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Media law in Hungary

Greens/EFA motion for a resolution

The European Parliament, – having regard to Articles 2, 6 and 7 of the Treaty on European Union, Articles 49, 56, 114, 167 and 258 of the Treaty on the Functioning of the European Union, Article 11 of the Charter of Fundamental Rights of the European Union and Article 10 of the European Convention on Human Rights, and other provisions of the EU and international law related to the respect of, promotion and protection of fundamental rights and of the freedom of expression and information and the right to media pluralism in particular, – having regard to Directive 2010/13/EU of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive - AVMSD), – having regard to the European Charter on Freedom of the Press of 25 May 2009 and the Commission's working document on media pluralism in EU Member States (SEC(2007)0032), the "three-step approach to media pluralism" defined by the Commission and to the independent study carried out on behalf of the Commission and finalised in 2009, – having regard to its resolutions of 25 September 2008 of concentration and pluralism in the media in the European Union, of 22 April 2004 on the risks of violation in the European Union and particularly in Italy of freedom of expression and information, and of 7 September 2010 on journalism and new media – creating a public sphere in Europe, – having regard to the statements by the Commission and the parliamentary questions tabled and debates held in the European Parliament on 8 October 2009 regarding freedom of information in Italy, and in the LIBE committee on 17 January 2011 regarding the Hungarian media law, – having regard to the decision by the LIBE Committee to request the Fundamental Rights Agency to issue an annual comparative report on the situation of media freedom, pluralism and independent governance in the EU Member States, including indicators, – having regard to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, in particular Articles 5(2), 7, and 11, – having regard to Rule 110(2) of its Rules of Procedure, A. whereas the European Union is founded on the values of democracy and the rule of law as spelled out in article 2 TEU and consequently guarantees and promotes freedom of expression and of information, as enshrined in Article 11 of the Charter of Fundamental Rights and Article 10 of the European Convention on Human Rights, for which media freedom and pluralism are an essential prerequisite, and whereas these rights include freedom to express opinions and freedom to receive and communicate information without control, interference or pressure from public authorities, B. whereas media pluralism and freedom continues to be a grave concern in the EU and its Member States, as highlighted by the recent criticism of the media laws and constitutional changes in Hungary introduced between June and December 2010, expressed by international organisations, such as OSCE and the Council of Europe Commissioner for Human Rights, professional organisations of journalists, editors and publishers, human rights and civil liberties NGOs, as well as by Member States and the European

Commission, C. whereas the Commission has raised doubts and requested information to the Hungarian government in relation to the conformity of the Hungarian media laws with the AVMSD and *acquis* in general notably in relation to the obligation of balanced coverage applicable to all audiovisual media service providers, the country of origin principle, the registration requirements, and whereas the Hungarian government responded by providing further information into these matters and by declaring their readiness to review the laws and amend them, D. whereas OSCE expressed serious doubts in relation to the scope of the Hungarian regulations (material and territorial scope), freedom of expression and content regulation, the appointment of a national media and telecommunications authority in one and same person, public service broadcasting⁽¹⁾, indicating that the new legislation undermines media pluralism, abolishes the political and financial independence of public service media, cements the negative features for free media for the long term, that the Media Authority and Council are politically homogeneous⁽²⁾ and exert a pervasive and centralized governmental and political control on all media; further concerns are the disproportionate and extreme sanctions for debatable and undefined reasons, the lack of an automatic suspension of sanctions in case of appeal to courts against a Media authority sanction, the violation of the principle of the confidentiality of journalistic sources, the protection of family values, among others, E. whereas the Council of Europe Commissioner on Human rights called the Hungarian authorities to incorporate Council of Europe standards on freedom of expression and media pluralism when reviewing its media laws, the relevant recommendations of the Committee of Ministers and Parliamentary Assembly of the Council of Europe and notably the binding standards contained in the European Convention on Human Rights and the case-law of the European Court of Human Rights; he referred to the use of unclear definitions that may be subject to misinterpretation; the establishment of a politically unbalanced regulatory machinery with disproportionate powers and lack of full judicial supervision; threats to the independence of public-service broadcast media; and erosion of the protection of journalists' sources; whereas he stressed the need for all relevant stakeholders, including opposition parties and civil society, to be able to participate in a meaningful manner in the review of this legislation, which regulates such a fundamental aspect of the functioning of a democratic society⁽³⁾, F. whereas the Hungarian media laws consequently should be urgently reviewed on the basis of the Commission, OSCE and the Council of Europe remarks and proposals, to ensure that it is fully in conformity with EU law and European values and standards on media freedom, pluralism and independent governance, G. whereas despite repeated calls by Parliament for a directive on media freedom, pluralism and independent governance, the Commission has up to now delayed this proposal, which has become increasingly necessary and urgent, H. whereas the conditions in the Copenhagen criteria for membership to the EU, established in June 1993 at the Copenhagen European Council relating to freedom of the press and freedom of expression, should be upheld by all Member States within the EU and enforced through relevant EU legislation, I. whereas the Court of Justice has held in joined Cases C-39/05 P and C-52/05 P, paragraphs 45 and 46, that access to information enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system and that it 'is a precondition for the effective exercise of their democratic rights', J. whereas concerns arise not only in relation to the Hungarian media laws, but also on the weakening of the Constitutional Court, as well as on the process and projects of revision of the Constitution, which removes constitutional constraints regarding protection of media pluralism and defining the role of public service media to contribute "to preserving the national and European identity, to preserving and enriching Hungarian and minority languages, to strengthening national cohesion and to fulfilling the needs of national, ethnic, religious communities and of the family"; whereas "family" might be defined as composed by a man and a woman - hereby banning same-sex marriage, of the life of the foetus starting from conception, a reference to the Christian roots of the Hungarian nation, possible reforms of the Constitutional Court and the creation of a second Chamber composed by representatives of the Church, of interest and professional organisations, etc., 1. Notes the initiative of the Commission to call for clarifications on the Hungarian media laws and their conformity with EU Treaties and law, as well as the announcement made by the Hungarian authorities in relation to their readiness to amend the law; regrets the Commission's limited targeting of only three points in implementation of the *acquis* by Hungary and especially the absence of reference to article 30 of the AVMSD, thereby limiting its own competence to

scrutinise Hungary's compliance with the EU Charter of Fundamental Rights while implementing EU law;

2. Regrets the Commission not addressing the core issues of the single administrative media governance pyramid, the arbitrary licensing provisions, disproportional sanctions, and the general remaining concerns regarding on-site audit systems, privacy and business secrets, journalistic source protection, and liability for internet intermediaries; urges the Commission to examine Hungary's compliance with the liability regime of the Directive 2000/31/EC on electronic commerce, and Hungary's transposition of EU Framework Decisions on combating certain forms and expressions of racism and xenophobia by means of criminal law (2008/913/JHA) and on combating terrorism (2008/919/JHA), which include references to freedom of expression and media freedom circumventions;
3. Calls on the Hungarian authorities to suspend the implementation of the new media laws, as the government's 2/3 legislative majority does not give it a right to decide alone in matters of media freedom; and instead start the legislation anew in parity-based discussion fora that include opposition and civil society, with a view of improving the laws also on the basis of the remarks and proposals made by the European Parliament, the Commission, OSCE and the Council of Europe Commissioner on Human Rights, recommendations of the Committee of Ministers and Parliamentary Assembly of the Council of Europe, and jurisprudence of the European Court of Justice and the European Court of Human Rights;
4. Calls on the Hungarian authorities to restore independence of media governance, with a parity based political composure and participation of journalists associations, while restricting media governance to the audiovisual field, removing its control over press and the internet; restore constitutional safeguards for media pluralism and true judicial overview by appeals to ordinary courts; limit the state interference with freedom of expression concerning balanced coverage to television only; protect investigative journalism by protection of confidential sources, removing news prescriptions and registration as a pre-requisite for operation; respect the country of origin principle enshrined in the AVMSD;
5. Calls on the Hungarian authorities to involve all stakeholders in relation to the revision of the Constitution, which is the basis of a democratic society based on the rule of law, with appropriate checks and balances to ensure the fundamental rights of the minority against the risk of the tyranny of the majority;
6. Calls on the Commission to set a close deadline for the Hungarian authorities to change the law on the points raised by OSCE, the Council of Europe, the Commission and the European Parliament, and shall the deadline not be met, proceed with infringement proceedings;
7. Requests the Commission, on the basis of Article 225 TFEU, to submit a proposal for EU legislation on media freedom, pluralism and independent governance before the end of the year, hereby overcoming the inadequacies of the EU's legislative framework on media, making use of its competences in the fields of the internal market, audiovisual policy, competition, telecommunications, State subsidies, public service obligation and fundamental rights of everyone on EU territory, in order to define at least the minimum essential standards that all Member states must meet and respect in national legislation to ensure, guarantee and promote freedom of information, an adequate level of media pluralism and independent media governance;
8. Calls on the Commission and the Council to ensure that democratic values including media freedom are respected within the EU and remain central to its foreign policy, while continuing to show support to media freedom campaigners inside and out of the EU;
9. Recalls the possibility of the European Parliament to initiate the procedure under Article 7(1) TEU in view of determining whether there is a clear risk of a serious breach by Hungary of the values referred to in Article 2 TEU, such as respect for freedom, democracy and human rights;
10. Advises its LIBE and CULT committees to draw up a report on the Hungarian media law package;
11. Instructs its President to forward this resolution to the Council, the Commission, the Council of Europe, the governments and national parliaments of Member States, the Fundamental Rights Agency, OSCE and the Council of Europe.

(1) Analysis and assessment of a package of Hungarian legislation and draft legislation on media and telecommunications, prepared by Dr Karol Jakubowicz

for OSCE.

(2) Letter by OSCE Representative on Freedom of the Media to the EP Chairman of the LIBE committee, 14.01.2010.

(3) http://www.coe.int/t/commissioner/News/2011/110201Hungary_en.asp

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