no financial future, then it will cease to exist.

Eve Salomon, legal and regulatory consultant, expert of the Council of Europe highlighted the role of the regulatory authorities overseeing the audiovisual field in the preservation of independent and healthy market conditions and stressed that self-regulatory bodies may also serve quality journalism by guaranteeing a certain degree of credibility.

According to Balázs Bartóki-Gönczy, media lawyer and employee of the National Media and Infocommunications Authority, people are living in a media bubble, yet the role of the media has fundamentally changed recently. From the economic perspective the change consists of the fact that while previously there was a single kiosk where one could buy the newspaper, today there are several kiosks (Google, Facebook) that sell many newspapers (contents), and keep much of the revenue for themselves. Balázs Bartóki-Gönczy also pointed out that Article 10 of ECHR focuses on restraining the state from restricting the right of the freedom of opinion, but today there may also exist restrictive actors other than the state. It is among else because of this that it is important to stress the principle of internet neutrality providing for equal access to all contents.

Eve Salomon saw the role of the state in creating the conditions among which the media can flourish.

Aidan White, chair of the Ethical Journalism Network and expert of the Council of Europe called attention to the role of ethical journalism in democracy. In a democratic country it is fundamental that independent journalists are able to scrutinise, analyse and make public the

exercise of power. If the private sector is not able to achieve this, then it should be implemented in a different form. In several African and Asian countries investigative journalists are supported in the performance of their tasks by foundations.

Closing the morning panel session, the moderator of the discussion, András Koltay summarized the points made and emphasized the need for the creation of the economic foundations of journalism, something that has only fractionally been achieved in Hungary yet. The state may play an important role not only in the creation of the minimum rules, but also in financing. Efficient self-regulation is very important also because new actors have emerged in the value chain of the media (e.g. search engines), which may arbitrarily curb speech.

The second part of the conference focused on the practical aspects of audiovisual media services. In the opening presentation Aidan White briefly introduced the Ethical Journalism network which has been called to life in order to further ethical journalism, good governance and the independent regulation of media contents. The organisation was founded in 2011 by newspaper owners, publishers, editors and journalists in order to strengthen the journalist trade. The primary objectives of the Ethical Journalism Network are the preservation of quality journalism on all platforms and the prevention of governments or interest organisations from gaining control over the media. The very same tools that enable governments to put citizens or journalists under surveillance or enable the dissemination of hateful content can also be used to strengthen transparency, enhance quality and increase the confidence in democracy.

Ethical journalism is not identical to the freedom of opinion; it operates in a framework based on values. Its main objective is to further the public good. Yes, admitted Aidan White, values do imply a certain form of constraint. These values are: truth, independence, impartiality and humanism. Ethical journalists pay attention to the audience; the main criterion of ethical journalism is respect for the audience, the viewers and readers.

At the end of his presentation Aidan White acknowledged that although excellent rules and regulations may be created governing the conduct of journalists, it is much more difficult to define the values along which the profession of journalism should be pursued. The important question is not who the journalist is, rather, it is what journalism is.

Carrying on Aidan White's train of thought, Joan Barata, Principal Adviser to the Representative on Freedom of the Media, Organization for Security and Co-operation in Europe, also stressed the importance of the role of ethical and professional journalism. In his contribution he emphasized that quality journalism is based on authentic facts and does not sacrifice quality for the sake of haste. Today's trends, however, are not in favour of such quality journalism, he admitted. Journalists receive less and less training, and this is further exacerbated by the fact that the amount of money invested into quality journalism is also decreasing. The person of the journalist and the reconstruction of the ethical foundations of journalism are extremely important. Journalism and the freedom of speech are not synonymous; responsible journalism requires a lot of effort as well as finances. In reply to a question from the audience on what sort of regulation he believes to be appropriate for the media, the Principal Adviser to the Organization for Security and Co-operation in Europe replied with the following: The current regulations that make a sharp distinction between the rules on broadcasting and the rules on the printed press will not be sustainable in the long run. A regulatory system is needed that is well adapted to the new, multi-actor value chain and is able to reinforce diversity. However, no regulatory solution is able to warrant independence, said Joan Barata.

András Koltay also acknowledged that media regulations find it difficult to keep up with the technological changes. The laws require regular review, and this is especially true for the audiovisual sector.

According to Balázs Weyer diversity cannot be created by legal means. Today it is hard to keep up with the most visited websites/market actors, therefore diversity is illusory only. According to him the effective legal regulations in Europe are so diverse that the creation of a uniform European system of regulations is inconceivable. As an example he mentioned the differences in the treatment of internet comments in the various countries.

Petra Láncoš, European law expert of the Péter Pázmány Catholic University concurred with this. The expert referred to the activities of the high-level task force created by Vice-President of the European Commission, Neelie Kroes and led by former Latvian head of state, Vika-Freiberga, which had established several conclusions related to the European situation of pluralism, however, the report adopted by the task force has not been followed up with any concrete measures.

In his contribution Levente Nyakas, head of the Institute for Media Studies pointed out that the European media regulatory system requires thorough review since the technological changes have rendered several media-related provisions obsolete.

Following this the members of the audience posed questions that were strongly critical of Hungarian media regulations and the current state of the freedom of the media. Even the foreign participants of the event replied to these criticisms and the calls for more forceful action from the European Union cautiously, stressing the importance of the national characteristics of the various member states and the impossibility of uniform solutions.

Following the press conference after the event, Eve Salomon and András Koltay answered the questions of the journalists. They concluded that the 2013 April amendment of the Hungarian media regulations and the previous, 2011 December decision of the Constitutional Court had for the time being closed the debate between Hungary and the Council of Europe on the contents of the text of the statute. During the past year the two cooperating organizations had held regular consultations deemed to be successful by both parties. Eve Salomon declared that although there remained certain debated issues related to the statute, they were now concentrating their efforts on optimising its practical application.

According to András Koltay, during the course of the cooperation the members of Hungarian judicial practice were able to acquaint themselves with the relevant recommendations and expectations of the Council of Europe as well as the details and possible future directions of European media regulation. According to his opinion Hungarian judicial practice operates in conformity with these. Both parties voiced their optimism in respect of the possibilities of future professional cooperation.

Budapest, January 6, 2014