

2021 Rule of law report targeted Stakeholder consultation

Submitted by the International Press Institute

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Media Pluralism - Hungary

Media regulatory authorities and bodies (Cf. Article 30 of Directive 2018/1808)

Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies. 3000 character(s) maximum

Hungary's system of media regulation is under direct political control. The Media Council, the sector regulator, composed of five members, were all nominated by the Fidesz party for a nine-year term in November 2019.

The Media Council's decisions on the tendering of radio frequencies have been made along clear political lines to silence critical voices, with the frequencies of independent broadcasters cancelled or not renewed.

Most recently, Klubrádió was forced off air on February 15, 2021, after its appeal against the Media Council's refusal to renew its license made in September 2020, was rejected by a court. Klubrádió, Hungary's last major independent radio, was denied its license renewal on spurious and clearly discriminatory grounds. Further changes in the media law introduced in 2020 were designed to ensure no temporary license could be granted to Klubrádió, or a rival, while the decision was appealed. It was forced off air as of 15 February 2021. IPI consider this a clear breach of Article 11 of the EU charter on fundamental rights.

The government's spokesperson has, for now, ruled out earlier-aided plans of establishing a highly controversial "chamber of journalists" with the power to determine who is a member of the profession, with all corresponding benefits.

The government has removed the public broadcaster from scrutiny through what amounts to a shell-company construction. The actual work of public service broadcasting – including control over content and contracts – is performed by an entity, MTVA, that is not subject to the law on public service broadcasting. There is no transparency around the funding or work of the public broadcaster. Hungary's public service media have been deformed into state media.

As a consequence, news coverage is not balanced and opposition politicians and viewpoints are either absent or – where there are legal requirements, such as during election campaigns – presented in a negative light.

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies 3000 character(s) maximum

Hungary's system of media regulation is not independent. In particular, the Media Council, the sector regulator, is composed of five members, all of whom were nominated by the Fidesz party for a nine-year term in November 2019. In practice, the Media Council's decision discriminate against media that do not toe the government line.

Existence and functions of media councils or other self-regulatory bodies

3000 character(s) maximum

Government plans to establish a high chamber of journalists is highly disturbing. It appears to have been put on hold, for now. But should be closely monitored.

Self-regulation of the work of journalists must remain in the hands of the journalist community itself without any government interference. Such a body can issue its own accreditation through press cards but cannot be used to limit access to the profession.

For example, the Hungarian Journalists Association Magyar Újságírók Országos Szövetsége (MÚOSZ) has its own ethics council which reviews complaints against its members for breaches of the association's journalist code of ethics.

Transparency of media ownership and government interference

The transparent allocation of state advertising (including any rules regulating the matter) other safeguards against state / political interference 3000 character(s) maximum

The government has pursued a strategy to silence critical press through manipulation of the media market – engineering the closure or takeover of independent media. In March 2020 a pro-government investor purchased a controlling stake in Indamedia, the company that runs advertising at Hungary's largest independent online news site, Index.hu. In August the editor in chief, Szabolcs Dull, was fired leading to the mass resignation of 90 journalists. The demise of Index as the leading source of independent news online was widely seen as a result of the machinations of the authorities.

The government has constructed a media empire, serving as a vast propaganda machine, insulating large parts of the public from critical news.

Independent media are starved through the state's abuse of public resources and harassment of private advertisers, even as the government directs taxpayer money to its own media.

Media ownership is heavily concentrated in the hands of government supporters, and specifically in the KESMA foundation (see below).

The government maintains a veil of media pluralism but independent research shows that 80 % of the market for political and public affairs news is "financed by sources decided by the ruling party". This includes pro-government private media and public media. This figure will have increased since the takeover of Index.hu and termination of Klubrádió's license.

Pro-government media have a quasi-monopoly in print and radio and dominate broadcasting. The online sector, with a primarily urban audience, was more balanced prior to the turmoil at Index.hu.

Content coordination of pro-government media, especially via the KESMA foundation, has led to a dominance of the state narrative particularly in rural areas.

Hungary has one remaining independent political daily, Népszava, with a circulation of 20,000. The government-controlled network of regional dailies has a combined circulation of over 200,000. There is one independent cable TV station with political programmes (ATV) while the evening news of the broadcaster RTL Klub, still a market leader, carries reports on government-related controversies. These outlets, and a few independent weeklies, compete against dozens of pro-government media, many supported by market-distorting practices to dominate the market.

State advertising is used to fund pro-government media while independent outlets are almost completely excluded, further distorting competition and damaging sustainability. In 2018, the pro-government broadcaster TV2 received 67 % of state TV advertising, while the independent RTL Klub, of similar reach, received 1 %. This imbalance is reflected across all sectors. Although this practice constitutes a blatant violation of EU state aid law and is an active threat to the financial survivability of Hungary's remaining independent media, the European Commission has not acted on a January 2019 complaint from representatives of Hungarian civil society, led by the NGO Mertek Media Monitor.

Rules governing transparency of media ownership and public availability of media ownership information

3000 character(s) maximum

Over the past 10 years, the Hungarian government has progressively assumed control over a huge segment of the country's media by placing the media under effective government control, at first through a network of pro-government investors. Later, this deliberate media concentration plan reached a provisional apex in 2018 when pro-government investors "donated" 467 media outlets – many of which were originally acquired with loans from state banks, i.e., taxpayer money – to the Central European Press and Media Foundation (KESMA), which is under effective government control and facilitates financial management and content control regarding pro-government media.

The Hungarian government has taken clear steps to reduce scrutiny of media ownership concentration. In the case of KESMA, the government exempted by decree **the merger and the foundation's activities from oversight by the Hungarian Competition Authority and the Media Council**, even though these bodies are already controlled by the ruling party – underscoring how blatantly the merger flouted competition law.

For its part, the European Commission has not sufficiently enforced EU law in the area of competition law and state aid. These cornerstone elements of the single market have been systematically abused by Hungary to silence the media. The European Commission has not acted on at least two complaints in these areas, one regarding the state aid to the public broadcaster, filed in 2016, and one regarding state aid in the form of public advertising, filed in January 2019.

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety 3000 character(s) maximum

Journalists working for independent media are publicly vilified, including on pro-government media, as opposition political activists, foreign agents, traitors or even as "Hungary-haters". The claim that independent journalists are "political activists" is repeated by the government's spokesperson.

In November 2019, an anti-Semitic smear campaign was launched against two journalists working for Index.hu over an article in which one of the journalists admitted that he did not stand when a nationalistic song was played at a stadium inauguration. The two journalists were subject to vicious attacks on pro-government television and on posters in Budapest. The attack and the subsequent claim by the government spokesperson to paint it as a deliberate provocation by the "left-wing" media, which reported the case, symbolize the state of independent media in Hungary today.

Female journalists note that gender is used as an additional excuse to diminish their critical work. Some also highlighted gender-based online harassment and reported receiving rape threats following reporting on sensitive topics.

Government pressure on the media has also succeeded in dividing the journalistic community, limiting solidarity among remaining independent journalists and media outlets as they fight for limited resources and audience share.

Amid the Covid-19 pandemic that began in the spring of 2020, the Hungarian government passed a new law ostensibly directed at combating disinformation on the pandemic but that upon closer review is a powerful new tool to control and punish independent media. The law states:

“Whoever presents a false claim of fact or an actual fact in a distorted manner, or spreads such claims at the time when the emergency legal order is in effect, and does so in public, with the result that the underlying claims impede the effectiveness of the protection efforts, or cause the outright failure of the latter, is liable of a criminal offence that is punishable for a term of imprisonment between one and five years.”

The Hungarian authorities, both prior to and during the pandemic, regularly accused independent media outlets of producing “fake news” and disinformation. In the context of the pandemic this included reports on whether Hungarian hospitals and medical staff were properly prepared for the spread of the virus, including access to necessary clothing and equipment.

The law with its vast and vague scope – which includes information that is true but “distorted” –, draconian punishments and the Fidesz party’s control over key institutions such as prosecutors’ offices poses a serious threat of self-censorship at a minimum with the spectre of arrests and imprisonment of journalists. At least two private citizens have since been investigated and while no media have yet been charged the impact on news rooms was immediate as they sought to objectively report the pandemic, and the government’s response, without falling foul of the new law.

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists 3000 character(s) maximum

The division between pro-government media and independent media has replaced ideological dividing lines; the remaining left- and right-wing independent media in Hungary are regularly smeared as political activists, “Hungary-haters”, foreign agents or traitors.

The Fidesz party holds control over key law enforcement institutions such as prosecutorial offices, reducing the likelihood of independent investigations into attacks on media. High-level judicial institutions such as the Constitutional Court are also widely considered to be under the sway of Fidesz. By contrast, lower courts in Hungary have been perceived as comparatively independent and in some cases have demonstrated a willingness to protect journalists’ rights. The wide-ranging and time-unlimited emergency rule ushered in by the Orban government in March 2020 threaten the last remaining pockets of judicial independence.

Access to information and public documents 3000 character(s) maximum

Independent journalists are subject to pervasive discrimination by the state when it comes to access to information. They are routinely denied access to publicly held information without explanation and excluded from official events. Public officials connected to the ruling party largely refuse communication and interviews with independent media who are often placed on blacklists.

The impact of the independent press is highly limited as the outcomes of journalistic investigations are simply ignored by the state apparatus due to informal government control over key institutions, including prosecutor's offices.

Rules have been introduced to limit the activities of audiovisual service providers, such as a regulation shortening the allowed time span for primetime television news to 45 minutes.

The government used the Covid-19 pandemic to exert further control over access to information by limiting access to press conferences, only responding to pro-government media inquiries and placing a ban on local health sector representatives from talking to the media but channeling all pandemic related questions through a centralized 'operative unit'. In April 2020 it weakened the deadline for responding to FOI requests from 30 to 90 days. This exacerbated a system that was already highly flawed with ministries regularly refusing to answer requests with the only option to appeal through a lengthy and expensive court case.

Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse

The genius of the Fidesz strategy of media capture has been to take control of the vast majority of Hungary's media sector while ensuring the independent sector withers and is confined to an urban bubble without high profile prosecutions and jailing of journalists.

Journalists are however regularly threatened with legal action particularly by business interests for breach of privacy using the General Data and Protection Regulation (GDPR) provisions to conceal information that would otherwise be publicly available and publishable in the public interest.

In January 2020 a Budapest court forced Forbes Magazine to remove the name of the owner of the drinks company, Hell Energy, from the list of the 50 richest Hungarians claiming it had violated GDPR.

In August, the National authority for Data Protection and Freedom of Information (NAIH) fined Forbes 12.000 € for failing to inform the subjects of their list of how their data would be handled despite all data being publicly available.

In October the same company used the same argument to force Magyar Narancs, an independent weekly to censor an article about Hell Energy.

The cases are now part of drawn out and expensive court cases that should never have been started. Unlike most other EU countries, Hungary has not exempted journalists from the GDPR constraints on handling data.

This misapplication of GDPR against journalists threatens to seriously undermine access to independent information in the public interest on, for example, how businessmen benefit from state subsidies.

Other - please specify 3000 character(s) maximum

The Hungarian government has used the Covid-19 pandemic as cover for a further power grab through the emergency legislation rushing through the law on criminalizing disinformation providing for heavy fines and up to five year jail terms for misinformation deemed to 'undermine the authorities fight against Covid-19'. The law poses a further threat to independent media in the form of a chilling effect on critical coverage of the pandemic.

This law sets a highly dangerous precedent in the EU empowering a government to jail journalists for their critical journalism that the government declares as disinformation. It also severely restricts the public's ability to access independent and reliable news sources in the extreme public interest.

The government has further raised the rhetoric against independent journalists as unpatriotic foreign agents, even instructing embassies across the European Union to report on the activities of visiting Hungarian journalists.

A small number of critical, independent media continue to exist in Hungary, though they are under constant threat and in many cases suffer from a lack of financial resources further exacerbated by the Covid-19 pandemic. Their work is blunted by a dominant pro-government narrative, and their reach is mostly limited to the capital, leaving the majority of the country's population in the dark. Readers and viewers who do not actively look for alternative sources of news (mainly online) receive a virtually exclusively government narrative given the government's level of control over the print, radio and television markets.

The government feels sufficiently emboldened by the inability of the EU to address its rule of law breaches under Article 7 procedure nor to investigate the breach of EU competition law as relates to the public broadcaster or the misuse of state advertising to subsidize pro-government media. If history is any guide, any short term political fallout over the takeover of Index.hu or the exclusion of Klubrádió will be quickly forgotten by the EU. Press freedom defenders have warned for years that lack of action in Hungary will embolden like-minded states to follow the path forged by Hungary. Recent developments in Poland and Slovenia demonstrate clearly that this has now become reality.