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**SPECIAL PROCEDURES OF THE  
HUMAN RIGHTS COUNCIL**

**Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of  
opinion and expression.**

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 16/4.

I submit this communication further to the communication sent jointly with the Special Rapporteur on freedom of religion or belief to your Excellency's Government on 31 March 2011, which contained commentary on some of the principal issues to be addressed following the amendments to the media legislation made by the Parliament of Hungary. I would like to thank again your Excellency's Government for the responses provided on 2 February and 8 March 2011, to our joint Communication of 18 January 2011, in which we expressed our concern about those new Media Acts most relevant from the perspective of our respective mandates. We did regrettably not receive a response to our communication of 31 March 2011.

In the spirit of the on-going dialogue and cooperation with your Excellency's Government, I would like to bring to your Excellency's Government's attention some of the outstanding issues regarding media legislation in the Republic of Hungary. This communication is submitted in light of the decision adopted by the Constitutional Court of the Republic Hungary on 19 December 2011 (1746/B/2010.AB) concerning two Media Acts: the Law on the Freedom of the Press and the Fundamental Rules on Media Content (Act CIV of 2010) (the "Press and Media Act"), and the Media Services and Mass Media Act (Act CLXXXV of 2010) (the "Media Law").

I have taken note that in its decision the Constitutional Court ("the Court") addressed several concerns regarding the Media Acts, such as unnecessary and disproportionate restrictions on printed and Internet-based press products; lack of sufficient safeguards to protect the identity of journalists' sources; intrusive and broad access by authorities to private data and data protected by law; and unnecessary State intervention into the activities of media service providers and press product publishers, as well as potential restrictions to editorial freedom.

Regarding the decision of the Court, I understand that:

The Court has declared that regulatory intervention of printed and Internet-based press products, based on the grounds provided for in the Press and Media Act, to be unnecessary and disproportionate restrictions on freedom of the press. It found that generally-defined grounds applied to the content rules such as protection of human dignity, the rights of persons to grant or refuse giving approval to publish their statement for public disclosure, and the right to privacy, provide an unduly broad opportunity to the Authority to intervene. The Court contends that the principles applied to regulate audio-visual media cannot be applied to printed and Internet-based press products. Audio-visual media has a strong influence on audience and public opinion, as pre-made programs can be delivered simultaneously to a large majority of the public, who would be passive receivers of the content in this case. In case of printed and Internet-based press products, the audience is not a passive receiver and has an opportunity to make a choice and avoid undesirable contents. Therefore, in case of these press products, the Court considers possible action by the Authority to be disproportionate. It states that the cases of persistent violations of human rights can be dealt with through the existing remedies, and that the sanctioning power of Authority for such cases is sufficient. While welcoming the the decision and the substantiating arguments provided by the Court, I would like to add that civil and penal codes may provide sufficient legal framework for regulating printed and Internet-based press products. It is also recommended to promote self-regulation and other forms of regulatory schemes developed through a consultative process with relevant stakeholders with regard to these forms of press products.

I understand that the Court's ruling thus excludes printed and Internet-based press products from the scope of application of the Press and Media Act, and calls for a new content regulations to be drafted by the legislators in this regard. I hope that appropriate amendments will be made to implement the Court's decision. Moreover, I would like to reiterate my recommendation made to your Excellency's Government, inter alia in the commentary of 31 March 2011, submitted jointly with the Special Rapporteur on freedom of religion or belief, to abolish unnecessary restrictions on printed and Internet-based content in the Press and Media Act. I would also encourage elaborating subsequent amendments in a public consultative process and ensuring that possible limitations on printed and Internet-based press products conform to the criteria established under international human rights law.

The Court has annulled all the provisions of the Media Law related to Media and Communications Commissioner (the Commissioner), which operates as a part of the Media Authority to promote interests of users of media service, press products and electronic news services. The Court found that given other existing administrative remedies for the promotion of the rights and interests of consumers and users, there were no sufficient grounds for creating a new institution in this form. It raised concern that the Commissioner would be entitled to take unnecessary interventions against media service providers and press product publishers on the basis of vaguely-defined grounds such as

'equitable interests' of the users and consumers. The Court called for new rules to be enacted on this matter. In this connection, I welcome the decisions and comments of the Court, and would like to urge the Government of Hungary to ensure that any new regulations and rules on this matter respect the principles of necessity and proportionality, pursuance of a legitimate purpose and prescription by unambiguous law.

The Court also addressed the issue of protection of identity of journalists' sources by modifying Article 6(2) of the Press and Media Act. I presume that if left unchanged, this Article may have placed an unnecessary restriction on freedom of the press. The original text indicated that media content providers would be able to enjoy the right to keep the identity of their journalists' sources confidential only in cases where information was disclosed for 'public interest' - a broad term which may have given wide discretion to authorities to determine what kinds of information would qualify as those in the interest of the public.

With regard to the legislation as a whole, the Court stressed the need for further procedural guarantees to protect sources of information in legal proceedings. It underlined that the protection of the identity of journalists' sources becomes real only if journalists are able to refuse to furnish data, or at least to disclose the identity of their sources, during procedures initiated by any authority. At the same time, it recommends that the code of procedure should clearly specify those exceptions under which they still would be obliged to cooperate with the authorities notwithstanding judicial review. I welcome the recommendation of the Court to strengthen the protection offered to journalists with regard to their sources of information, and would like to stress again the fundamental importance of the protection of media sources for freedom of the press.

The Court decided to invalidate potentially intrusive access to data by the Media Authority (under Article 175 of the Media Law), including data protected by law. Under this Article, the Media Authority may request 'any and all data that are indispensable for the Authority to perform the duties falling within its regulatory powers ... also in cases when such data are deemed as data protected by law', and 'no legal remedy shall lie against this request ...' I understand that one of the Court's arguments on this matter was that the obligation to furnish data imposed under this Article constituted unnecessary constraint on freedom of the press, as the purpose stated therein for requesting such data was imprecise, and the required data may be obtained through other proceedings.

The Court addressed concerns raised in relation to Article 155 which imposes excessively broad obligations on the clients to furnish data including private data as well as those protected by law such as business secrets. The Court stated that the issue of the obligations of media content providers to furnish data was not regulated in a satisfactory manner because the issues of protection of the sources of information and the duty of confidentiality of lawyers have not been fully addressed. It called for appropriate legislative actions in this regard.

I welcome the forementioned rulings of the Court which were aimed to ensure that the media legislations are in conformity with international human rights norms and standards, and appreciate the intent of the Government of the Republic of Hungary to adopt the necessary amendments. I will continue to monitor the process of amending the media legislation with a great interest, and would appreciate receiving information about the subsequent amendments adopted by your Excellency's Government.

Nevertheless, despite the decision of the Constitutional Court, with this communication I would like to highlight some of the remaining concerns regarding the media legislation that still need to be dealt with and merit closer scrutiny.

#### *Scope of the media legislation*

In my view, the scope of regulatory control under the Media Law, which covers all types of media, remains unduly broad. Any limitations and restrictions with regard to media should conform to the criteria established under international human rights law and standards. In this regard, I would like to reiterate that any limitations or restrictions to the right to freedom of expression should not undermine the essence of the right to freedom of expression. They should be proportionate and constitute the least intrusive means to achieve their legitimate purpose, and be unambiguous and concrete. Furthermore, laws imposing restrictions or limitations must contain sufficient remedies or safeguards against abusive or arbitrary application.

#### *Role of the Media Authority and the Media Council*

Concern remains that unnecessarily extensive power is granted under the existing legislation to the Media Authority and its Media Council, which covers almost all aspects of the media sector, including licensing, monitoring and sanctioning. This may create a very centralized governance and regulatory system, and if misused, may lead to a deterring environment for a free and independent media.

Further safeguards are needed to ensure the independence and impartiality of the authority overseeing the violations to the media laws, in particular with regard to the appointment process of its members. As I have stressed earlier, any acceptable limitation to or regulation of the media must be undertaken by an independent body which is free from any political control, commercial and other unwarranted influences with adequate safeguards against abuse.

#### *Sanctions and fines*

It is also strongly encouraged to avoid any possibility of imposing deterring sanctions and fines through the regulatory authority. Under the existing legislation, administrative infringements of the media legislation are determined by the Media Authority rather than an independent judiciary, and this may impair the functioning of media service providers and the full enjoyment of the right to freedom of opinion and expression.

#### *Restrictions to content*

I would like to stress that the issue of the restrictions to content needs to be dealt with further. For instance, despite the exemption of on-demand media from the requirement to provide “comprehensive, factual, up-to-date, objective and balanced” information, it remains problematic to fully guarantee the right to freedom of expression, as the existing legislation grants a considerable degree of discretion to the Media Authority to interpret such concepts. In this regard, I would like to reiterate my concern that the plurality and diversity of views and information transmitted via all forms of media may be undermined by such requirements. Furthermore, the requirement of balanced coverage adds to the vagueness of the law and ensuing sanctions contained therein.

*Ambiguous terms*

I would like to underline that, while the right to freedom of expression can be limited under certain criteria established under international human rights law and standards, restrictions outlined in law must be unambiguous, drawn narrowly and with precision so as to avoid legal uncertainty. There are other vague and open-ended terms in the current media legislation that would need further elaboration to avoid the risk of arbitrary and biased interpretation and application. For instance, vaguely formulated exceptions such as ‘interest of protecting national security and public order’ may not be used as a reason to compel journalists to reveal confidential sources. In my view, this provision leaves broad discretion to authorities to determine what qualifies as “exceptionally justified cases”. Furthermore, despite the changes made to the content regulations in March 2011, the Media Council may still retain the discretion to arbitrarily interpret offences related to incitement of hatred or discrimination. Concern remains with regards to the ambiguity in the licensing regulation for broadcasting media. Under Article 55(1) of the Media Law, the Media Council can exclude any company from participating in tenders for licenses, if, in the last five years, a media outlet owned by the company has been reprimanded by the same Media Council for a “serious” ‘breach of obligations stemming from a broadcasting or a public contract undertaken on the basis of previous tender procedure...’. The interpretation of what constitutes “serious breach” is considered to be left to the discretion of the Media Council.

I would like to express my appreciation for the continued cooperation and dialogue with your Excellency’s Government, and would like to reiterate my readiness to provide any guidance and assistance in relation to the media legislation in accordance with my mandate.

Please accept, Excellency, the assurances of my highest consideration.

Frank La Rue  
Special Rapporteur on the promotion and protection of the right to  
freedom of opinion and expression