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STATEMENT

Hungary: Controversial New Media Laws Cast Shadow on Presidency

On 1 January 2011, Hungary took over the rotating presidency of the European Council. This event was marred by controversy, as it coincided with the introduction of greater media control as part of measures to increase state supervision over key institution. This includes through powers granted to a government-appointed media authority to fine media outlets if their political coverage is deemed unbalanced or immoral. The move has prompted international concerns about the Hungary's democratic credentials.

ARTICLE 19 is concerned that attempts to control the media pose serious questions on whether the Hungarian Presidency can protect European human rights standards and democratic values. We also note that the actions of the Hungarian Government may fall within the scope of Article 7 of the Lisbon treaty that should finally be used to demonstrate that the EU takes violations of human rights by current member states seriously.

Background

In the April 2010 election, in a climate of economic crisis and high level of unemployment, voters in Hungary gave a sweeping victory to the Fidesz - Alliance of Young Democrats, which promised a stronger protection of national interests.

The ruling coalition of Fidesz and the Christian Democratic People's Party, with an absolute majority of two thirds of all seats in Parliament, immediately took full control over the legislative agenda. For the last six months, it amended more than fifty laws and changed the Constitution six times. To avoid public control over its actions, the ruling coalition removed important constitutional checks and balances. For instance, the parliamentary majority became in charge of the appointment of the constitutional judges while the Prime Minister used his powers to replace the head of Equal Treatment Agency, and thus removed its independence. Legislative amendments also permitted the coalition to replace the members the National Election Committee and gave powers to ministers to dismiss civil servants without justification. The rapid legislative reforms have been carried out without prior consultation with the public and the opposition.

In addition, the ruling coalition introduced a package of legislation which placed the media under governmental control; this included amendments to the Constitution, the Law on Electronic Telecommunication, the Law on Digital Transition, the Law on National News Agency, the Law on Radio and Television, an amendment to the Constitution, a new Press

and Media Law (concerning media content and the rights and obligations of the media) and a new Media Law (concerning media services and products). The Government claims that these amendments are aimed at protecting media freedom and responding to challenges posed by new media technologies. However, the new media regulatory framework is in violation of basic international freedom of expression principles and has been widely criticized by domestic and international experts.

ARTICLE 19 is concerned about following main shortfalls of the new media framework in Hungary:

Political control over the media

The Electronic Communication Law places all media under a highly centralised regulatory system controlled by the Government. On top of the media regulatory system is the National Media and Telecommunication Authority (NMTA), “a central government agency” that consists of several units: Media Council, the office of the National and Telecommunication Authority and the Government Frequency Management Authority. These bodies are given many oversight and supervisory powers with respect to print, broadcasting and the internet media services.

The most problematic aspect of the regulatory system is the fact that the NMTA is directly controlled by the Government, with the Prime Minister appointing its President. As expected, the current Prime Minister and Fidesz leader, Viktor Orbán, used this opportunity to secure his direct control over the media regulatory system and appointed a former politician from Fidesz as the first NMTA President in August 2010.

The new legislation requires that the members of the Media Council are elected by Parliament. In view of the powers of this body to control media content (see below), ARTICLE 19 is very concerned that government critics can be easily muzzled by the Media Council.

The new legislation also set up a nine-year term of office for the President of the NMTA and the members of the Media Council. It means that the outcome of the next parliamentary elections would not ease the current coalition’s grip on the media.

Content regulation of the press and the Internet

The content requirements introduced by the Press and Media Law, such as the ban on media content capable of inciting hatred against “nations”, “any majority” or “churches” or prohibition of media content to “offend or discriminate against”, *inter alia*, “any church or religious groups”, are not recognised by international law as legitimate restrictions on freedom of expression. ARTICLE 19 notes that although protection against speech that constitutes incitement to discrimination, hostility or violence is permitted under international law, the provisions in the Press and Media law go beyond what is permitted under international law, in particular the protection to churches and reliance on vague terms. The prohibition on content which could have a damaging influence upon the intellectual, spiritual, moral or physical development of minors found in the Press and Media Law is also vague and over-broad. Given the possibility these provisions create for abuse and the importance of freedom of expression, it is incumbent upon the Government to draft provisions on these issues more carefully, narrowing the scope of the restrictions and clarifying precisely what is being prohibited.

The Press and Media Law also restricts expression which violates public morals. This ban is overbroad because it does not take into account the pressing social need of such restriction and the public value of the expression. Any media – including online - could be sanctioned for the use of offensive expression. Not surprisingly, this overbroad content restriction was used by the Media Council shortly after its creation to launch an inquiry against a radio station for broadcasting two American rap songs in its 17:30 programme. In view of the broad discretion granted to the Media Council, ARTICLE 19 is concerned at the possibility of an arbitrary decision restricting freedom of expression.

Outright Registration

Article 5 of the Press and Media Law provides that an official registration may set up as a precondition for the commencement of media services and the publication of printed press materials. It means that the system of “notification” now in force can be replaced with “registration.” While the notification system presents no danger for media freedom because it has not effect for the operation of the media, the registration system is problematic because a media outlet must await a licence by the authorities in order to start operation. ARTICLE 19 notes that a registration system for print and online media is not necessary in a democratic society. Noting that no other EU state requires registration of print and internet media services, ARTICLE 19 is concerned that the registration system establishes a barrier to the entry of new media which can be used to silence those critical of the government and restrict media freedom in general.

Protection of Sources

The provision of source protection under the new Press and Media Law is not in compliance with international law. Protection of sources is a fundamental principle to freedom of expression and media freedom and a cornerstone of independent and professional investigative journalism. According to the law, a source who has supplied information illegally (which is often the case in most investigatory stories) is not entitled to protection. In addition, a court or another “authority” – unidentified by the law - should decide whether the disclosed information was of public interest. In contrast, international law imposes four requirements for an exception of the right to protection of sources to be valid: i) the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence; ii) the information or similar information leading to the same result cannot be obtained elsewhere; iii) the public interest in disclosure outweighs the harm to freedom of expression; and iv) disclosure has been ordered by a court, after a full hearing. The legal system in Hungary does not follow these standards. ARTICLE 19 is very concerned that the new Press and Media law eliminates source protection.

Excessive sanctions

ARTICLE 19 finds the fines set for violations of new media laws excessively harsh. The fines for "unbalanced reporting" by radio and TV broadcasters can be as much as 200 million forints (about €700,000). Other maximum fines can be up to 25 million forints (€90,000) for daily national newspapers and websites and 10 million forints (€36,000) for weeklies. Private persons can be fined up to two million forints (€7,250).

Noting that international law requires that sanctions be proportionate, ARTICLE 19 notes that the maximum fines are likely to bankrupt even big national newspapers and television station. Likewise, the maximum fines for private persons are disproportionately high in view of the average wage in Hungary. The high fines are likely to have a serious chilling effect on free expression and encourage self-censorship.

The shortfalls outlined above create real dangers for media freedom in Hungary. ARTICLE 19 is alarmed that basic principles of freedom of expression can be so easily disregarded by an EU Member State. Mindful that Hungary holds the current presidency of the European Council, we are concerned that the failure to observe human rights and democratic values will affect the EU's international credential as a protector of human rights and media freedom. The lack of respect for freedom of expression standards by the country presiding over the European Council not only sends a dangerous signal to authoritarian governments around the world that they can continue muzzling the media but also weakens the struggle of local and global campaigners for freedom of expression.

Recommendations

ARTICLE 19 calls on the Hungarian Government to respect its international obligations to protect freedom of expression and media freedom and:

- To ensure that the media regulatory authority is independent from the Government by changing its status from a central government agency to an independent agency and providing that its President is elected by Parliament upon proposals by professional associations;
- To limit content requirements to apply to broadcasters only, mindful that these requirements are not justified for print media and internet media services;
- To remove from the legislation the special protection of “nations”, “majorities” or “churches” against offensive speech;
- To ensure that the restricts on hate speech is in line with the international standards as indicated above;
- To replace the registration system for print media and Internet media services with a notification system provided that they can start operation immediately after notification;
- To revise the regime of source protection in line with the above described international standards;
- To reduce significantly the maximum fines for violations of the media laws;
- To seek wider public support for its legislative proposals;
- To uphold human rights and media freedom during its presidency of the European Council.

At the same time, ARTICLE 19 asks the European Parliament, European Council, and European Commission:

- To consider the initiation of the procedure under Article 7 of the Lisbon Treaty, in view to determine whether there is a clear risk of a serious breach by the Hungarian Government of the EU values such as respect for freedom, democracy and human rights, and if necessary to suspend Hungary of certain EU rights;
- To demand that Hungary revise its legislation to meet international standards on freedom of expression and ensure media can operate freely and without fear of repercussions;
- To ensure that the democratic values including media freedom are respected within the EU and remain central to its foreign policy.
- To continue its support to campaigners for media freedom inside and outside the EU.

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- 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.