



HUMAN RIGHTS WATCH

## Memorandum to the European Union on Media Freedom in Hungary

February 16, 2012

Human Rights Watch is concerned about reports of declining media freedom in Hungary. We expressed our concern in January 2011 about the media laws adopted by the government at the end of 2010 which established a new media regulation body that lacks independence and creates the risk of state interference with the media content.

In January 2012, Human Rights Watch conducted a research mission to Hungary to investigate the implementation of the media laws (the 2010 Mass Media Act and 2010 Press Freedom Act) as well as other recent legal changes impacting media freedom. We spoke with journalists from newspapers, public broadcasters, an internet-based investigative journalism site, and a news radio station, as well as civil society organizations in Budapest working on freedom of expression issues.

Based on these interviews and our analysis of international and European human rights law protecting freedom of expression and of EU law, Human Rights Watch has the following concerns about the implementation of the media laws in Hungary:

- Lack of independence of the Media Council which regulates media content and grants broadcast licenses, as evidenced by its decision to cancel the license of the leading independent radio station Klub Radio;
- Self-censorship by independent media outlets, arising from unclear regulations and inconsistent enforcement;
- Reports of declining public and private advertising revenue by independent media;
- Political interference in the editorial content of public television.

Human Rights Watch is also concerned about wider developments in Hungary, including the impact on human rights of changes introduced by the new constitution and related laws that interfere with judicial independence, undermine religious freedom, and enshrine discrimination against women, people with disabilities, and LGBT people.<sup>[1]</sup> <sup>[4]</sup> We are monitoring these developments closely, but the media laws are the first of the recent changes in which the clear regressive impact on respect for fundamental rights is being clearly played out.

### ***Lack of Independence of the Media Council***

The Media Council, a body established by the 2010 Mass Media Act under the National Media and Infocommunications Authority to “oversee and guarantee freedom of the press,”<sup>[2]</sup> <sup>[5]</sup> has wide-ranging powers to regulate the media in Hungary. The five members of the council were appointed in August 2011 by the ruling government for a nine-year term. The council lacks the necessary independence to perform the task of regulating the media in Hungary.

As the Council of Europe put it in February 2011, “The provisions regarding appointment, composition and tenure of existing media regulatory bodies demand amendment not least because they lack *the appearance of independence and impartiality*, quite apart from a *de facto* freedom from political pressure or control.”<sup>[3]</sup> <sup>[6]</sup>

Although the composition of the Media Council is not necessarily problematic in itself, the actions it has taken in the months following the July 1, 2011 implementation of the media laws shows that the fears about arbitrary and politically-influenced decision-making have proved well founded. The decision in December 2011 by the Media Council to strip Klub Radio of its license to broadcast in Budapest is a strong example of its lack of independence.

Klub Radio is the only national independent news radio station in Hungary. It has been critical of the current government since it came to office in April 2010. Klub Radio had already lost five of its ten broadcasting frequencies in Hungary in the previous two years and had been undergoing a relicensing procedure for the Budapest frequency since February 2010, broadcasting in the meantime on a temporary license.

Due to new rules for allocating broadcasting frequencies in the Mass Media Act, the Media Council has wide discretion to set the terms to grant radio frequencies to bidding companies.<sup>[4]</sup> <sup>[7]</sup>

The Mass Media Act regulates the tender procedure, allowing the Media Council to set the minimum tender fee as well as other criteria, such as the content of programming on which bids will be evaluated.<sup>[5]</sup> [8] The law provides no specific guidance to the Media Council on what appropriate, reasonable, or lawful criteria for a tender are, and thus it allows the Media Council wide discretion in determining the criteria that bidders must meet in order to obtain or maintain state-owned broadcasting frequencies.

When the broadcasting frequency on which Klub Radio broadcast in Budapest came up for renewal in 2011 after it had elapsed in 2010, the Media Council had wide discretion for setting the rules. According to Ferenc Vicsek, the editor in chief of Klub Radio, the tender issued by the Media Council for the Klub Radio frequency called for a station that would broadcast 60 percent music and provided that bids for this frequency would be evaluated based on that criterion, with extra points awarded for Hungarian music. The tender also stated that bids would be evaluated on the basis of programming that would touch on local life, as well as a general “programming” category without offering any further guidance on what kind of programming the Media Council would view favorably. The Media Council then awarded points for each proposal submitted by the bidders, in line with these criteria.

As Klub Radio is a news station, it could not realistically meet the 60 percent music requirement without fundamentally changing its identity. Instead it proposed to offer 40 percent music, even though that would substantially limit the news programming it could offer. This put it in unfavorable position compared to the other bidder, Auto Radio, a new company without any other radio stations in operation, which offered to meet the 60 percent requirement. In the end, Klub Radio lost the tender to Auto Radio by one point.<sup>[6]</sup> [9]

The requirements for the Klub Radio broadcasting frequency set up by the Media Council specifically disadvantaged news radio stations by requesting 60 percent music programming. Even though Klub Radio already held the broadcasting frequency in Budapest, and had done for a decade, the decision by the Media Council appears to have been designed to silence a critical voice.

According to Vicsek, the Media Council initially justified granting the tender to Auto Radio instead of Klub Radio based on the points it allocated in the tender, but subsequently changed its story, saying that Klub Radio lost the tender because it offered less money than Auto Radio for the frequency.<sup>[7]</sup> [10]

According to Vicsek, Klub Radio offered 55 million forints for the frequency, which was more than the minimum required by the tender but less than the 75 million offered by Auto Radio. It is unclear, however, what role money plays in the decision-making process for granting tenders, especially when both parties offer more than the minimum amount required by the tender, as the law contains no specific provisions on this.<sup>[8]</sup> [11]

Klub Radio was due to lose its frequency in Budapest in February 2012. But it appealed the decision with the Budapest Court of Appeals, as allowed by law. The court is expected to issue a ruling sometime in March, and the station has been allowed to continue broadcasting in the interim. According to the Mass Media Act of 2010, there is no opportunity to appeal the Media Council’s decision beyond this court, so the court’s decision will be final.

### ***Self-Censorship in Independent Media***

As the Council of Europe observed in an opinion on Hungary’s media laws in February 2011 about the requirement for “balanced coverage”:

“[W]hether or not [the requirement] is interpreted in a manner which restricts media freedom, the very fact that such a possibility exists is enough to have a profound chilling effect on media’s preparedness to challenge, dissent and assume unpopular positions, at least insofar as they could be perceived as having deviated from the types of information and coverage prescribed in the legislation.”<sup>[9]</sup> [12]

Concerns about lack of independence in the Media Council and the presence of broad and vague restrictions on media content in the Press Freedom Act and the Mass Media Act have created a chilling effect on media freedom. Independent news organizations told Human Right Watch that they have engaged in or considered self-censorship in order to avoid the attention of the Media Council.

A provision of the Mass Media Act prohibiting any political advertisements outside of election periods has affected media outlets in Hungary. The law fails to define clearly what constitutes political advertising. Since November 2011, *Nepszava*, a daily newspaper based in Budapest, has received requests to publish advertisements for political rallies protesting the government. It has been reluctant to publish any of these advertisements, however, due to fears that *Nepszava* would fall foul of the ban on political advertising.<sup>[10]</sup> [13] In January 2012, *Nepszava* finally decided to publish an advertisement announcing a protest, and as of the end of January it had not heard from the Media Council that the move breached the regulations.

The newspaper’s caution is linked to a letter it received on June 28, 2011, from Media and Communications Commissioner Jenő Bodonovich who investigates complaints that fall outside the scope of the Media Council’s

authority.[11] [14] The letter addressed a complaint received by the Minister of State for Communications, Zoltan Kovacs, about a comment from a reader that appeared on the organization's website.[12] [15] The letter did not specify which comment was the subject of the complaint, although it appeared to be related to a comment denigrating the former Hungarian president Ferenc Madl. The Commissioner ordered *Nepszava* to respond within 15 days with details about how it censors and vets comments on its website, a procedure mandated by the Mass Media Act.

Shortly after the commissioner issued this letter, the National Media and Infocommunications Authority,[13] [16] which appointed Bodonvich and has overall responsibility for media regulation in Hungary, announced that the media laws, including restrictions on defamation, do not apply to comments, forums, or blogs, as they are only applicable to newspapers and media services.[14] [17]

Despite this Bodonvich sent a second letter to *Nepszava* a month later, asking for the cooperation and opinions of the editor-in-chief in editing the tone and language of comments on its website, saying that it was "a problem that concerns the wider public." [15] [18] *Nepszava's* lawyer Zolt Nemeth told Human Rights Watch that it was unclear to him whether there was still an investigation by the Commissioner into the comment on *Nepszava's* website but he said that the incident had created fear at the newspaper and that the lack of clarity could lead to self-censorship. "We don't know how to adjust [our] operations to the law," the paper's lawyer Zolt Németh said. "If there is uncertainty it is natural to avoid the conflict."

The lawyer Zolt Németh also reported uncertainty in the newspaper about the process for challenging Media Council decisions. Although the Mass Media Act sets out an appeals process for challenging the provisions of government tenders, such as the appeal brought by Klub Radio, it is unclear what legal remedies are open to media outlets that wish to challenge other decisions taken by the Media Council.

#### ***Declining Advertising Revenue for Independent Media***

Additionally, *Nepszava* and Klub Radio reported to Human Rights Watch a dramatic decrease in advertising revenue from private sources and a halt in government advertising over the last two years. Senior staff at both outlets attributed the end of government-advertising to their critical reporting on the current government.[16] [19]

The media outlets attributed the decline in advertising from private sources to a political environment in which businesses are reluctant to appear supportive of media outlets critical of the government. Lack of advertising money is putting the long-term survival of both *Nepszava* and Klub Radio at risk. As Peter Nemeth the editor in chief of *Nepszava* put it, "This is one way to make opposition voices disappear." [17] [20]

#### ***Political Interference in Public Media***

Recent actions by the Media Council have undermined the editorial independence of the public television agency MTVA. Starting in July 2011, following the merger of Hungary's two public television organizations MTV and Duna TV in January 2011, MTVA began laying off hundreds of reporters, stating that it was doing so for efficiency reasons. Current and former MTVA journalists, however, believe that many of the dismissals were political.

A former senior MTV journalist who lost her job during the first round of layoffs, after a long career in public broadcasting told Human Rights Watch she had observed increasing political influence over the content of stories coming out of MTV in the months preceding the layoffs.[18] [21]

According to the journalist, the head of the news department, who was appointed by the Media Council, and his deputies actively engaged in dictating the content of MTV's news stories. She said that at morning editorial meetings, these individuals would dictate which stories journalists should and should not cover, what editorial positions (often politically-motivated) needed to appear in news reports, and who journalists could and could not interview for their stories. According to the journalist, those who did not follow the rules were the first laid off in July, including herself. The former editor's account of editorial interference and redundancies was corroborated by three other current and former MTVA employees interviewed by Human Rights Watch.

In December 2011, a journalist contracted to work for MTVA covered an event promoting the dual citizenship rights of Hungarians living in Slovakia. Before going out to cover the event, she told Human Rights Watch, her daily editors, without explanation, had told her she could not interview one of the organizers of the event, the former chief judge of the Hungarian Supreme Court, Zoltan Lomnici, and that Lomnici should not even appear on camera. This decision reportedly came from the head of the news department at MTVA.

The journalist protested the order as unethical, but she wanted to maintain her job (for several months she had been on a series of short-term contracts, putting her status at risk). In the end, she covered the press conference and attempted to keep Mr. Lomnici out of the footage she collected, but she was unable to do so.

On the 6:00pm news that night, the journalist's story appeared with the face of Mr. Lomnici blurred out. The journalist had not been informed that this would happen and was shocked by it, particularly as her name appeared in conjunction with the news story. After an investigation into this incident at the station, she received a reprimand for "not following orders of her superiors."<sup>[19]</sup> <sup>[22]</sup>

The incident triggered a protest by former MTVA journalists in early December 2011. The individuals who started the protests – including Balázs Nagy Navarro, the head of the journalists' union – were fired by MTV on December 27, 2011.

The Media Council fired the head of news following the Lomnici incident in December, but former and current employees of the public television station told Human Rights Watch that the incident was only the beginning of the problem. They claim that deputies appointed by the former head of news and who continue to work at MTVA enforce the same rules.

The informal restrictions on reporting critical voices appear to extend to civil society. Almost every non-governmental human rights organization Human Rights Watch spoke with in Budapest reported that, while previously the public media outlets had frequently sought out their comments on relevant stories, they have received almost no attention from the public media in the past two years, although private media outlets still contact them.<sup>[20]</sup> <sup>[23]</sup> This lack of public media attention to the opinions of human rights organizations in Hungary, despite the large number of changes to legislation that affect human rights, mirrors similar trends by the government, which has also declined meaningfully to consult on legislation with human rights organizations over the past two years.

While current and former MTVA journalists concede that public television has never entirely been free from government interference—no matter the ruling party, each government has tried to influence the direction and reporting of the public media—they believe that the intensity and degree of interference from the current government is unprecedented since the end of the Cold War.<sup>[21]</sup> <sup>[24]</sup>

### ***The Impact of the Constitutional Court Decision***

In December, the Constitutional Court of Hungary ruled some parts of the Mass Media and Press Freedom Acts unconstitutional and has given the government until May 2012 to amend the laws. This includes provisions requiring journalists to reveal their sources and some of the content restrictions, such as restrictions on reporting that might violate human dignity, contained in the Press Freedom Act.<sup>[22]</sup> <sup>[25]</sup>

The Constitutional Court's decision, however, does little to alleviate the concerns highlighted above. The most problematic provisions of the media laws, including those that threaten the independence of the media and lead to self-censorship, remain. According to a lawyer specializing in constitutional issues in Hungary, the fact that the Constitutional Court has now ruled on the constitutionality of the two laws likely precludes it from any future consideration of the laws unless circumstances have substantially changed since the time of the Court's decision.<sup>[23]</sup> <sup>[26]</sup> The judicial system in Hungary thus likely provides no further avenue for challenging the validity of this law under the constitution, and human rights groups in Hungary are now challenging the law at the European Court of Human Rights.

### ***Compatibility with EU Law***

On January 21, 2011, the European Commission requested that Hungary amend its media laws in order to ensure they conformed to EU Directive 2010/13/EU, the Audiovisual Media Services Directive, which regulates audiovisual material in EU member States.<sup>[24]</sup> <sup>[27]</sup>

When applying EU law, states must abide by the EU Charter of Fundamental Rights, including the right to free expression and free media.<sup>[25]</sup> <sup>[28]</sup> The Audiovisual Directive emphasizes this point, stating that "[a]udiovisual media services are as much cultural services as they are economic services. Their growing importance for societies, democracy – in particular by ensuring freedom of information, diversity of opinion and media pluralism – education and culture justifies the application of specific rules to these services."<sup>[26]</sup> <sup>[29]</sup>

On January 21, 2011, the European Commission requested clarification on adherence to EU Directive 2010/13/EU of provisions of the media laws that required balanced coverage, content that would not cause offense, and registration requirements for all media outlets. <sup>[27]</sup> <sup>[30]</sup>

In response, Hungary amended the media laws to make the "balanced" coverage requirement applicable only to broadcast media, requiring that on-demand media services register within 60 days of beginning operations rather than prior to commencement, and only prohibiting content that may incite hatred or discrimination rather than content that may "cause offense." The Commission accepted those changes as sufficient.<sup>[28]</sup> <sup>[31]</sup> The narrow focus of the Commission's intervention meant the changes fell short of what was required to bring the media laws in line with Hungary's obligations with respect to freedom of expression under EU and human rights law.

It is clear that the Commission remains concerned about media freedom in Hungary. Neelie Kroes, Vice President of the European Commission responsible for the Digital Agenda, asked the independent EU High-Level Group on Media Freedom and Pluralism which she established in October 2011 to look at the situation in Hungary.

On January 25, the head of the group said that the concern that stood out was “the extraordinary concentration of competencies and responsibilities in the Media Council, which seemed to be entrusted with functions that in other countries would be separate and thus allowing for more plurality and more evenhanded treatment of various medias.”<sup>[29]</sup> <sup>[32]</sup>

On February 9, Commissioner Kroes addressed the European Parliament on the issue and expressed “grave concerns” about the implementation of the media laws.<sup>[30]</sup> <sup>[33]</sup> But the solution she proposed was to refer matters to the Council of Europe for their advice and call on Hungary to follow that advice. The Commissioner also held out the possibility that if Hungary failed to do so, and situation warranted it, the Commission would consider action under article 7 of the EU treaty, which permits the Council of the European Union to suspend voting rights of a member state where there is a clear risk of a breach of the common values of the Union, or where a member state is in serious breach of those values.<sup>[31]</sup> <sup>[34]</sup>

### **Recommendations**

- Building on its welcome resolution regarding LIBE monitoring of developments in Hungary the European Parliament resolution should call for Council action against Hungary under article 7 of the EU treaty in light of deteriorating media freedom in the country on the grounds that it constitutes a clear risk of a breach of the common values of the Union.
- The European Commission should reinstate infringement proceedings against Hungary with respect to the operation of the Media Council, and support article 7 proceedings against Hungary in light of deteriorating media freedom in the country.
- The Council of the European Union should place Hungary on the agenda of the next meeting of the EU Working Party on Fundamental Rights (FREMP) with specific reference to deteriorating media freedom in the country on the grounds that it constitutes a clear risk of a breach of the common values of the Union, and recommend appropriate action by the Council under article 7.

---

[1] <sup>[35]</sup> Human Rights Watch, “Hungary: Reverse Interference with Courts, Media,” January 6, 2012, <http://www.hrw.org/news/2012/01/06/hungary-reverse-interference-courts-media>; Human Rights Watch, “Hungary: Reforms Needed to New Constitution,” June 23, 2011, <http://www.hrw.org/news/2011/06/23/hungary-reforms-needed-new-constitution>

[2] <sup>[36]</sup> Act CLXXXV of 2010 on media services and mass media (“Mass Media Act”), Article 132 (official translation).

[3] <sup>[37]</sup> Council of Europe, “Opinion of the Commissioner for Human Rights on Hungary’s media legislation in light of Council of Europe standards on freedom of the media,” para. 39, February 25, 2011 (emphasis in original), <https://wcd.coe.int/ViewDoc.jsp?id=1751289>,

[4] <sup>[38]</sup> Mass Media Act, Articles 52-62.

[5] <sup>[39]</sup> Mass Media Act, Articles 52 and 60.

[6] <sup>[40]</sup> Human Rights Watch interview with Ferenc Vicsek, editor-in-chief of Klub Radio, January 24, 2012.

[7] <sup>[41]</sup> Human Rights Watch interview with Ferenc Vicsek, editor-in-chief of Klub Radio, January 24, 2012.

[8] <sup>[42]</sup> Human Rights Watch interview with Ferenc Vicsek, editor-in-chief of Klub Radio, January 24, 2012.

[9] <sup>[43]</sup> Council of Europe Opinion, para. 14, February 25, 2011, <https://wcd.coe.int/ViewDoc.jsp?id=1751289> <sup>[44]</sup>.

[10] <sup>[45]</sup> Human Rights Watch interview with Zsolt Nemeth, lawyer for *Nepszava*, January 25, 2012.

[11] <sup>[46]</sup> Mass Media Act, Articles 139-142.

[12] [47] Letter from Commissioner Jenő Bodonovich to *Nepszava*, June 28, 2011 (translated from Hungarian).

[13] [48] The National Media and Infocommunications Authority is a regulatory agency in Hungary. The Media Council is a sub-body of the Authority with direct responsibility for media regulation.

[14] [49] Statement by Karola Kiricsi, spokesperson for the Media Authority, 1 July 2011, [http://www.zalaihirlap.hu/mediatorveny/20110701\\_mediatanacs\\_minimumszabalyok?s=rel](http://www.zalaihirlap.hu/mediatorveny/20110701_mediatanacs_minimumszabalyok?s=rel)

[15] [50] "Apparent retreat in the comments case," *Nepszava*, July 27, 2011, <http://www.nepszava.hu/articles/article.php?id=454534>

[16] [51] Human Rights Watch interview with Peter Nemeth, editor-in-chief of *Nepszava*, January 25, 2012; Human Rights Watch interview with Ferenc Vicsek, editor-in-chief of Klub Radio, January 24, 2012.

[17] [52] Human Rights Watch interview with Zsolt Nemeth, lawyer for *Nepszava*, 25 January 2012.

[18] [53] Human Rights Watch interview with former MTV journalist, January 27, 2012.

[19] [54] Human Rights Watch interview with current MTVA journalist, January 26, 2012.

[20] [55] Human Rights Watch interview with Hungarian Helsinki Committee, Hungarian Civil Liberties Union, and other rights organizations operating in Hungary, January 23-27, 2012.

[21] [56] Human Rights Watch interviews with Balázs Nagy Navarro, January 23, 2012; former MTVA journalist, January 27, 2012; and current MTVA journalist; January 26, 2012.

[22] [57] Although there is not yet an official English translation of the Constitutional Court's decision, an English summary of the decision can be found at [http://tasz.hu/files/tasz/imce/2011/hclu\\_const\\_court\\_media\\_law\\_dec\\_brief.pdf](http://tasz.hu/files/tasz/imce/2011/hclu_const_court_media_law_dec_brief.pdf).

[23] [58] Human Rights Watch interview with Szabolcs Hegyi, lawyer at Hungarian Civil Liberties Union, January 25, 2012.

[24] [59] Directive 2010/13/EU; see also letter from Neelie Kroes, January 21, 2011, [http://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/EC\\_lettertoHungary\\_2011Jan21.pdf](http://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/EC_lettertoHungary_2011Jan21.pdf) [60].

[25] [61] The Charter of Fundamental Rights of the European Union, Articles 11(1) and (2).

[26] [62] Directive 2010/13/EU, Preamble, para. 5

[27] [63] Letter from Neelie Kroes, January 21, 2011, [http://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/EC\\_lettertoHungary\\_2011Jan21.pdf](http://cmcs.ceu.hu/sites/default/files/domain-69/cmcs-archive/EC_lettertoHungary_2011Jan21.pdf) [60].

[28] [64] "Media: Commission Vice-President Kroes welcomes amendments to Hungarian Media Law," February 16, 2011, <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/89>.

[29] [65] Audio clip of oral statement by Vaira Vīķe-Freiberga, chair of the EU High-Level Group on Media Freedom and Pluralism, 25 January 2012, <http://blogs.ec.europa.eu/neelie-kroes/files/VVFquote1Memo.m4a>

[30] [66] Statement by Neelie Kroes to the European Parliament, February 9, 2012, <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/80&format=HTML&aged=0&language=EN&guiLanguage=en>

[31] [67] EUROPA, Summaries of EU Legislation, Respect for and promotion of the values of the Union, updated June 5, 2007, [http://europa.eu/legislation\\_summaries/human\\_rights/fundamental\\_rights\\_within\\_european\\_union/133500\\_en.htm](http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/133500_en.htm) [68]

---

**Source URL:** <http://www.hrw.org/news/2012/02/16/memorandum-european-union-media-freedom-hungary>