

HUMAN RIGHTS WATCH

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February 22, 2013

Dear Secretary General Jagland,

We are writing to express our concern and disappointment at your January 29 press statement welcoming the progress made by the Hungarian government with respect to changes to its media laws and the judiciary.

In the assessment of Human Rights Watch, even in light of the proposed changes, the current media regulations and relevant legislation on the independence of the judiciary remain insufficient and fail to adequately address the Council of Europe's recommendations.

In your statement, you welcomed proposed changes by the Hungarian government to its media laws.¹ The first change would limit the mandate of the President of the Media Authority (the overall media regulator in Hungary) to a single nine year-term and move responsibility for future appointments to the post from the prime minister to the president of the republic. The change will not take effect until the term of the current President of the Media Authority expires in 2019.

Your statement indicates that civil society will have a consultative role in the appointment process of the next president. It also indicates that professional standards will be established as criteria for appointment as President of the Media Authority. It is unclear what kind of requirements are envisaged.

¹ Council of Europe Press Conference with Secretary General Thorbjørn Jagland, <https://www.youtube.com/watch?v=xpluNdsVPUY>, accessed February 18, 2013.

The post is important since the President of the Media Authority is also the chairperson of the Media Council, a subsidiary body with independent powers, which is responsible for licensing and regulating television and radio.

In a May 2012 expert opinion on Hungary's media laws, the Council of Europe recommended that the appointment procedure for the President of the Media Authority "should be changed in order to effectively guarantee the application of criteria of professionalism and to safeguard his independence."²

In our assessment, a change that does not take effect for another six years, contains a weak requirement to consult civil society, and fails to specify what professional standards are required cannot be regarded as a major step forward nor as satisfying the Council of Europe's recommendation in relation to the independence of the post holder.

You also welcomed proposed changes to content regulation for television and radio media. The proposed changes do remove potentially subjective criteria in relation to content regulation such as "comprehensive", "factual", "up-to-date", and "objective" for information providers, as recommended by the Council of Europe. But the requirement of "balanced" reporting remains, despite the recommendation of the Council of Europe to remove it.³ The "balanced reporting" requirement is subjective and creates a risk of regulatory interference with editorial content on political grounds.

Regarding protection of journalists' sources, you state that the proposed changes comply with the Council of Europe's recommendations since disclosure of sources can only be ordered by a court during criminal proceedings. But the changes do not include the 'vital interest' test and do not protect freelance journalists, both of which were recommended by the Council of Europe.⁴

In addition to the incomplete nature of the changes proposed, wider concerns with the Hungarian media laws remain unaddressed. The May 2012 expert opinion concluded that "[m]embers of the Media Council are not sufficiently protected from political influences as required by Council of Europe recommendations" and recommended that "the procedure for the election of the members of the Media Council and its chairperson should be

² Expertise by Council of Europe Experts on Hungarian Media Legislation: Act CIV 2010 on the Freedom of the Press and the Fundamental Rules on Media Content and Act CLXXXV of 2010 on Media Services and Mass Media, May 11, 2012, p. 36.

³ Ibid., p. 21.

⁴ Ibid., p. 23.

changed.”⁵ As noted above, the chairperson is President of the Media Authority and the limited changes to that appointment process will not take effect for another six years. Furthermore, the proposed changes do not address the appointment of other members of the Media Council at all.

In assessing the overall state of media freedom in Hungary, Human Rights Watch notes that the government responded to the Council of Europe recommendations in May 2012 by introducing new legal amendments that further curtailed media freedom. One such amendment states that only the Media Council is authorized to approve broadcasting agreements, excluding courts from playing an oversight role in such agreements. Another amendment states that the Media Council is not obliged to conclude contracts, which means that it can ignore the results of public tenders for broadcasting licenses and award them as it wishes.

These May amendments have directly affected Klubradio, one of the largest independent news radio stations in Hungary. The station, which is currently broadcasting on a temporary broadcast license, has repeatedly sought to renew its license since 2011. But the Media Council has refused to do so, despite a series of court decisions throughout 2012 in favor of Klubradio.

With regard to the independence of the judiciary, your statement welcomed the Hungarian government’s proposals limiting the powers of the President of the National Judicial Office (NJO) and increasing oversight over the President. According to the proposed changes, the NJO President can only serve a single 9-year term.

If Parliament fails to select a successor with the two-thirds majority required before the NJO President’s 9-year term expires, under existing rules the Vice-President will step in as interim president. The Vice-President is appointed by the NJO President.

The proposed changes will give parliament the power to ask for information from the NJO President about every aspect of his or her duties. In addition, the National Judicial Council (NJC), a supervisory body composed of judges, will publish an annual opinion on the role of the President of the NJO in judicial appointments.

The Council of Europe Venice Commission has made a series of recommendations about judicial independence in Hungary, including on the role of the NJO President. The proposed

⁵ Ibid., p. 36.

limitation of the term of the President, greater Parliamentary scrutiny of the President's role and annual report on judicial appointments are consistent with its recommendations.

Furthermore, the power of the President to make appointments of non-senior judges was reduced in July, with a greater role given to the National Judicial Council, which is now responsible for preparing lists of candidates and applicable principles which the NJO President has to apply when deviating from ranking in the appointment of candidates. However, the Venice Commission has criticized the fact that the NJO President in practice can block an appointment of a candidate recommended by the National Judicial Council, forcing the process to be restarted.⁶

The changes to the NJO President appointment process fails to address the Venice Commission's concern that the two-thirds majority requirement and automatic appointment of the Vice-President as interim President mean that a minority of Parliament could block a new appointment as President, leaving the Vice President as interim President for an extended period. For that reason, the Venice Commission has recommended that the NJC be given the power to appoint an interim president instead.⁷

In addition, the proposed changes fail to address a number of the Venice Commission's recommendations on the powers of the NJO President. The President remains responsible for appointing senior judges, and has the power to transfer cases from one court to another if the first court is overburdened.

The Venice Commission "strongly disagrees with the system of transferring cases because it is not in compliance with the principle of the lawful judge, which is an essential component of the rule of law."⁸ It recommended that if cases are to be transferred, the decision about which cases should be transferred should rest with the president of that court based on binding objective criteria established by the NJC.

The Venice Commission also recommended that transfer decisions be subject to a right of appeal to a court and to explicitly state in law what principles the President of the NJO is bound by during review proceedings.⁹

⁶ European Commission for Democracy Through Law (Venice Commission), Opinion on the Cardinal Acts on the Judiciary That Were Amended Following the Adoption of Opinion CDL-AD(2012)001, Opinion no. 683/2012, CDL-AD(2012)020, Strasbourg, 15 October, 2012, p. 10.

⁷ *Ibid.*, p. 11.

⁸ *Ibid.*, p. 14.

⁹ *Ibid.*, p. 13.

Despite some changes to the powers of the President of the NJO, therefore, it is clear that many of the concerns with the judiciary identified by the Venice Commission have yet to be addressed.

The proposed changes to the media regulations and the judiciary fall short of meeting the recommendations by the Council of Europe. They fail to address the broader problems with the Media Council and Media Authority and the wide-ranging powers of the NJO President.

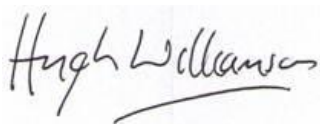
The limited nature of these changes, and the failure of the Hungarian authorities to address the wider recommendations and concerns expressed by Council of Europe expert bodies, indicate that Hungary continues to fall short of its obligations as a Council of Europe member state.

On January 30, the Ministry of Public Administration and Justice issued a press release referring to your assessment which said that “the Council of Europe’s decision is evidence that the basic values of the media are in line with European values.” This statement suggests that the government is reluctant to engage in further reforms necessary to ensure media freedom in Hungary.

We urge you to continue your engagement with the Hungarian government and press publicly for the necessary changes to the media regulations and laws pertaining to the judiciary until such time as the Hungarian government complies fully with the Council of Europe recommendations.

We thank you for your attention and hope we can count on your principled leadership on these important matters.

Sincerely,

A handwritten signature in black ink that reads "Hugh Williamson". The signature is written in a cursive style with a long horizontal flourish at the end.

Hugh Williamson
Director
Europe & Central Asia
Human Rights Watch