

**Full text of the press statement delivered by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, after the conclusion of his visit to Hungary**

**Budapest, 5 April 2011**

I would first like to express my deep appreciation to the Government of Hungary for inviting me to undertake a technical mission from 3 to 5 April. This visit is part of an ongoing dialogue with the Government regarding the media legislation,<sup>1</sup> which has been adopted in the context of a broader “media law package” and ongoing Constitutional reforms.

Since my concerns were initially communicated to the Government earlier this year, the Parliament has adopted some amendments on 7 March 2011 to bring the media legislation into compliance with international human rights standards. While I welcome such efforts, I remain concerned that the media laws still fall short of the required international benchmarks to which Hungary has committed itself.

Today, I will highlight some of my remaining concerns, including: (1) regulation of media content; (2) insufficient guarantees to ensure the independence and impartiality of the Media Authority; (3) excessive fines and other administrative sanctions; (4) applicability of the media legislation to all types of media, including the press and the Internet; (5) registration requirements; and (6) lack of sufficient protection of journalistic sources. These do not differ from the views expressed by the independent experts on the right to freedom of expression of other bodies, including the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE).

I am very pleased that in an attempt to address these concerns, the Parliamentary Committee on Human Rights has pledged to hold meaningful and effective consultations with all stakeholders, including representatives of the media and civil society, which was regrettably lacking prior to the adoption of the laws by the Parliament. I also strongly encourage the Committee to invite my colleagues from the Council of Europe and the OSCE to these discussions.

Moreover, in light of the examination of the human rights situation in Hungary on 11 May 2011, through the Universal Periodic Review procedure of the United Nations Human Rights Council to be held in Geneva, I encourage the Government, prior to the review, to adopt a concrete plan of action to bring the media legislation into conformity with international human rights standards, in open and transparent consultation with other relevant stakeholders.

**The right to freedom of opinion and expression and exceptional restrictions**

Let me begin by recalling a fundamental principle regarding the right to freedom of opinion and expression. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which Hungary ratified in 1974, provides that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive

---

<sup>1</sup> Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules Governing Media Content (the Press and Media Act), and Act CLXXXV of 2010 on Media Services and Mass Communication (the Media Services Act).

and impart information and ideas of *all kinds*, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

Only under very limited circumstances can this right be subject to restrictions. Importantly, any such restriction must be established in law, which is accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful. Moreover, the limitation must be justified as being necessary to achieve one of the aims contained in Article 19(3) of the ICCPR, while constituting the least intrusive means to achieve the aim without jeopardizing the essence of the right to freedom of expression. Finally, any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences in a manner neither arbitrary nor discriminatory, and with adequate safeguards against abuse.

### **Content-related prescriptions in the media legislation**

As they currently stand, the Press and Media Act and the Media and Media Services Act do not comply with the requirements I have just enunciated. For example, the Press and Media Act stipulates that the entirety of the media system, i.e. media providers operating in, or targeted at Hungary, are obliged to provide “proper, authentic and accurate information” on affairs and events “bearing relevance to the citizens of the Republic of Hungary and the members of the Hungarian nation”.<sup>2</sup> Likewise, the Press and Media Act provides that linear media services shall provide “comprehensive, factual, up-to-date, objective and balanced coverage”.<sup>3</sup>

Such wording leaves room for subjective interpretations and, while established in law, is ambiguous and neither drawn narrowly nor with precision. In practice, this means that an individual media provider cannot foresee whether its outlet or services comply with the requirements of the proper, authentic and accurate character of the information presented.

Rather than stipulating the requirement of the media to provide “accurate” or “balanced” information by law, I recommend that such regulations be adopted by media organizations as voluntary codes of conduct, which would guarantee the right to freedom of expression while ensuring that there is a common standard of ethics and responsibility of the media.

### **The Media Authority**

In my view, in consonance with those of the Council of Europe and the OSCE, the uncertainty and ambiguity of the laws is further exacerbated by the fact that any decision as to what qualifies as proper, comprehensive, balanced coverage or reporting is defined exclusively and without any precise and foreseeable guidelines by the National Media and Info-Communications Authority (or the “Media Authority”), which is a regulatory body without sufficient guarantees in the legislation to ensure its independence and impartiality. While I understand that the Constitutional Court has

---

<sup>2</sup> Article 10 as amended, Press and Media Act.

<sup>3</sup> Article 13(2) of the Press and Media Act.

opined on such terms, they are not clearly set out in the laws, which therefore do not meet the criteria of foreseeability and predictability of laws.

The Media Authority is comprised of a President, the Media Council, the Media Commissioner and the Bureau. This body is entitled inter alia to deny registration of media; to interpret the law and decide what constitutes “public interest”, “public morals”, and “balanced coverage”; to perform supervisory tasks to ensure compliance with the law; and to impose penalties on media service providers that violate the law.

Given these broad powers, it is essential that there are sufficient safeguards to ensure that this regulatory body is independent from any political or other unwarranted influences, given that the current appointment procedure does not ensure plurality and representation of a broad range of views. I would thus encourage the Government to consider alternative methods of nominating, reviewing, and appointing members of the Media Authority in a way that fully ensures its independence. Moreover, I would like to emphasize the importance of the Media Authority’s substantive and procedural decisions to be subject to scrutiny and review by courts.

### **Excessive fines and other administrative sanctions**

The problem of an apparent lack of independence and impartiality is particularly acute when considering that the Media Council can apply legal consequences for breaches of the legislation,<sup>4</sup> including suspension of a media service provider for up to one week in cases of repeated and grave infringements,<sup>5</sup> as well as imposition of overly high fines of up to HUF 50,000,000 for a media service provider.<sup>6</sup> I take note that the issue of excessive fines were not part of the amendments adopted on 7 March. I would like to highlight that even relatively small fines can exert a chilling effect on the right to freedom of expression.

I therefore encourage the Government of Hungary to remove any excessive fines for infringements of the media laws, which in practice may impair the functioning of media service providers. Similarly, I call on the Government to reconsider the imposition of any administrative sanctions that may lead to an environment of self-censorship and thus compromise media diversity in Hungary.

### **Scope of the media legislation**

The two media Acts broadly regulate all types of media service providers, including private and public-service audiovisual media, print and Internet-based media, and on-demand media services,<sup>7</sup> thereby creating a single administrative media governance system. I find this problematic. I thus recommend limiting the scope of the media legislation to the audiovisual sector in relation to distribution of frequencies, and encourage self-regulation of the print media and the Internet.

---

<sup>4</sup> Articles 185-189 of the Media Services Law.

<sup>5</sup> Article 187(3), Media Services Law.

<sup>6</sup> Other fines also include HUF 25,000,000 for a newspaper with nationwide distribution; HUF 10,000,000 for a weekly periodical with nationwide distribution; HUF 5,000,000 for other newspapers or periodicals; HUF 25,000,000 for an online media product; HUF 5,000,000 for a broadcaster; and HUF 3,000,000 for an intermediary service provider.

<sup>7</sup> Article 1 of the Press and Media Act and Article 203 of the Media Services Law.

## **Registration requirements**

As a result of the amendments introduced on 7 March 2011, there is no longer a compulsory registration system for a media service provider to commence its services. However, I still note with concern that a media service provider remains required to obtain such registration within 60 days following the commencement of its activities. While registration may be justified for linear media service providers, this principle should not be extended to other types of media. Additionally, given that Hungary has previously considered registration purely as a notification procedure, I am unable to see why it has necessitated the conversion to a compulsory registration system, which could create additional barriers for new content providers to enter the media landscape.

## **Protection of journalists and their sources**

While the Press and Media Act guarantees journalists' right to protect their sources from disclosure, I am deeply concerned that in addition to courts, "other authorities" can request journalists to do so "in the interest of protecting national security and public order or uncovering or preventing criminal acts".<sup>8</sup> I would like to underscore that protection of national security should not be used as a reason to compel a journalist to reveal a confidential source,<sup>9</sup> and that any decision compelling such disclosure should be made by an independent and impartial judiciary on the basis of precise and foreseeable guidelines, subject to challenge, and only in very exceptional circumstances.

Moreover, in principle, the media law guarantees non-prosecution of journalists for violating the law in the process of obtaining information of "public interest", so long as the information could not have been obtained through legal means.<sup>10</sup> However, I am concerned that this provision contains a considerably broad exception if a journalist reveals "qualified data", which is not clearly defined.

## **Conclusions and Recommendations**

I am concerned that the amended media legislation, as it now stands, risks generating a climate of self-censorship due to various restrictions on the media, ranging from excessive fines based on imprecise concepts to suspension of their operations.

As the current Presidency of Council of the European Union, I hope that the Government of Hungary will serve as a model in the region by fully guaranteeing the right to freedom of expression, including those that offend, shock, or disturb, which is essential for any democratic society.

The commitment made by the Parliamentary Committee on Human Rights to hold a public consultation process, with a view to amending the legislation further to address the remaining concerns, is a welcome step. I would like to reaffirm my willingness to participate in such a process as Special Rapporteur, and to continue the dialogue with the Government to ensure that the media legislation is brought into full conformity

---

<sup>8</sup> Article 6 of the Press and Media Act.

<sup>9</sup> See inter alia Principle 18 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information.

<sup>10</sup> Article 8 of the Press and Media Law.

with international human rights norms and standards. I also recommend that experts from the Council of Europe, OSCE, and Europe's Fundamental Rights Agency be invited.

Finally, given that the media legislation has been adopted within the context of various reforms, including amendments to the Constitution, I also encourage the Government to consult the public widely on these broader issues.

Thank you for your attention.