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The Media Act has a detrimental effect on the Hungarian EU presidency

Lucie Szymanowska

Hungary took over the presidency in the Council of the European Union on 1 January 2011. Budapest's major goals for the duration of the presidency include ending the work on the reform of the eurozone, the inauguration of the EU Strategy for the Danube Region, reviving the Eastern Partnership, support for the process of Croatia's accession to the EU, and extending the Schengen Area to Romania and Bulgaria. However, the image of this presidency has been seriously tarnished at its very onset when a wave of international criticism attacked Hungary in connection with the new media act adopted by the Hungarian parliament dominated by representatives of the political right. The new regulations have raised concerns in the media, international institutions and government representatives from some EU member states. Especially sharp criticism was expressed by left-wing and liberal circles, including via the activity of political factions in the European Parliament. Despite the strong criticism, Viktor Orban's cabinet is likely to continue supporting the newly adopted law and any potential amendments will be rather minor.

The new media law and the way it was adopted

The Hungarian parliament adopted the act regarding media services and the mass media on 21 December 2010. The new media law was passed partly as a consequence of the need to implement (with a delay) the EU's 2007 Audiovisual Media Services Directive. The act imposes restrictions on the broadcasting of commercials and a total ban on advertisements addressed to children, includes provisions regarding subliminal advertising, and in particular strengthens the competitiveness of producers from the EU, especially at the expense of US firms. The law sets minimum parity levels for broadcasting programmes produced in Hungary and the EU. In the case of television, these are 30% and 50% of the airtime, respectively (and even 60% in the case of public TV). The law also includes regulations aimed at preventing the emergence of news broadcasting monopolies. As a consequence the new rules may become a serious challenge for the largest commercial media corporations and at the same time provide greater opportunities for local producers and artists as well as smaller market players.

The new law also includes a number of controversial solutions. The media market is to be supervised by the newly established National Media and Communications Authority, which includes a five-member Media Council elected for a nine-year term. Their tasks include monitoring the media and imposing fines in case of any violations of the law. Although

neither the chairman of the Council nor directors of this Authority can represent political parties, the fact that they have been chosen by a parliament totally dominated by the political right has caused concern. The Media Council is also authorised to "inspect, examine and make duplicates and extracts on any and all data media containing data, document and deeds — even if containing secrets protected by law — related to the media service provision, publication of a media product or broadcasting". In practice this may mean that journalists will be obliged to reveal their information sources, so far protected in Hungary.

The establishment of the new institutions raised concerns among the opposition and a substantial part of journalist circles that the political right were aiming to set up an unofficial 'loyal team' in the media and force journalists to use self-censorship. This threat may be posed by the unclear regulations imposing for example a ban on using 'hate language' with regard to individuals, nations, communities, national, ethnic, community and other minorities, or any majority, as well as any of the churches or religious communities. In this case, the critics have pointed out that the law for example may impose a ban on criticising the parliamentary majority, although the provision in the same form as included in the media act as of 1996 did not raise any reservations.

Given the context of unclear provisions and concerns that this could be used by the government against its political opponents, the values of the fines which may be imposed on publishers for persistent violations of the legal regulations provoked special protests. In the case of the largest media corporations, they may reach even 200 million forints (around 730,000 EUR), and in the case of individual newspapers – up to 25 million forints (around 91,000 EUR). Thus, high fines could lead to the bankruptcy of some media. However, the enforcement of a penalty must be preceded by mediations and a legally binding court order.

The wave of criticism

The law has been strongly criticised by the left-wing and liberal opposition. The very way in which the act was adopted and implemented, i.e. the appointment of the Media Council members without holding a debate with other political parties or public consultations, and leaving practically no time for *vacatio legis,* raised objections. On January 6 MPs representing the opposition Hungarian Socialist Party took the law to the Constitutional Court. The other opposition parties also promised to contest the law at the Constitutional Court. The law was also criticised by representatives of many European governments (including Luxembourg, the Czech Republic, France and Germany). The OSCE agencies and the European Commission also voiced their concern. Vice President of the European Commission, Neelie Kroes, announced in the first days of January that a verification procedure would be launched to make sure whether Hungary's new media law met to a sufficient extent the requirements regarding the implementation of the EU's Audiovisual Media Services Directive of 2007. She also did not rule out analysing compliance of the media law package with the Charter of Fundamental Rights by the European Commission.

The future scenarios

It is rather unrealistic to expect that Orban's government will cave in to pressure from its critics and agree to amend the most controversial regulations. Although Prime Minister Orban admitted that some changes could be made in the law should the EC find any discordance with the EU's audiovisual directive and at the same time suggested that it was necessary to scrutinise the media laws in other (especially large) EU member states in a similar way. The government insists that regulations of the law are equivalent to the solutions adopted in other EU member states.

The government has invested significant political capital in their defence of the law. For this reason it is more likely (even if some amendments are made in consultation with the EC) to defend the basic guidelines of the law and at the same time take care that the practical application of some regulations does not support the objections and does not prove the legislator's bad faith. Therefore, it should be expected that the Media Council will be acting, at least within the next few months, in a balanced way and will impose fines on the media only in exceptional cases and at symbolic amounts, if at all.

In the longer term, if the government's economic strategy fails to bring positive results, the regulations of this law may tempt the government, which may result in a potential restriction of the freedom of speech. However, Fidesz, which enjoys a dominant position in Hungarian politics, is a party which owed its electoral success in June 2010 partly to its ability to respond to the expectations of a diversified electorate. Maintaining this broad public support will depend on the image of the government's activity presented in the media. At the same time, if senior state officials suppress pluralism in the media, this may adversely affect the condition of Fidesz as a grouping of many various movements. Discussions on the right side of the political scene preceding the adoption of the media package have already revealed this variety.

Conclusions

The style in which the new regulations were adopted proves that Orban's government grants top priority to challenges related to domestic politics, even now, at the time of Hungary's presidency in the EU Council. The government must have been aware of the reactions it would provoke from its political opponents and bodies of opinion in the EU. It rather did not expect that careful wording would be used in allegations against a country holding the EU presidency (at least given the Czech presidency's experiences) or that it would be possible to cover controversies the law would entail with regulations promoting European media production.

The concentrated attack of criticism from the EU has adversely affected the image and the political strength of the Hungarian presidency. However, this is unlikely to cause a decrease in support for Orban's cabinet in Hungary. The need to respond to the EU's objections will not reduce Hungarian voter support. Nevertheless, according to a public opinion poll carried out in January this year, the percentage of Hungarians satisfied with their country's accession to the EU was for the first time higher than the number of its critics (46% vs. 42% respectively), this is still the lowest rate of support in Central Europe.

Lucie Szymanowska, Mateusz Gniazdowski