On the Renewal of Media Regulation

Tasks Ahead for Media Legislation and Institutional Culture

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The opposition's two-thirds electoral victory has opened the way for a comprehensive renewal of Hungarian media regulation. This renewal is also being urged by the infringement procedure the European Commission launched against Hungary. Although the legislator must obviously respond to the legacy of the past sixteen years, lasting success can only be achieved if we are also able to learn from the thirty years of experience with Hungarian media governance.

The Problems Lie in the Law

The 2026 election campaign brought a range of major problem areas in this field into sharp relief. These include the public media, which had become a primary vehicle for disinformation; a nationwide media network disseminating literally identical content; inadequate protection and support of journalists in high-stakes situations (for example, against spyware or the withholding of public-interest information); and political campaigns financed with public funds, amongst others. Many of these problems can directly be traced back to regulatory causes (ie they are not simply the result of deficient institutional culture or abusive political practices). This makes the need for new Hungarian media regulation evident.

The 2010 reforms either eliminated the guarantee of pluralism from the institutional framework (as in the case of the media authority) or hollowed it out of any real meaning (as in the case of the public service media). Moreover, the legislation of that period established media governance bodies which lacked safeguards for diversity, while operating within an extremely centralised structure. The media authority was granted, under a so-called convergent model – that is, through the centralisation of state supervision of the media and telecommunications sectors – all existing powers relating to traditional media. At the same time, public service media channels produced their programme under a single company (Duna Zrt.) and a single centralised content producer (MTVA). Significant state spending distorted the media market in the absence of adequate regulation, paying little heed to transparency and pluralism. Regulatory deficiencies also made the work of journalists more difficult. For example, the inadequacy of ministerial oversight over secret surveillance has been condemned in *Szabó and Vissy v. Hungary* in 2016, and in the field of freedom of information requests, an increasingly restrictive legal environment and Constitutional Court jurisprudence reinforced the authorities' tendency toward non-disclosure.

The Role of Institutional Culture

From a constitutional perspective, there can be no doubt that these regulatory deficiencies must now be remedied. In doing so, however, it is necessary to come to terms not only with the legacy of the past decade, but also with thirty years of negative experience. Although the 1996 Media Act made a genuine and fair effort to institutionalize balanced political representation and civil participation, in practice political parity led to unacceptable and corrupt bargains (symbolically, the closing act of the earlier system was the resignation of László Majtényi, chairman of the media council, following the partisan allocation of national radio frequencies), and what had begun as a sincere attempt to involve civil society ultimately degenerated into an undisguised puppet show orchestrated by political parties. The usual rule on importing foreign theoretical models also applies here though: we should be aware that in a different cultural environment they might work differ-

ently. Or not at all. Unfortunately, given the deeply rooted public and social reflexes surrounding media governance, there is a grave danger of relapsing into what has been dubbed "institutional alcoholism".

However, certain significant developments provide some grounds for hope. First, the painful experience collectively endured by a large part of the society may have a sobering effect and lead to a renewed commitment to a stable institutional culture. Public trust in the news services of Hungarian public media has fallen to an unprecedented low in recent years. The deep mistrust of the media among four-fifths of the population is alarming in international comparison and may itself become the foundation for a genuine public demand for a well-functioning public service media system.

Second, owing to the legislative developments of recent years, the European Union's current legal framework establishes firmer guardrails than previously. The European Media Freedom Act requires institutional guarantees ensuring pluralism and functional independence – beyond merely formal criteria – both for public service media and for media authorities, while also seeking to curb governmental abuses in the allocation of state funds, and to strengthen the protection of journalists. The infringement procedure launched against Hungary covers all of these legislative developments.

Third, the media environment has been radically transformed by the internet and social media, rendering the current media regulation anachronistic. Arguably, adapting the regulatory framework to these changed circumstances calls for a liberating form of deregulation in the field of media oversight. The two-thirds parliamentary majority of the new government enables it to make constitutionally significant changes affecting media regulation not only in a formal but also in a substantive sense, since its political intention to pursue such reforms was articulated expressis verbis during the election campaign.

Preliminary regulatory questions may include whether, in a digitised public sphere dominated by social media, media regulation still warrants special legislative attention at all, and whether there will continue to be a need for public service media in the future. These dilemmas – along with many other important details – require intensive public discussion. My hope is that the final answer to both questions will ultimately be affirmative: the recent experience of the Hungarian public sphere demonstrates precisely the kinds of distortions that can arise from anomalies in the legal environment governing the traditional media system and journalism. It also reaffirms the role that a public service media provider, committed to constitutional principles and regarded as credible by a significant portion of society, can play in public discourse. Media regulation therefore remains a matter of outstanding constitutional importance, requiring the adoption of approaches suited to the twenty-first century. What guiding principles might shape such approaches in Hungarian regulation?

Narrowly Tailored Media Oversight With Institutional Guarantees of Pluralism

Media regulation should be narrowly tailored, and the competences of the media authority should be even more narrowly defined and decentralised. Although I myself was once an enthusiastic supporter of broader media law regulation, in today's media environment – where the social influence of traditional media has become increasingly relativised – the maintenance of special content regulation and extensive regulatory powers is no longer justified in many respects. Media oversight should therefore be limited to a carefully circumscribed set of functions that can be justified either by the constitutional requirement of pluralism or by obligations under EU law, while structurally excluding the possibility of regulatory overreach from the outset. Such functions could include frequency-allocation procedures, control of media market concentrations, a normative funding system for quality journalism, regulations protecting minors, and the enforcement of narrowly defined impartiality requirements. Beyond these specific details, the decentralisation of media oversight should begin with two decisive reforms. First, the telecommunications sector – which properly belongs within the sphere of ordinary governmental competence – should be separated from media

supervision. Second, the media authority's institutional powers over public service media (appointment and dismissal competences) should be abolished.

Institutional guarantees of pluralism must once again be integral to the operation of the media authority. If the authority continues to function in a collegial form – which I consider reasonable in order to ensure broad-based access to information concerning the functioning of the media system – then pluralism must be reflected in the composition of the body itself. At the same time, consideration should be given to extending this pluralism beyond the parliamentary parties alone (as was the case under the 1996 Media Act) to ensure proper representation of the journalistic profession.

The limitation of the media authority's powers should be accompanied by an increased role for "softer" oversight mechanisms tasked with monitoring and credibly assessing developments within the public sphere. An independent and respected body, detached from all relevant actors (for example, a media ombudsman), could perform an invaluable function in identifying troubling, undemocratic tendencies within the media system and public discourse.

Pluralistic and Decentralised Public Service Media

The institutional reorganisation of the public service media should likewise be guided by the principles of decentralisation and guarantees of diversity. In this area, the need for social representation extending beyond political parties is beyond question: alongside political actors, civil society organisations and representatives of the journalistic profession must also be given meaningful roles in the governing structure. Experiences prior to 2010 demonstrated that designing such a system in a creative and workable manner is a considerable challenge.

Decentralisation is another key issue for public service media. As with the media authority, the lessons of the past thirty years do not suggest that it is safe to establish strongly centralised decision-making structures, even with appropriate organisational safeguards. Decentralisation may take many forms – ranging from multiple media service providers enjoying substantial autonomy to genuinely independent regional editorial offices – and the most suitable model should be identified through professional consultation. At the same time, a solid starting point would be the restoration of a separate and independent national news agency, upon which the entire media market could rely as a credible source of information.

Protecting and Supporting Journalism

The regulatory environment supporting journalistic work should be strengthened. Subjecting covert surveillance measures to judicial oversight, and introducing additional safeguards into the system governing access to information of public interest, would protect not only journalists but the fundamental rights of all affected individuals. At the same time, recognition of the special role and status of journalists may justify additional guarantees even alongside strengthened general protections. Drawing inspiration from the recommendations of the Council of Europe, a comprehensive framework for the support and protection of quality journalism should also be established.

Two-Step Approach

All this will require complex legislative work that cannot be accomplished through a single act of immediate intervention; accordingly, progress in this field must proceed in two stages. In order to secure sufficient support for institutional arrangements capable of functioning effectively in the long term, certain issues – such as the twenty-first-century portfolio of public service media, or the framework for supporting journalism – require broad professional and public consultation, while others – such as the final competences of the media authority, or the establishment of a media ombudsman – necessitate carefully developed legislative work.

At the same time, with regard to immediate intervention, media legislation has an even clearer legal basis than many other fields: in addition to constitutional requirements, urgent action is also compelled by the European Union's ongoing infringement procedure. Since the concerns identified by the European Commission coincide with the tasks that must be

carried out under Hungarian constitutional law, they should be carefully taken into account when adopting the first measures. From the list of tasks outlined above, this certainly includes the establishment of institutional structures guaranteeing pluralism in the operation of both public service media and the media authority. The authority's appointment and dismissal competences over public service media must be abolished, and the decentralisation of the convergent regulatory model through the separation of telecommunications might feasibly be included among the first legislative steps. The newly pluralistic media authority should be enabled to conduct substantive examinations of emerging media concentration cases. The restoration of a separate and independent national news agency is likewise a task that cannot be postponed. The first round of legislation should also establish the fundamental rules governing state media expenditure and put in place the most urgent safeguards for the protection of journalists (and indeed all citizens). Crucially, covert surveillance measures must be subjected to judicial oversight, and the effective enforcement of freedom of information must be guaranteed against abusive administrative practices.

While these initial measures should clearly be adopted as soon as possible, all the other tasks outlined above should likewise be pursued without delay in order to ensure that the Hungarian media system and journalism can begin operating within a renewed regulatory framework in the near future. Once the legislator has completed this monumental task, the harder part will begin: ensuring that the system of media governance operates in accordance with an institutional culture committed to pluralism, dialogue, constitutional values, and sound public policy.

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