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STATEMENT

Hungary: ARTICLE 19 Calls for Comprehensive Media Law Reform

ARTICLE 19 welcomes the recent decision of the Hungarian government to amend some of the controversial provisions in the media law package adopted in 2010. At the same time, we are alarmed by the fact that many problematic provisions are not included in the government reform plans and remain unchanged. ARTICLE 19 calls on the Hungarian Government to immediately introduce a comprehensive reform of the media legislation to bring it in compliance with international freedom of expression standards.

In February 2011, after an intensive criticism of international community, including ARTICLE 19, the Hungarian Government agreed to revise some provisions of the Press and Media Act of 9 November 2010¹ and Media Law of 21 December 2010². The proposed amendments were consulted with the European Commission and relate to the following issues:³

- Content regulation: The Government agreed to remove the requirement for on-demand media content providers to provide “comprehensive, factual, up-to-date, objective and balanced information.”⁴ Furthermore, it pledged to remove the prohibition against offending individuals, groups and majorities⁵;
- Sanctions of foreign media for content requirements: The Government agreed to exempt foreign media from the regime of sanctions for content issues;
- Registration regime: The Government agreed to change the registration rules replacing the “permissive” regime for operation of the media with a “notifying” one.⁶

These amendments aim to bring the media laws in compliance with the EU Audiovisual Media Service Directive and other international principles. However,

¹ Act CIV of 2010 on the freedom of the press and fundamental rules governing media content.

² Act CLXXXV of 2010 on media services and mass media.

³ <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/89>

⁴ Article 13 (2) of the Press and Media Act.

⁵ Article 182 c of the Media Law and Article 17 of the Press and Media Act.

⁶ Article 46 (1) of the Media Law.

ARTICLE 19 points out that by these changes, the Hungarian Government fails to address all problematic areas in the current media laws. We consider some proposed changes incomprehensive whereas others are vague and not entirely in line with international freedom of expression standards. Below we provide examples of these shortfalls:

- Coverage issue: Although the government agreed to exempt on-demand media from the task to provide “authentic, rapid, and accurate information” on public affairs at local, national and EU level, this task remains for all other types of media. ARTICLE 19 finds this issue problematic with respect to media pluralism. In democratic countries, only public service media may be tasked to provide certain type of information in view of their public nature. Furthermore, the provision imposing this task bears consequences in as much as the Media Council is obliged to monitor for the observation of these tasks and has powers to punish violators of the task. The media authority’s powers to punish media for coverage issues are unprecedented and prohibited by international law. In Europe, courts and self-regulatory bodies are granted punitive powers over the media whereby their control does not include the manner in which the media cover information.
- Vague notions and failure to protect freedom of expression: Even though the Government agreed to remove the offending individuals, groups, majorities and minorities from the list of content restrictions, the excitement to hatred or discrimination against them remains in the Press and Media Act. This is problematic both in view of the vagueness of these notions and the increased protection offered to majorities. As the Media Council is granted with unlimited discretion regarding the interpretation of these notions there is a danger for the application of the restrictions to be arbitrary. Likewise, the task of the media to provide up-to-date, objective, balanced, authentic, rapid and accurate information is vague. This is particularly dangerous in view of the unrestricted powers of the Media Council to interpret these notions and impose sanctions.

As for problematic issues that remain completely unchanged by the proposed amendments, ARTICLE 19 wishes to highlight the following:

- The hierarchical media governance system: ARTICLE 19 finds it extremely problematic that all media are placed under a single regulatory system. The particular issues of concern are 1) the broad scope of regulatory control which covers not only broadcasting media but also print media and internet media providers as well as on-demand media⁷; and 2) the lack of safeguards for the independence of the regulatory bodies. Being a part of the central government, at present the heads of these bodies are either appointed by the Prime Minister or nominated and appointed by those appointed by the Prime Minister.⁸
- The government’s control over the public service broadcasters: The proposed amendments do not release the government’s grip of public service

⁷ Article 1 (1) and Article 203 of the Media Law.

⁸ Article 102 (2) a and Article 136 (11)-(12) of the Media Law and Article 14 (2) of the amended Act C. of 2003 on Electronic Communication.

broadcasters ARTICLE 19 has already previously criticized the fact that only the head of the Media Council can name candidates for heads of public service broadcasters. The problem is even bigger in few of the lack of procedure or criteria for the selection of candidates;⁹

- The powers of Media Council to oblige the internet service providers to block any internet-based news outlets¹⁰: The Media Council is granted with powers to order blocking of internet-based news outlets. ARTICLE 19 objects against this regulation is in view of the government control over the Media Council and the lack of safeguards against arbitrary use of these powers to muzzle critical speech. Even though blocking of internet sites might be necessary in some cases – for example against child pornography – this restriction is a very serious restriction on freedom of expression and should be imposed only in the most extreme cases. In view of danger for arbitrary and politically motivated interference the powers should be granted to independent bodies such as courts which should be obliged to consider imposing less restrictive measures before ordering blocking. The proposed changes do not restrict the powers of the Media Council to block any internet-based news outlets and do not introduce safeguards to free expression in cases of this type of interference.
- The lack of protection of journalistic sources: ARTICLE 19 has already expressed concerns about the problematic regulation of the right to protect the confidentiality of journalistic sources.¹¹ Without a right to retain the identity of their confidential sources journalists are be able to conduct investigations. In violation of international law the current Hungarian legislation does not allow for journalists and outlets to protect their sources if the information in question was a part of classified document.
- The arbitrary licensing regime for broadcasting media: The current legislation bans company from participating in tenders for licences if in the last five years they have been sanctioned for a “gross breach of obligations stemming from broadcasting or a public contract undertaken on the basis of a previous tender procedure”.¹² In view of the fact that the determination of what amounts to “gross” breach is left to the Media Council, broadcasters should always be careful not to upset the latter if they wish to remain on the market after the end of their licences. This obviously a chill for free expression and can lead to self-censorship. Unfortunately, the amendments proposed by the Hungarian government do not strengthen the fairness safeguards of licensing procedures.
- The high fines that the Media Council can levy when enforcing the law¹³: ARTICLE 19 is concerned that the proposed changes to the media laws do not include reduction of the high administrative fines.

⁹ Article 102 (2) a of the Media Law.

¹⁰ Article 189 of the Media Law.

¹¹ Article 6 (1) and (3) of the Press and Media Act.

¹² Article 55 (1) c. of the Media Law.

¹³ Article 187 of the Media Law.

In view of the forgoing, ARTICLE 19 is not satisfied with the scope of the proposed amendments to the legal framework of the media in Hungary and calls on the Hungarian government to consider expanding the media law reform by:

- Limiting the regulatory control over broadcasting media only and allowing self-regulation for print media and internet media providers;
- Removing the powers of the Prime Minister to appoint the head of the media regulatory body and including safeguards for the independence of the latter;
- Granting civil society organisations and individuals the power to name candidates for CEO of public service broadcasters in order to reduce the government control over public media;
- Removing the powers of the Media Council to order internet service providers to block any internet-based news outlets and granting these powers to courts who should be restricted to order blocking of internet news outlets only at a last resource when less restrictive measures have been exhausted without success;
- Bringing the regulation of the right to protect journalistic sources in line with international standards;
- Removing the ban on companies who have been sanctioned by the Media Council for gross violations to participate in licensing proceedings;
- Reducing the high fines for infringement of the media laws.

FURTHER INFORMATION:

- For more information, please contact: Boyko Boev, Legal Officer at boyko@article19.org or +44 20 7324 2500.
- Previous statement of ARTICLE 19 on the media legislation in Hungary can be found at: <http://www.article19.org/pdfs/press/hungary-controversial.pdf>.
- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.