

ARTICLE 19

# Hungarian Media Laws Q&A

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Country Report

# Summary

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In this report, *Hungarian Media Laws Q&A*, ARTICLE 19 and the Hungarian Civil Liberties Union explain how the new media laws have contributed to the deterioration of the media situation in Hungary.

The report provides information on the scope of the new media laws and explains why the current government of the Fidesz-KDNP conservative party alliance undertook the media reform. The public reaction toward the reform both in Hungary and abroad are also outlined.

ARTICLE 19 and the Hungarian Civil Liberties Union (TASZ) identify key discrepancies of the new regime of regulation with international media law standards and explain how they have corroded various aspects of media freedom.

The most serious problems with the Hungarian media regulations are:

- The hierarchical media regulatory system under the direct control of the government
- The numerous unclear content requirements
- The government's control over the public service broadcasters
- The powers of the Media Council to force internet service providers to block any internet-based news outlets
- The lack of protection for journalistic sources
- The arbitrary licensing regime for broadcasting media
- The high fines that the Media Council can levy when enforcing the law.

ARTICLE 19 and TASZ are committed to the principle of media freedom and will react to any violation following the implementation of the new media laws in Hungary in the most vigorous way.



# Questions and Answers on the Infamous New Hungarian Media Laws

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## Question 1: What are the infamous media laws in Hungary?

Two Hungarian media laws, adopted in 2010, have become infamous as a result of the severe international criticism they have triggered since their entry into force on 1 January 2011.

The legislation that is a matter of grave concern consists of two laws:

- *The 2010 Act 104 on the Freedom of the Press and the Fundamental Rules on Media Content*, adopted on 2 November 2010 (“the Press and Media Act”), regulates media content and the rights and obligations of the media;
- *The 2010 Act 185 on Media Services and Mass Media*, adopted on 21 December 2010 (“the Media Law”), deals with media services and products and sets up a media regulatory institution, Media Council, as well as administrative procedures for media law enforcement.

The two media laws are part of a major media reform launched by the government following the sweeping electoral victory of the Fidesz-KDNP conservative party alliance in April 2010. The package of media legislation was adopted by Parliament shortly after Fidesz leader Viktor Orbán formed his government. The accepted legislation included amendments to: the Constitution, the Law on Electronic Telecommunication, the Law on Digital Transition, the Law on National News Agency, and the Law on Radio and Television.

## Question 2: Why were the Hungarian media laws adopted?

There was arguably room for overhaul of the previous legal framework of the media, *Act No. 1 of 1996 on Radio and Television Services*, to help the media adapt itself to recent technological developments such as digitalisation and public demands such as the incorporation of European audio-visual directives. Furthermore, the previous broadcasting licensing regime was heavily criticised for its failure to guarantee transparent allocation of frequencies. In contrast with the case of electronic media reform, the regulation of print media was less problematic despite some inaccuracies.

The previous two parliaments failed to reform media legislation because a two-thirds majority vote was needed for the reform, and political parties could not reach an agreement. After the landslide victory of Fidesz-KDNP, the right-wing majority did not need support from outside the Fidesz-KDNP conservative party alliance to pass the measures.

Media regulation was not a key issue for debate during the 2010 election campaign. Consequently, the process of media reform which Fidesz-KDNP undertook in the first six months after coming into power was unexpected. The new government put forward two arguments in support of media reform. Pointing to examples of recent racist content in the press which had caused public outcry, the authorities argued that the media should be “put in order”. The newly established Media Council was given powers to fight against racist speech in the media, although it could be argued that the Hungarian law had already protected against such an extreme speech with regards to television and radio. According to

the government, the new laws are also necessary for the protection of minors; however, an almost identical protection system was already in place.

The government circumvented the normal public and parliamentary deliberation during the media reform process. There was no public consultation prior to the parliamentary debate on media regulation and the draft bills were not published before the parliamentary phase (as required by law). The public only learned about the government reform plans on the day the media bills were introduced to the Parliament. Consequently, both laws were quickly adopted regardless of their possible impact.

### **Question 3: What are the problems with the media laws?**

The following issues have been identified by ARTICLE 19 and TASZ as the most problematic aspects of the media laws from freedom of expression perspective:

- The laws establish a hierarchical media regulatory system under the control of a non-independent administrative body: All types of 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 media<sup>1</sup>; and 2) the lack of safeguards for the independence of the regulatory body – the National Media and Telecommunication Authority and the Media Council. 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 the Parliament.<sup>2</sup> Not surprisingly, the latter appointed a former Fidesz MP and the former head of the regional party organisation to be the head of the National Media and Telecommunication Authority and of the Media Council. The remaining four members of the Media Council are also persons loyal to the ruling party. All members were exclusively nominated and appointed by the Fidesz-KDNP MPs.
- Content requirements are unclear: The freedom of expression of printed and online press, television, radio and on-demand services is limited by numerous bans: they should respect “the constitutional order”, refrain from offending “human dignity”, “private life”, and forbear from discriminating against “any majority” or “any church or religious group”. Furthermore, the broadcasting media outlets should offer, independent of the fact that they are commercial or public, “objective and balanced coverage”.<sup>3</sup> In addition the media should not incite hatred against “nations”, “any majority” or “churches”.
- The laws fail to comply with international legal standards: Apart from being unclear, the above mentioned bans are not recognised by international law as legitimate restrictions on freedom of expression.<sup>4</sup> Moreover, these restrictions are not necessary in a democratic society. Although protection against speech that constitutes incitement to hatred or violence is permitted under international law, the scope of the bans set out in the Press

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<sup>1</sup> Article 1 (1) and 203 of the Media Law.

<sup>2</sup> Article 102 (2) and Article 136 (11)-(12) of the Media Law.

<sup>3</sup> Articles 13, 14, 16, 17, 18 of the Press and Media Act.

<sup>4</sup> Article 17 of the Press and Media Act.

and Media Act is overbroad, as they restrict speech in a wide way and go beyond the scope of incitement.

- The government has control over the public service broadcasters: The implemented amendments to the media laws do not release the government's grip on public service broadcasters insofar as the head of the Media Council continues to have responsibility for naming candidates to head public service broadcasters. The problem is even bigger in view of the lack of proper procedure or criteria for the selection of candidates.<sup>5</sup>
- The Media Council has powers to oblige internet service providers to block any internet-based news outlets<sup>6</sup>: The Media Council is granted the powers to order the blocking of internet-based news outlets. This regulation is problematic 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. Blocking of internet sites is a very serious restriction on freedom of expression and should be imposed only in the most extreme cases, such as child pornography. In view of the danger of 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 lack of protection of journalistic sources: The right to protect the confidentiality of journalistic sources is not effectively guaranteed.<sup>7</sup> Without a right to retain the identity of their confidential sources journalists will be unable to conduct investigations. According to the Press and Media Act, a source who has supplied information illegally (which is often the case in investigatory articles) is not entitled to protection. In addition, a court or other "authorities" – unidentified by the law - should decide whether the disclosed information was of public interest. In contrast, international law, mainly based upon the European Court of Human Rights' practice, 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 defense of a person accused of a criminal offence; ii) the information or similar information leading to the same result cannot be obtained otherwise; iii) the public interest in disclosure outweighs the harm to freedom of the press; and iv) disclosure has been ordered by a court, after a full hearing. The legal regime in Hungary does not follow these standards.
- The lack of safeguards against arbitrariness in the licensing procedures: The current legislation bans companies from participating in tenders for licenses 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".<sup>8</sup> In view of the fact that the determination of what amounts to a "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. This will obviously have a detrimental effect on free expression and could lead to self-censorship. Unfortunately, the amendments proposed by the Hungarian government do not strengthen the fairness safeguards of licensing procedures.

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<sup>5</sup> Article 102 (2) a of the Media Law.

<sup>6</sup> Articles 188, 189 of the Media Law.

<sup>7</sup> Article 6 (1) and (3) of the Press and Media Act.

<sup>8</sup> Article 55 (1) c. of the Media Law.

- The Media Council can impose high fines<sup>9</sup> The amounts of fines that can be levied are so high that a daily or a weekly publication could go bankrupt due to these sanctions. The fines for "the violation of the dignity" of, say, a public figure by radio and TV broadcasters can be as much as 200 million forints (around €700,000). Other maximum fines can be up to 25 million forints (€90,000) for daily national newspapers and news websites and 10 million forints (€36,000) for weeklies. Private persons can be fined up to 1.5 million forints (€ 5,500) in cases of non-compliance during the administrative investigation.

#### **Question 4: What was the public reaction in Hungary and outside of the country?**

There has been an overwhelming criticism of the media laws both domestically and internationally.

Domestically, newspapers (*Nepszabadsag*, *Magyar Narancs*, *Elet es Irodalom*, *Nepszava*) and online media with politically leftist, liberal or independent viewpoints protested against the overreaching media laws by publishing blank front pages in January. Government supporting media, such as the daily *Magyar Nemzet* or *Magyar Hirlap* or the weekly *Heti Valasz* have not, or have only mildly, criticised the media laws. The two big commercial TV stations (*TV2*, *RTL KLUB*), by far the most influential media outlets in Hungary, have neither criticised publicly nor joined any protest against the media laws. There are rumours that the government gained the media's silent support in exchange for postponement of the digital switchover by at least one year. This decision will increase the profits of the two broadcasters who are dominating the media market.

In January 2011, the opposition parties in Parliament (green/liberal *Lehet Mas a Politika*, centre-left *Magyar Szocialista Part* and conservative *Jobbik*) filed petitions with the Constitutional Court maintaining that the media laws in their entirety are unconstitutional. As the law does not set a deadline for examination of petitions, it is impossible to say when the constitutional justices will announce their decision on the petitions against the media laws

On 15 March 2011, a national holiday in Hungary, an important street protest organised by civil society took place. According to reports, some 40-50,000 protesters marched on the streets in Budapest to protest against the media laws.

On the international level, the Hungarian media laws dominated the first part of the Hungarian presidency of the Council of the European Union, which started on 1 January 2011. A group of MEPs welcomed the Hungarian Prime Minister, Viktor Orban, at a hearing of the European Parliament on the 19 January 2011 with Band-Aids covering their mouths in protest against the new Hungarian media laws.<sup>10</sup> In February 2011, Neelie Kroes, EU Commissioner for Digital Agenda, warned the Hungarian government that three provisions violate the Audiovisual Media Service Directive.

On 10 March 2011, the European Parliament (EP) adopted a very critical political resolution on the Hungarian media laws. The EP called upon the Hungarian government to bring about

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<sup>9</sup> Article 187 of the Media Law

<sup>10</sup> See: <http://www.flickr.com/photos/greensefa/5370009996/in/photostream/>

substantial changes to the media laws in order to be in line with standards for European media freedom.

Besides the political criticism, international intergovernmental organisations have criticised the media laws. In February 2011, the Organisation for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, Dunja Mijatović,<sup>11</sup> and the Council of Europe's Human Rights Commissioner<sup>12</sup> highlighted the serious shortfalls in the laws which included vague content restrictions for all media outlets, harsh sanctions, a mandatory registration system, a weak regime for protection of sources and a media regulatory body under the government's control. They called upon the Hungarian government to proceed with "a wholesale review of the media package". In addition, the Council of Europe Parliamentary Assembly passed a recommendation on the protection of journalists' sources that explicitly stressed the problems in the Hungarian Media Law.<sup>13</sup>

Recently the United Nations Special Rapporteur on freedom of expression, Frank La Rue, traveled to Budapest for a special visit to gain information on the media reforms. On 5 April 2011 he issued a declaration stating that the "media legislation still risks generating a climate of self-censorship".<sup>14</sup>

International NGOs such as ARTICLE 19, Amnesty International and Human Rights Watch also called upon the Hungarian government to change the media laws.<sup>15</sup>

#### **Question 5: What has been the government's response to the criticism?**

The government's reaction to the criticism was to publish a 12-page document titled "Criticisms and answers formulated on the subject of the proposed media act examined in a European context". This rebuttal randomly chose some European examples to show that particular parts of the laws are incorporated in the legislation of other European countries. In reply, the Swedish Ambassador in Budapest wrote a public letter denying the allegations that there are similarities between the Hungarian and Swedish laws.

In response to this criticism, on 7 March 2011 the Hungarian parliament revised some provisions of the media laws. The changes concerned the following:

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<sup>11</sup> OSCE, Analysis of the Hungarian Media Legislation; available at <http://www.osce.org/fom/75990>.

<sup>12</sup> Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media (internal quotation marks omitted); available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

<sup>13</sup> Europe Parliamentary Assembly Recommendation 1950 (2011) on the protection of journalists' sources, available at <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/EREC1950.htm>

<sup>14</sup> Hungary: UN expert on press freedom concerned by media law; available at <http://www.un.org/apps/news/story.asp?NewsID=38009&Cr=rappporteur&Cr1>. For the full report of Special Rapporteur, see [http://mediajogfigyelo.hu/uploads/files/0\\_2011-04-05\\_Hungary\\_Freedex\\_EndMission.pdf](http://mediajogfigyelo.hu/uploads/files/0_2011-04-05_Hungary_Freedex_EndMission.pdf)

<sup>15</sup> See: <http://www.hrw.org/en/news/2011/01/07/hungary-media-law-endangers-press-freedom>; <http://www.article19.org/pdfs/press/hungary-article-19-calls-for-comprehensive-media-law-reform.pdf>; <http://amnesty.hu/amnesty-international/emberi-jogaink/az-elsopr%C5%91-erej%C5%B1-mediatorveny-a-sajtoszabadsagot-fenyveti-magyarorszagon/-sweeping-new-media-law-threatens-freedom-of-expression-in-hungary>

- Content regulation: The requirement for on-demand media content providers to give “comprehensive, factual, up-to-date, objective and balanced information” was removed.<sup>16</sup>
- Sanctions of certain types of foreign media for content requirements: Television and on-demand audio-visual media services provided by foreign media were exempt from the regime of sanctions for content issues.
- Registration regime: The “permissive” regime for operation of the media was replaced with a “notifying” one.<sup>17</sup>

**Question 6: Have the media laws been used against media and journalists so far?**

No serious sanctions have been imposed against journalists and media so far (although some cases are pending).

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<sup>16</sup> Article 10, 13 of the Press and Media Act

<sup>17</sup> Article 46 (1) of the Media Law