



MINISTRY OF PUBLIC ADMINISTRATION
AND JUSTICE

TIBOR NAVRACSICS
Minister

Mr. Thorbjorn Jagland
Secretary General

Council of Europe
Strasbourg

Budapest, 19 December 2012

Dear Secretary General,

I would like to thank you for your letter dated 29 November 2012. Regarding your legislative suggestions on the Hungarian media regulations, my opinion can be outlined as follows.

One of the main legislative suggestions was that the President of the National Media and Infocommunications Authority and the President of the Media Council should not be the same person. Separation of these two positions would mean the renouncement of one of the basic strategic elements of the media legislation of 2010 – rendered inevitable by the technical development –, which aimed at governing the two organizations along single principles and therefore charged the same person with directing the two organizations.

Secondly, you propose that the President of the National Media and Infocommunications Authority should not be appointed by the Prime Minister, but should be elected by the Parliament. Implementing this proposal would require an amendment to the Basic Law of Hungary, since by virtue of Article 23, paragraph (2) of the Basic Law, the chairpersons of autonomous regulatory bodies (like National Media and Infocommunications Authority) shall be appointed by the Prime Minister or by the President of the Republic on the recommendation of the Prime Minister. In this regard, I do not support an amendment to the Basic Law, because the election of the chairpersons of an administrative organ by the Parliament – even if this organ is independent from the Government – could not be reconciled with the core principle of the separation of powers. There are a few organs in Hungary that are in the executive branch of power, but functioning autonomously, independently from the Government (e. g. the National Bank of Hungary, Hungarian Financial Supervisory Authority). However, the chairpersons of these organs are not elected by the Parliament. The extraction of one organ from this group of organs would thus be in conflict with the Basic Law as well as the executive institutional system, therefore we do not see this proposal as a viable option.

The letter did not react to our former compromise proposal according to which, in order to highlight the independence of the National Media and Infocommunications Authority, the President of the Authority would be appointed by the President of the Republic upon the recommendation of the Prime Minister. This step would comply with the Basic Law. Furthermore, in my opinion the appointment by the politically neutral President of the Republic would be a stronger guarantee of independence, than election by the politically determined Parliament. In addition – by virtue of the Basic Law – the President of the Republic shall refuse to appoint the chairperson of the autonomous regulatory body if the legal conditions are absent or if he or she has a well-grounded reason to conclude that it would result in a serious malfunction of the State's democratic operation.

You urge to set out clear professional requirements for the President, to have a transparent selection procedure and to grant non-governmental organizations (NGOs) the right to make a proposal for the person of the President to be elected.

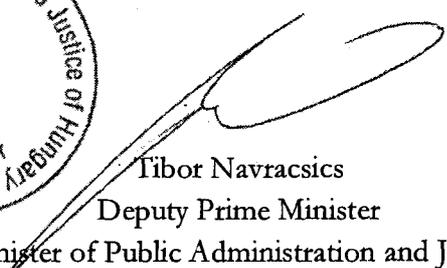
We are committed to strengthening the professional requirements for the President. Regarding the latter solution, we have already indicated earlier that according to the Hungarian constitutional rules, NGOs may only have a consultative right in the procedure, since they have no democratic legitimacy enabling them to propose a candidate with legal effect. Nevertheless, we are ready to amend the media legislation in a way that enables NGOs to communicate their candidate proposals to the Prime Minister who would be endowed with the right to make a proposal for the President of the Republic.

You accept, as a compromise solution the 9-years mandate of the President, excluding the possibility of re-election. We deem this proposal as an acceptable one as well.

I am convinced that these steps (the strengthening of the professional criteria, the inclusion of NGOs in the nomination procedure, appointment by the President of the Republic, and the 9-years mandate of the President excluding the possibility of the re-election) would highlight the independence of the President of the National Media and Infocommunications Authority. We are ready to propose these amendments to the Parliament.

Yours sincerely,




Tibor Navracsics
Deputy Prime Minister
Minister of Public Administration and Justice