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Introduction

Freedom of the press represents one of the pillars of European culture and civilisation. The fight for the freedom of the press in Europe started many centuries ago and in certain ways it is still in progress. The freedom of the press is a precious jewel shining bright among our common European values, assisting us in operating a democratic society and monitoring governments. As such, without freedom of the press, there is no democracy.

However, freedom of the press does not mean that the media are allowed to operate without any legal restrictions. Freedom has its limits in every field; however, such limits must be defined narrowly and precisely. Freedom of the press can only be restricted if such a restriction serves to protect another similarly fundamental right or constitutional interest. The scope of the freedom of the press is therefore determined by the appropriate balance between the different opposing interests possibly confronting each other in the process of the free expression of opinion.

The new Hungarian media regulation was subject to numerous criticisms in Hungary and abroad. Among these, the most unrealistic accusations were also made. This study makes an attempt to focus on the law as it is. Upon evaluation of the Hungarian regulation, we must also take into account the other side of the coin, i.e. the interests the regulations intend to protect, and also the proportionality and necessity of such restrictions viewed from the perspective of such interests.

The media regulation of a particular country cannot be evaluated exclusively on the basis of the text of the respective laws. To make a well-founded judgement, it is necessary to have a precise knowledge of the history of the regulation, the constitutional norms of the state and the legal meaning of the notions included in the given law, as well as the legal practice applied by the courts and authorities. Our study has made an attempt to employ such a complex approach when examining the specific provisions.

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The authors

List of abbreviations

AVMS Directive
Directive 2010/13/EU (the Audiovisual Media Services Directive)
Basic Law
the Basic Law (Constitution) of Hungary
Civil Code
Act 4 of 1959 on the Civil Code
TVWF Directive
Directive 89/552/EEC (the Television Without Frontiers Directive)
Data Protection Act
Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest
Administrative Proceedings Act
Act CXL of 2004 on the General Rules of Administrative Proceedings and Services
New Criminal Code
Act 100 of 2012 on the Criminal Code
Media Act
Act CLXXXV of 2010 on Media Services and Mass Media
Media Authority
the National Media and Infocommunications Authority
Media Council
the Media Council of the National Media and Infocommunications Authority
NRTC
National Radio and Television Commission (the former media authority)
The Hungarian Code of Civil Procedure
Act III of 1952 on the Code of Civil Procedure
Radio and Television Broadcasting Act
Act I of 1996 on Radio and Television Broadcasting (not in effect)
Press Freedom Act
Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content
Press Act
Act II of 1986 on the Press (not in effect)

Competition Act
: Act LVII of 1996 on the Prohibition of Unfair Market Practices and the Restriction of Competition

Advertising Act
: Act XLVIII of 2008 on Essential Conditions of and Certain Limitations to Business Advertising

Act on Business Associations
: Act IV of 2006 on Business Associations

Copyright Act
: Act LXXVI of 1999 on Copyright

Digital Switchover Act
: Act LXXIV of 2007 on the Rules of Broadcast Distribution and Digital Switchover

Part I

The Bedrock of Media Regulation: Conceptions, Notions, and Jurisdiction

1. The Constitutional Foundations of Media Regulation

1.1. Introduction

Communication rights comprise the totality of fundamental (human) rights, of which the central element is the communication process itself, or which are closely related to it. The most important communication right is the freedom of expression, protected by Article IX of the Basic Law, recognised by the practice of the Hungarian Constitutional Court related to the former Constitution as having exceptional significance in the system of fundamental rights, too. (We wish to note that, as of the entry into force of the Basic Law on 1 January 2012, the previous text of the constitution was repealed. At the same time, in respect of communication rights, the Basic Law is, in several points, identical to the previous constitutional provisions; not surprisingly, since the recognition of these rights is Hungary's international obligation. Consequently, we have used the substantive conclusions of previous Constitutional Court decisions when writing the present section, as the Constitutional Court may take these into account during the course of its future practice. A further argument in favour of this is that several decisions of the Constitutional Court contain confirmative references to previous decisions. Naturally, in respect of issues that arise anew, the reference to the new Basic Law has priority in all cases.)[1]

> [T]he freedom of expression has a special place among constitutional fundamental rights; in effect it is the "mother right" of several freedoms, the so-called fundamental rights of communication. Enumerated rights derived from this "mother right" are the right to free speech and the right to the freedom of the press, with the latter encompassing the freedom of all media, as well as the right to be informed and the right to freely obtain information. In a broader sense, the freedom of expression includes artistic and literary freedoms, the freedom to distribute and disseminate works of art, the freedom of scientific research and the freedom to teach scientific knowledge.… It is this combination of rights that renders possible the individual's reasoned participation in the social and political life of the community. Historical experience shows that, on every occasion when the freedom of expression was restricted, social justice and human creativity suffered and mankind's innate ability to develop was stymied. The harmful consequences afflicted not only the lives of individuals but also that of society at large, inflicting much suffering while leading to a dead end for human development. Free expression of ideas and beliefs, free manifestation of even unpopular or unusual ideas is the fundamental requirement for the existence of a truly vibrant society capable of development [Constitutional Court Decision 30/1992. (V. 26.), Statement of Reasons, Point III. 2. 1.].

[1] Constitutional Court Decision No. 22/2012 (V. 11.) expressly declared that, in the event of identical wording, it shall regard its practice related to the given Article of the former Constitution as precedent.

Communication rights also include: the freedom of conscience and religion, the freedom of assembly and association, the right to strike, the freedom of learning and teaching, artistic freedom, the freedom of information, and the freedom of the press which we may also call the freedom of the media.[2]

1.2. The freedom of expression and the freedom of the press

Underlying the simple wording of Article IX of the Basic Law ("[e]very person shall have the right to express his or her opinion") is a nuanced conceptual and doctrinal system. Some sources of the law and some of the authorities refer to this fundamental right as the freedom of speech or the freedom of the press (Meinungsfreiheit); however, the sphere and substance of the protection is similar. On the basis of freedom of expression, anyone may express their own thoughts and opinions without restriction by the state and with the state preventing any restrictions by others. It is important to stress, however, that this freedom is granted only within certain limits.

The term "opinion" denotes any verbal or written expression as well as images, audio, or audiovisual materials published by the media. The Basic Law "protects opinion irrespective of the value or veracity of its content" [Constitutional Court Decision 36/1994. (VI. 24.), Statement of Reasons, Point II. 1. 1.]. If, however communication contains a statement of fact, then stricter criteria may be applicable to it; therefore in respect of such the law may require the veracity of the contents. (Such, for example, are the prosecution of perjury and false accusations and the rules on press counter-statements.)

Certain forms of behaviour may convey opinions without uttering any words, e.g. the demonstrative use of certain garments or buttons, silent demonstrations, the burning of a flag, non-verbal communication signals, etc. Even a gesture or a movement is capable of expressing an opinion. In general, such manifestations also enjoy the protection of the freedom of expression, although the claim that the offender "had only expressed their opinion by committing the offence" (e.g. in the case of disorderly conduct or false testimony) will not acquit the offender of the consequences of the criminal offence. The freedom under examination is primarily intended to protect the expression of political/public opinions; from among all opinions, it is these that it protects the most. At the same time, this does not mean that opinions other than political do not enjoy any protection, although the level of their protection may be different (depending on the subject matter). Thus, for example, commercial communication may be restricted in a broader area, and pornographic content may also be subject to limitations in certain cases.

According to Constitutional Court Decision No. 30/1992 (V. 26), it follows from the constitutional provision guaranteeing the right of the individual to the freedom of expression that

[2] For further details, see Hermann von Mangoldt – Friedrich Klein – Christian Starck (Eds.): *Kommentar zum Grundgesetz*. Munich, Franz Vahlen, 2010. 517–669.

> it is the duty of the state to secure the conditions for the creation and maintenance of a democratic public opinion. The objective and institutional aspect of the right to the freedom of expression relates not only to the freedom of the press, freedom of education and so on, but also to that aspect of the system of institutions which places the freedom of expression, as a general value, among the other protected values. For this reason, the constitutional boundary of the freedom of expression must be drawn in such a way that, in addition to the person's subjective right to the freedom of expression, the formation of public opinion, and its free development—being indispensable values for a democracy—are also considered (Statement of Reasons, Point III./2. 2.).

It follows from this definition that it is not only the negative aspect of freedom that must be ensured, i.e. that the state does not inhibit the expression of the opinions of the citizens, but also that the state's positive duty to protect the institution is at least as important. On the basis of the latter, the state is required to take active measures to create and operate a media system that is suitable for the formation and maintenance of a democratic societal environment and appropriately guarantees the individual freedom of speech, too. When discussing the right of assembly as a communication right, we shall provide a particular example to illustrate that non-intervention by the state is not sufficient to completely ensure the fundamental right—the state is also required to ensure that other citizens do not unconstitutionally impede the exercise of that right.[3]

As we have mentioned previously, although the freedom of expression is one of the most precious fundamental rights [Constitutional Court Decision No. 30/1992. (V. 26.), Statement of Reasons, Point III.], it is not illimitable. It may be restricted on the basis of Paragraph (3) of Article I of the Basic Law, i.e. to allow the exercise of another fundamental right or to defend any constitutional value to the extent absolutely necessary, in proportion to the desired goal and in respect of the essential content of such a fundamental right. As the former Constitution provided for an essentially identical mechanism for the limitation of fundamental rights (apart from the fact that constitutional value was not mentioned as a reason for such limitation),[4] we may assume that the Statement of Reasons of the previous decisions of the Constitutional Court related to the admissible limitation of fundamental rights will influence legal practice in the future, too. The grounds for the limitation may be an external reason (typically the protection of another fundamental right or constitutional interest) and not the content of the communication; however, the Constitutional Court pointed out that communication may be limited on the basis of its manner, form, place, and time, too, if such limitation does not result in complete prohibition [Constitutional Court Decision 33/1998. (VI. 25.), Statement of Reasons, Point III. 3.].

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[3] On the so-called "third party effect" or *Drittwirkung*, see e.g. Eric Engle: Third Party Effect of Fundamental rights (Drittwirkung). *Hansel Law Review,* 2009/2. www.hanselawreview.org/pdf8/Vol5No2Art02.pdf

[4] We wish to note, however, that in the practice of the Constitutional Court the formulation "other constitutional value" has served as grounds for the freedom of expression, as is shown by Point IV. 2. of the Statement of Reasons of Constitutional Court Decision No. 13/2000. (V. 12.) on the protection of national symbols.

János Sári classified the possible cases on the basis of the grounds for limitation into three groups: certain interests of the state to be upheld, certain interests of the various groups of society to be upheld, and limitations necessitated by the rights of the individuals.[5]

The protection of the interests of the state and society as a whole may legitimise the limitation of the freedom of speech at several points. These include the already mentioned criminal or even civil law prohibitions that are not subject to the protection of this fundamental right: e.g. false accusation and perjury do not enjoy such broad protection and may be prosecuted despite their communicational character; similarly, in the field of civil law, both verbal and written unlawful contracts are prohibited, yet this does not entail any limitation of the freedom of speech.

The recognition of the state's right to "secrecy" in certain cases is an instance of the protection of state communication. The former concept of a 'state secret' or 'official secret' is currently provided for by Act CLV of 2009 on the Protection of Classified Information. The Act enables the state to provide certain information with special protection on the basis of the grounds specified and according to strict procedural rules. On the basis of the earlier regulations, the Constitutional Court declared that the protection of such data is in the legitimate interest of the state, e.g. during the course of criminal proceedings; however, such protection must be regulated at the level of an act of law [Constitutional Court Decision No. 25/1991. (V. 18.), Statement of Reasons, Point I]. Such secrets must be related to the actions of the state as public authority: "the possibility of barring data of public interest from the public, the discretionary power over the classification of data… is unconstitutional in itself, as it restricts the constitutional right of access to data of public interest without constitutional guarantees" [Constitutional Court Decision No. 36/1994. (VI. 24.)].

Another important area of the collision between the protection of state interests and the freedom of speech is the protection of national symbols. The sanctioning of the use of prohibited symbols of authoritarian regimes is also not unconstitutional according to the Constitutional Court.

The protection of public peace may also serve as the basis for the restriction of the freedom of speech; however, the scope of the conduct of spreading rumours prohibited by criminal law previously had been too broad, therefore the Constitutional Court struck down this provision.

Public morals also constitute a notion that reflects the interests of all of society. It may serve as the basis for the temporary or permanent limitation of communications and programmes with sexual content (prohibition of the publication of certain types of content during certain periods of the day; total prohibition of pornographic programmes),

[5] János Sári: Az Alkotmány 61. §-ához fűzött magyarázat. [Commentary on Article 61 of the Constitution] In Zsolt Balogh et alii: *Az Alkotmány magyarázata*. [*Commentary of the Constitution*] Budapest, KJK–Kerszöv, 2003. 593–594.

and the advertising of sexual services may also be constitutionally restricted on the basis of this (Constitutional Court Decision No. 794/B/1999.).

The measures and provisions that serve the protection of individual groups of society may also impose limitations on the freedom of speech. From among these, the issue of hate speech is especially important. The protection of individual groups of society constitutes the grounds for the prosecution of the public denial of the crimes committed by the national socialist and the communist political systems.

The protection of individual interests—the constitutional basis of which is the protection of human dignity—constitutes the third group of the grounds on which the freedom of expression may be restricted. According to Constitutional Court Decision 30/1992. (VI. 10.), in certain cases the protection of human dignity may restrict the freedom of expression. The protection of personality derivable from human dignity, and, within that, the protection of good reputation and honour are rights, the protection of which may form the basis for the restriction of the freedom of the press.

The protection of privacy is provided parallel guarantees by the protection of personal rights and the protection of personal data. The rights to images and sound recordings, the inviolability of private dwellings, private secrets, and the confidentiality of correspondence are all rights that help citizens protect their privacy from unauthorised intrusion. On the basis of the protection of personal data, "data relating to the data subject, in particular the name and identification number of the data subject, as well as one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity, or conclusions drawn from the data in regard to the data subject" (Point 2 of Article 3 of the Act on Informational Self-determination and Freedom of information) enjoy legal protection on the basis of the subject's right of disposal.

The freedom of the press is closely related to the freedom of expression. The freedom of the press includes the freedom to establish and launch media content providers, editorial freedom, and the prohibitions of censorship as well.

It is important to emphasise that the media not only exercises freedom of speech, as do citizens, i.e. private individuals, but plays a special role in society, a role which implies special licences and obligations as well. This distinction is the logical consequence of the fact that in democratic societies the media is part of the democratic institutions and bears the accompanying responsibility, too. As the Constitutional Court expressed it:

> [F]reedom of expression is realised in a special manner in respect of the freedom of the press. In guaranteeing the freedom of the press the state has to take into account that the "press" is an exceptionally important vehicle for accessing information and expressing and formulating opinions. The press is not only a vehicle of the freedom of expression, but also of information, that is, it has a fundamental role in accessing information, which is a precondition to the formulation of opinions" [Constitutional Court Decision No. 37/1992. (VI. 10.), Statement of Reasons, Point II. 2. b.].

According to the generally accepted view, the elements of the freedom of the press are the freedom of establishment, editorial freedom and the prohibition of censorship. This "classic" approach entailed that, on the basis of the freedom of establishment, anyone

could establish a printed press product by notification rather than application for permission; the content of the product was controlled by the editor and nobody else could influence it; and, finally, the state had to refrain from censorship, i.e. the right of arbitrary prior authorisation. In respect of media that use scarce resources, i.e. frequencies, the freedom of establishment may be limited constitutionally; in such a case it is the responsibility of the state to ensure that the selection process conforms to certain guarantees required by the rule of law. The freedom of establishment may also be limited in the interest of the attainment of general and specific media and competition policy objectives. As part of the freedom of the press, editorial freedom denotes the right of editors to independently determine the content, place, time, order and other circumstances of publications. Editorial freedom is a right protected by the constitution [see e.g. Constitutional Court Decision No. 57/2001. (XII. 5.), Statement of Reasons, Point II. 9.]; however, it is not unlimited.

2. The System and Forms of Media Regulation

2.1. The sources of media regulation

The prescription of the rules of conduct related to the field of media law is the most typical, although by no means exclusive, instance of state regulation. The legal provisions may be classified according to their position within the hierarchy of the sources of law and according to their content.

2.1.1. Constitution-level provisions

The Basic Law contains several provisions that have direct bearing on the field of media law. Paragraph (2) of Article IX of the section entitled "Freedom and Responsibility" lays down the constitutional fundamental right of the freedom of the press, and paragraph (3) provides that it is the task of the Parliament to pass an organic law on the detailed rules for the freedom of the press and the body supervising media services, press products and the communications market.

Furthermore, Article 23 of the chapter entitled "The State" defines the concept of an "autonomous regulatory body;" this provision governs the structure, direction and operation of the National Media and Infocommunications Authority.[6]

Besides the above mentioned regulations, several general provisions of the Basic Law also have a bearing on the field of media law (the rule of law, the principle of the separation of powers, the assertion of the rights of national minorities, etc.).

2.1.2. Statutory level provisions

The issues regulated by media law are closely related to the fundamental right of the freedom of the press. These issues must be provided for at the highest, i.e. statutory, level.

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[6] While the Constitution specifically named the National Media and Infocommunications Authority, the Fundamental Law, by contrast, has introduced a collective term (autonomous regulatory body) for the bodies exercising administrative powers that are independent from the Government. Accordingly, the autonomous regulatory body status of the National Media and Infocommunications Authority does not follow from the Fundamental Law; this is established at the statutory level (by Article 109 of the Media Act).

The legislator chose the regulatory technique of laying down in separate acts the fundamental regulations of the freedom of the press and the contents of the media (Press Freedom Act) and the further regulations on media services, the fundamental rules of public media service and the regulatory supervision of media and press products (Media Act).

To a certain extent the Press Freedom Act—nicknamed the "media constitution"—contains declarative provisions on the protection of the freedom of the press and the public service media, while at the same time, it also lays down the fundamental obligations and rights related to the assertion and exercise of the freedom and the obligations of the press.[7] Besides these abstract provisions, further detailed regulations, differentiated according to the nature of the various services, are laid down in the Media Act.[8]

The regulations that entered into effect as of 1st January 2011 merged the regulatory system for the regulation of the media and communications. With this, the Electronic Communications Act now affects the operation of the National Media and Infocommunications Authority (and, thereby, the entire system of media regulation). This Act contains the rules on the duties of the state relating to electronic communications and the rules on electronic communication services and activities, including the obligations of electronic communication service providers and the state's duty to ensure the provision of adequate services to users.

Besides these comprehensive legal acts, certain other laws have a bearing on various segments of the regulation of the media. Electronic commerce services are one issue and certain questions concerning the services related to the information society are included in the E-Commerce Act. The civil and penal system for the protection of personality rights should also be mentioned in this context. The detailed rules of this are established by the provisions of the Civil Code and the Criminal Code.

2.1.3. Decree-level provisions

A major change was brought about in the field of media regulation by the fact that, due to a constitutional amendment, as of 2nd January 2011 the President of the National Media and Infocommunications Authority may also pass decrees. The legislative power of the President of the National Media and Infocommunications Authority is exclusively derivative, i.e. the President may only pass decrees under explicit statutory authorisation. Currently, the legislative power is conferred upon the President of the National Media and Infocommunications Authority by Article 206 of the Media Act. According to this,

[7] András Koltay – Levente Nyakas – Annamária Mayer – Anett Pogácsás: Smtv. 1. §. [Article 1 of the Press Freedom Act] In András Koltay – András Lapsánszky (Eds.): *A médiaszabályozás kommentárja.* [*Commentary on Media Regulation*] Budapest, CompLex, 2011, 15.

[8] György Molnár-Bíró: Mttv. 1. §. [Article 1 of the Media Act] In Koltay – Lapsánszky op.cit. (n. X.), 57.

the President of the National Media and Infocommunications Authority is authorised to establish by decree:

a) the frequency fees and the fees payable for the reservation and use of identifiers, as well as the supervisory fee for communications and postal service providers,

b) the administrative service fee for the regulatory procedure related to the categorisation of programmes and classification of communications,

c) the method and terms of the payment of the fees for procedures conducted by the Authority and the Media Council, as well as the amount of and rules for calculating such fees.

On the basis of the enabling provision, it may therefore be established that the President of the National Media and Infocommunications Authority may pass decrees on administrative issues (the amount and method of the payment of the fees) rather than on issues of content. (This is only true in respect of the media; on the basis of the Electronic Communications Act, the President may pass decrees on a wide range of substantive rules in the field of communications.)

Accordingly, it is especially true that the decrees of the President of the National Media and Infocommunications Authority do not directly affect a wide range of citizens. Instead, the decrees target the actors in the communications and media market. Nevertheless, the effects of the decrees of the President of the National Media and Infocommunications Authority are not limited to this narrow target group, but are directed towards the outside world. Accordingly, such an act constitutes a general mandatory rule of conduct, i.e. it is a legal provision. This factor has no effect on the classification of the decree as a source of law, but it does influence its content. Due to the relatively narrow target group, the regulatory body and the subjects of the regulation are "close" to each other and co-regulation is possible.

2.1.4. Recommendation

Besides the authorisation to pass decrees, its power of recommendation, according to Points *a)–c)* of Paragraph (1) of Article 183 of the Media Act, is of major significance. It follows from these points that the Media Council issues recommendations related to the substantive elements of the media services (protection of minors, product placement, efficient technical solutions). Recommendations are not legal acts, have no normative content, and may not be enforced by court procedure.

Constitutional Court Decision No. 2/2005 (10th February) analysed, on the basis of the former legal environment, the nature of the legal interpretative decree issued by the National Radio and Television Commission (the former media authority); nevertheless, the conclusions of this decision are applicable to recommendations as well. It follows from the decision of the Constitutional Court that an organ (such as the Media Council) proceeding in a public administration case

> interprets the governing legal provisions during the course of its proceedings. The interpretation performed during the application of the law, however, must be incorporated into the decision passed and may be subject to dispute during any subsequent judicial review.

Accordingly, the legal interpretation incorporated in the recommendation may be disputed in specific cases before the ordinary courts; it is not binding in any way on the courts. The significance of recommendations is that they render the practice of the Media Council predictable in specific cases and therefore enable the voluntary observance of the law.

> Several acts of singular law enforcement and intervention by the authorities may be avoided if the service providers are informed in advance about *a)* the direction and aspects of consequent legal interpretation related to given cases and legal provisions, *b)* the forms of conduct that are considered to be legal violations, *c)* the market weight of such, and *d)* the practice and conceptual basis of the sanctions that can be expected to be applied.[9]

In the narrower sense, therefore, a recommendation—lacking direct enforceability—is not a legal provision; the Media Council may not base claims on the recommendations issued by it in court proceedings. Recommendations, however, are *preventive* in nature; their advantage is that they enable the Media Council to express its position on substantive issues independently from any specific cases, thereby defining its future practice.[10]

2.1.5. Self- and co-regulation

The Media Act refers to self-regulation at the level of basic principles. According to Article 8: "the professional self-regulatory bodies comprising the media service providers, publishers of press products, intermediary service providers and media service distributors, as well as the various self- and co-regulatory procedures applied, play an important role in the field of media regulation and in the application of and compliance with the provisions of this Act." As of its June 2012 amendment, the Media Act provides that "the provisions pertaining to co-regulation shall neither affect nor restrict the right of media content providers to accept and apply self-regulatory initiatives, within the scope of their activities, by organising themselves, within the frameworks of this Act."

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[9] András Lapsánszky: A hírközlési szabályozó hatóságok jogállásának, szervezetének és szabályozó hatáskörének sajátosságai a közigazgatás szervezeti rendszerében. [Characteristics of the legal standing, organisation, and regulatory scope of the bodies regulating communications within the organisational system of public administration] In *Ünnepi kötet Szalay Gyula tiszteletére, 65. Születésnapjára.* [*Festschrift for Gyula Szalay on his 65th birthday*] Győr, Széchenyi István Egyetem, 2010. 374.

[10] Ibid. 373.

The Media Act introduces a special co-regulation procedure in the regulation of the media. The Act formalises the procedure of the other organisations participating in co-regulation (qualifying as self-regulatory bodies unaffected by the relevant provisions of the Media Act): it provides for the detailed rules of procedure (Articles 197–200), the supervision of the activity (Article 201) and obliges the self-regulatory body to report its activities to the Media Council (Article 202).

All this, however, has no bearing on the voluntary nature of co-regulation: the subjects of the regulation decide at their own discretion whether to conclude an administration contract with the Media Council, according to Article 197 of the Media Act (in which case their activities will partly fall under the scope of the Media Act), or to select "pure" self-regulation exclusively, or perhaps not to perform self-regulatory activities at all.

Nothing therefore prevents the subjects of the law from establishing their own rules of conduct independently from the Media Act, and to engage in self-regulation; however, such self-regulation shall have no legal relevance as per the Media Act.

At the same time, the Media Act establishes a dual role for co-regulation. On the one hand, in respect of regulatory rights, Paragraph (1) of Article 191 of the Media Act provides that self-regulatory bodies may, in respect of specific types of cases, perform self-management tasks as non-regulatory tasks prior to the specific exercise of regulatory powers. This is also reinforced by Paragraph (3) of Article 197 of the Media Act, which provides that the task of self-regulatory bodies is the preliminary settlement of disputes. On the other hand, in respect of the supervision of certain provisions of the Press Freedom Act, the self-regulatory bodies assume the task of the Media Council on substantive issues.

Naturally, the self-regulatory bodies may engage in other activities as well, outside the scope of the Media Act. The Media Act does not define what self-regulatory bodies may do; rather, it defines when legal relevance is to be attributed to their activities. As such, the Act defines how the regulatory activities partly conducted by extra-judicial, private subjects may be channelled into the operation of the public authority and the legal regulations.

2.2. The structure of the regulation

2.2.1. The National Media and Infocommunications Authority and the Media Council

The Media Act has established a *convergent* authority by merging the media and the communications administration. The *convergent* regulation model conforms to the most recent European development trend, according to which the authority jointly performs (1) the issue of media service licences and the supervision of the content of such services,

(2) the tasks of the communication authority, and also (3) certain competition authority tasks in respect of enterprises operating in the media sector.[11]

The two fields overlap to a large extent; however, an important constitutional law difference is that media regulation is much more closely related to fundamental rights than is the regulation of communications. Communications are also related to the freedom of expression as a fundamental right of communication; however, in this area the issues of administration are more prominent, while with regard to media regulation, content-based restrictions may have more presence in the furtherance of appropriate, legitimate objectives.

This difference is apparent in the organisational system of the National Media and Infocommunications Authority, too. According to Paragraph (3), Article 109 of the Media Act, the Hungarian Media Authority comprises the following entities with independent powers: the President, the Media Council, and the Office of the National Media and Infocommunications Authority. It is therefore apparent that, while the National Media and Infocommunications Authority has both media administration and communications administration tasks, within the organisation it is primarily the Media Council that deals with issues of content related to media services.

The Media Act differentiates between the administration of communications and the administration of the media not only in respect of personal but also in respect of organisational independence. According to the Media Act, the National Media and Infocommunications Authority implements the policies of the Government in the field of communications and spectrum management, i.e. it does not define sectoral policies independently. From the aspect of policy this is understandable, since spectrum management is a key national economic issue. As regards constitutional law, however, this explanation is insufficient; the independent executive body would be expected to formulate an independent policy. Nevertheless, such an independent policy is formulated by the National Media and Infocommunications Authority as well: apart from communications and spectrum management, all other areas of administration are independently defined by the Authority.

Furthermore, it is important to note that regulations are passed by the President of the National Media and Infocommunications Authority rather than by the Media Council. The legal provisions granting authorisation also provide the derivative legislative powers in respect of issues related to market regulation rather than in respect of media services. This conforms to the general characteristic of regulatory authorities, the operations of which are directed at ensuring the appropriate operation of the market.

Furthermore, the general attributes of regulatory authorities (abstract regulation, *ex ante* law application, directive-bound operation) are also attributes of the Media Council itself, not only of the National Media and Infocommunications Authority as a whole.

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[11] Judit Körmendy-Ékes – Márk Lengyel: A médiahatóság jogállásának kérdéseiről. [On the Questions of the Legal Standing of the Media Authority] *Magyar Jog*, 2004/4. 213.

2.2.2. Further law enforcement bodies participating in media regulation

The National Media and Infocommunications Authority and the Media Council directly participate in the regulatory administration of the media. There are, however, several other organisations that influence the operation of the media via their respective spheres of authority.

The Hungarian Competition Authority supervises fair market competition, and takes measures against restrictive trade agreements and the abuse of dominant position according to the provisions of the Competition Act. As such, the Hungarian Competition Authority—also with respect to Article 169 of the Media Act—supervises the media sector and, if it finds that competition is distorted or restricted in the media services market, it may initiate a Competition Authority investigation.

A further connection between the Hungarian Competition Authority and the Media Council is that the former is obliged to obtain the position statement of the latter as the special authority in order to permit the concentration of companies aimed at delivering media content to the general public via electronic communications networks or print press products.

The application of the law by the courts also has direct bearing on the system of media regulation. Public administration decisions are reviewed by the courts, whereby there is a hierarchy of interpretation between the application of the law by the courts and the administrative authorities (including the National Media and Infocommunications Authority). Hence, in the final instance, the correct interpretation of the provisions of media law is the task of the courts; via the judicial review system, the interpretation of the court necessarily affects the application of the law by the authorities.

The Constitutional Court also has a major effect on media regulation. When performing its duties to monitor standards, the Constitutional Court has to interpret the Basic Law (it compares the legal provision under examination with the Basic Law), and so in its decisions it defines the interpretation of media-related legal provisions that is in conformance with the Basic Law. The decisions of the Constitutional Court passed on the basis of constitutional law complaints in individual cases have an even more direct effect on media law. According to Article 24 of the Basic Law, the Constitutional Court may take action against both legal provisions and judicial practice that are in violation of the Basic Law and, in the former case, may strike down the legal provision in question.

On the basis of these competences, the Constitutional Court (as the "principal organ for the protection of the Basic Law") asserts constitutional considerations both in respect of media-related legislation and the related application of the law.

According to the Basic Law, the Commissioner for Fundamental rights examines or causes to be examined any abuses of fundamental rights of which he or she becomes aware and proposes general or special measures for their remedy. The Commissioner for Fundamental rights is not an executive body and has no executive power, and only acts in the interest of the protection of fundamental rights. The Ombudsman's actions have an effect on media regulation, too: if the Commissioner for Fundamental rights notes an abuse of fundamental rights during the course of the provision of a media service, then

he or she will report or issue a recommendation to the relevant authority.[12] The competence of the Commissioner for Fundamental rights extends over not only the media authority but also the public media service providers as organisations providing public services. A change introduced by the new Act on the Commissioner for Fundamental Rights (Act CXI of 2011) is that the Commissioner for Fundamental Rights may take action against not only the authorities and bodies providing public services in the event of any violation of the fundamental rights of a large group of persons. This provision enables the Commissioner for Fundamental Rights to turn to the authorities in the field of media law, too, in the event of a large number of affected parties, irrespective of whether the violation was caused by an authority or was not.

The operation of the Authority for Data Protection (replacing the former data protection commissioner) also has a bearing on the field of media law. The task of the Authority for Data Protection is to supervise and promote the right to the protection of personal data and free access to information of public interest.

[12] See e.g. report no. OBH 4247/2003 on the reality show phenomenon.

3. Understanding Media Services and Press Products in the New Hungarian Media Regulations

3.1. Introduction

The European Union adjusted its audiovisual regulations to the digital environment in 2007. Within the framework of this, the most significant change was that the scope of the Television Without Frontiers Directive[13] was extended to a certain group of "Internet services", the so-called on-demand, nonlinear audiovisual media services based on individual needs.[14] This meant the acknowledgement of the fact that audiovisual services, showing a likeness to broadcasting, have a similar social significance and may have a similar impact to that of television. Because of this, they had to be provided with uniform market entry conditions similar to those of television broadcasting, so that the uniformity of the internal market and free movement of services could be guaranteed.

The new Hungarian media regulations also take into account the fact that, in the area of providing consumers with media content, new technologies have appeared in the realm of media services and press products. For this reason, starting from the principle of technology neutrality, and taking into account the increasing significance of new types of services besides traditional printed press products, the regulation of online press products and of on-demand media services also became necessary, alongside linear ones, as these services play similar roles in the process of mass communication. European regulation does not cover radio media services and press products, but, at the same time, the AVMS Directive gives a free hand to the Member States to regulate these services as they see fit.[15]

The new regulations only cover media services published with mass communications purposes and press products whose principal purpose is the provision of specific media content to the general public. Besides the presence of other criteria, it is very important

[13] Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities.

[14] Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (hereinafter: the 2007 AVMS Directive) and Directive 2010/13/EU of the European Parliament and of the Council 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) (hereinafter: the AVMS Directive).

[15] See Recital 23 of the Preamble of the AVMS Directive.

that the scope of the acts only extend to services intended for a significant portion of the general public. The distinction between private and public communications is clearly apparent in the new regulations.

It is important to emphasise that, from the principle of technology neutrality, it also follows that to determine the material scope, with respect to both press products and media services, it is always the given, concrete media content that has to be evaluated. Hence, the given service is *primarily* assessed, not by its form of appearance or the provider of the service, but based on the content provided to the public. This, of course, does not mean that, based on the content itself (or a certain portion of it), the given service can always be judged, because many other aspects have to be taken into account in the course of the assessment. However, the form of appearance or name alone of the given media content will never be the determining factors.

The present study provides a detailed analysis of the concepts of media services and press products serving as the basis of the conceptual system for the new Hungarian media regulations.

3.2. The conceptual system of the Press Freedom Act and the Media Act

The starting point in the determination of the material scope is that both Act CIV of 2010 on the freedom of the press and the fundamental rules of media content (the Press Freedom Act) and Act CLXXXV of 2010 on media services and mass media (the Media Act) apply to media services provided by, and media products published by, media content providers established in Hungary.[16] The acts define the concept of establishment in accordance with the AVMS Directive.[17]

Article 1(1) of the Media Act divides into two large groups the basic services under its scope: the first is media services, and the second is press products. The structures of their definitional elements are similar, a similarity which stems from the fact that the legislator created them based on the media service concept[18] of the AVMS Directive. The new regulations refer to the providers of the two different services as media content providers.

To determine the material scope, we should not start from the definition of media content provider and media content,[19] as these are summary categories which lead us back to the basic services already described, and to the definitions of media services and press products.

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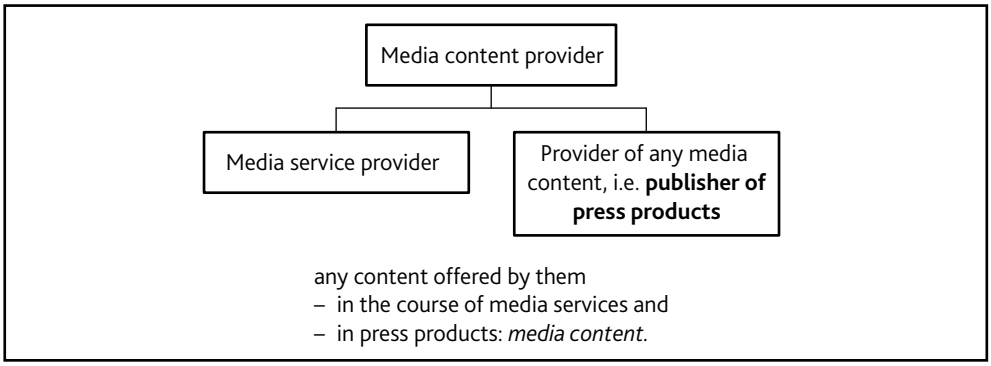
[16] Article 2 Paragraph (1) of the Press Freedom Act; Article 1(1) of the Media Act.

[17] Article 2 of the AVMS Directive; Article 2 Paragraphs (2)–(4) of the Press Freedom Act; Article 1 Paragraphs (2)–(7) of the Media Act.

[18] Article 1 Paragraph (1) Point *a)* of the AVMS Directive.

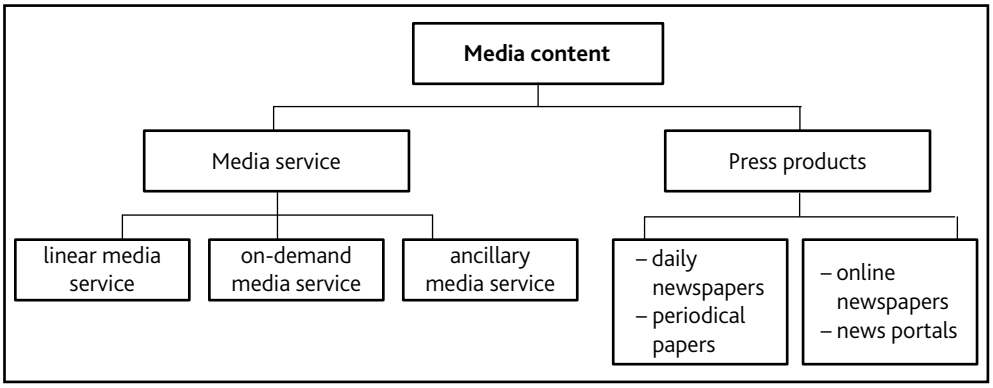
[19] According to Article 203(42) of the Media Act, any content offered in the course of media services and in press products.



Media service shall mean "any independent service of a commercial nature, as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union, provided on a regular basis, for profit, by taking economic risks, for which the media service provider bears editorial responsibility, the primary aim of which is the delivery of programmes to the general public for informational, entertainment or educational purposes through an electronic communications network".[20]

Press products shall mean "individual issues of daily newspapers or other periodical papers, online newspapers or news portals, which are offered as a business service, for the content of which a natural or legal person, or a business association without legal personality, has editorial responsibility, and the primary purpose of which is to deliver textual or image content to the general public for information, entertainment or educational purposes, in a printed format or through any electronic communications network. Editorial responsibility shall mean the responsibility for the actual control over the selection and composition of the media content and shall not necessarily result in legal responsibility in connection with the press product. Business service shall mean any independent service of a commercial nature, provided on a regular basis, for profit, by taking economic risks."[21] Both services are business services, for which the provider of the service bears editorial responsibility and the principal purpose of which is the provision of the service to the general public for information, entertainment or education purposes. We analyse in detail these definitional elements in the same way as the differences between the definitions of the services.

[20] Article 203(40) of the Media Act and Article 1(1) of the Press Freedom Act.
[21] Article 203(60) of the Media Act and Article 1 (6) of the Press Freedom Act.



3.2.1. Common definitional elements of media services and press products

The legislator has created the general, dynamic concept conforming to the technical development of the services provided by the media service provider and the publisher of the press product (together: media content), which, instead of the various types or forms of appearances of media services and press products, concentrates on their function. The four basic attributes that turns services into media services or press products are the following:

– "business service"-like quality;
– editorial responsibility;
– the purpose of providing information, entertainment or education; and
– the principal purpose of the provision of the service to the general public.

Only if all these elements are met simultaneously can we say that the service falls within the scope of regulation. These criteria enable the dynamic interpretation of the concept with respect to additional technical-technological developments that can be expected in the future, and they do not force an interpretation in relation to already existing technical solutions.

After the interpretation of the four common definitional elements, we turn to the particular individual definitional elements of the different services.

A) "Business service"

For the definition of media services, the legislator relied on the concept of business service as defined under Articles 56 and 57 of the TFEU.[22] The definitional elements that were included with regard to media services reappear in the definition of press products: a business service is an independent service of a commercial nature provided on a regular basis, for profit, by taking economic risks.

[22] The Treaty on the Functioning of the European Union (TFEU) replaced the Treaty on the EC on 1 December 2009.

According to Article 57[23] of the TFEU, *services* shall be considered to be "services" where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. Services in particular shall include:

a) activities of industrial character;
b) activities of commercial character;
c) activities of craftsmen; and
d) activities of the professions.

Hence, Article 57 of the TFEU is a general clause, after which a non-exhaustive list of examples provide further guidance. The concept was filled with content by the judgements and legal analyses of the European Court of Justice (ECJ), on the basis of which the publication of media content is clearly considered as a service.[24]

The service must be of "economic" character, for the fulfilment of which the fulfilment of the two definitional elements below is essential.

1. It is fundamental that the activity be of a commercial nature. Act IV of 2006 on business associations also uses the concept of "commercial nature," but it does not define it either. According to the explanation of the act,[25] commercial nature generally means striving for profit with taking economic risks and, in addition, it assumes regular, long-term, and organised economic activities. As such, the activity is considered as an activity of a commercial nature if it is conducted on a regular basis for the purpose of making a profit or an income.[26] The Press Freedom Act and the Media Act also build on these definitional elements known from Hungarian jurisprudence and the definition of Act LXXVI of 2009 on the general rules on the commencement and pursuit of service activities[27] specifying service activities. Therefore, in the case of business services that are conducted

a) on a regular basis,

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[23] The former Article 50 of the TEC.

[24] Cf. the 30 April 1974 judgement of the ECJ in the *Giuseppe Sacchi* (C-155/73) case [ECR, 1974, 00409], as well as the 9 July 1997 judgement of the ECC in the *KonsumentOmbudsmannen (KO) v. De Agostini (Svenska) Förlag AB* (C-34/95) and *TV-Shop iSverige AB* (C-35/95 and C-36/95) consolidated cases [ECR, 1997, I-03843], and the 26 April 1988 judgement of the ECJ in the *Bond van Adverteerders et al. v. Netherlands State* (C-352/85) case [ECR, 1988, 02085].

[25] Ferenc Zumbok: *A gazdasági társaságokról szóló törvény magyarázata* [*Explanatory Notes on the Companies Act*], Budapest, Magyar Hivatalos Közlönykiadó, 2006.

[26] András Kisfaludi – Marianna Szabó (Eds.): *A gazdasági társaságok nagy kézikönyve* [*The Big Handbook on Business Associations*], Budapest, CompLex, 2007, 39. The authors provide this definition in comparison with the concept of non-profit companies (Article 57 Paragraph (1) of the Civil Code).

[27] According to Article 2 Paragraph (l) of Act LXXVI of 2009, service activity is any independent economic activity of a commercial nature, provided on a regular basis, for profit, by taking economic risks, with the exception of production activities and exercise of public authority; o) production activity: the manufacturing of any products, even by the processing of other products, including the placing on the market of the product manufactured by the manufacturer in accordance with Article 2 Point (2) of Regulation (EC) 765/2008 of the European Parliament and of the Council.

b) to make a profit,
c) by taking economic risks,
we can talk about services.

Regularity presumes a sort of periodicity and continuity. "The Court of Justice has consistently held that the temporary nature of the activities in question should be determined in the light not only of the duration of the provision of the service, but also of its regularity, periodical nature or continuity."[28]

The concept of *profit* or remuneration should be interpreted broadly, as the income for the service does not necessarily come from the user of the service (reader, viewer or listener), but with the user, or independently from the user, can be also paid by third parties (e.g. advertisers). For example, the ECJ in the *Bond van Adverteerders* case[29] found that an activity is considered a service if it was provided in return for remuneration, but it is irrelevant who pays the remuneration to the service provider.

It is important to underline that the existence of actual tangible profit is not necessary for the activity to be considered a service of an economic nature. It is sufficient to pursue profits (if, however, the service provider does not strive to generate income but maintains the press product with the purposes of "good will", it is not governed by the regulations). If the activity cannot by any means be characterised with the pursuit of profits, but simply realizes the exercise of the freedom of expression of opinion, we cannot talk about a service.[30] (In the *Grogan* case, one of the student organisations in Ireland, which prohibits abortion, had published a list of British clinics performing abortions, an activity which was not considered by the ECJ as a service.)[31] In the case of an application for registration, the authority considers the fact of the filing of the application (in the absence of information or data to the contrary) as the applicant's express statement acknowledging the performance of activities of a commercial nature. However, in the course of proceedings for a failure to register, based primarily on public information or facts in official registries, or available data and information, and, if necessary, based on the data provision of the customer, the authority examines whether the service is provided as a business service. This, however, is only significant if the service in question is characterised by all the other definitional elements, without exception. Considering that it is the service provider itself that knows exactly whether it provides business services (and the authority does not have relevant prior information), in the event of a dispute it

[28] Recital 77 of the Preamble of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (hereinafter: Services Directive).

[29] The 26 April 1988 judgement of the ECJ in the *Bond van Adverteerders et al. v. Netherlands State* (C-352/85) case [ECR, 1988, 02085].

[30] Ernő Várnay – Mónika Papp: *Az Európai Unió joga* [*The Law of the European Union*], CompLex, Budapest, 2010, 618.

[31] The 4 October 1991 judgement of the ECJ in *The Society for the Protection of Unborn Children Ireland Ltd v. Stephen Grogan et al.*(C-159/90) case [ECR, 1991, I-04685].

may prove that, contrary to the allegations, its activities are not business services, and thus that it is not a media service or press product.

The fact in itself that the service is free is not determinative, as, for example, so-called "free" media services (*free-to-air television/radio service*)[32] themselves also work based on a certain business model, but, e.g. in the individual services or advertisements found in print media or on websites, they may refer to the business character of the service in question. We can very often encounter the phenomenon that the person bearing editorial responsibility provides compensation for the website in question to the authors of the website. The existence of paid contributors or employees may also indicate the economic character of the service.

The absence of *taking economic risks* also suggests that the service is non-economic in nature. Considering that every business service entails risk, the taking of risk exists not only in services in the pursuit of generating profit but also with regard to activities aimed at the maintenance of the service.

Many websites operate while taking economic risks. From the existence of banners and advertisements we can conclude that, in theory, there is economic activity, but at the same time, it is important that these appear on the website in question in a manner indicating that the website pursues profit from the service, and the website in question does not contain advertising only in an ancillary manner. However, in the case of certain websites, we cannot talk about taking economic risks, no independent business services take place, and indeed the advertisements only appear on the site in an ancillary manner. In the latter situation, examining the service as a whole, it can be concluded that there are no economic risks taken, we cannot talk about economic activity, and, thus, we cannot talk about a media service or press product either.

2. The service must be an *independent* business service. Such a service that is closely and inextricably connected to another economic activity (not providing media service or press products), cannot be considered independent, and, thus, is not governed by the acts. Accordingly, the Press Freedom Act and the Media Act do not cover Internet websites of a commercial purpose that serve information exchange within a certain interest group (e.g. a commercial on the website of the manufacturer of a product or service), or which serve the display of businesses, advertising their products or services, or information or statements regarding their business activities.[33] The existence of the independent nature of the service should be assessed on a case by case basis. It should be determined after evaluating all circumstances of the relationship between the non-media service or press product and partially related services providing information or information exchange (thus, whether the latter is independent or only related or ancillary by nature). In other

[32] Unencrypted, free-to-air broadcasting.

[33] Cf. RTR Aktuell: Medien Newsletter, Medien 09/2010. 4. It may be downloaded from http://www.rtr.at/de/komp/NewsletterM092010.

words, there is no restriction for a business operating in a given area to provide press products or media services in addition to its basic activities.

Also exempt are those websites that provide services related exclusively to the information society or electronic commerce, and the service provider provides information in association with these services.

Games of chance involving a stake representing a sum of money (lotteries, betting and other forms of gambling services), as well as online games and search engines, but not programmes devoted to gambling or games of chance,[34] should also be excluded from the material scope of this Directive.[35] These services are not considered media services as they only present audiovisual content in an ancillary manner relating to the underlying business service, and not as an independent economic service.

The electronic versions of printed newspapers and magazines published with different content than their printed version, however, may be considered as independent services, and, as such, they can fall within the material scope of the acts as online press products. It is also possible that on a given website both the publication of press products and the provision of media services take place. (See Section 3.2.4.)

With regard to economic activities, it is important to emphasise that the scope of the regulations extends to all forms of such activities (and so also e.g. to the activities of public service and community media services), but they do not extend by any means to services that are fundamentally not economic in character, which are not in competition with, in the case of media services, traditional (linear) media services (e.g. private webpages or audiovisual content produced by private persons shared among each other within communities with the same interests), or, in the case of press products, with the traditional, printed press.[36] Hence, in the course of the interpretation of the "business service" definitional element, all possible forms of activity must be considered, irrespective of the form of the business association or business model of the given service.[37]

Owners of blogs or private websites are not governed by the acts if they do not provide their services as media content providers; in other words, if they do so as independent business services. The assessment of blogs or private websites does not change if audiovisual services are also presented on them because, in accordance with the Directive, the Press Freedom Act and Media Act do not cover activities that are fundamentally not economic in nature and are not in competition with television media services (see the interpretation of the concept of "*television-like*" services under Section 3.2.2. B). As such, video blogs or audiovisual content published on social websites do not fall under the material scope of the acts either.

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[34] Recital 22 of the Preamble of the AVMS Directive.

[35] Recital 25 of the Preamble of the Services Directive and Recital 22 of the Preamble of the AVMS Directive.

[36] Recital 21 of the Preamble of the AVMS Directive.

[37] Cf. ATVOD decision in the *BNPtv* case at http://www.atvod.co.uk/regulated-services/scope-determinations/bnp-tv.

B) "Editorial responsibility"

According to Article 6 of the Press Freedom Act and Article 203(60) of the Media Act, editorial responsibility means the responsibility for the actual control over the selection and composition of media content and shall not necessarily result in legal responsibility in connection with the press product.

In accordance with the AVMS Directive,[38] editorial responsibility is the effective control over the selection and organisation of programmes; in the case of linear audiovisual media services, it is the chronological schedule of programmes and, in the case of on-demand audiovisual media services, it is the catalogue of programmes. Editorial responsibility does not necessarily result in legal responsibility under national law with regard to the content or service provided (also pursuant to the Hungarian regulation, the service provider, usually a legal entity, bears the legal responsibility, and not the person actually carrying out the editing of the programme in violation of the regulations). The Directive adds additional comments to the concept of editorial responsibility,[39] based on which, from the perspective of the definition of media service provider and, thus, of media service, and, because of the special features of the Hungarian regulations, the publisher and press product and the establishment of editorial responsibility are of fundamental importance. Member States may further specify other aspects of the definition of editorial responsibility, notably the concept of 'effective control', when adopting measures to implement this Directive.[40] The Directive, on the other hand, does not pertain to the exemptions from liability set forth in Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.[41] In the application of the Directive, the concept of media service provider does not extend to natural or legal persons that only broadcast programmes for which editorial responsibility lies with third parties.[42]

According to the Directive, editorial responsibility means the exercise of effective control over both the selection of programmes and their organisation into programme catalogues. Based on this, the editing of content means that the media service is realised in each case as a result of the organisation of several programmes and, with regard to press products under Hungarian regulation, editorial activity is carried out in the organisation of content comprised of text and pictures. The proposals worded in the course of the amendment of the AVMS Directive also listed exactly those activities meant by the selection and organisation of media content. As such, in the case of linear media services, the scheduling of programmes (programme schedule)—and, in the case

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[38] Article 1 Paragraph (1) Point *c)* of the AVMS Directive.

[39] Recital 25 of the Preamble of the AVMS Directive.

[40] Recital 25 of the Preamble of the AVMS Directive.

[41] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. Hereinafter: Directive on Electronic Commerce.

[42] Recital 26 of the Preamble of the AVMS Directive.

of on-demand media services, the selection of programmes (programme catalogue)— are covered by this responsibility. The concept of "programme schedule" is defined by neither the Hungarian acts nor the Directive. The design of programming is internationally labelled by the term *scheduling,* which entails the designation of the placement and broadcasting time of the programmes. Accordingly, the Directive sets forth that the editorial activities covered by the editorial responsibilities be manifest in the chronological organisation of programmes and the organisation of the catalogues of programmes. This was not included in the Hungarian concept definition, but it can be derived from the Directive.

In the course of the examination of the editorial responsibility definitional element, not only the responsibility for effective control but also editing as an activity should be taken into account. The activity of the editor, in addition to the organisation and selection of the media content they want to provide to the public, also gives an added value to the services, as editors carry out professional activities. The processing of information by a professional is also an element of the concept of mass communications. In the case of printed press products, because of its traditions, the interpretation of editorial activity can be considered clear, and its definition in the case of online press products has to be established based on analogy with the former. The definition of periodicals[43] as set forth by the no longer effective Press Act, as well as judicial practice,[44] shows that the attributes *indicating* that the material is edited are the formal requirements: publication with the same title and topic, the volume number, the issue number and the date; the legal criterion pertaining to content is that it publishes a written piece, either as an original work or a translation, belonging in the genres of journalism, literature or scientific literature (news, news report, article, interview, study, poem, short story, etc.), photography, graphics, caricature or puzzles. These criteria are not included in the current regulations, but taking them into account to distinguish between the various services may be helpful.

Accordingly, for example, in the case of a webshop, the person placing on and uploading to the website the description of the product offered for sale cannot be considered an editor, and, therefore, in this case there is no editorial responsibility. In the case of printed advertising publications, it is a decisive criterion whether we merely talk about a "listing" of certain products and related data and, thus, these are only simple flyers not qualifying as press products, or we talk about an organisation requiring editorial activities (e.g. about a paper where the editor decides which of the ads received may be published, even if the decision is that all advertisements will be published in the newspaper). Even an online advertising publication "operated" by software can be an online press product, assuming that the content on the given website meets the definitional elements of press products (in other words, e.g. there is editorial responsibility).

[43] Article 20 Point *f)* of the Press Act.

[44] Budapest Court of Appeal, 2.Pf, 20, 793/2006/3 and Budapest Court of Appeal, BDT2009, 2148.

All this is also strongly connected with the "supplemental" criterion, according to which on-demand audiovisual media services under the AVMS Directive are similar to traditional (linear) audiovisual media services[45] ("*television-like*"), because the Directive requires the regulation of on-demand media services only in cases where they are aimed at the same audience and compete in the same market as television broadcasts, and they are similar to them as regards their content and appearance as well. This principle, because of the logic of the Hungarian regulations and the definition of press products, must be also applied as regards online press products. In other words, online press products have to be "press-like" or similar to printed press products. The Hungarian legislator also included online press products in the regulations because they compete with printed press products and, as such, it is logical and justified by the protection of users to apply similar regulations to them. The Media Act and Press Freedom Act therefore do not wish to regulate those services that qualify as economic by nature; their purpose is to provide their content to the general public, but neither by content nor by form do they resemble printed press products and they do not fulfil their function either. The Press Freedom Act and the Media Act specify a uniform concept and thus identical definitional elements with respect to printed and online press products, and, therefore, with regard to all press product types, we can talk about "press-like" services. [See also Section 3.2.3. B)]

C) "Purpose to inform, entertain or educate"

Pursuant to the AVMS Directive, the definition of audiovisual media service covers media services in their function to inform, entertain and educate the general public.[46] In this way, the Directive also emphasises the limitation of the regulations to activities of mass communication. Under the Directive, therefore, the concept of audiovisual media services includes exclusively those audiovisual, either linear or on-demand, media services which are intended for reception by, and could have a clear impact on, a significant portion of the general public.[47]

These supplemental criteria also appear in the Hungarian regulations. It is clearly expressed both in the title and the Preamble of the Media Act that the act governs certain forms of mass communications within the scope of the regulations.

The intentions of mass communications can easily be integrated into the functions appearing in the concept of media services set forth in the Directive. These are the following:

a) information (compilation, storage, processing, publication and distribution of news, data, images and facts);

[45] Recital 24 of the Preamble of the AVMS Directive.
[46] Recital 22 of the Preamble of the AVMS Directive.
[47] Recital 21 of the Preamble of the AVMS Directive.

b) education (dissemination of scientific, cultural and artistic knowledge, and the development and shaping the taste and knowledge of the individual); and
c) entertainment.

The Press Act had earlier defined the concept of the provision of information. According to its Article 20(e), "providing information is the public communication, through a press product, of facts, events, official announcements and speeches, as well as opinions, analyses and evaluations relating thereto". The National Radio and Television Commission (ORTT) detailed the concept of entertainment in Resolution No. 1476/2002, with respect to light entertainment, as follows: "A light entertainment programme is a non-fiction programme, the purpose of which is to provide light entertainment to the audience (e.g. light-hearted game shows, talk shows, musical entertainment programmes and cabaret programmes)". Pursuant to the Resolution, entertainment as a purpose can best be captured as a means of providing entertainment.

No matter which of the above purposes is at issue, without a business service nature the given service cannot be considered mass communications under the Press Freedom Act and the Media Act, as media services and press products are also business services at the same time. Blogs, for example, want to provide information and participate in the shaping of public opinion, but in general they are not governed by the act, because "blogging" is characteristically not carried out in a commercial manner, i.e. by taking economic risks and for generating a profit. At the same time, there could also be examples of websites calling themselves blogs while also providing business services. Hence, if the real purpose of the website is to provide business services (according to the above, generating income by itself is not sufficient to establish this), if the website is edited, and if, based on its content, it is within the scope of mass communications, then it can be considered as a press product or media service.

The criterion regarding information, education and entertainment cannot be separated from the condition of providing content to the general public, because the Directive and, in accordance with it, the Media Act and the Press Freedom Act do not wish to regulate services that are private in nature or accessible only within a certain, narrow circle. Accordingly, for example, they do not apply to the various forms of private correspondence, hence, to e-mails,[48] sent to a limited number of recipients, considering these are still to be within the scope of private communications (e.g. e-mail circulars). "Press-like" media content communicated in the form of a newsletter (thus, sent via e-mail), however, may be considered as an online press product if it meets all other conditions.

Social or file-sharing websites in general are not within the scope of the Press Freedom Act and the Media Act, because, from the perspective of the person uploading the content, they are not fundamentally economic in nature or are not edited. In the course of these services, sharing and exchanging content prepared by private persons themselves within

[48] Recital 22 of the Preamble of the AVMS Directive.

communities of the same interest is taking place, and these are not in competition with linear media services (the service is not "*television-like*"). Although we can find users on social websites who operate their own websites with business purposes, in these cases we do not talk about independent business services, because the subpages of these registered users serve the advertisement and promotion of their own activities and businesses, and their purpose is not the generation of profit by this content provision (and so their services are not economic in nature). In general, community websites, as independent services, are within the scope of private communications and their purpose is not mass communication. They do not meet the definition of press products either, as their content is not "press-like".

Such services, as already mentioned, that serve to display information or communication between people in connection with themselves or their activities, can be excluded from the scope of the regulations as well. With respect to such content, the assessment of the economic nature of the given service and the evaluation of the purpose of the service deserve special attention. In the case of websites presenting and promoting the activities of certain individuals, it can be concluded that the principal purpose of the service is not mass communications. For example, the website of a certain performing artist or public figure, that contains news articles and videos of the person as well, cannot in itself be considered either as a press product or on-demand media service, because its principal purpose is to effectuate the provision of private information and self-advertisement. Although, without doubt, these websites have the purpose of providing information, their principal purpose is not the provision of content with an aim that can be found in the definition of press products (information, entertainment or education) with the *purpose of mass communication*. These websites do not qualify as independent business services either, because they serve, built on another business service or another activity connected to their persons, activities or businesses falling within the scope of another set of regulations and not the Press Freedom Act or the Media Act, and the advertisement and promotion thereof.

If, for example, public news or "*television-like*" content also appears on such a website, the purpose and character of the whole website in its entirety has to be examined, because if they *principally* provide it with a purpose of mass communications or if, from the perspective of the user uploading the content, the service qualifies as economic, if it competes with linear media services or printed press products and it is similar to them in its appearance and content, then it may be considered an on-demand media service or online press product.

D) "Providing the general public with content" as the principal purpose

Several of our acts provide definitions for the concept of public disclosure. According to Act LXIII of 1992 on the protection of personal data and the disclosure of data of public interest, public disclosure means the disclosure of data to the general public.[49] Based on

[49] Article 2(11).

the definition, it can be concluded that the number of people with access, the actual users of the service, is irrelevant from the standpoint of the occurrence of public disclosure. The emphasis is on accessibility. Accessibility is also achieved if access to a specific content requires some sort of registration and login, in other words, if access is only for a certain group, assuming that the service falls outside the scope of private communications. As such, the objective of providing the general public with content does not necessarily mean that any member of society has actual access to the given media content. This is because mass communications means providing smaller or larger groups of people (the public) with the media content.

From the perspective of the concepts of press products and media services (in other words, the consideration of a specific service as a press product or media service), it is irrelevant how many people actually receive the given content (for example, an Internet newsletter may reach a larger group of readers than e.g. a printed press product). How many people actually visit a website is also irrelevant from the perspective of the concept. As regards the assessment, it is not the number of visitors but the fulfilment of all the definitional elements that is relevant, as well as whether the given service is intended for a significant portion of the general public and whether the given service could have an impact on the general public.[50] It is another question that, in the event of an alleged violation, it can be relevant as to what proportion of the general public received the illegal content (it can be an evaluation factor when judging the gravity of the violation).

Article 20 Point (d) of the Press Act defined the concept of public communication, according to which the sale, distribution, delivery, commercial rental, free dissemination, public presentation, broadcasting or cable transmission of press products are considered as such. Although this enumeration included the possible forms of accessibility, because of technical developments and the emergence of new forms, a listing of possible forms and means seems unnecessary. The Press Freedom Act and Media Act are built on the principle of technology neutrality, and so it is unnecessary to put special emphasis on the means of the provision of the content to the public within the specific types of services. It is not the form or means that has to be examined, but the fulfilment of the criterion as to whether the given service is intended for a significant portion of the general public and whether the given service could have an impact on the general public.[51]

In the case of both on-demand and linear media services, the competition is for the same audience, and "the nature and the means of access to the service would lead the user reasonably to expect"[52] protection in connection with both services. In the *Mediakabel* case,[53] the ECJ found that the decisive criterion of the concept of television broadcasting was the transmission "intended for reception by the public" of programmes—

[50] Recital 21 of the Preamble of the AVMS Directive.

[51] Recital 21 of the Preamble of the AVMS Directive.

[52] Recital 24 of the Preamble of the AVMS Directive.

[53] The 2 June 2005 judgement of the ECJ in the *Mediakabel v. Commissariaatvoor de Media* (C-89/04) case.

in other words, the simultaneous transmission of the same images for an indeterminate number of potential television viewers. Stemming from the principle of technology neutrality, the means of the transmission of the images is not determinative in the evaluation. In the case of on-demand media services, the issue is the provision of content to the general public but only upon the individual initiation (request) of the service by the user.

For the interpretation of the concept of online press products it also deserves attention that, in the course of the service, the provision of content to the public emerges as a principal purpose. It is true that, with the rapid expansion of the Internet, the blurring of the boundaries of private and public communications can be observed, but, in addition to the criterion discussed previously, we cannot overlook this in the course of the interpretation, either.

3.2.2 Media services

With regard to media services, the subject of the service is the series of *programmes*, and the provision of service can exclusively take place via *electronic communications networks*.

The provider of a media service is the *media service provider*.[54] (A service provider, naturally, can provide more than one type of service. It is increasingly common that a media content provider, as a *multimedia service*, provides different kinds of content and so both media services *and* press products.)

In the *Mediakabel* case,[55] the ECJ found that the most important element of a television broadcasting service was the television programmes. According to Article 203 Point (47) of the Media Act, programme shall mean the series of sounds or moving images, or still images with or without sound, which form a separate unit in the *programme schedule* or *catalogue of programmes* selected by the media service provider, and the form and content of which is similar to that of radio or television media services.[56] As such, not only moving images can be considered as part of the programme but also still images presented in the media service (e.g. photographs shown in a news broadcast). The form and content of the programme has to be comparable with the form and content of television broadcasting services if it contains still images, and so, for example, a photo gallery attached to an online press product can be considered as part of the press product and is not considered as an on-demand media service. Hence, according to the definition, the programme can present still images besides moving images, or just still images in the

[54] According to Article 203 Point (41) of the Media Act, media service provider shall mean the natural or legal person, or business association without legal personality, who or which has editorial responsibility over the composition of the media services and determines their contents.

[55] The 2 June 2005 judgement of the ECJ in the *Mediakabel v. Commissariaatvoor de Media* (C-89/04) case.

[56] Cf. Recital 24 of the Preamble of the AVMS Directive.

media service can create a programme, if its form and content is comparable with the form and content of television broadcasting services.

As we have previously noted, the Hungarian regulations and the Directive do not define the concept of programme schedule and catalogue of programmes. However, based on the grammatical interpretation of the words and the definitions of the specific media services, it is clear that, in the case of *linear* media services, the media service provider enables the simultaneous viewing of programmes it provides based on a *programme schedule* (in other words, we can talk about chronologically organised programmes), while in the case of *on-demand* media services, we cannot talk about a programme schedule, because the programmes can be viewed or listened to upon individual demand, and hence, in this case, users can only select from a *catalogue of programmes* prepared by the media service provider.

The comparison of on-demand media services with television (linear audiovisual), as well as with linear radio media services, has a particular importance, as the definitional element of programme, according to the Media Act, is that the form and content thereof is *comparable* with the form and content of radio and television broadcasting services. The new definition of television and radio (linear) media services is built on the previous broadcasting definition.[57]

The category of "media services" therefore includes more than one type of service, which, according to the new Hungarian regulation, can be divided into two types, *linear and on-demand media services* (the third type is ancillary media services which, based on the extent and means of the regulation, can be considered as much less important).[58]

A) Linear media services

According to the Hungarian regulations, in accordance with the AVMS Directive,[59] the scope of linear media services includes radio and television broadcasting services, but the services of *webcasting* (such Internet programmes or linear media services which do not appear on other distribution networks), *simulcasting* (the digitisation and online transmission of television or radio programmes, simultaneously with the respective television/radio programme) and *near-video-on-demand* (hereinafter: NVOD) can also be included here. Simulcast cannot be considered an independent linear media service, because it only makes the given media service available on another platform.

Webcasting and simulcasting services only differ from traditional radio or television programmes in that they do not reach the public with the help of television or radio sets

[57] According to the repealed Article 2 Point (30) of Act I of 1996 on radio and television broadcasting (hereinafter: the Radio and Television Broadcasting Act), "broadcasting service shall mean the production of radio or television programmes by a broadcaster intended for reception by the general public and display in the form of electronic signals."

[58] Article 203 Points (35) and (36) of the Media Act.

[59] According to Recital 22 of the Preamble of the AVMS Directive, television broadcasting currently includes, in particular, analogue and digital television, live streaming, webcasting and near-video-on-demand.

but via computers; however, they are generally not recorded permanently in the memory of the computers.

The NVOD service means the repeat display of the same programmes on multiple channels at different times, and it does not make it possible for the viewer to select the time of access, as opposed to *video-on-demand* services, which are based on individual demand. The concept of "on individual demand" was first analysed by the ECJ in the *Mediakabel* case.[60] Although, with regard to the service that was the subject of the dispute, the service could be used with a decoding key sent by the service provider, the ordering of films that could be accessed in this manner was only possible at times determined by the service provider. In view of this, the ECJ did not find that the possibility of "individual demand" existed, but, allowing the possibility of "near individual" demand, deemed the service at issue in the case to be a broadcasting service.[61]

Services that merely provide technical assistance for the viewing of a linear programme, such as *time-shifted television* (TST) or *personal video recorders* (PVR), are not considered as media services. Of course, this does not mean that the linear programme itself, the edited media content, provided by the media service provider, is not within the scope of the regulation, but it means that these types of service provided by the media service distributor, that enable the viewing of the programme at a later time, are not considered as media services, because they do not have independent media content.

The rules pertaining to linear media services apply also to non-interactive teletext, which, according to Article 203(21) of the Media Act, is a programme broadcast in linear audiovisual media services, which primarily serves as the textual provision of information, and, in addition, may contain still images, moving images, sound or computer graphics.

As regards editorial responsibility, "effective control" means, in the case of linear media services, with respect to the selection and organisation of media content, advance control and editing, in the course of which statutory requirements must be taken into account (avoiding the broadcast of illegal content), and, in the case of live programmes, it provides presenters and managing editors with the opportunity to immediately intervene to eliminate the violation. In phone-in programmes, where there is a risk that the content of viewers' communications may be illegal, according to Decision No. 865/2005 (V. 22) of the National Radio and Television Commission [ORTT], the liability of the service provider, for hate speech in the concrete case, "is substantiated not by the hateful speech itself, but because the opinion at issue could reach the viewers without obstruction". According to the decision, it is the task of the service provider (concretely the editor and presenter of the programme), in the event of illegal communications, to mitigate or counterbalance the speech, actually to distance themselves from it or even to

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[60] The 2 June 2005 judgement of the ECJ in the *Mediakabel v. Commissariaatvoor de Media* (C-89/04) case.

[61] Levente Nyakas: *Elemzés a médiaszabályozó hatóságok munkájáról, valamint a nemzetközi audiovizuális szabályozás irányairól.* [*Analysis of the Activities of Media Regulatory Authorities and the Directions of International Audiovisual Regulation*] Budapest, AKTI, 2007.

interrupt the viewers' communications. The Decision found that the broadcaster was also liable with respect to SMS messages, because all the tools were available for them to publish viewers' opinions received by moderating them in compliance with the law. The Tribunal concluded that the programme was capable of inciting hatred, after considering in their entirety the viewers' statements spoken during the programme and the SMS messages which accompanied the conversation.

As such, the editor, in addition to counterbalancing the statements spoken, is responsible for the preliminary review of the messages that will be displayed on the screen, and the publication of SMS messages in compliance with the law, bearing in mind that the messages displayed in this manner are part of the programme (and what is more, in these situations there is no opportunity for subsequent mitigation).

B) On-demand media services

According to the definitions section of the Press Freedom Act and the Media Act, on-demand media services "shall mean the media services where, on the basis of a catalogue of programmes compiled by the media service provider, users may, at their own request, watch or listen to the programmes at any time of their own choice."[62]As such, for the interpretation of the concept of an on-demand media service, the following have to be examined:

a) who or what businesses may be considered to be media service providers;
b) whether, with the option of individual choice, including the choice of the time as well, access is achieved; and
c) what types of service are included within the scope of the media service.

Point *a)* Those who bear editorial responsibility for the selection of the content of the media service and determine its organisation may be considered media service providers. Intermediary service providers,[63] media service distributors[64] or any others that do not edit the content or determine its organisation are not considered media service providers. Regarding certain video on-demand services, it can happen that it is the media service distributor itself that organises the catalogue of programmes, so it is not impossible that the media service distributor also carries out editorial activities, and, thus, provides media services.

In the case of on-demand media services, in addition to the presence of "business services" (the principal purpose of providing content to the general public and the purpose of information, entertainment and education), with respect to the analysis of editorial responsibility, it has to be determined who organises the catalogue of programmes, because that person will be the subject of editorial responsibility. In the

[62] Article 1(4) of the Press Freedom Act and Article 203 Point (35) of the Media Act.
[63] Article 2(l) of Act CVIII of 2001 on certain issues of electronic commerce services and information society services (hereinafter: E-Commerce Act).
[64] Article 203 Point (51) of the Media Act.

case of all services where the organisation of the catalogue of programmes is not carried out by the service provider but by somebody else (for example, the users), these are not considered media services, either.

Point *b)* The main difference between on-demand media services and linear services is that, in case of on-demand media services, the user has individual access to the programme(s) based on a given catalogue of programmes (so-called point-to-point service), while as regards the latter, we can talk about a so-called point-to-multipoint service, where simultaneous, schedule-based programme access is realised.[65] We can also call on-demand (in other words, nonlinear) media services *video-on-demand* services, based on the wording of the Directive.[66] The Hungarian regulations expand this concept with services that provide access to programmes consisting exclusively of sound, for example an on-demand media service of a radio station (at which such Internet-based programmes can be found that can be listened to on individual demand).

Point *c)* The subject of the on-demand service is the collection of programmes. According to Article 203 Point (47) of the Media Act, programme shall mean the series of sounds or moving images or still images, with or without sound, which form a separate unit in the catalogue of programmes selected by the service provider and the form and content of which is similar to that of radio or television media services.

The AVMS Directive extended its scope to cover on-demand audiovisual media services to acknowledge that they were related to broadcasting and had similar social significance to television broadcasting (*television-like services*). This thinking is apparent, on the one hand, from the coordination of regulatory topics pertaining to on-demand audiovisual media services and television broadcasting,[67] and, on the other hand, from the definition of audiovisual media services[68] in the requirement of "information, entertainment and education" as public communications purposes. Recital 24 of the Preamble of the Directive states that "it is characteristic of on-demand audiovisual media services that they are "television-like", i.e. that they compete for the same audience as television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive. In the light of this and in order to prevent disparities as regards free movement and competition, the concept of 'programme' should be interpreted in a dynamic way, taking into account developments in television broadcasting." The concept of "competition for

[65] In other words, on-demand media services are considered a sort of ISSs just as the online versions of press products.

[66] Based on Recital 11 of the Preamble of the AVMS Directive: "It is necessary that at least a basic tier of coordinated rules apply to all audiovisual media services, both television broadcasting (i.e. linear audiovisual media services) and on-demand audiovisual media services (i.e. nonlinear audiovisual media services)." According to Recital 21 of the Preamble of the AVMS Directive, "For the purposes of this Directive, the definition of an audiovisual media service should cover only audiovisual media services, whether television broadcasting or on-demand, which are mass media, that is, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public."

[67] Chapter II of the AVMS Directive.

[68] Article 1(a) of the AVMS Directive.

the same audience" has to be interpreted comprehensively with respect to the media-consuming audience as a whole. This provision does not aim at the definition of the market at issue from a competition law perspective, but it refers to the fact that, whether the service providers broadcast media content either in linear or on-demand form, they are intended without exception for "media consumers". And although content strives to reach well-defined target groups in the increasingly fragmented media market, it is still true that they can only approach viewers, listeners and readers at the "expense" of other service providers. The popularity of on-demand media services increases in opposition to linear services, and online press products take readers away from print newspapers. Thus, based on the logic of the regulation, we have to consider the market of media services and press products separately as uniform. The precise definition of target audience by media service providers based on professional considerations, the methods employed to reach different social groups, and the media content supply developed based on these to satisfy the special needs of viewers, all indicate a diverse market, but the analysis and assessment of this do not fall within the scope of the Media Authority.

The Hungarian act was developed in accordance with this. The similarity with television broadcasting as a requirement appears in the definition of a programme adopted from the Directive.[69] The same principle should accordingly be applied to the relationship between linear radio and on-demand radio media services.

For the determination as to when a service can be considered television-like with respect to its form and content, neither the Hungarian regulation nor the Directive provides further reference points. Television broadcasting in the traditional sense is not an easily definable category either, because with respect to its theme, technology and design, we can talk about a constantly changing environment, which constantly renews its own appearance. The survey conducted for the British regulator Ofcom[70] to facilitate interpretation and applicability established a system of criteria built on the opinion of consumers as to the characteristics based upon which they consider a service "television-like".

Based on viewers' opinions, the characteristics of the content of a given on-demand media service include the following:

a) whether it was available before on television;
b) whether its standard, value and quality are close to that of television services;
c) whether its target audience is the same as, or similar to, that of the linear media service;
d) whether its title is similar to that of a television programme;
e) whether the producer of the programmes is the same; and
f) whether the format in which the service is broadcasted to the general public is similar.

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[69] Cf. Recital 24 of the Preamble of the 2010 AVMS Directive.

[70] The regulation of video-on-demand: consumer views on what makes audiovisual services "TV-Like" – A qualitative research report prepared by Essential Research December 2009.

With respect to the characteristics of format, viewers found the following important in connection with the packaging of the content:
a) the brand name of the service provider;
b) the visualisation and presentation of the content; and
c) the price of the service.

The participants also evaluated other factors during the study, such as the purpose and genre of, as well as the means of access to, the programme, but they did not find these to be crucial criteria of television-likeness. Although the purpose of the production and process of the programme does not help viewers in the assessment of the category, the creators, and thus the media service providers, have to know already at the moment of production whether the purpose would be television broadcasting, because then they create the given programme and also determine the budget of the production accordingly. The aforementioned characteristics, based on consumer perceptions, are not legal and not conjunctive conditions for the determination of the likeness to television of a programme. They can only be thought of as considerations assisting interpretation. Hence, the fact that given video content could have been seen previously on television can be a clear indication that it is an on-demand media service, but content can be "television-like" even in the absence of this.

With respect to the target audience, the so-called mainstream content intended for a significant portion of the general public shows similarity to television, while services filling in gaps intended for special, smaller audiences do not. The title of the programme may also substantiate the similarity, if it clearly refers to a television programme. Regarding the format, the viewers considered for the most part the longer programmes as television-like but the shorter content and video clips they did not, although in these cases they could make a decision more easily, based on the quality. For example, they did not compare a home video uploaded to a file sharing website to television programmes. The professional quality of video content can be a clear sign of "television-likeness", but this does not mean that exclusively professional content can satisfy the "television-like" definitional element.

The aforementioned characteristics defined by the viewers may possibly provide assistance with the interpretation of the acts, but they are not necessary and indispensable conditions of the conclusion that an on-demand media service has television-like characteristics.

As regards formal requirements, including brand names, it could be concluded that the viewers perceived content which was accessible through websites maintained by television media service providers as television-like, rather than content that could be downloaded from less familiar websites. From the perspective of the presentation of the content, they highlighted structure, well designed menu bars and clear signals which serve safe searching. They saw a similarity to television in general through easy and passive accessibility.

The criteria system of the survey based on viewers' impressions conducted in connection with the implementation of the Directive into the British legal system may

assist us in the interpretation of the Press Freedom Act and Media Act, but, of course, it is not legally binding.

If a programme that was previously broadcast as a linear programme later becomes accessible with the same content in on-demand format, pursuant to Recital 27 of the Preamble of the AVMS Directive, in addition to the rules pertaining to linear media services that had been already necessarily applied, it is not necessary to apply the rules prescribed with respect to on-demand services. Thus, in this case the two different means of access do not generate different rules with regards to the content of the same programme.

This means that it is not necessary to alter the content of a linear programme in order to make it available in on-demand format, because it had already met the content requirements pertaining to linear programmes. The objective of the Directive is the exemption from further obligations of service providers providing both linear and on-demand media services (although the Press Freedom Act and the Media Act do not contain provisions stricter than the regulation of linear programmes pertaining to the content of on-demand media services). Thus, as regards the content of the programme, new obligations cannot be created, but with respect to the means of access, the programme must comply with the special rules arising from the special nature of the on-demand media service (e.g. regarding registration, the protection of minors or programme quotas).

When the same media content is made available in on-demand format, irrespective of the fact that, as regards content requirements, it is subject to the same rules as linear media services, it will qualify as on-demand media service, and, with the exception of content requirements, it will be governed by the substantive and procedural rules applicable to on-demand services, also taking into account the currently effective provisions of the co-regulation.

At the same time, if in the on-demand services, as regards the content of the programme, a longer or shorter version of the same programme can be accessed (for example "uncut" shots related to a news programme), or the two services are clearly distinct, two systems of rules should be applied, because they are considered distinct services. In the latter case, the "*television-like*" nature of the on-demand service must be examined. Two services are considered distinct services if, compared to each other, they constitute separate entities in a well perceivable way. For example, on the website of a linear media service provider, the television programme accessible in the same length with the same content, and other media content accessible exclusively as an on-demand media service, substantiate the distinction between the two services.

C) Ancillary media services

The scope of the act also extends to ancillary media services and their service providers.[71] According to Article 203 Point (23) of the Media Act, ancillary media services

[71] Article 2 Paragraph (1) of the Media Act.

"shall mean all services—also containing content provision—which are transmitted through a media service distribution system and which qualify neither as media services nor as electronic communications services. For example, electronic programme guides are ancillary media services." This constitutes a change compared to the Radio and Television Broadcasting Act, in that while the old concept expected the information to reach the general public through the same programme distributor and programme broadcasting channel simultaneously, closely connected to the broadcasting, this definition requires fewer conditions. In addition, it includes the concept of added-value services from the previous regulation, which consists of the distribution of programmes and information that are not related to the broadcast. The ancillary media services are such independent content that, regarding its nature and distribution, is related to the media services.

Among the ancillary media services, the electronic programme guide is specified in the act by name. The electronic programme guide (EPG) in practice provides assistance in the direct access of media services. Users (subscribers) can see in it what media services are available for them, and they also can look up in them, in advance and retroactively, information about specific programmes, including the start and end times of their broadcasts. Ancillary media services also include traditional teletext services, as well as RDS services that send a small amount of digital information during FM radio shows (and during analogue broadcasts, too). The different types of these are AF (Alternative Frequency), CT (Current Time), EON (Enhanced Other Networks, which monitors other networks and switches to e.g. traffic news), TA and TP (to identify, search for, and increase the volume of, Traffic Announcements and Traffic Programmes), the TMC (Traffic Message Channel, which works together with the GPS navigation system and sends information on traffic jams, accidents and changes in traffic patterns), PI (Programme Identification), PS (Programme Service, 8 characters displaying the name of the media service), PTY (Programme Types, searches 31 pre-defined programme types by genre, e.g. news, drama, rock and state of emergency news), REG (Regional signal, where one can listen to radio stations of a given region), and RT (Radio Text, which is a 64-character free format text that can be used, for example, for a slogan or the title of a song currently playing).

3.2.3. Press products

In the case of press products, the *subject of the service* is the content consisting of text and images, and the *provision of the service* takes place in print format or through electronic communications networks. Text here refers to written text and images refer to still images, or in certain cases to moving images.

The *service itself* is the individual issues of daily newspapers and other periodical papers, as well as online newspapers and news portals. The specification by name of daily newspapers and other periodical papers, as well as online newspapers and news portals, in the definition of press products is a fundamental difference compared to the

definition of media services. While in the latter definition the subject of the service is not specified, in other words, the presence of all the definitional elements is the condition for the realisation of media services, in the case of press products, it is important that the service is a daily newspaper or other periodical paper, or an online newspaper or news portal. Hence, in this way, as compared to the definitional elements of media service, a fifth definitional element can be found in the definition: such services that are daily newspapers and other periodical papers, or newspaper-like or "press-like" online content similar to these, qualify as press products.

Article 20 of the already repealed Press Act and the judicial decisions[72] which, by interpreting the previous statutory definitions, extended the concept of periodical newspapers to online press products, thereby bringing them within the scope of the regulations, indirectly help to define the concepts of print and online press products. We will discuss in detail the set of criteria that can be outlined based on this when we turn to the specific types of service.

The "business service" definitional element requires a certain regularity and continuity in the case of press products, too. Accordingly, daily newspapers are published on a daily basis and periodical newspapers on a certain regular basis. In other words, press products, by definition, are published periodically without a planned "final point in time" (last publication). When people start a newspaper, they usually plan it for an indefinite period of time hoping that their enterprise will withstand time, while e.g. the regular publication of the complete works of Jókai [a famous nineteenth-century Hungarian writer] will necessarily end with the last work of the author. This differentiates e.g. printed press products from an also regularly published book series. In the case of online newspapers and news portals, the given service is also accessible on a regular basis, usually every day (even if the content is not updated daily but only periodically).

Under the Press Freedom Act and the Media Act, editorial responsibility is included not only in the concept-definition of linear and on-demand media services but is also a definitional element with regard to press products. According to Decision No. 57/2001 (XII. 5) AB of the Hungarian Constitutional Court, edited content, "the opinions and value judgements presented in a concrete press product are controlled by the columnists, editors, the editor-in-chief and finally by the owner, who take into account not only the aspects of publishing competing opinions in the press, but also those of preserving the specific image and spirit of the press product concerned, the marketability of the product and the requirement of profitable operation." This excerpt sheds light on the essence of editorial activities, within the framework of which the effective control of the content is realised.

The definition of press products does not specify *who* the provider of the service is with regard to a press product. However, the Media Act, in most places, clearly specifies the publisher as the subject of obligations and responsibilities. The fact that the founder

[72] Budapest Court of Appeal, 2.Pf, 20.793/2006/3, and BDT2009. 2148. (See in detail under Section 2.3.2 on online press products.)

was included in the regulations means the confirmation of a tradition of the history of the press and the practice of the newspaper market, as well as the partial adoption of the previous regulations, based on which the founder has those general powers that provide him with the right of disposal over the press product. According to the rules of the Press Act, the previous press law, the founder of the press product ensures the financial, material and personnel conditions of the operation of the newspaper, and, further, is financially liable for the operation of the newspaper, while, according to the Media Act, founders, if they are different from the publishers, may play a role at the time of registration[73] and at the time of the cancellation of the registration;[74] they can register the press products and are also entitled to designate the publisher. However, in most cases the founder is the same as the publisher, but if the person of the founder and publisher is different, the question is which one of them has the right to use the name of the newspaper. It follows from the previous regulations and jurisprudence that the founder of the newspaper has the right to use the name. Accordingly, therefore, if the founder and the publisher are different, the founder is entitled to designate the publisher, to which inseparably belongs the step that the founder authorises the publisher to use the registered name of the newspaper. This restrictive interpretation of the founder's rights can be derived from the regulations. Pursuant to Article 46 Paragraph (1) of the Media Act, the parties shall incorporate their responsibilities and rights vis-à-vis said media product in an agreement.

After reviewing the jurisprudence of the past years, it can be stated that the legal relationship between the founder and the publisher has a few such cardinal points that may justify that the parties stipulate in their agreement as to who and within what scope they have financial liabilities to, who is entitled to design the content of the press product, who and in what cases can exercise monitoring powers and whether the rights in connection with the press product can be assigned. If the publication of the newspaper is based on *license* rights, the parties may stipulate the conditions under which the newspaper has to be operated, and, in addition, if the company has employees, who has the authority to exercise the employer's rights. In sum, it follows from the regulations that, with the exception of the registration, the subject of the rights and obligations provided by law is the publisher, with the caveat that, naturally, the publisher cannot change the person of the founder.

A) Printed press products

Considering that printed press products can be daily newspapers and other periodical papers, the previous Press Act, which included the definition of *periodical paper,* can be useful for the interpretation of the concept. According to Article 20 Point (f) of the Press Act, *periodical paper* was "a daily newspaper, magazine or other newspaper that is published at least once in a calendar year, published with the same title and topic, is

[73] Article 46 Paragraph (1) of the Media Act.

[74] Article 46 Paragraph (6) Point *b)* of the Media Act.

provided by volume number, issue number and date, publishes written pieces, either as original works or as translations, belonging in the genres of journalism, literature or scientific literature (news, news report, article, interview, study, poem, short story, etc.), photographs, graphics, caricatures or puzzles". Accordingly, periodical papers include daily newspapers too, which are specified by the currently effective media regulations. The press products definition of the Press Act[75] included the "individual issues of periodical papers" expression, which was partially also adopted by the new regulation. The decision of the Budapest Court of Appeal published under Decision No. BDT 2009 2148 concluded that a press product qualifies as a periodical paper if it has editorial staff, an imprint, bears the essential and content elements of a periodical paper, its publication, update and accessibility are continuous, and it provides news and publishes articles. (Pursuant to Article 46 Paragraph (9) of the Media Act, the imprint must include the publisher's name, registered office and the name of the person in charge of publishing, and the name of the person in charge of editing.)

The modern media world has rendered the periodical paper definition of the Press Act somewhat obsolete. The rigid insistence on format requirements (topic, volume number, date, etc.) would have rendered the new regulation inflexible, but taking these into account as auxiliary aspects might come into play in the course of the application of the law, when making the necessary distinctions.

In the concept of *publication,* as defined by the Media Act, we can discover the previous concept of "press product" of the Press Act. According to Article 203 Point (22) of the Media Act, publication shall mean the book, press product in electronic or printed format, the periodical publication, and other printed material, films, sound recordings and musical compositions. Hence, publication is a collective term that includes books, press products and other materials (for example, a newspaper, which is not provided as a business service and which does not qualify as a press product, qualifies as a publication). While the Press Freedom Act and the Media Act create detailed rules with respect to printed and online press products, "publications" only have a role under Article 46 of the Media Act among the provisions pertaining to legal deposit copies.

In the case of printed press products as well, it is an important criterion that it is a business service. Print newspapers are so-called dual market products, and, therefore, in their case, the business service nature has to be examined with respect to income received from both consumers and advertisers. This means that even free newspapers may fall within the scope of the act, as it is possible that they generate income from the publication of advertisements. It is the intention to generate profits and the taking of economic risks that are decisive and not the actual realisation of profit. As such, in the case of loss-

[75] According to Article 20(b) of the Press Act, press products are individual issues of periodical papers, radio and television programmes, books, flyers and other publications containing texts, except bank notes and bonds, publications containing musical compositions, graphics, drawings or photographs, maps, films and tapes intended for public showing, video cassettes, music tapes and records, as well as any other technical devices containing information of programmes intended for public presentation.

making and free newspapers, the criterion of business service may also be established. The decisive factor is whether at the time of the publication of the press product the publisher took steps in order to realise an income or profit, in other words, whether the purpose of the service is generating profit.

In the case of newspapers of local governments or official authorities, it cannot be decided, based merely on the fact that the newspaper is free, whether or not they are printed press products. The examination of the individual definitional elements is also necessary in these cases (for example the advertisements published in these newspapers may also generate income). If the promotions and advertisements are only published in an ancillary manner, we do not necessarily talk of business services (all of the aspects of the latter definitional element have to be examined). However, it is indeed considered a business service when, despite the intention, no profit is actually realised or if the profit only serves the self-preservation of the service.

Certain services that were previously considered periodical papers do not meet the press products definition of the Press Freedom Act and the Media Act. In the case of certain university and college newspapers, for example, which before were clearly considered to be periodical papers, under the current set of criteria, editorial responsibility is established, as the editor is clearly identifiable, who exercises effective control and whose purpose is obviously the provision of certain texts and images to the general public. However, if they are not published as business services, in other words, if they do not intentionally publish advertisements, they do not have any other outside income and they are free, they are publications not classified as press products. However, if the publisher of the university newspaper seeks to generate profits (or at least it is not inherently precluded from its operational characteristics), in other words, if the definitional element of business service is met (for example it is a characteristic attribute of the newspaper that it contains advertisements), then the given newspaper is considered as a press product.

As we have explained while analysing the "business service" definitional element, with respect to the "purpose of generating profits", in the case of the submission of an application for registration, the Authority considers the fact of the submission of the application (in the absence of information or data to the contrary) as an express and admitting statement by the applicant regarding the activity of a commercial nature, while in the course of the proceedings initiated because of failure of registration, primarily based on information publicly available or contained in official registers, or available data and information or if necessary, based on the data provision of the customer, it examines whether the given service is provided as a business service.

According to Article 41 Paragraph (5) of the Media Act, in the event that a media service provider provides both linear and on-demand services, or if a publisher publishes both printed and online press products, it shall register each of its media services or press products separately. In the case of media services, this means that, if a television or radio media service provider provides both linear and on-demand media services, those have to be registered separately. This is not subject to the aforementioned provision of the Directive, according to which the publication of a linear programme in on-demand

format does not generate further obligations with respect to the content of the programme, as the act requires the registration of the service and not the programme, and here we speak of the provision of two different means of access, linear and on-demand media services.

In the course of the registration of press products, this rule should be interpreted such that, for example, in the case of a service published in print format and a service operating as an online press product providing more content than the content of the print version, even if its title is the same as that of the former, both services must be registered. However, if a publisher provides its press product *with the same content* on paper and through an electronic communications network, it has to be considered as a single press product. In this case we talk about one press product which is published with the same content on multiple platforms, i.e. in print format and through an electronic communications network. This interpretation can be derived from the fact that the regulations only recognise the concept of a uniform press product, and make a distinction only within that, between printed and online press products, based on the means of access. If, therefore, the content on both platforms is the same, notwithstanding the commercial communications ancillary to the media content and necessarily different with respect to printed and online publications, we can talk about a uniform service with a single registration obligation.

As such, the electronic versions of registered printed press products already in the register of the National Office of Cultural Heritage, published with the same content and transmitted through an electronic communications network, do not have to be registered as online press products, but they have to be considered as press products (having the same content as printed press products), which have already fulfilled their registration obligation. In the case of services entering the market after the act came into force, they have to clarify at the time of the *registration* of the press product whether the publisher provides the press product in print and/or electronic format. If it publishes, under similar names, two (print and online) press products with different content, they are considered to be two independent services. If a publisher does not separately register its press product that can be accessed online, in other words, it does not register the service as an online press product, then it can be assumed that it has the same content as the version of the press product published in the print version, and, hence, the service provided on two different platforms is considered a single press product.

In the case of different content, and so when in addition to the necessarily different commercial communications, the online version has a different content, we can talk about two independent press products (e.g. certain columns are only published in the online version), and, in this way, both the print and the online press products have to be registered. In this case, with respect to the *title* of the two press products, in the course of the examination of the similarity of names, it has to be taken into account if the founder and the publisher are the same and they wish to publish the online newspaper under a title similar to that of the print version (although it has different content, and, accordingly, it is formally considered an independent press product, but, at the same time, it has a close relationship with the print publication).

It has to be noted that registration does not have a legal consequence, pursuant to which the employees of the registered press products would automatically be considered "journalists", or that only the employees of registered press products can qualify as "journalists". Registration only pertains to the press product itself and has no legal consequences as regards the employees. (At the same time, Articles 6–8 of the Press Freedom Act provide certain rights to employees or other persons in a work-related legal relationship with the media content provider, and thus to "journalists" as well. The question as to who is qualified as a journalist has to be examined on a case by case basis, because it cannot be defined in the regulations in a general sense.)

B) Online press products

Online newspapers and *news portals* are types of services that are specified by name in the concept definition of "online press products". Although we cannot find the definition of these types of services in the act, the legislator, by mentioning the term "newspaper", clearly refers to the fact that online press products are published in a similar way and means to printed press products (newspapers).

The sharp distinction between online newspapers and news portals would be difficult and also unnecessary, because in the regulations these services do not appear as the differentiated subjects of rights and obligations. The publishers of press products may call their services online newspapers and news portals at the same time. In the course of the performance of their registration obligations, it is the publishers themselves who carry out the categorisation and fill in the registration form as to whether they consider their services to be online newspapers or news portals. As regards their rights and obligations, under which types of online press products they categorise their services is irrelevant.

For the interpretation of online press products, we may be assisted by previous judicial decisions that interpreted the concept of periodical papers in an extensive manner. The decision of the Budapest Court of Appeal published under Decision No. BDT 2009 2148 concluded that, if an online news portal carries out media activities, and, thus, it has an editorial staff, imprint, continuous publication,[76] contact information and updates, as well as provide news and publishes articles, it bears the essential and content elements of a periodical paper, and, therefore, the obligation of press correction applies to it and is subject to the Press Act. In its Decision No. 2.Pf.20.793/2006/3, the Budapest Court of Appeal concluded that if a press product is regularly published on the Internet, has an imprint, an editorial staff and an editor-in-chief, it can be considered as a periodical paper. In its Decision No. Pf.I.20.369/2005/9, the City of Győr Court of Appeal imposed

[76] Monitoring of regular publication is simple in the case of printed press products thanks to the legal deposit copies, but, as regards online press products, there is currently no obligation to provide electronic legal deposit copies. Although, according to its Section 1, the scope of Government Decree No. 60/1998 (III. 27.) on the provision and utilisation of legal deposit copies of press products applies to "press products", pursuant to Article 4, it is clear that the obligation only applies currently to printed press products.

similar conditions on online press products (that eventually, contrary to the judgement of the trial court, it did not qualify as a periodical paper). Here, the court examined whether the given website was published with continuously updated content and the same title, several times, practically daily, within a calendar year; whether the permanent topics at the top of the website could be read, which were identical to the classic columns of daily newspapers; whether, in addition to mere news communication, it regularly published written pieces belonging within the scope of the genre of journalism that were in part original and in part works of authorship adopted from elsewhere (edited news, news reports, articles or interviews); whether the year and also the date were displayed; and, in addition, whether it was identical to traditional periodical papers in its functions and impact.

In this sense, therefore, every such press product which, in its function, appearance and impact is similar to printed press products, and which is offered as a business service, for the content of which a natural or legal person, or a business association without legal personality has editorial responsibility, and the primary purpose of which is to provide textual or image contents to the general public for information, entertainment or educational purposes, *through an electronic communications network*[77] must be considered as an *online press product* (in other words an online newspaper or news portal). As such, the emphasis is on the simultaneous presence of these definitional elements.

In addition to text and still images, online press products may also contain moving images. To make a distinction between these moving images from on-demand media services, the following considerations must be taken into account. If a moving image (video content) appears on the website of an online press product embedded in the text in a supplementary, ancillary manner, we do not talk of a programme of an on-demand media service but about the content, a part of an online press product containing text, as well as still and moving images. If a website does not contain moving images (videos) in this manner, but they appear in a "*television-like*" manner, creating a catalogue of programmes, it has to be examined as to whether the service has the definitional elements of on-demand media services. In practice, therefore, there is nothing to prevent a publisher of an online press product from also providing, at the same time, an on-demand media service (and in this case both services must be registered). However, the mere fact that video content is featured on the website of an online press product does not mean that the given website also provides on-demand media services. Moving images that do not meet the criteria of on-demand media services are simply integral parts of the online press product and are not separate services. If the service provider creates a catalogue of

[77] According to Act C of 2003 on electronic communications, "»Electronic communications network« shall mean transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals between specific terminal points by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed and mobile terrestrial networks and electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed" [Article 188 Point (19)].

programmes from the videos on the website of the online press product, then we can describe it as a "television-like" service, and it can be considered as an on-demand media service. Accordingly, videos may constitute a catalogue of programmes if they have been collected in a video library that is categorised and labelled, and the viewer may select from these edited and organised videos. However, the service provider may make the catalogue of programmes available in another manner, not only by organising them in a video library.

The perspective of the business service's nature may also assist us in connection with the assessment of online "diaries" (so-called blogs), as, despite meeting the other criteria, websites that do not provide business services are not within the scope of the act. In the case of blogs, it is important to underline that, regarding the assessment of the service, we must primarily start from the recognisable characteristics and not the name. We can differentiate between countless types of blogs, but the starting point with regard to all of them is that they are generally not subject to the act, as, although they may be able to address a large proportion of the general public, they do not do this for the purpose of providing business services. However, if a blog qualifies as a business service, the missing definitional element is realised and the given service called a "blog" may become subject to the act.

As regards the "editorial responsibility" definitional element, we can also conclude in the case of online press products that, by emphasising the "responsibility for effective control", the legislator prevented the possibility of a broad interpretation of editorial responsibility. Otherwise, editorial responsibility could also mean that the publisher is also responsible for media content where it has no direct influence over its publication. As such, the extent of editorial responsibility cannot be extended unnecessarily. The responsibility covers the selection and organisation of the various items of content. The fact that a publication is edited can be indicated even by the placement of various advertisements by the editor on the given page (for example, when an advertisement "pops" up when an article is clicked, or content consisting of moving images begins with a commercial, or when, between the paragraphs in the text or on the left side of the text, advertisements appear that were also placed there by the editor of the given page).

The editorial decision made in the course of the selection and organisation of content and the responsibility generated in this way, can in the case of an online press product be determined by the amount of "editing into" the website of the given content. For the content accessible from the homepage of an online newspaper or news portal, including the content published under the title of a "blog", the editorial staff of the press product also have editorial responsibility (the publisher of the press product bears legal liability, while the author of the blog has no liability). The publisher bears the editorial responsibility for the online newspaper in this case too, as the content of the blog in question, which can be reached directly from the homepage, becomes part of the content of the press product by dint of its being edited into the homepage. It is important to underline, though, that this does not at all mean the full extension of the liability of the publisher of the press product for content edited by someone else. If, for example, an edited blog post is updated, after being edited into the website, without the control or influence of the editor of the press

product and subsequently becomes illegal, then legal (in this case primarily civil or criminal, but not media law) liability can be established only with respect to the author of the blog.

Blog posts and comments posted subsequently to the content of a given online press product do not fall within the scope of the regulation, as these are not considered part of the given press product. With respect to them, there is no editorial responsibility. Hence, forums and comment boxes on the website of the press product, unless their content is placed there after editing and selection, are not governed by the Press Freedom Act and the Media Act. Subsequent moderation does not serve as a basis for editorial responsibility either, because this activity does not render the given comment box or blog an edited part of the press product, as, even in the case of content left untouched by the moderator, an editorial decision is absent with respect to the publication. (This does not mean that the posts of forums or comment boxes on the online platform provided by the publisher of the press products may be published on the given website without regard to other legal requirements. In the event of the violation of the limit of any right to expression of opinion, it is the user of the forum or publisher of the press product against whom steps may be taken for the termination of the violation, pursuant to the rules of the E-Commerce Act, as well as the Civil Code and the Criminal Code.)

As regards the assessment of "linked" content, it can be stated that the manner of the link's publication, placement and relation to the press product determines the evaluation of the content that can be reached through the link. The question as to whether the linked content should be considered as edited content, in other words, part of the press product, should be analysed on a case by case basis. Even if it can be established about a link that it qualifies as edited content, the content and manner of the communication together determine the illegal quality, in each case; for example, how the embedding of an article containing hate speech in the form of a link into another article should be judged. If in this case the content of the link is subject to scholarly analysis or public debate, and its authors exclusively post it for the sake of clarity, and call attention to the illegal nature of the content and distance themselves from it, the further communication (transmission) of the infringing content does not constitute another legal violation.[78] This does not mean that the publisher can be liable for the Twitter stream running on the website, because it is not part of the press product. The publisher is only liable for the content that was adopted from it and edited into the press product.

As to the nature of the "business service", we have to note that the application of Google AdSense or placement of some banners does not necessarily mean that we can talk of a business service (especially if it is not the editor of the content of the website but its operator that generates income from the given advertisement; it is the same in the case of the Facebook page of a given press product, as it is not the editor of the content that strives to generate profit from the uploaded content). For a service to fall within the

[78] Cf. Decision No.IZR 191/08 of the German Federal Court in the "Any DVD" case, where the court found that the link of the "heise online" news portal pointing to pirated software was not illegal.

scope of the act, it is not enough to receive income in an "ancillary manner" from the given service—business services have to be primarily provided by taking economic risks (naturally, the actual generation of profits is not a precondition in the case of online press products either).

3.2.4. Assessment of "complex" services

If a service provider provides more than one service through the same or different electronic communications networks, they have to be assessed separately by type of service and not together as a "complex service".

If the services of a website fall partly under the definition of online press products and partly under the definition of on-demand media services, then both services must be registered. If an online press product contains television-like audiovisual elements with the primary purpose of providing media services, these elements may be classified as on-demand media services, and thus the service provider has a registration obligation with respect to both services. The reason for this is that the media content providers in this situation enter the market not only as a press product but compete in the same market for the same audience with the other media service providers, and, therefore, they have to be subject to the same rules.[79] As we previously wrote in the subchapter on online press products, it can be established that audiovisual content similar to television programmes, published by the service provider on the webpage of an online newspaper (thus, for example, "television-like" videos accessible on the website of an online press product), meeting all the definitional requirements, qualify as on-demand media services,[80] whereas the content on the given website consisting of text and still images, as well as moving images and videos not qualifying as on-demand media services, connected to the content of the text, is considered as a press product.[81] An article and attached photo gallery can be considered as a press product, as in this case the still images are displayed not as a part of a programme, thus not as a media service.

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[79] See Recital 24 of the Preamble of the AVMS Directive.

[80] In conformity with the decision of ATVOD in the *Sunday Times* case (http://www.atvod.co.uk/regulated-services/scope-determinations/sunday-times-video-library) where the ATVOD found that the video library on the electronic version of the Sunday Times was an on-demand media service and not merely a part of the online press product, as it was an independent business service which offered media content that was television-like, not ancillary to the content of the newspaper, viewable at any time and edited into a catalogue of programmes.

[81] If media service providers provide both linear and on-demand services, or if publishers of press products publish both printed and online press products, pursuant to Article 41 Paragraph (5) of the Media Act, they are obliged to register their media services and press products separately. If a service provider provides various services both as publisher and as media service provider, naturally, registration, separately for each service, is a basic requirement in these cases as well.

If a service provider provides more than one type of service, or produces various types of content and some of these are under the material scope of the acts and some of them are not, then the distinction between the given types of content must be examined first. In the case of websites where only one distinct part of the service provided (e.g. the content of a subpage) meets the definitional elements, only that page has to be registered independently as an online press product. If there is no possibility of formally dividing the given service, it has to be examined whether the given service as a whole constitutes an activity that falls within the material scope of the acts and not whether all the elements of a website (interface) constitute such an activity. In this situation, if there is no distinguishable subpage, technically the given website is registered, but the registration pertains only to those items of content that are considered as press products or media services, and thus registration naturally does not concern the other content of the website. However, in the course of the individual evaluation, we cannot ignore whether the purpose of the service is the provision of programmes, texts, and images, even in exchange for a fee, to anybody, and whether the format and content of the media content provided can be compared to television, radio or the press. As such, registration may be required, even in the case of websites containing a mix of private communications and edited content (naturally, only with respect to the media content of the given website).

3.3. Summary

The legislator adopted a dynamic definition of media services and press products to conform with their technical developments. When examining the fulfilment of the specific criteria regarding the specific services, it is not the name of the activity to be evaluated, but primarily the assessment of the actual service provided that will determine whether or not the given activity falls within the material scope of the new regulations.

The starting point is that private communications are not subject to the regulations in the acts. The Press Freedom Act and the Media Act contain provisions only with respect to mass communications. In addition to the specific key definitional elements ("business service", "editorial responsibility", "information, entertainment or educational purpose", and "providing content to the general public"), as a supporting principle, in the case of on-demand media services, their similarity to television (radio) media services, and, in the case of online newspapers, their similarity to printed periodical papers, should be examined.

As such, the new Hungarian media regulations, in conformity with the objectives of the European Union, contain harmonised provisions with respect to services playing similar roles and competing for the same audience in the process of mass communication.

4. Jurisdictional Questions

4.1. General questions of jurisdiction

One of the achievements of the AVMS Directive is that only one Member State may take action against a media service provider (only one Member State has jurisdiction). As a general rule, this is the Member State in which the given media service provider is established. (Article 2, AVMS Directive; Articles 2–3, Press Freedom Act; Articles 1–2, Media Act):

a) as a general rule, a Member State may be regarded as the country of origin forming the basis of jurisdiction by the fulfilment of one of the conditions provided for by the Directive or the Act, or, lacking this,

b) the technical conditions, or, in the last instance,

c) the relevant provisions of the Treaty on the Functioning of the European Union (hereinafter TFEU) on establishment are decisive in respect of the establishment of jurisdiction.

Ad a) In the first of the three possible scenarios, the primary basis of jurisdiction is that the central management of the media service provider is located in a Member State and the editorial decisions related to the audiovisual media service are also passed there. If these two are in two different Member States, then the decisive factor is where the major part of the workforce participating in the activities related to the audiovisual media service is located. If the workforce is split between two Member States, the Member State with jurisdiction over the media service provider shall be the one where the central administration is located. If the central administration is not located in either Member State, the Member State with jurisdiction shall be the one where the media service provider first started providing the media service according to the laws of the given state, on condition that the media service provider maintains a continuous and efficient relationship with the economy of that Member State. If the central administration of a media service provider is in a Member State, but the editorial decisions are passed in a third (non-EU) state or the other way around, but a significant part of the workforce is located in the given Member State, the media service provider shall be regarded as established in that Member State; i.e. it belongs under the jurisdiction of the state where the central administration and a significant part of the participating workforce is located, or where the editorial decisions are passed and a significant part of the participating workforce is located.

The provisions of Article 2 (1) a) of the Press Freedom Act and Article 1 (2) a) of the Media Act provide guidance in the case of media content that is not or only partly provided for by the AVMS Directive. Accordingly, a media service is to be regarded as established in Hungary if its analogue distribution uses a frequency owned by Hungary. This provision primarily concerns analogue linear radio media services (and analogue television broadcasting until the digital switchover), since the FM (VHF, UHF) frequencies used by these are the property of the Hungarian State. Radio and television stations providing such media services use the frequencies directly and are granted the right to use frequencies or frequency bands. By contrast, in the case of digital media service distribution, the frequency is used not by the terrestrial digital television stations, satellite television and radio stations, but by media service distributors who do not qualify as media service providers, so the provision referred to does not apply to them.

Similarly, a media content provider is regarded as being established in Hungary if the press product provided by the media content provider is primarily available via an electronic communications identifier assigned primarily to Hungarian users. That is, if the top level domain (TLD) of a press product is "hu", it may be assumed that the given press product is established in Hungary. The Hungarian regulation conforms to EU law; however, it provides that the establishment rules of point c) of Article 2) of the Directive on Electronic Commerce should be applied, i.e., according to the Press Freedom Act and the Media Act, the *domain* name is a major factor in deciding whether or not an online press product belongs under the scope of the law. At the same time, it should be noted that, in the case of press products issued under the "hu" domain, the jurisdiction of Hungary is only presumable, as other factors may preclude it.[82]

Ad b) The second scenario needs to be examined if none of the possibilities mentioned in the first scenario hold true. In this case, the Member State with jurisdiction over the media service provider is the one where the satellite uplink station is used by the media service provider for broadcasting its programme flow. If jurisdiction cannot be established on the basis of this either, but the media service provider uses the transmission capacity of a satellite that is the property of a Member State, this Member State shall have jurisdiction over the media service provider.

Ad c) If jurisdiction cannot be established on the basis of either of the above two scenarios, the Member State with jurisdiction shall be the Member State in which the media service provider is established according to Articles 49–55 of the TFEU.

[82] György MOLNÁR-BÍRÓ: Mttv. 2–3. §. [Articles 2–3 Press Freedom Act]. In András KOLTAY – András LAPSÁNSZKY (eds.): *A médiaszabályozás kommentárja.* [*Commentary on Media Regulation*] Budapest, CompLex, 2011, 28.

4.2. Special instances of jurisdiction

Paragraph (2) of Article 3 of the Press Freedom Act provides for those instances of jurisdiction where the service provider does not qualify as established in any of the Member States of the TFEU, and the jurisdiction of no Member State can be established over the media service or press product of the service provider. On the basis of the law in such instances, Hungarian jurisdiction (ancillary jurisdiction) may be established.

Articles 3–4 of the AVMS Directive and Articles 176–180 of the Media Act provide for special instances of jurisdiction as well, besides general and ancillary jurisdiction. The European and Hungarian provisions on special jurisdiction are extremely significant because several media service providers that mainly target the Hungarian public are not under Hungarian jurisdiction according to the rules of general jurisdiction, so they are not required to comply with the provisions of Hungarian media regulation. As opposed to the general rule, on the basis of the provisions on the special instance of jurisdiction, the Media Council may proceed in respect of those media services and press products which are distributed and published in the territory of Hungary by service providers which are not established in Hungary. That is, these are the special instances when—if the necessary conditions are given—the freedom of receipt and retransmission otherwise provided for by the AVMS Directive may rightfully be restricted. Within the sphere of these, the Media Act distinguishes between five groups, sometimes by implementing the AVMS Directive and sometimes by deriving new rules from the AVMS Directive.

A) Proceedings against a linear audiovisual media service provider not established in Hungary but established in another Member State in the event of an infringement of the provisions on the protection of minors and the prohibition of hate speech

In the first scenario, the authority may take action against a linear audiovisual media service provider not established in Hungary in the event of a severe and public infringement of the provisions on the incitement to hatred and the publication of content severely harmful to minors or a severe infringement of the rules of publication and classification (Article 176, Media Act). These jurisdictional rules are sourced verbatim from paragraph (2), Article 3 of the AVMS Directive with the exception that the AVMS Directive does not provide for what measures may be taken, while the Media Act does [Article 187 (3) c)–d)].

Essentially, the rules provide that the Media Council may only proceed and take measures against service providers established in a different Member State in exceptional cases, and these measures (the notice and the prohibition of distribution) must be preceded by a consultation mechanism with both the service provider and the authority with jurisdiction according to the domicile of establishment of the service provider. As such, according to Article 3 (2) of the AVMS Directive and Article 176 of the Media Act, such proceedings may only be instituted (and closed) if the following five conditions are fulfilled:

a) The media service is in evident and severe infringement of the provisions on the protection of minors [Paragraphs (1) and (4), Article 19 of the Press Freedom Act,

Article 9, Paragraphs (1)–(3), Article 10 of the Media Act] or the prohibition of hate speech [Paragraph (1), Article 17 of the Press Freedom Act], and the media service provider has already committed at least two legal infringements of identical gravity during the 12 months preceding the infringement.

b) Upon the initiative of the Media Council, Hungary must notify the media service provider concerned and the European Commission in writing about the infringements and the planned actions of the Media Council to be applied in the event of subsequent infringements (in the event of the third infringement at the earliest).

c) No agreement is made between Hungary and the Member State concerned within fifteen days from the date of the notice.

d) The legal infringement defined in point a) still subsists or recurs; i.e. a minimum of three infringements against the protection of minors or the prohibition of hate speech are required as defined by the Media Act or the Press Freedom Act for the Media Council to take action against a media service provider under foreign jurisdiction.

e) Following this, the European Commission has to be informed about the actions planned against the media service provider. The European Commission will approve or veto the planned action within two months from the date of the notification.

If all conditions are met, it is possible for a Member State receiving the programmes of a media service provider established in a different Member State to take action against the said media service provider.

B) Proceedings for the protection of the public interest against an on-demand audiovisual media service provider established not in Hungary but in another Member State of the European Union

In the second scenario, the Media Council may take action against on-demand audiovisual media services of media service providers established outside Hungary (Article 177, Media Act). The conditions of this have been sourced by the legislator from Paragraph (4), Article 3 of the AVMS Directive (based on Articles 52 and 62 of TFEU on the admissible restriction of the free movement of services). The Media Council may apply the sanctions specified in the first scenario against media service providers providing on-demand audiovisual media services if such sanctions are required for the protection of public interest, as defined by law, because the media service provider violates or severely jeopardises public interest. The law formulates this as follows: "the measures are necessary for the protection of public order, the prevention, investigation, and prosecution of criminal acts, necessary on account of infringement of the prohibition of inciting hatred against communities, or for the protection of minors, public health, public security, national security, and consumers and investors."

The legal sanctions must be proportionate to the interest to be protected, and, in this case too, prior to action, the Media Council is obliged to consult with the media authority with jurisdiction, and to send its draft resolution to the European Commission, which has the right to "veto" it.

In cases of special urgency, the Media Act provides the Media Council with the option of passing a prompt decision in the form of an immediately executable transitional

measure. The Media Council must notify the Member State concerned and the European Commission of such a decision forthwith, and is bound by the decision of the latter in this case, too. The reason for the possibility of faster action with fewer guarantees is that, with regard to on-demand media services, market entry and market exit are much easier, and the Member State of origin is not able to exercise the same degree of control over such enterprises as over linear media service providers. In the event of an obvious and serious violation, a protracted procedure would hinder the effective remedy of the injury.

C) Proceedings in the case of media content services (radio media services and press products) established in a Member State of the European Union other than Hungary that are outside the scope of EU legal harmonisation

The third scenario (Media Act, Article 178) provides the Media Council with scope for action in respect of radio media service providers and press products not established in Hungary. With a few exceptions, the rules of this procedure are identical to the rules applicable to the scenario described in point B) above. The first difference is that, in this case, the sanction may only be the mandatory publication of a notice according to point c), Paragraph (3) of Article 187 of the Media Act; the second difference is that the European Commission does not have to be involved in the consultation procedure, as no European Union legislation is applicable to this issue. The third difference is that if the Media Council passes a transitional decision due to the exceptional urgency of the case, it shall request measures from the Member State concerned, and in terms of upholding or revoking its decision—depending on the measure taken by the Member State—it will pass a decision independently from the European Commission in this case, too.

D) Proceedings against a linear audiovisual media service provider established in another Member State in the event of the circumvention of the law

The fourth scenario provides the Media Council with scope for action in the event of a circumvention of the law (AVMS Directive Article 4, Media Act Articles 179–180). We may speak of a circumvention of the law if a linear audiovisual media service provider is established in a Member State in order to avoid the stricter or more detailed regulations of another Member State.

The Member State claiming the circumvention of the law must prove the fulfilment of two conjunctive preconditions.

a) The Media Council must verify whether the media service provider established in a different Member State directs the entirety or the major part of the linear audiovisual media service concerned to the territory of Hungary. Within the framework of this, the following have to be examined:
- which Member State is the major source of the media service provider's advertising or subscription revenues,
- what the primary language of the media service is,
- which Member State is the main site of the media service provider's broadcasts, and
- which Member State's public is targeted by the programmes broadcast.

b) Proof is required that the media service provider was established outside Hungary in order to circumvent the stricter rules that would be applicable to it on the basis of the Media Act and the Press Freedom Act.

The AVMS Directive and the practice of the Court of Justice of the European Union provide no clear guidelines as to the violation of which rules constitutes the basis for the institution of proceedings against the circumvention of the law. The applicable provision of AVMS, Article 4, yields two different interpretations. Paragraph (1), Article 4 provides that "Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive provided that such rules are in compliance with Union law". According to Point b), Paragraph (3), Article 4, the proceedings against the circumvention of the law may be applied if "the broadcaster in question has established itself in the Member State having jurisdiction in order to circumvent the stricter rules, in the fields coordinated by this Directive, which would be applicable to it if it were established in the first Member State". The question, therefore, is what are the "fields coordinated by the Directive", where the violation of provisions additional to the Directive may form the basis for proceedings against the circumvention of the law (besides the fulfilment of the other conditions). The following two answers may be given to this question.

a) The "fields coordinated by the Directive" are to be interpreted strictly as only containing the provisions regulated by the Directive (e.g. rules on the protection of minors, advertising rules, restriction of hate speech, quota rules) but not the other national rules applicable to audiovisual media services. This interpretation would render impossible any legislation that is mandatory in respect of service providers established abroad in fields that are not coordinated by the AVMS Directive, since the media service providers could legally establish themselves in another Member State in order to circumvent such legislation, and the original Member State could institute no proceedings against them. (This would result in all cultural policy and other national objectives becoming mere formalities.)

b) The "fields coordinated by the Directive" are to be understood in a broader sense and, in keeping with Paragraph (41) of the Preamble of the Directive,[83] are applicable to the regulation of audiovisual media service in general, i.e. they include all "general rules in the public interest", e.g. consumer protection and cultural political rules. In

[83] "Member States should be able to apply more detailed or stricter rules in the fields coordinated by this Directive to media service providers under their jurisdiction, while ensuring that those rules are consistent with general principles of Union law. In order to deal with situations where a broadcaster under the jurisdiction of one Member State provides a television broadcast which is wholly or mostly directed towards the territory of another Member State, a requirement for Member States to cooperate with one another and, in cases of circumvention, the codification of the case-law of the Court of Justice, combined with a more efficient procedure, would be an appropriate solution that takes account of Member State concerns without calling into question the proper application of the country of origin principle. The concept of rules of general public interest has been developed by the Court of Justice in its case-law in relation to Articles 43 and 49 of the EC Treaty (now Articles 49 and 56 of the Treaty on the Functioning of the European Union) and includes, *inter alia,* rules on the protection of consumers, the protection of minors and cultural policy . . ."

this case all media regulation may qualify as general public interest regulation, and so any violation of any of its elements could form the basis of a procedure against the circumvention of the law. (On the basis of the case-law of the Court of Justice of the European Union this interpretation appears to be the correct one.)

In practice, however, it is difficult to prove that a media service provider has moved its registered office to another Member State with the express purpose of circumventing stricter regulations. Claims that a media service provider has moved its registered office to another Member State in order to circumvent regulations which exist in the Member State also serving as its new domicile, due to the implementation of the AVMS Directive, but which are interpreted less restrictively by the authorities or the courts there, can hardly be successful. There exist hardly any instances in the case-law of the Court of Justice of the European Union where a Member State was able to prove with success that a media service provider relocated its registered office to another Member State with the aim of circumventing provisions that are present in the AVMS Directive as well. We may thus conclude that a procedure against the circumvention of the law may only be successful if it was instituted claiming the circumvention of a regulation not specifically provided for by the AVMS Directive and not applicable in the Member State with general jurisdiction.

E) Proceedings in the case of media content services (radio media services and press products) established in a Member State of the European Union other than Hungary that are outside of the scope of EU legal harmonisation

Proceedings against the circumvention of the law may be launched with regard to radio media services and press products outside of the scope of EU legal harmonisation (Article 180 Media Act). (In the case of on-demand media services, proceedings against the circumvention of the law are not possible. In these cases the procedure analysed in point B) above and provided for in Paragraph (4), Article 3 of the AVMS Directive, and Article 177 of the Media Act may be conducted.)

The procedure is different from the previous scenario of the circumvention of the law, in that the suspension of the right of distribution is not available as a sanction in this case and that no action is required from the European Commission on the basis of the Media Act, since the media content services in question are outside the scope of EU legal harmonisation (and Hungarian laws could not establish obligations for or define the purview of the European Commission anyway). That is, in respect of these services the Media Act voluntarily adopted the provisions of the directive on the procedure in the event of the circumvention of the law, and thereby incorporated additional guarantees into the system of media regulation.

Action against Internet-based radio stations and press publications is possible on the basis of Paragraphs (2)–(4) of Article 3 of the Directive on electronic commerce and the provisions of Article 3/A of Act CVIII of 2001 on Electronic Commerce (the Act adopting the said Directive) in the case of a violation against the provisions of the Act. The provisions of this Act are harmonised with the provisions of the Media Act analysed above; however, in keeping with the provisions of the Directive on electronic

commerce, in such a case the European Commission will also have a role to play in the procedure. Given the fact that the E-Commerce Act also provides that the proceeding authority shall be the Hungarian Media Authority, conformity between the two legal acts may be ensured within a single procedure before the same authority.

F) Procedure against media content providers not established in Hungary and not under the jurisdiction of a Member State

On the basis of Article 3 of the Press Freedom Act and Paragraphs (5)–(6) of Article 1 of the Media Act, the scope of Hungarian media regulation extends over all media content providers (media service providers and publishers), and the media content provided by such, which are not considered to be established in any Member State but their services are distributed within Hungary. With regard to Internet-based media content services, publication via the Internet constitutes distribution. In the event of infringements, the media authority can take action against such service providers without reference to the framework of the law of the European Union. Due to the lack of cooperation between the various states and their authorities, law enforcement may prove to be difficult in such cases (e.g. in the case of illegal content stored on a server in the United States). If the foreign service provider fails to comply with the decision of the Media Council or the Office of the National Media and Infocommunications Authority establishing the fact of the infringement and the legal sanctions, on the basis of Articles 188–189 of the Media Act, the distributor of the service (the media service distributor or the intermediary service provider) may be obliged to suspend or terminate the service.

Part II

Rules on Media Content

5. The Protection of Reputation and Honour

5.1. The protection of reputation and honour in general

5.1.1. Definitions (reputation, honour, human dignity)

A) Constitutional provisions
Article II of the Basic Law of Hungary (effective as of 1 January 2012) lays down provisions on human dignity: "Human dignity shall be inviolable. Every human being shall have the right to life and human dignity", while Article VI lays down provisions on human dignity: "(1) Every person shall have the right to the protection of his or her… good reputation".

Reputation, honour, and human dignity are inseparable personality rights, which are closely related to each other. Under the interpretation of the Constitutional Court, the right to human dignity is the "mother right" of all other individual rights and, thus, it is also the source of the right to honour and reputation [Decision No. 8/1990 (IV. 23.) AB].

B) Civil law
The protection of honour and human dignity (Article 76 of the Civil Code):

> The violation of personality rights shall include especially… the violation of honour or human dignity.

The protection of reputation (Article 78 of the Civil Code):

> (1) The protection of personality rights shall also include the protection of reputation. (2) The violation of reputation shall include, in particular, the statement or dissemination of an injurious untrue fact pertaining to another person or a true fact with an untrue implication that pertains to another person.

Reputation and honour protects the value judgement of society concerning each and every person. Article 78 of the Civil Code specifies the statement or dissemination of an injurious untrue fact pertaining to another person, or a true fact with an untrue implication that pertains to another person as clear violations of reputation, while the Civil Code (in Article 76) merely mentions the right to honour and human dignity. In order to establish the fact of violation, no actual harm to the position enjoyed by the person concerned in any part of "society" is necessary. The mere fact of publishing injurious facts or using such expressions suffices. Reputation is violated if the statement of an untrue fact is capable of having a detrimental impact on the social standing of the person concerned

(case no. BH2010. 294.). On the one hand, reputation may be violated by the statement or dissemination of an injurious untrue fact, or by presenting an opinion based on untrue facts. On the other hand, defamation may be committed by presenting opinions only.

C) Criminal law

Libel (Article 179 of the Criminal Code):

> (1) Any person who engages in the statement or dissemination of anything that is injurious to the good name or reputation of another person, or uses an expression directly referring to such a fact, is guilty of a tort punishable by imprisonment for up to one year, community service work, or a fine. (2) The punishment shall be imprisonment for up to two years if the libel is committed a) for a malicious motive or purpose, b) to a broad public, or c) causing considerable injury of interest.

Defamation (Article 180 of the Criminal Code):

> (1) Any person who, apart from that contained in Article 179, uses an expression injurious to honour: a) in connection with their professional, public office, or public activity; b) in broad publicity or commits any other similar act shall be liable to punishment for a tort by imprisonment for up to one year, community service work, or a fine. (2) Any person who engages in an act to defame someone by physical assault shall be punishable in accordance with Paragraph (1).

Under Article 179 of the Criminal Code, the publication (statement, dissemination) of any fact capable of causing harm to honour may result in being liable for the crime of libel, while Article 180 of the Criminal Code prohibits the use of expressions capable of harming the honour of others, if other conditions are met (tort of defamation). In other words, libel may be committed by stating facts, while defamation may be committed by stating opinions.

The exact meaning of the term "honour" is hard to grasp as regards the law. Generalisation is not appropriate, but it refers to the individual, innate values of the personality. For the purposes of criminal law, honour and reputation are occasionally used as synonyms: "[honour] means the advantageous opinion of society or of the environment about one's personality".[84] The statement of facts regarding the crimes of defamation and libel are almost the same under the new Criminal Code (Articles 226–227).

D) Distinction between honour and reputation

As used by the general public, reputation fundamentally means the value judgement of other persons about one's personality, while honour means the *immanent* core of one's personality, which is rather hard for the law to grasp. The protection of reputation and honour is mixed in Article 179 of the Criminal Code. On the other hand, the Civil Code

[84] Tamás Jakucs (ed.): *A Büntető Törvénykönyv magyarázata* [*Commentary to the Criminal Code*]. Budapest, KJK-Kerszöv, 2004. 179.

does not require that the value of the victim is actually reduced in the eyes of any member of society for there to be defamation: the term "injurious" does not reflect the tolerance level of the victim, but must be objectively capable of harming their reputation in front of other persons. Nevertheless, the achievement of this outcome (i.e. actual harm) is not required for the establishment of the violation under civil or criminal law. It is not necessary either for violating these personality rights that the victim has any "good" reputation (positive image) prior to the violation; the mere fact of publishing the respective untrue (and injurious) or harmful facts suffices. It is important to note that, for the purposes of both civil and criminal law, even legal persons and other subjects of law—including bodies exercising state powers or carrying out public functions—might have a reputation (e.g. case no. BDT2008. 1860). Nevertheless, the right to honour of legal persons and other bodies is recognised under criminal case law only (e.g. case no. BH1992. 154. and Uj v. Hungary case, no. 23954/10, judgement of 19 July 2011). Under civil case law, only natural persons have the right to honour, as it is deemed as a unique feature of their personality.

E) Human dignity as a personality right

In the "company" of the protection of reputation and honour, the protection of human dignity is seldom applied directly as a personality right. Criminal case law developed a rather specific meaning of human dignity: it is regarded as part of honour, and libellous or denigrating expressions are regarded as the violations of both the right to honour and human dignity (cases no. BH1993. 139., BH1998. 412., EBH2000. 181., BH2001. 99., EBH2005. 1194.). For example, the court held in case no. BH2000. 285. that human dignity means "the value judgement of society about the character, behaviour, and personal values of the individual," and that "human dignity …. . . expresses the need for treating each and every person in line with the minimum civilised standards of society." This consistent case law mixes the terms of reputation, honour, and human dignity, and developed a rather narrow meaning for the latter, which cannot be separated from honour. However, as the violation of human dignity, in itself, is not a specific crime punishable under the Criminal Code, the above mixing of the various terms does not result in material practical consequences.

The interpretation of human dignity is more complicated in civil lawsuits. Most court decisions regard the right to honour and the right to human dignity as synonymous terms. As such, "unjustifiably harmful", "humiliating", "offensive", "derogatory" expressions—similarly to the violation of honour—are regarded as violations of human dignity (cases no. BH1997. 578., BH2000. 293., BH2002. 352., BDT2006. 1466.). In its decision no. BDT2010. 2191., the Regional Court of Pécs—perhaps because Tamás Lábady, president of the court, was a former judge on the Constitutional Court—recognised that the terms of human dignity and honour bore different meanings, and established the violation of human dignity in a case (certain photographs linking Roma children to a demonstration by the far-right Magyar Gárda (Hungarian Guard) were published by the press without permission), where defamation most probably did not occur. In another case, the Regional Court of Pécs held that mounting the face of a person to a picture of a naked female body,

and giving the impression that the resulting picture shows the applicant (a school teacher) certainly is—in addition to the violation of the right to reputation and one's image—a violation of human dignity (case no. BDT2011. 2549.). The latter decisions show that the right to human dignity—an individual personality right specified in the Civil Code—may have its own individual meaning. However, practice shows that the room for distinguishing the right to human dignity from other personality rights is rather narrow.

F) Summary

Summarising all relevant information directly relating to the subject of this chapter, under criminal law, the crime of libel may be committed only by stating untrue facts or true facts disguised falsely, while the tort of defamation may be committed by stating an opinion. Under civil law, reputation may be violated either by stating untrue facts or true facts falsely disguised, or by stating an opinion based on untrue facts. Defamation under civil law may be committed by stating offensive or humiliating opinions.

It must be emphasised that the above rules of the Civil Code and of the Criminal Code are *erga omnes* applicable, meaning that their applicability is not limited to the media, though representatives of the media tend to appear most commonly as applicants or defendants in the relating proceedings, for obvious reasons.

Personality rights are protected under the media regulations by rather different means from those in civil or criminal law. The enforcement of individual rights is somewhat limited, since the regulations focus primarily on the public interest limitations of press freedom. The right to reputation is not even mentioned in the media regulations, while the relationship between the right to human dignity and regulation of the media is quite specific. On the other hand, the institution of correction was adopted by the media regulations from civil law (the Civil Code).

5.1.2. Why are public figures to be exempted from the generally applicable rules of personality rights protection?

Personality rights enjoy enhanced protection. For a long time there was no suggestion that the level of protection should be differentiated according to the type of statements that are harmful to reputation, or should be reduced for certain types of person. False statements and statements that are harmful to reputation were naturally regarded as constitutionally unprotected statements, until the emergence of the idea that certain statements relating to public debates and which may be harmful to the reputation of public figures should be afforded special protection. Such special protection is necessitated by the special importance of freely engaging in public debates.

The developments concerning the protection of reputation in modern times regarded the fact of being active in public life as a factor that automatically reduced the scope of the protection of reputation. This approach is essential to a fundamental feature of democratic societies: open debates on public matters are more important—up to a certain limit—than the protection of the personality rights of a person subject to criticism.

Persons participating in public life voluntarily waive their opportunity to enforce their personality rights in general. The limited protection of the reputation and honour of public figures thus became acknowledged in all legal systems recognising the above distinction.

5.2. Fundamental questions

5.2.1. What is the legal basis for the limited protection of the reputation and honour of public figures?

The limited protection of the personality rights of public figures does not have a statutory basis in the Hungarian legal system. While it is not unusual for legal systems to settle this matter by means of case law, this solution (i.e. "judicial legislation" without a statutory basis) is rather unusual in Hungary. The most important legal authority on this matter is decision No. 36/1994. (VI. 24.) of the Constitutional Court, which laid down the necessary theoretical foundations.

5.2.2. Who are public figures? What are public matters?

Who are public figures? The operative part of decision No. 36/1994. (VI. 24.) AB of the Constitutional Court refers to authorities, officials, and politicians acting in public. However, the justification for the decision mentions public figures as well, entrusting the courts to define the scope of this latter category. Decision No. 57/2001. (XII. 5.) AB of the Constitutional Court also mentions the category of "persons acting in public" in the course of describing the Strasbourg case law.

Although the scope of public figures is apparently broader than originally defined by decision No. 36/1994. (VI. 24.) of the Constitutional Court (including public officials and politicians), the decisive criteria are not entirely clear. While the extension of the group of public figures is a worldwide trend, the theoretical foundations of this—sometimes apparently endless—expansion are yet to be clarified. As discussed above, the limited personality protection afforded to public figures is justified by the effectiveness of democratic order and by the necessity to conduct public debates. However, this argument is hardly applicable to certain new waves of expanding the group of public figures (e.g. to include "celebrities"). It is not possible to determine with absolute certainty who has, and to what extent, an impact on the development of public matters. While persons who are unknown to the public but, in the background, make important decisions for society enjoy unlimited personality protection, other people who become known for a short period of time as celebrities and have no influence on public matters whatsoever qualify as public figures. This imbalance may be eliminated if the legal focus—and the scope of limited protection—were to shift from persons to matters of

public interest. Although this idea was referred to in decision No. 34/2004. (IX. 28.) AB of the Constitutional Court, it has yet to become more widely adopted.

In consequence, it is not the status of public figures—meaning the personal scope—but the scope of situations that reduce the level of personality protection that should be defined clearly and in advance in order to decide on the various legal disputes (bearing in mind that public figures retain the entirety of their personality rights when not acting in public). In other words, the fact of appearing publicly ("public matter") is important, not the public figure (the person) him- or herself. The scope of activities and information about public figures, persons exercising state powers, and persons carrying out public functions that may be disclosed to the public is of fundamental importance. The protection of the personality rights of such persons may be occasionally limited even beyond the scope of carrying out their public functions and public appearances. For example, the family life of a Member of Parliament may be regarded as information of public interest if it may influence the decisions of voters.

5.2.3. Facts and opinions

Decision No. 36/1994. (VI. 24.) AB of the Constitutional Court clearly distinguishes between facts and opinions, and applies different standards to the limitations thereof: "no punishment may be imposed because of stating opinions expressing value judgements". As the expression of nearly all, even the most offensive opinions, contains "value judgements". the application of this rule would result in the unlimited and unconditional protection of opinions, thereby creating an "invulnerable" category of communication. In this respect, the Supreme Court does not—so far—apply the standard described by the Constitutional Court either in criminal or civil cases, but reaffirms its own previous position: defamatory and humiliating expressions, and criticisms based on false facts do not enjoy any such privilege otherwise afforded to opinions. As such, case law has developed three different categories of opinions: (a) permitted criticism, (b) expression of opinions based on false facts or alleging (directly or indirectly) false facts, (c) defamatory and unjustifiably harmful, unsubstantiated opinions. The latter two of these are generally not protected.

Qualifying extreme and defamatory expressions of opinions, that are not based on false facts or facts presented as false facts, as unlawful goes clearly against the intentions of the Constitutional Court. As for opinions based on false facts, this is only partially true, because the Constitutional Court merely stated that the expression of opinions expressing "value judgements" may not be limited and, although communications falling into the above category may express "value judgements", their factual basis is still false. These restrictions are in line with the established case law of the European Court of Human Rights, and are also acceptable for the Hungarian legal system (see e.g. BDT2007. 1701.). While false statements are obviously capable of harming one's reputation, the current case law distinguishes between various types of value judgements, i.e. value judgements based on true facts and value judgements based on false facts or lacking any

factual basis. While opinions falling into any of the above categories may not be regarded as unlawful unless they are unjustifiably harmful or defamatory, the existence or absence of a true factual basis is relevant for determining whether or not anyone's rights have been violated.

Distinguishing facts from opinions is a complex, occasionally even impossible task. While calling someone racist is predominantly regarded by the courts as an expression of an opinion, it could be equally regarded as a statement of a fact, while the legal consequences of the various qualifications may be of fundamental importance. In a decision serving as a basis for the Karsai v. Hungary case (No. 5380/07., judgement of 1 December 2009), the Hungarian Supreme Court held that calling some people "Jews" was the expression of an opinion. On the other hand, the European Court of Human Rights held that the act was the expression of an opinion supported by facts.[85] The interpretation of the disputed expressions is up to the proceeding court, and, due to the diversity of the cases, a certain degree of uncertainty and the imperfections of a uniform approach is an inevitable feature of the judicial work.

5.2.4. The burden of proof

In lawsuits concerning the violation of reputation or honour, the burden of proof is usually borne by the person making the respective statement. While the truth of the statement must be proven in lawsuits concerning the violation of reputation, in lawsuits concerning the violation of honour the person must show that his or her opinion was not excessively groundless, or even that it was based on facts. There is also a special rule in criminal cases, according to which no evidence for truthfulness may be provided in defamation, libel, or piety cases, unless "stating or disseminating the disputed fact or using an expression directly referring thereto was justified by public interest or by the lawful interest of any person" (Criminal Code, Article 182). In general practice, evidence may be provided for the truthfulness of a statement in public interest cases (BH2000. 285., BH2008. 81.). On the other hand, no evidence may be provided for the truthfulness of opinions lacking any factual basis (e.g. "in relation to defamatory statements relating to feminine virtue", see BH2007. 365.).

5.2.5. Dissemination

The matter of dissemination is a sensitive issue among the rules of the protection of reputation and honour. Dissemination means the act of relaying information received from others. Under both the Civil Code and the Criminal Code, dissemination is regarded

[85] For more details, see András Koltay: A Karsai v. Hungary ügy [The Karsai v. Hungary case]; *Jogesetek Magyarázata*, 2011/2. 67–70.

as if the person merely relaying the information had made the false statement himself. According to Position No. 14 of the Civil Law Department of the Supreme Court on press correction—the validity of which may be extended to other means of protecting reputation—"the correction of false statements is necessary, even if the communication originates from other sources. For this reason, the law allows for press correction in the case of both making statements based on their own experiences and relaying or communicating, i.e. disseminating information received from others."

It is far from desirable entirely to remove the dissemination of false statements from the scope of communications entailing legal liability, as it would open the door to the most diverse trespasses by the press. The publication of infringing and false statements by dissemination would be left in most cases without any legal consequences. However, it may be justified to ease somewhat the strict rule of applying uniform consequences in cases of dissemination, statements and relaying.

The case law of Hungarian courts has recently shifted, correctly, to a more lenient approach toward dissemination (exemption from liability of persons disseminating information), even without any statutory changes. In certain cases, and if using certain journalists' sources, it may be acceptable for the press merely to publish a given statement. According to case No. EBH2001. 407, such sources include the Parliament, local governments, and various national and local public administration bodies. "Press members… reporting on proceedings falling within the competence or about motions or proposals filed during such proceedings are not required to have evidence for the truthfulness of their statements." In other words, reports reflecting the relevant actual events are accepted as lawful under all circumstances. In the relevant case, a television channel reported on a motion for amendments to a proposal for resolution filed in Parliament by Fidesz. During the report, the reporter disclosed the names of people whose connections with the so-called "oil cases" were alleged in the motion for resolution. After the Supreme Court amended the final court decision, the television channel was not obliged to publish any correction. Similarly, the press may not be required "to verify the statements made in a press conference by a police officer" (BH2002. 51.). The Supreme Court—by amending the final court decision and denying the petition for correction—established that acting at an unfeasible level of duty of care may not be required of the press. By way of extending the application of this principle, the act of relaying information received from a press officer of the court may not serve as grounds for any claim for the infringement of personality rights (BH2003. 357.).

The court decided in a rather peculiar manner in this case: as false information to the detriment of the applicant's reputation was in fact published (a newspaper falsely reported that the judgement of the court of first instance had become final), the court held that the defendant harmed the reputation of the plaintiff. However, accountability—which is a pre-requisite for legal liability—was not established; damages were not awarded to the applicant. Similarly, "press correction may not be sought if the press publishes correct information about a fact established in a criminal, civil, or public administrative action before the completion of the proceedings" (BH2004. 273.), even if

the information subsequently turns out to be false in the course of the proceedings. This decision of the Budapest Court of Appeal extended the application of Position No. 14 of the Civil Law Department of the Supreme Court from its original scope covering information provision in criminal procedures. Furthermore, journalists who practically called the victim a psychopath on the basis of a defective expert opinion prepared during the police investigation were found not guilty of the crime of libel under case No. EBH2005. 1289.

5.3. The test of protecting the reputation and honour of public figures

The limited personality protection of public figures is not based on statutory provisions. The starting point is the well-known and frequently quoted Decision No. 36/1994. (VI. 24.) of the Constitutional Court. In addition to deciding on the subject matter at hand, this decision also laid down the applicable theoretical foundations. The decision was based on a motion challenging the constitutionality of the crime of "defamation of authorities or official persons," a crime specified in Article 232 of the Criminal Code as of that time. This Article threatened those persons who use expressions capable of harming the honour of authorities with more severe punishment than for the crime of defamation committed against other private persons. The provision offered an excellent opportunity for the Constitutional Court to make clear its theoretical position on the essence of the freedom of speech, while ruling on the subject matter at hand.

The provision was found unconstitutional and was repealed because—relying on a previous decision, No. 30/1992. (V. 26.), of fundamental importance—the Constitutional Court established in line with its case law that the freedom of expression and of the press are requisites—and therefore of utmost importance—for the existence and development of a democratic society (statement of reasons, point II/1). According to this decision,

> it follows from the positions taken so far by the Constitutional Court on the constitutional value of the freedom of expression and the freedom of the press, as well as the significant roles they fulfil in the life of a democratic society, that this freedom requires special protection when it relates to public matters, the exercise of public authority and the activity of persons with public tasks or in public roles (statement of reasons, point III/1).

As such, while the constitutionality of protecting the honour and reputation of the aforementioned persons by means of criminal law may not be excluded, the freedom of the press—in comparison to private persons—may be limited to a rather narrow extent, and only in order to protect persons exercising state powers.

Furthermore, the Constitutional Court laid down certain constitutionality requirements as to the applicability of the crimes of libel and defamation, the examination of which was otherwise not requested by the petitioner, and, accordingly, was not examined any further. According to such a constitutionality requirement as specified in the operative part,

> [a]n expression of a value judgement capable of offending the honour of an authority, an official, or a politician acting in public, and expressed with regard to his or her public capacity is not punishable under the Constitution; and an expression directly referring to such a fact is only punishable if the person who states a fact, or spreads a rumour capable of offending one's honour, or uses an expression directly referring to such a fact, knew the essence of his or her statement to be false, did not know about its falseness because of his or her failure to pay attention or exercise the caution reasonably expected of him/her pursuant to the rules applicable to his or her profession or occupation, taking into account the subject matter, the medium and the addressee of the expression in question.

Accordingly, the expression of an opinion is unlimited within the defined scope, while the statement of a fact may not be punished, unless the perpetrator was aware of the fallacy thereof, or was not aware of such a fallacy due to their failure to exercise the level of due diligence that may be expected from them. This test establishing the liability of the perpetrator for deliberate lies or in the event of negligence is rather similar to—but is not identical with—the Sullivan rule developed by the US Supreme Court.[86]

However, the differences between the two decisions are significant: the Sullivan standard does not distinguish strictly between facts and opinions. The Sullivan ruling was passed in a civil claim for damages, while the decision of the Hungarian Constitutional Court was adopted with regard to criminal law. The Hungarian standard lays down a more lenient approach toward limitations: instead of recklessness, failure to meet the "expected level of care" is also sufficient. This leniency may make it hard for journalists to be acquitted from liability, as the rules of their profession require the thorough verification of each statement.

The guidelines followed by the Constitutional Court in case No. 36/1994. (VI. 24.)—concerning the constitutionality of libel and defamation committed by Members of Parliament—are similar to those applied in case No. 34/2004. (IX. 28.) According to Article 4 of Act LV of 1990 on the Legal Status of Members of Parliament, the immunity of MPs does not apply in cases of defamation and libel, or to the liability of MPs under civil law. (We note here that, according to the effective text of the Act on Parliament, the immunity—in addition to liability under civil law—does not apply to certain crimes against public order and to crimes involving the abuse of qualified data [Article 73(2)]). According to the petition, this situation violated the right of MPs to free speech. The Constitutional Court ruled that the challenged provision was not unconstitutional in itself, but established as a constitutionality requirement that the immunity of MPs may not be suspended in the event of expressing opinions reflecting value judgements on fellow MPs, other persons exercising state powers, other politicians acting in public, or on public affairs. Furthermore, immunity may not be suspended for stating false facts, unless the MP was aware of the falsehood of his or her statement.

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[86] According to this federal rule, elected public officials may not sue successfully for publishing statements made in relation to their position and harmful to their reputation, unless they can prove that the publisher (typically the press) had actual malice, i.e. it had knowledge that the information was false, or the information was published with reckless disregard of whether it was false or not.

This decision was also adopted in the context of criminal law, and did not affect liability under civil law. The limitation standard is lower than that established in 1994: MPs may be acquitted of liability even if they acted with (gross) negligence. Nevertheless, it must be taken into account that the decision applies to a rather specific and narrow group: it is certainly justified to protect the freedom of speech of Members of Parliament. The operative part of the decision does not limit "privileged" speech to the Chamber of Parliament or to the work of the committees: it covers all statements made at any time and any place. However, an opposite suggestion may be found in the justification of the decision, according to which this benefit applies in plenary sessions of the Parliament and in sessions of the committees (statement of reasons, point V./3.1.). It might be beneficial to ignore this suggestion and follow the instructions of the operative part. Retaining the liability of MPs under civil law is in line with the spirit of decision No. 36/1994. (VI. 24.) of the Constitutional Court and with decision No. BH2004. 55. of the Supreme Court reaffirming the statutory provision that the immunity of MPs does not cover their liability under civil law, including their liability for violating the honour or reputation of others.

Recent case law is unclear on the relationship between criminal law and civil law concerning this matter. The Constitutional Court clearly considered the matter from its criminal law aspects only. Although the "basic judgement" of 1994 affected the case law of civil courts, the extent to which the provisions of the decision should be applied is still uncertain. The decision of the Constitutional Court established the full immunity of expressing opinions containing value judgements, but defamatory opinions are clearly considered to be infringements in civil courts. Although the standard established by the Constitutional Court is more widely applied in criminal cases than in civil cases, even criminal courts refrain from adopting complete protection, i.e. immunity of expressing opinions.

6. Hate Speech and the Protection of Communities

The Hungarian notion "gyűlöletbeszéd" is a literal translation of the applicable terminology (*hate speech*) originally used in the United States of America. According to Gábor Halmai, "this type of communication includes acts of speech by which the speaker—usually driven by prejudice or even hatred—expresses his or her opinion of various racial, ethnic, religious, or sexual groups in society, or of the member of such groups, which opinion may insult the members of the given group and may incite hatred in society against that group."[87] According to the Recommendation by the Council of Europe, "the term 'hate speech' shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin."[88] The term "hate speech" itself is not used in legislation; for the purposes of written law, this term is covered by the crime of incitement against a community (Article 269 of the Criminal Code), supplemented by the crimes of the use of symbols of despotism (Article 269/B of the Criminal Code), public denial of the sins of the National Socialist (Nazi) and Communist systems (Article 269/C of the Criminal Code), and violation of national symbols [Article 269/A of the Criminal Code]. Of course, these crimes are not specific to the media, meaning that they may be committed by means other than via the media, but they constitute certain limitations to the freedom of the press. Furthermore, the Press Freedom Act lays down various provisions against hateful expressions.

6.1. The crime of incitement against a community

The Constitutional Court adopted five decisions on hate speech and the crime of incitement against a community. While the structure of these decisions may appear more or less solid, a thorough examination does reveal certain contradictions. According to

[87] Gábor Halmai: *Kommunikációs jogok.* [*Communication rights*] Budapest, Új Mandátum 2002. 114.

[88] Council of Europe, Recommendation No. R (97) 20, of the Committe of Ministers to Member States on „Hate speech".

Decision No. 30/1992. (VI. 10.) of the Constitutional Court (AB), hateful expressions capable of triggering hostile actions and intense emotions may be punishable. The existence of any intent to incite hatred is irrelevant. It is not even necessary to exhaust the abstract facts of the crime that the act of incitement calls for "active hatred" specifically. However, the perpetrator must be aware of the fact that his or her behaviour may trigger "active hatred" and may result in violent actions. The protected legal interest is twofold: first, such intense hazards violate public order, and second, such incitement to action involves the violation of individual rights. Merely inciting hatred does not suffice, if such incitement is not capable of leading to active violations. The Constitutional Court did not specify the level of threat that could justify any limitation to freedom of the press. Nevertheless, as the crime is *immaterial*, the facts of the case may be realised even if no sense of hatred is raised in the recipients of the communication; the actual execution or commencement of or preparations for harmful actions are absolutely not required. The objective possibility and the capability of the communication to lead to such consequences are sufficient for punishability. According to the Constitutional Court, the capability of the expression to disturb public order would not in itself be sufficient reason for restrictions; danger to individual rights (honour, dignity, life, physical integrity) is also necessary. Misunderstandings may arise from a reference in the decision to the standard of *clear and present danger* originating from the United States of America, under which the existence of any direct, real, and immediate threat of violation is a requisite for imposing any restriction. In the view of the Constitutional Court, the standard required for imposing restrictions is far more lenient, as the mere possibility of violating individual rights and the capability of the communication to result in such violations is sufficient. These rights must be protected against even less intensive threats, and no direct danger is required. Consequently, giving rise to any "clear and present danger" to public order is not required for the commission of the crime.

The act of using "an offensive or denigrating expression" as stipulated in Article 269(2) of the Criminal Code was held unconstitutional—thus annulled—by the Constitutional Court, which claimed that a capability to disturb public order was not amongst the facts of the crime stipulated in that paragraph, and the abstract and presumed danger of disturbing public order does not provide sufficient grounds for limiting the freedom of the press. Furthermore, actual endangerment of individual rights is not required for committing the crime, and the abstract facts of the crime may be exhausted even without any such endangerment. While this statement is true, it is also true of that regulated in paragraph (1), which was held constitutional by the Constitutional Court (the Court believed that the difference lay in the intensity of the danger). The Constitutional Court held that freedom of the press may not be restricted merely on the basis of expressed values, as freedom also includes the freedom to express morally questionable opinions (some "external" limit is thus needed for such restrictions). Outrageous, abusive, or intolerant expressions may not be restricted as such, and the "external" limit required by the Constitutional Court was found to be remote and theoretical. The crime of using offensive or denigrating expressions is less grave an activity, and the level of intensity of

the danger is lower; this argument provided the Constitutional Court with sufficient reason to annul the respective statutory provision.

Decision No. 12/1999. (V. 21.) of the Constitutional Court annulled the phrase "other act capable of inciting hatred", which was inserted to the abstract of circumstances in 1996 as a possible form of committing the crime. The arguments were rather similar to those used earlier; the decision practically repeated the contents of Decision No. 30/1992. (V. 26.). According to the justification, the punishment of other actions capable of inciting hatred lowers the standard for possible limitations to an extent that is unconstitutional. The standard should be the standard of "incitement" as defined by the previous decision. If the act meets that standard, it would be punishable anyway. Any lower threat to the protected legal interest—meaning incitement in this case—is insufficient to justify any restriction. Besides, the term of "other actions" is not clear enough, and may lead to arbitrary restrictions.

Decision No. 18/2004. (V. 25.) of the Constitutional Court struck down yet another attempt to make the act of using offensive or denigrating expressions punishable. Without doubt, the draft amendment intended to lower the applicable standard of punishability. While attempts to lower such standards are not by definition unconstitutional, they are commonly repealed by the Constitutional Court if it believes that lowering the standard of punishability is not necessary or proportionate to the objective to be met. The Constitutional Court did believe that no further extension of the scope of protection was justified. Furthermore, the decision of 2004—apart from establishing the unconstitutionality of the amendments—even raised the standard of restriction from its previous level established in the decision of 1992. According to the decision:

"In the case of 'incitement to hatred', the restriction of the freedom of expression is justified by the violation of, or by the direct danger of violating, the exercise of individual fundamental rights.… [I]t is important that the danger to public peace should be more than a mere presumption, and it is absolutely necessary to have at least a hypothetical feedback (the communication is capable of disturbing the public peace). It is the intensity of the disturbance of the public peace that »above and beyond a certain threshold ('clear and present danger') justifies the restriction of the right to free expression«."

This statement is not easy to interpret. It would require direct danger (i.e. *clear and present danger*) to individual rights (honour, human dignity) for permissible restriction, but would be satisfied with the capability to disturb public order, while quoting a fundamental statement from the decision of 1992 without certain essential parts of the original text. The quoted part in its entirety is as follows:

> [T]his reasoning considers not only the intensity of the disruption of public peace which—above and beyond a certain threshold ("clear and present danger")—justifies the restriction of the right to freedom of expression. What is of crucial importance here is the value that has become threatened: incitement endangers subjective rights, which also have a prominent place in the constitutional value system.

This text means that clear and present danger would be required for restriction with regard to the public peace, but even less would be sufficient for restriction in the case of honour or human dignity.

Decision No. 95/2008. (VII. 3.) AB annulled the last attempt to amend the criminal regulation of hate speech. The Act adopted in February 2008 aimed to introduce the crime of "the use of offensive or denigrating expressions" into the Criminal Code, placing the crime among the crimes against persons instead of in the Chapter on Crimes against public order, next to the crime of incitement against a community. This amendment would have significantly lowered the standard for restrictions: capability of harming the honour or human dignity of a person would have been sufficient, and such expressions used against a community would have been prohibited. Similarly to the previous amendment to the Criminal Code annulled by Decision No. 18/2004. (V. 25.) AB, the amendment tried to avoid the legal obstacles laid down by Decision No. 30/1992. (VI. 10.) AB by making the harm to dignity an abstract fact of the crime: in its decision of 1992, the Constitutional Court held that the mere use of such expressions may not be punished without any specific harm. However, no actual outcome, merely the capability of causing harm, was stipulated among the abstract facts of the new crime, implying that a *praesumptio juris et de jure* existed as to the actual occurrence of such harm. In its decision, the Constitutional Court followed the path it started on in its three previous decisions. The Court held that the crime of using offensive or denigrating expressions does not meet the restriction standard, as "the commission of the crime would be established even if the acts of the defendant would not be capable of disturbing public peace, or even if the expression or gesture—due to the circumstances—would not lead to the danger of harming individual rights". Actual harm is not required for punishability; "it is sufficient if the expression or gesture used is in principle capable of harming the honour or human dignity of a member of the concerned group in general". As such, there was no constitutional right or interest standing against the freedom of the press that would justify the constitutionality of the restriction. However, the decision does not mention that the merely theoretical nature of the harm was sufficient for the effective abstract facts of the crime of incitement against a community—which crime had always been held constitutional earlier—where actual harm is not required either. The remaining question is therefore what level of probability is required for imposing restrictions, and whether the dignity of members of a community is automatically violated in the event of using offensive or denigrating expressions. Again, the Court decided the answer to the latter question to be negative, and it maintained the *clear and present danger* standard introduced by Decision No. 18/2004. (V. 25.) AB, according to which criminal sanctions may be constitutional only for "acts leading to the clear and present danger of violent actions or to individual rights." While the insistence of the Court on maintaining this freedom of speech standard with an eventful past is not quite clear, the Court narrowed—or rather blocked—the possibility of imposing criminal sanctions.

The new Criminal Code—effective as of 1 July 2013—made minor corrections to the crime set forth in Article 269 of the Criminal Code. For example, the statutory name of the crime has been changed [see Article 332 of the new Criminal Code]. The former

Hungarian term was "agitation against a community" whereas the new expression is "incitement against a community." This amendment is welcome, as it makes clear that there is no point in searching for a difference in interpretation of "agitation against a community" and "incitement against a community." As to the abstract facts of the crime, communities based on disability, sexual identity, or sexual orientation have been stated as protected communities. However, this change is not expected to have any practical implications, as the phrase "certain groups of the population" (also included in the new Act) has already been relied upon to cover such groups as well.

> Article 332 A person who incites to hatred before the general public against
> *a)* the Hungarian nation,
> *b)* any national, ethnic, racial group, or
> *c)* certain groups of the population—with special regard to disability, sexual identity, or sexual orientation—shall be liable to punishment for a felony offence with imprisonment for up to three years.

Retaining the act itself of committing the crime indicates that the legislator—fully aware of its options limited by the decisions of the Constitutional Court—did not wish to establish a rule of questionable constitutionality; the rapporteur of the draft of the new Criminal Code even indicates his opinion in the justification of the draft that the amendment of the Constitution would be required for adopting a more stringent provision.

6.2. The civil law restrictions of using offensive or denigrating expressions

Does civil law have anything to do with the restriction of using offensive or denigrating expressions? The final thoughts expressed in Decision No. 30/1992. (V. 26.) AB specifically recommend the application of protective measures under civil law, such as claiming non-material damages. In its Recommendation of 1997 on hate speech, the Council of Europe explicitly urges Member States to "enhance the possibilities of combatting hate speech through civil law, for example by allowing interested non-governmental organisations to bring civil law actions, providing for compensation for victims of hate speech and providing for the possibility of court orders allowing victims a right of reply or ordering retraction." The system of fundamental rights typically includes individual rights that may be exercised on an individual basis. The question thus arises whether some of these rights could be transformed to "community" rights. Do communities have dignity? If the right of communities to dignity is not recognised, may the fact of belonging to a community be regarded as a manifestation of the dignity of an individual, which should be protected? In the Hungarian legal system, only a handful decisions of the Constitutional Court and of other courts use the term "dignity of a community", thereby recognising its existence and treating it as a protected value. However, no coherent theoretical considerations for such protection could be found in the available sources. The available means of personality protection under civil or

criminal law are not capable of protecting the dignity of communities. According to current judicial practice, the means of personality protection—including the protection of human dignity—laid down in the Civil Code (Article 76) are not available to legal entities or to other communities without a legal personality. In order to launch any official proceedings, the victim whose personality rights were violated must clearly be identified. Consequently, no civil action may be filed for using offensive expressions against communities in general, as the victim in such cases cannot be identified. Legal entities are entitled to the protection of their honour (Article 76) and reputation (Article 78), but they do not have any dignity by definition. The crimes of libel (Article 179) and defamation (Article 180) stipulated in the Criminal Code do not protect communities, as proceedings must be launched by filing a complaint, as a form of exercising the right to self-determination, for which a victim must be identified first. The Act provides separate protection for members of national, ethnic, racial, and religious groups: any insult, violence, or threat against such a persons due to their membership in the respective group is subject to more stringent punishment than similar crimes without such a motive (Article 174/B). While human dignity is not specifically protected by criminal law, the crime of defamation—as described above—may be generally applicable to the violation of dignity. None of these Acts lay down explicitly that the violation of dignity may be committed against specific persons only, but the courts consistently reject any and all actions and complaints filed by individuals for insults suffered by a community.

In its Decision No. 96/2008. (VII. 3.), the Constitutional Court annulled a provision introduced into the Civil Code in 2007, which sought to lay down the necessary foundations for taking civil law measures against hate speech. The decision held that, first, the scope of the protected groups was too broad under the Act (it applied to any minority group, while the scope and number of such groups was unlimited), and second, the scope of protection was narrow and discriminative, as the Act offered protection to minority groups only, without protecting other majority identities. The Act would have allowed any and all members of such communities to file a lawsuit for the violation of its rights. The possibility of parallel lawsuits was found to be a disproportionate limitation of the freedom of the press, as it may result in disproportionate punishment of the infringer. On the other hand, the intended institution of the action in the public interest was found by the Constitutional Court to be an unconstitutional limitation to the right of self-determination, taking into consideration that such actions, in the field of consumer protection, serve to protect a social interest which cannot be protected effectively by enforcing subjective rights, but, in the subject matter at hand, they would be used to afford protection against an indirectly violated subjective right (i.e. right to dignity), instead of protecting a public interest. Consequently, all parties would seek remedy for their own violated rights, which end could not be served by the right of non-governmental organisations to bring civil law actions. However, the decision allows the conclusion that the idea of imposing civil law limitations on freedom of expression in order to combat hate speech is not unconstitutional in itself. Furthermore, the decision makes no attempt to transpose the clear and present danger standard into civil law, but shows the willingness to accept less grave harm in order to allow such limitations.

6.3. Symbols

6.3.1. Prohibited symbols of despotism

In 1993, the following crime of the "Use of Symbols of Despotism" was introduced into the Criminal Code [Article 269/B]:

> (1) Any person who a) distributes; b) uses in front of a wider public; c) exhibits in public; a swastika, the SS sign, an arrow-cross, a hammer and sickle, a five-pointed red star, or a symbol depicting the above—unless a graver crime is realised—commits a misdemeanour, and shall be liable to punishment with a fine. (2) Any person who commits the act defined in subsection (1) for the purposes of the dissemination of knowledge, education, science, or art, or with the purpose of information about the events of history or the present time shall not be liable to punishment.

Due to claims concerning the excessive limitation of the freedom of speech, this provision was brought before the Constitutional Court, but held to be constitutional in Decision No. 14/2000. (V. 12.) AB. The judges made it clear that the limit of an acceptable restriction of freedom of speech "is where the prohibited conduct not only expresses a political opinion, deemed right or wrong, but it does more: it endangers public peace by offending the dignity of communities committed to the values of democracy". Besides public peace, therefore, the dignity of communities appeared in the Decision as a protected legal interest. According to the Constitutional Court, the use of the symbols of despotism offends the dignity of the community at large in every case, because they are harmful not only to those who were the victims of the given dictatorship but they offend every person who is committed to the values of democracy: such opinions are incompatible with democracy in general. Laconic is the statement which says that "[t]he Constitution is not value-neutral but it has a set of values. The expression of opinions inconsistent with constitutional values is not protected by Article 61 of the Constitution." Furthermore, the Court took into account the fact of disturbing the public peace and the role of special historical circumstances, which—considering the temporal proximity of the dictatorships—also support the possibility of restriction. A more lenient level of limitation to freedom of speech might be sufficient in other countries with less of a history of turmoil. On the other hand, the prohibition is not absolute: such symbols may be produced, acquired, held, imported, exported, and used (but not in public).

This decision seems to contradict other decisions on the issue of incitement. While the judges did sense this tension, they found it solvable. The necessarily high number of violations—which may not be reached by using offensive or denigrating expressions unless using such expressions against the Hungarian nation, as all other communities protected by penalising the act of incitement are in the minority, while, as implied by the decision, the persons committed to the values of democracy are the majority—and the fact that (unlike in the case of using offensive or denigrating expressions) no other legal means for restriction are available, taken into consideration jointly, do justify the constitutionality of the challenged provision. In fact, the decision gave birth to an independent and exceptional standard, which differs from the standards developed in

relation to the crime of incitement against a minority, as the actions possibly capable of breaking the prohibition on using symbols of despotism could be far less dangerous than any incitement against a community.

In its decision of 8 July 2008 in the case of *Vajnai v. Hungary* (application no. 33629/06), the European Court of Human Rights answered the following specific question: can it be prohibited for a member of a political party to wear a red star in public, thereby expressing his political views? Vajnai decided to seek remedy in the European Court of Human Rights after he was sentenced for wearing a prohibited symbol of despotism in public. The decision held that the red star can have multiple meanings beyond its relationship with the Communist dictatorship. It is also the symbol of the international workers' movement, and is not clearly related to the dictatorship or its ideology. The actions of Vajnai were not dangerous in the sense that Hungary had a solid democracy wherein the spread of extreme ideas would not be a real possibility in the foreseeable future, and the possibility of disturbing public order was unlikely in the given situation (in and after a public meeting) leading to his sentencing. The possible indignation and uneasy feelings of citizens seeing the symbol or becoming aware of the use thereof are not sufficient to restrict the right of others, as the return of the Communist regime is not a real threat. In conclusion, the Court found no compelling interests for the—even most lenient—punishment of Vajnai. The Court considered in general that the effective Hungarian rules in question were too "broad", meaning that it limited actions—such as the one discussed in the given case—that were otherwise protected by the freedom of expression. With regard to the two decades that passed since the change of regime and to the achievements of a continuous democratic development, maintaining this symbolic rule in the legal system openly rejecting any and all ideologies of despotism is not absolutely necessary.

While the decision takes into consideration the especially sensitive affairs in Central and Eastern Europe, the Court did not find such affairs to be compelling enough for limiting the rights of citizens in this case. It did not evaluate the two dictatorships in order to make general observations on the possible limitations on the use of their symbols. However, the demonstrative rejection of extreme right-wing ideologies is a European tendency; the symbols of Communism are prohibited in a handful of countries only. While it is uncertain what the position of the Court would be if it had to decide on the use of Nazi symbols, it is certainly possible that it would have different opinions on the two dictatorships.

After this decision, public demands were made for the removal of the red star (and presumably of the hammer and sickle) from the Criminal Code. Are such demands justified? As to the statement that the red star has multiple meanings, it is not necessarily the case in Hungary. The dictatorship that lasted over forty years caused wounds that are hard to heal. The red star is more likely to remind victims of the regime and people familiar with history of the falling of the red star from public buildings in the rebellion of October 1956 and during 1989 than of the struggle for equal suffrage of the Western European left-wing movements. This symbolic act did not mean the rejection of left-wing ideologies but embodied the insatiable desire for the abolition of the hated

totalitarian regime. In other words, the red star may have a different meaning in Hungary, Lithuania and Cambodia than in France or Italy.

In its judgement of 3 November 2011, in the case of Fratanoló v. Hungary (application no. 29459/10), the European Court of Human Rights confirmed its position assumed in the Vajnai case and ruled against Hungary. The Grand Chamber overruled the appeal by the Hungarian government, and the ruling of Section II became final.

The new Criminal Code of 2012 retained the provisions of Article 269/B with hardly any change (Article 335 of the new Criminal Code), but indicates that the provisions "do not extend to the official symbols of states in force".

> Article 335(1). Any person who
> *a)* distributes;
> *b)* uses in public;
> *c)* exhibits in public;
> a swastika, the SS sign, an arrow-cross, a hammer and sickle, a five-pointed red star or a symbol depicting the above – unless a graver crime is realised – commits a misdemeanour, and shall be liable to punishment with a fine.
> (2) The person who uses a symbol of despotism for the purposes of the dissemination of knowledge, education, science, or art, or with the purpose of information about the events of history or the present time shall not be punishable.
> (3) The provisions of subsections (1) and (2) do not extend to the official symbols of states in force.

6.3.2. The protection of national symbols

The crime of "Violation of a National Symbol" was also inserted into the Criminal Code in 1993 [Article 269/A]:

> A person who—in public—uses an expression insulting or demeaning the national anthem, the flag or the coat of arms of the Republic of Hungary, or commits any other similar act, unless a graver crime is realised, shall be liable to punishment for a misdemeanour with imprisonment of up to one year, a community service order, or a fine.

The Constitutional Court considered the constitutionality of this provision in Decision No. 13/2000. (V. 12.), and rejected the motion for its annulment. The judges held that this provision protects the rights and lawful interests of the state and of members of the nation at the same time. National symbols are the "constitutional symbols of the external and internal integrity" of the state and of the nation, and the symbols expressing national sovereignty deserve enhanced protection. Furthermore, this provision also protects the dignity of the members of the nation, as the symbols mentioned therein—in addition to their official "role" described above—also "express that such members belong to the nation, as a community". Such—twofold—expressions of national identity deserve enhanced protection, with regard to historical circumstances, as any display of belonging to the nation had been considerably limited or even prohibited during the previous decades. These symbols gained even more importance after the change of regime in

Hungary, a fact which should be taken into consideration. However, the justification for the decision notes that the negative opinions on these symbols or their history, value, or importance, as well as artistic expressions, criticisms, or proposals for their change or abolition may not be subject to punishment.

The new Criminal Code (Article 334 of the Criminal Code) made minor amendments to the provisions laid down in Article 269/A of the Criminal Code by mentioning the Holy Crown among the protected symbols and by making persons using an expression outraging or humiliating the symbols—which are also listed in Article I of the Basic Law—or "insulting them in any other way" liable to punishment, instead of persons committing "any other similar act".

> Article 334 Any person who (in public) uses an expression outraging or humiliating the national anthem, the flag or the coat of arms of the Republic of Hungary or the Holy Crown, or insults them in any other way, unless a graver crime is realised, shall be liable to punishment for a misdemeanour with imprisonment of up to one year.

6.4. Media law measures against hate speech

In addition to criminal law measures, actions may be taken against hate speech by the means of media legislation. According to Article 6 of the AVMS Directive, Member States shall ensure that linear, non-linear, television, and other audiovisual media services do not contain any incitement to hatred based on race, sex, religion or nationality; the phrase "*incitement to hatred*" used in the English text can be translated into Hungarian both as "*gyűlöletkeltés*" (incitement to hatred) or as "*gyűlöletre uszítás*" (instigation of hatred)—apparently, the EU did not wish to get involved in a domestic debate on Hungarian criminal law terminology. [Similarly to the Press Freedom Act, the official Hungarian text of the Directive uses the term "*gyűlöletkeltés*" (incitement to hatred).]

With reference to media services and to printed and online press products, the Press Freedom Act prohibits the publication of media content that "incites hatred against any nation, community, national, ethnic, linguistic or other minority or any majority as well as any church or religious group" [Article 17(1)]. According to Article 17(2), "[t]he media content may not exclude any nation, community, national, ethnic, linguistic and other minority or any majority as well as any church or religious group". The first provision requires the capability of inciting hatred for the prohibition (irrespective of the intents of the communicator), while the latter provision prohibits the publication of media content that is capable of excluding a group. (Note that the respective provision of the previous media act—Radio and Television Broadcasting Act, 1996 (repealed), Article 3—was most similar to the effective provision, with the important difference that it was applicable to television stations and radio channels only. Apart from that, the sole material difference between the text of the Radio and Television Broadcasting Act of 1996 (repealed) and of the Press Freedom Act is that the former prohibited "open or covert insults" to communities as well. It might be noteworthy that this rule was also

included in the original text of the Press Freedom Act, but—after the outrage in Europe caused by the Hungarian media regulations—it was deleted at the request of the European Commission during the negotiations.)

Article 14 of the Media Act lays down a provision protecting members of religious communities, according to which "viewers or listeners shall be given a forewarning prior to the broadcasting of any image or sound effects in media services that may hurt a person's religious, faith-related or other ideological convictions or which are violent or otherwise disturbing".

The Media Council may take action against those who violate the above rules (as for Article 14 of the Media Act, the Office of the National Media and Infocommunications Authority proceeds as the authority of first instance).

6.4.1. "Incitement to hatred"

The question is whether the terms "incitement to hatred" and "exclusion", used in Article 17 of the Press Freedom Act, refer to a standard that is lower than the standard of "incitement to hatred" used in the Criminal Code, meaning that the rules applicable to the media are more lenient than the general rules.

The Constitutional Court considered the constitutionality of the provisions laid down in the Radio and Television Broadcasting Act, 1996 (repealed) [Articles 3(2) to (3) of the Radio and Television Broadcasting Act, 1996]—which are rather similar or occasionally identical to the provisions laid down in Article 17 of the Press Freedom Act—in its decision No. 1006/B/2001. The decision found the regulations constitutional, and made it clear that the possibility of the intervention of the media authority—which is independent of the will of the community or individual harmed—does not limit the right to self-determination and does not substitute for the enforcement of claims by holders of subjective rights. The decision of 2007 states that "the option of simultaneously available legal remedies, and even proceedings that can be conducted simultaneously under different branches of law regarding the fundamental rights complementing each other, does not violate, and, what is more, does not even restrict unnecessarily the freedoms of expression of opinion and of the press". Accordingly, outside of the system of criminal law, sanctions against hate speech may be constitutionally prescribed in the media regulations, too. The decision also mentions the obligation of the state under international law, according to which action must be taken to combat hate speech.

On the other hand, Decision No. 1006/B/2001. AB stated that "*gyűlöletkeltés*" (incitement to hatred) under the Radio and Television Broadcasting Act, 1996 (repealed) and "*gyűlöletre uszítás*" (instigation of hatred) under the Criminal Code bear one and the same meaning. Decision No. 165/2011. (XII. 20.) of the Constitutional Court also confirmed this interpretation. However, the Court did not analyse the relationship between the criminal law and media regulation standards either in 2007 or in 2011. The Constitutional Court has materially modified the constitutional interpretation of the crime of "incitement against a community" since 1992, and established a standard in

2004 and 2008, the application of which in practice is rather complicated and, for the purposes of media regulation, would make the application of the law nearly impossible.

The evolution of the application of the respective provisions of the Criminal Code and of the Radio and Television Broadcasting Act, 1996 (repealed)—which were declared to be identical by the Constitutional Court in 2007—thus followed entirely different paths. The jurisprudence of the Constitutional Court and the lower courts has been forming since 1992 (taking shape gradually), and gave a definition to incitement to hatred, according to which the application of the facts of the case in practice is difficult, and almost impossible, while the media authority (previously the National Radio and Television Commission, now the Media Council) took action against media service providers on a regular basis for incitement to hatred or exclusion, even if the person articulating his or her opinion would not have been liable under criminal law.

The Constitutional Court considered the constitutionality of the prohibition of incitement to hatred (and exclusion) under the Press Freedom Act in its decision No. 165/2011. (XII. 20.). Pursuant to the Decision, the obligation pertaining to the prohibition of the incitement of hatred against and the exclusion of communities may be constitutionally prescribed also with respect to press products. According to the Constitutional Court:

> [m]edia content denying the institutional values associated with fundamental rights is excluded by definition as an instrument for the development and maintenance of democratic public opinion. Such media content promoting views that are contrary to the values of democracy does not serve the democratic formulation of opinion and decision-making [statement of reasons, point IV. 2. 2. 1.].

However, this decision still does not mention the difficulties associated with the application of the different standards of incitement to hatred laid down in the Criminal Code and in the media regulations ("*uszítás*" v. "*gyűlöletkeltés*"). It should be also noted that—even if we assume that the two standards are identical—arguments in favour of parallel protection could be found; the reasons for such twofold regulation could be identified in the different structure of liability under criminal law and public administrative law, the different scope of those persons liable, and the different objectives of the different rules.

6.4.2. "Exclusion"

The constitutionality of the rules applicable to exclusion—which still form part of the media regulations—was considered by the Constitutional Court in its Decision No. 1006/B/2001. In relation to the prohibition of "exclusion" (and to the prohibition of the time concerning any "explicit or implicit offence"), the Court attempted to answer the questions concerning the reasons for the considerably lower level of restriction standards—compared to those pertaining to criminal law. In its response, the Court distinguished the sets of sanctions applicable under criminal law and public administrative

law, and emphasised the importance of the impact of the "electronic press" on public opinion. What may be protected under the general freedom of expression (incitement of hatred against a community) is not necessarily covered by the freedom of the press. The decision mentions the significant opinion-forming power of the electronic media as another reason for the distinction, thus referring to Decision No. 1/2007 (I. 18.) AB:

> "it is generally accepted that the opinion-forming powers of radio and television broadcasting and the persuasive effects of animated images, audio and live coverage are many times more effective than the ability of other social information services to provoke thought". Further elaborating on this thought, the Decision states that "therefore the media are of critical importance for the existence of diversity of opinion, also serving as one of the most important stages for community debate; however, one must also take into account the fact that the broadcasting of programmes found to be offensive or exclusionary to, or discriminative against, persons or certain groups within society (whether minorities or the majority) may have similarly considerable negative effects of unforeseeable magnitude."

According to Decision No. 165/2011. (XII. 20.) AB, the obligation pertaining to the prohibition of incitement of hatred against and the exclusion of communities may be constitutionally prescribed also with respect to press products. While the decision does not specifically mention the provision on "exclusion" laid down in Article 17(2) of the Press Freedom Act, it is revealed by the operative part of and the statement of reasons for the decision that the Court still accepts this provision as constitutional. One might argue that the decision regards the provisions on "exclusion" as parts of the provisions on "incitement to hatred"—meaning that the latter implies the former—and consequently the same constitutionality standards would apply to both sets of provisions. However, this interpretation is not elaborated clearly in the Constitutional Court decision of 2011; it might be only concluded from the fact that Article 17(2) of the Press Freedom Act was not specifically discussed in the decision. However, the media authority—in line with Decision No. 1006/B/2001. AB—associates more moderate acts with the term "exclusion" than those implied by the phrase of "incitement to hatred".

Messages that seek to achieve or argue in favour of the alienation or separation of a community from other layers of society are usually regarded as exclusive content. Such results may be reached by a programme if it is capable of enhancing or aims to enhance any stereotyped ideas or opinions that may exist in relation to a social group. Furthermore, media content may be regarded as exclusive if the communicator seeks somehow to prevent the members of a community from exercising their constitutional rights or seeks to place obstacles to the exercise of their rights. In the end, such attempts prevent the equal right to dignity of members of such communities from being effective and enforceable.

Content that violates human dignity is capable of falling within the scope of the prohibition of exclusion and *vice versa*; the provisions laid down in Articles 14(1) and 17(2) of the Press Freedom Act may be applicable separately as well. In theory, it is possible for certain content to promote separation of a community within society without questioning its members' equal right to dignity (thereby without violating the right of the

community to content that respects the value of dignity), or, on the other hand, certain content may question the right of a community to dignity without qualifying as exclusion.

6.4.3. The practice of the media authority

Certain programmes of Tilos Radio ("tilos" means "forbidden" in Hungarian) caused public outrage in 2003. One of the programmes—broadcast on Christmas Day—contained various insults to followers of the Christian religion, accompanied by the following statement: "First of all, I would like to exterminate all Christians". The National Radio and Television Commission imposed harsh sanctions on the station for violating various provisions, including the provisions on the protection of minors, of the Radio and Television Broadcasting Act. The broadcaster terminated the employment of the speaker on the show, but challenged the decision of the media authority in court. The Budapest Court of Appeal established the breach of the law and maintained the decision of the National Radio and Television Commission (2.Kf.27.153/2004/7.).

Note that the National Radio and Television Commission held even less offensive statements to be offending in its practice. The liability of the media service provider was established for presenting Muslims in a "stereotyped, intolerant, and exclusive" manner [Decision No. 1512/2009. (VII. 20.) of the NRTC], broadcasting extreme criticisms of and presenting prejudiced opinions on the social role of homosexuals [Decision No. 2500/2009. (XII. 16.) of the NRTC], denigrating Socialist Members of Parliament [Decision No. 865/2008. (V. 22.) of the NRTC], or broadcasting overly generalised and simplified opinions of the "left-wing" [Decision No. 866/2008. (V. 22.) of the NRTC]. Similar was the situation regarding two talk-shows, in which the Commission carried out a thorough and comprehensive review. In the end, the liability of the broadcasters was established as "presenting the actions of the aggressive and violent figures with the occasional tendency to take the law into their own hands was capable of stigmatising the Roma community". and the programmes enhanced the existing stereotypes and negative prejudices of society [Decisions No. 2502 and 2503/2009. (XII. 16.) of the NRTC].

On the other hand, an "alternative hip-hop song" broadcast by a broadcaster as part of its programme was found to be lawful, though it did contain expressions that insulted other nations, as—according to the Commission—"art is an experimenting form of expression, in permanent pursuit of reaching the boundaries of general taste. No significant works of art could be created if certain works that do not conform to the general taste would be denied publicity" [Decision No.2298/2009. (XII. 2.) of the NRTC]. A final decision of the Budapest Court of Appeal repealed Decision No. 1800/2005. (IX. 14.) of the NRTC, in which the Commission imposed a fine on RTL Klub for broadcasting a scene showing members of the Roma minority in a prejudicial manner (despite the intended humour of the scene). The court held that parodies may be subject to standards that are different from those applicable to other genres. As such, the contested parts were found to be lawful. According to this ruling, the artistic (whatever

that means) or humorous nature of certain expressions can justify a more lenient approach toward the respective expressions.

For the purposes of deciding on the possible infringement, it was an important aspect for the media authority whether the presenter made any attempt to balance or moderate the extreme opinions—of a guest or text messages from the audience—that might appear in the programme under review. It could justify the liability of the media service provider if no attempt were made to this end [e.g. Decisions No. 1189/2007. (V. 23.) and 1266/2007. (V. 30.) of the NRTC].

It is safe to establish that, in general, the National Radio and Television Commission adopted relatively few decisions concerning the issues of incitement of hatred and hate speech (no such decision was passed between 1996 and 2002, and the liability of media service providers was established in 32 cases between 2002 and 2010, only two of which were not repealed in court with final effect).

In the course of adopting its decisions, the Media Council relies on the practice of its predecessor, the National Radio and Television Commission, and establishes legal liability on the basis of the prohibition of "incitement to hatred" for opinions that are capable of enhancing the stereotypes concerning certain communities, include unjust generalisations, or fail to respect the equality of individuals [e.g. Decisions No. 828/2011. (VI. 22.) and 1153/2011. (IX. 1.) of the Media Council].

6.5. The denial of the Holocaust and other cases of genocide

In 2010, the Hungarian Parliament adopted the inclusion of the crime of "Public Denial of the Holocaust" (Article 269/C) into the Criminal Code, thereby criminalising the act of denying the Holocaust. According to the Criminal Code, the crime is committed by persons who "violate the dignity of the victims of the Holocaust in public by denying or questioning the occurrence or belittling the significance of the Holocaust." This provision was never applied in practice, as the Parliament—after the change of the government—adopted fundamental amendments thereto in June of the same year. The title of the new part was changed to "Denial of the Crimes of The National Socialist and Communist Regimes". After the amendment, the crime was committed by persons who "publicly deny or question the occurrence or belittle the significance of the genocides and other grave crimes against humanity committed by the National Socialist or Communist regimes".

Apparently, the word "Holocaust" was removed from the text, thereby making the provision applicable to the act of denying any genocide or other crime against humanity committed by the specified despotic regimes (including, of course, the Holocaust). The new text is in line with most of the "Acts on Denial" in the sense that it avoids mentioning the Holocaust specifically. On the other hand, it is clear that the amendment was made for symbolic political reasons (similar to its adoption, the amendment was not the result of any pressing or real social problem).

The new Criminal Code (2012) made certain amendments to the provisions of Article 269/C (Article 33 of the new Criminal Code). Firstly, the Hungarian phrase ("*emberiség elleni cselekmények*") used for "crimes against humanity" was replaced by another phrase ("*emberiesség elleni cselekmények*") expressing the meaning of the English phrase more precisely. Secondly, the amendment made the act of "attempting to justify such crimes" punishable, because—according to the reasoning of the rapporteur—"in addition to denial, the mere act of attempting to justify or legitimise such crimes poses in itself a danger to society".

> Article 333. A person who denies or questions the occurrence or belittles the significance of the genocides and other grave crimes against humanity committed by the National Socialist or Communist regimes, or attempts to justify such crimes in public, shall be liable to punishment for a felony offence by imprisonment for up to three years.

7. The Protection of Privacy, Images, and Voice Recordings

7.1. Overview

The various aspects of protecting privacy against the freedom of speech and the freedom of the press may be hard to fit into clear-cut and well-defined legal categories, such as libel or defamation. One may consider the right to privacy as the equivalent of a general personality right, or the general clause of personality rights.[89] It would be hard to draw any exhaustive list of the various facts that could be relied upon to define an abstract set of circumstances covering all possible cases of conflicts between the freedom of speech and the right to privacy. In the event of conflict between these fundamental rights, freedom of speech is protected to a certain extent, even if the exercise thereof involves one indulging in private pursuits, disclosing secrets, or taking pictures without consent. As for matters of public interest, the extent of the protection of privacy is more limited. Moreover, libellous statements are more tolerated if made in relation to matters of public interest. However, the category of "matters of public interest" is to be construed in a limited sense: not all matters in which the public may be interested are regarded as matters of public interest.[90] The privacy of politicians and persons exercising state powers is also protected. However, it may be—and indeed, should be—open to debate which events or pieces of information relate to carrying out the public function of such persons, and may be therefore disclosed to the public. The extended scope of the freedom of the press concerning celebrities and the infringement of the privacy of celebrities is also subject to debate. Similarly to persons exercising state powers, the starting point is that even the most exposed celebrities have certain privacy to be protected, the infringement of which is not justified by any public interest consideration. However, and in comparison to persons exercising state powers, instances of matters falling within the privacy of celebrities being relevant for deciding on public matters seldom arise. Liability for infringements of the privacy of celebrities is at least shared by the press and the respective celebrity trying to protect his or her privacy. On the one hand, celebrities seek publicity, thrive on it, and ultimately earn their living by appearing publicly. On the other hand, "stars" enjoy publicity as long as they can benefit from it; a time may come when celebrities wish to withdraw to their autonomous private sphere.

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[89] László Sólyom: Polgárjog és polgári jog. [Civil Rights and Civil Law] *Jogtudományi Közlöny*, 1984/12. 667.

[90] See in the UK the following ruling of the House of Lords: Campbell v. MGN [2004] 2 AC 457, HL.

Hungarian law typically uses criminal measures and relies on the rules of data protection to provide protection against harassment and unauthorised data collection. Private secrets, homes, images, and voice recordings are protected by both criminal and civil law measures, while the confidentiality of personal identity is protected primarily by data protection legislation and the rules of various legal procedures.

7.2. Civil law, criminal law, data protection, and media regulation

Current Hungarian legislation does not explicitly provide for the general protection of privacy. Nevertheless, the specific rights and the related case law of ordinary courts and of the Constitutional Court imply that privacy in general is protected by law, and no individual right in this respect remains unprotected. Decision No. BDT2008. 1899. states that "the law does not provide an exhaustive list of personality rights but specifies certain examples thereof. The right to privacy… is an *erga omnes* personality right protected by law against every other person."

Certain key, specific personality rights—forming part of the private sphere—are mentioned in civil and criminal law, the violation of which opens the door to the application of various sanctions.

Data protection basically provides a parallel layer of privacy protection; the Freedom of information Act covers the entire field also protected by traditional personality rights legislation. The protection of private secrets, homes, images, and voice recordings may therefore also be enforced under data protection legislation.

For media regulation purposes, the violation of privacy was prohibited under the Press Freedom Act until 19 June 2012. With regard to the press, this provision was held to be unconstitutional by the Constitutional Court in its decision No. 165/2011. (XII. 20.). In this decision, the Constitutional Court held that the victims of privacy violations have recourse to other legal remedies (under civil or criminal law), and this possibility was found to provide a sufficient level of protection. However, the Constitutional Court failed to determine whether or not the above rule complied with relevant constitutional requirements with regard to media services, where the aforementioned legal remedies are also available. Finally, the legislator decided to repeal the provision in its entirety. The rather short and uneventful "career" of privacy protection under media regulation was thus finished.

7.2.1. Publication of confidential information in the various branches and fields of law

Under effective Hungarian legislation, protection for confidential information against publication is afforded by civil law (Civil Code, Article 81, the protection of letters, private secrets, and business secrets), criminal law (Criminal Code, Article 177, violation of private secrets; Article 178, violation of the confidentiality of letters; Article 178/A,

unauthorised acquisition of private secrets) rules of secrecy, as well as rules of data protection (Freedom of information Act, Civil Code, Article 83, data management violating personality rights; Criminal Code, Article 177/A, abuse of personal data; Article 177/B, abuse of data of public interest).

The case law on the conflict between information confidentiality and press freedom has still to be elaborated further. Decision No. BH2002. 89. of the Supreme Court states that "personal data concerning family relations constitute private secrets". In this case, a journalist conducted an interview with the partner of the plaintiff, and published the personal data and other information concerning the family members of the plaintiff as supplements to the published article. The defendants (the chief editor and the publisher of the journal) argued without success that the plaintiff's partner, i.e. the interviewee, consented to the publication of the relevant information. This—as revealed later, wrongfully claimed—fact was found to be irrelevant: for the publication of personal data concerning more than one person, the consent of all affected persons should be required. Each person concerned may dispose of his or her personal data only. Having failed to require such consent to publication, the journal did in fact breach the personality rights of the plaintiff, and was therefore ordered to offer satisfaction.

7.2.2. The special status of images and voice recordings under civil law

According to Article 80(2) of the Civil Code, permission is not required for publishing images and voice recordings made in the course of public appearances. In practice, the press tends to construe this rule in a broad sense, and does not ask for permission to publish images taken of public figures in public spaces. In theory, this possibility is somewhat limited. According to court decision No. BH2006. 282, "images of public actors may be used without permission if the image was taken in the course of a public appearance and in order to relay such an appearance. Images of public figures are therefore not freely usable . . ."

In the specific case, a satirical journal used an image of the plaintiff separately from and without any relation to the plaintiff's status as a public figure; the court considered the specific use to be harmful (without requesting any consideration of damages, as the violation did not result in damage). According to court decision No. BDT2007. 1663., "for the purposes of taking images or making voice recordings, the requirements of appearing publicly are met if making video recordings or television footage is common at the particular types of event; hence visitors to the particular event should expect to be recorded in a recognisable manner".

The lawfulness of using photographs taken at mass events is still subject to debate. Today, taking "mass photographs" (in which individuals cannot be identified) is generally considered to be lawful. In itself, it is also lawful if a person can be identified on the picture, without having given permission to take or publish the picture. In decision No. BH1997. 578., the court established that persons attending public events—even as passive observers—waive their right to privacy to a certain extent. Even in such cases,

images may not be published in an abusive or harmful manner. However, no permission is required for making—otherwise not harmful—pictures giving particular attention to individual persons in the crowd and thereby making such persons identifiable. Active participants in public events (e.g. speakers) are without question public figures; while passive observers are not public figures, the images taken of such observers may be published (but not in an abusive manner).

According to the court, "the act of releasing information by a police executive to members of the press on police work qualifies as public appearance. For this reason, using an image of the person delivering such information without permission as an annex to an article discussing the released information does not constitute any violation". (BDT2006. 1298.)

A principle not mentioned in the Civil Code but developed by case law is that "the party may not claim any violation of his or her subjective rights, i.e. abuse of voice recordings if he or she aims to conceal an untrue and false factual statement by doing so, and seeks to prevent the use of a recording of the truth by relying on his or her personality rights" (BDT2009. 2126.). This rule may be also applied to the protection of images, as happened in the case No. BDT2011. 2442. According to this ruling, "taking or using an image, or making or using a voice recording does not constitute violation if it is made in the public interest or for material private interest related purposes in order to provide evidence for a directly impending, or already completed violation of rights, and subject to the condition that taking or using an image, or making or using a voice recording does not cause disproportionate harm in comparison to the violation to be demonstrated".

In the absence of statutory exceptions, it can in general be safely stated that the subject's permission is required for using an image or voice recording (e.g. cases No. BDT2009. 1962. and BDT2007. 1682.), and that the permission granted may not be construed in a broad sense. Naturally, mounting the face of a person onto a picture of a naked female body, and giving the impression that the resulting picture shows the plaintiff (a school teacher), is certainly a violation of the right to the plaintiff's image (case BDT2011. 2549.).

A personality action was filed for the violation of the right to dignity by publishing images of the corpse of Jimmy Zámbó, a well-known and popular performer in Hungary, who died in tragic circumstances (Case No. EBH2005. 1194.). Pictures taken of his corpse after autopsy were published in a tabloid newspaper. The court had to decide whether or not the publication of such images amounts to defamation of the deceased, thereby constituting a violation of the right to dignity. According to the final decision of the court, rights to dignity were not violated by merely publishing the images, as "the fact and portrayal of one's death is not capable of having any negative impact on the social standing of the deceased". However, the Supreme Court did not concur, and stated that displaying a corpse "after autopsy, under humiliating circumstances, and in a condition giving rise to regret" is in itself capable of harming the honour of the deceased.

Nevertheless, tabloids can get away even with material violations, unless an action is filed with the court. Perhaps the most outrageous example of such violations was given by a tabloid front page photograph (published in 2004) showing the agony of Miklós

Fehér, a member of the Hungarian national football team. The picture – covering nearly the entire front page of the paper – showed the worn and sweating face of the football player collapsing on the field, who died within minutes after the picture was taken. While no court action was filed, the Data Protection Commissioner expressed his objections.

7.3. The right of public figures and private persons to privacy

Similarly to the protection of reputation and honour, there are differences in the extent of privacy protection afforded to public figures and private persons. The private life of a public figure may be of public interest if his or her private life has any impact on his or her social position, or the performance of his or her tasks associated with such a position. According to decision No. 60/1994. (XII. 24.) of the Constitutional Court,

> in order to serve the purposes of a democratic public life and of public opinion, the constitutionally protected extent of privacy afforded to state officials and other public figures in politics is more limited than the privacy of others… With regard to persons exercising state powers and undertaking a public role for political purposes, the right of others—especially of voting citizens—to the disclosure of public interest data is given priority over the right to the protection of the personal data of the former persons if such personal data may be relevant to the public activities—or to the evaluation thereof—of such persons [justification, Part IV/2, Point *ba)*].

Nevertheless, even the most prominent politicians have a certain degree of privacy. According to the court ruling in a case filed by the mayor of Füzesabony, the fact that the mayor of a town in Northern Hungary had taken pornographic photographs qualifies as a piece of information of public interest, as information on the sexual morals of the mayor may influence the preferences of the voters, but publishing such photographs or discussing their content in detail violated the privacy of the plaintiff (the court reprimanded the journal publishing various details of the case for having violated private secrets). According to the Freedom of Information Act, "public interest data" include the personal data of persons carrying out state or local government functions or other public functions if such data relate to the tasks of such persons [Article 19(4)].

For the purposes of privacy protection, the scope of the category of "public figures" is to be construed in a rather broad sense: it includes persons exercising state powers or entrusted with public functions, as well as any other person who became known for some reason and, consequently, the public is interested in his or her private life. László Majtényi defines three categories of public figures: (1) institutions and persons exercising state powers; (2) other persons entrusted with public functions; and (3) "famous persons", such as scientists, sports figures, media persons, or celebrities.[91] The extent of privacy

[91] László Majtényi: *Az információs szabadságok. Adatvédelem és a közérdekű adatok nyilvánossága.* [*Information Civil Liberties: Data Protection and the Publicity of Data of Public interest*] Budapest, CompLex, 2006. 248–249.

afforded to persons in these categories gets even broader in each subsequent category. On the one hand, data of or information relating to celebrities may be published on the basis of permission—which may also be given as implied permission—or as part of their public appearances. On the other hand, the private life of an elected state official may constitute publishable information of public interest even without permission. This approach is in line with the developments of the Strasbourg case law summarised above. Recent court rulings move toward limiting the possibilities for tabloids, as they tend to narrow the options for entering the privacy of celebrities.

To a certain extent, it may be justified to distinguish public figures, persons exercising state powers, and persons carrying out public functions for the purposes of defining the extent of privacy protection. Apart from public appearances, public figures retain the entirety of their privacy. On the other hand, and with regard to persons exercising state powers or carrying out public functions, the law on the freedom of public interest data clearly defines the range of publishable data and information. However, the two categories are permeable to a significant extent. Occasionally, the extent of the privacy of public figures may be even more limited—due to public pressure—than it would otherwise be justified, merely due to the fact of making public appearances. If a public figure falsely denies in public his or her addiction to narcotics, the fact that he or she is in fact addicted to narcotics may be published, even if this fact is not related to any of his or her public appearances. The extent of privacy of persons exercising state powers or carrying out public functions is defined by law, but public figures are not necessarily capable of doing so themselves: the most important criterion is the existence of any public interest consideration. According to the *erga omnes* presumption stipulated in [Article 6(7) of] the Freedom of Information Act, "permission shall be deemed as granted by the subject in relation to personal data disclosed or released for publication by the subject during a public appearance."

8. The Protection of Human Dignity in Hungarian Media Regulation

8.1. About the legal concept of human dignity

Human existence and dignity, just like human unity itself, are not actually rights. The essence of humanity, as regards the law, is inaccessible. Because of this, human life and dignity are included in the catalogue of human rights and in modern constitutions as the sources of rights, as inviolable values beyond the law. The law must guarantee that these inviolable values are respected and protected.[92]

Under the interpretation of the Constitutional Court (hereinafter: CC), the right to human dignity is the "mother right" of all other individual rights and, thus, the source of all other specific individual rights (Decision No. 8/1990 (IV. 23.) AB). Human dignity is a paramount value, which is unapproachable and inaccessible for the law. The law cannot define human dignity, cannot summarise all of its sub-elements, and cannot grasp its essence in a technical sense; however, the law can protect human dignity even in the absence of a detailed definition.

The background of the CC's philosophy in describing the content of the right consists of the ideology of Christian natural law and Kantian moral philosophy. Behind the CC's monistic view of man and the "indivisibility doctrine" lies the concept of the Christian world view, according to which man is the image of God, and man's personal spiritual soul is the unique work of God's creation.

"Human dignity is the principal constitutional guiding principle for the creation and application of all laws and the actual foundation of the system of constitutional fundamental rights, values and obligations." [Decision No. 37/2011 (V. 10.) AB].

As such, the right to human dignity, together with the right to life, is the absolute limit of the restriction of all other fundamental rights. It is the untouchable essence within the essential content. The CC connected the concept of essential content with the concept of human dignity, creating an absolute limit as regards the constitutional scrutiny of the restriction of fundamental rights [Decision No. 23/1990 (X. 31.) AB]. Connecting the right to human dignity and the essential contents of fundamental rights made it clear that the CC regards the system of fundamental rights as a value system. Its starting point was the theoretical consideration that the Constitution's system of fundamental rights is not the aggregation of sporadic or isolated rights, but it is an integral whole, the foundation

[92] Decision No. 23/1990. (X. 31.) AB of the Constitutional Court, Concurring opinions of Tamás Lábady and Ödön Tersztyánszky.

and source of which is the right to human dignity. Ultimately, every right can be traced back to and other rights can be deduced from, human dignity. In other words, fundamental rights are interwoven with and presuppose one another, but it does not matter which fundamental right is at issue: there is an absolute limit to their restriction.[93]

One of the functions of the right to human dignity is to guarantee autonomy, as human dignity "is the seed of individual self-determination free from any other person's will, which ensures that… that the person can remain an individual and does not become an instrument or object" [Decision No. 8/1990 (IV. 23.) AB].

The other function of the right is to guarantee equality by ensuring that everybody has an equal right to dignity. According to the CC's interpretation, it also follows from the mother right nature that human dignity is:

> such a subsidiary right that both the Constitutional Court and other courts may invoke it for the protection of the individual's autonomy if none of the concrete, specific fundamental rights can be applied to the specific facts of the given case [Decision No. 8/1990. (IV. 23.) AB].

Human dignity is only unrestrictable in connection and forming a whole with the right to life (see the issues of the death penalty, abortion, and euthanasia). If it is separated from the right to life, the individual partial licenses deriving from it can already be restricted.

Reputation, integrity and human dignity are personal rights which may be separated but which are closely connected with each other. Reputation and integrity protect the social value judgment formed of a person. Article 78 of the Civil Code (Act IV of 1959) protects against defamation and prohibits the statement and dissemination of false facts or the misrepresentation of true facts that would be injurious to another person. The Civil Code also protects the right to integrity and includes the right to human dignity (Article 76), but civil court jurisprudence does not attribute independent meaning to the latter; for the most part, it regards integrity identical with human dignity.

Pursuant to Article 179 of the Criminal Code (Act IV of 1978), the publication of any facts capable of undermining integrity may substantiate the commission of the offence of libel, and Article 180 prohibits – in addition to certain other conditions – the use of statements capable of undermining integrity (the offence of slander). The Civil Code does not expressly cover human dignity, but for the most part, here also, the jurisprudence views it as identical to the right to integrity. Human dignity thus has no independent meaning or content, either in civil or criminal law.

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[93] Zsolt Balogh: Alapjogi tesztek az Alkotmánybíróság gyakorlatában [Fundamental Rights Tests in the Jurisprudence of the Constitutional Court], in Gábor Halmai (ed.): *A megtalált Alkotmány? A magyar alapjogi bíráskodás első kilenc éve.* [*Constitution Found? The First Nine Years of Hungarian Fundamental Rights Jurisprudence*] Budapest, Indok, 2000, 124.

8.2. Protection of human dignity and freedom of the press in Europe

The protection of human dignity is not merely one of the foundations of European media regulation but also one of the bases of the common European legal order.[94] According to McCrudden, the concept of human dignity differs from legal system to legal system, and sometimes it can mean different things even within the same legal system; nevertheless, human dignity has a special significance in ruling on cases concerning human rights.[95]

The protection of human dignity in television broadcasting is prescribed by the television broadcasting convention of the Council of Europe: "[a]ll items of programme services, as concerns their presentation and content, shall respect the dignity of the human being and the fundamental rights of others".[96] In addition to this, the protection of human dignity in the common European media regulation appears primarily in the form of the prohibition of hate speech in audiovisual media services.[97] With respect to audiovisual services and the Internet, the European Parliament and the Council have formulated a recommendation in order to protect human dignity more effectively.[98]

The protection of human dignity is part of the media regulations of a number of European countries (France, Luxembourg, Italy, Portugal, Slovakia, Slovenia, Cyprus, Romania, the Czech Republic, Greece and Spain). It is characteristic of these regulations that they include the protection of human dignity as the alternative to the violation of reputation and integrity, or sometimes they are included in the regulations as provisions in addition to the reputation and integrity causes of action. They chose different approaches than in the Hungarian regulation, which regulates the issue of personality violations committed in the media as part of the general personality protection regime (Civil and Criminal Code), and it does not incorporate the protection of personal rights in the media regulations. This also means that, in these states, the

[94] Perry Keller: *European and International Media Law. Liberal Democracy, Trade and the New Media*, Oxford University Press, 2011, 135–139.

[95] Christopher McCrudden: Human Dignity and Judicial Interpretation of Human Rights, *European Journal of International Law*, 2008/4., 655–724.

[96] The European Convention on Transfrontier Television, adopted on 5 May 1989, was promulgated by Article 7(1) of Act XLIX of 1998.

[97] Directive 2010/13/EU on audiovisual media services, Art. 6. See more on this in Tarlach McGonagle: Safeguarding Human Dignity in the European Audiovisual Sector, *IRIS Plus, Legal Observations of the European Audiovisual Observatory*, Issue 2007/6.

[98] Recommendation No. 2006/952/EC of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry.

media authorities may initiate proceedings in cases of violations of dignity (reputation and integrity).[99]

Another solution—which is also used in Hungarian media regulation,[100] in Article 14(2) of the Press Freedom act—is when the law prohibits specific conduct violating human dignity.[101]

The regulation of the European states shows a colourful picture, and in the light of these laws – as well as being mindful of the debate surrounding the Hungarian media regulations – it can be stated that the Hungarian regulations and jurisprudence are special, and its unique solution may carry European-level lessons.

8.3. Protection of human dignity in the Hungarian media regulations

Article 3(2) of the Radio and Television Broadcasting Act, in effect from 1996 until 1 January 2011, stated that "Broadcasters are obligated to respect the constitutional order of the Republic of Hungary, and their activities shall not violate human rights. . ." The rule applied exclusively to "broadcasters", and therefore (according to the definition of the currently effective law) to linear audiovisual and radio media services, and the law did not specify the fundamental right of human dignity.

The CC considered the constitutionality of the protection of human rights (and within those, human dignity) in Decision No. 46/2007 (VI. 27.) AB under the media regulations and held that

> if a broadcaster violates an individual right, the aggrieved person may decide whether to enforce their individual rights against the broadcaster having committed the violation, for example, by filing a court action. In addition to judicial action, Articles 112(1) and 136(1) of the Media Act [Radio and Television Broadcasting Act] provides for administrative remedies. The ORTT [the Hungarian abbreviation of the previous Hungarian media authority, the National Radio and

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[99] This is how the French (Article 1 of the Freedom of Communication Act no. 86-1067), Luxembourgish (Article 1(2)(c) of act of 27 July 1991 on Electronic Media), Italian (Legislative Decree 31 July 2005, no. 177; Articles 3–4 of the Audiovisual Media and Radio Services Code), Portuguese (Law no. 27/2007 of July 30; Article 27 of the Television and On-Demand Audiovisual Services Law, Law no. 54/2010 of December 24; Articles 30 and 32 of the Radio Law), Slovakian (Article 19 of Act no. 308/2000 Coll. on Broadcasting and Retransmission), Slovenian (Article 6 of Media Act no 35/2001), Cypriot (Article 33(1) of the Radio and Television Stations Law of 1998) and Romanian (Law no. 504/July 11th, 2002; Article 9 of the Audiovisual Law) law regulate the issue with respect to media services and the Italian (Id.) and Slovenian (Id.) with respect to press products. (We are using the title of foreign laws and regulation in every case in English.)

[100] Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content.

[101] Similarly to their Hungarian counterpart, the Czech (Article 32 of Act no. 231/2001 Coll., on the operation of radio and television broadcasting) and Portuguese (Law No. 1/99; Journalist Statute) regulations prohibit people being portrayed in vulnerable situations, and the latter also prohibits such depictions of children that violate their dignity (Id., Article 14). The violation of human dignity is prohibited in advertisements pursuant to the Czech (Article 2 of Act no. 40/1995 Coll., on the regulation of advertising), Greek (Article 3 of Law 2328/1995 "Legal regime of private television and local radio broadcasters, regulation of relevant market and other provisions") and Spanish (Article 57 of General Audiovisual Law 7/2010) media regulations.

> Television Commission]—proceeding pursuant to Article 3(1) of the Media Act [Radio and Television Broadcasting Act]—does not decide on the violation of the rights of individual legal entities in these administrative proceedings. Article 3(1) of the Media Act [Radio and Television Broadcasting Act] is a provision of principle. Accordingly, during the administrative proceedings the ORTT is entitled to establish whether the broadcaster carries out its activities while respecting human rights, and whether the subject-matter, nature and perspective of its individual programmes violate fundamental values embodied in human rights.

The expression "fundamental values embodied in human rights" in the CC's decision may be interpreted in more than one way. It is not clear if, based on this, any values (basis) that lie behind any human rights may provide a reason for administrative proceedings, and it is unclarified what we regard as the values that lie behind human rights, and if these could be included in judicial practice. It is surmised that the text quoted wished to indicate that the task for the media regulations is to safeguard the "institution" of human rights, in other words, it protects an institution indispensably important for society and not the person that suffered actual injuries as a result of the violation of human rights.

With respect to the right to self-determination, the CC in this decision also stated that:

> an important element (among others) is the right of the person to enforce their subjective rights covered by the claim before various state authorities, as such including the courts as well. However, the right to self-determination also includes—as a general right to act—the right to refrain from enforcing claims or to non-action. Since this right is intended to protect the autonomy of the individual, in general everyone is free to decide whether to enforce claims by way of the administrative proceedings available under the Constitution for the protection of rights and lawful interests, or to refrain from doing so [Decision No. 1/1994 (I. 7.) AB].

The right to self-determination therefore also covers the right to refrain from resorting to court action in the event of violation of one's rights, or refrain from enforcing one's rights in any other way: "If a broadcaster violates an individual right, the aggrieved person may decide whether to enforce their individual rights against the broadcaster which committed the violation".

Based on the decision of the CC, it can thus be established that, in general, there is a constitutional opportunity for the protection of human dignity in the media regulations, but in the course of these proceedings it can only make a finding of the fact of the violation of a fundamental right by "anonymising" it. (See the interpretation of this issue below.)

The material scope of the Press Freedom Act, which became effective on 1 January 2011, extends to on-demand media services, as well as print and online press products. In addition to the material scope, the content of the relevant provisions has also changed substantially. The original text of Article 14 provided that: "(1) The media content provider shall, in the media content published by it and while preparing such media content, respect human dignity. (2) No wanton, gratuitous and offensive presentation of persons in humiliating, exposed or defenceless situations shall be allowed in the media content." Moreover, Article 16 stated that "Media content providers shall respect the

constitutional order and, in the course of their activities, they shall not violate human rights". Similarly to the earlier regulations, the text included the protection of the constitutional order and human rights, but the protection of human dignity was included in a separate statement of facts and, within that, another special statement of facts provided for a specific instance of the violation of human dignity (in the protection of persons in humiliating, exposed or defenceless situations).

It was an important change in the regulation that became effective in 2011 that dignity violations committed in the course of the production of programmes also became prohibited. (The courts, in the course of their review and taking into account the earlier regulations, usually repealed the media authority decisions rendered in connection with this.)

The Press Freedom Act in its original form thus made it possible to bring an action in cases of the violation of dignity taking place in the course of the production of programmes. In the case of such programmes, where its participants are "deprived" by contract—with their consent but under dubious circumstances—from the possibility of future enforcement of rights and legal remedies, or with regard to whom (also by contract) the possibility of preventing the recorded programme from being broadcast (even if the broadcast is clearly injurious with respect to the contracting party, and the withdrawal of the consent to broadcast would not cause disproportionate damage to the broadcaster) is excluded, the media authority now may initiate proceedings. The authority did not take advantage of this regulatory instrument and, as the result of the amendment of the law (which became necessary following Decision No. 165/2011 (XII. 20.) AB, although it was not mandatorily required by the CC decision), as of 19 June 2012, this provision was deleted from the text of the statute. A possible explanation for this was that the CC regarded the prohibition of the violation of human dignity with respect to media services as a constitutional provision because of the significant extent of its effect on society; in other words, according to the tribunal, the restriction of the media content broadcast in media services is permissible, and not the manner of production or the conduct in the course of the production.

The December 2011 Decision No. 165/2011 (XII. 20.) of the CC found the application of human dignity protection contained in the Press Freedom Act to press products to be unconstitutional and remedied the constitutional violation with the *pro futuro* repeal of the material scope of the statute.

The CC continues to consider the general protection of human dignity in connection with media services to be constitutional. The principal reason for this is the media effect theory, which appeared several times before in the jurisprudence of the Constitutional Court. In the decision the tribunal confirmed its previous position according to which

> in the case of audiovisual media, which have a special influence on the thinking of people and social processes, to guarantee such special action by the authority is a necessary and proportionate restriction.… This administrative proceeding, which is guaranteed for the sake of the viewers and listeners, is considered a necessary and proportionate intervention because of their especially

> strong influence on the audience. However, in the case of print and on-line media, the influence of which is different, the option for this kind of action—in this form generally extending to human rights—is considered a disproportionate restriction. (Statement of reasons, paragraph IV. 2.2.2.)

It should be noted that the media effect theory is disputed by many, and it can be indeed argued that, in today's convergent media world, television and radio's sharp distinction from the press in the regulation cannot be justified. However, in the light of media consumption statistics, these two media are the most influential today. The Press Freedom Act is based on the concept that certain content requirements can be prescribed to all media, and in its opinion the CC finds this approach constitutional with respect to hate speech, the protection of constitutional order and minors, as well as advertising rules. While the tribunal accepted the argument, according to which media regulation protects the public interest and not the individual rights of the aggrieved person, still, with respect to the press products, it finds the media effect theory, as well as the availability of civil and criminal proceedings protecting individual rights, sufficient to declare that the regulations are unconstitutional. This is without a doubt a coherent argument; however, the determination of its validity depends on the acceptance of the media effect theory (without precise data, the application of the effect theory is primarily the acceptance of a hypothesis on the part of the CC).

In the reasoning of the decision, the CC states that "it is justified that the authority, within the scope concerning the institutional content of these rights… in the interest of the community, has the means to take action against the offender". (Paragraph (IV. 2. 2. 2.) From this, compared with the 2007 CC decision, the need for the separation of the branches of law safeguarding individual rights and media regulation is more clearly distinguishable.

The decision also provides that human dignity may be protected with respect to any media content, thus, given certain conditions, it can be the limitation of the freedom of the press with respect to press products, too, if it appears in the regulation not in a general wording but as a concrete statement of facts. It follows from this that the provision under Article 14(2) of the Press Freedom Act on persons in humiliating, exposed or defenceless situations is constitutional with respect to press products too. According to the CC's reasoning:

> In contrast, Article 14(2) of the Press Freedom Act sets forth such a special cause of statement of facts, which enables media authority actions sufficiently narrow in scope and based on a particularly compelling public interest. The provision regulating treatment of persons in humiliating, exposed or defenceless situations—in addition to indicating the absence or limitation of their qualification for personal rights protection—covers those instances of human rights violations which could seriously compromise the prevalence of the substance of the institution of human dignity. Legal protection by the authority within this realm therefore means proportionate restriction in the case of all media channels. (Reasoning, paragraph IV. 2.2.2.)

The tribunal made it clear that this case—in addition to the limited status of the right to self-determination—justifies action because it may also seriously compromise "the substance of the institution of human dignity" —thus, according to the CC, the objective and justification of the regulation is the protection of the institution of human dignity—more precisely, the protection of its "institutional substance" and not the protection of individual rights. It can be concluded from this part of the reasoning that the CC would accept as constitutional other specific fact patterns undeniably violating human dignity if they were sufficiently narrow in scope and based on a particularly compelling public interest, and if the circumstances pertain to a case where the qualification for personal rights protection is absent or limited.

In any case, the legislature, which was in a legislative dilemma, chose the simplest solution: according to the text effective as of June 19, 2012 of Article 14(1) of the Press Freedom Act, "[m]edia service providers, in media content they publish, shall respect human dignity". In other words, the text applies only to (linear and on-demand) media services and only to the content that appears on the screen or that is audible over the ether. Furthermore, the legislature has deleted the protection of "human rights" from Article 16, thus closing an old, unresolved dispute that surrounded the question of which human rights should be protected by the media regulations. Pursuant to the new wording, this can only be a right specified in the Press Freedom Act (such as human dignity).

8.4. Justification of the protection of human dignity under the media regulations

8.4.1. Institutional protection – individual right

We have to take a short detour to the foundations of the "state institutional protection obligation" developed by the CC. According to the principles laid down in Decision No. 64/1991. (XII. 17.) AB of the CC, the human rights protection obligation of the state has a dual nature: on the one hand, it protects the human rights guaranteed to individuals (legal entities), and on the other hand, in certain cases—and with respect to certain human rights—it has to provide for the conditions necessary for the prevalence of human rights (institutional protection). The institutional protection of a certain human right may be the justification of the restriction of another. With respect to the freedom of the press, for example, based on Decision No. 30/1992. (V. 26.) AB of the CC, the state is required not only to guarantee the freedom of the expression of opinion to its citizens but it also has to ensure the appropriate functioning of democratic public opinion. Decision No. 46/2007. (VI. 27.) AB and Decision No. 165/2011. (XII. 20.) AB of the CC—especially the latter—opened the gate toward such an interpretation, based on which the protection of human rights and human dignity under the media regulations also stems from the institutional protection obligation of the state.

The protection of human dignity is one of the negative obligations (i.e. it obliges restraint, in other words, avoidance of infringements), which—similarly to certain positive obligations—through the institutional protection of these rights, protects the appropriate functioning of a democratic public sphere and not the individuals potentially violated in their rights. Because the main justification of rules appearing as restrictions on the freedom of the press is the protection of the viewer/listener/reader (collectively: the audience) "entitled" to such protection as a member of society and of those common interests that are connected to the general recognition and respect of human rights. When media regulation prohibits the violation of human dignity, it protects with this fundamental principle of European civilization, that is, it excludes from democratic publicity that content which channels the lack of recognition of the respect, appreciation and equal status to which the individual is entitled.

Human dignity is a fundamental value, the prevalence of which permeates the entirety of the legal system and every venue of public life and thus the media as well. This is a lot more than the protection of the personality of people violated in their rights, because the respect of this basic value is one of the principal foundations of public life and cooperation. (According to the CC's view, television and radio programmes can seriously compromise this foundation, while press products cannot.)

The individual protection of human dignity in media regulation is also justified by the special functions and characteristics of the media. This is because the media not only "turn up the volume" of specific opinions and communications (and by this, offensive content become "more dangerous"), but also—to a degree hard to measure—influence the audience; that is to say, they shape the level of demand, taste and culture of society. The role of the media is also symbolic: the media as a system symbolise the democratic system and, as the most important domain for social publicity, provide a picture of the functioning of society as a whole. As such, the limitations set for the media are in part also symbolic: they provide a picture of which values the legislature finds desirable to protect, even against those arguments in favour of there being no restrictions on public debate.

The CC's jurisprudence drives enforcement toward this interpretation. According to Decision No. 46/2007 (VI. 27.) AB,

> [t]he ORTT in the course of the administrative proceedings is entitled to establish whether the broadcaster carries out its activities while respecting human rights, and whether the subject-matter, nature and perspective of its individual programmes violate fundamental values embodied in human rights.

It follows from this that, even if according to the CC the violation of human rights can be established based not on the violation of the individual rights but on the "nature and perspective" of the programme, we can speak of more than mere individual grievance, but the behaviour "required" to establish the violation, which is more serious by comparison.

The reasoning of Decision No. 165/2011 (XII. 20.) AB provides more straightforward reference points for an interpretation arguing in favour of the separation of institutional protection and protection of individual rights. The reasoning of the decision cited above finds that the authority does not act "in the protection of the side of the protected right relating to the individual", and then states that the media "is capable of bringing about destruction in the culture of respect for human rights, especially human dignity", hence, the protection of culture may be the objective of the media regulation. After this, the reasoning makes it clear that "it is justified that the authority, within the scope touching the institutional content of these rights… has the ability to act against the violator". With respect to Article 14(2) of the Press Freedom Act, it provides that the special protection of persons in humiliating, exposed or defenceless situations is appropriate because it may seriously compromise "the prevalence of the substance of the institution of human dignity". (All quotes are from paragraph IV. 2.2.2. of the reasoning for the opinion.) From the quoted sections of the text, it becomes clear that, according to the CC, the objective and justification of the regulation are the protection of the "institutional content" in the interest of the community (and not the individual).

There is only one final order in appellate proceedings which considered this issue with a ruling that overturned the decision of the media authority. In a tabloid programme from a commercial television station, a patient treated in a psychiatric ward was recorded on a hidden camera in a humiliating situation while he was tied to the bed. The decision of the authority [Decision No. 1825/2008 (X. 1.) ORTT] sanctioned the media service provider for the violation of the patient's personality rights (right to one's likeness and right to self-determination, and, through these, the violation of the patient's human dignity). Although the institutional content might also have been violated by the depiction of the person in a humiliating, exposed or defenceless situation, the decision clearly referred to the violation of individual rights. However, the Hungarian Supreme Court, which ultimately decided the case, stated in its opinion (Decision No. Kfv. III.37.554./2010/5) that

> [the authority] may examine the violation of human rights in the context as to whether the subject, nature or perspective of the programme at issue violates the fundamental values materialising in human rights. Although the right to the freedom of self-determination is part of the right to human dignity, the issue of whether the right to one's likeness or other personal rights of the person in the programme was violated by the fact that the person did not consent to the broadcasting is an issue for the domain of civil law. As it is apparent from Article 75(3) of the Civil Code, personality rights may be also violated even if the concerned person has consented if it violates or compromises social values. When the defendant authority has the right to act for the protection of an interest protected by the Radio and Television Broadcasting Act or for enforcing respect for the constitutional order—manifested primarily in fundamental human rights—the inquiry should focus on whether the public interest protected by the Radio and Television Broadcasting Act is violated or compromised, independent of the concerned person's consent. If this protected value is not violated but the personal rights and human dignity of the concerned person are violated by the fact that the programme at issue was broadcasted without the consent of this person, then such a situation, in which legal violation occurred not because of the broadcasting of the programme

> toward the audience but based on facts outside of the subject, nature and perspective of the programme—of which the audience watching the programme usually does not even know—a personal rights violation, violating the right to self-determination, may also be enforced before a civil court as a right belonging to the right to self-determination of the aggrieved person. It follows from this that the legal violation in itself does not provide a basis for media authority action—pursuant to Article 3(2) of the Radio and Television Broadcasting Act referring to Article 54(1) of the Constitution — although this circumstance may be considered in the course of imposing sanctions in the case of the violation of an interest protected by the Radio and Television Broadcasting Act.

With this opinion, the Hungarian Supreme Court has defined for enforcement purposes the appropriate interpretation of the protection of human dignity under the media regulations.

The negative obligations set forth in the Press Freedom Act—therefore also including the protection of human dignity—establish through the media such basic "rules of the game", the respect of which is a precondition for conducting the debate. At the same time, the community has an interest in knowing all positions, hence even strong, sometimes outrageous, offensive or disturbing opinions; the community may not be deprived of their communication—merely by referring to their previously mentioned nature—in other words, the freedom of the press and open public debate can only be restricted with reference to human dignity violations based on sufficiently serious grounds, proportionately and within an appropriately narrow scope.

8.4.2. Right to self-determination – separation of the branches of the law

The media regulations may not restrict the individual's right to self-determination, and the media authority may not act in the defence of others' (individual) rights, irrespective of whether or not the person concerned has turned to other available forums before. Regarding the adjudication of cases which were initiated as a result of circumstances that also qualify as a violation of individual rights, the media regulations also take into account the possibility of the initiation of other (criminal or civil court) actions, and the tribunals administering the law (the media authority and the courts) must distinguish the media regulations from these other procedures.

The primary objective of criminal law is to deter its citizens from committing crimes in the future using the instruments of the state's penal authority, while the objective of civil law is to provide, if a right has been violated, the injured party with appropriate remedies (for example, by compensation for damages); this justifies, for example, conducting simultaneous proceedings for the protection of the person. At the same time, no similarly strong arguments can be raised for creating the possibility of a third set of proceedings (that of the media authority) to protect the individual. This is because the media regulation—through the institutional protection of human rights and human dignity—primarily protects the audience and not the individual attacked in the media.

8.5. Jurisprudence

The media authority has serious jurisprudence in the institutional protection of human dignity. According to our position, cases in which certain media service providers show victims who are exposed or defenceless, or in a helpless situation or victims of accidents or crimes (e.g. Decision No. 2637/2006 (XI. 29.) ORTT, a case in which a media service provider showed victims seriously injured during the August 20 fireworks) may be regarded as acting for the institutional protection of human dignity; this statement of facts is set forth with special emphasis in the Press Freedom Act.

Institutional protection may be similarly invoked in connection with the protection of the appropriate level of physical and emotional development of minors. The protection of minors and the undisturbed fulfilment of their personality are common social objectives and interests, and, therefore, it may be justified in certain cases to invoke public interest legal enforcement in their cases; in other words, the institutional protection of dignity may be necessary. The instance of a programme showing the humiliation of a boy by his peers in the news from a media service provider [Decision No. 952/2009 (IV. 29.) ORTT] or the interview made with a child who murdered his foster parent [Decision No. 736/2003 (V. 29.) ORTT] could serve as relevant examples. In these situations we find authority action justified: not because it ”substitutes” the theoretically existing but in practice limited individual legal remedy, but because in these actual situations we can discover institutional content violations. This is because the offences in these actual situations disregard and violate fundamental social norms and interests—the solidarity of the community and the healthy development of minors.

Programmes with a concept and nature which disregard the respect of dignity and are built on questioning the fundamental value of dignity and the ”untouchability” of human personality are also capable of violating human dignity. In 2001, in the trailer for a programme called “The Reporter Tamás Frei”. aired on a commercial television channel, the following pitch was announced: “Be part of a risky adventure. Accompany Tamás Frei [the reporter] to Moscow to hire the hit-man who, for one million dollars, would even kill the Hungarian prime minister!” Decision No. 665/2001 (V. 16.) ORTT found for the violation of human dignity, not because the personal rights of the prime minister were violated, but because the message of the programme was “capable of generating a sense of fear by suggesting that a person who can be hired for money, crossing all obstacles, merely in the hope of financial gain, would commit a violent act resulting in the taking of a human life. The statement of the communication, evoking intense emotions in the viewers, uttered in the imperative in a form that violated human dignity, is unacceptable.”

The proceedings initiated in connection with the programme called “The Price of the Truth” are an important milestone in the enforcement practice of the media authority, because they introduced a new rule of interpretation. The ORTT found for violation in that case, because the programme suggested that human personality does not have

untouchable realms and human dignity may be made public and accessible to anybody for financial gain. [Decision No. 748/2008. (IV. 29.) ORTT.]

The new media authority, the Media Council, followed the progress of the "The Price of the Truth" case. The tribunal found that a reality show ("Alekosz Is Looking for a Wife") violated human dignity and, with its 2011 decision, sanctioned the large commercial media service provider in question for "objectifying" the participants, humiliating them in their femininity, deceiving them and making their private sphere public, as well as suggesting that human personality has no untouchable realms and that one can surrender the inviolability of human dignity for financial gain. [Decision No. 1044/2011. (VII. 19.).] According to the authority, neither the participants' consent nor the extent of limitation of the utilisation of legal means related to the protection of their personality as a result of their consent changes the fact of violation.

Furthermore, media content that questions the equality, unrestrictability and irrevocability of human dignity, which prevails with respect to every individual and social group, may be also regarded as the violation of human dignity. Based on the 2011 decisions of the Media Council, offensive opinions articulated against the Roma minority which disregard the value of human dignity, to which everybody is equally entitled, shall be considered unlawful. [Decision No. 828/2011 (VI. 22.) and Decision No. 1153/2011. (IX. 1.).] (It should be noted that such content may simultaneously establish the circumstances of "incitement to hatred" and "exclusion", contained in Article 17 of the Press Freedom Act, and thus the distinction may be difficult.)

Based on the jurisprudence, specific media content which violates human dignity may in part be typified. The following instances may be regarded as such:

- explicit, recognisable and offensive depiction of persons in exposed or defenceless, helpless, or humiliating situations—e.g. victims of accidents or crimes (in their cases the enforcement of rights is inherently limited, and showing people in these situations violates the rules of social coexistence too),
- the showing of minors in activities which violate human dignity or which necessitate institutional protection; individual enforcement of rights is limited in their cases too; and the appropriate development of the personality of minors is also a common social interest, and action against threatening content that is justifiable (it should be noted that Article 19(4a) of the Press Freedom Act, effective as of 19 June 2012, supplements this situation and formulates the prohibition of showing minor persons in an offensive manner directly in the media content; the aim of the amendment was quite clearly to provide media law sanctions for such content appearing in press products too, despite the amendments that became necessary as a result of Decision No. 165/2011 (XII. 20.) AB),
- treatment of certain persons or social groups as second class compared with others, as well as questioning their equal human dignity and the existence of their personal rights (the distinction between these cases and the manifestation of the circumstances contained in Article 17(2) of the Press Freedom Act—the prohibition of exclusion—can be a difficult task for the courts or the authority),

– when the content of a media service suggests that human personality does not have untouchable realms, human life can be taken for money and human dignity for financial gain may be made public and accessible to anybody.

8.6. The "The Price of the Truth" case

Decision No. 748/2008 (IV. 29.) ORTT received broader (professional) publicity, considering that it introduced a new type of interpretation in the authority's analysis of human dignity (human rights),[102] so it is worth taking a closer look at the case.

"The Price of the Truth" was a game show and, before the studio recording, the players participated in a polygraph lie detector test, responding to certain different (in part innocent, in part embarrassingly personal) questions. When later, during the recording, they were asked some of the same questions, it was revealed immediately after they responded whether the earlier lie detector test had accepted their answer as true or false.

The authority's investigation of the 5 March 2008 episode, found, among other things, the following:

> the first round of questions is less uncomfortable for the players; in this case they related to the lady's appearance or perhaps hypothetical situations ("Can you look into the mirror in the morning without make-up? Do you prefer if your intellect is complemented and not your cleavage? Would you be willing to engage in cannibalism in order to stay alive?") The above questions—according to our opinion—contributed to revealing the side of the player's personality, which after a commercial break could be followed by a group of questions—becoming more and more embarrassing as the amount of the prize increased—organised primarily around the subject of sexuality. It should be noted that the footage closing the segment already projected the failure of the player, and the viewers could witness the player's breakdown. They could see as the sobbing player's girlfriends escort her out (22:20:24), and they could also hear one of them telling the cameraman to "Stop recording this!" (22:20:28).
>
> In the second segment of the programme, the player had to answer (among others) the following questions:
>
> – (22:30:01) "Have you ever been disgusted by yourself?" The answer: "yes".
> – (22:31:56) "Do you have a breast implant?" The answer: "yes".
> – (22:34:38) "Do you also sleep with the musicians?" The answer: "yes".
> – (22:35:31) "Have you had sex with more than one man simultaneously?" The answer: "yes".
>
> After the player reached the one million forint limit, the host asked the player the question: do you want more money? The player said, yes. The host, noticing that the player became uncertain, thought that it he should stress the rules of the game in front of the cameras, too.
> (22:37:26)
>
> *Player:* "I don't think that there are more embarrassing questions than this. Although it is hard to embarrass me. It is not the questions I'm afraid of…"

[102] László Majtényi: Az ORTT szabadságjog-védelmi szerepe [The ORTT's Role in Protecting Freedom Rights], *Fundamentum*, 2010/2; Gábor Polyák: A Legfelsőbb Bíróság ítélete Az igazság ára című televíziós műsorszámról [The Judgement of the Supreme Court Regarding the Television Programme Entitled The Price of the Truth], *Jogesetek Magyarázata*, 2011/2.

Host: "The question is whether you lied during the test."
P: "No, but these are emotional questions and they are not necessarily yes or no questions, and in addition not all. . ."
H: "But there is a result that is objective."
P: "Sure."
H: "So, you cannot..." *(The host motions with his hand in a way that it is not ambiguous.)*
P: "Sure, of course. It is just hard, it is just hard to answer them, not to evaluate them, obviously. For me to decide, so that. . ."
H: "This is why you can win so much money. You know that you can lose this one million forints if you gave a false answer even once?"
P: "Yes."

Question 16 concerned the sexual habits of the player again, but this time the host wanted to learn more.

(22:39:26)

"Have you ever been tied up during sex?" The answer: "yes".

P: "Don't look at me like this! What do you want to know? I do not want technical details..."
H: "In short, everything. . ."
P: "I thought so. But if I'm correct, this is a PG-rated programme. I wouldn't get into it, I don't know what to say. This is what I am like."
H: "Did it leave a mark?"
P: "No, on the tattoo…" After this, they start talking about the meaning of the player's tattoo, which reveals the title of one of Almodóvar's movies (Tie Me Up, Tie Me Down).

Question 17, the last question:

(22:40:59)

"Have you ever been paid for sex?" The answer: "no". "The answer is false," sounded the verdict. The player did not want to believe it, and her friends were also incredulous in the background.

P: "This cannot be, you also know that this cannot be." She turns to her friends.
A relative of the player: "This is stupid!"
P: "No."
H: "This is what the polygraph showed."
P: "I know, I know that I cannot question this, but this is probably such an embarrassing question in itself that when you hear it, and you are also nervous, that why would the person asking the question assume this?"
H: ". . . unfortunately, you answered 16 questions. I am very sorry, but thank you very much for being here."

The player was standing for a while at the edge of the stage, puzzled. She did not want to believe that the game really ended like that. Her friend waved, then she was told to go off the stage, and she left the set. The next footage showed the player sobbing in the arms of her friend, as her friend, embracing her, was trying to comfort the devastated girl. The camera was continuously following the player, and we could witness as her friends went up to her and escorted out their sobbing friend.

The viewers could barely come to their senses from the details of the dramatic breakdown of the first player, and the next player was already up, who in the next minutes had to face – in the midst of the great amusement of the audience – no less embarrassing questions…

In the statement of reasons for the decision, the ORTT found that the game show

conveys the suggestion that human personality has no integral, untouchable realms, and that human beings can be transparently humiliated. The programme's participants sign up to reveal

> the innermost circles of their private lives for a monetary prize, and thus, the programme carries the message that privacy and human dignity are not inviolable and that, for material interest, they can be made public and consumable.

The operative part of the decision suspended the broadcasting license of the television media service provider for 30 minutes.

This interpretation is in line with the necessary separation of individual rights and institutional protection, and it provides the "abstract" interpretation of human dignity with a new meaning (i.e. that it can be and should be distinguished from violations of individual rights). The need for institutional protection can be established in connection with content conveying such messages because these programmes question the fundamental value of human dignity, and with this, they indirectly challenge the democratic rule of law.

The opinion of the Hungarian Supreme Court, reviewing the decision of the authority (Kfv. III.37.915/2009/6), analyses in detail whether any unavoidable personal rights violations occurred in the programme. With this respect the opinion makes it clear that

> the essence of the »game« is that the player in the given situation considers—when the question is asked—whether they wish to respond. This decision involves the player's actual consent concerning the revelation of a private secret to the public. If the player tells the truth, with that, they give their consent, but if they do not reveal their private secret the general consent given earlier cannot be regarded as consent either, because the player has withdrawn it. It follows from this that when, according to the host, the answer is false, there are two possible scenarios. Either the player did indeed lie, and in this case the revelation of the real information takes place against the will of the player, violating their right to informational self-determination, or the polygraph was wrong. In the latter case, the programme conveys false information to the viewers about the person concerned which, being their innermost private secret, means the violation of their right to reputation. In these instances, therefore, it is logically impossible to prevent the violation of the right to reputation.

The reasoning of both the ORTT and the court are acceptable, according to which there was no "escape route" for human dignity in the programme. They either reveal their innermost secrets or they try to keep them secret but, in this case, the lie detector will indirectly reveal them. The decisions of the authority and the court agreed that the violation of personal rights was unavoidable in the programme.

According to the court—in accordance with the holding of the authority's decision—the violation of dignity was realised by the "message" of the programme. The reasoning of the Supreme Court's opinion cites in agreement the 2007 opinion of the Constitutional Court and the declaration of the media service provider plaintiff, according to which (quote from the Supreme Court's opinion):

> [the examination of the violation of human rights and human dignity] does not mean the examination of the individual violations of the rights of the specific legal entities but the examination of whether the subject, nature and perspective of the programme violated the fundamental values manifesting in human rights.… The Hungarian Supreme Court adopted the starting point of the Constitutional Court, and thus that of the plaintiff, that the decision of the

> defendant [authority] established the violation of the first clause of Article 3(2) of the Radio and Television Broadcasting Act based not on violations of individual rights but based on the subject, nature and perspective of the programme.

According to our position, for the establishment of the violation of dignity under the media regulations, the occurrence of the violation of individual (personal) rights is not necessary. Decision No. 721/2010 (XII. 8.) of the Media Council states this clearly: "media authority proceedings initiated for the examination of specific violations of personal rights and the violations of the provisions contained in Article 3(2) of the Radio and Television Broadcasting Act are distinct from each other; in other words, the violation of this provision may also be established even if there is no pending litigation before a court in connection with the violation of personal rights—for any reasons (e.g. the consent of the person concerned to the broadcasting of the programme or failure to file a complaint) or even if the court found that no violation of personal rights had taken place." At the same time, it can be an important factor for the establishment of the violation if the violation of individual rights in the programme is unavoidable. This is because it can serve as a good reason for the suspicion that the violation of dignity has occurred. As such, the necessary violation of individual rights may indicate that the violation of dignity under the media regulations has occurred, but it is by no means the condition, in a general sense, for establishing the latter.

8.7. The Cohn-Bendit and Lomnici cases

One of the segments of the programme on channel m1 of Magyar Televízió [Hungarian Television] entitled *Híradó* [*News*], broadcasted on 1 April 2011, featured a report on the press conference in connection with Hungary's draft constitution held by Daniel Cohn-Bendit, a representative of the European Green Party. From the report it appeared that Cohn-Bendit refused to answer a question regarding earlier paedophilia allegations he was accused of and left the press conference. The Media Council, despite viewer complaints, did not initiate administrative proceedings for alleged violations of human dignity. In one of the segments of the programme entitled *Híradó* [*News*] broadcasted on Duna Televízió [Danube Television] on 3 December 2011, and on the same day on channel m1 of Magyar Televízió [Hungarian Television], the face of Zoltán Lomnici, former President of the Hungarian Supreme Court was pixelated, as a result of which viewers were unaware that he attended the event which was reported in the story. The Media Council did not initiate administrative proceedings for the violation of human dignity in this case either.

Based on the decision of the authority, no institutional violation of human dignity took place in the Cohn-Bendit and Lomnici cases. It can be stated in general that false reporting about important events diminishes the faith in the reputation of the media and especially in the *ethos* of public service media. False reporting also restricts the viewers' right to adequate information and raises the issue of violation of the personal rights of the

individuals concerned. However, it does not in itself violate human dignity protected under the media regulations. Although the viewers' right to information is violated if they see something on the screen that is different to what actually happened, the "message" of the programme affected by this fact however does not necessarily transmit such content, which would then amount to the gravity of dignity violation.

The Cohn-Bendit case appeared in the context of a major public (political) debate, which inherently requires a different approach from the authority applying the law as the assessment of content destroying the culture of human dignity. This is because, in political debates, the freedom of the press has a broader scope of latitude. In the case of political events (in the present case, the editing of a press conference is considered as such), Article 24 of the Press Freedom Act can only be applied in a very narrow scope.

On the other hand, the Lomnici case raises different types of issues. This is because, in a political sense, the former chief judge is clearly a neutral public figure, and, therefore, we cannot suspect there to be, behind the pixilation of Mr. Lomnici in the footage, an intention to express political or public opinion. (According to newsbites, there were personal reasons behind the pixelation. At the same time, the blatant manner in which the manipulation was carried out raises the suspicion of provocation, but both "rumours" remained unconfirmed.) As such, former chief judge Mr. Lomnici's right to reputation might have been violated, because the audience did not receive (indirect) information about his participation in a public event. Following the outbreak of the scandal, this generated the impression that he was some sort of *persona non grata* in public life, who was not fit to appear on television. (The story is qualified by the fact that, before and also after the incriminating report, he was invited on several occasions by public media outlets, so it is difficult to see any tendencies behind his one-time pixelation. However, an offence can be committed by one-time conduct, too. Nonetheless, it is important to point out that the gain obtained in the "marketplace of opinions" by the pixelation is not really visible; in other words, this editorial action could only influence public visibility to a small extent.)

Naturally, falsification is unacceptable, even in connection with the highly protected expression of political opinion. The violation of the reputation or integrity of the persons concerned in these cases could have been taken place, but the violation of human dignity—especially, in the "institutional" sense analysed above—according to the authority's decision, requires more severe conduct. What is certain, however, is that if we accept that the violation of any human or personal rights stemming from human dignity is sufficient for there to be a violation of human dignity, we would significantly devalue the concept of human dignity itself.

Of course, it is not impossible to imagine a violation of an individual right of such gravity that it would invoke the need for the institutional protection of dignity. In this case the offensive content "is separated" from the victims who suffered the specific violation, and the conduct would violate the respect (or, according to the 2011 opinion of the Constitutional Court, the culture) of human dignity. However, a false statement published in the media (even if it is broadcasted by visual means) does not necessarily result in the violation of dignity.

8.8. Conclusion

The protection of human dignity under the media regulations is an issue that is not completely resolved. The interpretation outlined in the present study—based on the jurisprudence of the Constitutional Court and other courts, as well as the authority—wished to provide coherent content for the provision at issue, content that respects the freedom of the press as well as the perspective of the separation of different areas of the law. Human dignity is today a "fashionable" legal concept and frequently serves as a basis of reference. However, several aspects of the concept still require further analyses. The need for appropriate interpretation is amplified by the nature of the content of profit-oriented media outlets, which often deny or neglect the principle of human dignity. As is apparent from the decisions of the authority and their reception, in the light of this issue, the legal analysis of content in connection with or published in the context of political questions is controversial. Although regulation or enforcement cannot provide completely satisfying and effective answers to these problems, they can significantly contribute to the resolution of them.

9. The Protection of Public Morals and Minors

9.1. Protection of public morals in the Hungarian legal system

9.1.1 The appearance of public morals and pornography in the legal system

The provisions of the Advertising Act define prohibitions and restrictions on advertising, part of which are expressly directed at the protection of the moral development of minors and children, in general, i.e. against any kind of advertising. As such, for example, the dissemination of advertisements that are capable of impairing the physical, mental, or moral development of children and young people is prohibited, in particular those that depict or make reference to gratuitous violence or sexual content, or that portray children or young people in situations depicting danger or violence, or in situations with sexual emphasis [Article 8 Paragraphs (1)–(3)]. Another group of advertising prohibitions is concerned with pornographic advertisements. These restrictions protect the morals of all members of society (and, equally or even more so, protect privacy and human dignity, too, by preventing such advertisements from appearing outside specialised stores and becoming part of everyday life without regard to the wishes of those who do not wish to have any contact with them). On the basis of these provisions, it is forbidden to disseminate pornographic advertisements, or advertisements for sexual services, or goods, or premium rate telecommunication services, aimed at arousing sexual interest outside of sex products or sex shops [Article 9 Paragraphs (1)–(4)]. Pornography consists of the representation of sexuality in a gravely indecent manner, meaning in particular the open display of sexual intercourse or genitals [Article 9 (1)]. Related to this provision is Article 272 of the Criminal Code ("Violation of public decency"), which threatens those who "violate the regulations governing the distribution of sexual goods" with sanctions, as well as Act II of 2012 on Regulatory Offences, the Regulatory Offence Procedure and the Regulatory Offence Registry System, which provides that a fine shall be imposed for the display of "sexual goods" on public premises or in display windows in a manner visible to others, as well as any other violations against the provisions on the distribution of such goods, or the publication of advertisements depicting gratuitous violence [Article 192 (2)–(3)].

The provision of the Criminal Code prohibiting the possession, acquisition or distribution of pornographic still and moving images of minors also serves the protection of minors. (The "creation of prohibited pornographic images", and the abuse of such, was introduced as an independent offence in the Criminal Code in 1997.) Persons acquiring, possessing, offering, conveying, providing access to, creating, or distributing/trading pornographic images of minors commit a felony, as do those having minors appear in pornographic shows or inciting minors to appear in pornographic recordings or

shows, or providing the financial means and thereby assisting in any of the above felonies. According to the definition of the Act, pornographic images are images that display "sexuality in a gravely indecent manner of exposure, specifically for arousing sexual desire", while pornographic show means "an act to display sexuality in a gravely indecent manner of exposure, specifically for arousing sexual desire" [Article 204 (1)–(7)].

9.1.2. Protection of public morals in media regulation

The Press Act effective prior to 1 January 2011 also provided for the prohibition of violations against public morals:

> Article 3 (1) The exercise of the freedom of the press may not constitute or encourage any acts of crime, violate public morals, or the moral rights of others.

Constitutional Court Decision 20/1997 (III.19) directed attention to this provision: at the time of the 1989 amendment of the Act, the provision remained in force whereby, upon the motion of the public prosecutor, the court could ban or suspend with immediate effect the publication of press products or other documents in violation of the article cited. In other words, the provision enabling prior restraints had been applicable in the interest of the protection of public morals, too. According to the petition received by the Constitutional Court, the possibility of prior examination and the right of the public prosecutor to act without the consent of the injured party with regard to violations against moral rights, as well as the public prosecutor's right to interdict the publication of communications in violation of public morals that are not prohibited by the Criminal Code and the interdiction of publication on the basis of a suspected criminal offence prior to the establishment of such offence by the final verdict of a court of law, are all in violation of the freedom of the press and the right of self-determination in lawsuits. With reference to this, the petitioner requested the Court to establish the unconstitutionality of the provision.

The entire disputed provision was struck down by the decision of the Constitutional Court. However, the reason for this was only a legal technical consideration, as only the right of the public prosecutor to make motions with reference to the violation of the rights of other persons and the commission of criminal offences independently of the wishes of the parties concerned, was found to be unconstitutional. At the start of the statement of reasons in the Decision, the judges cite the International Covenant on Civil and Political Rights and the European Convention of Human Rights, which admit the restraint of freedom of speech in the interest of the protection of public morals, then reject the unconstitutionality of the restraint, and thus, in principle, maintain the possibility of prior control in the event of a possible violation of public morals, too.

> Constitutional Court Decision 21/1996 (V. 17.) had already established that the "Constitutional Court does not review the content of public morals enforced in law. As the Court basically made it over to legislation to define 'public interest'… enforcing public order as well as morals is the right of representatives—until, for other reasons, they come up against the boundaries of the Constitution…" Since in the given context the concept and substance of public morals is not provided for by law, its definition falls under the scope of the application of the law. Judicial Decision no. BH1992.454. of the Civil Collegium of the Supreme Court sets forth guiding principles regarding the adjudication of requests for the prohibition of the publication of press products. In this decision, the Supreme Court concluded, *inter alia*, that the concept of public morals includes those rules of behaviour that are generally accepted by society. The press product's conflict with public morals can be established if it is clear and undisputable according to public opinion. According to the position of the Constitutional Court, the restrictive provision of the Press Act concerning offences against public morals cannot be classified as unnecessary and disproportionate. [Point III. 3., Statement of Reasons, Constitutional Court Decision 20/1997. (III. 19.)]

As the rule found to be unconstitutional appeared in the same paragraph as the others, the Court struck down the entire provision and the legislator did not replace the regulations thus eliminated. In their dissenting opinion annexed to the decision, Constitutional Court judges Tamás Lábady and László Sólyom deemed that the public prosecutor's right of suspension on the basis of a violation of public morals was also unconstitutional. (Finally, of course, this too had been removed from the act.) According to their position, "public morals, which constitute an abstract value, underlying which the violation of certain individual fundamental rights are the least discernible, are among the values that are the least applicable to the limitation of the freedom of the press according to constitutional criteria". At the same time, the authors of the dissenting opinion also recognised that public morals may form an admissible limitation on the freedom of the press and freedom of speech.

Besides the above provision, Paragraph (1) of Article 14 of the Press Act, repealed, enabled the authority (most recently: the Office of Cultural Heritage responsible for the maintenance of the press register) to refuse the registration of press products if—*inter alia*—such press products violated public morals. (This provision had never been actually applied and would have been well-nigh impossible to apply, as it required the establishment of a future violation against public morals by a press product prior to its first publication.) This provision was struck down by Constitutional Court decision 34/2009 (III. 27.). In its decision the Constitutional Court pointed out that:

> by prescribing not only the notification of the title and purpose of periodical publications but also the examination of the notified purpose—i.e. the prior examination of content—in essence the legislator provides for the supervision of the accessibility and distribution of information. As such, the decision right of the authority responsible for registration includes the prior supervision of law enforcement, and the assessment and evaluation of the content of the ideas intended for communication via the press product from the aspect of their suitability for distribution in the form of a press product. This constitutes censorship.

Accordingly, due to the decisions of the Constitutional Court, the prescription that was left in the Act (the general protection of public morals in Article 3) remained as an in principle declaration with no definite legal sanctions.

The Press Freedom Act, effective as of 1 January 2011 and which replaced the Press Act, adopted the previous provision verbatim:

> Article 4 Paragraph (3). The exercise of the freedom of the press may not constitute or encourage any acts of crime, violate public morals or the moral rights of others.

Similarly to the situation that had ensued by 2009 under the previous regulations in the wake of the two Constitutional Court decisions, Paragraph (3) of Article 4 of the Press Freedom Act gives no rise to any declarative, specific legal obligation; the Media Council therefore has no competence to oversee content that violates public morals. As opposed to this, there are precisely formulated provisions on the protection of morals that form the basis of administrative control, for example, the provisions of Articles 9–11 of the Media Act serving the protection of minors, which primarily formulate obligations in respect of violent and pornographic programmes.

Decision 165/2011 (XII. 20.) of the Constitutional Court touched upon the protection of public morals in the Press Freedom Act as well. An important conclusion of the Decision is that, as a result of the regulations, the fundamental principles stated in Article 4 of the Press Freedom Act (thus, for example, the respect of public morals) may not serve as the basis for administrative supervision. The Decision infers the provisions formulated in the interest of the protection of minors from the protection of public morals and so, according to the Decision, the protection of public morals is present in "concrete form" in the regulations: "[the] protection of minors is ultimately based on 'public morals', the concept and contents of which vary by time and place".

9.2. Protection of minors

9.2.1. Elements of regulation

Besides media regulations, many other Hungarian legal provisions clearly regard the healthy and uninterrupted development of children to be of paramount importance and treat the related issues accordingly. The present subsection provides a brief review of the Hungarian legal provisions, documents, and (legal) institutions that serve the protection of minors (although it should be noted that the list is far from exhaustive).

A) Basic Law

Article XVI of the Basic Law declares that "[e]very child shall have the right to the protection and care required for his or her proper physical, mental and moral development". Declared as fundamental, the assertion of the rights of children obviously enjoys preference over other constitutional objectives, principles, or even the (public) interest of

society. A more thorough examination is called for in the event that the right of children conflicts with another fundamental right. In the case of the freedom of the press, however, it can be said that, on the basis of the entire practice of the Constitutional Court, the (media) law provisions on the protection of minors may not be regarded as unconstitutional restrictions of the freedom of the press.[103]

B) Child Protection Act

Act XXXI of 1997 on The Protection of Children and Guardianship Administration was drafted in order to fully enforce the provisions of the Constitution (Basic Law) and the Convention on the Rights of the Child[104] concluded in New York on 20 November 1989. Besides the rights of children, the Act contains detailed and comprehensive provisions on the duties of parents and the various form of care, as well as regulations on the local governmental and ministerial provisions related to the performance and management of child protection tasks, and the administrative and procedural rules.

It should be noted that the Act conferred authority upon the Commissioner for Fundamental rights to investigate any abuses related to the constitutional rights of children that become known to the Commissioner, and to take general or specific measures towards their remedy. In the interest of this the Commissioner—acting as the special Ombudsman for children's rights—launched a fundamental rights project in 2008 focusing on the assertion of children's rights.[105] This project has, to date, been "operated" by the Commissioner for Fundamental rights.

C) Family Protection Act

Point 4 of Chapter II of Act CCXI of 2011 on the Protection of Families specifies the rights and obligations of children. According to the statement of reasons of the law, the regulations grant organic law status to the provisions of the Child Protection Act, establishing that "minors are entitled to an upbringing in their own family environment, providing physical, intellectual, psychological and moral development, healthy growth and welfare".

In respect of the protection of children, the Act formulates several positive obligations for media service providers among the fundamental principles (Article 5). It is important to note, however, that no authority is competent to oversee or check the general, fundamental provisions of the law and so the assessment of its actual effectiveness cannot be the subject of an independent regulatory procedure.

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[103] See e.g. Constitutional Court Decisions 1123/B/2005 and 165/2011. (XII. 20.).

[104] The UN Convention was promulgated in Hungary with Act LXIV of 1991.

[105] Orsolya Ágota Kovács (ed.): *Gyermekjogi projekt*. [*Children's Rights Project*] Budapest, ÁJOB, 2010, 35.

D) Act on Motion Pictures

Act II of 2004 on Motion Pictures contains distinct provisions on the mandatory measures to be taken in the interest of the protection of minors. According to the Act, similarly to those programmes broadcast via linear and on-demand media services, cinematographic works distributed in Hungary must be appropriately age-rated according to their content in the interest of the healthy development of minors. The ratings must be clearly indicated on both the cinematographic works and their previews, both during public screenings and on the packaging and cover of the data media marketed, as well as in any announcements and advertisements related to the works (Article 24).

E) Advertising Act

Among the general limitations and prohibitions related to advertising, the Advertising Act contains several general provisions on the content of advertisements in the interest of the healthy development of minors. (It may be noted that the provisions of the Advertising Act contains limitations that are, for the most part, also related to the depiction of violence and sexuality.) Furthermore, the Act contains distinct provisions on the contents of advertisements directed at minors (in this respect the Media Act formulates much broader regulations on advertisements published via media services).

F) Electronic Commerce Act

The Electronic Commerce Act was drafted in the interest of the implementation of the provisions of the Directive on Electronic Commerce within the Hungarian legal system. The Act enables the limitation of services directed at the territory of Hungary in the interest of the protection of minors.

G) Media regulations

In the field of media regulations, both the Press Freedom Act and the Media Act contain provisions serving the interest of the protection of minors. The Press Freedom Act contains the "common" rules applicable to all media content providers; the constitutionality of these provisions was reinforced by the Constitutional Court's decision in December 2011. The provisions of the Media Act on linear and on-demand media services are fundamentally based on the regulations of the repealed 1996 Radio and Television Broadcasting Act, as amended in 2002.

H) Self- and co-regulation

The activities of self- and co-regulatory organisations in the interest of the protection of minors that are supported by the AVMS Directive are also of special importance. The Media Act expressly cites the provisions of media regulations—the Press Freedom Act and the Media Act—directed at the protection of minors, in the interest of the supervision of which the Media Council may appoint self-regulatory organisations in respect of print and online press products and on-demand media services.

The administrative contracts concluded by the Media Council in June–July 2011 authorised the Association of Hungarian Content Providers, the Hungarian Publishers'

Association and the Association of Hungarian Electronic Broadcasters to oversee the provisions on the protection of minors within the framework of co-regulation. Each of the co-regulation Codes of Conduct, integral to these administrative contracts, contains separate articles on the provisions for the protection of minors.

Besides co-regulation, the active role of self-regulatory bodies in this field should also be mentioned. From these, especially noteworthy is the Hungarian Code of Advertising Ethics of the Hungarian Advertising Association, created in 1981 and amended several times since. Article 13 of the Code contains 21 paragraphs on the protection of children and minors.

In respect of the protection of minors, the extremely important Internet Hotline service, launched in 2005, has to be mentioned: this provides an interface for reporting content found on the Internet that is illegal or harmful to minors. Following the receipt of the report, if it is found to be justified, the operator of the hotline calls upon the service provider concerned to remove the reported content. The removal of the content is voluntary, and the service provider is not obliged to comply with the request (this procedure does not therefore replace or substitute for any administrative and court proceedings initiated due to the legal violation).[106]

9.2.2. Regulations of the Press Freedom Act

As a result of the "two-level" regulatory system that entered into effect as of 1 January 2011, the Press Freedom Act formulates the general rules related to the protection of minors. These rules are elaborated in detail in the Media Act.[107] The rules of the Press Freedom Act on the protection of minors specify the obligations in respect of all media content providers.

The characteristic of the regulations in the Press Freedom Act is that, on the one hand, they distinguish between the types of services (i.e. different provisions apply to linear and on-demand media services and press products), and, on the other hand, they distinguish the given media contents according to their effect on minors (severely harmful or dangerous content). Besides the differences between the "consumption" modes of the various media content, the reason for the differentiation of the regulations is the different effect of such content on individuals.[108]

According to the Act, linear media services may not include media content that could materially damage the development of minors, while such media content may only be included in on-demand media services in a manner that prevents minors from accessing

[106] As of 22 September 2011 the operation of the service was taken over by the National Media and Infocommunications Authority from the Association of Hungarian Content Providers.

[107] Levente Nyakas: Smtv. 19. § [Article 19 of the Press Freedom Act] In Koltay – Lapsánszky op. cit. (n. X.) 51.

[108] Ibid.

such content in ordinary circumstances. In the case of press products—similarly to on-demand services—access by minors has to be limited, and such content may only be published if accompanied by a warning about the possible danger [Paragraphs (1)–(4) of Article 19 of the Press Freedom Act]. According to the Press Freedom Act, such content comprises media content capable of exerting a harmful influence on the intellectual, psychological, moral, or physical development of minors by presenting pornography, or extreme or unreasonable violence. In the case of content depicting "violence", deciding whether such violence is extreme or gratuitous requires case-by-case examination. As regards pornography, other legal provisions offer important guidance [e.g. according to Paragraph (1) of Article 9 of the Advertising Act, pornography consists of the grossly obscene depiction of sexuality, especially the open depiction of the sexual act or the sexual organs; furthermore, according to Points *b–c)* of Paragraph (7) of Article 204 of the Criminal Code, pornography consists of the representation of, or actions deliberately directed at arousing sexual desire]; however, as we have seen, the interpretation of these legal provisions is not fully compatible with the Media Act.

The Press Freedom Act only states that content in linear media services that endangers the development of minors may only be published in a manner that ensures, either by selecting the time of broadcasting or by means of a technical solution, that minors do not have the opportunity to access such content under ordinary circumstances. [Paragraph (4) of Article 19 of the Press Freedom Act]. This provision is concretised by Articles 9–11 of the Media Act.

Finally, we wish to refer to the provision codified during the June 2012 amendment of the Press Freedom Act [Article 19 (4) *a*)], on the basis of which any depiction of minors in media content that would gravely endanger their psychological or physical development as appropriate to their age is prohibited by law. As such, in this case the law prohibits harmful content produced with the participation of minors rather than harmful content produced for their consumption. The reason for the codification of this provision is the increasingly widespread media practice of recent years, found to be objectionable by the authority, of featuring minors in a way that violates their rights and development.

In keeping with the previous practice of the Court, Constitutional Court Decision no. 165/2011 (XII. 20.), passed in December 2011, established the constitutionality of the limitation of the freedom of the press by legal provisions in the interest of the protection of minors with regard to both printed and online press products. Critiques of the Decision point out, however, that the Constitutional Court had limited its procedure to the analysis of the necessity of the regulation, while a broader and more profound analysis could have resulted in the establishment of the proportionality of the limitation as well.[109]

[109] András Koltay – Gábor Polyák: Az Alkotmánybíróság határozata a médiaszabályozás egyes kérdéseiről. [The Decision of the Constitutional Court on Certain Issues of the Media] *Jogesetek Magyarázata*, 2012/1. 40.

9.2.3. Regulations of the Media Act

The regulations of the Media Act contain further provisions in the interest of the protection of minors in respect of linear and on-demand media services. The importance of the topic is witnessed by the fact that, of all the provisions of the Media Act related to media service content, the provisions on the protection of minors take first place (Articles 9–11).

A) Provisions related to linear media services
Similarly to the provisions of the Radio and Television Broadcasting Act, repealed as of 1 January 2011, the Media Act also provides that all contents published by linear media service providers must be age-rated (classification). The Act provides an itemised list of the exceptions from this: news programmes, political information programmes, sports programmes, previews and advertisements, political advertisements, teleshopping, public service advertisements, and public service announcements [Media Act Article 9 (1)]. That is, classification is the duty of the media service providers, since they are responsible for all content published by them.

The Media Act introduced one more category in addition to the age-rating categories of the previous regulations, "not recommended for audiences under the age of six", and currently all programmes have therefore to be classified into one of the following categories:
- Category I: may be viewed by persons of any age,
- Category II: not recommended for audiences under the age of six,
- Category III: not recommended for audiences under the age of twelve,
- Category IV: not recommended for audiences under the age of sixteen,
- Category V: not recommended for audiences under the age of eighteen,
- Category VI: the programme may not be broadcast.

The principles of classification are basically provided for in Paragraphs (2)–(7) of Article 9 of the Media Act; however, it should be mentioned that, using the powers granted by the Act, the Media Council has issued a so-called classification recommendation.[110] This recommendation summarises the governing principles of and the legal practice applicable to the age-rating classification of media content, the signals applicable prior to and during the broadcasting of the individual programmes and the manner of the communication of the rating. According to the recommendation, the following principles are to be generally adhered to during classification:

> The reason for the special protection of minors is that, in their case, the realistic value-judgement of the recipient may not be assumed, i.e. it may not be assumed that minors will analyse and assess what they see on the basis of an appropriate scale of values, since minors are in the process of

[110] Accepted by Decision No. 1037/2011 (VII. 19.) of the Media Council.

the formation of such a final scale of values. This is what renders their personality development vulnerable and this forms the grounds for their special protection (Supreme Court Kfv. No. III. 37507/2001/ 5.). Due to the special protection of minors, content service providers are always required to proceed restrictively rather than permissively during classification. When assessing the harmful effects, the interests of the child take primacy. In this respect, it has to be borne in mind that the mental and emotional development level of minors may differ, even within the same age-group, and that their television consumption habits, and the parental (guardian) control over them may also be different due to differences in their social, welfare, and family circumstances. Accordingly, if the comprehension of a given content by the minor requires active cooperation by their parents/guardians, such protection cannot be regarded as given. If only a single element/ scene of the published work meets the criteria of a higher classification category, that category must be applied during classification. Since the classification extends over the entire programme, if certain elements or scenes belong to a higher category, this will affect the classification of the whole of the programme. In the case of programmes which consist of segregated parts, the more severe classification of a single segment may result in the more severe classification of the entire programme. The individual episodes of programme series must be classified separately, as practice shows that there may be marked differences between the individual parts in respect of aggression, fear or sexuality.

When establishing the principles of classification, the legislator strove to protect minors to the maximum extent possible from any negative influences from the media that may have a harmful effect on their physical, mental and moral development. There are no exact criteria for age-rating, therefore the Act does not provide for every minute detail in respect of the classification of contents. Violence, sexuality or the violent resolution of conflicts, all of which could have a negative effect on the development of minors, are not the only possible sources of damage: the Act only highlights these as the most significant such sources. In respect of other considerations, it is primarily the prevailing public opinion and the values and objectives preferred and set by the various institutions of society (healthcare, education, etc.) that govern.

When classifying the individual programmes, a "thematic presentation" test is to be applied. During the course of this, it should be examined whether any harmful content appears in the given programme, and, if so, with what weight. The next issue to be examined is the manner in which the given programme presents the harmful theme. It should also be examined whether the given programme contains any elements that help children within the protected age group to distance themselves from what they see and to decode and re-assess the violence, sexuality, or other harmful contents presented. Furthermore, the imagery, the music and the other sound effects that may reinforce or mitigate the effects of the dramaturgic events also have to be taken into account. As such, the overall categorisation of programmes is a function of the number, extent, quality, text, imagery, musical score, intended message, and explanation or lack there of the scenes that give rise to the protection of minors, i.e. their comprehensive effect on minors.

The classification of the National Film Office, on the basis of the Film Act as well as other national classification systems, may serve as orientation for the media service providers, but does not relieve them from any legal violations established on the basis of the Media Act, since the television genre is entirely different both in respect of effect and viewership.

Finally, it is important to note that the "artistic" value of a production has no relevance in respect of whether such production constitutes a danger to minors. In certain cases, it is this precise feature that renders minors incapable of interpreting what they see.

The criteria of the category classification are based on the following considerations. When describing the various age-rating categories, it is necessary to follow a gradual approach reflecting the nature of the classification system, i.e. the recommendation takes into account the category under examination and the one level higher category when describing the contents presented and

the form of presentation suitable for a given age, and the recommended mode of presentation and context of topics for that age. Taking into account the characteristics of the effective classification system, the approach applied by the recommendation takes off from the basic assumption that at the start of the classification process the media service provider already has a notion of what age-group is targeted by the media content to be classified. Then, it is on the basis of the classification criteria for this age-group that the media service provider examines whether the given content contains any possibly harmful elements that would call for a higher age-rating category. The logic of the text of the recommendation—diverging from the logic of the formulation of the Act present in the titles of the various categories—is therefore that it lists the psychological characteristics and media comprehension competencies of the age-groups under the various age-rating categories, then presents a non-comprehensive outline of what elements may appear in the given category and what elements call for a higher category in respect of the individual issues (e.g. genres, groups of harmful elements, etc.).

Similarly to the previous regulations, the Media Act restricts the possibility of the publication of content belonging to the various categories to certain periods, e.g. programmes belonging to age-rating category IV may be broadcast between 9pm and 5am while category V programmes may be broadcasted between 10pm and 5am. The Media Act also defines those (age-rating category VI) programmes severely harmful to the development of minors that fall under the full prohibition of publication (i.e. with the exception of digitally broadcasted media services that apply effective technical solutions, adults, too, are barred from such content, at least in linear media services). With a few exceptions, the provisions on the publication of the ratings of the programmes are basically identical to those prescribed by the previous regulations.

The regulations that entered into effect as of 1 January 2011 contain several innovations in comparison with the earlier provisions. Besides the creation of the new category (II), the innovation is that, upon the request of the media service provider and against the payment of an administration fee, the Media Council will pass a regulatory decision on the category classification of a given programme [Media Act Article 9 (9)]. Another novelty is that, in the case of radio media services, the communication of the rating at the start of the programme may be omitted if the programme is broadcast in a time-slot under a higher age-rating classification category [Media Act Article 10 (3)]. A similar rule applies to audiovisual media services: if a programme is broadcast in a later time-slot, the continuous display of the sign corresponding to the rating of the programme may be disregarded [Media Act Article 10 (5)]. Apart from this latter possibility, the provisions on the announcement of the age-rating category prior to the start of the programme and the display of the *pictogram* during the programme have remained basically unchanged.

Another important innovation in the regulations is that the Media Act allows the use of so-called effective technical solutions, which, if applied, relieve the media service providers of the duty to comply with certain provisions of the Media Act [Media Act Article 10 (6)]. The Media Council has published its (legally not binding) recommendations on the effective technical solutions applicable by both linear and on-demand media

service providers in the interest of the protection of minors.[111] The scope of the recommendation includes the effective technical solutions applied with regard to:
– analogue cable television services,
– digital cable television services,
– digital satellite television services and IPTV services,
– digital terrestrial television services,
– linear and on-demand media services provided via the mobile telephone network, and
– on-demand and linear services accessible via the Internet.

On the basis of the above it may be seen that, besides linear media services, this recommendation contains (non-binding) provisions in respect of on-demand media services as well.

In respect of the provisions on linear media services serving the protection of minors, the balance of the 2011 supervisory activities of the Media Council should be mentioned. In 2011 the media authority established 32 instances of violation of the provisions serving the protection of minors prior to 1 January 2011 (i.e. adjudged on the basis of the Radio and Television Broadcasting Act rather than the Media Act). The majority of these violations consisted of the broadcasting of programme previews in inappropriate time-slots (12 cases) and the media service provider's mis-categorisation, and, consequently, the inappropriate timing of programmes with contents targeting persons under the age of sixteen (4 cases). In respect of the programmes broadcast following the entry into force of the Media Act, the Media Council established a further 21 cases of legal violations against minors. The majority of these violations consisted of the broadcasting of programme previews in inappropriate time-slots (8 cases), the mis-categorisation, and/or the inappropriate timing of programmes targeting persons under the age of sixteen (8 cases).

Among the decisions of the Media Council, the so-called "Ice-T" case has gained considerable publicity, when proceedings were initiated due to an English-language piece of music. Finally the authority did not establish any violation of the effective provisions of the Radio and Television Broadcasting Act in respect of a song using American "gangster rap" slang, on the basis that few minors could have understood the lyrics and so the proceedings were closed.[112] The official decisions passed in 2011 and 2012 in relation to the so-called "reality shows" broadcast by the two national commercial television channels should be noted: these established violations of the provisions on the protection of minors in several instances. The central theme of several scenes in these

[111] Adopted by Decision No. 798/2011. (VI. 22.) of the Media Council.
[112] See Order No. 76/2011. (I. 12.) of the Media Council.

programmes was emotionless, gratuitous sexuality; besides the two-faced system of values conveyed by the participants and the frequent use of rude and obscene language, sexuality often took the main role in the programmes, both visually and verbally.[113]

B) Rules pertaining to on-demand media services

The manner of the "consumption" of on-demand media services is fundamentally different from that of linear media services, as it is based on individual demand (request); therefore, in their case, the time-bound programme flow structure requirements applied to linear media services are not applicable either.[114] The classification of programmes belonging to age-rating categories V and VI is mandatory with regard to this type of media service, too [Media Act 11 (1)]. However, in this case classification does not entail that the programmes may only be viewed during certain time-slots or may not be viewed at all. According to Paragraph (2) of Article 11 of the Media Act, the media service provider of the on-demand media service or the media service distributor concerned is required to use an effective technical solution to prevent minors from accessing these programmes. (We wish to note that the considerations in the aforementioned classification recommendation of the Media Council are also applicable to programmes published via on-demand media services.)

The recommendation of the Media Council on effective technical solutions sets out in detail the restrictive measures applicable/required in the case of content available on digital and web-based platforms.

Due to the emergence and proliferation of on-demand media content, the efforts directed at enhancing media consciousness are gaining increasing significance. These contribute to the protection of the healthy development of minors in the face of the new difficulties. (For the time being, the realisation of these objectives appears to be on track; in the period since 1 January 2011, the Media Council has not established any violations against the provisions on the protection of minors in respect of on-demand media services.)

C) Advertising rules pertaining to the protection of minors

The chapter on commercial communication describes in detail the provisions of the Media Act on the protection of minors, therefore here we only wish to refer to the fact that the relevant rules of the Media Act on commercial communications contain detailed provisions in this respect [Points *c)–f)* of Paragraph (1) and Points *a)–b)* of Paragraph (2) of Article 24 of the Media Act]. The majority of the rules pertaining to commercial

[113] See Decisions No. 624/2011. (V. 11.) and 1043/2011. (VII. 19.) of the Media Council establishing the violation of the provisions on the protection of minors by 40 episodes of the programme entitled *Való Világ 4* [*The Real World*] and Decisions No. 321/2012. (II. 15.) and 581/2012. (II. 28.) whereby the Media Council established the same in respect of the programme entitled *Összesküvők* [*Perfect Bride*].

[114] Levente Nyakas: Mttv. 11. §. [Article 11 of the Media Act] In: Koltay – Lapsánszky op. cit. (n. X.), 77.

communication was incorporated into Hungarian media regulations by way of the implementation of the AVMS Directive. Similarly to the fundamental regulations in the interest of the protection of minors, these rules were also created in order to provide for the protection of minors against commercial content capable of exerting a harmful influence on them due to their exposure and lack of experience.

10. The regulation of commercial communications

10.1. The protection of business communications in the practice of the Constitutional Court

The practice of the Constitutional Court has theoretically constructed the framework and legal principles of the application of the fundamental right of freedom of the press to commercial communications. According to Constitutional Court Decision 30/1992 (V. 26.), freedom of the press forms the basis of the possibility and actuality of the communication of individual thoughts, while the Constitution guarantees the freedom of communication itself. Constitutional Court Decision 1270/B/1997 specifically examined whether commercial advertising activity is protected by the Constitution and the ways in which it may be restricted. According to the Decision, "freedom of the press is not only granted in respect of ideas, facts and opinions" but the guarantee of constitutional protection "covers the entirety of free communication and thus the expression of opinion in the broad sense". This broad field includes information provided in the form of business advertising as well.

The Constitutional Court—similarly to the practice of the European Court of Human Rights—set forth as a general principle that, in the case of commercial information, broader state intervention may be constitutionally justified:

> [f]reedom of expression enjoys additional protection as it is indispensable to the self-expression and the free development of the personality of the individual in order to promote the participation of the individual in democratic society. Since, however, economic advertisements are not directly related to the fundamental value of freedom of the press… in the case of such commercial-purpose information, the possibility of restriction may be considered constitutional in a broader field (Constitutional Court Decision 1270/B/1997, Statement of Reasons, Point IV/3).

Constitutional Court Decision 37/2000 (X. 31.) examined the possible scope of the restriction of commercial expression protected by the mother right of freedom of expression in respect of the advertising of tobacco products. The Constitutional Court established that the justification for broader state intervention is to be found in the primary purpose of commercial information, which is first and foremost the promotion of the sale, awareness, and use of goods, rather than the freedom of expression or the free development of personality.

Constitution Court Decision 23/2010. (III. 4.) also examined the possibility of the restriction of commercial advertising communications, i.e. personal rights (right to dignity, protection of personal data) as the limitations of commercial communication. According to the practice of the Constitutional Court, with regard to commercial

information, a collision between the freedom of expression and other constitutional rights needs to be resolved by the comparison of the conflicting interests according to the principles of proportionality and necessity:

> lower level protection means that the Strasbourg bodies have hitherto deemed to be necessary and, therefore, conformant to the treaty, all restrictions applied by the participating states in the interest of the "rights of others", i.e. the rights of consumers and buyers [Constitutional Court Decision 23/2010. (III. 4.), Statement of Reasons, Point IV/3.; Constitutional Court Decision 1270/B/1997].
> Commercial communications serve the prevalence of constitutional rights by simultaneously ensuring freedom of expression and the freedom of consumers to access information. The opinion of the Constitutional Court in this respect is that a further consideration related to the subject and content of the communication is that the right of consumers to information may justify the protection and restriction of commercial expression [Constitutional Court Decision 23/2010. (III. 4.), Statement of Reasons, Point IV. 4. 1.].

The Constitutional Court answered the question as to where the limits of less strict protection are by stating that "commercial speech under less strict constitutional protection is differentiated from other communications by the exclusive or dominant presence of business interests." When adjudging the exclusivity of business interests, the object, the content, and the subjects of the given communication should be examined (e.g. the price of the given product). In the latter case, it is especially important to stress that, in this context, communication is not the vehicle of self-expression; communication always serves the business interests of the economic actor [Constitutional Court Decision 23/2010. (III. 4.), Statement of Reasons, Point 4. 1]. Nevertheless, it is rather difficult to define the intermediate category of advertisements where economic self-interest is mixed with public interest during commercial speech. To manage the marginal cases brought about by the mixture of economic and public interest, and to define the extent and level of protection, the decision of the Constitutional Court has resorted to the assumption, according to which commercial communication is protected by the freedom of the press, and any stricter limitation requires that it be proven that there is no other, more important interest than economic interest underlying its publication.

> [The] adjudgement of the constitutional protection of communication requires that the person making the communication, the subject, and purpose of the communication, on the one hand, and the reason for and extent of the legal restriction, on the other hand, be taken into account. The extent of the constitutional protection of commercial speech is defined by the strength of the constitutional reason for the restriction… according to the test of necessity/proportionality
> – the rights of others (including the consumers)
> – the obligation of the state to uphold fundamental rights (e.g. to prevent the formation of opinion monopolies in the electronic media)
> – and public interest (e.g. the protection of minors, public health and public safety)
> may constitute the justified and necessary limitations of commercial speech protected by the constitution [Constitutional Court Decision 23/2010. (III. 4.), Statement of Reasons, Point IV. 4. 2].

In keeping with these expectations, state intervention may be seen in the regulation of commercial communications: the limitations and the rules to be followed are laid down in a strict, cogent set of legal norms both at the European Union level and—building on that—at the level of the individual Member States.

10.2. The system of the regulation of commercial communications

10.2.1. The regulation of commercial advertising

Commercial communications encompass a much broader field than just advertising proper: "an important difference between information and advertising is that the two serve different purposes, since the objective of advertising is not merely to provide information, but also to increase the propensity to purchase a given product, i.e. to shape the contractual will of the consumer in respect of an understanding that has not yet been concluded."[115] Commercial advertising is just one of the types of commercial communications; it is provided for in detail by the Advertising Act. According to the Advertising Act, commercial advertising is

> any form of communication, information, or the making of a representation directed at promoting the purchase or use of goods or the promotion of the name, signage or activities of an undertaking directed in relation to this objective or the promotion of the public awareness of goods or brand names [Advertising Act Article 3 *d)*].

According to the statement of reasons in the Advertising Act:

> the presentation of an enterprise or its activities may only be considered advertising if it is directly related to the promotion of the sale of the enterprise's goods; communications made by the enterprise for purposes different from that (e.g. about the social undertakings or charitable activities of the enterprise), or simply about the existence of the enterprise, may not be regarded as commercial advertising.

Accordingly, the Act regulates commercial advertising, i.e. those advertisements published primarily in the interest of the attainment of business objectives; political and public service advertisements and public service announcements therefore do not fall under the scope of the Act.

The regulation is of a dual nature, as it strives to ensure the freedom of economic operators' communications while upholding constitutional rights, the public interest, the purity of market competition and the protection of the rights of others, especially of consumers.

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[115] Tihamér Tóth (ed.): *A reklámjog nagy kézikönyve*. [*The Big Handbook of Advertising Law*] Budapest, CompLex, 2009, 23.

The general and specific restrictions and prohibitions of the Act apply to the subjects of advertising legislation in respect of all commercial advertisements unless an act of law contains special provisions on a given issue. The Advertising Act prescribes mandatory rules for advertisers, advertising service providers, and the publishers of advertisements. Advertisements are published in the interest of the advertiser; it is the advertiser who orders the publication of the advertisement. On the basis of the order, the advertising service provider creates the advertisements and provides other related services within the framework of its own economic activity. The publisher of the advertisement is in possession of the media whereby the advertisement is published and reaches the public [Advertising Act Article 3, Points *k)–m)*].

The most effective publishers of advertisements are the media content providers: the printed and online press and the linear and on-demand media services. "Advertising is primarily the technique of persuasion whereby—mainly using the possibilities offered by the media—the advertiser tries to persuade consumers to purchase its goods and services."[116] Due to the major role of media content providers in advertising, the special legal instruments that apply to them contain further provisions on the form and content of commercial communications. Paragraph (3) of Article 1 of the Advertising Act expressly provides that, in respect of advertisements published via audiovisual or radio media services, the provisions of the Press Freedom Act and the Media Act must be applied as well.

10.2.2. Characteristics of the regulation of commercial communications in media regulation

Similarly to the regulations of the European Union, the Hungarian legislators tried to establish a less strict legal framework for the regulation of commercial advertising in the media, in the interests of the financing required for the operation of the media industry to be provided without lifting the necessary and proportionate restrictions on economic freedom in the interest of the protection of fundamental values.

While the provisions of the former Radio and Television Broadcasting Act were built on the minimum rules of the TVWF Directive on advertising, the Press Freedom Act and the Media Act implemented the minimum rules of the AVMS Directive on commercial communications, but extended the scope of these over the radio and printed and online press as well, in addition to audiovisual media services. As such, all commercial communications appearing in any media content service became subject to the regulations (although the scope of the regulations is much narrower in the case of on-demand and ancillary media services and press products than for television and radio).

[116] Lord Campbell of Alloway – Zahd Yaqub (Eds.): *The European Handbook on Advertising Law.* London, Cavendish, 1996, 26.

The Hungarian media regulations effective as of 1 January 2011 are based on the concept of a more active and more conscious media consumer who is not merely passively exposed to advertisements, but is able to decide upon whether to accept or to avoid advertisements.

The Constitutional Court formulated the following opinion on this:

> The development of technology has changed the structure of mass communications; the individual has become the consumer, in fortunate cases the interactive consumer. In respect of state intervention —due to the multiplication of information channels and the possibility of choice—this fact may call for liberalisation.… On the regulatory side, the situation gives rise to the dilemma of whether the neutral state should assume the role of passive observer only or whether a certain level of corrective intervention is necessary [Point IV. 1. 2. of Constitutional Court Decision 165/2011. (XII. 20.)].

Nevertheless, it must not be forgotten that a significant part of the audience only encounters media contents as passive consumers of linear media services. This also calls for differentiated regulations, since consumers require a different extent of state intervention "external protection" in the case of on-demand and linear access.

The specific protection of the consumer in the AVMS Directive, the Press Freedom Act and the Media Act against misleading practices primarily consists of the separation of editorial content from commercial communications, and the provision on the obligation to provide information on the commercial nature of the communication. These are applicable to all forms of commercial communication, including sponsorship and product placement as well.

A cardinal issue in respect of the publication of commercial communications is the upholding of independent operation free from economic influence: the "person who orders the publication of the commercial communication and the person who has an interest in such publication may not exert editorial influence over the media service, except for the time of publication". (Media Act, Article 25). By this clear distinction, the Act sharply separates the influence on the editor responsible for the content of the media service and the person ordering the publication of the commercial communication. The protection of editorial independence is closely related to editorial responsibility. The time of the publication of the content is of defining importance in respect of the counter-value paid; the person ordering publication may therefore exert an influence at the time of publication. The publication of the commercial communication at the right time, in the right place and with the necessary power of persuasion is primarily in the interest of the person ordering publication. However, on the side of the person ordering publication, this is only a requirement towards the media service provider; the service provider may decide at its own discretion whether to accept such a requirement or not. The person

ordering the publication may exert no influence on content; editorial (and, in parallel with that, legal) responsibility lies with the service provider, who cannot assign it to others. According to Decision No. 218/2012 (II. 1.) of the Media Council:

> the media service provider is exclusively entitled to decide upon the content of its media services, i.e. to determine what is broadcast when, and how the content is edited in the programme. Given the exclusivity of this right, the media service provider is also fully liable for the content (obviously, this right may not be assigned to others).

10.2.3. Self- and co-regulation in advertising

The advertising industry is highly organised, at both the national and the European level. This is witnessed by the fact that, *inter alia,* over and above the applicable legal provisions, the industry formulates ethical requirements of itself within the framework of self-regulation, the voluntary compliance with which is effectively supervised by the trade. The first Hungarian code of advertising ethics was published in 1981; the most recent version was adopted in 2009. The Hungarian Code of Advertising Ethics is the principal instrument for the self-regulation of the advertising industry. It contains more detailed and practical rules than the applicable legal provisions.

The Media Council has concluded a co-regulation agreement with the Hungarian Advertising Self-Regulatory Body for the supervision of commercial communications appearing in on-demand media services and press products. A mandatory content element of this is the Co-Regulatory Code of Conduct. This sets out the procedural rules of co-regulation based on cooperation and the material rules on commercial communications.

10.3. Commercial communications

10.3.1. The concept of commercial communications

Hungarian media regulations apply the collective term "commercial communications" to denote commercial communications that appear in the form of media content. This has various specific forms (advertisement, sponsorship, product placement).

> Commercial communications shall mean media content aimed at promoting, directly or indirectly, the goods, services or image of a natural or legal person, or a business association without legal personality carrying out business activities. Such content accompanies or appears in media content against payment, or similar consideration, or for the purpose of self-promotion. [Press Freedom Act Article 1 Point (9) and Media Act Article 203 Point (20)].

Direct and indirect promotional communications published for a fee, as well as self-advertising, are considered to be commercial communications in the field of audiovisual media services by the AVMS Directive, whereas Hungarian media regulations consider

such to constitute commercial communications in any media content service. An important element of the concept is the definition of commercial communications as media content. According to Point 7 of Act 1 of the Press Freedom Act, media content is "any content offered in the course of media services and in press products". This yields several inferences. Hungarian regulations extend this concept over commercial communications published in press products as well and apply their requirements towards such communications, too. Commercial communications are a form of media content themselves; therefore the requirements regarding media content are applicable to them as well (unless, of course, the law provides otherwise, as in the case of the classification duty).

According to preamble paragraph 96 of the AVMS Directive, "self-promotional activities are a particular form of advertising in which the broadcaster promotes its own products, services, programmes, or channels". Self-promotion is considered to be commercial communication, both according the Directive and the Hungarian sources of law and so the relevant provisions of the law are applicable to such activity.

The distinction between self-advertisements and trailers is an important issue, because programme trailers related to a programme to be published by the media service provider at a later time are not included in the concept of an advertisement.

As a legal technical solution governing commercial communications, the legislator provides for commercial communications in a uniform manner in the case of all media content providers and, where necessary, stipulates further differentiated provisions.

In the case of linear audiovisual and radio media services, due to "simultaneity" (the fact that the linear programme schedule is independent of the audience), certain commercial content requires special regulations (e.g. advertisements, teleshopping). In the case of on-demand media services, the "simultaneous" nature of linear services is absent; therefore, due to the particular manner of access (i.e. that the time of access is individually selected by the members of the audience), a part of the regulations applicable to linear services is not applicable to these (the temporal limitations of publication). At the same time, the general rules on the content and publication of commercial communications and the provisions on sponsorship and product placement should be adhered to in the case of these, too.

Printed and online press products publish commercial communications too; the formal and content requirements of Article 20 of the Press Freedom Act therefore govern these as well. Decision No. 165/2011 (XII. 20.) of the Constitutional Court ruled that the provisions on commercial communications are constitutional with regard to printed and online press products too and meet the requirement of necessity and proportionality, as such restrictions "mostly concern the rights of the advertisers' commercial speech and only indirectly restrict the freedom of the press, i.e. the media publishing the advertisements; in this respect differentiation between the various media is irrelevant."

10.3.2. The restrictions on the manner of the publication of commercial communications

Irrespective of whether a commercial communication accompanies or is placed within a programme, a general requirement in the interest of avoiding the consumer being misled is that it should be easily recognisable, i.e. the consumer has to be aware of the commercial nature of the content. The differentiation of commercial communications from editorial content is also important from the aspect of the integrity of the programme [Paragraph (1) of Article 20 of the Press Freedom Act].

Surreptitious commercial communications and commercial communications that apply subliminal techniques also constitute violations against the clause of recognisability and differentiation. According to Paragraph (3) of Article 20 of the Press Freedom Act, no surreptitious commercial communication may be published in media content. Surreptitious commercial communication means any commercial communication the "publication of which deceives the audience about its nature" (Point 10 of Article 1 of the Press Freedom Act, Point 4 of Article 203 of the Media Act). If it is not clear to the consumer that the given media content is commercial communication, this results in the consumer being misled.

The consumer must, at all times, be informed of the fact of the publication of commercial content. The publication may be "misleading" if the objectionable content is inserted into a programme by the media service provider without calling attention to its commercial nature [see Decision No. 1256/2011 (IX. 21) of the Media Council)]. Commercial communication may be misleading if the name of an undertaking or the price of a service provided by an undertaking appears in media content without informing the audience of the commercial nature of the message. "A commercial communication is misleading, i.e. it constitutes surreptitious commercial communication, if it is presented in a context where the audience is not able to recognise its real nature, i.e. if it carries a commercial message without overtly declaring its commercial nature [Decision No. 1118/2011 (VIII. 24.) of the Media Council]. Misrepresentation occurs if the audience can interpret the commercial information as part of the programme. The possibility of misrepresentation in respect of the commercial communication is sufficient for it to be considered misleading [Decision No. 215/2012. (II. 1.) of the Media Council].

The prohibition of surreptitious commercial communication is applicable to the publication of any surreptitious commercial message. The establishment of the surreptitious nature of commercial communication is not contingent upon the payment of any consideration for publication.

Also in the interest of avoiding the danger of consumers being misled, commercial communications in the media content may not use techniques that cannot be perceived by the conscious mind [Paragraph (4) of Article 20 of the Press Freedom Act)]. In such cases, consumers are unable to perceive that they have become the victims of manipulation, i.e. that they have been exposed to commercial communication; however, such communication may influence their subconscious. According to the Advertising Act, advertisements that cannot be perceived by the conscious mind (subliminal

advertising) "is advertising which, when published, due to time constraints or any other reason, influences the consumer in a psychological sense with stimuli from images, sounds, or other effects of an intensity below the threshold required for conscious perception" [Point *q)* of Article 3 of the Advertising Act].

10.3.3. The restrictions on the contents of commercial communications

According to Paragraph 5 of Article 20 of the Press Freedom Act, no commercial communication that offends religious or ideological convictions may be presented in media content.

In respect of the content of commercial communications, there are certain behavioural patterns, the propagation of which violates the public interest. On the basis of such considerations, commercial communications presented in media content may not encourage conduct that could be harmful to health, safety or the environment [Press Freedom Act, Article 19 (5)–(6)].

The requirement of the Media Act, according to which commercial communications presented in media content not may not violate human dignity and may not contain or support negative discrimination on the grounds of gender, racial or ethnic origin, nationality, religion or ideological conviction, physical or mental disability, age, or sexual orientation, is expressly limited to commercial communications published in media content [Media Act Article 24 Paragraph (1) Points *a)–b)*].

Since the faculties of minors are different from the faculties of the average consumer, as they are more credulous and suggestible, special attention has to be paid to them when formulating the rules of advertising law. Article 8 of the Advertising Act sets out the general prohibition of advertisements capable of harming the physical, intellectual or moral development of children and young persons, or which portray children or young people in situations depicting danger or violence, or in situations with a sexual emphasis. Furthermore, no "advertisement addressed to children and young persons may be disseminated if it has the capability of impairing the physical, mental, or moral development of children and young people, in particular those advertisements that depict or make reference to gratuitous violence or sexual content, or that are dominated by conflict situations resolved by violence".

The protection of minors is given priority in all media services since, in today's media market, they are regarded as a separate group of consumers; moreover, by persuading them, advertisers wish to exert an indirect influence on adults, too. What tools and methods are used in the media to approach and influence them is therefore hardly insignificant. The Media Act summarises the content-related provisions pertaining to business communications in audiovisual and radio media services that have been formulated on the basis of the above considerations. Commercial communications may not directly call upon minors to purchase or rent products or services, or to persuade their parents or others to do so. Commercial communications are not permitted to exploit the special trust of minors placed in their parents, teachers or other persons or the inexperience

and credulity of minors and may not (gratuitously) depict minors in dangerous situations. Among the special advertising provisions and limitations governing specific products, there are several other provisions formulated specifically with respect to the characteristics of this age-group [Media Act Article 24 Points *c)–f)*].

The protection of minors also plays an important role in the provisions restricting commercial communications broadcast in media services pertaining to alcoholic drinks. According to the requirements of the Media Act towards commercial communications related to alcoholic drinks, these may not specifically target minors, may not present minors consuming alcoholic drinks, may not encourage the excessive consumption of such drinks and may not present excessive drinking in a favourable light or the abstinence from alcohol as negative [Media Act Article 24 Paragraph (2) Points *a)–h)*]. Point b) of Paragraph (1) of Article 18 of the Advertising Act also contains a specific prohibition related to editorial practice, as no advertisement related to alcoholic drinks may be presented directly preceding, during the entire duration of, or immediately following programmes for children or minors [Advertising Act 18 (1) b)].

The other regulations pertaining to commercial communications are general, i.e. not limited to the protection of minors. Accordingly, commercial communications broadcast in media services and which pertain to alcoholic drinks may not show exceptional physical performance or driving of vehicles as a result of the consumption of alcoholic drinks; may not create the impression that the consumption of alcoholic drinks contributes to social or sexual success; may not claim that the consumption of alcoholic drinks has a stimulating, sedative, or any other positive health effects, or that alcoholic drinks are a means of resolving personal problems; may not create the impression that immoderate alcohol consumption may be avoided by consuming beverages with low alcohol content or that high alcohol content is a positive attribute of the drink [Media Act Article 24 (2)].

Media service providers providing linear media services are exempted from the classification duty in respect of advertisements, political advertisements, teleshopping, and public service advertisements and announcements, i.e. these programmes do not have to be classified according to the age rating categories specified in Article 9 of the Media Act. Commercial communications may not be aired at such times when it is foreseeable that these would not be allowed to be aired if they were provided with a proper rating based on their content [Media Act Article 10 Point *h)*]. Since the Hungarian regulations are mandatory for radio as well as audiovisual media services, Decision No. 741/2011 (VI. 1.) of the Media Council established that the advertisement of a shop selling sexual aids aired in a classic radio advertisement spot was capable of exerting a negative influence on the physical, mental, or moral development of minors by referring to sexuality directly; it could therefore only have been broadcast between 9pm and 5am.

Commercial communications broadcast in media services may not express religious, conscientious, or ideological convictions, except for commercial communications broadcast in thematic media services with religious topics, and may not violate the dignity of a national symbol or offend religious conviction [Media Act Article 24 Paragraph (1)].

According to Paragraph (7) of Article 20 of the Press Freedom Act, media content may not contain commercial communications aimed at the promotion or presentation of tobacco products, weapons, ammunition, explosives, gambling games organised without the permission of the state tax authority, prescription medications and therapeutic procedures. This restriction does not apply to the exemptions set forth in the Act on Commercial Advertising and other relevant legislation.

10.4. Sponsorship of media content providers and media content

10.4.1. The concept of sponsorship

The Press Freedom Act and the Media Act jointly adopted the rules of sponsorship liberalised by the AVMS Directive. Sponsorship means any contribution provided by an undertaking to finance media content service providers or media content with the purpose of promoting its own name, trade mark, image, activities or products, or those of others [Press Freedom Act Article (1) Point (12)]. Sponsorship is the pecuniary contribution expressly provided for the purpose of promotion; the commercial communication is the publication of the sponsorship announcement rather than the sponsorship itself.

10.4.2. The sponsor

Media services or programmes may not be sponsored by:
- political parties and political movements. In the interest of political neutrality and the elimination of political influence, this prohibition applies to all media services [Media Act Article 27 (1) a)],
- undertakings manufacturing tobacco products [Media Act Article 27 (1) *b)*],
- undertakings organising gambling games without the permission of the state tax authority [Media Act Article 27 (1) *c)*],
- undertakings, which—as their core business—manufacture products that may not be advertised or which provide services related to such products [the difference from the previous two limitations is that here the activities have to constitute the "core activity" of the undertaking, and such undertakings are required to refrain from the sponsorship of media services or programmes only in respect of such products or services, while their other activities may be promoted via sponsorship announcements, see Paragraph (2) of Article 27 of the Media Act],
- audiovisual media services and the programmes thereof may not be sponsored by other undertakings providing audiovisual media services or producing audiovisual programmes or cinematographic works [Paragraph (8) of Article 20 of the Press Freedom Act]. By this provision, Hungary has adapted the mandatory restriction of the AVMS Directive applicable to audiovisual services; however, the Directive is not applicable to media content services and so to the publishers of radio media services,

and print and online press products may be sponsors of or sponsored by audiovisual media services and the programmes thereof.

Paragraph (3) of Article 27 of the Media Act only establishes a restriction in respect of sponsorship tied to the publication of the name and trademark of an undertaking in connection with a medicine or a therapeutic procedure, or sponsorship tied to the promotion of medicines, medicinal products, or therapeutic procedures, which may be used without a medical prescription. Programmes sponsored by an undertaking engaged in the manufacture or distribution of medicines, medicinal products, or the supply of therapeutic procedures may not promote medicines, medicinal products, or therapeutic procedures accessible only with medical prescriptions.

10.4.3. The object of sponsorship, the content of the sponsorship announcement

The sponsoring of media content providers, i.e. the sponsorship of radio, audiovisual, linear, and on-demand media service providers as well as the printed and online press is equally permitted. In this case, the undertaking supports the operation of the service itself (the channel) rather than any given programme or media content.

If the support is provided for financing a given media content or programme, the sponsorship announcement may only be published in relation to that content or programme. The sponsorship of news programmes and political programmes is prohibited in audiovisual media services. This restriction does not affect the sponsorship of thematic media services broadcasting news and political programmes. The sponsorship of programmes reporting on the official events of national holidays is prohibited with regard to both audiovisual and radio media services [Media Act Article 28(1) *a)–b)*].

The media content published and sponsored in the media service may not encourage, call for, or discourage the purchase or use of the products or services of the sponsor, or a third party specified by the sponsor [Press Freedom Act Article 20 Paragraph (9)].

The presentation of the sponsorship announcement may take different forms: by referring to the name or the trademark of the sponsor or another undertaking designated by it, or by the publication or use of a symbol of the sponsor or another undertaking designated by it, or by reference to its product, activity, or service, or the publication or use of the distinguishing sign or logo of the aforesaid [Media Act Article 26 Paragraph (2)]. The name, slogan, or emblem of a political party or a political movement may not appear in the name or the displayed name of the sponsor. Since pecuniary contribution is provided in the interest of promotion, i.e. the sponsor expects to be provided with a promotional opportunity in exchange for the contribution that is economically advantageous for the financing of the given service provider or media content, the sponsor requires an appearance of such magnitude, nature and place as is proportionate to the objective to be attained.

Paragraph (5) of Article 27 of the Media Act clarified the situation that had been often the subject of disputes in previous legal practice (especially in relation to sports

broadcasts), by declaring that, unlike previously, it does not qualify as the sponsorship of an audiovisual media service or programme or as surreptitious commercial communication, if a public event, or the name or logo of the sponsor of the participants of the event, or the name of the product or the service of the sponsor is displayed on the screen in the course of the broadcast from the event (e.g. an interview in front of the so-called sponsor wall). However, for this to not constitute surreptitious commercial communication, two conditions must be met conjunctively: the media service provider may have no material interest in such an appearance, and the manner of appearance within the broadcast may not provide the sponsor with an unjustified emphasis. The rules of sponsorship do not apply in this case at all, i.e. even the logos of undertakings barred from sponsorship may appear in the broadcast.

If the sponsor of a person or undertaking appears in another way in the programme (e.g. during a studio conversation where the guest is wearing clothes decorated with the sponsor's logo), the rules on the sponsorship of media services and programmes are to be applied, with the exception of the duty to name the sponsor (i.e. undertakings barred from sponsorship may not appear in this case either, and the fact of sponsorship does not have to be communicated at the beginning and the end of the programme, since the revenue provided by the sponsor is not realised by the media service provider).

10.4.4. The placement of the sponsorship announcement

According to Paragraph (3) of Article 26 of the Media Act, the publication of the sponsorship announcement may not be damaging to the nature and content of the sponsored programme. According to the detailed rules of the provision cited, besides prior to and following the programme, the sponsorship announcement may also appear simultaneously with the programme (e.g. in the form of an on-screen subtitle). This may have an effect on editorial independence, too. In respect of editorial independence, the Press Freedom Act emphasises that the sponsor may not influence the media content or the publication thereof in a manner that could affect the liability or editorial freedom of the media content provider [Press Freedom Act Article 20 Paragraph (10)].

In the case of sponsorship, the audience must be informed of the fact of sponsorship. The party sponsoring the media content and the fact of the sponsorship are to be named concurrently with or immediately before or after the publication of the programme [Press Freedom Act Article 20(8)].

10.5. Product placement

The institution of product placement was introduced to European media regulation by the AVMS Directive. By adopting the rules of product placement, "the possibility of utilising new financial resources in the interest of the creation of locally produced

programmes has been made available to media undertakings".[117] On the basis of the authorisation conferred by the Media Act, the Media Council drew up the detailed rules of the application of product placement in the form of a soft law-type recommendation. The recommendation is not mandatory, but, since its formulation had been preceded by professional consultation with the media service providers in the interest of transparency, clarity, and a unified framework of application, adherence to the recommendation—as a directive summarising the practice of the authority— may be expected from both parties.

10.5.1. The concept of product placement

> Product placement shall mean any form of commercial communication which contains products, services, the trademark of the above or any reference to them and appear in a programme for payment or a similar consideration. [Media Act Article 203(68)]

Product placement, therefore, consists of commercial communication within programmes, inserted into their content by means of dramaturgical solutions.

An important condition is that placement is made against payment or a similar consideration. On the basis of Decision No. 1257/2011. (IX. 21.) of the Media Council, a "similar consideration" may consist of the provision of a consideration over and above the provision of the product to be placed or the free of charge provision of the product itself. The authority interpreted as a "similar consideration" the case in which a tabloid daily allowed the media service provider to produce a programme compilation in its editorial offices, in exchange for which the media service provider promoted the tabloid both verbally and visually in its programme, while the tabloid promoted and presented the media service provider in one of its issues.

Presentation for a consideration is only permissible if the programme is not directed at minors under the age of 14. Product placement is only permissible in programmes expressly directed at persons under the age of 14 if the producer or distributor of the given product, or the provider of the given service provides no—direct or indirect—financial remuneration to the media service provider or the producer of the programme besides providing the given product or service free of charge in the interest of the product placement. The so-called barter agreement between the advertiser and the media service provider is free of charge if the contracting parties conclude an understanding whereby products and services are exchanged and no cash flow occurs (i.e. the product to be placed on the side of the advertiser and the commercial communication on the side of the media service provider are the subjects of the exchange):

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[117] Decision No. 1048/2011. (VII. 19.) of the Media Council [as amended by Decision No. 1151/2011. (IX. 1.)] ordering the acceptance and publication of the recommendation issued in respect of the conformance of product placement and calls for product placement to the legal criteria provided for in the Media Act (hereinafter in the present chapter: Recommendation).

> [The] media service provider provides the surface for the presentation of the product, while the advertiser provides the media service provider with the product free of charge for presentation. The contracting parties both issue an invoice for the same amount, although the monetary value of the service and the consideration are not necessarily proportionate in all cases.[118]

10.5.2. The permission of product placement in certain programmes

Following the logic of the AVMS Directive, the Media Act prohibits product placement with certain exceptions. Similarly to the Directive, the Act contains a list of the programmes where product placement against consideration is permitted (unless the said programmes explicitly address minors under the age of 14). Accordingly, in the case of

a) cinematographic works intended for showing in movie theatres;
b) cinematographic works or film series intended for showing in media services;
c) sports programmes;
d) entertainment programmes
e) product placement is permitted.

Item a) Point 11 of Article 203 of the Media Act defines cinematographic works according to the Copyright Act (CA), expressly nominating those programmes that are not regarded as cinematographic works (news and political information programmes, programmes on current affairs and services, sports programmes, or programmes broadcasting other events, game shows, quiz shows, and commercial communications). Cinematographic works include, in particular, feature films, television films, television series, animation films, and documentaries. According to Article 64 of the CA, cinematographic works are works expressed by motion pictures arranged in a predetermined order and accompanied or not by sound, irrespective of what kind of carrier the work has been fixed on.

Item b) Sport programmes are programmes broadcasting sports events (simultaneously or after the event, in an edited format), excluding news reports on sports events and programmes containing discussions of sports-related topics [Media Act Article 203 (61)].

Item c) The precise definition of entertainment programmes is difficult, and it would be impossible to provide an exhaustive list of such programme types. According to the recommendation of the Media Council, the "primary objective" of entertainment programmes is to entertain the audience. Such programmes include, *inter alia*, talk shows, music shows, reality shows, variety shows, comedy, radio cabaret shows, game shows, magazine programmes, and programmes dealing with sports that do not qualify as sports programmes, with the exception of sports news.[119]

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[118] Ibid. 2.
[119] Ibid.

10.5.3. The restrictions on product placement

Unjustified emphasis, which does not otherwise stem from the content of the programme flow, may not be given to the product displayed. The meaning of "unjustified emphasis" is to be defined by jurisprudence in relation to actual cases. According to the position of the Media Council, the appearance of the product in the programme is given unjustified emphasis in particular in instances when the goods and services or their trademarks or any reference thereto appear in a way that is dramaturgically alien from the sequence of actions. Unjustified emphasis may be established, primarily on the basis of the frequency of appearance and the proportion of appearances to the length and nature of the given programme.[120] The Media Council ruled that the statement, repeated several times in a programme, according to which a daily newspaper was "the number one tabloid in the country" constituted unjustified advertising information that did not stem from the content of the programme [Decision No. 1257/2011. (IX. 21.) of the Media Council]. In its practice, the authority makes a distinction between visual and verbal product placement. In the first case, the product or its logo, etc., is visible in the programme, while in the second case its name is uttered during the programme. Furthermore, we may distinguish between active and passive product placement. In the case of active product placement, the product or brand is used, worn, or mentioned during the programme without giving it unjustified emphasis, while in the case of passive product placement the product or brand is merely present in the programme with no dramaturgic role, i.e. it is part of the background. Product placement may not directly call upon the purchase or rent of a product or the use of a service. According to the recommendation of the Media Council, such "direct call" is any (verbal or visual) intentional and clear appeal to purchase, promote, or use the product or service. In particular, the publication of the commercial availability and the price of the product or service within the programme, the description of its properties and advantages and the publication of the slogan, or the mentioning of the statements made in the commercial of the product or service constitute such a direct call. At the same time, the presentation of the product or service in relation to the subject matter of the programme in the interest of information, educational, cultural, critical, or consumer protection purposes does not constitute such a direct call.[121]

In the case of product placement, the advertising message is always inserted into the editorial content and so in this respect the protection of editorial independence is of particular importance. The actual manner of the incorporation of the advertising message (placement, frequency, emphasis), however, always depends on the decision of the media service provider; the media service provider is therefore liable in the event of any legal violations [Media Act Article 31 Point (1) *a)–c)*].

Viewers and listeners must be clearly informed of the fact of product placement. At the beginning and at the end of the programme containing the product placement, and when

[120] Ibid. 5.
[121] Ibid.

the programme resumes after advertisements, attention must be drawn to the fact of product placement in an optical or acoustic form [Media Act 31 (2)]. The obligation to provide information does not apply to programmes which were not produced or ordered by the media service provider, or another media service provider, or production company operating under the qualifying holding of its owner (e.g. films purchased, series).

10.5.4. Exclusion from product placement

No product placement may be published for free or against a consideration in news programmes and political programmes, programmes reporting on the official events of national holidays and in programmes with religious or ecclesiastical content. The content and nature of such programmes preclude their identification with such commercial communications, and no economic influence may be exerted over them in this manner. (Product placement targeting minors under the age of fourteen may not be published even against a consideration.)

The general restrictions on commercial communication are applicable to product placement as well. Programmes may not contain product placements of the following products: tobacco products, cigarettes, or other products originating from undertakings whose primary activity is the manufacture or sale of cigarettes, or other tobacco products; gambling services provided without the permission of the state tax authority; medicines, medicinal products, or therapeutic procedures which may only be used with a medical prescription [Media Act Article 31 Paragraph (4) Points *a)–d)*] and products that may not be advertised pursuant to other pieces of legislation [see e.g. Advertising Act Article 9 Paragraph (3)].

Similarly to the AVMS Directive, the recommendation of the Media Council discusses the joint use of product placement and sponsorship separately. According to the position of the Media Council, on the basis of the provisions of the Media Act, the joint use of product placement and the display of the sponsor in a single programme may not be precluded if it does not result in a violation of editorial independence.

10.6. Advertisements and teleshopping in linear media services

Special regulations apply to advertisements appearing in linear media services, while the general rules of commercial communication govern in this field, too. These provisions primarily contain requirements on the manner and volume of publication and take into account the use of the possibilities provided by technological development. For example, a requirement made of content is that presenters, reporters, or newsreaders appearing regularly in the news and political programmes broadcast in public and community media services may not appear or play a role in advertisements, or political advertisements broadcast in any media service, with the exception of the self-promotion of public media services [Media Act Article 36. Paragraph (4)].

10.6.1. The concept of advertising and teleshopping

The definition of "advertisement":

> communication, information, or form of representation intended to promote the sale or other use of marketable tangible assets—including money, securities and financial instruments and natural resources that can be utilised as tangible assets—services, real estate, pecuniary rights or to increase, in connection with the above purposes, the public awareness of the name, designation, or activities of an undertaking, or any merchandise or brand name [Media Act Article 203 (59), Press Freedom Act Article 1. (11)].

In contrast with the definition of the concept in the Advertising Act, this definition includes, among the conceptual elements of advertisement, its programme-like nature. Consequently, the requirements towards programmes are applicable to advertisements as well.

Teleshopping:

> is an advertisement which contains direct offers for the sale, purchase, or other utilisation of goods, services, rights, and obligations for payment or consideration, by way of establishing contact with the distributor or the service provider, including phone-ins operated as business undertakings transmitted in the media service [Media Act Article 203 (65)].

Teleshopping is therefore an advertisement that contains a direct purchase offer via direct contact with the distributor or service provider.[122] A teleshopping window is "a teleshopping facility, the uninterrupted duration of which is at least fifteen minutes" [Media Act Article 203 (66)].

10.6.2. The formal criteria of the publication of advertisements

A) Distinguishability

Instead of the former spatial and temporal delimitation of advertisements, the effective regulations require that advertisements be distinguishable from the other parts of the programme flow. In the case of audiovisual media services, this may take place in the form of an optical or acoustic notice, and by an acoustic notice in the case of radio media services [Media Act Article 33 Paragraph (1)].

[122] Kinga Pázmándi: A műsorelőzetesek szabályozásának ellentmondásai az elektronikus médiában. [The contradictions of the regulation of previews in the electronic media] *Gazdaság és Jog,* 2002/5. 263–265.

B) Advertisements published between programmes or by the interruption of a programme
Traditionally there are two types of placement of advertisements or advertising blocks, in the breaks between the programmes or by interrupting a programme. From the aspect of the viewer, the latter type is more disturbing as it interrupts the dramaturgical unity of the programme. It is in the interest of the mitigation of this effect and the protection of the rights of the producers related to the integrity of the programme that the law provides that, in linear media services, the advertisement or teleshopping broadcasted by interrupting the programme—taking natural breaks, the duration and nature of the programme into consideration—may not interfere with the coherence of the programme to an unjustified extent or violate the rights or legitimate interests of the holder of the copyrights or the related rights to the programme [Media Act Article 33 Paragraph (2)].

Besides the general restriction, the Media Act contains several further restrictive provisions:
– in sports programmes and other programmes featuring natural breaks, advertisements may only be broadcast between the parts and during such breaks [Media Act Article 34 Paragraph (1)], with the exception of split screen advertisements and virtual advertisements;
– cinematographic works, news, or political programmes, the duration of which exceeds thirty minutes—with the exception of television series or documentaries—may only be interrupted once every thirty minutes, including the duration of advertisements and previews as well.

Besides the above restrictions, it is expressly prohibited to interrupt with advertisements (teleshopping) programmes which
– broadcast political news or contain political information and the duration of which does not exceed thirty minutes;
– are intended for minors under the age of fourteen and the duration of which does not exceed thirty minutes;
– report on the official events of national holidays;
– have religious or ecclesiastical content, save for cinematographic works [Media Act Article 33 Paragraph (3)].

The strict application of the principle of distinction has been upheld in the case of public and community media service. No advertisements may interrupt these programmes. With regard to these, advertisements may only be published between the individual programmes—or, in the case of complete programmes consisting of several parts (e.g. sport broadcasts), between the individual programme parts—or preceding or following the programmes [Media Act Article 30 Paragraph (3)].

C) The rules governing new advertising techniques

Virtual advertisements and split screen advertisements constitute new, regulated advertising techniques: "[v]irtual advertisement shall mean an advertisement inserted, digitally or by any other method, subsequently into the programme signal or the programme" [Media Act Article 203 Point (72)]. In this case, the advertisement is inserted into the programme afterwards (e.g. by "projecting" an image using digital technology on an advertising pillar in the film, whereby the audience sees the advertiser's advertisement, rather than the image "seen" by the camera during shooting).

Using the possibility of the presentation of commercial messages in the programme, split screen advertising is a form of advertisement developed especially for audiovisual media services that is published on a particular portion of the screen displayed during a programme which itself does not qualify as commercial communication [Media Act Article 203 Point (53)]. Split screen advertisements may only be broadcast a linear audiovisual media service if these are separated from the programme in terms of visual appearance in a clearly recognisable manner, on half of the screen at most, indicating the nature of the advertisement on the screen in a clearly visible manner [Media Act Article 33 Paragraph (7)].

Virtual or split screen advertisements may not be published in a programme which:
- contains political news or political information and its duration does not exceed thirty minutes;
- is intended for minors under the age of 14 and its duration does not exceed 30 minutes;
- reports on the official events of national holidays;
- has religious or ecclesiastical content; or
- is a documentary and its duration does not exceed thirty minutes [Media Act Article 33 Paragraph (6)].

In the interest of the appropriate information of the consumers, proper designation is important in the case of such new advertising techniques, too. The media service provider is required to draw attention to the fact of the publication of the advertisements by an optical or acoustic notice immediately prior to and immediately after the given programme. This obligation does not extend over programmes produced independently from the media service provider. In public and community media services, split screen advertisements and virtual advertisements may only be broadcast in conjunction with the broadcast of sports programmes.

D) Advertising duration

According to Paragraph (1) of Article 35 of the Media Act, the duration of advertisements broadcasted on linear media services may not exceed 12 minutes within any 60-minute period, i.e. hour to hour (the "20% limitation"). The limitation of the duration of advertisements is based on consumer protection considerations: the objective is to limit the exposure of the audience to advertisements to a tolerable level.

From the aspect of the service provider, what is included in the hourly 12-minute quota is an important question. Split screen advertisements, virtual advertisements, non-interactive teletext with advertising content and the promotion of the programmes of other media services are to be taken into account against the 12-minute restriction. The Act lists the content that is not to be taken into account against the 12-minute restriction:

- teleshopping windows;
- political advertisements;
- public service announcements;
- public service advertisements;
- previews of the media service's own programmes or the programmes of another media service operating under the qualifying holding of the given media service provider or its owner;
- sponsorship announcements;
- product placements;
- non-interactive teletext, if it is broadcast in a local media service;
- virtual advertisements appearing in programmes which were not produced or ordered by the media service provider or another media service provider, or production company operating under the qualifying holding of the given media service provider or its owner;
- advertisements published in media services solely broadcasting advertisements and teleshopping;
- linear audiovisual media services advertising exclusively the media service provider or its other media services;
- announcements intended solely for the purpose of advertising the media service itself or the products complementing the programmes broadcast in the media service [Media Act Article 35 Paragraph (2)].

The transmission time used for broadcasting teleshopping windows may not exceed 3 hours per calendar day, not including the transmission time of the thematic media service broadcasting primarily teleshopping or teleshopping windows [Media Act Article 35 Paragraph (3)]. The duration of the advertisements and teleshopping broadcast in the linear media service of a public media service provider may not exceed 8 minutes within any 60-minute period, i.e. hour to hour (from the top of the hour). The duration of the advertisements and teleshopping broadcast in a community media service may not exceed 6 minutes within any 60-minute period, i.e. hour to hour (from the top of the hour). The broadcasting of non-interactive teletext containing advertisements is also counted into the duration of advertisements in the case of public media service.

10.7. Public service announcements, public service advertisements

10.7.1. The concept of public service announcement and public service advertisement

A public service announcement is:

> any announcement released without consideration, originating from an organisation or a natural person fulfilling state or local governmental responsibilities, which provides specific information of public interest for the purpose of attracting the attention of the viewers or the audience, and does not qualify as political advertising [Media Act Article 203 Point (27)].

A public service advertisement (PSA) is:

> any communication or message with a public purpose, which does not qualify as a political advertisement, is not for profit and does not serve advertising purposes, is transmitted for or without consideration, and which aims to influence the viewer or the listener of the media service in order to achieve a public interest goal [Media Act Article 203 Point (64)].

Public service announcements and public service advertisements may be distinguished from each other on the basis of three definitive criteria.

- The first such criterion is consideration. Being free of charge is a conceptual element of public service announcements, i.e. such announcements are to be published without consideration, while public service advertisements may be published for or without consideration on the basis of the decision of the media service provider. According to Decision No. 1256/2011 (IX. 21.) of the Media Council, the media service provider may not demand but may accept consideration for the publication of public service announcements.
- In the case of public service announcements, the source of the information is always a state or local government organisation or the representative of such, while the law makes no such provision with regard to public service advertisements.
- The content of a public service announcement is information of public interest, the purpose of its publication is to raise awareness. By contrast, a public service advertisement may be any communication or message serving the public interest that is free from any business interest, and serves no advertising purposes, but only intends to exert an influence in the interest of the attainment of an objective of public interest. In the decision referred to above, the Media Council established that the basis for the distinction between the two is the content of the message.

Neither public service announcements nor public service advertisements may qualify as political advertisements; in the case of the latter, the distinction from advertising messages of business interest is also important. If the media service provider is unable to decide which category the communication belongs to, the Media Council passes a

regulatory decision on whether the communication in question qualifies as a public service announcement, public service advertisement or as political advertising [Media Act Article 32 Paragraph (8)].

10.7.2. The distinction between advertisements and public service advertisements

According to the position formulated in Decision No. 1436/2011 (X. 19.) of the Media Council, "the distinction between (commercial) advertisements and public service advertisements is primarily based on the purpose and nature of the advertisements and the related business interests (if any); the object of the promotion is not among the criteria for the distinction". Freedom from business interests is a conceptual element of public service advertisements. In relation to a violation against the rules of the publication of advertisements, the Media Council examined the distinction between advertisements and public service advertisements in Decision No. 1705/2011 (XI. 23.). The authority established that:

> [The communication under examination] qualifies as advertising on the basis of its content, since it prompted the audience to visit a specific event, a festival, and carried business interests, as by calling attention to the festival it encouraged the use of a service. It encouraged participation in the festival and thereby the use of a commercial service rather than trying to influence the audience in the interest of the attainment of a public interest objective.

10.7.3. The rules of publication

The duration of the public service announcement may not exceed one minute. Public service announcements and public service advertisements must be immediately recognisable in nature and distinguishable from other media contents. In this case too, distinguishing is achieved by a visual and acoustic notice [Media Act Article 32 (7)].

Since the person or entity ordering the public service announcement or advertisement must be clearly identified upon publication, in relation to the publication of a public service announcement the Media Council passed a decision against a media service provider which failed to comply with this publication duty, as beside the name and account number of the foundation concerned and the name of the beneficiary it failed to clearly disclose the identity of the entity ordering the publication [Decision No. 170/2012. (I. 25.)].

The person or entity ordering the publication of public service announcements or public service advertisements and the person or entity with an interest in the publication thereof may not exert editorial influence over the media service, except at the time of publication [Media Act Article 32 Paragraph (1)].

10.7.4. Publication duty in public media services

Public media service providers are obliged to reserve two minutes of transmission time for the broadcasting of public service announcements in each two-hour period—i.e. from the top of the hour—in respect of the entire annual transmission time of their media service that has the highest audience share per year on average. This provision does not apply to the periods from hour to hour (from the top of the hour), when a programme that is longer than two hours and may not be interrupted due to its nature is broadcast. If the publication of such content is required, the media service provider is to relinquish the two minutes for such purpose; the two-minute period may only be used for other programmes if no such publication is required.

The publication of the public service announcements of the professional disaster management agency, if it provides information on the potential occurrence of danger to safety of life or property, on the mitigation of the consequences of an event that has already occurred or on the tasks to be carried out, is mandatory. This obligation is applicable to public or community media service providers and media service providers with significant market power. In justified cases the latter two are obliged to interrupt their programme flow with the publication of such announcements [Media Act Article 32 Paragraph (6) and Article 36 Paragraph (6)].

11. Special Regulations Pertaining to the Content of Media Services

11.1. Balanced coverage obligations

11.1.1. The media system and the duty to informing public

According to Article 10 of the Press Freedom Act

> All people shall have the right to receive adequate information on public affairs at the local, national, and European level, as well as on any event bearing relevance to the citizens of Hungary and the members of the Hungarian nation. The media system as a whole shall have the task of providing authentic, rapid, and accurate information on these affairs and events.

This provision on the duty to provide information does not generate any specific obligations in respect of the individual media content providers. It does not entail that the provision of general information is mandatory for all media; it is merely a declarative rule establishing the public service duty of the media. Originating from the universal right to information, the duty of the provision of information is one that applies to the entirety of the media market; as such, it is the legal formulation of the requirement of external pluralism. In itself this provision does not place any specific obligations on the individual media content providers; rather, it establishes a general principle of media law. The prescription of specific information obligations is only justified in the case of certain media service providers (public service and community media services, and media services with significant market power, see Paragraph (1) of Article 38, Article 66 and Point *m)* of Paragraph (1) of Article 83 of the Media Act). Furthermore, similar obligations may be prescribed within the framework of the tender procedures for frequency use.

11.1.2. Theoretical bases of the obligation of balanced coverage, and the reasons for regulation

The obligation of balanced coverage in terms of content is a sensitive area that raises several questions. The notions of balance, impartiality, and objectivity are often confused in both everyday usage and legal literature. The prescription of balanced coverage stems from the recognition of the public interest tasks of the media. On the basis of the provision, the information on and the coverage of the affairs of the community must represent opposing views. The relevant positions formulated regarding a given issue have to be collected and presented to the community, enabling the community to pass a well-founded decision on the issue under debate, thereby furthering the ideal of

democracy. As opposed to pluralism, the requirement of balanced coverage is a specific prescription: the fulfilment of this obligation is only required of information programmes (but is not limited to news programmes). The characteristics of the specific genre must be taken into account; accordingly, balanced coverage similar to that required from news programmes cannot be expected from certain other types of programmes (e.g. satirical political revues).

The requirement for balanced coverage only applies to linear television and radio media services, and may only be applied with respect to media ethics and professional requirements, always taking into account the circumstances of the specific situation. The differentiation between the various media content services (the exemption of press products from this obligation) is primarily due to the greater effect and influence of media services. Furthermore, it is indisputable that it has certain "historic" reasons, too, since the previous regulation was formulated at a time when the opportunities for providing media services were scarce. (It should be mentioned that the new Hungarian media regulation had intended to extend the obligation of balanced coverage to cover on-demand media services, too; however, as a result of the negotiations with the European Commission, this was removed from the text of the Act in April 2011.)

The obligation of balanced coverage does not mean that the various opinions have to be presented in equal length to the minute, since the law cannot measure the equal, unbiased treatment of the interviewees or the tone and gestures of the reporter. Obviously, it is not always possible to present all opposing views; during editing it is sometimes necessary to select from among the relevant views represented with appropriate weight and in appropriate proportion (this, however, may not mean that the "dominant" opinion is presented at all times). It is the views themselves, and not their representatives, that have to be presented: in the given situation the editor may select from the various proponents of a given view; however, in justified cases (e.g. if no interviewees are available from the opposite side), the reporter or the journalist may also act in the interest of balanced information by presenting the dissenting opinion. Balanced coverage is not required from every single programme; if it were, that would greatly complicate the production of information magazine type programmes, for example. In certain cases it is sufficient if—in the case of programmes consisting of several parts or regular appearances—balanced coverage is only achieved in respect of the entire programme series, or even only within the entire programme flow of the given channel.

11.1.3. The content of balanced coverage

The rule on balanced coverage has been part of the Hungarian legal system since 1996, the year of the entry into effect of the Radio and Television Broadcasting Act. Balanced coverage is a general category, several elements of which are specified in the law. In Judicial Decision No. BH2007. 253., the Supreme Court construed that, according to the law, the concept of balanced coverage includes the requirements of diversity, factuality, timeliness, and objectivity as well. At the same time, on the basis of the current legal

practice of the authority, it may be said that these sub-elements (diversity, factuality, timeliness, and objectivity) are not independent—and, consequently, may not form the basis for the initiation of a regulatory procedure independently—but are the sub-requirements of the requirement of balanced coverage. Similarly to Paragraph (1) of Article 4 of the former Radio and Television Broadcasting Act, Article 13 of the Press Freedom Act, the currently effective provision containing the formulation of the requirement of balanced coverage prescribes diverse, factual, up-to-date, objective, and balanced coverage. The further detailed rules pertaining to this obligation provided for by the Media Act refer to the obligation as the "the obligation of balanced coverage set forth under Article 13 of the Press Freedom Act". Article 181 of the Media Act only provides for rules of procedure in the event of violations against the obligation of balanced coverage; the authority does not separately examine the other provisions of Article 13 of the Press Freedom Act, i.e. the subcomponents of balanced coverage (diversity, factuality, timeliness, and objectivity). These are only subjected to scrutiny inasmuch as their violation has resulted in a violation against the obligation of balanced coverage. Or, put the other way round: coverage is only balanced if it conforms to these sub-components.

Decision No. 1/2007. (I. 18.) of the Constitutional Court stated that the obligation of balanced coverage is not contrary to the fundamental right of the freedom of the press, even in an age when the spectrum of programmes is constantly broadening. It is somewhat confusing that, during the examination of the constitutionality of the rules prescribing balanced coverage, the Decision uses the term "pluralism" as well. The Decision states that "taking into account the full spectrum of radio and television programmes, the emergence of the multi-actor market has achieved external pluralism. This diversity of programmes, however, does not eliminate the need for the prescription of the obligation of balanced coverage (internal pluralism)" [Statement of reasons, Point III./3. 2)]. That is, the Constitutional Court uses the two concepts as partly synonymous with each other. At the same time, the decision also states that in itself the liberalised media market is not sufficient for the achievement of pluralism (balanced coverage): "in the interest of maintaining the pluralism of opinions, balanced coverage is to be verified in the case of public service broadcasting organisations established using public funds as well as in the case of commercial radio and television stations with significant influence on public opinion" [Statement of Reasons, Point III./3.2)]. That is, if at some point in the future the obligation of balanced coverage were to be required from all media service providers, this requirement could not be restricted to the appropriate coverage provided by public media service providers: the sphere of the media service providers subject to the requirement would have to be broader (on the basis of the extent of the "influence on the public opinion", according to the Constitutional Court). At the same time, the above glimpse at the future may be misleading since, after all, the Decision of the Constitutional Court did not deem the application of the obligation of balanced coverage to all radio and television stations as unconstitutional; i.e. the possibility of narrowing the sphere of those subject to the obligation should be understood as a glimpse into an imaginary future. The Decision uses the terms "pluralism" and "balanced coverage" somewhat

confusingly, giving rise to several misunderstandings, since while it recognises the achievement of (external) pluralism, it still regards the requirement of balanced coverage as tenable. The two concepts—if we do not use them as synonyms for each other—are not mutually exclusive. Irrespective of whether the Court regards the issue of the achievement of external pluralism, the obligation of the balanced provision of information may still exist. The operative part of the Decision prescribes, as a constitutional obligation, that, depending on the nature of the programme, balanced coverage be evaluated within the individual programmes or within the entire programme flow. The former requirement may be justified in the case of daily newscasts or individual programmes, for example, while the latter may be acceptable in the case of regularly aired programmes.

The content of balanced coverage is, therefore, jointly defined by Article 12 of the Media Act and Article 13 of the Press Freedom Act. Article 13 of the Press Freedom Act states that:

> Linear media services engaged in the provision of information shall provide diverse, comprehensive, factual, up-to-date, objective, and balanced coverage on local, national, and European issues that may be of interest for the general public and on any events, and debated issues bearing relevance to the citizens of Hungary and the members of the Hungarian nation, in the general news, and information programmes broadcast by them. The detailed rules of this obligation shall be set forth by the Act with a view to ensure proportionality and democratic public opinion.

Article 12 of the Media Act provides that the "information activities of media services shall comply with the obligation set forth under Article 13 of the Press Freedom Act. Subject to the nature of the programmes, the balanced nature of the information provision shall be ensured either within the given programme or within the series of programmes appearing regularly." It is in the interest of balanced coverage and the separation of news, and the evaluation thereof that

> [s]ave for the explanation of the news, employees of the media service provider appearing regularly in the programmes providing news service and political information as presenters, newsreaders, or correspondents may not add any opinion or evaluative explanation to the political news appearing in the programme aired by any media service provider [Media Act Article 12 (3)].

During the application and interpretation of the provisions of the Press Freedom Act and the Media Act on balanced coverage, the provisions of the Press Freedom Act on fundamental principles must also be taken into account—first and foremost the last sentence of Article 13 of the Press Freedom Act, which declares that the detailed rules of balanced coverage shall be set forth by the Act, with a view to ensure proportionality and democratic public opinion. Accordingly, it must be taken into account that it is impossible to provide detailed coverage of individual facts or events in news programmes. Furthermore, the requirements of the protection of the freedom of the press as decreed in Article 4 of the Press Freedom Act, and the provisions on editorial independence and journalistic freedom found in Article 7 of the Press Freedom Act, should also be observed.

On the basis of the provisions, the information on and the coverage of the affairs of the community must represent all opposing views. The application of the law in practice by the Media Council suggests that the obligation of the media service provider only exists in relation to relevant opinions directly related to the topic presented. That is, the opinions that are only indirectly related to the given topic or the positions of groups and organisations that are basically not concerned with the given topic cannot be regarded as relevant. It also may be regarded as an established principle of the application of the law that if several organisations, groups of society or political parties represent the same position on a given issue and there are no relevant differences between them, it is sufficient to present only the opinion of a single such organisation or group. It is the views themselves, and not their representatives, that have to be presented: in the given situation, the editor may select from the various proponents of a given view; however, in justified cases (e.g. if no interviewees are available from the opposite side), the reporter or the presenter may also act in the interest of balanced information by presenting the dissenting position. The media service provider is free to choose from those representatives with identical or very similar opinions. Obviously, it is not always possible to present all opposing views; during editing it is sometimes necessary to select from among the relevant views. The number of different opinions to be presented in the programme may not be defined in advance. A situation is conceivable where the presentation of a single opinion is sufficient, while in other cases it may be necessary to present, for example, the opinions of all parliamentary parties. This depends on the specific subject and the number of relevant and different opinions available.

On the basis of judicial practice, the obligation of balanced coverage by the media service provider exists only with regard to information that is already known and public at the time of editing the programme. If new information arises later on in respect of an already presented topic, it is not absolutely necessary to return to that topic (Court Decision No. BH2005. 80.). Not all programmes have to be balanced: it is sufficient to achieve balance in respect of the totality of the sequence of programmes. However, when presenting a unilateral position in a programme, reference has to be made to the existence of dissenting views (Court Decision No. BH2006. 270.).

The balanced nature of coverage should also be examined in respect of whether the structure of the news content and the text heard are capable of influencing the audience, and whether, during the news piece or news report, commentaries are uttered containing value judgements that could emotionally influence the audience or exert an influence on the decisions of the members thereof.

The requirement of balanced coverage may only be applied with respect to media ethics and professional requirements, always taking into account the specific circumstances of the given situation. It cannot be construed as entailing that the presentation of the various different opinions should be equal to the second. The law cannot measure the equal, unbiased treatment of the interviewees or the tone and gestures of the reporter asking the questions.

It must be emphasised that balanced coverage, or the lack thereof, may only be established in specific cases, taking into account the specific circumstances; as such, even the above principles are not universally applicable.

The obligation of balanced coverage exists in respect of all media service providers providing linear media services (television and traditional radio), but the requirement stipulated in Article 13 of the Press Freedom Act is only applicable to news and information programmes. The Media Act gives the definition of "news programme" (Article 203 17), the most important conceptual element of which is the existence of the coverage of "the current events of Hungarian and international public affairs". There is no separate definition of the concept of "information programme"; however, it is reasonable to interpret the term narrowly, as referring to programmes discussing politics and public affairs (political background programmes, general programmes about public affairs, morning magazines), as, in the broader sense, any programme contains information about something. Judgement No. 4.Kf.27.281/2005/4 of the Budapest Court of Appeal established that if the topic discussed has a bearing on the everyday life of the population of the reception area, influences the public morale of that population, is related to the use and utilisation of state assets or is related to those services concerning fundamental constitutional rights and the duties of the state formulated in the constitution, such a programme is to be regarded as being in the public interest.

Article 3 of the Media Act declares, as a fundamental principle, that the content of the media service and the press product may be determined freely; nevertheless, the media service provider and the publisher of the press product shall be liable for compliance with the provisions of the law. Editorial freedom is not only a right of the media service provider, but a responsibility as well. The freedom of the editor of the programme is not unlimited, and should, *inter alia*, be construed in conjunction with the legal requirements on balanced coverage.

On the basis of editorial freedom established in Article 3 of the Media Act as a fundamental principle, the information obligation does not apply to media service providers in general with regard to any given case, i.e. they are free to determine the news items published in their programmes and the persons called upon to comment on them (or may decide not to perform any information service at all).

However, in the interest of the achievement of the public service objectives (see Article 83 of the Media Act), the obligation of information service applies to community and public service media service providers. Media service providers with significant market power also have a specific public service obligation: the Media Act states that they are required to publish news or information programmes of a precisely defined duration. Furthermore, according to the public contracts concluded with them, media service providers awarded with frequency use licences via tender procedures are required to provide an information service according to the requirements specified in the call for applications published by the Media Council.

However, nobody is granted the subjective right to demand their appearance or the publication of their opinion in any media, i.e. the requirement of balanced coverage does not entail a disproportionate limitation of editorial freedom. The requirement of balanced

coverage only applies to the news inserted into the broadcast and so, according to the practice of the Media Council, if the media service provider does not provide any coverage of an event, the possibility of any violation of the balanced coverage requirement is precluded. (It should be mentioned, however, that a different interpretation of the law is also possible. This was characteristic of the practice of the former media authority operating until April 2010, the National Radio and Television Commission. According to this other possible view, media service providers are obliged to provide coverage of events of public interest; the omission of such therefore constitutes an infringement of the law. The authority has defined the sphere of events of public interest on the basis of court directives.)[123]

The operative part of Constitutional Court Decision 1/2007. (I. 18.) orders, as a constitutional obligation, that, depending on the nature of the programme, balanced coverage be evaluated within the individual programmes or within the entire programme flow, and thus

> it is possible for the broadcaster to present the relevant positions related to public issues within a series of regularly aired programmes. The requirement of balanced coverage may not be construed to imply that the broadcaster is required to present every single position in every single programme. If the broadcaster were required to comply with the requirement of balanced coverage in respect of every single programme, that would result in a violation of the freedom of the press and, within that, editorial freedom, of a severity that is not justified by the legitimate objective of the legislator, the achievement of the pluralism of opinions.

Paragraph (2) of Article 12 of the Media Act incorporates the previous interpretation of the Constitutional Court, i.e. there are certain programmes that are required to be balanced in themselves while, in the case of others, balanced coverage is only required in respect of the entire programme flow rather than the individual programmes themselves.

In the course of the investigation of the authority, the categorisation of the programme by the Media Council is of special importance since, in the case of news programmes, the requirement of balanced coverage applies to each individual programme, while in the case of information programmes, balanced coverage is to be assessed in respect of the series of programmes, even if the complaint was lodged only against a single programme.

11.1.4. Proceedings in cases of infringement of the obligation of balanced coverage

Following the entry into force of the Media Act, in the event of a violation against the requirement of balanced coverage, proceedings are initiated against media service providers with significant market power [see Ch. 17] and public media service providers

[123] See, e.g. Judgement No. 24.K.35.225/2006/3 of the Budapest Metropolitan Court and Judgement No. 4.Kf.27.281/2005/4 of the Budapest Court of Appeal.

by the Media Council, while in the case of other media service providers first instance proceedings are initiated by the Authority's Office. Appeal against the decision of the latter may be lodged with the Media Council (the first and second instance decisions of the Media Council may be the subject of judicial review).

It is important to stress that the authority will only investigate a violation against the requirement of balanced coverage upon request. In comparison with the previous Radio and Television Broadcasting Act, the Media Act has broadened the sphere of those entitled to initiate proceedings. Accordingly, proceedings may be initiated by the representative of the position that has not been published as well as by any member of the audience (in practice it is usually a representative of the "silenced" opinion who lodges the complaint).

Balanced coverage is reviewed within the framework of a regulatory procedure. Prior to the initiation of the regulatory procedure, the applicant must first contact the media service provider with the complaint. Article 181 of the Media Act, which provides for this procedure, prescribes short deadlines for guarantee reasons: the applicant, within seventy-two hours of the broadcast of the contested information or, in the case of re-broadcast, from the date of the last broadcast, may request in writing that the media service provider broadcast the viewpoint required for balanced coverage, properly and under conditions similar to the contested information. The applicant may not exercise his/her right of challenge if another representative of the same position has already been given an opportunity to present the position not presented earlier, or if this opportunity has been given to the applicant but the applicant has failed to exercise it.

The media service provider decides on the acceptance or rejection of the objection within forty-eight hours of the receipt thereof and notifies the applicant of the decision forthwith in writing. If the applicant or another representative of the same position has already been given an opportunity to present the given position under similar conditions, the media service provider is not required to adopt the objection again. A procedure may also be initiated with the authority if the media service provider fails to comply with the content of the objection or complies with it incorrectly. In this case, the applicant may turn to the Authority within 48 hours from the communication of the decision or, if the decision is not communicated, within ten days from the date of the publication of the information objected to. The regulatory procedure is exempt from dues, charges, and administrative service fees. The Media Act specifies short deadlines in respect of the judicial review of regulatory decisions in order to ensure the timely publication of the relevant positions. The statutory period of proceedings conducted by the Authority is 15 days, which may be extended in justified cases on one occasion, by eight days at the most.

In comparison to the general regulatory supervision procedure of the media authority, the regulatory procedure investigating compliance with the requirement of balanced coverage is also special in that, if a legal violation is established, only the sanctions provided by the law may be applied. Should the authority establish that the media service provider has infringed the obligation of balanced coverage, the media service provider shall broadcast or publish the decision passed by the authority or the notice defined in the

decision, without any assessing comment thereon, as given in the decision of the authority, in the manner and at the time specified by the authority, or shall provide an opportunity for the applicant to present his/her viewpoint. In addition to the foregoing, other legal sanctions—as defined in Articles 186–187 of the Media Act—may not be applied against the breaching entity. The defendant or another participant in the proceedings may seek a review of the final decision of the Media Council by lodging a statement of claim against the Media Council with the Budapest Court of Appeal, by claiming infringement of law, within 15 days. The Budapest Court of Appeal shall judge the statement of claim in court proceedings, within 30 days. The Media Council is competent to adjudicate claims for legal remedy submitted against the decisions of the Office.

11.2. The regulation of European, Hungarian, and independent programme quotas

11.2.1. The contents of the obligation

Act XX of 2002 on the Amendment of Legal Harmonisation adopted the Member State obligations in the AVMS Directive to the Hungarian legal system among the provisions of the former Radio and Television Broadcasting Act. In harmony with the European Convention on Transfrontier Television and the AVMS Directive, the Media Act intends to realise the cultural objectives of the legislator by the creation of a comprehensive toolkit. With respect to the strengthening of national and cultural identity, as stated in the Preamble of the Act, and in the interest of the protection and support of domestic media undertakings, Articles 20–22 of the Media Act—taking into account the norms of the EU and Preamble Paragraphs (64)–(68) of the AVMS Directive—forest out a system of requirements for programme flow structure which consists of the mandatory proportion of European and Hungarian-language programmes and, as established in Paragraph (8) of Article 136, the aid scheme operating within the framework of the Media Service Support and Asset Management Fund.

Articles 20–22 of the Media Act appropriately forest out the rules of the presentation of European works according to the AVMS Directive, supplementing these with the rules on Hungarian works. Since the Directive only contains provisions on European works, there are significant differences between the quotas of the various Member States.

On the basis of the comparison of the effective regulations with those in force prior to 1 January 2011, it is apparent that, compared to the provisions of the Radio and Television Broadcasting Act, the Media Act has significantly increased the sphere of media service providers required to meet the quotas. While the Radio and Television Broadcasting Act only gave quota obligations in respect of national and regional media service providers providing audiovisual media services, Articles 20–22 of the Media Act require that quota obligations apply to the following media services: national linear audiovisual media services, regional linear audiovisual media services, national linear radio media services,

regional linear media services, local linear audiovisual media services, regional linear radio media services, linear audiovisual community media services with local reception area, local reception area linear radio community media services, and on-demand media services.

The Media Act provides different obligations in respect of linear media service providers and on-demand media services. Furthermore, within linear media services, different obligations apply to audiovisual and radio media service providers and special provisions are formulated in respect of public audiovisual media service providers.

According to the AVMS Directive [Point *n)* of Paragraph (1) of Article 1 and Paragraphs (2)–(4) of Article 1] and the Media Act (Point 9 of Article 203), the term "European work" denotes:

> *a)* any Hungarian work;
> *b)* any work originating in a member state of the European Union;
> *c)* any work originating in a European state which is a party to the European Convention on Transfrontier Television, adopted in Strasbourg on 5 May 1989, promulgated by Act XLIX of 1998;
> *d)* any work produced under the co-production of the production companies of a member state of the European Union and a state outside the European Union, provided that the majority of the total co-production costs is provided by the co-producers from a EU member state, and the production is not controlled by one or more producers who are established in a country other than an EU member state; or
> *e)* any work produced in co-production, within the framework of an agreement concluded between the European Union and third countries concerning the audiovisual sector, and which complies with the conditions of the applicable agreements.
> The works mentioned in Points *b)–c)* are works which were produced by authors and with the contribution of professionals having their addresses in one or more states defined under points *b)–c)*, provided that the given work meets one of the following three conditions:
> 1. it is the work of one or more producers established in one or more of the above-mentioned states;
> 2. its production is supervised and actually controlled by one or more producers established in one or more of the above-mentioned states;
> 3. the contribution of co-producers from the above-mentioned states to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside the above-mentioned states.
> The works defined under Points *c)* and *e)* can qualify as European works if no discriminatory measures apply to the works originating from the members states in the given affected state outside the European Union.

According to Point 37 of Article 203 of the Media Act, the term "Hungarian work" denotes:

> *a)* works originally made in the Hungarian language in their entirety;
> *b)* works originally made in several languages, but when considering their overall length, their parts originally made in Hungarian are longer than any of their other parts made in any other language;
> *c)* works originally made in the languages of any of the nationalities recognised by Hungary, provided their subject matter concerns the life or culture of the given nationality in Hungary;

d) a music programme performed in Hungarian or performed in the language of any of the nationalities recognised by Hungary, provided its subject matter concerns the culture of the given nationality related to Hungary;

e) an instrumental music programme, which, primarily because of its composer or performer, forms part of Hungarian culture or the Hungary-related culture of any of the nationalities recognised by Hungary; or

f) a cinematographic work which qualifies as a Hungarian work in accordance with the Act on Motion Pictures.

11.2.2. The proportion of the quotas to be met

According to the regulations in effect, a linear audiovisual media service is required to devote over one half of its annual transmission time to broadcasting European works, over one third to broadcasting Hungarian works and at least ten percent to broadcasting such European works, and at least eight percent of its transmission time to broadcasting such Hungarian works that were ordered by it from an independent production company, or were purchased from an independent production company within five years of production. (The Hungarian quota is not to be construed as an obligation to be met over and above the European quota.)

Article 21 of the Media Act provides rules in the interest of the protection of Hungarian musical culture applicable to linear radio media service providers. According to Paragraph (1) of Article 21, in linear radio media services at least 35 percent of the total annual transmission time dedicated to broadcasting musical works should be allocated to broadcasting Hungarian musical works. The diversity called for in the Preamble of the Act that is mandatory for the entire media system must, of course, be achieved in respect of this obligation, too. The requirement that a quarter of the Hungarian recordings should be less than five years old also serves this. According to its intentions, the provision on the presentation of musical works created or published less than five years ago serves the emergence of new talents, thereby ensuring the renewal of Hungarian musical culture. The Act contains no restrictions of the frequency of the repetition of the works, i.e. a repeated presentation of the same musical work is also included in the quota.

A time restriction is also specified: the vast majority of the quota requirements must be met by the various media services during the transmission between 5.00 a.m. and 12.00 p.m. [Media Act Article 22 Paragraph (5)]. This is not to be understood as the media service being required to meet the quota provisions on every single day during this period, since—as given in Article 21 Paragraph (1)—the quotas have to met on a yearly average. The reason for the provision on the period of the day is to prevent media service providers from meeting their quota obligations during the commercially less valuable night hours.

The Act provides a stricter quota in respect of community radio media services since these are required to allocate at least 50 percent of their weekly transmission time committed to programmes broadcasting musical works to the presentation of Hungarian musical works [Media Act Article 66 Paragraph (4) Point *h)*].

Paragraph (3) of Article 20 of the Media Act formulates strict requirements towards public audiovisual media service providers on the basis that the objective of public media services as defined in Article 83 of the Media Act, is, *inter alia*, to support, sustain, and enrich national, community, and European identity, culture and the Hungarian language, and to present Hungary and Hungarian culture as well as the culture of the national and ethnic minorities living in Hungary to Europe and the world. Public audiovisual media service providers are required to devote over 60 percent of their total annual transmission time to European works, over half to Hungarian works and over one third to works ordered or purchased from production companies independent from them that were produced less than five years ago. The Act does not provide quotas that are stricter than the general ones in respect of public radio media service providers.

With respect to Preamble Paragraph (69) of the AVMS Directive, Paragraph (2) of Article 20 of the Media Act provides a European and Hungarian quota in respect of on-demand media services as well: Over one-quarter of the total length of the programmes made available in a given calendar year in the form of on-demand audiovisual media services must be European works, and at least ten percent must be Hungarian works (these obligations are not cumulative, either, i.e. meeting the Hungarian quota is counted against the European quota, too).

Linear television and radio media service providers, therefore, are required to define the quota obligations applicable to them on the basis of their total annual transmission time, not including the transmission time specified in Paragraph (7) of Article 22 of the Media Act, devoted to news programmes, sports programmes, games, advertisements, teleshopping, political advertisements, public service announcements, sponsorship announcements, public service advertisements, and non-interactive teletext. The regulations favour media service providers providing more than one media service [Media Act Article 22 Paragraph (6)] by requiring that the quota requirements are to be met as an average of the total transmission time of all of their media services; only radio media service providers are required to meet the quota of Hungarian musical works in respect of each of their media services [Media Act 22(6)].

The Act exempts from the programme quota requirements those media services engaged exclusively in advertising and teleshopping services as well as media service providers exclusively advertising the media service provider or another media service of the media service provider. The programme quotas are not applicable to media services which broadcast their service exclusively in a language other than the languages of the Member States of the European Union: where programmes are broadcast in this language or languages in the significant part of the transmission time, the provisions do not apply to the respective part of transmission time. Also exempted from the quota requirement are local media services, with the exception of local community media services, as well as media services which are exclusively broadcasted in countries outside the European Union.

Another type of exemption from the quota rules is exemption upon request as defined in Paragraphs (2)–(6) of Article 22. In the case of a new media service, the application for exemption may be lodged simultaneously with the initiation of the registration procedure. In the case of already operating media services, the application in respect of the next calendar year must be lodged no later than 30 September. In the application the media service provider is required to specify the proportion intended to be achieved by it (separately for each year, if the application is submitted for a period of several years), and the duration of the exemption, as well as the detailed reasons for and justification of the application. According to the effective regulations, exemption may be granted for a term of three calendar years in a public contract on condition that the media service provider—until it reaches the prescribed proportions—gradually increases the proportion of broadcast Hungarian and European works and works produced by an independent producer in its media service [Media Act Article 22 Paragraph (2)]. The operative word here is gradualness, i.e. the proportion of the quotas has to be increased each year in such a manner as will ensure that the media service meets the requirements on programme flow structure provided for by law by the end of the fourth year as of the conclusion of the exemption agreement. Such an exemption from compliance to the provisions concerning programme quotas may not be general [Media Act Article 22 Paragraph (4)]. The Media Act provides the possibility of exemption for a term of over three years by introducing the institution of long-term or permanent exemption in respect of certain service providers. A public contract entered into with a media service provider offering radio media services and on-demand media services may permit a long-term or permanent deviation from the programme flow structure requirements defined in Articles 20–21 [Media Act Article 22 Paragraph (3)]. Linear television media service providers may only deviate from the time limits guaranteeing innovation [Media Act Article 22 Paragraph (3)]. The basis and justification of long-term or permanent exemptions are reviewed regularly (e.g. annually) by the Media Council ex officio; if the exemption is found to be unjustified or unfounded, the Media Council may amend or terminate the public contract granting the exemption. The Media Act states that, apart from long-term or permanent exemption, no general exemption may be granted.

The supervision of the annual quotas sets a serious challenge for the media authority. Controlling the 365-day term is problematic; currently no technological solution exists that is capable of monitoring the offerings of the media service providers continuously and with high accuracy. According to Paragraph (8) of Article 22, the media service providers are required provide data based on self-assessment monthly to the Media Council for the verification of compliance with the provisions concerning programme quotas. Media service providers submit their records on the fulfilment of the quotas on a weekly basis; these records are aggregated by the Office each month. Since the Media Act requires the fulfilment of the quotas in proportion to the entire annual transmission time, violations of these rules may only be established and sanctioned retroactively once a year, in possession of the data for the entire year.

11.3. The regulations on the coverage of events of major importance

Paragraph (1) of Article 16 of the Media Act states that an audiovisual media service provider may not exercise an exclusive broadcasting right so as to deprive a substantial part—more than 20 percent—of the Hungarian audience with access to audiovisual media services of the opportunity to follow the events, live or in a subsequent broadcast, regarded to be events of major importance to society, through an audiovisual media service accessible without the payment of a subscription fee.

In comparison to the rules on the provision of access provided in Articles 16–18 of the Media Act, Article 19 provides another restriction on exclusive broadcasting rights in the interest of the information of the audience. While appropriately respecting exclusive rights, the provisions of the Media Act on short news reports set forth the rights of the media service providers requesting access and the rules of such access. In this way, apart from access to the signal of the media service with exclusive broadcasting rights, access may include a recording by another media service provider at the site of an event of major importance or the footage created by the holder of the exclusive broadcasting rights may be provided to other media service providers.

The programmes or news programmes of media service providers may broadcast a part of an event otherwise open to the public—simultaneously with or following the broadcast—if the event is broadcast with exclusive rights by another media service provider, on condition that the length of such a broadcast does not exceed the limitation on the extent of the free use of authorial works. The total length of the parts to be broadcast may not exceed 10 percent of the total length of the programme concerned, or 50 seconds at most. (The contract may permit the broadcasting of parts with a longer total length.) In the event of an application for access, the details are governed by the contract concluded between the parties. Within these limits the audiovisual media service provider acquiring the rights of a short news report may freely decide which part of the programme of the holder of the exclusive broadcasting rights it wishes to broadcast in its own news and information programmes; however, it must indicate the holder of the exclusive right with whom the contract was concluded. Only linear audiovisual media service providers may acquire the right to short new reports; however, they may also publish the short news report broadcasted within their linear media service in their on-demand media service too, in an identical format.

The procedure for the establishment of the status of events as being of major importance and the manner of broadcasting such events constitutes a special regulatory procedure. The Media Council passes a regulatory decision on the definitions of events of major importance for society following a public hearing. Such events may include both cultural and sports events.

The Media Act provides three considerations for the compilation of the list: the event is of major importance if it is of interest to a large part of the audience, if the event is a

world or European level event or relates to Hungary, or if the event is broadcast in many European Countries.

Decision No. 950/2011 (VII. 19.) of the Media Council has defined the list of events of major importance to society according to the following; however, the European Commission had not passed a decision on the approval of the list by the closing date of the present volume.

On the basis of Paragraph (1) of Article 18 of the Media Act, audiovisual media service providers with exclusive broadcasting rights are under an obligation to contract if the media service provided by them is not accessible to at least 80 percent of the Hungarian audience without the payment of a subscription fee. The audiovisual media service provider with exclusive broadcasting rights is accordingly obliged to make a contract proposal—subject to reasonable terms and conditions and in exchange for consideration appropriate under the prevailing market conditions—to the linear audiovisual media service provider which provides services accessible for at least 80 percent of the citizens of Hungary without the payment of a subscription fee, when approached by such service provider for the broadcasting of the said event. Under such circumstances, the media service provider which obtained exclusive rights may not refer to not being entitled to assign the exclusive right. In such cases, the holder of the exclusive broadcasting right is obliged to make a contract offer to the applicant and the agreement is to be concluded by the parties within 15 days. The obligation to contract of the media service provider holding exclusive broadcasting rights also exists when the subject of the exclusive broadcast is an event of major importance to society in one of the Member States of the European Union. If several audiovisual media service providers established in different Member States have acquired exclusive broadcasting rights in respect of the event of major importance, access may only be requested from media service providers established in the same Member State as the applicant (in the absence of such, naturally, access may be requested from other media service providers as well). This means, for example, that if an audiovisual media service provider established in Hungary and another audiovisual media service provider established in Germany have both been granted exclusive broadcasting rights in respect of an event on the list provided for by Paragraph (2) of Article 16 of the Media Act, the other media service providers established in Hungary may only request access from the rights holder established in Hungary: in keeping with the AVMS, the right of access may only be cross-border if necessitated by the circumstances.

Although the parties establish the details of the contract, Article 18 of the Media Act contains certain provisions on the remuneration and the manner of broadcasting. The contract must be concluded under equitable, reasonable and non-discriminatory terms. In respect of the remuneration, the legislator has formulated a further, clarifying provision, namely that the counter-value of the right of access may not exceed the direct costs incurred by providing the access (in order to avoid over-pricing, which would result in the unfeasibility of the legal institution and would frustrate its original objective).

On the basis of the above, it may be established that the regulations of the Media Act constitute an intervention in the economic relationship between the media service provider with exclusive rights and the authorised media service provider, which creates a legal obligation provided for by law in respect of contracting and the establishment of the legal relationship. On the other hand, the obligation to contract is a restrictive law enforcement measure proportionate to the objectives of constitutional media regulations, and which is capable of ensuring the attainment of the regulatory objectives provided by the AVMS Directive and the Media Act and enables a significant part of the Hungarian audience to access events of major importance as well.

A substantial element of the enforcement of the obligation to contract consists of ensuring that the authorised media service provider is able to appropriately assert its rights. Paragraph (5) of Article 18 and Articles 172–174 of the Media Act set out the order of the assertion of rights in respect of the obligation to contract related to the coverage of events of major importance and the basis of the competence of the regulatory application of the law. The provisions of the Administrative Proceedings Act are to be applied as further secondary regulations.

If the media service provider holding exclusive rights and the media service provider conforming with the relevant legal requirements, and which requests the contract proposal from the former are unable to reach agreement—i.e. the agreement is not concluded within 15 days from the date of the proposal, or if there is a dispute between the rights holder and the authorised media service provider in respect of the remuneration for the coverage of the compulsorily offered event—the Media Council may proceed within the framework of a legal dispute procedure in respect of the legal dispute between the media service providers concerned. The legal dispute procedure may be initiated by either contracting party. The Media Council shall initially attempt to achieve a compromise between the adversaries. If this fails, the Media Council shall pass a decision upon the dispute on the merits. In the event the Media Council establishes an infringement in respect of the obligation to contract, it will call upon the infringing media service provider to cease and desist from the infringement within an appropriate deadline and will call upon both parties to conclude the contract. As a result of the legal dispute procedure—depending on the contents of the applications for the initiation of the legal dispute procedure—the Media Council may establish or amend the contract on the coverage of the event and may determine the contractual content subject to the dispute. The Media Council is only entitled to establish the contract and the contractual provisions if the application contains an unequivocal and clear textual proposal in respect of the contractual content requested to be established or determined. The Media Council incorporates the resolution passed via the legal dispute procedure in a decision containing, among others, the deadline for meeting the obligation, the legal sanctions applicable in the absence of voluntary compliance, information on the possibility of legal remedy, the factual and legal reasons behind the decision, and the evidence offered by the client but disregarded, as well as the reasons for disregarding it, and the discretionary aspects taken

into account during the decision. The Act provides for legal remedy against the decision of the Media Council, as the media service provider may request the judicial review of the decision.

11.4. Warnings about content offensive to the audience

Article 14 of the Media Act formulates the obligation to provide a warning about offensive content according to the following:

> Viewers or listeners shall be given a forewarning prior to the broadcasting of any image or sound effects in media services that may hurt a person's religious, faith-related, or other ideological convictions or which are violent or otherwise disturbing.

The cited passage of the Media Act is an almost verbatim repetition of Paragraph (1) of Article 5 of the former Radio and Television Broadcasting Act. Article 14 of the Media Act does not intend to interfere with editorial freedom; it may not be applied in the interest of the prohibition of the publication of certain content, i.e. it is not of a censorial nature but merely serves to inform the audience.

The issue of the extent to which an expression or statement of opinion may hurt the religious convictions of certain people and groups does not depend on whether it is within the permitted limits of the freedom of expression, as the sensitivity of the individuals may vary greatly. In respect of the protection of religious conviction, the basis of consideration is that the violation of the freedom of expression should be avoided, and so the section of the law cited does not declare that expressions capable of hurting religious convictions or feelings of creed should not be published at all, but only that, prior to their presentation, the audience has to be warned about this possibility in order to be able freely to decide whether to view the given content or not. When examining such expressions, however, one must not disregard the purpose of the legislator, namely, that it is "conviction" that is protected by the law, i.e. the authority is not concerned with the possible violation of the religious sensitivity of the members of the given community. Contents that may violate convictions must be analysed with special circumspection in order to be able to assess them according to objective criteria. It is important to emphasise that, for the application of this rule, it is the effect rather than the content of communications that has to be put to scrutiny. (The provision in Point *d)* of Paragraph (3) of Article 33 of the Media Act, according to which programmes that have "religious or ecclesiastical content, save for cinematographic works, may not be interrupted with advertisements or teleshopping" also serves to uphold respect towards religious ceremonies broadcast by the media.)

The provision of Article 14 of the Media Act is the "first step" in the interest of the protection of communities organised on the basis of religion or ideology, which prescribes a soft obligation, as it provides no prohibition of the publication of the content concerned.

The second, stricter step is the prohibition of incitement to hatred and exclusion as provided by Article 17 of the Press Freedom Act.[124]

The application of the provision in Article 14 of the Media Act is primarily called for in the case of news and information programmes. The obligation to provide information (forewarning), according to Article 14 of the Media Act, however, does not entail the restriction of editorial freedom: the editor and the media service provider may freely decide what events are reported by the various programmes, i.e. they may report on accidents, manslaughter or other severe criminal offences, too. If, however, these topics are treated and presented to the public in a manner that may be disturbing, for example by describing a brutal case of manslaughter in detail, then, according to Article 14 of the Media Act, the media service providers are required to issue a warning and thereby provide members of the audience who do not wish to be exposed to the shocking scenes with the possibility of choice. Such a warning is especially important during time slots when a large number of children are watching television.

The predictable and consequent application of this provision entails a difficult task for the authority, since it requires the assessment of an extensive variety of contents. While entrusted with the duty of protecting the interests of the members of the audience, the authority has to avoid the impression that its decisions might be based on the individual tastes of the decision makers—some sort of general social standard or expectation needs to be identified, albeit one that is undergoing constant change.

During the course of the application of the above provision, on the one hand it has to be examined whether the programme broadcasted is capable of violating the religious or ideological convictions of the viewer, or is violent, or otherwise contains potentially disturbing imagery and sound effects, while, on the other hand, it has to be verified that the media service provider has forewarned the audience about this circumstance. Deciding whether a given content is potentially disturbing, as defined by law, always requires circumspect examination and the consideration of the specific characteristics of the case. Given the variation of the stimulus threshold among the members of the audience, the authority has to verify from the aspect of an average viewer/listener whether the given content is potentially disturbing or not.

The facts of the official cases resulting in sanctions against the media service providers may be grouped according to the following:

– offences against religious or ideological convictions [Decisions of the National Radio and Television Commission Nos. 79/2008. (I. 9.), 1083/2008. (VI. 11.), and 374/2004. (III. 31.)];

[124] Bernát Török: A vallási meggyőződés tisztelete a magyar médiaszabályozásban. [Respect for religious convictions in Hungarian media regulations] In *A személyiség burkai. Írások, tanulmányok a 60 éves Majtényi László tiszteletére* [*Shells of personality: Writings in honour of the 60-year old László Majtényi*] Budapest, Eötvös Károly Intézet, 2010. 112–116.

– the use of obscene, indecent expressions [e.g. Decisions of the National Radio and Television Commission Nos. 1507/2007. (VI. 27.), 2456/2006. (XI. 8.), and 2579/2005. (XII. 14.)];
– sexual content [e.g. Decisions of the National Radio and Television Commission Nos. 870/2006. (IV. 26.), 283/2002. (II. 19.)];
– presentation of violent images and sound effects, or of criminal acts [e.g. Decisions of the National Radio and Television Commission Nos. 156/2010. (I. 27.), 693/2010. (IV. 14.), 1302/2009. (VI. 24.), 2506/2009. (XII. 16.), 1035/2008. (VI. 5.)];
– presentation of accidents [Decisions of the National Radio and Television Commission No. 476/2005. (III. 17.)];
– other [e.g. Decisions of the National Radio and Television Commission Nos. 2300/2005. (XI.9.), 870/2006. (IV. 26.), 2118/2006. (IX.20.), 589/2005. (III. 31.), 763/2008. (IV. 29.)].

Part III

The Legal Framework of Journalism

12. The Legal Status of Journalists

12.1. The concept of a 'journalist'

Today, even a blogger writing from home as a hobby may be regarded as a journalist, although the influence of the press operating as an institutional, professional undertaking is much greater, of course. Journalists cannot be identified on the basis of formal criteria—e.g. chamber membership, professional activity—so essentially anyone who performs information activities in front of a public forum, either by collecting new or by evaluating existing information, may be regarded as a journalist. The scope of media regulations, however, only extends over the services of professional media undertakings operating as business enterprises; content outside this sphere are only subject to the general legal provisions (e.g. Civil Code, Criminal Code).

Journalism may be conducted under a pseudonym, an assumed name or even anonymously, too. Paragraph (2) of Article 77 of the Civil Code expressly permits the use of an assumed name and the civil law protection of names is granted to such. Artisjus maintains a register of voluntarily assumed names and *noms de plume*, in part because such a register is of assistance in the enforcement of the authors' rights to their names, and decreases the possibility of choosing identical names.

Anonymity is primarily characteristic of the online press, blogs, and comments; it is one of the most important elements of the formulation of opinions online (many people are ready to comment on issues anonymously which they would refuse to do if they had to reveal their real names). Anonymous journalism or journalistic activity conducted under a pen-name does not, of course, entail a waiver of legal liability; the number of judicial decisions ordering internet service providers to identify subscribers publishing infringing content is therefore increasing worldwide.

12.2. Tasks and activities of journalists

The ideal or traditional concept of journalism is related to the service of the public interest. According to the practice of the European Court of Human Rights, the task of the publication of information of public interest and opinions on topics of public interest

are "incumbent on" the media.[125] In similar spirit, Constitutional Court Decision No. 37/1992. (VI. 10.) declares that "[t]he press is not only a vehicle of the freedom of expression, but also that of information; that is, it has a fundamental role in accessing information, which is a precondition to the formulation of opinions". The democratic tasks of the media are performed by journalists, who therefore play an important role in democratic society.

In keeping with the above, according to Article 10 of the Press Freedom Act, "[t]he media system as a whole shall have the task of providing authentic, rapid, and accurate information about public affairs at the local, national, and European level, as well as on any event bearing relevance to the citizens of Hungary and the members of the Hungarian nation". In itself this general principle cannot be enforced legally; it is rendered specific by various provisions of the regulation (e.g. balanced coverage as provided for in Article 13 of the Press Freedom Act) in respect of radio and television, while in respect of press products it remains a declarative fundamental principle.

Besides legal regulations, the work of journalists is governed by the ethical codes and moral norms of their profession. Generally these repeat already existing provisions, sometimes formulating them in greater detail, while in some cases they impose additional obligations to the subjects under their scope. In certain cases the rules of the trade may be of significance in the establishment of legal liability, too: on the basis of Constitutional Court Decision No. 36/1994 (VI. 24.), in cases involving slander against and defamation of public figures, the defendant (most often a journalist) publishing false allegations may only be held liable if he or she was aware that the information published was false or "did not know about its falsehood because of his or her failure to pay attention or exercise caution reasonably expected of him/her pursuant to the rules applicable to his or her profession or occupation". The rules of the trade may therefore have legal relevance.

12.3. The privileges of journalists and the press

Resolution 1003 on the ethics of journalism of the Parliamentary Assembly of the Council of Europe firmly declared that the "journalist's profession comprises rights and obligations, freedoms and responsibilities."[126] In order to fulfil its democratic obligations, the media may enjoy rights and privileges that are not available to non-journalists exercising the right of freedom of speech. Recommendation [R (2011) 7] of the Committee of Ministers of the Council of Europe on a "new notion of media" lists the privileges of journalists, which are the following: the protection of sources; freedom of

[125] See e.g. *Observer and Guardian v. the United Kingdom* (decision no. 13585/88 of 26 November 1991), *Sunday Times v. the United Kingdom* (decision no. 13166/87 of 26 November, 1991), *Thorgeir Thorgeirsson v. Iceland* (decision no. 13778/88 of 25 June 1992), *MGN Ltd. v. the United Kingdom* (decision no. 39401/04 of 18 January 2011), *Uj v. Hungary* (decision no. 23954/10 of 19 July 2011).

[126] Resolution 1003 (1993) on the ethics of journalism.

movement and access to information; the right to accreditation (collectively: the right of access); protection against misuse of libel and defamation laws; entitlement to tax benefits providing financial advantages; and the "internal" freedom and pluralism of the press (Point 42).[127]

12.3.1. Protection of information sources

The maintenance of the confidentiality of sources is integral to the freedom of the press as, lacking such a guarantee, the media would be barred from a wide range of confidential information of public interest, which, in turn, would impede the right of the public to information. The right of confidentiality may extend over court procedures as well, including witness testimonies during the investigative phase. The protection of the sources of information, however, may not be unlimited; in certain cases public interest may call for the revelation of the journalist's sources.

The earlier Hungarian regulations, the 1986 Press Act (repealed) left the media defenceless in precisely the most important process, namely criminal proceedings, when it failed to guarantee the right of confidentiality and left the settlement of the issue to the Act on Criminal Procedure. According to Point *b)* of Paragraph (1) of Article 11 of the 1986 Press Act (repealed), the journalist "may—and, upon the request of the source, should—maintain the confidentiality of the identity of the person providing the information; in the case of information on criminal offences the provisions of the penal laws govern". Thus, revealing the identity of the journalist's source was generally deniable with regard to civil lawsuits and administrative procedures previously, too. At the same time, on the basis of Point *c)* of Paragraph (1) of Article 82 of the Code of Criminal Procedure, giving evidence could only be refused if the witness was bound by confidentiality on the basis of his or her profession. Journalists, however, are not bound by confidentiality on the basis of their profession, or, more precisely, it is not their profession that binds journalists to confidentiality (as with physicians or attorneys); such a confidentiality obligation may arise from their agreement, if any, with their sources. That is, the confidentiality obligation was not based on the profession, but on a civil law agreement, i.e. an understanding that may be concluded with the owner of an important piece of information by non-journalists, too. Accordingly, prior to the new regulations, journalists could be obliged to reveal their sources during criminal proceedings.

Hungarian media regulation has instituted a general right of confidentiality in the interest of the protection of journalists' sources. In respect of the rule on the protection of journalists' sources, Constitutional Court Decision 165/2011 (XII. 20.) established regulatory shortcomings and, consequently, a constitutional violation by omission in respect of the provision concerned during the examination of the original Article 6 of

[127] Recommendation CM/Rec (2011)7 of the Committee of Ministers to member states on a new notion of media.

the Press Freedom Act, and, furthermore, established regulatory shortcomings and, consequently, a constitutional violation by omission in respect of the entire legal system, because the appropriate guarantees for the protection of journalists' sources were not in place in official and court proceedings.

Within the sphere of source protection, it is the confidential relationship between the person providing the information and the information source that is entitled to protection. According to the decision, the relevant provisions of the Press Freedom Act "were constitutional in respect of their direction" when they provided for the protection of journalists' sources as a right enforceable vis-à-vis the authorities, too, but due to the lack of guarantees, Article 6 of the Press Freedom was in a state of constitutional violation by omission, as was the entire legal system. Accordingly, the decision established that the regulations on criminal, civil and public administration regulatory procedures were also incomplete, as these contained no provisions on the protection of journalists' sources; therefore, the "regulatory inadequacy of the procedural guarantees" was established not only in respect of the Press Freedom Act, but "generally, in respect of the entire legal system". The protection of qualified data (which would have been exempted from the general right of confidentiality according to the original text of the Press Freedom Act) constitutes a necessary limitation of the freedom of the press according to the Constitutional Court; however, the general priority of the protection of qualified data over the freedom of the press, with no preliminary judicial review, constitutes a disproportionate limitation.

The original text of Paragraph (2) of Article 6 of the Press Freedom Act stated that the exercise of the subjective right of source protection in court or in regulatory procedures was conditional upon the provision of evidence. In other words, the media service provider could only have pleaded for protection of the journalist's source if it was able to prove that the publication of the information was in the public interest. Accordingly, the authority would not have been required to prove that the disclosure was necessary: it would have been sufficient if the media service provider was unable to prove the public interest vested in the publication of the information. This burden of proof would have greatly increased the possibility of limitation and no constitutional objective was found that would have provided sufficient grounds for placing the burden of proof on the protection of journalists' sources, and so the Constitutional Court struck down the last phrase of Paragraph (2) of Article 6 of the Press Freedom Act.

In this way, the decision of the Constitutional Court uncovered the deficiencies of the new regulations as well, and—on the basis of the review of the practice of the European Convention on Human Rights—specified the criteria that should be taken into account to remedy the constitutional violation by omission. These criteria are the following: (1) the opportunity to resort to preliminary Court revision against the first decision; (2) the statutory limitation shall be in accordance with the provisions of Article 10(2) of the European Convention on Human Rights, that is, limitation shall be properly substantiated; (3) limitation is possible only when the Authorities do not have alternative ways to obtain the particular information; (4) the limitation should be proportionate, that is, revealing the identity of information sources should take place in exceptional cases only, when so

justified by a threat to human life or health or particularly significant public interest; (5) in the context of protecting information sources, the opportunity to reject delivery of documents, deeds, and data media shall also be provided for; (6) no burden of proof may be required for the exercise of the right of information source protection.

The amendment adopted in the wake of the decision of the Constitutional Court in June 2012 established the necessary procedural guarantees and the possibility of legal remedy in all cases. The new wording of Paragraph 6 of the Press Freedom Act is as follows:

> Article 6(1) A media content provider or a person in an employment relationship, or in a work-related legal relationship with a media content provider, shall be entitled, as stipulated by the respective Act, to keep the identity of a person delivering information to him/her in connection with the media content provider's activities (hereinafter: journalists' source) in the course of court or regulatory procedures, as well as to refuse to hand over any documents, objects or data carriers that could potentially reveal the identity of the journalists' source.
> 2) In order to investigate a crime, the court may—in exceptionally justified cases as defined by law—oblige the media content provider or a person in an employment relationship, or in a work-related legal relationship with a media content provider to reveal the identity of the journalists' source, or to hand over any document, object, or data carrier that could potentially identify the journalists' source.

Accordingly, the exceptions from the protection of sources are provided in the Code of Criminal Procedure rather than the Press Freedom Act. Paragraph (6) of Article 82 of the Code of Criminal Procedure states that:

> (6) The court may oblige a media content provider or a person in an employment relationship or in a work-related legal relationship with a media content provider to reveal the identity of the person providing the information in relation to the media content provision activities if being aware of the identity of the person is essential to investigate a deliberate crime punishable by imprisonment of three years or more, if the evidence expected from such sources may not be replaced by any other piece of evidence, and if the interest in investigating the crime—taking into consideration the material weight of the crime—is important enough to clearly override the interest in keeping the journalists' source in secret."

Revealing the identity of the source is only possible if a severe and premeditated criminal offence has been committed, and the identity of the source is indispensable for the investigation of such an offence, provided that this information cannot be acquired without ordering the disclosure of the source of the information. As such, rather than specific exceptions, the new regulations provide a single general rule as the exception and permit the ordering of the disclosure of the source in the interest of the investigation of any criminal offence punishable with a minimum of three years' imprisonment.

As a result of the amendment, the procedural laws contain the procedural provisions on the confidentiality of the source of the information. The relevant provisions of the Code of Civil Procedure [Article 170 Paragraph (1) Point *f)*], the Code of Criminal Procedure [Article 82 Paragraph (1) Point *d)*], the Administrative Proceedings Act [Article 53 Paragraph (4)] and Act II of 2012 on Regulatory Offences, the Regulatory

Offence Procedure and the Regulatory Offence Registry System [Article 60 Point *c)*] establish, as a circumstance constituting grounds for the justified refusal to give testimony, the case when the testimony of the media content provider or a person employed by or in another work-related legal relationship with the media service provider would disclose the identity of a person providing information related to the media content provision activity. Since the institution of journalists' sources is protected by the confidential relationship between the journalist and the source of the information, all of the above acts provide that the exemption shall remain valid even after the legal relationship justifying the exemption is terminated.

The Media Act [Article 155(5) *b)*], the Administrative Proceedings Act [Article 50/A(2)] and the Act on Regulatory Offences [Article 76(1) *a)*] provide that the client (the journalist) may not be obliged to provide any data, or to hand over any deed, instrument or document, or to present the object of examination if that would—even indirectly, unintentionally—result in the disclosure of the identity of the source. In theory, a situation could arise in which a journalist is obliged to provide information or to hand over an object, and the ancillary consequence of this is the disclosure of the journalist's source.

The amendments make it clear that only a court of law may oblige journalists to disclose their sources. This, by definition, is only possible within the system of the Code of Criminal Procedure; therefore civil courts and public administration tribunals have no competence in this respect. The Code of Criminal procedure assigns the decision to the investigating magistrate [Article 207(2) *f)*], against whose ruling there exist further avenues of legal remedy.

12.3.2. Special access rights

The other fundamental issue related to the privileges of the press is whether the media have special access rights in respect of sites and events that are otherwise not public. As a general rule, everyone is granted the right of attendance at court procedures and parliamentary sessions—limited only by the space available—but certain procedures, trials, and sessions may be held *in camera*. It is disputable whether the media is to be granted access to penal institutions, or if this right of the media is to be understood as being broader that the access rights of others (relatives, for example).

The general recognition of the access rights of the media is yet to come; currently these privileges are usually recognised on the basis of custom. The wariness towards the recognition of the right is understandable: on the one hand, the lack of space would not allow the satisfaction of all needs (even the press gallery of the Parliament can only hold a finite number of journalists) and, on the other hand, excessive journalistic interest would significantly complicate the operation of the institutions. Furthermore, barring the public from certain procedures is necessary as a guarantee (e.g. the court trial of confidential cases). Although the possibility of access may be limited, the obligation to

inform the press is a widely recognised and protected right that is not only provided for by the Act on Information Freedom, but is also recognised by the Press Freedom Act as a fundamental principle that is mandatory for certain organs and organisations, although no legal sanction is provided for in respect of its violation:

> State and local government bodies, institutions, officers, public officers, persons entrusted with public functions and directors/managers of business associations in the majority ownership of the State or local governments shall be obliged to assist media content providers in performing their obligation of information supply by providing the necessary information and data to the media content providers in a timely manner and in accordance with the legislation on the disclosure of data of public interest and the freedom of information.

The general limitations of the freedom of the press and the legal provisions on the protection of confidential information may serve as the basis for exceptions from the obligation to provide information. The relevant procedural laws cover the publicity of court proceedings.

12.3.3. The "internal" freedom of the press

In certain cases, journalists and editors are entitled to freedom from the owner of the press product or media service, this is known as the so-called "internal" freedom of the press. Act XIV of 1914 (the second Hungarian press act) had already provided for the legal relationship between the publisher and the journalists, granting the latter certain rights if the publisher "demanded that they write announcements" (Articles 57–60). But how could the independence of journalists and editors from the influence and pressure of the owner be granted in today's media landscape?

The Press Freedom Act grants media workers a level of freedom from the owners and advertisers that is unmatched even at the European level. Article 7 of the Act declares that:

> Persons employed by or engaged in any other work-related legal relationship by the media content provider shall be entitled to professional independence from the owner of the media content provider, or from natural or legal persons or business associations without legal personality sponsoring the media content provider, or placing commercial communications in the media content, as well as to protection against any pressure from the owner or the sponsor aimed to influence the media content (editorial independence and journalistic freedom of expression). No sanctions set forth in the labour laws or originating from any other work-related legal relationship may be applied against any person employed by or engaged in any other work-related legal relationship by the media content provider for their rejection to comply with any instruction that would have violated editorial freedom or the journalistic freedom of expression.

The purpose of this rule is to ensure professional independence and is based on the recognition that not only the state, but also certain private interests may jeopardise the independence of the media and the performance of their tasks in the public interest. The

owners may naturally still define the direction and the character of their media, but may not issue direct instructions to journalists and editors that would violate their independence. According to the Act, no sanctions set forth in the labour laws or originating from any other work-related legal relationship may be applied against journalists or editors for their rejection to comply with any instruction that would have violated their journalistic freedom of expression (at the same time, the owner may naturally freely decide upon employing them).

12.3.4. Tax benefits

One of the privileges of the press is the entitlement to various tax benefits. According to Paragraph (2) of Article 82 of Act CXXVII on Value Added Tax, in Hungary the tax rate on printed products, i.e. books, dailies (publications published at least four times a week), journals, and periodicals (publications published at least once a year) is 5 percent. Editors of book and newspaper publishing houses, journalists, radio and television editors are subject to a tax regime more favourable than the general one on the basis of Act CXX of 2005 on the Simplified Contribution to Public Charges up to a revenue limit of HUF 25 million p. a.

12.4. The legal environment of investigative journalism

12.4.1. The category of investigative journalism

The term "investigative journalism" denotes the research and disclosure by journalists of the background of news, facts, and phenomena that are of public interest. Investigative journalism consists of independent research and the disclosure of hitherto unknown relationships. In contrast with journalists engaged in daily reportage and the preparation of analyses, who are concerned with public events using relatively easily accessible sources, the task of investigative journalists is to discover information that is usually intentionally kept secret, as it is related to legally or ethically condemnable issues. The purpose and task of investigative journalism is the disclosure of the truth; therefore investigative journalists often deal with sensitive issues and are compelled to use methods different from those of traditional journalism.

12.4.2. The regulation of investigative journalism

Is it permissible for the press to violate the law in the interest of discovering criminal acts or abuses during its investigations? Where are the limits of investigative journalism?

The issue of the legal and ethical limits of investigative journalism has been raised several times in Hungary, too, for example in April 2004 when the Internet news website

Index.hu published a report on a closed session of the campaign team of the Hungarian Socialist Party. The journalist visited the event incognito, without permission, and reported on the rather gross statements made there (e.g. that in the campaign for the upcoming European Parliament elections, activists could do almost anything, with no respect to ethical norms or the codes of the election, etc.). The case gave rise to a dispute on whether the conduct of the journalist—i.e. reporting on an *in camera* session without permission—had been ethical, or not.

In November 2006 a court of law found two reporters from TV2's programme "Napló" [Diary] guilty when they produced an investigative report on how Budapest parking supervisors could be bribed. Although the report—which was filmed using a spy camera—was clearly in the public interest and exposed a criminal offence, this was not sufficient for the Budapest Metropolitan Court, which found the journalists guilty. Although the least severe measure, court admonition, was applied, the mere fact of the establishment of guilt is capable of discouraging journalistic investigation and urging the condemnation of investigative journalism by the application of the law.

In September 2008 the National Radio and Television Commission (the former media authority) found two investigative reports from Hír Televízió [News Television] to be infringing the rules due to the methods used. In one case, in the channel's Híradó21 [News21] programme, broadcasted on 23 February, a reporter from the TV channel pretended to be the campaign manager of minister of finance János Veres. The telephone conversation thus conducted and recorded was capable of giving rise to suspicions of electoral fraud among the viewers. Abusing the personal identity of someone else, the reporter made an illegal offer related to the campaign to the Roma local authority representatives. Decision No. 1510/2008. (VIII. 27.) of the National Radio and Television Commission established that this conduct of the television station had violated the right of name (nobody may use the name of others unlawfully) and, furthermore, that during the telephone conversation the reporter made an offer that is condemned by society in the name of someone else, which constitutes a violation of the right to reputation.

In November 2008 a reporter from the channel *RTL Klub* was arrested after making a report on the abuses related to disability certificates, revealing how local authority employees assisted in the acquisition of parking permits using false medical documents. The journalist was accused of abetting the forgery of official documents by public officers.

If the objective to be attained is the involvement of journalists in the promotion of the transparent and democratic operation of public authority, then—provided that they are cooperative—even accusation by the investigative authority may be unwarranted, and investigative journalists who do not inform the police in advance about their activity should not be sentenced, as their activity obviously presents no danger to society.

Article 8 of the Press Freedom Act provides that investigative journalists may not be held liable for any breach of law committed by them in connection with obtaining information of public interest, provided that the particular item of information could not have been obtained by them in any other manner, or the difficulties endured while obtaining such information would be out of proportion. Relief from liability is only

granted if such a breach of the law by the journalist does not constitute a disproportionate or serious violation, and the information is not obtained in breach of the Act on the protection of qualified data. Relief from liability does not constitute an exemption from the enforceability of claims under civil law for compensation for damages caused to property by the unlawful conduct of the journalist.

12.5. Consent to the publication of interviews and statements

In order to lawfully publish an interview or statement (including materials to be published in any media), journalists are required to answer two questions. The first question is whether the interview or statement has to be provided, for review, to the interviewee. The answer is given in Paragraph (2) of Article 15 of the Press Freedom Act, which states that the statement prepared for publication only needs to be presented if the person making the statement so requests, i.e. the law provides for no general presentation obligation.

The second question is whether the consent of the person making the statement is required for the publication of the interview or report. According to Paragraph (2) of Article 15 of the Press Freedom Act, after presentation, the person making the statement may only revoke consent to publication if the media content provider has materially modified or distorted the statement in a way that is detrimental to the person making the statement. This narrowed the theoretical possibility of retraction as, on the basis of the 1986 Press Act (repealed), any changes qualified as sufficient grounds for retraction, irrespective of whether they were detrimental or not. The phrase "materially modified or distorted the statement in a way that is detrimental to the person making the statement or who appears in the media content" expresses that it is the modification of facts and factual information rather than the style, tone, structure, and length of the text that may provide the grounds for retraction. Besides the provisions of the Press Freedom Act, the right to the integrity of the work provided for in the Copyright Act also serves to protect journalists and media content providers against unjustified changes to the media content created by them. The text precludes the interpretation according to which persons not featured (or only mentioned) in the media content are entitled to initiate a retraction.

Paragraph (3) of Article 15 further narrows down the right of retraction; on the basis of this provision, apart from the cases defined in Paragraph (2)—i.e. material change or distortion—statements made in connection with local, national or European public affairs, events of significance to the citizens of Hungary and the members of the Hungarian nation, or statements made by official persons, persons entrusted with a public function or politically exposed persons in relation to their public office may not be retracted in any case.

Partly in relation to the previous paragraphs but open to interpretation independent from the contents of those, Paragraph (4) of Article 15 contains a special cause of nullity in respect of civil law contracts. According to this rule, media content providers may not enter into agreements with persons appearing in media content which limit the enforceability of the right of the person appearing in media content to his or her reputation,

honour or privacy, or the right to withdraw the statement pursuant to Paragraphs (1) and (2) of Article 15.

This provision allows a broad interpretation of the concept of statement (interview): on the basis of the text it may be construed to mean almost any intentional appearance in the media (at the same time it does not include the coverage of public appearances or any other activity which, although not directly intended for media appearance, are covered by the media, or cases when the media speaks or writes about someone who does not appear in the media personally). In practice, such statements may give rise to problems in two instances: if a public figure intends to retract their statement made to the press or if someone (e.g. a participant in a reality show) claims that their media appearance has been distorted and they have been misled in respect of such appearance.

In comparison with the 1986 Press Act (repealed), the new regulations significantly increase the scope for action available to media content providers while, in the interest of the protection of democratic publicity, they tighten the right of the retraction of statements and offer protection against the anomalies experienced previously.

On the basis of the examination of Article 15 of the Press Freedom Act, Constitutional Court Decision No. 165/2011. (XII. 20.) established that, among such circumstances, the counter-party of the publisher of the press product is an individually identifiable person with clearly defined and enforceable subjective rights. As such, there is no reason for any restrictions that would allow the public authority to take action in the event of a breach against personal rights or their enforceability. That is, the authority (the Media Council) has no constitutional right to exercise supervision over Article 15 of the Press Freedom Act, as this may only be done by a court of law (the legal amendment of June 2012 based on the decision of the Constitutional Court refined and rendered more precise the provisions of Article 15, therefore the present text of the Article is not identical to that at the time of the adoption of the law).

12.6. The responsibility of journalists

During their work, journalists are required to observe the rules of several branches and fields of the law (criminal law, civil law, data protection law, media law, etc.). However, it is primarily the publisher of press products and the media service provider who are the subjects and rights holders of the provisions of media law; therefore it is they who may be clients in the proceedings before the media authority. At the same time, journalists have civil and criminal responsibility for the media content created by them. Journalists may be liable to make amends and to provide indemnification and may be sentenced to fines (or even to imprisonment, in theory, although no such—final and binding—sentence has been passed throughout the modern history of media law in Hungary).

The Media Act introduces, within narrow bounds, the personal liability of the executive officers of media content providers [Article 187(1)]. The executive officer, however, is not usually a journalist or an editor (although such a case cannot be ruled out); therefore typically this provision has no bearing on journalistic responsibility.

12.7. The self-regulation of journalism

Self-regulation is conceivable not only in respect of publishers and media service providers (who are directly subject to the obligations provided for by media law), but also in respect of journalists and editors; in fact, the latter attempt self-regulation more often. The provisions on the rights and obligations of journalists are set forth in the code of ethics, which is a set of written and published norms that conforms to the legal regulations, but contains more detailed explanations, goes into more details sometimes, and forests out additional obligations, too.

In Hungary an effective system of self-regulation and a common code of ethics encompassing the entire media market has yet to be adopted by the whole of the industry. The Forum of Editors-in-Chief was established in January 2012 by a number of editors working in the Hungarian media market in order to lay down common governing principles and to see that they are widely adopted by the industry. These governing principles set out the external and internal conditions of conscientious journalism: impartiality, thoroughness, the rules of the acquisition, and management of information, the prohibitions related to conflicts of interest and the relationship between editorial content and advertisements. A document containing ethical norms—the Common Fundamental Ethical Principles—had also been created previously and was broadly accepted by the trade. This was drawn up in 2000 by the Association of Hungarian Journalists, the Community of Hungarian Journalists, the Hungarian Catholic Association of the Press and the Hungarian Press Union in the interest of the ethical operation of Hungarian journalism on the basis of the so-called Visegrád Protocol, the result of the media conference held in Visegrád in 1999, which was the first document providing for the basics of ethical regulations. The Mutual Ethical Principles, however, had no perceptible effect on journalistic practice.

Part IV

Problems of Regulation Relating to the Media

13. Regulatory Issues over Print and Online Press Products

13.1. The past: the 1986 Press Act

Prior to the adoption of the Press Freedom Act, the fundamental rules appertaining to press products were contained in the previous press law, the Press Act of 1986. Although it defined no control mechanism, the Act provided for content obligations related to media activities, i.e. the production, issue, and publication of press products.

When defining the concept of "periodical publication," the 1986 Press Act did not nominate the Internet-based forms thereof (which is hardly surprising, given the date of its adoption). Later on, however, but prior to the adoption of the Press Freedom Act, judicial practice interpreted the concepts of the 1986 Press Act in alignment with the new technological circumstances, e.g. several decisions provided that web-based products that today are considered to be online press content were classified as periodical publications.

The Preamble of the 1986 Press Act established that "everyone may publish their opinions and works via the press if these do not violate the constitutional order of the Hungarian Republic". With the aim of the realising this objective, Chapter 1 of the Act, containing the fundamental provisions, defined the task of the press. According to this, the task of the press (periodical publications according to the terminology of the Press Act, replaced by broadcasters and news agencies in the Radio and Television Broadcasting Act of 1996)—in harmony with the other instruments of communication—is to ensure the authentic, accurate and timely provision of information. As a fundamental requirement, the Act formulated that the press should facilitate the understanding of the relationships between various social phenomena [Paragraphs (1)–(3) of Article 2]. Similarly to Article 4 of the Press Freedom Act, the Press Act provided that the freedom of the press may not violate public morals or prejudice the personal rights of others [Paragraph (1) of Article 3 of the 1986 Press Act].

Although the 1986 Press Act stipulated that everyone may produce and publish press products, it also provided that, in the interest of the enforcement of other fundamental constitutional rights, this right may be limited to the extent absolutely necessary and proportionate to the circumstances [Paragraphs (1)–(2) of Article 12]. Within the sphere of press publications, the production and publication of periodical publications fell under a registration duty on the basis of the previous press act, too, and the distribution of periodical publications was prohibited prior to their registration.

The 1986 Press Act did not provide for any control mechanisms in respect of the obligations related to content; however, Decision No. 34/2009 (III.27.) of the Constitutional Court emphasised that the 1986 Press Act establishes the fundamental principles of the exercise of the freedom of the press in the form of guidelines for the legislative and executive branches of power, and "thus, it cannot be ruled out that the legislature shall assign certain sanctions to the violation of concrete legal rules based on similar provisions of fundamental principles". The Press Freedom Act, on the other hand, was accepted as an act containing such specific obligations, compliance with which is overseen by the Media Council and the Office of the National Media and Infocommunications Authority on the basis of the Media Act.

13.2. The regulation of the content of press products

The new regulations establish—varying—obligations with regard to all actors in the media market, including the producers of both print and online press products. The regulations of the press provide for specific negative (i.e. prohibitive) content obligations in respect of the various press products [the only exceptions to this are certain advertising-related rules, see Paragraphs (1)–(2) and Paragraph (8) of Article 20 of the Press Freedom Act].

Accordingly, in keeping with Constitutional Court Decision No. 165/2011. (XII. 20.), with some exceptions, the scope of the Press Freedom Act extends over the press products published by media content providers established in Hungary. The exceptions are that the obligation of balanced coverage (Article 13 of the Press Freedom Act) only applies to linear media services; the respect of human dignity as an abstract requirement (Article 14 of the Press Freedom Act), and its official supervision is limited to the field of media services; some of the provisions serving the protection of minors were originally formulated expressly in respect of media services [Paragraphs (1)–(2) and (4) of Article 19 of the Press Freedom Act]; and certain provisions related to supported media content also expressly refer to media services [the second sentence of Paragraph (8) and Paragraph (9) of Article 20 of the Press Freedom Act].

In keeping with Article IX of the Basic Law, Article 4 of the Press Freedom Act also sets out that Hungary recognises and protects the freedom of the press and ensures its diversity, and that the freedom of the press includes independence from the State and from any organisations or interest groups. The Act also adds to this that the exercise of the freedom of the press may not constitute or encourage any acts of crime, or violate public morals, or the personal rights of others. Title IV of the Press Freedom Act, "The Obligations of the Press", defines the specific, negative (prohibitive) content rules according to the following:

– one of the most fundamental provisions applicable to the content of press products (as well as any other media content) is that no self-serving and detrimental presentation of persons in humiliating or defenceless situations is allowed [Paragraph (2) of Article 14 of the Press Freedom Act],

- it is prohibited to misuse the approval granted to the media content provider (and thus, the publisher of the press product) for the publication of statements intended for public disclosure,
- also applicable to all media content providers is the requirement that their activities may not violate the constitutional order,
- the press product may not incite hatred or discrimination against persons, nations, communities, national, ethnic, linguistic and other minorities or any majority as well as any church or religious groups,
- access to media content in the printed press media that could materially damage the intellectual, spiritual, moral, or physical development of minors, especially by displaying pornography, extreme, or unreasonable violence, may only be granted to the general public in a manner that prevents minors—by the application of an appropriate technical or other solution—from accessing such content. If the application of such solutions is not possible, the given media content may only be published with a warning label informing of its possible harm to minors,
- the presentation of minors in a way that could materially jeopardise their mental or physical development as appropriate to their age is prohibited
- commercial communications presented in press products are also regulated in detail.

Decision 165/2011 (XII. 20.) of the Constitutional Court established that, under certain conditions, duties relating to the content of print and online press products may be prescribed, and that compliance with such may be overseen by an authority. Constitutionality is conditional upon the limited and justified (necessary and proportionate) nature of such a limitation and the possibility of a judicial review of the authority's decision. The Hungarian legislation conforms to this requirement and the above-listed duties applicable (among others) to the press are constitutional according to the criteria of necessity and proportionality, too. The Constitutional Court, however, deemed as problematic the applicability of some of the provisions to press products and the possibility of official control with regard to them, emphasising that, in the event of violations against these requirements, the protection provided by civil and criminal law is sufficient. Beyond these, significant state intervention is only possible with regard to audiovisual and radio media services, as the effect of these on the audience is much stronger. On the one hand, the argument based on the effect of the media recognises the fact that, even taking into account the increasing significance of the internet, television and radio are the mass communication channels that reach the broadest spectrum of society, and, on the other hand, audiovisual media content has a different effect on its audience *per se*. The Constitutional Court, therefore, only maintained the protection of human dignity and its official supervision [Paragraph (1) Article 14 of the Press Freedom Act] in the field of media services; the provision establishing the rights of people making public statements (Article 15 of the Press Freedom Act) is constitutional in respect of the press, too, but its observance may not be overseen by an authority. The provisions forming the basis of the protection of human rights (the second phrase of Article 16 of the Press Freedom Act) and the protection of privacy Article 18 of the Press Freedom

Act) have been removed from the Act as of May 2012 (i.e. they are not applicable in the future in respect of media services either, even though the Constitutional Court ruled that their application to the latter had been constitutional).

13.3. The registration of press products

In respect of press products, the authority has regulatory supervisory duties, clearly stated in Articles 182 and 184 of the Media Act in the interest of the prevalence of the norms of substantive law provided for by the Media Act and the Press Freedom Act, and to ensure the lawful operation of the given legal subjects. It is indispensable to regulatory supervision that the authority possesses appropriate information and authentic records about the legal entities subject to the Press Freedom Act and the Media Act. If the media regulations did not contain a registration obligation, the authority would first have to determine which service providers fall under the personal scope of the given regulatory authority with regard to all regulatory procedures, which would significantly hinder the assertion of rights, and would not be guaranteed and predictable in respect of the identification of the legal subjects concerned. As previously established by the Constitutional Court, "the mandatory notification and registration of the production and publication of periodical publications is a traditional and necessary element of the administration of the press" [Constitutional Court Decision No. 20/1997. (III. 19.)].

The commencement of operation is only conditional upon registration in the case of linear media services; publishers of press products may start their activities prior to registration. Nevertheless, notification and registration are mandatory for these, too, within sixty days from the start of the activity. In the event of non-compliance with the registration duty, a fine of up to one million forints is applicable according to the principles of progressivity and proportionality [Paragraph (8)a) of Article 46 of the Media Act].

Besides recognising the importance of notification and registration, it should also be emphasised that the registration prescribed by the Act may only be a formal, administrative procedure. Accordingly, registration as provided for by the Media Act does not mean any examination of the substance of the media content service on its merits, nor its authorisation. During the registration process the authority has no discretionary jurisdiction in respect of the decision on the notification; moreover, with regard to the notification of press products, registration may not be refused: the formal procedure following notification necessarily results in the registration of the given press product, as the authority is required by law to do so within fifteen days. Although (similarly to the procedure applicable in the case of on-demand media services) the registration may be revoked after automatic registration, this does not entail any limitation of the freedom of speech, as the authority may only revoke the registration on its merits in the event of obstacles to the pursuit of the activity prescribed by law, on the basis of objective reasons (conflict of interest, similarity, or identity of names), i.e. the authority once again has no discretionary jurisdiction in respect of revoking the registration.

According to Constitutional Court Decision 34/2009 (III. 27), the registration duty could only be regarded as a limitation of the freedom of the press if it were more than a mere administrative act, i.e. if the authority had discretionary jurisdiction in respect of the application. Accordingly, the law only prescribes formal criteria and data provision in respect of the notification rather than any examination of the contents thereof, in keeping with Paragraph (1), Article 5 of the Press Freedom Act, which provides that "the conditions set for registration may not restrict the freedom of the press".

Certain data in the records (the names and contact information of the founders and publishers of the press product and the name of the press product) are public and freely accessible on the website of the National Media and Infocommunications Authority. The authenticity of the data of the records is to be presumed until proven otherwise. In keeping with the provisions of the Information Act, the data management activity of the authority is tied to specific objectives.

The authority maintains separate records of print and online publications; however, it is possible for the publisher of a press product to provide services belonging to both categories. According to Paragraph (5) of Article 41 of the Media Act, in such a case notification has to be made separately for the individual press products. Thus, for example, the publisher of a print press product may launch (even under the same title) an online newspaper with partly or entirely different content, thereby providing services that belong to different registers, which requires separate notification. The video content on the website of an online press product complementing and embedded into the text is generally regarded as part of the given press product. It only qualifies as a separate service (an on-demand media service) if it meets all the conceptual criteria of on-demand media services (see Points 35, 40 and 47 of Article 203 of the Media Act). If the content of a press product is distributed via an electronic communications network as well as in print format (e.g. if a print newspaper is also available via the Internet with identical content), this does not constitute a service belonging to two different registers. In this case, the same press product is considered to be available via different platforms. This is so even if the commercial communication surrounding the articles is different on the print and the online platform. Accordingly, upon the registration of the printed press product, it should be recorded that the publisher distributes its press product in an electronic as well as print format. If a publisher fails to issue a notification about the online accessibility of its print product, i.e. the publisher does not register it as an online press product, the authority shall assume that the online version of the press product is wholly identical in content to the print version.

According to the provisions of the law, notification is the duty of the publisher of the press product. In the event that the founder and publisher of a press product are different persons or undertakings, they are required to enter into an agreement defining their relationship and their responsibilities and rights regarding the press product. The founder possesses the licences granting the right of disposal over the press product. (According to the Press Act of 1986, the founder of the press product was responsible for ensuring the financial, material, and personal conditions of the operation of the paper, as well as bearing financial liability for its operation.) If other than the publisher, the founder has a

role in the registration and de-registration of the press product. The founder may issue the notification about the press product and may specify the publisher (e.g. in the case of papers operated in a franchise system, the founder appoints the publisher). As the content of the press product is controlled by the publisher, apart from notification, the subject of the rights and obligations established in law is also the publisher, although the publisher obviously cannot change the identity of the founder.

If the founder and the publisher are different persons or undertakings, the basic data (name, contact information, commercial register number, registration number) of both the founder and the publisher have to be provided. Besides these, the notifier is only required to provide the title of the press product and to issue the statement on the absence of any conflict of interest. The identity of the publisher may also change; the registered publisher is required to report such changes within fifteen days, just as any changes to the individual data. If the publisher fails to comply with this duty, the founder is required to do so. The up-to-date status of the records is especially important, as to a large extent the Media Council exercises its powers related to the control of market concentration on the basis of this reporting duty.

The press product has to be deleted from the records if the registration is required to be revoked by law or if the publisher requests deletion from the records. (If the publisher is a different undertaking from the founder, the founder's approval is required for this.) The press product is also deleted from the records if a final decision of a court of law has ordered the infringing party to cease and desist from a trademark infringement committed via the name of the press product, if the publication of the press product has not commenced within two years from the date of registration, or ongoing publication is interrupted for over five years (in comparison with other media content services, the legislator has provided the longest period of forfeiture in the case of press products). The automatic deletion of services that were never commenced or are suspended for a protracted period of time after the elapse of a deadline has enabled the anomalies caused by the previous rules of registration to be managed. To this day the press registration system contains a large number of titles never intended for publication by those who registered them, the purpose of which had been merely to restrict the options available to market competitors by registering the title.

The registration of press products required by law may therefore be regarded as formal and is surrounded by appropriate guarantees. As Constitutional Court Decision No. 165/2011 (XII. 20.) has established, it is a constitutional provision that does not unduly restrict the freedom of the press.

The mandatory imprint on press products and—unless otherwise provided for by law—on other publications defined in Point 22 of Article 203 of the Media Act contains two significant pieces of data: the name and contact information of the person responsible for publication, and the name of the responsible editor of the given product. These data are important not only from the aspect of media regulation, but also for the applicability of other civil and criminal law sanctions for the readers and other persons and bodies.

The detailed rules of the provision of the legal deposit copies prescribed by the Media Act are provided for by Government Decree 60/1998 (III. 27.), On the Legal Deposit of Press Products; however, in the case of press products the provision of legal deposit copies is the duty of the printing house (the body responsible for reproduction) rather than the publisher.

13.4. The regulatory procedure against the publisher of the press product

The Media Act precisely defines the sanctions of substantive law available to the Media Council and the Office of the National Media and Infocommunications Authority, as well as the scope of responsibility in the event of violations against the rules governing press products.

With regard to press products, too, when applying the legal sanction, the Media Council and the Office, under the principle of equal treatment, act in line with the principles of progressivity and proportionality; they are required to apply the legal sanction proportionately, in line with the gravity and rate of re-occurrence of the infringement, taking into account all circumstances of the case and the purpose of the legal sanction (Media Act, Article 185). According to Point c) of Article 182 of the Media Act, the Media Council oversees, with regulatory powers, compliance with the requirements towards press products laid down in Articles 14–20 of the Press Freedom Act, while the Office oversees the changes in the ownership structure and other data of the publishers of press products, the relevant reporting of such changes and the publication of certain data [Media Act, Article 184 (1) c–d)]. The Act precisely defines the legal sanctions applicable in the event of legal violations, obviously in a differentiated manner conforming to the nature of the different service.

The legislator has provided for the rules of corrective statements (similarly to the Press Act of 1914 which introduced this institution) within the framework of media regulation (in the Press Freedom Act), introducing major changes in content in comparison with the previous regulation of corrective statements provided for in the Civil Code. At present, therefore, the publication of corrective statements in respect of content under the scope of media regulation may be requested according to the provisions of Article 12 of the Press Freedom Act.

13.5. The issues of self- and co-regulation in respect of press products

Self- and co-regulation play an important role in the regulation of press products. Article 8 of the Media Act declares that the professional self-regulatory bodies comprising, among others, the publishers of press products, as well as the various self- and co-

regulatory procedures applied, play an important role in the field of media regulation and in the application of and compliance with the Media Act. Such bodies and procedures should be respected during the course of the application of the Act. Representing the mid-point between direct state intervention and industry self-regulation, co-regulation enables dialogue between the state and the self-regulatory organs, which creates an interaction that is especially important in the case of press products.

14. The Regulation of Audiovisual and Radio Media Services

14.1. The antecedents

Prior to the adoption of the Press Freedom Act and the Media Act, linear radio and audiovisual media services were provided for in the repealed 1996 Radio and Television Broadcasting Act. The act referred to these as radio and television broadcasting services and its scope was limited to such services.

In keeping with the new regulations, however, in the present chapter we shall discuss the rules of market entry of a broader sphere of services, and shall mention the other relevant regulations as well. Building on the AVMS Directive, the current concept of "media service" includes both the aforementioned radio and television services (linear media services) and the so-called on-demand media services, which are similar to the former but may be accessed in a different way. The above two groups qualify as media content services. Besides these, the present chapter shall also briefly discuss the so-called ancillary media services, which do not constitute media content services, but are related to them. The concept of these superseded the concept of supplementary value-added broadcasting services used by the repealed 1996 Radio and Television Broadcasting Act.

14.2. The regulation of the content of media services

For the reasons discussed previously, the regulations differentiate between the various media services (differentiated regulations), both in respect of the regulatory obligations related to market entry and the other regulatory obligations related to content.

This differentiation also entails that the regulations recognise and maintain the basic regulatory principles laid down in the repealed 1996 Radio and Television Broadcasting Act, extending them over on-demand media services, too, with the difference that, in the case of the latter, less strict or different rules are applied on the basis of the principles, and certain issues are not regulated at all.

The Hungarian regulations adhere to the principal of two-level monitoring and control as used in the AVMS Directive. The common regulations on the content of media content services are in the Press Freedom Act, while the different regulations pertaining to on-demand and linear media services are contained in the Media Act. One part of these

regulatory topics appears in the form of prohibitions, as limitations of the freedom of the press:

- the prohibition of hate speech and the protection of communities,
- the protection of minors,
- the prohibition of the violation of the constitutional order,
- the protection of human dignity,
- the regulation of commercial communications.

The other part of the regulatory topics are not prohibitive, but take the form of positive obligations (prescribing active forms of conduct) in respect of the role of the media, primarily linear media, within the public sphere of democratic society, intended to further the achievement of media pluralism:

- balanced coverage,
- programme quotas,
- the coverage of events of special significance,
- warnings about offensive content,
- the right to reply (the right to request corrections in the press),
- political access (political advertisements),
- the public service obligations of media service providers with significant market power.

14.3. Concept and forms of, and the reasons for the market entry of media services

The principle of differentiated regulations is apparent in the system of conditions for the market entry of media services, too. The rules of market entry provide the conditions that must be met for an undertaking (a tenderer or a notifier) to become legally entitled to start activities in the Hungarian media market or legally to operate in that market.

In respect of the forms of market entry, too, the Media Act adheres to the system established by the repealed 1996 Radio and Television Broadcasting Act, since media service provision rights may be acquired by registration or via tendering or, in certain cases, without tendering or notification (by appointment). The manner of market entry is primarily determined by the distribution platform (telecommunications network, infrastructure) chosen by the given media service for its operation. If the linear media service uses a state-owned limited resource (analogue frequency), then—with certain exceptions—market entry is contingent upon tendering; in all other cases the operation of the media service requires official registration [Article 41 Paragraph (1) of the Media Act]. Terrestrial digital media services (DVB-T) also only require notification.

The latter sentence of the Media Act refers to the reason for the need to differentiate the two types of market entry. The tendering system has become the standard all over the world, because linear media services distributed via terrestrial broadcasting use a scarce resource, namely, terrestrial frequencies. States possess only a limited amount of such frequencies (the national frequency assets). Besides the scarcity of the resource, its

allocation requires careful international technical coordination, since interference between the various broadcasts has to be avoided not only within a single state, but also between the various different states (elimination of interference).[128] Since this scarce resource is not freely available to all, its allocation is directed by the regulatory authority. In the invitations to tender, the authority applies certain considerations of public interest, and such considerations are, accordingly, applied in the assessment of the tenders received (e.g. ensuring pluralism, consideration of cultural characteristics, diversity of content, public service content, satisfaction of the needs of minorities, etc.). This, of course, does not mean that the authority enjoys complete freedom when assessing the tenders, but it does have a certain scope for action in respect of the allocation of the resource.

It follows from the above that the method of the simple notification and registration of the activity is applied when the given media service does not use scarce resources for its operation. In the case of media services provided via cable networks, the terrestrial digital platform (DVB-T) or satellite broadcasting, as well as in the case of on-demand media services, there is no such scarcity as is found in terrestrial broadcasting, since, theoretically, the number of new networks and the amount of satellite capacity may be increased without limitation. Accordingly, apart from the requirement of lawful operation, the provision of such media services is not contingent on any further conditions; all that is required is that they comply with the relevant notification and data provision duties.

We have to remark, however, that cable networks operate as natural monopolies, since their construction requires major investment with high-risk return; accordingly, the construction of parallel networks is uncommon. On the other hand, in parallel with digitalisation, the natural monopoly-like nature of cable networks is decreasing, since other distribution networks are also becoming capable of programme distribution. One such example is the telephone network, that can be developed to support the provision of multi-channel services similar to cable television (e.g. IPTV).

The registration duty of media services is significant from the aspect of legal certainty, too: independently from the form of market entry, all media services have to be registered by the authority [Paragraph (4) of Article 41]. The official register ensures the transparency of the media sector, since it provides information about the amount and types of media services in the media market, promotes law enforcement, and ensures the reliability of and guarantees for the definition of the legal subjects by determining precisely which entities fall under the scope of the regulations. Incidentally, linear media services acquiring a media licence via tendering are also officially registered by the Office of the National Media and Infocommunications Authority, although the process of the market entry of such services is different. For similar reasons, the registration duty is mandatory in the case of press products, too.

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[128] Office of the National Media and Infocommunications Authority: *Műsorszóró szolgálat műszaki irányelvei – Digitális rádióműsorszórás*. [*The Basic Technical Principles of Broadcasting Services: Digital Radio Broadcasting*] Budapest, NHH, 2008. http://www.nhh.hu/dokumentum.php?cid=14291

14.4. Registration of media services

14.4.1. The issue of preliminary or subsequent registration

The rules of the registration of media services are set forth in Articles 42–45 of the Media Act. The Media Act distinguishes between media services for which commencement of operation is contingent upon preliminary registration, and media services in the case of which such preliminary registration is not required, i.e. where it is sufficient to register the service subsequently, after the commencement of their operation. The first group consists of linear (radio and audiovisual) media services; all other media services (i.e. on-demand radio and audiovisual and ancillary media services) may be provided without registration; however, even in the case of these, the media service provider is required to register the media service subsequently. The media service provider is required to issue notification within 60 days from the date of the start of the service [Paragraphs (1)–(2) of Article 41]. In respect of the notification obligation—irrespectively of whether the registration is preliminary or subsequent—the law only prescribes formal criteria and data provision rather than any examination of the content [in keeping with Paragraph (1), Article 5 of the Press Freedom Act].

14.4.2. Notification of linear media services

The notification procedure for linear media services is different from the procedure applicable to on-demand media services, even though the main rules are identical in both cases. As we have mentioned, linear media services may only start operation following registration. Furthermore, in the case of these, more data must be provided to the authority and, third, the authority may refuse registration on several grounds.

The scope of data provision includes two types of data: data on the identity of the notifier and data on the future media service. From the provisions regarding the identity of the notifier, the obligation of the notifier to "make a statement that no grounds for exclusion under the Act would arise against it in the event of its registration" [Paragraph (2) of Article 42] is prominent. A breach of the rules on conflict of interest (Article 43 of the Media Act) constitutes one of the grounds for the rejection of registration. The reason for the requirement to provide detailed data on the future media service is that the Office of the National Media and Infocommunications Authority determines the media service provision fee due from the service provider on the basis of these data (Article 44 of the Media Act). Data provision (the notification of the Office about the data) is required 45 days prior to starting the planned linear media service provision activity.

The linear media service provision activity may be commenced even if the Office fails to adopt the decision on the registration within forty-five days after the notification. In this case, the Media Act requires the Office to pass a decision on the fact of registration and the amount of the media service provision fee within 15 days from the date of the expiry of the deadline [Article 42 (4)].

The Office may also decide to refuse registration in the instances listed one by one in the Media Act [Article 42 Paragraph (6)]. This is also true of already registered linear media services; these may be deleted by the Office [Article 42 (7)]. The reasons for refusal may be the following:

a) a conflict of interests exists vis-à-vis the notifier (Article 42 of the Media Act),
b) the notifier, or any of its owners, has overdue fees from previous media service activities,
c) registration would be in violation of the provisions on the prevention of media market concentration (Article 68 of the Media Act),
d) the notification does not contain the data provision required under the Media Act, even after notice to remedy the deficiencies,
e) the name of the notified media service is identical to—or is confusingly similar to—the name of a linear media service already registered, having valid records at the time of notification, or
f) the notifier has failed to pay the administrative service fee.

Deletion from the register is possible if:

a) refusal of registration would be applicable,
b) the media service provider requested its deletion from the register,
c) the media service provider failed to pay its overdue fees within 30 days from the written notice of the Office of the National Media and Infocommunications Authority,
d) the rights holder fails to commence the media service within 6 months from the date of registration, or interrupts the ongoing service for more than 6 months, except if the media service provider offers adequate justification for it,
e) a final decision by a court has ordered the cessation of trademark infringement perpetrated through the use of the media service's name, and barred the infringer from further violation of the law, or
f) based on repeated and serious violations by the media service provider, the Media Council ordered the application of this legal sanction.

In respect of the refusal of registration and the deletion from the register, it is important to emphasise that the Media Act grants no discretionary jurisdiction to the authority. The above decisions may only be passed in the event of the legal violations listed in the Act or—in the case of deletion—upon the request of the client; this is an important guarantee from the point of view of the freedom of the press.

14.4.3. Notification of on-demand and ancillary media services

On-demand media service activities may be commenced without registration; however, the Media Act requires the notification of the authority also about these, within 60 days from their commencement [Paragraph (2) of Article 41 of the Media Act].

In this case, the data provision duty is limited to only the absolutely necessary personal and media service related data. The authority is required to register on-demand media services within 30 days. As opposed to linear media services, the registration of these may not be refused, but may be withdrawn subsequently. Here, too, the possibility of the deletion of already registered on-demand media services is given [Paragraphs (4)–(5) of Article 45 of the Media Act].

The Office shall withdraw the registration if
a) a conflict of interests exists vis-à-vis the notifier, or
b) the name of the notified media service is identical to—or is confusingly similar to—the name of an on-demand media service already registered, having valid records at the time of notification.

The on-demand media service shall be deleted from the register if
a) the registration is to be withdrawn,
b) the media service provider requested its deletion from the register,
c) the media service is not commenced for more than a year, or the ongoing media service is interrupted for more than a year, or
d) a final decision by a court has ordered the cessation of trademark infringement perpetrated through the use of the media service's name, and barred the infringer from further violation of the law.

The same rules apply to the registration of ancillary media services (Media Act 47).

14.5. Tendering linear media services

14.5.1. On tendering in general

Media service providers engaged in linear radio and audiovisual media services are awarded the right to conduct their activities within the framework of the tender procedure managed by the Media Council (Articles 48–63). The reason for this is that such service providers use limited resources. In comparison to other selection procedures, tender procedures are complex and, in respect of certain elements (the additional proposals made over and above the contents of the invitation to tender), they are "beauty contest" type procedures. This means that, unlike auction procedures, the selection of the winning bidder is not only contingent upon the fee offered, and the right of the utilisation of terrestrial frequencies is not awarded on the basis of the first come first served principle. The principles referred to, especially the magnitude of the fee offered, may be important in the case of tender procedures, too; however, other principles serving the prevalence of the freedom of the press are also prominent, and may, in certain cases, have more weight in the assessment of the tenders submitted.

The tender procedure prescribed by the Media Act is similar to the previous one in respect of several provisions; however, the legislator took into account the decision of the Constitutional Court, which deemed the tendering system in the repealed 1996 Radio and Television Broadcasting Act to be unconstitutional in respect of several significant points:

> The legal regulations for the tendering of broadcasting rights did not establish a transparent tendering system. This shortcoming results in an unconstitutional situation as it does not enable broadcasting rights to be awarded via a transparent decision-making process. This may give rise to doubt regarding the independent operation of the broadcasters as required by the freedom of the press. The evaluation criteria applicable during the tender procedure related to broadcasting rights are not provided for by legal act; the decision making procedure cannot be monitored by the bidders and the public. A further shortcoming is that the deadline for the evaluation of the bids submitted for the acquisition of broadcasting rights is not provided for by law, nor does the obligation to provide the grounds for the decisions taken by the National Radio and Television Commission (the former media authority) during the tender procedures follow from the law.… Furthermore, an unconstitutional default persists because the Parliament failed to regulate, by an act of law, the comprehensive, substantive judicial review of the administrative decisions on the award of broadcasting rights according to Paragraph (1) of Article 57 of the Constitution [Point IV/3. of the Statement of Reasons of Constitutional Court Decision 46/2007 (VI. 27.)].

The Media Act has incorporated the guarantee rules required by the Constitutional Court. Such guarantees include, in particular, the possibility of independent legal remedy against the individual decisions of the Media Council (against the order on the refusal of tender registration and the regulatory decision establishing the success or failure of the tender procedure), the definition of the various procedural deadlines (the repealed 1996 Radio and Television Broadcasting Act only provided for a deadline in respect of the establishment of formal validity) and an exhaustive list of the instances of formal invalidity.[129]

The tendering system of the repealed 1996 Radio and Television Broadcasting Act was applied to analogue radio and television broadcasting, and it was this that the Media Act developed further with the above corrections. However, the Digital Switchover Act, introducing digital switchover and digital terrestrial broadcasting, established a new tendering system for the utilisation of digital terrestrial frequencies, and so the field for the application of the tendering system provided for by the Media Act is becoming increasingly limited; in practice, it only serves the market entry of analogue linear radio media services. (On the basis of the Digital Switchover Act, applications may be submitted for the operation of the terrestrial digital platform that will "host" the individual media services, while applications for the media service provision rights themselves are based on the Media Act.) The Media Act does not take into account this circumstance when it provides that the analogue audiovisual media service provision rights awarded

[129] György Andrássy – Ditta Boncz: Mttv. 48–66. §. [Articles 48–66 of the Media Act] In Koltay – Lapsánszky op. cit. (n. X.) 135.

will expire at the time prescribed in the Digital Switchover Act (the target date of the digital switchover) and shall not be renewable [Paragraph (5) of Article 48 of the Media Act]. The Digital Switchover Act has set the target date for digital switchover as 31 December 2014 in respect of both digital radio and audiovisual media services (Article 38 of the Digital Switchover Act). (It should be noted that, as opposed to television, there is no "target" date for digital switchover in the case of radio at the EU level either; taking this fact into account, the Digital Switchover Act formulates several conditions, in the absence of the fulfilment of which the 2014 switchover may be postponed to a later date.)

14.5.2. The scope of participants in the tendering procedure

The Media Council is in charge of managing the tasks related to the tender procedure [Paragraph (3) of Article 48 of the Media Act]; however, in practice, the Media Council delegates some of these tasks to the Office. Such tasks include, for example, the compilation of the register of media service facilities [Paragraph (9) of Article 48 of the Media Act], the publication of the frequency plan according to Paragraph (5) of Article 49 of the Media Act [see also Paragraph (3) of Article 50 of the Media Act], the management of the public hearing of the draft invitation to tender, and, in general, the preparation and implementation of the decisions of the Media Council related to the tender procedure.[130]

The other central actor of the tender process is the tenderer itself. The Act formulates eligibility criteria (rules of exclusion) in respect of the tenderers (Article 55 of the Media Act). Among other factors, eligibility is contingent upon the absence of public debts, the economic viability of the undertaking, its conformance with the provisions of the Act on media concentration and conflicts of interest, and the absence of severe breaches of contract by the tenderer during its participation in previous contractual relationships directed at the provision of media services.

14.5.3. Preparation of the tender procedure

In order to launch the tender procedure, the Media Council needs to have adequate information on what media service facilities exist in a given geographical area. The Media Council may therefore request that the Office of the National Media and Infocommunications Authority compile the register of media service facilities [Paragraph (9) of Article 48 of the Media Act].

In possession of the register of media service facilities, the Media Council is able to decide on the options it wishes to offer for tendering; in this case—along with the

[130] Ibid. 136–137.

specifications of the preferences related to the frequency—the Council once again requests the Office to draw up the detailed frequency plan of the available media service facilities. By requiring the Office to publish the frequency plan, the Media Act ensures publicity already at the start of the tender procedure. In this way, precise information about the technical parameters of the media service facility is made available to the potential tenderers; moreover, the Act grants them the right to make comments during the publication period (Article 49 of the Media Act).

With regard to the frequency plan, the Media Council may basically pass three types of decision. The Media Council may return the frequency plan to the Office for Amendment if it does not meet the preferences or media policy considerations specified by the Council, or it may accept or reject the plan. In the last case, no tender procedure is launched in respect of the media service facility.

As opposed to the above, Paragraph (8) of Article 49 of the Media Act also grants the right to others to request frequency planning for a fee; however, this requires the prior approval of the Media Council based on media market and media policy considerations. If such prior approval is granted, the resulting media service facility is governed by the general rules applicable to the related tender procedure.

If the Media Council approves the frequency plan, the next step is the preparation of the invitation to tender in respect of the given media service facility (Article 50 of the Media Act). The invitation to tender contains the specification of the tender conditions. The Media Council first decides upon the draft invitation to tender and then publishes it. The purpose of publication is to ensure the transparency and verifiability of the tender procedure. The publication of the draft and the subsequent public hearing ensures that stakeholders receive precise information about the tender procedure and the draft, and are able to pose questions and formulate proposals verbally or in writing to the Media Council in respect of the invitation to tender. Taking into account the observations received and the proposals made at the public hearing, the Media Council decides upon the finalisation of the invitation to tender within 45 days from the date of the hearing.

14.5.4. Invitation to tender

The tender procedure starts with the publication of the finalised invitation to tender. The administrative deadline for the procedure is 85 days, to which the rules of the Administrative Proceedings Act apply [i.e. the amount of time beyond the administrative deadline as provided for by Paragraph (3) of Article 33 of the Administrative Proceedings Act, and the period between the publication of the invitation to tender and the submission of the tenders are not taken into account].

The Act divides the content elements of the invitation to tender into two groups. Accordingly, in the interest of the transparency, traceability, consistency, and comparability of the tender processes, Points *a)*–l) of Paragraph (2) of Article 52 of the Media Act provide for the mandatory content elements of the invitations to tender as

guarantees, while Point *m)* of Paragraph (2) and Paragraph (3) of Article 52 list the optional tender elements that fall under the discretion of the Media Council.[131]

The first group contains, amongst others, the following: the exact details of the frequency plan, the fundamental rules of procedure and the minimum media service provision fee (media service provision basic fee). The form of and the deadline for the submission of tenders, their required content, the principles of evaluation, and the criteria to be taken into consideration during evaluation, the quantified evaluation framework allocated to specific evaluation categories and the rules of evaluation based on which the Media Council adopts its decision about the winning tenderer also belong to this group. Further very important mandatory content elements are the validity criteria of tenders concerning their form and content, the starting date of the provision of the media service, the term of the media service provision right, and the formal requirements of tenders. Among the mandatory content elements, the media service provision basic fee should be highlighted: offers below this amount cannot be awarded the right of service provision. Furthermore, the specification of the term of the right is important. The Media Act provides a general definition of this: "the right to provide analogue linear media services using state-owned limited resources shall, in the case of radio, be valid for a maximum period of seven years or, in the case of audiovisual media service provision, for a maximum period of ten years, and it may be—upon expiry—renewed one time for a maximum of five years without a tender procedure at the media service provider's request" [Paragraph (5) of Article 48 of the Media Act].

The second group of tender conditions, i.e. the group of optional tender elements, contains the criteria related to the content of the media service. These include the ratio of programmes serving public service objectives and programmes on subjects related to local public affairs or facilitating local everyday life, the predefined extent of services for nationalities and other minority needs, the obligation to provide news services, the criteria for connecting to a network and expanding the reception area, and the provision of ancillary and value-added media services. It is the criteria in the second group that render the tendering procedure somewhat akin to a "beauty contest". since in certain cases these elements may have significant weight in the evaluation. These content elements of the tender serve the achievement of pluralism.

The invitation to tender must provide sufficient time for the preparation and submission of the proposals; based on the reception area, the Act provides that this is 60 days in the case of national, 40 days in the case of regional, and 30 days in the case of local media services as of the date of the announcement of the invitation to tender.

The invitation to tender may be amended or withdrawn in the event of a major change of circumstances after its announcement (Article 53 of the Media Act). The Media Council may amend or withdraw the invitation to tender until no later than the fifteenth day prior to the deadline for submission. The amendment of the invitation to tender,

[131] Ibid. 145.

however, may not put the tenderer at a disadvantage; amendments may therefore only be made along the principles of an objective, transparent and non-discriminative procedure. One of the guarantees of this is that tenderers must be provided with a deadline equal to the original for the submission of their tenders.

14.5.5. Formal and substantive validity criteria of the tender, and its assessment

The application may be regarded as a response to the invitation to tender; therefore, as regards its structure, it is the "image" of the invitation. Here, too, the Act stipulates mandatory elements [Points *a)–h)* of Article 56 of the Media Act], as well as other elements defined by the Media Council in the given invitation to tender [Point *i)* of Article 56 of the Media Act].

The Media Council first examines whether each submitted tender complies with the applicable formal requirements. The Act provides an exhaustive list of the instances of formal invalidity, as well as the formal validity criteria, in the case of which deficiencies may be remedied [Paragraph (2) of Article 57 of the Media Act]. In the event of such deficiencies, the Media Council issues an order calling upon the tenderer to remedy the said deficiencies within 15 days from the date of receipt. The deadline set for remedying deficiencies represents a limitation period; if it is not met by the tenderer, the Media Council shall establish the formal invalidity of the tender and shall refuse its entry into the tender register. The Media Council proceeds in the same way in the case of formally invalid tenders where no remedy of deficiencies is possible [Paragraph (2) of Article 58 of the Media Act]. Tenderers submitting formally valid tenders are entered into the tender register. It is also possible that the Media Council only notes the formal invalidity at a later stage of the tender procedure. In this case, no separate order is issued; the Media Council establishes the invalidity of the tender in its decision upon the closure of the tender procedure.

The Media Council also verifies the compliance of formally valid tenders with the content requirements. The purpose of the examination is to verify that the content of the tender is coherent, both as regards its totality and as regards the individual tender components. During the course of the examination "the Media Council may, without prejudice to the principle of equal opportunities, request clarification from the tenderer.… Clarification may not result in the modification of any financial or other commitments pertaining to value or other material statements; it may only serve the interpretation thereof" [Paragraph (2) of Article 59 of the Media Act]. The Act also defines the instances of substantive invalidity [Paragraph (3) of Article 59 of the Media Act]. A tender is considered to be substantively invalid if:

a) it contains incomprehensible, contradictory, or clearly unfeasible commitments or conditions that impede the evaluation of the tender on the merits,

b) in the opinion of the Media Council, the tender contains commitments that are unfeasible, excessive, or insufficient or highly disproportionate, or contains such

clearly irrational or unfounded commitments or conditions that contradict the facts and data available to the Media Council, and thus render evaluation in accordance with the set of criteria defined in the invitation to tender impossible,

c) the tender is unsuitable for achieving or implementing the objectives defined in this Act and in the invitation to tender, since the tender itself is unfounded, or

d) it does not comply with the substantive requirements defined in the invitation to tender.

The Media Council does not establish the substantive invalidity of the tender in a separate order; rather it stipulates such invalidity in the decision closing the tender procedure.

The evaluation of tenders may only be based on the principles and criteria defined in the invitation to tender. The Media Act also provides that the "evaluation criteria shall be based on quantitative or other assessable factors" and prohibits double or multiple evaluation. The Media Council may, in connection with the tender components, determine a ceiling, i.e. a maximum value compared to which no more favourable offers can be made.

14.5.6. Result of the tender procedure, the public contract

Following the evaluation of the tenders, the Media Council passes a regulatory decision establishing the success or the failure of the tender procedure (Article 62 of the Media Act). The tender procedure is deemed to be unsuccessful if all submitted tenders are invalid in terms of form or content. In the case of several valid tenders, the Media Council establishes the success of the tender procedure and the winner of the tender procedure on the basis of the evaluation. The judicial review of the Media Council's decision announcing the winner and the success of the tender procedure or declaring the tender procedure to be unsuccessful may be requested from the Budapest Court of Appeal within 15 days of the decision's announcement on the grounds of breach of the law [Paragraph (5) of Article 62 of the Media Act]. The public contract may not be concluded with the winner of the tender before the final and binding decision of the Budapest Court of Appeal [Paragraph (4) of Article 63 of the Media Act].

The Media Council concludes a public contract with the winner of the tender procedure. The administrative deadline for such regulatory procedure is 45 days from the date of the announcement of the decision [Paragraph (1) of Article 63 of the Media Act]. In contrast with the repealed 1996 Radio and Television Broadcasting Act, the public contract is a new instrument. The appearance of this new contracting form may also be traced back to the aforementioned Constitutional Court decision No. 46/2007 (VI. 27), which pointed out that, in the event of a breach of the obligations provided for in the previous broadcasting agreements, the National Radio and Television Commission (the former media authority) could simultaneously act as contracting party and as authority. The Constitutional Court ruled that such dual legal standing was unconstitutional.

> The National Radio and Television Commission (the former media authority) authorises broadcasters to exercise the broadcasting right by concluding a contract. The reason for the application of the solution based on civil law agreements that was chosen by the legislator was clearly to ensure the broadest possible protection of the broadcasters and to eliminate any possibility of the exercise of pressure by the state organ. In respect of this, the legislator's reasoning was probably based on the theoretical characteristics of state administrative and civil law relationships. According to this, the fundamental characteristic of state administrative relationships is the superordination/subordination between the legal subjects, while in civil law relationships, the parties act as partners with equal licences granted by law. Drawing conclusions from these characteristics of the respective types of legal relationship, the legislator established the effective regulatory system on the basis of the assumption that the status of contractual partner granted to broadcasters is, in itself, a significant guarantee of their independence from the state. Practice, however, did not confirm these expectations of the legislator; the civil law element incorporated into the relationship between the National Radio and Television Commission (the former media authority), and the broadcasters proved to be a discordant factor hindering the practical application of the law.[132]

The provisions of Article 63 of the Media Act on the rules of the circumstances of contracting clearly show the intention of the legislator to ensure the appropriate utilisation of the limited resources. One such rule is the stipulation of the 45-day deadline for the conclusion of the contract, according to which, if this deadline passes with no result because "the winning tenderer does not participate in the regulatory procedure, or if the winning tenderer hinders the conclusion of the public contract". the "public contract may not be concluded" and the Media Council terminates the procedure. The Act also provides the Media Council with the option of imposing fines if "the winning tenderer withdraws its tender or does not conclude the public contract". Moreover, the Media Council may oblige the winning tenderer to bear all costs arising from the above conduct [Paragraphs (2), (5) and (6) of Article 63 of the Media Act].

The Media Act leaves the definition of the content of the public contract to the contracting parties. Nevertheless, the Act does provide for certain criteria indispensable for the performance of the contract. Such are the provisions on the payment schedule of the media service provision fee (the financial remuneration for the right granted), the legal sanctions for delayed payment or non-payment of the fee (termination), and the legal sanctions for breaches of contract [Paragraphs (9)–(11) of Article 63 of the Media Act]. Paragraph (12) of the Article referred to provides a brief definition of the service obligations of the winning tenderer which, indirectly, also defines what elements must be included in the contract at all times:

> The media service provider shall be entitled and obliged to broadcast the programme flow meeting the requirements specified under the public contract, via its own network maintained by it, using its own equipment and instruments or using an electronic communications service provider (broadcasting service).

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[132] Tibor Bogdán: *Az 1996. évi I. törvény elvi és jogtechnikai elemzése.* [*Theoretical and Legal Technical Analysis of Act I of 1996*] Budapest, AKTI, 2004. 88–89.

14.5.7. The termination of the tender procedure

The Media Act also exhaustively provides for the cases when, although there is a valid invitation to tender, the Media Council is obliged to terminate the tender procedure without completing it (Article 61 of the Media Act). The Act specifies the scope of the Media Council's discretion in the various case scenarios. The scenarios are the following:

a) no tenders are submitted for the invitation to tender,

b) the tender procedure loses its original purpose (the national or international economic environment changes substantially following the invitation to tender, or the economic, legal, spectrum management, or media service market circumstances or conditions prevailing at the time of the publication of the invitation to tender change materially),

c) in the opinion of the Media Council, the media policy aspects, or the fundamental principles or objectives defined under this Act or in the invitation to tender cannot be guaranteed by executing the tender procedure,

d) the Media Council establishes that none of the tenders submitted by the tenderers satisfy the objectives or basic principles laid down in the Media Act, or that declaring any one of the tenderers as the winner would jeopardise the responsible, proper and effective management of frequencies.

14.6. Media service provision rights without a tender procedure

14.6.1. Temporary media licence

In contrast with the tender system of analogue linear media service rights described above, the Media Council may, upon request, grant undertakings the right to provide media services temporarily (Article 65 of the Media Act). The Media Act distinguishes between two types of temporary media service provision rights: the general [Paragraph (1) of Article 65 of the Media Act] and the extraordinary [Paragraphs (10)–(11) of Article 65 of the Media Act] ones. The purpose of the general rules is to enable the Media Council to satisfy—without recourse to a tender procedure—such *ad hoc*, temporary, seasonal, or unique media service provision needs as are socially or economically justified.[133] The general provisions provide for three scenarios, under two of which frequency plans already accepted by the Media Council are available and may, therefore, be used. Under the third scenario, no such frequency plan has been prepared; however, the Authority is able to demonstrate that the temporary media service may be provided without disruption to other services or violation of the international provisions. According to the general rules, the Media Council may conclude the public contract with the applicant for a term of only 30 days.

[133] Andrássy – Boncz op. cit. (n. X.), 166.

Under the extraordinary scenario, in the case of the extraordinary circumstances specified in the Media Act, the Media Council recognises the media service provider's interest as regards the provision of its media services, and enables the media service providers to continue their activity for a period specified in a provisional public contract without a tender procedure.[134] In part, this scenario is intended to manage the anomalies related to the digital switchover [Paragraph (10) of Article 65 of the Media Act]. A smooth and comprehensive digital switchover in the audiovisual market is a fundamental media policy objective. The conditions of this (the preparation of the population for the switchover, and the widespread distribution of the necessary technical equipment) are not in place yet, and therefore the date of the digital switchover (the date of the shutdown of analogue terrestrial television broadcasting transmission) has been postponed relative to the plan. The term of analogue linear media service provision rights depends on the date of the shutdown; analogue licences will necessarily expire as of that time. The Act attempts to manage the resulting uncertainty by granting the holder of the analogue linear audiovisual media service provision the right to continue the provision of its media service until the time of the shutdown according to the original terms, subject to no tender procedure.

The Media Act resolves the situation of analogue terrestrial linear radio media service rights under the same scenario, on the basis of somewhat different grounds. As the *quorum* of the legal predecessor of the Media Council, the National Radio and Television Commission, ceased to exist as of spring 2010, the tender procedures in respect of the expiring licences could not be conducted. Paragraph (11) of Article 65 of the Media Act is intended to resolve this transitory period. In respect of the radio licences for which the tender procedures were commenced but—for the reasons mentioned above—no decisions were passed, this provision enables the Media Council to conclude provisional (60-day) public contracts with the media service providers upon the request of the latter. The parties may conclude such provisional public contracts several times; however, such contracts may only remain in force at most until the date of the conclusion of the public contract with the winner of the tender procedure.

14.6.2. Media service provision rights for the performance of public duties

Paragraph (4) of Article 48 of the Media Act provides the Media Council with an extraordinary licence, authorising the Media Council to appoint, with no tender procedure, an undertaking to provide media service for a term of maximum 3 years. This extraordinary licence is only available in situations where immediate action is required. A state of emergency or a disaster may constitute such a situation (Articles 48 and 53 of the Basic Law). However, the Act also recognises another set of instances, when "duties

[134] Ibid.

serving a community's special educational, cultural, information needs, or needs associated with a specific event affecting the given community" justify granting the right. If the Media Council receives several applications simultaneously, they are evaluated in the order of receipt; however, if the first applicant is able to perform the required public function adequately, then, on the basis of the first come first served principle, the first applicant is granted the right to provide the media service.

14.7. Other regulatory issues related to media services

14.7.1. Restriction of media concentration

The provisions on media holdings constitute one of the special conditions of the market entry of linear radio and audiovisual media service providers (Chapter V of the Media Act). These rules were constructed along the principle of media pluralism. The restriction of media concentration may be regarded as one of the instruments of the realisation of media pluralism. In this respect, the objective of the realisation of media pluralism is basically manifested in the form of market and structural regulations, rather than any positive provisions related to programme content. The basic assumption of the legislator was that excessive media concentration degrades the diversity of the media supply and restricts the sources of information available to the public, and is, therefore, detrimental to the operation of democratic society as a whole. In comparison with the former Radio And Television Act, the Hungarian regulations contain complex provisions adapted to the digital environment in this respect.

14.7.2. Co-regulation

Technological development (digitalisation and the emergence of cross-border, on-demand audiovisual content) has highlighted regulatory approaches other than—supplementary or parallel to—state regulation. These are known as self-regulation and co-regulation. The reason for these new forms of regulation gaining prominence is that, in the rapidly changing digital audiovisual environment, certain issues cannot be managed within a purely public administration framework; the role and responsibility of the subjects of the regulations therefore have to be increased. The European Union has been progressively encouraging these forms of regulation and their role is getting more important within the media regulations of the individual Member States, too. The AVMS Directive has expressly called upon the Member States to encourage the adoption of forms of self- and co-regulation in their legal systems [Paragraph (8) of Article 4]. In keeping with European trends, the Hungarian legislator has adopted provisions on co-regulation within the system of media regulations.

Part V

Access to the Media

15. Access to the Media

15.1. The right of correction (right of reply)

15.1.1. The legal contents of the right of correction

In the Hungarian law in effect, the right of correction is a subjective right related to false statements of fact. Hungarian law, however, does not recognise the broader right of reply that allows the reaction of the injured party, not only in respect of false statements of fact, but also in respect of other aspects of the subject of the original media content. The Hungarian rule is narrower than those of several European countries, as it is limited to false statements of fact, and not to injurious opinions. Although the legislator did attempt to introduce the right of reply (the right of the correction of opinions), Decision No. 57/2001 (XII. 15.) of the Constitutional Court found the solutions then chosen by the legislator to be unconstitutional. It is important to stress, however, that the Constitutional Court did not deem the right of reply to be unconstitutional in general, but quite the opposite:

> [it] can be established, regarding the right of reply in the broad sense, that the obligation to publish a reply to a statement violating one's reputation or human dignity is considered a restriction of the freedom of the press (primarily the freedom of editing) and indirectly of the freedom of expression that serves the purpose of protecting the fundamental rights specified in the Constitution—and in particular, human dignity, which is of especially great weight among them. This tool is necessary even if sanctions of criminal law are applied against the offender against human dignity, reputation or honour, as such a rule, which does not belong to criminal law, could ensure the provision of information on the position of the injured party to those who gained knowledge of the original statement. The obligation to publish the reply is designed to protect the fundamental right in the form of supporting those who are otherwise in a weaker position than those who dispose over the mass media. In cases where the statement did not violate any fundamental right, the purpose of the reply is to provide information to the public on the true facts and the affected person's own opinion; therefore, the obligation to publish the reply is justified by the need to inform the general public on the broadest possible basis and to use diverse sources of information [Point 1. 1., II, Statement of Reasons, Constitutional Court Decision 57/2001 (XII. 15.)].

In the specific case, the act of law was found to be unconstitutional because the uncertain, inadequately regulated manner of the reply—the size of the reply statement would not have been limited—and the special sanction applicable in such cases (it would have been mandatory to impose a public purpose fine on the media) were disproportionate, and therefore unconstitutional, restrictions.

The current rules of the right of correction are set forth in Article 12 of the Press Freedom Act. We wish to note that, during the period 1978–2010, Article 79 of the Civil Code provided the rules of correction, and significant practice in the application of the

law had been accumulated in respect of it. Article 12 of the Press Freedom Act provides the rules of correction, in many ways similarly to the earlier provisions, i.e. the previous jurisprudence seems to have survived. (It should be noted that, upon its first introduction in 1914, it was also the media regulations that provided for the right of correction, which has thus regained its original status as of 1 January 2011.)

According to Paragraph (1) Of Article 12 of the Press Freedom Act:

> [i]f false facts are stated or disseminated about a person or if true facts related to a person are represented as false in any media content, such person may demand the publication of a corrective statement capable of identifying the part of the statement that was false or unfounded or the facts that the statement has distorted, while also presenting the true facts.

Besides the protection of personality, the right of correction also serves the appropriate information of the public by eliminating errors. By moving the statement of the facts from the Civil Code to the Press Freedom Act, it became disputable whether this legal institution still serves the legal protection of personality, i.e. whether it is still of a private law nature. According to our position, the right of correction has preserved its private law nature and serves the protection of the personality rights of the injured person, although of course, due to the change, more emphasis has been given to the appropriate information of the public.[135]

Press correction procedures have to be distinguished from lawsuits relating to the protection of personality. With regard to the latter, a lawsuit may be instituted on the basis of an injury to personal rights as defined in the Civil Code, especially the right to good reputation, honour, graphical representation, sound recording, and other personality rights by the injured party. Personality protection lawsuits are procedures conducted according to the general rule wherein the injured plaintiff may apply the personality protection methods recognised by the Civil Code, i.e. the plaintiff may apply for interdiction from the infringing conduct, the restoration of the *status quo ante*, amends—which may be an announcement containing the true facts in the event of injury to reputation—and indemnification. In press correction procedures, these are not available since these procedures serve exclusively to ensure that the true facts are published and made accessible instead of the false ones. The procedure for the protection of good reputation and the press correction procedure are also different in the respect that, in the case of the latter, it is not a requirement that the false fact actually cause injury to the party initiating the procedure; i.e. press correction may be demanded with regard to false statements of fact that cause no injury to reputation (while in such cases no injury to reputation occurs). This also indicates that the right of correction is an institution that is not limited to the protection of personality, but also serves the provision of appropriate information.

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[135] László Kovács: A jogalkalmazás mindennapi kérdései a sajtó-helyreigazítási perekben. [Everyday issues of the application of the law in press correction lawsuits] *Magyar Jog*, 2011/11. 659.

Press correction should also be distinguished from the procedure available in the case of a violation against the duty of balanced coverage [Press Freedom Act 13 and Media Act 12 (1)–(2)]. Any member of the audience, as well as parties representing a position that has been suppressed, may institute such proceedings against linear media service providers. Such proceedings (as opposed to press correction) are not intended to serve the correction of incorrect facts; no injury against personality rights (as in the case of personality protection actions) is required, and their availability is not limited to the parties about whom a libellous, unfounded opinion has been expressed (as in the case of press correction and personality protection lawsuits). The purpose of this special media law obligation is to ensure the dissemination of a large number of diverse positions in respect of issues of public interest, thereby upholding the fundamental right to information.[136]

It is the interest of the public as a whole that necessitates access to the media, since all Hungarian citizens are entitled to access appropriate information and diverse ideas and positions. From all this it follows that narrow access to the media, including the institution of press correction, is

(1) a fundamentally democratic legal institution;

(2) serves the information interests and information needs of citizens;

(3) is not contrary to the ideal of the freedom of the press; on the contrary, by limiting the scope for action of the press to some extent, it serves the realisation of the multilateral meaning of that freedom and exemplifies its full accomplishment.[137]

15.1.2. Who may be obliged to make press corrections?

According to the Press Freedom Act, false factual statements published in any media content may serve as the basis for correction, i.e. the sphere of those obliged is broader that that provided for by the rules effective until 1 January 2011 (when the obligors only included television, radio, and the printed press), and the scope of press correction may extend over any media content provider. That is, the content of print and online press products, television and radio stations, and on-demand media services may all constitute the grounds for press correction.

The sphere of those obliged to press correction is specified in Article 342 of the Code of Civil Procedure and includes, besides the aforementioned media service providers and the editorial staff of press products, the Hungarian News Agency as well. In respect of

[136] We wish to note that the requirement of balanced coverage could also serve as the basis for the correction of false facts; previously the National Radio and Television Commission deemed that this was possible in certain cases. This interpretation would provide more active protection for the fundamental right to information, as that is conditional upon factuality.

[137] András Koltay: Sajtó-helyreigazítás és válaszjog: a sajtószabadság korlátja vagy kiteljesítése? [Press correction and the right of reply: a limitation or the full accomplishment of the freedom of the press?] *Iustum Aequum Salutare*, 2008/4. 143–180.

the news published by it, correction may be demanded also from the Hungarian News Agency independently; however, if the materials of the Hungarian News Agency were republished by other media, press correction has to be demanded from, and in certain cases a lawsuit has to be brought, against these media, together with the Hungarian News Agency. The reason for this is that there is no longer a legal provision that would require media publishing news taken from the Hungarian News Agency to immediately perform a correction if a court of law has ordered correction from the Hungarian News Agency as the source.[138] Therefore, in such cases the claim for correction has to be enforced against both the source of the news (the Hungarian Press Agency) and the recipient(s) of the news.

In the increasingly global world of the media, the activities of a significant part of media content providers are not confined to a single state. As a general rule, however, claims for press correction may only be enforced against media content providers that qualify as being established in Hungary. The enforcement of claims for press correction in respect of media content providers established in another Member State of the Union which provide a service that is accessible in Hungary, too, is only conceivable in the event of an evasion of the law. In the case of service providers established outside of the European Union, in theory the right would be enforceable, but actual enforcement is highly doubtful in practice.

According to the previous practice, press correction proceedings could only be instituted against media content providers that are legally established.[139] In other words, press products and media service providers that fail to comply with the obligation of advance notification may not be subject to press correction proceedings. If this were not so, the court could indirectly "legalise" an illegally operating entity (a press organ or media service provider) by ordering it to publish a corrective statement. The issue is more complex, however, since, according to the Media Act, the media service provider (the press organ) may legally start operation prior to notification (Media Act, Articles 41–42, 46), and non-compliance with the notification obligation may only bring about administrative legal sanctions. Due to the changed legal situation, the previously established practice may require review.

15.1.3. Who may request press correction?

Anyone about whom false facts are stated or disseminated or true facts are represented as false in media content may request the publication of a corrective statement, over and above their civil law claims related to the injury against their other personal rights. Such

[138] Kovács op. cit. (n. X.), 663–664.

[139] Mátyás Kapa – Imre Szabó – Sándor Udvary: *A polgári perrendtartásról szóló 1952. évi III. törvény magyarázata*. [*Explanation of Act III of 1952 On The Code of Civil Procedure*] Budapest, Magyar Hivatalos Közlönykiadó, 2006/ 3., 1401.

broad definition of the subjects naturally includes natural and legal entities and business associations without legal personality. Those organisations, however, that have no or only limited legal personality, may not demand press correction (e.g. a condominium may have legal capacity in respect of its financial management, but this does not extend over the enforcement of personal rights or press correction claims).

Press correction may be requested by those referred to by the press statement—by mentioning their names or otherwise—or whose identity is recognisable from the content of the press statement (Point I of Position Statement No. PK 13. of the Supreme Court). The convincing force of this lasting formulation of the practice of the court has remained intact upon the entry into force of the Press Freedom Act, too. Paragraph (1) of Article 342 of the Code of Civil Procedure also requires a higher degree of concern for anyone to institute such proceedings.

The assessment of this issue, however, becomes more complicated if the press correction is requested by a legal entity, as in this case the false factual statement is required to refer to the organisation, its activities, existence, operation, etc., in order for the claim to be granted. If the false facts apply to an executive or member of the organisation rather than the organisation itself, the former are entitled to institute a claim for press correction personally; the legal entity may not do so in their name or on their behalf. We wish to note that previously the law did allow for this in several cases, e.g. the National Council of Justice had been entitled to institute lawsuits for the protection of the interests of judges, but these possibilities are no longer available. From all this it also follows that the claim for press correction may only be enforced personally; the rights holder may only apply for remedy in respect of their own injury. The requirement of personal enforceability also means that, upon the death of the rights holder, the right to press correction ceases as well.

If the disputed statement formulates a false statement of the facts that concern several people, it is not inconceivable for these people to take joint action in the interest of the enforcement of their rights; they may do so via a simple joinder of parties, although this does not mean that joint action is mandatory for them.

Although, in respect of proceedings for the protection of reputation, special considerations apply to them, public figures may enforce their claims for press correction according to the general rules, too.

15.1.4. Basis of press correction: The injurious statement

Press correction may be requested against media content. The possibility of press correction is not precluded in the event that the injurious statement is published in a paid announcement rather than as part of the editorial content (Supreme Court Decision No. EBH2000. 299.).

In order to request a press correction, the injured party is required to claim that the content published by the media service provider or press product made a false factual statement about the said party, represented a true fact as false, or disseminated (passed

on) a false statement made by others. The complainant is required to be identifiable in the statement objected to, although this is not limited to the mention of the name of the complainant.

From the very start, judicial practice has consistently rejected claims for the correction of opinions. In themselves the expression of opinion, criticism and social, political, and scientific disputes may not form the basis of press correction (Supreme Court Position Statement No. PK 12, Point III).

> Press correction… may only be ordered if the legal violation is realised by way of a false statement of facts or the depiction of true statements as false. Any injurious assessment, criticism, journalistic opinion, or value judgement may only form the grounds for press correction if it contains or expresses false facts, or if it depicts true facts as false (Supreme Court Decision No. BH1981. 402.).

Presentation of political views may not, in itself, form the grounds for press correction (Supreme Court Decision No. BH1993. 493.). The assessment or criticism of the conduct of politically exposed public persons can not be the subject of press correction. No valid claims for press correction may be made on the basis of a criticism of conduct manifested in a truthful presentation of the facts (Supreme Court Decision No. BDT2008. 1737.). Press correction may not be used by the parties as a vehicle for scientific, artistic, professional, or similar debates; in such cases the court shall reject the claim. Professional disputes expressing variances of opinion on the legal evaluation of actual facts may not be the subject of press correction (Supreme Court Decision No. BH1992. 753.). In certain cases, delimiting statements of opinion from statements of fact can be a complex and complicated issue: in such cases it is difficult to decide whether or not press correction proceedings are called for. Such situations would require a case-by-case examination of whether any untrue facts that serve as the basis of the given expression of opinion can be identified. If false, statements of fact from which the assessment made in the press statement is inferred may also be subject to press correction (Supreme Court Decision No. BH1989. 479.). However, the court may not overstep the limits of its competence as provided for by law and may only award correction in respect of the factual statements.

"Statement of false facts" denotes the case when the media content provider is the primary source of the statement that has proved to be false. The service provider commits a "dissemination of false facts" if it mediates and disseminates facts claimed by others rather than its own statements. Court Practice is unequivocal in that claims to such, as a general rule, do not relieve the media from its legal responsibility, i.e. the press is required to proceed with appropriate circumspection whenever it mediates the statements of others to the public (Supreme Court Decision No. BH1990. 468.).

No press correction is admissible if the press organ has provided the public with a truthful account of the contents of the charges, the public court procedure or the appealable verdict of a criminal court prior to the final conclusion of the criminal proceedings. If the criminal procedure does not result in conviction, then, upon the request of the person concerned, the press organ is required to inform its readers about

this fact, too (Points II–III, Supreme Court Position Statement No. PK 14.). The publication of the opinions of others may form the basic action for press correction in the same way as when the press publishes its own unfounded statements. An exception to this is when the press reports on a criminal procedure. In such cases the provisions of Points II and III of PK 14. govern.

> Mass media (the press, radio, television, etc.) play an important role in the life of society. They serve people's natural curiosity and influence public thought. They are only able to fulfil their social mission, however, if they depict reality faithfully and do not violate the personality rights and interests of others with their communications.… General reference to the source of information or the content of other press organs in itself does not exempt press organs from their liability under press law (Supreme Court Decision No. EBH2000. 297).

The fact that a press organ is entitled to report on the public event does not affect its correction duty in respect of the reporting of any false factual claims made about a person not present at the public session of an organisation (Supreme Court Decision No. EBH2000. 298.).

The media content provider may "present true facts as false" by concatenating statements that are, in themselves, true (or, perhaps, opinions that seem to be correct) in such a manner that is capable of giving rise to false inferences by average readers, viewers, or listeners that the media content provider does not substantiate with facts. On the basis of judicial practice, for example, during a debate on a social issue, an allusion that a person opposing the publication of the data of former secret agents may be doing so for personal reasons means, as regards its substance, that the person in question may have also been a secret agent, which is in violation of the right to good reputation (Supreme Court Decision No. BH2007. 151.).

15.1.5. Press correction procedure

The procedure related to the legal relationship of press correction consists of two parts: the (out of court) press correction procedure and, if necessary, the press correction lawsuit. In many cases the press notices the error without having to resort to costly and protracted court proceedings; therefore a rule that primarily subscribes an out of court reconciliation between the parties in the interest of the enforcement of the claim is justified. It is important to emphasise that any subsequent press correction lawsuit is conditional upon the properly conducted out of court procedure.[140]

A written request for press correction has to be made to the provider of the media content [Paragraph (1) of Article 342 of the Code of Civil Procedure]. The request may be submitted by the concerned party or its representative; however, press correction may not be requested on behalf of others. In the case of printed or online press products, the

[140] Ibid. 1405–1408.

addressee of the request is the editorial office (rather than the publisher or the founder) as specified in the imprint of the press product or website. In the case of other types of media content, the addressee is the media service provider: the natural or legal person or business association without legal personality who or which has editorial responsibility over the composition of the media services and determines their content [Press Freedom Act Article 1 Point (2)]. Requests for press correction may also be submitted to the Hungarian News Agency in respect of news published by it.

An important formal requirement is that the request must be in written form. Although written form is prescribed by the Code of Civil Procedure, since the document in question is an extrajudicial one, it is sufficient for the printed or written request to be signed by the applicant; there are no strict formal requirements.[141] (At the same time, requests submitted via email or other electronic means do not conform to the requirements unless the message and its sender have been authenticated using advanced electronic signature, see Supreme Court Decision No. BH2006. 324.)

The party concerned may submit the request for press correction within 30 days of the date of publication of the disputed statement. According to previous legal practice, this 30-day deadline was clearly a so-called substantive law deadline, on the basis of which the request made to the media had to arrive to the addressee within 30 days. Although the place of the legal provision has changed and currently a provision of procedural law contains the deadline, according to Point II of Supreme Court Position Statement No. PK 13, it is still effective: judicial practice still treats this as a substantive law deadline. The burden of proof of the arrival of the request within the deadline provided lies with the requestor; therefore it is useful to ensure that the receipt of the request is certified (notice of receipt, courier, certified electronic document, etc.).

However, the question should also be raised as to when the period starts within which a written request for the publication of the press correction has to be made to the media content provider. In the case of a printed press product, this is the date of the publication of the disputed statement as stated on the press product; however, if the distribution of the paper only starts later than that, the actual time of the start of distribution shall apply (Supreme Court Decision No. BH1986. 22.). In the case of linear media service providers, the programme schedule serves as the basis of the establishment of the time of publication; naturally, if changes are made to the schedule, the actual time of publication shall govern. If the obligor is an online newspaper, news portal or provider of on-demand programmes, then, according to the main rule, the deadline period commences with the point in time when the disputed statement is made accessible (uploaded, posted), even if the false statement only reaches its target audience long after it has been made accessible (e.g. via sharing on Facebook). If, however, the article has been modified subsequently to its initial publication, and it was such a modification that caused the infringement, the deadline is measured as of the time of this modification.

[141] Kovács op. cit. (n. X.), 665.

The request is required to specify which statement of facts objected to in the press announcement is requested to be corrected (Supreme Court Decision No. BH1992. 308.) According to Paragraph (1) of Article 12 of the Press Freedom Act, the true facts, as opposed to the false claims, are also required to be presented. The rights holder may request, as a corrective statement, the publication of the reply letter of the rights holder (first phrase of Point I of Supreme Court Position Statement No. PK 15.), which obviously includes electronic replies as well.

Press correction lawsuits are conditional upon the certified submission of the press correction request to the media content provider within the legally prescribed deadline, in the correct form and with the required content. Any claims not preceded by such a procedure shall be rejected in a lawsuit.

Paragraph (2) of Article 12 of the Press Freedom Act provides that:

> for newspapers, online press products and news agencies, the corrective statement shall be published within five days from receipt of the respective request, in a manner and to an extent similar to the contested part of the statement. In case of on-demand media services, the corrective statement shall be made within eight days from receipt of the respective request, in a manner and to an extent similar to the contested part of the statement; in the case of other periodicals the corrective statement shall be published eight days after receipt of the request, in the next issue/edition, in a manner and to an extent similar to the contested part of the statement, and in the case of linear media services within eight days in a manner similar to the contested part of the statement, and during the same time of the day in which the contested part was published.

The request may only be rightfully rejected within rather narrow limits: The media content provider may refuse to comply with the request if

– the request for press correction was not originated by the right holder,
– if receipt of the request was delayed or its format is incorrect, or
– if the claims made in the request for press correction can be refuted immediately.

In the event of any reasons for refusal, however, the rights holder may seek relief within the appropriate deadline, since only a court of law may decide on the merits (with the force of substantive law) about the issues in respect of which the claim was rejected.

The service provider is required to meet its obligations in such a way as to provide actual remedy for the injury. If the service provider fails to meet this obligation or performs this obligation inadequately—whether because its position is that the facts stated by it are correct or lacking such conviction—the rights holder shall be entitled to enter an action. The publication of the press correction in the correspondence section does not qualify as proper correction; therefore in this case a writ for execution may be issued (Supreme Court Decision No. BH1992. 388.). Rather than repeating the injurious text, the text of the press correction is required to specify its true content (Supreme Court Decision No. BH1992. 390.). The same principles apply to linear and on-demand media services, too.

If the press organ fails to meet the unconditional obligation of correction examined above, the law grants the right holder, i.e. the party in respect of whom the press organ has alleged and spread false facts, the right to bring an action. Action for press correction may only be brought against the press organ defined in the act of law. In the case of an inappropriate respondent, the court is required to call upon the plaintiff proceeding via a legal representative to involve in the legal action the person specified by law or to clarify the identity of the respondent if the statement of the claim in unclear in that respect (Supreme Court Decision No. EBH2008. 1877.).

The claim for press correction may not overstep the narrow bounds provided for by law, i.e. the request may only be directed at the correction of invalid facts and, possibly, the publication of a reply. If the rights holder enters claims beyond that (e.g. personality rights, indemnity, etc. claims), those will be rejected by the court. As the decision of the court may not exceed the scope of the claim, and because claims for press correction may not be united with or attached to other claims, in lawsuits for press corrections the court may not decide in respect of claims for other legal sanctions related to a violation of personal rights (Supreme Court Decision No. BH1986. 272.).

The claim has to be instituted at the tribunal (previously, county or municipal court) with jurisdiction according to the registered office of the respondent media content provider within fifteen days of the last day of the effective period of the publication obligation; non-conformance to this deadline is excusable if an acceptable certificate for such is provided. The deadline is calculated as of the day when the media content provider failed to comply with the relevant publication duty. The statement of claim is required to provide the specific content of the corrective statement required, proof that the plaintiff has requested the correction within the deadline provided for by law, and, in the case of daily newspapers, periodicals, and periodical publications, a copy of the issue containing the objectionable statement; in the case of online press products, a printout of the objectionable statement is to be attached, if available [Code of Civil Procedure, Article 343(3)–(4)].

The court proceedings are conducted with special priority; the entire procedure is speedy. Accordingly, within just eight days from the commencement of the lawsuit, the court is required to hear the case unless deficiencies of the statement of claim need to be remedied. In the trial the plaintiff is the party about whom the media content provider has published the injurious statement, while the respondent is the media content provider. If possible, the parties are required to be present at the trial and represent their case on its merits. If, for example, the respondents fail to appear at the hearing, they run the risk of a condemnatory judgement even if the content published by them is true and capable of proof.

The rules of proof in press correction lawsuits are special. While in other lawsuits proof is required from the plaintiff and the respondent is engaged in defence, in the case of press correction lawsuits the burden of proof is reversed. In this lawsuit it is the respondent media content provider that is required to furnish proof that, contrary to the plaintiff's claim, the statement claimed to be injurious reflects the truth (Supreme Court Position Statement No. PK 14.). The court may only take into account evidence that has

been available from the date of the first hearing of the case. Second hearings are held very rarely. That is, the respondent is required to prove the validity of the statement via all available means, right at the first hearing, otherwise the respondent may lose the lawsuit.

If the respondent media content provider is successful in proving that it had rightfully rejected the publication of the correction requested earlier and that the facts stated by the respondent were materially correct, only then will the court reject the claim and not oblige the press organ to publish the corrective statement. If, however, this is not the case, i.e. if the press organ is not successful in proving its position or if it takes no effort to prove it, the court will oblige the media content provider to publish the press correction with the text specified in the judgement of the court. The manner, place, and deadline of the publication of the corrective statement is also specified by the court, in keeping with Paragraph (2) of Article 12 of the Press Freedom Act. The Court may also rule that the service provider is to publish the reply letter (statement) of the plaintiff that meets the criteria on the content of corrective statements. Notwithstanding its length, the reply letter requested to be published as a press correction has to be accepted as a request for correction. In itself, the fact that the reply letter of the party requesting press correction is extensive may not constitute an obstacle to publication; in such a case it is the task of the press organ and the court to select the facts requested for press correction by the rights holder plaintiff (Supreme Court Decision No. BH1993. 23.).

The judgement has to be capable of presenting this character of the false facts published, i.e., it must indicate unequivocally that the facts stated by the media were false or that a certain true fact was depicted as false. Beyond this (if necessary) the press correction is required to contain the true facts as well. Corrective statements, taking into account the entire statement and its context must make it clear which of the statements of facts in the press announcement are false, what the falsely presented facts are and what the true facts are. The text of the statement may not be formulated in such a way as to deprive the statement of its corrective nature (Supreme Court Position Statement No. PK 15). The publication of press corrections is usually deemed inappropriate if the correction is accompanied by comments and other statements that reinforce the content of the statement found to be injurious. When establishing the text of the correction, the court is required to take into account any agreements on the manner of the publication of the corrective statement (Supreme Court Decision No. BH1983. 151.).

Appeal lies against judgements in press correction lawsuits according to the general rules; appeals are adjudged by the Court of Appeal with jurisdiction. Applications for judicial review may also be submitted to the Supreme Court of Justice (the *Kúria*, as the supreme judicial organ has been called since 1 January 2012); nevertheless, motions for a new trial are not granted.

15.2. Access to the media during election campaigns, political advertisements

It is characteristic of a wide range of legal systems that they impose limitations on political purpose access to the media. The scope of such limitations may be temporal, objective, or personal, but might even extend over the amount of money available for public communication. A frequent temporal limitation of political communication is its restriction to the campaign period, followed by a period immediately prior to the elections (campaign silence) when such form of political persuasion is forbidden. In some legal systems certain political messages are prohibited on the basis of their subject; the general limitations on freedom of speech may extend over such expressions, too. Personal limitations may be limitations that restrict budgetary support to only political organisations conforming to certain conditions for participation in the campaign and deny such support from others. Finally, the limitation related to monetary assets is also widespread: the stipulation of a maximum amount of money that may be used in respect of each electoral candidate or a limitation of the support to individual candidates are also well-known methods of legislation in the interest of limiting political communication.

On the side of the media service providers, the provision of access has another dimension, too: Can media service providers be forced to publish political advertisements and can they demand financial remuneration for this (i.e. the advertising time)? Are the announcements published during campaign periods required to ensure balanced coverage, or, on the contrary, is it allowed to select only the political messages and their proponents that the media service providers prefer? It is the answers to these questions that determine the substance of the regulation of political access.

15.2.1. Hungarian regulations

According to Point 55 of Article 203 of the Media Act, a political advertisement:

> shall mean any programme transmitted for or without consideration, promoting or advocating support for a party, political movement, or the Government, or promoting the name, objectives, activities, slogan, or emblem of such entities, which appears and is transmitted in a manner similar to that of advertisements.

The subsequent Point 56 defines the concept of a political programme, distinguishing it from that of a political advertisement:

> a programme, which devotes at least ninety percent of its duration to the analysis, coverage and evaluation of Hungarian or international political or current public affairs, and to the exploration of the background of such affairs or events, which does not qualify as a news programme.

Also an independent category distinct from both "general" and political advertisements is that of public service announcements:

> any announcement released without consideration, originating from an organisation or a natural person fulfilling state or local government responsibilities, which provides specific information of public interest for the purpose of attracting the attention of the viewers or the audience, and does not qualify as political advertisement. [Point (27) of Article 203 of the Media Act].

Furthermore, a public service advertisement is

> any communication or message with a public purpose, which does not qualify as a political advertisement, is not for profit, and does not serve advertising purposes, is transmitted for or without consideration, and which aims to influence the viewer or the listener of the media service in order to achieve a goal of public interest [Point (64) of Article 203 of the Media Act].

Since different conditions apply to commercial and public service messages and political advertisements, upon the request of the media service provider the Media Council may issue a preliminary decision (prior to publication) on the classification of a given announcement, thereby relieving the media service provider from subsequent liability (on condition that the latter publishes the content concerned according to the rules applicable to the category established in the decision).

Distinction between the above categories is not always a simple matter, since it is possible that the forces in possession of governmental power and resources or the supporters of the opposition parties wish to communicate a message via the media which, although not classified as a political advertisement, is nevertheless capable of promoting a political force. In this respect the provision of the Media Act may be considered as particularly progressive in comparison to the previous media regulations; it expressly nominates the Government, too, among the buyers of political advertisements, i.e. messages promoting the government's programme or its accomplishments may fall under the category of political advertising as well. The elaboration of the reliable practice of a distinction between public service announcements and the political advertisements of the Government is a task yet to be accomplished by the Authority.

The buyers of political advertisements, public service announcements and public service advertisements may not exert editorial influence over the content of the media service. The person or entity ordering the publication of the given advertisement or announcement may only exert influence in respect of the time—and, accordingly, the expected audience share—of the broadcast [Media Act Article 32(1)].

The general rule on commercial communications, according to which such communications must be clearly distinguished from other media content, is applicable to political advertisements, too. Accordingly, in the case of audiovisual media service providers, optical and acoustic signals (images and sounds), and acoustic signals, in the case of radio stations, are required to distinguish such communications from other media content. Upon the publication of political advertisements, public service announcements and public service advertisements, the person or entity ordering the publication is

required to be identified unequivocally; this provision also serves the distinction of such communications from other editorial political content [Media Act Article 32(3)–(4)].

As a general rule, political advertisements may be published during the campaign period exclusively or in relation to extraordinary referendums. The publication of these is governed by Article 32 of the Media Act, the Act on Electoral Procedure, and other electoral rules. The campaign period lasts from the date of setting the date for the elections until the start of voting; the date of the elections must be set at least 60 days prior to voting. In general, therefore, a period of approximately two months is available to political parties and other organisations to convey their messages to the electorate in the form of advertisements. They have several means of doing this. As such, nominating organisations and candidates may produce posters without separate permission, which posters may be freely placed, on condition that posters may only be placed on the walls of buildings and fences with the consent of the rights holder and the placement of posters may be restricted in respect of certain buildings on the basis of the protection of historical monuments, and, furthermore, standalone temporary billboards may be erected in public areas against a consideration. Posters may not be placed in such a manner as to overlap (to cover other posters) and have to be removed within a set period of time. The organisation of rallies is also characteristic of the campaign period. For such purposes, the parties may be granted premises by the state organs under identical conditions; however, campaign activities are not permitted on the premises of public authorities.

During the campaign period the media service providers may publish political advertisements, subject to equal terms for the various nominating organisations and candidates. No opinions or explanations may be appended to political advertisements. We wish to remark at this point that the Act on Electoral Procedure still applies the concept used by the 1986 Press Act (repealed); however, the term "political advertisements" should obviously be construed according to its definition provided by the Media Act. The media service provider shall not be responsible for the content of the political advertisement if the request for the publication of the political advertisement is in compliance with the provisions of the Act on election procedures, and in such a case the media service provider shall be obliged to publish the advertisement without further consideration [Media Act, Article 32(4)].

Press products and media service providers play an active role in the media campaign; the Act on Electoral Procedure therefore provides the possibility of legal remedy against their actions. Depending on the nature of the media content provider, such complaints are adjudged by the local, the regional or the national election committee. If the complaint is found to be justified, besides other sanctions the committee may order the editorial staff of the periodical, the media service provider, or the news agency to publish the decision or its operative part within three days in the case of daily newspapers and news agencies, or in the next issue in the case of periodicals, in identical form, and within three days in the case of media service providers during the same period of the day and in an identical number of times as the infringing communication.

The Act on Electoral Procedure also provides for certain free of charge publication obligations in respect of public media service providers. Accordingly, national public

media service providers are required to publish the political advertisements of nominating organisations putting forward national lists, regional public service programme providers are required to publish the political advertisements of nominating organisations putting forward regional lists in their region of reception, and local public service programme providers are required to publish the political advertisements of candidates announcing themselves in single mandate constituencies in their reception area from the 18th day preceding the elections at the latest until the 3rd day preceding the elections at least once, free of charge. On the last day of the election campaign the above media service providers are required to publish the political advertisements produced by nominating organisations and candidates free of charge, according to the same order as given above (Article 93 of the Act on Electoral Procedure). Similar provisions apply to local government elections. No publication obligation applies to commercial broadcasters. If commercial broadcasters decide to publish political advertisements, they are required to provide equal conditions for all nominating organisations and candidates. No opinion or assessing explanation shall be attached to such political advertisements. [Paragraph (1) of Article 44 of the Act on Electoral Procedure].

A recent example of the diverging interpretations of the rules on political advertisements was the legal dispute surrounding the political advertisement for *Jobbik Magyarországért Mozgalom* ("*Jobbik, Movement for a Better Hungary*")[142] published during the campaign of the 2010 autumn local government elections. According to Hungarian Television Ltd. (hereinafter referred to as "MTV") the term "Gypsy crime" featured in the advertisement was contrary to the provisions of the Radio and Television Broadcasting Act, 1996 (repealed) prohibiting the violation of human rights. Accordingly, Hungarian Television Ltd. refused to publish both the original and the bleeped-out version of the advertisement. The National Electoral Committee found Jobbik's objection to be justified, thereby essentially obliging the public television station to publish the advertisement. According to the position of the National Electoral Committee, the content of Jobbik's "political advertisement that was objected to does not violate such fundamental constitutional rights and does not constitute a criminal act punishable by law, on the basis of which MTV could refuse its publication, thereby restricting the freedom of expression". This decision was approved by the Supreme Court as well; moreover, later on the Supreme Court ruled that MTV had committed a violation against the rules of electoral procedure by adding the commentary to the advertisement simultaneously with its publication that the advertisement was published on the basis of the ruling of the National Electoral Committee and the court. It should be noted that, on the basis of Paragraph (4) of Article 32 of the Media Act, currently MTV would have no right to decide, at its discretion, about publication, although it is also true that the television station would have no liability either if it were subsequently found that the political advertisement violated the provisions of the applicable regulations.

[142] "Jobbik", at the same time, is also an allusion to the right(est) wing.

It should be noted that special rules apply to the examination of balanced coverage during election periods, and the National Electoral Committee is entitled to verify conformance thereto as well. As an example, we wish to mention Decision No. 627/2010 of the National Electoral Committee which, on the basis of a complaint received from a private individual, established the infringement of the equal opportunity of candidates and nominating organisations, and the fundamental principles of the regular exercise of rights in good faith, as a national television station only presented the opinions of three candidates for the post of Mayor of Budapest in respect of the planned "congestion charge" during the campaign period of the local government election. The infringement consisted of depriving the fourth candidate from the opportunity to express their position, and the media service provider was not able to justify the omission. The decision called upon the infringing party to desist from further infringement and to publish the text of the decision several times.

Campaign silence is ordered on the day of the election until the ballot-boxes are closed, and this applies to the media as well. On the basis of the examination of the institution of campaign silence, the Constitutional Court did not find it to be in violation of the freedom of expression, and the freedom of the press (even though the period of campaign silence was longer under the previous regulations: Campaigning was banned from midnight on the day preceding the vote until the closure of the ballot-boxes):

> Provisions on campaign silence… do not substantially restrict the flow of information; rather, they set a time limit for the participants of the electoral procedure. The rules of campaign silence restrict the freedom of expression and the freedom of the press in respect of the candidates, the nominating organisations and the media: the Act on Electoral Procedure… does not differentiate between the concerned parties in respect of the restriction of campaign activity [Constitutional Court Decision No. 39/2002 (IX. 25.), Statement of Reasons, Point III. 2.].

Another decision of the Constitutional Court, however, found the provision prohibiting the publication of the results of public opinion polls within eight days prior to the elections to be unconstitutional [Constitutional Court Decision No. 6/2007. (II. 27.)]. The purpose of the restriction of the publication of the results of public opinion polls—which may constitute the justification for the restriction—is related to the undisturbed management of the elections. Although the undisturbed management of the elections may be a legitimate and constitutionally acceptable objective of the restriction of the fundamental right, the eight-day prohibition specified in Paragraph (1) of Article 8 of the Act on Electoral Procedure had not been in proportion to the objective to be achieved, i.e. the legitimate interest in the undisturbed management of the elections. This objective may be attained without resorting to a restriction of the freedom of expression and the freedom of the press for such a period of time. This decision generated considerable criticism, since while the institution of campaign silence is hardly suitable for the elimination of the negative effects of attempts to influence public opinion in bad faith, the publication of the results of public opinion polls may motivate uncertain voters to vote for the candidate who seems to be stronger (*the band wagon effect*). Public opinion polls and the publication of their results in bad faith is, in fact, capable of influencing the

elections, which is why in most other countries the methods, application and publication of such polls are subject to strict rules. The result of the decision of the Constitutional Court was, however that public opinion polls could be published during the entire campaign period with the exception of the campaign silence period; this has been considerably shortened recently. As such, it is questionable whether the rule adequately serves the public interest vested in the undisturbed management of the elections.

In Hungary, the financing of campaign costs is also provided for by law. Similarly to the German system of financial support for political parties, nominating organisations are entitled to support from the central budget in proportion to the number of their candidates. Such support, which may only be used to cover material type costs (travel, rents, etc.) must be accounted for. Over and above the aforementioned budgetary support, independent candidates and nominating organisations may spend a maximum of one million forints per candidate for the purposes of the election. The above campaign financing amount must be accounted for, and the State Audit Office exercises control over such accounts as well (Act on Electoral Procedure, Articles 91–92).

16. Aspects of Communications Law in Media Regulation

16.1. The *must carry obligation*

Paragraph (2) of Article 73 of the Media Act prescribes that media service distributors distributing media services over a transmission system or network used for broadcasting radio and audiovisual media services to the public are subject to a must carry obligation. On the basis of Paragraph (3), transmission systems or networks used for broadcasting audiovisual media services to the public include, in particular, cable television networks, satellite and terrestrial media service distribution networks (with the exception of analogue audiovisual broadcasting networks), as well as transmission systems allowing for the transmission of media services using Internet Protocol, if the nature and conditions of the service are identical to those of media service distribution, or if this substitutes for the media service distribution carried out by any other means. On the basis of Paragraph (4), the Media Council may also extend the must carry obligation to service providers and operators distributing media services over other transmission systems or networks, if these transmission systems or networks are widely used by subscribers and users as the main instrument for receiving radio or audiovisual media services. The Media Council monitors the compliance of such networks to the must carry obligation regularly, but at least every three years. If, during the course of the regulatory procedure launched as a result of such monitoring, the Media Council establishes that it is reasonable to impose a must carry obligation in respect of the given network or transmission system, it passes a decision establishing the must carry obligation in respect of all service providers and operators distributing media services over the given transmission system or network.

The Media Act makes it clear that the must carry obligation does not apply to radio media services over a media service distribution network or transmission system used primarily for broadcasting audiovisual media services to the public [Paragraph (5) of Article 73]. The must carry obligation does not apply to satellite media service distributors in respect of local media services either [Paragraph (2) of Article 75]. Furthermore, the Media Act also makes it clear that if a media service distributor provides media service distribution services over several transmission systems or media service distribution networks, the must carry obligation applies to this media service distributor separately in respect of each transmission system or media service distribution network [Article 73 Paragraph (6), Article 75 Paragraph (4)].

Articles 74–75 of the Media Act prescribe the must carry obligation according to the following system:

1. With the exception of media service distribution via broadcasting, public media service distributors are obliged to transmit a total of four linear audiovisual media services and three linear radio media services as a basic service, free of charge. The public media service provider may not claim consideration from the media service distributor for the distribution of such media services and may not claim an additional fee from subscribers in excess of the costs of access. In the case of analogue media service distribution networks, all public media services falling under the scope of the must carry obligation shall be made available to subscribers in all programme packages.
2. The media service distributor is, for up to ten percent of its total capacity but in respect of three media services at most, subject to an obligation to contract regarding the technically[143] and economically[144] viable contract offers made by the media service providers, regarding the provision of their regional or local audiovisual community media services.
3. The media service distributor is subject to an obligation to contract, regarding the technically and economically viable contract offers made by the media service provider with a local reception area, regarding the provision of a maximum of two additional—not necessarily community—audiovisual media services, provided that the reception area of the given media service provider falls within the given media service distributor's reception area.
4. In addition to the above, the Media Council may, ex officio or upon the media service provider's request, specify a maximum of two additional linear public media services or one linear community media service, in respect of which the media service distributor has an obligation to contract according to a technically and economically viable contract offer. The provision on free of charge transmission is not applicable to the public media service specified by the Media Council, i.e. the public media service provider may charge a fee for the specified media service.[145]

[143] Offers may be rejected on objective technical grounds if the service requirement indicated in the offer jeopardises the safety of operation or the unity of the network [Media Act, Article 75(9)].

[144] Offers may be rejected on objective economic grounds if the service claim indicated in the offer jeopardises the operation of the media service distributor, thereby the agreement is impossible. [Media Act, Article 75(10)].

[145] András Kovács: Mttv. 72–81. §. [Articles 72–81 of the Media Act] In Koltay–Lapsánszky op. cit. (n. X.) 194.

5. Given their increased capacity to influence public opinion, influential media service distributors[146] have an obligation to contract in respect of a maximum of three further linear community audiovisual media services according to the technically and economically viable contract offers made by the media service providers for distributing their audiovisual community media services.

If the authorised media service provider and the obliged media service distributor are unable to agree upon the conditions of transmission, the media service provider may initiate a legal dispute procedure before the Media Council. This, however, is conditional upon the "materialisation" of the legal dispute, that is—on the basis of Article 75 Paragraph (5) of the Media Act—the media service provider is required to proceed in good faith, and in line with the principles of fairness in the course of the contract offer procedure and the negotiations held, to prepare the conclusion of the contract and to negotiate on the merits in order to bring about the conclusion of the contract. During the course of such a legal dispute procedure, the Media Council may, upon request, establish the contract between the parties; however this is subject to several limitations as specified in Article 76 of the Media Act.[147]

The obligation to contract must be fulfilled according to the order of the offers. If, in the course of the fulfilment of the must carry obligation, the media service distributor is only obliged to transmit one authorised media service provider but several authorised media service providers simultaneously require transmission too, the media service distributor is obliged to assess the authorised media service providers' contract offers, impartially and based on objective criteria, under a public and transparent procedure [Media Act, Article 75 Paragraph (8)].

16.2. The Hungarian regulation of the digital switchover

According to Paragraph (1), Article 38 of the Digital Switchover Act, the digital switchover shall be implemented in the entire territory of the Republic of Hungary by no later than 31 December 2014, to such an extent that at least 94 percent of the population

[146] The number of subscribers of the media service distribution of such distributors—irrespective of the media service distribution platform and network used—exceeds 100,000 or their reception area covers more than one third of the population of Hungary, and the sales revenue of the media service distributor group arising from media service distribution or related services, with the exception of analogue broadcasting transmission, performed in the territory of Hungary, exceeds one billion forints annually.

[147] The Media Council, in the course of exercising its powers, has the right to determine the content of the contract, provided that the application is substantiated, only in the following manner: *(i)* the media service is also distributed in the subscription service or programme package of the media service distributor providing the greatest access, and *(ii)* the media service distributor has no right to receive any consideration for the transmission of authorised the media services, and the media service provider is not entitled to any consideration for the programme. The term of the contract is one year, automatically renewed if neither party decides to discontinue the contract.

is reached by public service programmes via a digital broadcasting service and the devices suitable for receiving digital broadcasting services are available via retail sales to the population. In respect of the digital switchover of radio media service distribution, Article 38 Paragraph (2) of the Digital Switchover Act specifies only a target date rather than an obligation; this target date is also specified as 31 December 2014. The switchover is only possible if by the date specified at least 94 percent of the population is able to access the public media service via digital radio broadcasting transmission, and at least 75 percent of the population is in possession of devices capable of receiving digital media services. If these conditions cannot be fulfilled by the date specified, the date of the digital switchover of radio media service distribution shall be postponed to the date of their fulfilment. According to Article 48 Paragraph (5) of the Media Act, analogue linear media service provision rights shall expire upon the switchover. In the case of radio, analogue broadcasting may be presumed to continue for a protracted period of time,[148] and therefore Article 71 of the Media Act provides special ownership rules, taking over, in essence, the similar rules contained in the former Radio and Television Broadcasting Act.

One of the most important regulatory issues related to terrestrial digital switchover concerns is so-called multiplex services (the combination of several signals in a single signal stream). In the case of digital broadcasting transmission, the programme signals basically reach the viewer in three steps. In the first step, the media service provider creates the contents of the programme. In the second step, the actual multiplexer combines the programmes of several media service providers into unified signal streams by frequency and possibly encodes them, while in the third step the broadcaster distributes (broadcasts) the signals on the frequency dedicated to the given multiplex. Multiplexes may operate according to one of two models. If granted the right to decide which channels to combine into a single programme flow, then, similarly to cable television providers, multiplexes conduct a sort of secondary programme packaging that falls under the scope of media regulation (strong multiplex). If no such right is granted, their activity is of an exclusively technical nature, which falls under the scope of the regulation of electronic communication. According to the Hungarian Digital Switchover Strategy covering the preparation for digital switchover,[149] a trend may be observed that in the countries where the content packaging activities of cable television providers has a definitive role in the access to the programme signals, multiplexes receive strong rights in order to strengthen the competition between the different platforms. Another argument in favour of the strong model is that there is no reason to justify the right of the state to decide upon the inclusion of paid content in the platform; moreover, the competition of packages on the retail television market is traditionally strong in Hungary, and the bureaucratic supervision of the package creation of multiplexes would hinder the intensity of this competition.

[148] Kovács op. cit. (n. X.) ,185.
[149] Digital Switchover Strategy, Annex to Government Resolution 1014/2007 (III. 13.).

The frequency shall be used by the multiplex operator in all cases; therefore the selection of the operator may be done on the basis of individual licensing via tendering, as provided for by Paragraph (1) of Article 8 of the Digital Switchover Act. Under the weak multiplex model the inclusion of media services in the multiplex is decided by the national media authority, while under the strong model this is the competence of the multiplex operator. In the latter case the state only provides for the must carry media services. The Digital Switchover Act follows the strong model. Accordingly, on the basis of Paragraph (5) of Article 8 of the Digital Switchover Act, the Media Act provides for the obligatory transmission of public service, local, regional, and community media services (Articles 74–75) in a gradual manner. On the basis of Article 44 Paragraph (3) of the Digital Switchover Act, the operators of digital television and radio broadcasting networks and broadcasting stations are required to provide the users with access to the public media services, as specified in Paragraph (1) of Article 74 of the Media Act, free of charge. On the basis of Paragraph (4) of Article 44 of the Digital Switchover Act, the operator of the free-to-air digital television broadcasting network is required to distribute the media services of the public media service providers via the network with the largest public availability and the mobile free-to-air digital television broadcasting network.

On the basis of Paragraph (2) of Article 8 of the Digital Switchover Act, the licence for the operation of a digital free-to-air media service distribution network or a free-to-air media service distribution station awarded in an application procedure includes the construction of the digital free-to-air media service distribution network or free-to-air media service distribution station with the technical parameters stipulated in the call for applications after obtaining the licence, the right to use the radio frequencies allocated to the network or free-to-air media service distribution station, and the right to provide, via the network, media service distribution services, ancillary digital services and other electronic communications services. On the basis of Paragraph (6) of Article 8 of the Digital Switchover Act, the operator of the digital free-to-air broadcasting network or the free-to-air broadcasting station is entitled to use only up to 15 percent of the part of the available data transmission capacity not contracted for media service distribution for the purpose of ancillary digital services and/or electronic communications services—in this order—or allow the use of the remaining free capacity for the same purposes to other parties.

Under the strong model, during the application process, media policy and information society objectives may and should be asserted in respect of the multiplex service provider. This is made possible by point B.7. of the Annex of the Authorisation Directive. Accordingly, among the evaluation criteria, Paragraph (3) of Article 39 of the Digital Switchover Act mentions as advantageous commitments, based on a mutual letter of intent, to the provision of access to a free-to-air, general topic media service provider with terrestrial distribution, commitments related to the media service fees of the distribution of the public service programmes of public media service providers, the introduction of interactive ancillary media services, and support for interactive services via the set-top boxes used for the reception of the programmes distributed over the digital media service distribution network. Point *g)* of Paragraph 2) of Article 39 of the Digital Switchover Act states that the information of users and subscribers and a proposal for the

establishment and operation of the system for the discounted and subsidised marketing of set-top-boxes are conditions for application.

During the selection of the multiplex, the competition between the platforms has to be taken into account; therefore, in the case of an appropriate must carry and must offer duty, the vertical integration towards the content providers[150] would not give grounds for objection. It is indisputable, however, that by barring the media service providers from participation in the application process, Point *b)* of Paragraph (5) of Article 39 of the Digital Switchover Act moderates the regulatory burden significantly. In other words, it is primarily vertical integration in the direction of parallel media service distribution platforms that should be avoided. In respect of the competition between the platforms, it is less problematic if the multiplex activity is conducted by the media service distributor, on condition that it provides no other telecommunication services (e.g. landline media service distribution, IPTV, satellite media service distribution). It is also true that up to a certain number of subscribers the extent of the overlap cannot be such as to cause a welfare loss at the national level, due to the elimination of competition between the platforms in the given field. The aggregate number of 300,000 subscribers, as specified in Point *a)*, Paragraph (5) of Article 39 of the Digital Switchover Act, however, may exceed this limit.

The application procedure is supervised by an ad hoc committee set up by the Parliament [Paragraph (1) of Article 40 of the Digital Switchover Act], which includes preliminary and final approval of the documentation of the call for applications, the decision concerning the validity of the application procedure or the individual tenders submitted, and the approval of the decision concerning the winning bidder in the application. According to Point (6) of Article 42 of the Digital Switchover Act, the Hungarian Media Authority concludes a public contract with the winner of the application procedure, the judicial review of which may be requested from the Budapest Court of Appeal as provided for in Article 40 Paragraph (11) of the Digital Switchover Act. Since the ad hoc committee of the Parliament which oversees the application process conforms to the composition of the Parliament (see Paragraph 2, Article), but approval requires a two-thirds majority [Paragraph (3) of Article 40 of the Digital Switchover Act], it is conceivable that the ad hoc committee is unable to issue its approval, despite the fact that Paragraph (9) of Article 40 of the Digital switchover Act provides that such approval may only be withheld on the grounds of a legal violation. In this case, Paragraph (10) of Article 40 of the Digital Switchover Act authorises the Hungarian Media Authority to pass the decision. If, during the judicial review of the decision of the Hungarian Media Authority, the Budapest Court of Appeal finds that the decision passed with the circumvention of the Committee [by the application of Paragraph (10) of Article 40 of the Digital Switchover Act] is otherwise lawful, it will order the Hungarian Media Authority to conduct a new procedure, during the course of which the Authority will pass

[150] This is the "reciprocal" of the must carry duty, whereby a given media service provider is obliged to offer its service for distribution to a given media service distributor.

a decision identical to the contents of the given draft decision or public contract without sending it to or obtaining the approval of the Committee.

Currently, in Hungary, three national multiplexes have been set up.[151] The operating rights of the latter, just like that of the operation of the national analogue broadcasting network, have been acquired by Antenna Hungária.

[151] Multiplexes A, B and C, of which A and C are free-to-air (public service broadcasters and commercial television channels), while the encoded broadcast of B may be accessed for a subscription fee.

Part VI

Restrictions on Ownership

17. Regulation of Competition in Media Markets

17.1. The restriction of market concentration in the Media Act

Chapter V (Articles 67–71) of the Media Act is entitled "Preventing Market concentration and Media Service Providers with Significant market power". The first article notes that the regulation only concerns a small segment of the market: according to Article 67 the market concentration of media service providers providing linear media services may be limited within the framework of this Act in order to maintain the diversity of the media market and to prevent the formation of information monopolies. (Linear media services are the media services provided by a media service provider that allow for the simultaneous watching or listening to programmes on the basis of a programme schedule, Media Act, Article 203 Point 36). Compared to the general declaration of Article 67, the next article provides precise threshold values when restricting the acquisition of holdings and the launch of new services in respect of audiovisual media service providers with an average annual audience share of at least thirty-five percent, linear radio media service providers and media service providers having a joint average annual audience share of at least forty percent of the linear audiovisual and linear radio markets, any owners of the media service provider and any person or undertaking having a qualifying holding in the media service provider's owner.

As may be seen, the legislator has applied an incontestable presumption, according to which, if a media service provider achieves a certain average annual audience share, this entails such significant market power that calls for the restriction of market concentration in the interest of the protection of media pluralism. Undoubtedly, the threshold values (35 percent and 40 percent) defined in Article 68 indicate that the given service provider has a significant capability of influencing public opinion. Here, however, the typical discrepancy between the regulation of competition and the regulation of the industry is apparent. In competition authority proceedings, the competition authorities always perform their analysis with regard to specific cases on the basis of the market situation of the moment. Consequently, there is no need to define in advance a similar threshold value—for example in order to restrict market concentration—since what the competition authorities examine is whether the given concentration is restrictive in respect of market competition, or not. Contrary to this, the Media Act presumes that any concentration in excess of the given threshold values (35 percent and 40 percent) would result in market concentration that jeopardises pluralism. Whether this is actually so, or not does not need to be examined, it is enough if the media service providers transgress this "magic" limit.

In respect of market concentration, the Media Act provides for one further restriction, too. Article 71 of the Media Act contains substantive rules in respect of national, regional, and local analogue linear media services, prescribing how many such services a service provider may provide and in which areas (reception area). According to the regulations, if the service provided by the service provider is not nationwide (i.e. regional or local), then the smaller the reception area of the service provider, the more services may be provided by it. Service providers, however, that provide national analogue linear radio media services may only do so on a single channel, and may not pursue or engage in such activities in any other form. According to Paragraph (2), with the exception of thematic analogue linear radio media services, providers authorised to provide national analogue linear radio media services and those having a qualifying holding therein may not acquire a qualifying holding in undertakings providing or distributing other media services. As such, this paragraph not only provides for the restriction of the acquisition of influence in respect of linear radio media service providers, but also contains restrictive provisions in respect of other undertakings engaged in media services or programme distribution. According to Paragraph (5), a regional or local linear radio media service provider or its owner may not, with the exceptions defined in Paragraph (5), acquire a qualifying holding in other undertakings providing regional or local linear radio media services within the reception area of its media service. The legislator is thereby protecting the local diversity of media content as well. It is also the task of the Hungarian Competition Authority to uphold the above rule, since Paragraph (7) of Article 71 of the Media Act provides that the concentration of companies as per the Competition Act is not permitted if such concentration were prejudicial to the Act.

Another example also shows the difference between competition regulation and the Media Act. The market concerned, i.e. the market wherein the undertakings compete with each other, has to be defined separately during the course of each competition authority proceeding by examining the substitutability of the various services. Thus, for example, it is quite conceivable that, from the aspect of a competition authority procedure, a linear media service provider with an annual audience share of 45 percent would not qualify as having significant market power over consumers, since in respect of the influence on public opinion, other services (e.g. Internet, press products, on-demand media services) would also have to be taken into account, which could lead to the conclusion that the given service provider has no significant influence on public opinion in a given geographical market. On the basis of the Media Act, however, no such individual consideration is required, as the legislator has defined in advance the value in excess of which the significant market power of the media service provider is incontestably presumed.

Both the competition law regulations and the provisions of the Media Act have several advantages. Competition law regulations require specific and resource-intensive investigations, but the results present a more accurate picture of the actual market situation. By applying a "rule of thumb", the Media Act limits the freedom of the law enforcement body and simplifies the application of the regulations. Competition regulations are, therefore, flexible, while the regulation of the Media Act is more rigid. However, this is

not unprecedented in the regulated industries. The limitation of the discretionary power of the law enforcer may be especially useful in the case of industries where the actors in the given industry may have undue influence over the authorities. The legislator is able to mitigate this via similar rules.

17.2. Significant market power according to the Media Act

We have referred several times to the fact that the existence of significant market power may only be established by the specific examination of the situation at any given moment. The legislator, however, has provided a rule simplifying the application of the law in this respect, too. The regulations define two levels. On the one hand, in the previous subsection we have defined the concept of media service providers reaching or exceeding the threshold value. On the other, Article 69 of the Media Act defines linear audiovisual media service providers and linear radio media service providers with an average annual audience share of at least fifteen percent as media service providers with significant market power, provided that the average annual audience share of at least one of their media services reaches three percent.

The legislator provides for different obligations in respect of the two threshold values. Media service providers with audience shares reaching or in excess of the percentage stated in Article 68 of the Media Act shall, according to Point *b)* of Paragraph (1) of the said Article, take measures in order to increase the diversity of the media market by modifying the programme flow structure of their media services, by increasing the proportion of Hungarian works and programmes prepared by independent production companies, or in any other way. (At this point the legislator assumes that if a media service provider achieves such an audience share, that in itself will jeopardise media pluralism, and therefore the legislator provides that such media service providers are obliged to increase the diversity of their content. Although it is possible that the content in question is already diverse, in theory the media service provider is nevertheless obliged to take all possible measures to increase diversity.) The subsequent paragraphs of Article 68 specify the regulatory statutes of the supervision of the measures planned to increase the diversity of the media market.

Articles 32 and 38–39 of the Media Act set out the obligations of media service providers with significant market power as defined in Article 69 of the Media Act and referred to above [Paragraph (2), Article 69 of the Media Act]. These obligations relate to political advertisements, public service announcements and public service advertisements (Article 32 of the Media Act), news programmes (Media Act, Article 38), and the programmes accessible to people with impaired hearing (Article 39 of the Media Act). Here, too, an interesting discrepancy between the regulation of competition and the regulation of the industry is apparent. While competition law provides for the forms of conduct via regulatory decisions or the voluntary self-restraint of the undertakings required in the interest of competition, the industry regulations codify such forms of conduct in advance.

Finally, it should be noted in the present section that Article 70 of the Media Act contains the detailed rules of procedure aimed at preventing media market concentration and identifying media service providers with significant market power. While, on the basis of the threshold value referred to above, significant market power is clearly defined on the basis of audience share alone, Article 70 mentions a number of other relevant and significant market factors and circumstances.

17.3. The obligation to offer media services (must offer)

In the jurisprudence of competition law, over the previous decades the principle has crystallised that undertakings which possess a dominant market position may not discriminate among their customers, must offer their so-called essential facilities to their customers, including their competitors, and may not deny the conclusion of certain business arrangements. Once again it should be emphasised that the above forms of conduct are only required from undertakings with significant market power if, as a result of a specific investigation, the competition authority concludes that the protection of competition necessitates that the forms of conduct defined above be demanded. In this respect, too, the Media Act lays down provisions that are more stringent in comparison with the jurisprudence of competition law. In essence, Paragraph (1) of Article 78 of the Media Act ties the must offer obligation of media services to the already defined concepts of significant market power and the qualifying holding of influential media service distributors. Such media service providers are "obliged media service providers", according to the terminology of the Act, and are required to meet several obligations.

These obligations are listed in Paragraph (2) of Article 78, according to which, for example, the obliged media service provider has an obligation to contract in respect of all its linear media services on the basis of fair and reasonable contract offers from a media service distributor. The obliged media service provider is subject to an obligation to contract in respect of each linear media service separately. In Paragraph (3) this is supplemented by a prohibition similar to the prohibition on tying imposed by competition law, according to which the conclusion of an agreement subjecting any of the other media services of the obliged media service provider, which are not essential for the distribution of the given media service, or the purchase or use of other services or products, may not be set by the obliged media service provider as a precondition for the conclusion of an agreement pertaining to any of its media services or of the determination of the material content of such an agreement (prohibition on tying). Another important provision is that, in the agreement between the two parties, i.e. the obliged media service provider and the media service distributor, the principles of equal treatment, technological neutrality, the affordability of the fee and economy of scale must be adhered to. In essence, these provisions constitute an adaptation of the FRAND (Fair, Reasonable, and Non-discriminatory) principle, well known in patent law and competition law, to the Media Act. Such limitation of the freedom of contract is relatively frequent both in regulated industries and in the practice of competition law. By codifying it, the legislator is applying

this principle over a broad sphere of media service providers. The law also provides for a typical case of the violation of the mentioned principle [Article 78 Paragraph (5) of the Media Act].

A typical instance of the violation of the principle is if the obliged media service provider unreasonably subjects the broadcast of the programme flow to technical conditions which a decisive proportion of media service distributors are unable to meet. Although at first sight similar to the refusal to contract known in competition law, this is an entirely different provision, as it approaches the issue from the opposite direction. In the practice of competition law, the undertaking that possesses a dominant position is obliged to enter into contract if its product is indispensable for the market competition of its customers, if in the absence of this product, competition would cease in the given market, and if there are no objective grounds for the refusal to contract. On the basis of the Media Act, however, the issue should be examined from the opposite direction: what has to be decided is whether a decisive majority of the media service distributors are able to meet the given conditions. The rationale behind the regulation is that the availability of the products of media service providers with significant market power or influential media service distributors or their owners is required to ensure the pluralism of the media and/or competition in the media market. For these reasons, when prescribing the technical conditions, it should be taken into account whether the decisive majority of media service distributors are able to meet such technical conditions.

The other typical case specified by the law is when the media service provider establishes the fee, or, more precisely, the fee system due from the media service distributor in such a manner that the most favourable conditions are only available to a few media service distributors. Although at first sight this, too, is similar to the prohibition of price discrimination in the sense of competition law, the difference between the regulatory principles of the two fields is apparent here as well. The concept of prohibited price discrimination in the competition law sense is contingent upon a number of conditions. As such, only those equivalent transactions, during the course of which the undertaking that possesses a dominant market position applies different conditions, whereby those undertakings that conclude the contract under less favourable terms suffer a competitive disadvantage, may be considered relevant. In the Media Act, the regulation of the media once again relies on the wisdom of the legislator when, rather than prescribing the examination of the individual cases—i.e. the competition rules—it essentially demands that the most favourable fees be available to a not inconsiderable number of media service distributors.

In both cases, market efficiency is basically subordinated to the principle that the products of the obliged media service provider should be available to a wide range of media service distributors in order to ensure media pluralism.

Paragraph (6) of Article 78 of the Media Act provides for the case when an offer may be rejected (if satisfaction of the commitments contained in the offer is impossible for objective technical or economic reasons, and the parties cannot come to an agreement regarding these terms within the framework of the procedure aimed at the conclusion of

the agreement), while according to Paragraph (7) the burden of proof lies with the obliged media service provider.

Finally in this respect, reference should be made to the fact that Articles 79–81 of the Media Act contain detailed provisions on the publication, notification and amendment of the contractual terms under the scope of the obligation to contract.

17.4. The proceedings of the Media Council as special authority

Paragraph (1) of Article 171 of the Media Act declares that

> The Hungarian Competition Authority shall obtain the position statement of the Media Council for the approval of concentration of enterprises under Article 24 of the… Competition Act, which enterprises, or the affiliates of at least two groups of companies as defined in Article 15 of the Competition Act, bear editorial responsibility, and the primary objective of which is to distribute media content to the general public via an electronic communications network or a printed press product.

In essence this provision declares that the Hungarian Competition Authority is obliged to obtain the position statement of the Media Council in the event of a concentration of undertakings if these undertakings or the other members of their company groups bear editorial responsibility, and their primary objective is the delivery of media content to the general public via an electronic communications network or a print press product.

By defining the substantive scope of the provision on the basis of the Competition Act, the above rule is, in essence, referential. While the Competition Act does not define the concept of "undertaking", the related jurisprudence does. Furthermore, the jurisprudence of the Competition Council relies heavily on the jurisprudence of the European Union. Within competition law the concept of "undertaking" includes all legal subjects engaged in economic activity, irrespective of their legal standing and the manner of their financing.[152] All activities that consist of the supply of goods or services in a given market constitute economic activities.[153] Market conduct is not contingent upon the realisation of profit by the undertaking.[154]

Furthermore, the Media Act makes reference to "company groups" and the members thereof. Different undertakings belong to a company group if an undertaking independently controls another undertaking,[155] or if the given undertaking is independently

[152] Judgment of the Court no. 41/90 (Sixth Chamber) of 23 April 1991, Klaus Höfner and Fritz Elser v Macrotron GmbH [ECR 1991. I-01979.].

[153] Judgment of the Court of Justice in Cases C-180/98 to C-184/98. Pavel Pavlov and Others v Stichting Pensioenfonds Medische Specialisten [ECR 2000. I-06451.].

[154] See, e.g., Decision no. Vj-83/1998 of the Competition Council of the Competition Authority against the Local Government of Törökbálint Township.

[155] See Paragraphs (2)–(3) of Article 23 of the Competition Act.

controlled by other undertakings, or if the given undertaking is jointly controlled by other undertakings in the competition law sense.[156]

On the basis of Paragraph (1) of Article 23 of the Competition Act, a concentration of undertakings is effected if:

a) two or more previously independent undertakings merge, or one of them purchases the other (takeover), or a part of an undertaking becomes part of another undertaking which is independent of the first one;
b) a sole undertaking, or more than one undertaking, jointly acquires direct or indirect control of the whole or parts of one, or more than one, other undertaking which has been independent of them; or
c) several undertakings, which are independent of each other, jointly create an undertaking controlled by them, which is able to perform on a lasting basis all the functions of an independent undertaking.[157]

In essence, therefore, the procedure briefly described above entails that, if the Hungarian Competition Authority's procedure is related to undertakings nominated in Paragraph (1) of Article 171, the Competition Authority is required to request the position statement of the Media Council. While during the course of its proceedings the Hungarian Competition Authority examines the competition aspects of the case according to the Competition Act, the Media Council examines whether the "level of independent opinion sources following the merger would still ensure the right to diversity of information within the particular market segment of media content service" [Paragraph (2) of Article 171 of the Media Act].

The scope of the examination of the Media Council is significantly narrower than that of a sectoral investigation, as it is limited to the media content service market and, within that, the right to diverse information. On the basis of Paragraph (2) of Article 68 of the Media Act, the Media Council is obliged to reject approval if an undertaking providing media services as described below [Paragraph (1) of Article 68 of the Media Act] intends to acquire a share in an undertaking providing media services, if the media service provider intending to acquire the share

– is a linear audiovisual media service provider with an annual audience share of at least 35 percent, or
– is a linear radio media service provider with an annual audience share of at least 35 percent, or
– is a media service provider with an audience share of at least 40 percent in the linear audiovisual and the linear radio market taken jointly.

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[156] In this respect the Communication of the European Commission on the unified application of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings [2008 HL C 95, 2008.4.16., 1–48.] makes useful reading.

[157] For a detailed discussion of the concept of concentration see, e.g. Pál Szilágyi: Koncentráció ellenőrzés, fúziókontroll. [Concentration and Merger Control] In Györgyné Boytha – Tihamér Tóth (eds.): *Versenyjog*. [*Competition Law*] Budapest, PPKE-JÁK, 2010. 196–203.

– It is peculiar that the legislator only prescribed the acquisition of a business share in Paragraph (2) of Article 68 of the Media Act, while relying on the Competition Act. In competition law the acquisition of a part of an undertaking also constitutes concentration. On the basis of the Competition Act, the acquisition of the assets or rights—including the customer base—of an undertaking that are sufficient, either in themselves or in combination with the assets and rights of the acquiring undertaking, for the performance of the market activity constitutes the acquisition of a part of an undertaking [Paragraph (5) of Article 23 of the Competition Act 23]. In other words, media market concentration is possible not only through the acquisition of business shares, but also through the acquisition of a part of an undertaking or even through a syndication agreement. This, of course, does not mean that in such cases the Media Council is not able to reject approval, but it cannot do so on the basis of media concentration. Rather, it has to examine the above described conditions according to Paragraph (2) of Article 171 of the Media Act.

The outcome of the proceedings of the Media Council is the issue or rejection of the approval of the special authority. Furthermore, the Media Council may impose so-called preliminary or subsequent provisions, conditions or obligations which the Hungarian Competition Authority is required to take into account [Media Act Article 171(4) *b)* and Competition Act Article 30(3)].

If the level of independent opinion sources following the merger would still ensure the upholding of the right to diverse information within the particular market segment of the media content service, the Media Council, with the exception of the case of media market concentration, cannot reject granting an approval as special authority [Media Act Article 171(2)]. The position statement of the Media Council as special authority is binding upon the Hungarian Competition Authority; however, this does not prevent the Hungarian Competition Authority from *a)* prohibiting a merger that has already been officially approved by the Media Council as special authority, irrespective of any condition the Media Council may have set; or *b)* imposing a condition or an obligation, as defined in Article 30(3) of the Competition Act, which the Media Council had failed to set [Media Act 171(4)].

According to the Media Act, the statutory period for the proceedings of the Media Council as special authority is twenty days, which may be extended on one occasion by another twenty days. The statutory period of the competition authority proceedings does not include the period of proceedings of the Media Council as special authority. Failure by the Media Council to issue its position statement within the prescribed statutory period is deemed to be an approval on its part [Media Act, Article 171 Paragraph (5)].

The legislator chose a fortunate solution by enabling the issue of prior approval as a special authority [Media Act Article 171 Paragraph (7)]. In the case of a concentration, the protraction of the procedure may cause significant damage to the stakeholders. Applications for prior approval as technical authority must be submitted by the date of the submission of the application for concentration, but not later than within thirty days

from the date of the publication of the public call for proposals, the conclusion of the contract or the date of the acquisition of the controlling right, whichever is the earliest. The prior approval of the special authority can be used within six months from the date of issue, provided that the facts, the market and the regulatory circumstances decisive for the purposes of the approval have remained unchanged since the date of the position issued by the special authority. If a specific requirement or condition laid down in the prior approval issued by the Media Council as special authority contradicts an obligation or condition deemed necessary by the Hungarian Competition Authority in part or in full, the government entities involved shall negotiate with each other on the basis of the Administrative Proceedings Act [Article 45(2) of the Act on the General Rules of Administrative Proceedings and Services]. In essence, therefore, it is conceivable that:

– the Hungarian Competition Authority issues the approval on the basis of competition considerations, but the Media Council denies approval,
– the Media Council approves the concentration, but the Hungarian Competition Authority prohibits it on the basis of competition considerations,
– both authorities issue their approval, or
– neither authority approves the concentration.

Although there is reason to this procedure—the authority with the general scope requests the position of the special authority—it would, perhaps, be more fortunate if the proceedings of the two authorities were independent of each other. That is, an independent application would have to be submitted to each authority, and both authorities would decide in respect of the issues that fall within their scope. The reason for this is that if the Media Council rejects approval while the Hungarian Competition Authority would grant it, the latter is also required to pass a decision on the rejection of the approval. Once its decision is contested, however, the Hungarian Competition Authority will be the respondent before the courts; consequently it will be the Competition Authority that is required to defend those—non-competition law—considerations on the basis of which the Media Council rejected the approval, i.e. the legitimacy of the decision.

Following the entry into effect of the Media Act, the first proceedings as special authority according to Article 171 of the Media Act were initiated by the Hungarian Competition Authority in the case of the planned concentration between two publishers, Axel Springer and Ringier. In compliance with the provisions of the Media Act which had entered into force in the meantime, within the framework of the proceedings launched in 2010, and upon the application of the two publishers, the Hungarian Competition Authority requested the position of the Media Council as special authority. As special authority, the Media Council based its position on whether the planned merger could be assumed to result in a deterioration of the right to the diversity of information in the relevant media content service market, i.e.:

– what would be the effect of the concentration on the ability of the merging undertakings to influence public opinion and on the diversity of information,

– what amount and variety of media content would be available to society (external pluralism),
– how would the amount and diversity of the information content of the media content affected by the planned concentration change (internal pluralism).

The examination proceeded along three dimensions (the thematic dimension, the mediating channels and the geographical dimension).

Along the lines of the thematic dimension a distinction was made between general topic opinion sources, i.e. the topics of broadest public interest (domestic and international news), and special topic opinion sources (e.g. business, sports).

As for the dimension of the channels, on the basis of the market analysis data provided by the Hungarian Competition Authority, the Media Council established that the consumers of printed press products regard the role of television, radio, and the Internet as supplementary content; the substitutability of the former with the latter was below 10 percent everywhere, and therefore these form a separate market. In respect of the geographical dimension, the Media Council established that, in the category of "general topic contents, news and the interpretation thereof", printed press products have to be assessed at the county level, since the role of content sources only available locally is significant in this segment.

On the basis of the above examinations, the Media Council established that the following markets constitute the relevant market:

I. Daily newspapers:
   a) general topic daily newspapers (political dailies, daily tabloids, county—regional—daily newspapers) in the counties covered by Axel Springer's local newspapers,
   b) special topic content, the national market of daily newspapers presenting news and interpretations thereof:
      b1) daily newspapers presenting economic-financial content, news and the interpretations thereof,
      b2) daily newspapers presenting sport-related content, news and the interpretations thereof,

II. Periodical publications:
   a) general topic periodical publications in the counties covered by Axel Springer's local newspapers,
   b) special topic content, the national market of periodical publications presenting news and interpretations thereof:
      b1) periodical publications presenting economic-financial content, news and the interpretations thereof,
      b2) periodical publications presenting sport-related content, news and the interpretations thereof,
      b3) periodical publications presenting entertainment and lifestyle content.

In respect of the change in internal and external pluralism, the Media Council concluded that, given the fact that the best-selling national tabloid, *Blikk*, and the best-selling national political daily, *Népszabadság*, are both owned by Ringier, while a significant part of the regional daily newspapers belongs to Axel Springer, the planned merger would restrict the previously bi-polar owners' influence. Accordingly, following the planned merger, the right to diverse sources of information could not be guaranteed.

Furthermore, it was also presumable that the joint company resulting from the concentration would, in the interest of cutting costs, use the same news source for producing the similar content of the two newspapers, which would result in a decrease in the diversity of the content available on the market, and would jeopardise the publication of diverse content and opinions indispensable to the formation of democratic public opinion, and would, thereby, violate the interests of a broad section of society.

On the basis of the number of copies sold, the Media Council performed the detailed analysis of the market shares of the relevant markets. According to the results of this analysis, the market share of the company resulting from the merger would be 85 percent in the market for general topic newspapers, 75 percent in the market for general topic periodicals, and close to 50 percent in the market for publications presenting entertainment and lifestyle content. According to the Media Council, these rates are so high as to clearly and significantly result in the limitation of the diversity of content in these markets, therefore the Media Council as special authority prohibited the planned merger.[158]

[158] Kinga Géczi: Az Axel Springer – Ringier fúzió a Médiatanács előtt. [The Axel Springer – Ringier Merger before the Media Council] *In Medias Res*, 1/2012.

Part VII

The Public Service Media System

18. The Constitutional Framework of the Public Media Service

The Hungarian Constitution and the practice of the Constitutional Court provided public media services with a distinguished and secure position within the Hungarian media system from the outset. This approach has been consistently upheld in the subsequent decisions of the Constitutional Court, as well as in the legislation concerning the amendment of the constitution, the Basic Law, and, in conformity with the aforementioned, in the drafting of the relevant provisions of the Press Freedom Act and the Media Act. In its decisions, the Constitutional Court provided ample scope for legislative action in respect of the supervision, organisational system, and funding of public service media, which means that, despite the relatively large number of motions, the Court established that only a few of the contested legal provisions (typically in the Radio and Television Broadcasting Act) were unconstitutional.

18.1. The necessity of the public service media system

From the beginning of the nineties (the period of the strengthening of the dual media system and, as part of that, commercial media services), one of the basic issues most often raised concerning public media services has been whether it is necessary for the state to maintain, as a separate institution, the public media service system, or whether the realisation of public service objectives and the performance of public service tasks require no separate organisational form, and the state should achieve such objectives by supporting certain already existing vehicles of content delivery or content.

Article 61(4) of the Constitution, and its interpretation by the Constitutional Court, clearly support the institutional solution. Article 61(4) of the Constitution stipulates that a two-thirds majority is required to pass the laws related to the institutional system, i.e. "the supervision of public service radio, television, and the public service news agency, as well as the appointment of the directors thereof". In respect of public service news agencies, the Constitutional Court ruled: "As long as Article 61(4) of the Constitution expressly nominates the public service news agency category, the maintenance of at least one such institution is a constitutional requirement."[159] The Constitutional Court estab-

[159] See Section II, Reasoning, Constitutional Court decision 61/1995. (6 October).

lished the obligation to maintain one specific public service media institution, the public service news agency; however, this holds for the other institutions of the public service media system, i.e. the institutions providing media services, too.[160]

Paragraph (2) of Article IX of the Basic Law, which provides that "Hungary… shall ensure the conditions for free dissemination of information necessary for the formation of democratic public opinion", forms the basis of the state's duty to maintain the public service media system.

18.2. The place of public media service within the media system

Public media service is fundamental to the creation of a pluralistic media system, in respect of which, European constitutional systems stipulate implementation of internal pluralism. The Constitutional Court also reasoned along these lines when it established that the prevalence of the general right to information (including both the right to information and freedom of access to information) is contingent upon the existence and operation of public service media. The Constitutional Court regarded this right as identical to the right of access to information of public interest as provided for in Article 61(1) of the Constitution: "the upholding of the constitutional fundamental right of access to information of public interest bestows upon the state the constitutional duty of ensuring the continuous and uninterrupted operation of public service programmers and news providers."[161] In this respect, the position taken by the Constitutional Court is not fully consistent with the Court's own legal interpretation as expressed in certain other decisions, wherein the right of "access to information of public interest" is used in the narrower sense of the concept of the freedom of information, and is limited to the obligation of the transparent operation of government bodies.[162] Regardless of this, however, it may be stated that European traditions, the present state of the media, the international legal environment, and the right to information specified in the Press Freedom Act, as well as "democratic public opinion" as defined in the Basic Law, all call for and support the existence of an independent public service media system.[163]

The extent to which the obligation placed on public service media defines the scope of action of the other actors of the media system may be raised as an issue. In this respect the Constitutional Court has declared:

> the fulfilment of the above conditions in respect of the presentation of opinions and the provision of information must be ensured for the totality of radio and television programming; what obligations

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[160] András Koltay: *A szólásszabadság alapvonalai – magyar, angol, amerikai és európai összehasonlításban*. [*The Basic Aspects of the Freedom of speech in Hungarian, British, American and European Comparison*] Budapest, Századvég, 2009, 282–290.

[161] Item IV./7.2, Statement of Reasons, Constitutional Court decision 22/1999. (30./VI.)

[162] Koltay op. cit. (n. X.) 284.

[163] Ibid.

> are placed on local and commercial programmers, besides the national public service radio and television broadcasting system that is primarily responsible for meeting such obligations, is the decision of the legislator.[164]

Accordingly, the privileged constitutional status of public service media and the realisation of the related regulatory objectives have a significant effect on the regulatory burdens placed on the other, "non-public service" actors in the media system. As a consequence of this, the requirement of internal pluralism may not be applied to the major actors of the media system, the commercial media service providers, as such a requirement would result in a disproportionate restriction of the freedom of the press (editorial freedom).

18.3. The organisational system of the public media service

The fundamental requirements formulated towards the public service media (internal pluralism, diverse programming, presentation of different opinions) may only be met if the independence of the public media service is ensured. Prior to the drafting of the Radio and Television Broadcasting Act, the Constitutional Court had already formulated the independence of the public service media as a fundamental requirement towards the future regulation:

> As a precondition to the constitutional operation of radio and television broadcasting, the legislation must preclude any dominant influence of either the state organs or any groups of society on the content of the programme flow in public service media.… The Constitution demands the freedom of radio and television from both the "state" and various groups of society [Item II./3., Statement of Reasons, Constitutional Court decision 37/1992. (10./VI.)].

The decision of the Constitutional Court makes it clear that the measure of the independence of public service media is whether any party other than the media service provider "exerts dominant influence on the content of the programme flow", i.e. the editorial freedom of the public media service provider is violated or not.

It is the legislator's duty to ensure the independence necessary for internal pluralism; however, rather than specifying the organisational solutions for achieving this end, the Constitutional Court left it to the legislator to provide for the legal solution guaranteeing the preservation of independence.[165] On the basis of the decision cited, from among the possible organizational solutions, even the supervision of public service media by the government could be constitutional on condition that such material, procedural, and organisational guarantees are in place that ensure the Government does not "exert

[164] Item II./3., Statement of Reasons, Constitutional Court decision 37/1992. (10./VI.)
[165] Item II./3., Statement of Reasons, Constitutional Court decision 37/1992. (10./VI.)

dominant influence on the content of the programme flow, even indirectly."[166] Maintaining the logic of the 1992 decision, in another ruling the Constitutional Court reached a similar conclusion in respect of the public service media system established by the Radio and Television Broadcasting Act. With respect to the Parliament-elected board of trustees of the public foundations operating as the owners of the public media service providers, the Court ruled that:

> within the boards of trustees, the chair or the members of the chair have no special sphere of authority… as their voting rights are identical to the voting rights held by the delegated trustees. On the basis of the cited provisions of the Act, the chair may not exert direct influence over the content of the radio and television programme flow.[167]

That is, the Constitutional Court approached the issue of the separation of the public service media from politics via the aspect of the formal guarantees of independence.

18.4. The financing of public media services

Besides the establishment of the organisational system, a further guarantee issue related to the independence of public media services is their financing. Public service media receive state aid in all European countries; the possibility of state (government) intervention is inherent to this system.

The Constitutional Court established that the legislation prior to the Radio and Television Broadcasting Act had been unconstitutional because:

> the government was granted the right of disposal over the material assets necessary for the performance of the public service tasks of Hungarian Radio and Hungarian Television, which, lacking the guarantees stipulated by the Constitutional Court, enables the government to exert at least an indirect influence on the programming content.[168]

At the same time, the Constitutional Court did not find the establishment of the budget of the public media service providers within the general budgetary act to be unconstitutional,[169] nor the holding of their financial assets on treasury accounts,[170] nor the assumption by the central budget of the payment of the so-called television licence fee intended to serve the purpose of financing the media service providers, which had been originally payable by households.[171]

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[166] Ibid., item II./4.
[167] Item IV./1., Statement of Reasons, Constitutional Court decision 22/1999. (30./VI.)
[168] Item III./2., Statement of Reasons, Constitutional Court decision 47/1994. (21./C.)
[169] Ibid.
[170] item V./4., Statement of Reasons, Constitutional Court decision 1/2005. (4./II.)
[171] Ibid. Item 6./VI.

19. The System of Public Media Services

The rules governing public service media are primarily provided for by the Media Act. The provisions of the Media Act may be divided into two groups. One of these defines the fundamental principles, objectives, and operation of public media services, while the other contains the provisions on the individual public media service providers.

Besides the Media Act, the role of the Public Service Code should be mentioned. Although the Code is not a mandatory source of law, it contains important guidelines on the nature and tasks of public media services.

19.1. The basic principles and objectives of public media services

Article 82 of the Media Act defines four basic principles of public media services:
- independence,
- responsibility,
- public funding, and
- non-profit character.

Independence is a fundamental condition for the attainment of public service objectives; it means independence from both governmental and economic players, and the professional autonomy of the participants in public media services. Independence is of constitutional significance as it is one of the preconditions of ensuring freedom of information [Basic Law, Article IX]. Responsibility means that the system of public media service ensures accountability and social control. The last two basic principles arise from the fact that the approach and the measure of success of public media services are fundamentally different from those of commercial media services. Public media services—in addition to their other duties—try also to provide what is "missing" from commercial media services or that is not their primary task. Accordingly, market competition between public and commercial media services is inconceivable (the circumstances of competition are unequal), which justifies the state aid for public service media. The appropriate utilisation of state funding implies that public media services may not be primarily led by the generation of profit (non-profit character).

Article 83 of the Media Act defines priorities in respect of the objectives of public media services; these are the public objectives the state strives to realise via public media services.

These objectives may be classified into three main groups: the obligations serving the democratic public (e.g. balanced, accurate, thorough, objective and responsible news service, the confrontation of dissenting opinions with each other, contribution to the freedom of the press), cultural obligations (e.g. the presentation of Hungarian and international culture) and obligations serving the strengthening of social cohesion (e.g. serving the cultural needs of Hungarian minorities outside the border, strengthening social integration).

19.2. The Public Service Foundation

The primary task of the Public Service Foundation (hereinafter referred to as "the Public Foundation") is to ensure the provision and protect the independence of public media and news services. Previously there were separate public foundations for each media service provider; the new regulation has merged these. The Parliament established the Public Foundation and accepted its statutes [Parliamentary Decision No. 80/2010. (IX. 15.)]. The Public Foundation is the owner of those public media service providers operating as non-profit private limited companies.

The managing body of the Public Foundation is the Board of Trustees. The Board of Trustees' members are partly elected, partly delegated. The Parliament elects six members to the Board of Trustees by a two-thirds majority vote of the Members of Parliament present; three members are elected on the basis of the recommendation of the opposition parliamentary groups, and three members on the basis of the recommendation of the ruling party groups. The Chair of the Board of Trustees and one other member are delegated by the Media Council for a term of nine years. On the basis of Constitutional Court decision 22/1999 (VI. 30.), the Media Act also provides that if either the ruling party or the opposition fails to delegate candidates, this shall not prevent the establishment of the Board of Trustees; in such a case the Board of Trustees is established by the election of three members. The present rules of the election of the members of the Board of Trustees provide the basis for comparison with the previous regulations and the related elements of the practice of the Constitutional Court that are still relevant today. The principle of the "full parity" of the parliamentary parties is not wholly implemented, although it still holds true in respect of the members of the Board of Trustees elected by the parliament; in addition to these, however, the Media Council as a regulatory body elects one further member and the chairperson. This fact necessitates the analysis of the relationship system between the authority and the public media from the aspect of constitutionality.

The primary task of the Board of Trustees is to oversee the realisation of the objectives of public media service. If the Board of Trustees notes operations severely violating or jeopardising the attainment of these objectives, it may initiate an official procedure by

the Media Council. The other main task of the Board of Trustees is the protection of the independence of public media service providers. Besides these tasks, the Board of Trustees also has personnel and economic competences. Within the framework of the former, it elects and dismisses the Directors General of public media service providers, and elects and recalls the chair and members of the joint supervisory commission. The Board's economic competences may be divided into two groups. On the one hand, Article 90 of the Media Act expressly provides for competences related to economic operation (e.g. the approval of the annual business and financial plans, the approval of the balance sheets and profit and loss reports of the public media service providers, the oversight of funding), while on the other hand it is the Public Foundation that exercises the founder's and shareholders' rights in respect of public media service providers (with certain exceptions).

The Board of Trustees holds ordinary meetings at least once a month and extraordinary meetings as necessary; the latter are to be convened by the Chair of the Board of Trustees within eight days at the request of the majority of the members.

19.3. The Board of Public Services

The Board of Public Services (hereinafter referred to as "the Board") guarantees social control over public media services. The Board consists of 14 members for a term of three years, eight of whom are delegated by the organisations specified in the Media Act (the Hungarian Academy of Sciences, the Catholic Church in Hungary, the Reformed Church in Hungary, the Lutheran Church in Hungary, the Alliance of Hungarian Jewish Faith Communes, the Hungarian Olympic Committee, the Hungarian Rectors' Conference and the Hungarian Chamber of Commerce and Industry). The social organisations registered by the Office of the National Media and Infocommunications Authority delegate the remaining six members; the delegating organisations are selected on the basis of drawing lots.

The Board oversees the public media service providers' compliance with the Public Service Code, continuously monitors the implementation of the principles of public service and the realisation of its objectives, reviews the reports of the public media service providers and decides upon their approval. If the Board does not approve the report, with a two thirds' majority the members of the Board may initiate the termination of the appointment of the Director General by the Board of Trustees. It is clear from this provision, too, that the Directors General are personally responsible for the content provided and may not be deprived of this responsibility. However, it also follows, from the principle of the independence and professional autonomy of public media service, that the activities may only be reviewed and assessed *a posteriori*.

Due to the legislation, the composition of the Board of Public Services is less representative than the former so-called great advisory boards were (operating on the basis of the Radio and Television Broadcasting Act). These latter, however, were unable to supervise the fulfilment of the criteria of public service media (both due to problems

of competence and practical difficulties). The new organisation implementing "civilian control". the Board of Public Services, is clearly distinct from the Public Foundation exercising the owner's rights, but is endowed with limited powers with regard to public media content, and its task is clearly limited to the supervision of content issues (the Public Service Code) and the attainment of the objectives of public media service.

19.4. The public media service providers

The concept of public media service provider should be approached from the aspects of objective and structure. Public media service providers are media service providers which realise the public service objectives provided for by law and conform to the provisions of the Act on Business Associations on companies limited by shares (with the differences specified in the Media Act).

According to the effective regulations, the public media service providers are Hungarian Radio, Hungarian Television, Duna Television and the Hungarian News Agency. The fundamental task of these media service providers is the realisation of the objectives of public media service. Maintaining their autonomy, the public media service providers try to achieve this objective in concert with one another.

Public media service providers operate as non-profit private limited liability companies, each of which holds a non-marketable share. Public media service providers provide nationwide media service (accessible by at least 90% of the population). Besides this, they may provide local or regional media services as well.

The management of pubic media service providers is the responsibility of their Directors General. The Directors General bear sole responsibility for the achievement of the public service objectives in the institutions under their direction. Unlike the companies limited by shares, the public media service providers have no board of directors. The Director General is elected by the Board of Trustees with a two-thirds majority from the two candidates proposed by the President of the Media Council and approved by the Media Council. If neither candidate achieves the required majority, new candidates have to be proposed, from whom the Board of Trustees will elect the Director General by a simple majority. The Board of Trustees concludes an employment contract with the elected candidate. The criteria of eligibility for election are completed graduate studies, a clean criminal record and at least five years' professional experience. (The rules of the election of the Directors General once again require the examination of the system of relations between the authority and the public media from the aspect of constitutionality.)

A joint Supervisory Board monitors the management of public media service providers. The Supervisory Board may request reports or information from the Directors General and the employees of public media service providers, and may review the financial situation of such providers. The Supervisory Board consists of the president and four members, elected by the Board of Trustees. The joint auditor of the public media service providers is also elected by the Board of Trustees for a term of two years.

The Media Act prescribes additional tasks for the Hungarian News Agency as the national news agency. The tasks of the Hungarian News Agency include, especially, the following (Article 101):

- provision of information on events of general public interest, taking place either in Hungary or abroad,
- provision of access to all such news items and news reports which the general public needs to know in order for community and individual rights and interests to be upheld,
- cooperation in transmitting public service announcements to the printed and electronic media,
- reporting on the activities of public and public administration organisations,
- exclusive production of news programmes for other public media service providers,
- operation of the integrated news portal of public media service providers, along with other online press products of the public media service providers, as well as their on-demand media services accessible via the Internet.

The task of the production of news programmes by the Hungarian News Agency does not entail that the public service television and radio stations are relieved of their editorial responsibility, i.e. not the producer but the media service provider becomes liable for the content and consequences of the news programmes by broadcasting them. This means that television and radio stations are forced to cooperate with the Hungarian News Agency in order to be able to assert their requirements and specific considerations during the process of the production of news programmes.

In the interest of the efficient performance of these tasks, the Hungarian News Agency operates a national network of reporters covering all counties, the capital and the areas of the Carpathian Basin populated by Hungarians, as well as an international reporter network.

19.5. The media service support and asset management fund

The Media Service Support and Asset Management Fund (hereinafter referred to as "the Fund") is a special status legal entity and economic organisation. The Fund, as a separate asset management and monetary fund, is exclusively responsible for the performance of the tasks prescribed by the Media Act. These are the following: promoting the structural transformation of public media services, the Public Service Foundation, community media services and public media service providers, the production and support of public service programmes, supporting contemporary musical works and cinematographic works intended to be shown in cinemas, for the careful management and expansion of the Archive and of other assets, as well as for promoting and implementing other activities related to the above.

The Fund is a legal entity and economic organisation, and is managed by the Media Council. The management right related to the Fund has several legal aspects. On the one

hand, the Fund's support and subsidy policy, business plan and annual report are adopted by the Media Council. The detailed rules of managing the Fund are defined by the Media Council, while the Parliament passes a separate act on the Fund's budget. The President of the Media Council exercises employer's rights over the Director General of the Fund [Paragraph (11), Article 136 of the Media Act]. (The management of the Fund by the Media Council once again necessitates the analysis, from the constitutional aspect, of the nature of the system of relationships between the media authority and the public media system, and the realisation of the complete independence of the public media.)

Under Parliamentary Decision No. 109/2010 (X. 28.) OGY, the entirety of the ownership rights and obligations (asset management rights) concerning the assets transferred to the ownership of the Hungarian State are exercised by the Fund. Exercising the ownership rights and obligations by the Fund concerning the assets transferred under the management of the Fund and other assets acquired by the Fund in relation to its economic activities, utilising, encumbering, or otherwise managing such assets do not fall within the scope of the Act on State Property. Instead, these are governed by the special provisions of the Media Act; within the framework of this, it is also the Media Council that provides for the detailed rules of the management of the assets of the Fund. Parliamentary Decision No. 109/2010. (X. 28.) OGY provided for the transfer of a certain part of the assets of the Public Service Foundation, Hungarian Radio, Hungarian Television, Duna Television and the Hungarian News Agency to the Broadcasting Support and Asset Management Fund (as the Fund was previously known), thereby establishing the unified mass of assets, the diligent management and expansion of which is the task of the Fund. Those assets remained the property of the public service corporations that ensure the upholding of the conditions of the definition, planning and production of the programme flow structure and programmes by the public service corporations as provided for by law, as well as the performance of the tasks of the national news agency.

The Fund's revenues provided for by the Media Act consist of the following: media service provision fees, tender fees, default penalty and compensation levied for breaches of broadcasting agreements, fines, public service contributions, surplus frequency fee amounts transferred by the Authority to the Fund pursuant to Article 134 (5) of the Media Act, support paid by media service providers providing linear audiovisual media services, target subsidies from the central budget, proceeds from the disposal of assets and from business activities, interest received and voluntary payments received.

The proprietary rights and duties related to the public service media assets are exercised by the Fund; however, the Fund may not alienate, transfer or encumber such assets.

> *Public service media assets* shall mean cinematographic and other audiovisual works, radio programmes, sound recordings and other documents ancillary to media services representing cultural assets, copyrights and certain related rights of photographs or any other licenses of the aforementioned, and the physical media containing the aforementioned works (e.g. discs, tapes, cassettes, paper-based documents, music scores) ordered by the public media service providers, their predecessors, the Media Service Support and Asset Management Fund, produced on any

> legal grounds, procured by way of a sale and purchase transaction, obtained or created in whole or in part by way of a licensing or any other agreement; furthermore costumes, props, film sets and other copyright material, provided that the copyrights and certain related rights are owned or used to be owned by any of the public media service providers prior to the Act entering into force or by the Media Service Support and Asset Management Fund subsequent to the Act entering into force; and also those, over which any of the public media service providers obtained rights subsequent to this Act entering into force.

The Fund thus manages the rights related to the authorial works and other accomplishments previously owned by the public media service providers. The Fund supports the fulfilment of the responsibilities of the public media service providers from its own resources.

19.6. The Public Service Code

19.6.1. The nature of the Public Service Code

According to Paragraph (1), Article 95 of the Media Act:

> The Public Service Code contains… the basic principles governing public media services and fine-tunes the public service objectives defined in this Act. The Code may have a general content and also a content relating to individual public media service providers separately. Fundamentally, the Code is meant to provide guidance to public media service providers regarding the appropriate operating principles of the public media services within the framework of the Act.

This legal definition also shows that the Code has features that refer to normative acts, others that refer to quasi-legal norms (with no independent normative content) and even features that refer to individual decisions. That is, a mixture of these acts is apparent in the Code.

The quasi-legal nature of the Code is primarily apparent from its name and content. In this context, the term "code" suggests an ethical (rather than legal) norm, and the subject of the regulation also supports this interpretation: typically, the Code provides for the rules of the production and service of programmes on the level of the basic principles. The purpose of the regulations is also suggestive of this quasi-legal nature, as it is directed at providing the guidelines for the operation of public media services.

At the same time the Public Service Code is not a product of self-regulation, as it lacks the most characteristic feature of self-regulation, i.e. voluntarism. According to Paragraph (2), Article 95 of the Media Act, the creation of the Public Service Code is mandatory; moreover, it is (at first) subject to the approval of an authority other than the subject of the Code, namely the Media Council. It is true, though, that this requires the approval of the Board of Trustees and subsequently it is also the Board of Trustees that is entitled to amend the Code. The Public Service Code, therefore, is created by the authority for the purpose of regulating the conduct of its subjects. In this sense, the Public Service Code is akin to a normative act. The implementation of the provisions of the Public Service Code is supervised by the Board of Public Services.

19.6.2. The contents of the Public Service Code

As regards its content, the Public Service Code expounds the objectives of public service as provided for by law. It is based on the theoretical assumption that, due to the primacy of the objective of maximising revenues, market-oriented media service in itself is insufficient for the performance of the task of democratic information. Therefore, the Code provides that public service media should be versatile and should take into account the needs of both the majority and minorities during the compilation of the programme flow. The Public Service Code further details this "mission" and defines the following objectives:

- to conduct community debates,
- to mediate and present cultural responsibility and cultural products,
- to promote the cohesion and integration of the community.

As may be seen, the Public Service Code is related to the provisions of the Media Act and is intended to promote putting these into practice by laying down certain considerations that are not enforceable legally. These considerations may change during practical application, and therefore the Media Act permits the Board of Trustees to update them according to the new issues that may arise.

19.7. The funding of public media service

The Hungarian State pays an annual public service contribution based on the number of households using equipment suitable for receiving linear audiovisual media services. The amount of this public service contribution is defined in Annex no. 4 of the Media Act. The public service contribution is paid by the State in twelve equal instalments, always in advance by the third day of every month, by transfer to the Fund's bank account.

Portions of frequency charges that were not used by the National Media and Infocommunications Authority for operating purposes under the provisions of the Act or were not used to generate reserves are paid into the Fund as instructed by the President of the Authority. The President designates in his/her instructions the public purpose for which, and the manner in which, the amount paid into the Fund may be used.

Media service providers with significant market power who provide linear audiovisual media services shall use 2.5 percent of their annual advertising revenues to support new Hungarian cinematographic works. This obligation may be performed by the media service providers with significant market power in two ways, either by paying the relevant amount to the Fund, or by providing financial support for new cinematographic works specified in an agreement concluded by and between the Fund and the media service provider. The media service provider may deduct this amount paid or used as support from its corporate tax base.

The provision of funding to public media service providers proportionate to the tasks entrusted to them is one of the most important guarantees of independence. The appropriate definition of the organ or person providing the funding and possessing the right of disposal over the funds also has an important effect on independence (according to Constitutional Court Decision No. 47/1994 (X. 21.), it is unconstitutional to provide the government with the right of disposal over the funds required for the performance of public service tasks, as this is a major violation of the principle of independence). Accordingly, the Media Act entrusts the Fund and the Public Service Fiscal Council, consisting of the Directors General of the public media service providers, the Director General of the Fund and the two members delegated by the Chairperson of the State Audit Office, with securing and distributing the funding. In the interests of transparency, the decision is public (it is accessible on the homepage of the Fund) and conforms to the public service duties of the given media service provider. In order to ensure the financial independence and the reliability of the budget of public media service providers, once established the budget may only be amended in especially justified cases via the decision of the Council passed with a two-thirds majority.

Under Point *e)* of Paragraph (1) of Article 105 and Paragraph (6) of Article 106 of the Media Act, the Director General of the given public media service provider is to submit the annual report together with the opinion of the Supervisory Board for approval to the Board of Trustees authorised to approve the balance sheet and the profit and loss report. This process includes the review of the utilisation of the profit gained during the operation of the public media service provider undertaking. The State Audit Office is responsible for the supervision of financial management.

The provision whereby public media service providers must maintain separate records of their contracts also promotes transparency. Although, for the same reason, public media service providers may not establish foundations or acquire shares in other media service providers, it is possible for an economic organisation in the qualifying holding (as defined in Point 3, Article 203 of the Media Act) of a public media service provider to provide public media services.

Public (linear) media service providers may publish 8 minutes of advertising or other commercial communication per hour. The proceeds of such may be utilised by the public media system for its own funding. This possibility raises the question of principle, of whether it is justified to allow public media outlets to publish commercial communications, thereby exposing them to the market effects from the side of the advertisers and inevitably forcing them to compete with the commercial media for advertising revenues, if the majority of their financing is otherwise sourced from public funds and the elimination of the negative effects of market competition is a declared objective of the public media (which is present at the level of the law in the Media Act, see Article 82).

19.8. The public service obligations of privately held media service providers

Although not part of the public media system, in certain cases privately held media service providers are also required to support the attainment of the objectives of public service media. The regulations provide for three such cases: on the one hand, this may be prescribed in the Media Council's calls for tenders for frequency usage rights, and, on the other hand, the Media Act prescribes special public service obligations for community media service providers and for the most popular commercial media service providers (Media Service Providers with Significant Market Power, MSPSMP).

19.8.1. The public interest obligations of media service providers with significant market power

The fact of significant market power is established by the Media Council. Those media service providers that have an average annual audience share of at least 15 percent qualify as MSPSM providers if at least one of the media services provided by them achieves an average annual audience share of 3 percent. As a result of the procedure, the Media Council passes a regulatory decision or concludes a public contract, and the MSPSM shall be subject to the special obligations as of 1st January following the entry into force of the regulatory decision or public contract.

Articles 38–39 of the Media Act provide for three types of obligations on the side of the MSPSM provider:

- MSPSMPs are required to provide news programmes. Television channel operators are required to broadcast a news programme of at least fifteen minutes in duration on each day between 7:00am and 8:30am, and a separate news programme of at least twenty minutes in duration on each day between 6:00pm and 9:00pm Linear radio media service providers are required to broadcast a news programme of at least fifteen minutes in duration on each day between 6:30am and 8:30am The media service provider is required to meet this obligation within its media service with the highest average annual audience share. On average a maximum of 20 percent of the duration of the news programme may consist of news content or reports of a criminal nature.
- The other requirement towards MSPSMPs is the broadcasting of programme items in the original language. Television media service providers with significant market power are required to ensure, in the course of all of their media services transmitted by digital media service distribution, that at least one quarter of the cinematographic works and film series originally produced in a language other than Hungarian, broadcast between 7:00pm and 11:00pm, is available in their original language, with Hungarian subtitles, including programmes starting before 11:00pm but ending later.

– With respect to people with impaired hearing, MSPSMPs are required, in respect of their media service with the highest average annual audience share, to ensure that all public service announcements, political advertisements, news programmes, political programmes and programmes about people with disabilities or equal opportunities, as well as cinematographic works, games and programmes serving public service objectives as provided for in Article 83, are also accessible with Hungarian subtitles or with sign language interpretation. In respect of the latter (cinematographic works, games and programmes serving public service objectives), full compliance is only required from the MSPSMPs as of 2015; until then the Media Act specifies the gradually increasing number of hours per day during which the MSPSMPs are required to ensure this service.

19.8.2. The public service obligations of community media service providers awarded frequency usage rights via tender

In the case of media services using analogue frequencies, in the call for tenders for the allocation of frequency usage rights the Media Council may stipulate the undertaking of public service obligations as a condition of winning the tender or may decide that only community media services may be provided on the given frequency. Public service obligations with a bearing on the programme flow may exist in respect of community media services established outside of tendering via registration.

Part VIII

The Regulating Process of the Media Authority

20. The Public Administration Organisational System of Media Administration

20.1. The legal standing and organisation of the National Media and Infocommunications Authority

The legal standing of the National Media and Infocommunications Authority is provided for by the Media Act, according to which it is a central public administration body with autonomous legal standing and, within that, an independent regulatory body. As a result of this status it is subject only to legal acts and operates under the supervision of the Parliament. It is important to note that the National Media and Infocommunications Authority is the legal successor to the former organisation responsible for media administration, the National Radio and Television Commission, as well as the former organisation responsible for the administration of communications, the National Communications Authority.

One of the instruments and guarantees of the judicial oversight exercised by the Parliament over the National Media and Infocommunications Authority and independently over the Media Council is that these bodies are required to submit a report on their previous year's activities by 31 May each year. The detailed content of such reports is provided for by the Media Act (Articles 119 and 133). The report is the instrument of the Parliament's direct supervisory scope.

The National Media and Infocommunications Authority comprises the following entities with independent powers: The President of the National Media and Infocommunications Authority (hereinafter referred to as President), the Media Council of the National Media and Infocommunications Authority (hereinafter referred to as the Media Council), and the Office of the National Media and Infocommunications Authority (hereinafter referred to as the Office) [Media Act Article 109 Paragraph (3)]. Within the organisation of the Office and under the direction of the Director General the Spectrum management Authority (KFGH), the Office of the National Council for Communications and Information Technology (NHIT) and the National Film Office operate as organisational units with independent powers. The specific organ of media administration, the Media and Communications Commissioner, is related to the organisational system of the National Media and Infocommunications Authority.

The Media Act provides for in detail and guarantees the financial and economic independence of the National Media and Infocommunications Authority. In essence, the basis of the regulation is that the National Media and Infocommunications Authority manages its finances in accordance with the legislation applicable to the financial management of budgetary entities, but with the differences provided for by the Media

Act, and covers the costs incurred in connection with the fulfilment of its duties from its own revenues and from central budget funding.

The Media Act provides for the revenues of the National Media and Infocommunications Authority in the form of a guarantee [Media Act Article 134 Paragraph (4)]. The National Media and Infocommunications Authority's own revenue comprises frequency charges, fees received for the booking and use of identifiers, and for regulatory procedures, as well as the supervisory fees paid by electronic communications service providers and postal service providers, which are used to ensure the efficient and highly professional operation of the Authority. These fee revenues form the basis of the financial management of the National Media and Infocommunications Authority. The Media Act confers the power to issue orders in respect of the establishment of the rate of such fees upon the President. The reason for this is partly that, in respect of frequencies and identifiers, it is the National Media and Infocommunications Authority that exercises the rights of the state as owner, and partly that the power to issue orders in respect of its finances is a primary guarantee of its autonomous legal standing and economic independence.

The National Media and Infocommunications Authority has a consolidated budget, approved by the Parliament in an independent act of law. Until the approval of the new budget, the National Media and Infocommunications Authority, and, independently, the Media Council, operate on the basis of the previously approved budget. This regulation guarantees the continuity of the operation of the National Media and Infocommunications Authority even without an approved budget.

The revenue realised from fines constitutes a special revenue of the National Media and Infocommunications Authority, the utilisation of which is governed by itemised provisions of an act of law (in order to guarantee that the imposition of fines is free from any considerations directed at the increase of revenues). The Media Act expressly provides that the revenue from fines may not be utilised to finance the own operation of the National Media and Infocommunications Authority. The National Media and Infocommunications Authority may only utilise the revenues from fines in the fields of communications and the media in the interest of developing a culture of the informed decisions of consumers. Accordingly, on the one hand the basis and objective of the regulation is to avoid the encouragement of the imposition of unnecessary fines in the interest of increasing revenues, and, on the other hand, to utilise such fines in the interest of the development of the consciousness of consumers, thereby furthering the development of the markets it supervises and effectively preventing legal infringements [Media Act Article 134 Paragraph (9)].

The Media Council is an independent organ within the financial management of the National Media and Infocommunications Authority, too. Accordingly, the budget of the Media Council is subject to approval by the Parliament in the Act on the Budget of the National Media and Infocommunications Authority as part of the consolidated budget of the Authority as a separate item thereof, to be financed from the amount that may be used to cover the operating costs of the Media Council from the Media Service Support and Asset Management Fund's resources defined in the Act.

20.2. The President of the National Media and Infocommunications Authority

The President holds several public administration functions. On the one hand, the President is responsible for the direction, i.e. the internal management of the National Media and Infocommunications Authority, while, on the other hand, the President also holds several first and second instance regulatory powers in the field of communications administration, and, if elected as the President of the Media Council by the Parliament, the President summons and conducts the meetings of the Media Council. In respect of the direction of the National Media and Infocommunications Authority the President holds full organisational and professional executive rights.

The President is appointed by the Prime Minister for a term of nine years (after the elapse of which period the President may be re-appointed). The terms of the appointment of the President are provided for in detail by the Media Act (Article 111).

For warranty reasons, as well as in order to ensure the autonomy of the National Media and Infocommunications Authority, the mandate of the President only terminates or may only be terminated in the instances expressly provided for by the Media Act.

The mandate of the President is terminated upon the elapse of his term, upon resignation, or upon the death of the President. Furthermore, the mandate of the President may be terminated by discharge from office by the Prime Minister, the instances of which are also provided for by the Media Act in itemised form (Article 113).

In keeping with the organisational legal standing of the National Media and Infocommunications Authority, the guarantee of its independence and the special importance of its powers and responsibilities, the Media Act formulates rather strict conflict of interest rules in respect of the President (as well as the Deputy President, the Director General, and the Deputy Director General). The special significance of the rules on the conflict of interest is that these constitute one of the elements of the system of rules guaranteeing the independence of the National Media and Infocommunications Authority from the market actors and the parties under its administrative scope as well as from political and economic influences (Media Act Article 118).

It should be stressed that the President has no media administration type regulatory powers; according to the relevant legislation (Media Act, Communications Act), the President only has independent regulatory power in respect of communications administration. That is, in respect of media administration, the President's independent powers are exclusively non-regulatory in nature.

In respect of the powers of the Office, the President only qualifies as the supervisory authority with the right to adjudge appeals in respect of official matters related to communications. The President may delegate such powers to the Deputy President. Such delegation may be general or specific.

For warranty reasons the President has no second instance powers in respect of the regulatory decisions passed in the field of media administration; the applicable forum for legal remedy depends on which organ of the National Media and Infocommunications

Authority holding the right to exercise media administration powers has passed the regulatory decision:

a) in respect of the first instance media administration regulatory decisions passed by the Office, the second instance powers are held by the Media Council,

b) in respect of the first instance regulatory decisions passed by the Media Council, no public administration legal remedy (appeal) lies, therefore the decisions may be challenged via judicial review.

Regulatory powers are conferred upon the President by the Basic Law and Act CXXX of 2010 on Legislation. The Basic Law nominates the concept of an independent regulatory body upon which legislative power may be conferred.

In respect of the regulatory power of the President in the field of media administration, it may be established that it does not and may not, even indirectly, affect the regulatory powers and responsibilities related to the media or the relationships and conduct of the actors in the media/media market with respect to the media. This regulatory power is not general in nature and does not extend over media administration media policy or administrative activities.

The regulatory power conferred by the Media Act upon the President is rather restricted and serves to ensure the full financial and economic independence of the National Media and Infocommunications Authority. On the basis of the Media Act, the legislative and, within that, the regulatory powers of the President only extend over the following regulatory fields:

a) the definition of the frequency fees, the fees payable for the reservation and use of identifiers, as well as the supervisory fee for communications and postal service providers,

b) the definition of the administrative service fee of the regulatory procedure related to the rating of programmes and classification of communications,

c) the definition of the method and terms of the payment of the fees for the procedures conducted by the National Media and Infocommunications Authority and the Media Council, as well as the amount and the rules for calculating such fees.

20.3. The Office of the National Media and Infocommunications Authority

The Office is a public administration body with independent powers and responsibilities operating under the distributed organisational and professional direction of the President and the Media Council. It is an organisational unit of the National Media and Infocommunications Authority with independent powers. The applicable legislation confers first instance regulatory powers upon the Office in the field of both media and communications administration.

At the same time, the professional direction of the Office is differentiated according to media and communications administration tasks. On media administration issues, the

professional direction of the Office is the task of the Media Council, while on communications issues it is the task of the President. Accordingly, on media issues the supervisory body of the Office is the Media Council, while on communications issues it is the President.

An especially important function of the Office is to provide support for the tasks and decisions within the scope of the Media Council and the President, i.e. the Office is fundamentally the decision support work organisation of the Media Council and the President.

The head of the Office is the Director General, appointed by the President for an indefinite term. The Media Act also defines in detail the fundamental provisions, conditions and requirements related to the executive scope and the establishment, termination or conflict of interest of the public service legal relationship of the Director General (Article 115).

20.4. The Media Council of the National Media and Infocommunications Authority

The Media Council is an autonomous central public administration body of the National Media and Infocommunications Authority with independent powers under the exclusive supervision of the Parliament [Media Act Article 123 Paragraph (1)]. In the interest of legal continuity, the Media Act also declares here that the Media Council is the legal successor of the former media authority, the National Radio and Television Commission. As regards its legal standing, the Media Council is a public administration organ under corporate management whose supreme body is the five-member council. The regulations in the Media Act guarantee the organisational and professional independence of the Media Council from political and economic influences, as well as the influence of the parties under the scope of its administration (Articles 127 and 118).

Within the National Media and Infocommunications Authority, the Media Council is an independent and distinct organ both as regards organisational structure and regulatory powers. Media administration powers are primarily exercised by the Media Council (with the exception of certain first instance media administration powers conferred upon the Office, but the Media Council exercises professional supervision in respect of these, too).

Both the regulatory and the non-regulatory powers of the Media Council are listed in itemised form in the Media Act (Articles 182–183). The most important *regulatory powers* are the following:

- to provide general regulatory supervision over public contracts concluded by it,
- to perform regulatory supervision regarding certain statutory provisions defined in the Media Act (e.g. standards on the protection of children and minors; standards on the broadcast of events of major importance; provisions on extraordinary situations concerning media services; requirements on programme quotas; requirements in

respect of commercial communications; must-carry obligation rules applicable to media service distributors and the obligations related to the offering of media services),
- to supervise compliance with the requirements laid down in Article 14 and Articles 16–20 of the Press Freedom Act,
- to exercise regulatory powers in relation to infringements committed by media content providers established in another Member State,
- to adopt a regulatory decision on the rating of a programme, at the request of a media service provider,
- to conclude a public contract with the media service provider on exemption from the requirements on programme quotas,
- to perform the tasks concerning the tendering of media service provision rights for radio media services and concerning media service provision rights granted for performing public functions,
- to proceed in official matters related to media service public contracts,
- to identify the media service providers with significant market power, to define the obligations encumbering media service providers with significant market power and to proceed in respect of the enforcement of such obligations,
- to conduct market surveillance procedures,
- to act in legal disputes defined in the Media Act,
- to perform its tasks as a special authority in cases defined in the Media Act and the Competition Act,
- to proceed in relation to complaints on imbalanced coverage that may arise in media services provided by media service providers with significant market power and by public media service providers,
- to define events of major importance for society under its regulatory decision,
- to perform regulatory tasks related to the proceedings and decisions of self-regulatory bodies.

The *non-regulatory powers* of the Media Council are especially the following:
- to draw up recommendations in the interest of the protection of minors on requirements for an effective technical solution to enable access to media content for viewers or listeners over eighteen years of age only, as well as in relation to the application of product placement,
- to decide on the reallocation of approved budgetary appropriations of expenditures,
- to provide opinion on draft legislation concerning spectrum management and communications,
- to formulate the concept of spectrum management affecting media service provision,
- to manage the Fund, accept the subsidy policy, annual plan and report of the Fund, to define and publish the detailed rules on the management of the Fund and to approve the general conditions of tendering developed by the Fund,
- to prepare a report for the European Commission on certain programme flow structure requirements,
- to perform the non-regulatory tasks related to the actions of self-regulatory bodies.

The Media Council performs regulatory inspection in respect of all media content providers. The former media authority, the National Radio and Television Commission, had already been responsible for such regulatory inspection of media services (i.e. traditional audiovisual and radio media services); however, on the basis of the previous media regulations, the authority had no right to proceed in respect of the infringements of press products. Constitutional Court Decision No. 165/2011. (XII. 20.) established that the right of official control conferred upon media regulation as of 1 January 2011 in respect of all media content providers constitutes a limitation of the freedom of the press; however, the possibility of such control—under effective and on its merits judicial supervision—may not be regarded as unconstitutional (if otherwise the restrictive rule forming the basis of such official control passes the constitutional test of necessity and proportionality).

The President and the four members of the Media Council are elected by the Parliament with a two-thirds majority for a term of nine years by simultaneous voting by list. The law formulates strict conditions in respect of them [Media Act Article 124 Paragraphs (1)–(2)].

Within a maximum 60 and minimum 30 days from the elapse of the mandate of the members of the Media Council or within 30 days from the receipt of information about the termination of the mandate, the members of the Media Council are nominated by the unanimous vote of an *ad hoc* parliamentary committee consisting of one member of each parliamentary faction (hereinafter referred to as the nominating committee). If the nominating committee fails to nominate four candidates within the stated deadline, the nominating committee may propose a candidate in the second round of nomination with at least a two-thirds majority of votes. If the nominating committee fails to nominate four members within eight days in the second nomination round, its mandate is terminated and a new nominating committee is set up.

In each voting round, the members of the nominating committee have a number of votes corresponding to the headcount of the parliamentary faction they were appointed by. (In the interests of ensuring the continuity of the operation of the Media Council, the nomination process may commence even if a faction fails to appoint a member to the nominating committee within the deadline set by the parliamentary decision.)

Similarly to the Media Council, members of the National Radio and Television Commission, established pursuant to the former Radio and Television Broadcasting Act, were also elected by the Parliament, upon the recommendation of the factions of the parliamentary political parties. The Constitutional Court has examined the constitutionality of the election of the members of the National Radio and Television Commission, and established the following on the respective rules in its Decision No. 46/2007 (VI 27) AB:

> the fact that the Media Act allows judicial action against material decisions of the National Radio and Television Commission regarding the legality of broadcasting provides adequate safeguards that parliamentary parties cannot exert substantial influence on the content of programmes through the National Radio and Television Commission.… In and of itself, the nomination right of parliamentary factions indeed does not guarantee the independence of the National Radio and Television Commission. However, nomination by parliamentary factions does not automatically

> mean the election of the person recommended for National Radio and Television Commission membership. The fact that MPs elect the members of the National Radio and Television Commission ensures that the decision on members is the outcome of a democratic process. The fundamental principle of representative democracy is an independent mandate, and an MP cannot legally be obliged to cast his vote in a certain manner.… Pursuant to Article 31 Paragraph (2) of the Media Act, members of the National Radio and Television Commission are subject only to the law and cannot be instructed in their actions. The free mandate of members and the fact that they cannot be recalled ensures independent operation, free of any influence. Political and economic conflict of interest rules provide further safeguards of independence. The mandate of National Radio and Television Commission members elected by the Parliament is distinct from the legislative cycle.… These statutory provisions are theoretically capable of ensuring the independence of National Radio and Television Commission members and excluding parliamentary parties from formally exerting their influence.

Based on the above, the regulation of the election of the Media Council complies with the requirements of constitutionality: its members are elected by the Parliament, and, moreover, not by a simple majority vote under the disposal of the governing parties, but with a qualified two-thirds majority, requiring agreement with the parties of the opposition. The members' term of mandate is distinct from the legislative cycle: they are appointed for a term of nine years.

The post of the President and that of the president of the Media Council are closely intertwined since, upon the appointment of the President, the President becomes the candidate for the presidency of the Media Council, and if the mandate of the President is terminated, then the President's mandate in respect of the presidency of the Media Council is terminated as well. (In this case, upon the appointment of the new President, the new President also becomes the candidate for the presidency of the Media Council. His election shall be decided upon by two-thirds of the Members of Parliament present.)

The provisions of the Media Act on the President and the president of the Media Council were amended in June 2012. According to the currently effective regulation, if the President is elected as the president of the Media Council then the President shall have the right to convene and chair the meetings of the Media Council and to arrange for the preparation of such meetings [Article 111 Paragraph (2) Points *a)–b)*]. In contrast with the former regulation, until election to the presidency of the Media Council, the President has no right to summon and chair the meetings of the Media Council. If the Parliament does not elect the President to the presidency of the Media Council then the President shall lose his post of President as well.

If the term of the mandate of the President expires and the Parliament fails to elect the new President to the post of president of the Media Council within the deadline provided for in Paragraph (8) of Article 216 of the Media Act (30 or 15 days), then the mandate of the previous president of the Media Council is "extended" until the election of the new president. If the post of the President is not filled in, the president—or, in certain cases, a member—of the Media Council shall exercise the powers of the President.

On the basis of the above it is evident that, until election as president of the Media Council, the President may not take any measures on the merits in respect of the Media

Council. At the same time, it may also be seen that the guarantee for the continuous operation of both "organs" are given in the interest of predictability and reliability, since if either the post of the President or the post of the president of the Media Council is not filled, the law provides for the "deputy" responsible for the tasks under the scope of the given post. This regulation of the relationship between the various offices held is conformant to the guarantees of constitutionality as well, since it is only after legitimacy is granted by the Parliament, i.e. as president of the Media Council, that the President appointed by the Prime Minister is granted any rights in the body responsible for the supervision of the operation of the media market.

In the interest of fair and impartial decision-making, the law provides for strict rules of conflict of interest in respect of the president and members of the Media Council [Media Act Article 127 and Article 188 Paragraphs (1) and (3)]. The express guarantee regulation of the termination of the mandate of the members of the Media Council also serves as a special guarantee of the autonomous, independent operation of the Council (Media Act Article 129).

The Media Council is a corporate body; as such, the procedural rules of its operation have to be provided for in detail. The agenda established by the Media Council defines the detailed rules of corporate operation. The fundamental rules of corporate operation are provided for by the Media Act, i.e. the Act provides for the guarantee elements of corporate operation that cannot be entrusted by the legislator to the rules of the corporate agenda established by the corporate organisation itself. The Media Act expressly provides that the members and the president of the Media Council each have a single vote and that the body is deemed to form a quorum if over one half of the members—including the president of the Media Council, too—are present and, furthermore, that the Media Council passes its decisions with the simple majority of the votes of its members, including the president of the Media Council. An exception to this latter rule is in the event that the Media Council passes a decision on a conflict of interest, relief from duties or exclusion, as these require a unanimous vote. In respect of the agenda, it should be noted that, according to the Media Act, the agenda of the Media Council is to be published in the official journal, i.e. the *Hungarian Gazette* (Article 131).

20.5. The Media and Communications Commissioner

In respect of media content services, the task of the institution of Commissioner, introduced by the Media Act, is to contribute to the promotion of the equitable interests of users, subscribers, viewers, listeners, and consumers of media content services, as well as the readers of press products, that are beyond the scope regulatory powers [Media Act Article 139 Paragraph (1)].

The regulation of the institution of the Commissioner underwent substantial changes due to Constitutional Court Decision No. 165/2011. (XII. 20.). On the basis of the motions received, the Constitutional Court reviewed the part of the institution of the

Commissioner with a bearing on the operation of the press. The Constitutional Court established that the Commissioner has the power to examine issues directly related to the activities of media service providers and press product publishers, i.e. on the basis of such power the Commissioner could subject to inspection issues within the scope of editorial freedom. When exercising its powers, the possibility of official action and enforcement is always present behind the proceedings of the Commissioner as, on the basis of the Commissioner's initiative, the Office may order data provision or impose fines, and the Commissioner is required to render account of the reports to the Media Council. On the basis of this, the Constitutional Court took the position that the legal institution of and the procedural powers and powers of action granted to the Commissioner entail a restriction of the freedom of the press from the aspect of media service providers and press product publishers. The Constitutional Court deemed the provisions relating to the Commissioner as unnecessary restrictions of the freedom of the press and, accordingly, struck down the said provisions.

The amendment of the Media Act on the basis of Constitutional Court Decision No. 165/2011. (XII. 20.) terminated the media administration powers related to the proceedings of the Commissioner, struck down the possibility of passing decisions providing for obligations, and provided anew for the institution of Commissioner as an institution with a role exclusively limited to cooperation with the service providers, i.e. to *mediation*.

As regards the legal standing of the institution of the Commissioner, it is part of the central public administration system of the National Media and Infocommunications Authority. During the performance of its tasks the Commissioner may not be instructed, i.e. the Media Act guarantees the independence of the Commissioner in respect of the performance of the tasks related to its powers. That is, although in the organisational sense the Commissioner is subject to direction, in the professional sense, i.e. in respect of its tasks and powers, the Commissioner is independent, may not be instructed and may not be deprived of its powers [Media Act Article 139 Paragraph (2)].

It is important to note that, in respect of the legal standing, status and powers of the institution, the Commissioner is sharply distinct from the Commissioner for Fundamental rights elected by the Parliament and the former parliamentary commissioners. The two institutions are similar in name only; however, the Ombudsman is an "organ" of the Parliament fulfilling the indirect supervisory function of the Parliament. As opposed to this, the Commissioner, rather than being the indirect organisation of the Parliament responsible for upholding the fundamental constitutional rights, is a public administration body operating under the auspices of the National Media and Infocommunications Authority, the tasks and powers of which are limited exclusively to public administration type non-regulatory duties. (That is, as regards its organisation, operation or tasks, the institutions of the Commissioner are not on the level of the enforcement of constitutional rights or the branches of state power.)

20.5.1. The tasks and powers of the Commissioner with a bearing on media content services

Via its special proceedings provided for by the Media Act, the legal institution of the Commissioner serves to protect consumers' and users' interests that cannot be enforced via other proceedings; thereby its duty is to promote the welfare of consumers whilst serving as a forum for the settlement of problems and disputes in constructive cooperation with the service providers [Media Act Article 141 Paragraph (1)]. The institution of the Commissioner supplements the other activities of public administration. It is an organisation providing mediation, conciliation and cooperation tasks and its activities in respect of media service providers and press product publishers—in respect of the upholding of the fundamental constitutional right of freedom of the press—are sharply distinct from the regulatory activity of the National Media and Infocommunications Authority.

In keeping with its aforementioned role of mediation and service, the legal institution of the Commissioner serves to provide remedy for complaints that cannot be settled by regulatory means, but violates the interests of a large number of consumers and users. In essence, that is the Commissioner is a special consumer protection institution which participates in the system of relations between the media content provider and the consumer in the role of a special representative, the task of which, in the cases provided for by law, is to assist the enforcement of consumer interests (in cooperation with the media content provider) within the framework of a conciliation procedure using its special expertise and by providing a forum for the expression of the positions of the professional organisations.

The Media Act contains guarantee provisions on the powers of the Commissioner by clearly defining the cases in respect of which the Commissioner may proceed [Media Act Article 140 Paragraph (2)]. In the case of complaints related to media services and press products (i.e. in the event of express application), the scope of the powers of the Commissioner extends over conduct related to the provision of media services or press products that does not qualify as a violation of the relevant media administration rules, but nevertheless causes or may cause a violation of the equitable interests of the users or consumers of the media content services.

Such equitable interest may be public interest or lawful private interest, too. In this respect, lawful private interest is any interest protected by law, i.e. derivable from a legal provision, the violation or possible violation of which has been raised in respect of the provision or use of a media service or press product, if the injury caused by such violation does not constitute a breach against a rule of media administration and cannot be sanctioned by the regulatory instruments of the Media Council, the President or the Office, but causes or is capable of causing injury to the users in their role of consumers.

20.5.2. The proceedings of the Commissioner in cases related to media content service

The Commissioner may not conduct public administration, law enforcement regulatory proceedings and may not apply regulatory instruments (may only apply regulatory instruments with regard to complaints about electronic communications services).

Its proceedings are mediatory and conciliatory in nature, based exclusively on the equal standing of the parties. The purpose of its proceedings is to ensure the management of consumer and user complaints that cannot be settled via other avenues of public administration (Media Act Articles 140–141).

The proceedings of the Commissioner may only be commenced upon a complaint (i.e. upon request). If the Commissioner proceeds in respect of the complaint, it is required to conduct oral or written conciliation in respect of the harm to interests subject to the complaint with the professional or interest organisations or self-regulatory bodies (hereinafter collectively referred to as professional organisations) of the media content providers. During the conciliation process, the Commissioner notifies the media content provider about the complaint concerning its activities, and is required to ensure the media content provider has the opportunity to present its position in all stages of the conciliation procedure. During the conciliation procedure its task is to draw up a proposal for remedying the complaint, taking into account the observations of the professional organisations and the media content provider concerned, and to forward such a proposal to the professional organisations.

The Commissioner shall prepare a report of the results of the conciliation procedure and shall forward the report to the complainant, the media content provider concerned, and the relevant professional organisations. The purpose of the report is solely to inform the concerned parties about the proposal, the responses, and observations made thereto. It is important to note that the report has no mandatory force or legal effect whatsoever.

The Commissioner reports on the experiences of the proceedings conducted, and on the effect of the reports and proposals it has made, to the Media Council on a quarterly basis. The purpose of such reporting is limited to providing information for the Media Council. The report of the Commissioner provides the Media Council with important information, especially on whether the public interest, manifest in the increase of the welfare of consumers, prevails adequately (Media Act Article 143).

21. The System and Procedural Order of Media Administration

21.1. The system and characteristics of the public administration activities of the National Media and Infocommunications Authority

In comparison with the media regulations effective prior to 2011, a novelty of the Media Act is that, in the interest of ensuring public law guarantees, the Act brought all media administration activities under the regulatory framework of public administration law. Within this sphere, all elements of state intervention directed at the legal subjects concerned are subject to regulatory activity, and so all cases and decision types based on the Media Act belong under the material scope of the Administrative Proceedings Act. As such, all guarantee principles and elements of public administration law and all regulatory procedural law provisions upholding the rights of clients extend over the activities, decision making procedures, and decisions of the media administration.

Accordingly, on the one hand, the Media Act delimits regulatory (law enforcement) powers from non-regulatory (non-law enforcement) competences and, on the other hand, in respect of the regulatory powers, it defines exactly which independent organisational units of the National Media and Infocommunications Authority may exercise which powers. Third, the Act provides for the system of the forums for legal remedy in respect of regulatory cases and decisions.

We wish to note, already at this early phase, that the President, having no regulatory powers in the field of media administration, has no right to conduct any regulatory procedures. Consequently, the procedural rules discussed below are applicable in the case of the procedures conducted by the Media Council and the Office.

21.1.1. Regulatory supervision in media administration

Albeit with several differences, regulatory supervision in media administration follows the general principles and fundamental rules of the operation of public administration supervision. The basic types of regulatory supervision are general regulatory supervision and market surveillance (besides these two basic types of public administration regulatory supervision, certain special types of regulatory supervision may also be identified; however, as these are not present in Hungarian media regulation, they have no relevance to media administration).

A) General regulatory supervision — regulatory inspection
This may be understood as the basic, general instance of regulatory supervision. Within the framework of general regulatory supervision, the Media Act provides for guarantee rules supplementary to the Administrative Proceedings Act. These cover the entire complexity of the processes of the enforcement of the legal norms of public administration, whether by voluntary compliance or through the application of the law (Media Act Article 167). Within the framework of this, the Media Council and the Office may decide at their discretion whether to oversee compliance with regulatory decisions or legal provisions via regulatory inspection or by way of a regulatory procedure instituted with immediate effect. The provisions of the Media Act and the Press Freedom Act, the regulatory decisions of the Media Council and the Office, and the public contracts concluded by the former (as well as the broadcasting agreements concluded under the former Radio and Television Broadcasting Act) fall under the scope of the general regulatory supervisory activity provided for by the Media Act.

In respect of the supervision of regulatory decisions, the Media Act provides that it is the competence of the Media Council and the Office to decide, on the basis of the consideration criteria provided for by the Media Act, whether in the event of a violation of the regulatory decision, to apply the enforcement procedure as defined in the Act on the General Rules of Administrative Proceedings and Services or to institute a regulatory procedure according to the Media Act.

B) Market surveillance — market surveillance inspection
Market surveillance is a distinct type of public administration supervision with specific conceptual and content elements. The fundamental objectives of market surveillance, as provided for by the Media Act, adapt the general objectives of market surveillance specifically to media administration (Article 168). According to the Act, the fundamental legal objectives and scope of market surveillance are the following:

a) to protect the smooth, fruitful, and diverse operation of the media market,
b) to protect the interests of those under the personal scope of the Act, especially to ensure consumer protection,
c) to preserve the diversity of the national culture and opinions,
d) to promote the maintenance of fair and effective market competition,
e) to gain an insight into market trends,
f) to comprehensively assess, analyse, and inspect the regulatory supervision of the media policy considerations and other objectives as defined in the Act.

Due to its specific scope and substance, market surveillance is a type of procedure that may only be instituted ex officio (and not upon application). (That is, within the framework of media administration regulatory supervision, only a general regulatory supervision procedure may be instituted upon application.) It should be noted that only the Media Council has market supervisory purview within the framework and to the extent of its own scope of action, i.e. only the Media Council has licence to conduct market supervision activities.

The Media Act also provides for one of the main types of the general instruments of market surveillance, the market surveillance plan and its publication, as well as the basic rules of market surveillance planning. In relation to this, the Media Act specifically provides for a fundamental guarantee of market surveillance, namely the summary report on the results and findings of market surveillance activity [Media Act Article 168 Paragraph (7)].

As a result of the market surveillance activity, the Media Council passes a summary regulatory decision establishing the occurrences of the legal infringements (assessed both individually and in context with respect to each other), as well as the legal sanctions and liabilities.

21.1.2. The regulatory registration activity

Both regulatory and non-regulatory types of public administration registration activities are present in media administration and are considered to be of special importance, since the appropriate performance of public administration tasks in the public interest would be virtually impossible without the necessary registers and, especially, the data of the actors of administration.

Due to the specifics of the administrative area, the official registers of media administration are basically declarative in type. With one single exception, the register of media services—one of the most important official registers of media administration—does not establish, but only records the exercise of the right or the termination thereof (the register of printed press products, online press products, on-demand media services, etc.). Linear media services are the only type of media service for which registration is constitutive in nature, i.e. in the case of these, registration establishes the media service provision right.

21.1.3. Quasi-jurisdictional dispute settlement activity

The media regulations provide Hungarian media administration with a broad scope for the settlement of legal disputes, as they grant the right of initiation of a legal dispute procedure to all media service providers, publishers of press products, ancillary media service providers and media service distributors which consider that their rights or lawful interests concerning media administration—defined in a rule on media administration or an agreement concluded under such a rule—were infringed by another media service provider or media service distributor (Media Act Article 172).

Over and above this, a legal dispute case and procedure may also be initiated if, under the obligation to contract provided for by the Media Act, the contract initiated by the rights holder is not concluded within the deadline provided for by the Act. This official legal dispute procedure ensures that the party obliged to enter into contract shall not wrongfully deny the conclusion of the contract.

It should be noted that a legal dispute procedure may only be initiated upon the application of a media service provider or media service distributor; ex officio proceedings are not possible in the event of legal disputes. This follows from the basis of the scope of legal dispute procedures, as these are specific *adversarial* procedures, the "nature" of which is alien to the *official nature* of public administration, i.e. the ex officio principle.

The legal dispute procedure of the Media Council is a special type of regulatory procedure which—as we have mentioned previously—is similar in character to *adversarial* court procedures. The entire legal dispute procedure consists of mediation and proof between the adversary parties; furthermore, the Media Council attempts to achieve a settlement between them (if, on the basis of the consideration of the facts of the case, this is expected to yield results). The central element of the legal dispute procedure is negotiation (although this is not mandatory, as in many cases it is not expected to yield results in respect of the decision on the merits, the clarification of the facts and the successful management of the procedure).

In legal dispute procedures initiated in relation to contracts subject to the obligation to contract, if the client expressly requests it, the Media Council may establish or amend the contractual content between the parties.

The institution of legal dispute procedure is of special significance in respect of guaranteeing and ensuring the must-carry obligation relating to local and community media services and the obligation to offer certain media services for media service distribution (Media Act Articles 73–81).

21.2. The procedural order of the public administration activities of the media authority

The Media Act assigns all procedures of the Media Council and the Office related to media administration under the scope of the Administrative Proceedings Act. The Media Act thereby achieves compliance with the constitutional requirement that public administration be subject to public law.

It should be noted, however, that the previous media regulations were subject to several objections by the Constitutional Court [see Constitutional Court Decision 46/2007. (VI. 27.)], especially because, in its procedures, no clear distinction could be made between the law enforcement and the civil law tasks of the former media authority, the National Radio and Television Commission. According to the decisions of the Constitutional Court, it was severely problematic from the aspect of the rule of law that, in the tender procedures related to broadcasting rights, the public and private law roles and powers of the National Radio and Television Commission were mixed. Furthermore, the regulatory method whereby, on the basis of the former media act, the procedure of the National Radio and Television Commission regarding external legal subjects was not based on clear and predictable rules of procedure, and public administration type law

application was not based on public administration and public law provisions, was not compatible with either the rules of the European Community on law enforcement or the Hungarian principles of the rule of law.

21.3. The relationship between the general (Administrative Proceedings Act) and the specific (Media Act) procedural rules

In respect of the relationship between the general and the specific procedural rules, the Hungarian code of procedure follows the model according to which the procedural code has primacy in all issues that fall within its scope, i.e. specific procedural rules may only diverge from the general rules if such divergence is expressly permitted by the general act on proceedings.

As regards the relationship between the general and the specific procedural rules, the Administrative Proceedings Acts is *subsidiary* (underlying or secondary) to the regulatory procedural order of the Media Act. That is, the provisions of the Administrative Proceedings Act are applicable in cases when the Media Act does not provide for the given procedural issue [Media Act Article 144 Paragraph (1)]. In this respect, the Media Act specifically declares that, in all regulatory procedures provided for by the Media Act, the provisions of the Administrative Proceedings Act are to be applied in conjunction with the supplementary or divergent provisions of the Media Act on media administration.

In respect of the divergent procedural rules and, in fact, in respect of the entire procedural law basis of media administration, it is especially important to stress that, in the proceedings governed by the Media Act, it is the general regulation of the Administrative Proceedings Act, i.e. the rules of public administration procedural law, that prevail; therefore, the system of rules of the Administrative Proceedings Act *is* the procedural law of media regulation. Within this "general rule," i.e. the main procedural legal basis, the Administrative Proceedings Act is only applicable as underlying or secondary, i.e. the Media Act is only considered to be the primary procedural rule if an express and specific provision of the Media Act supplements the provision of the Administrative Proceedings Act or if it diverges from a procedural rule provided for by the Administrative Proceedings Act. Even in this latter case, the Administrative Proceedings Act and the court practice of its application is clearly present as a procedural law guarantee in respect of the supplementary or divergent provision of media law.

The Media Act diverges from the rules of the Administrative Proceedings Act in respect of the following procedural institutions and rules (see Media Act Part Four Chapter IV)

a) the applicant,
b) legal succession,
c) confidentiality,
d) communications via electronic means,
e) the commencement of proceedings,

f) the assessment of competence and jurisdiction,
g) the administrative deadline,
h) the application,
i) the access to documents for inspection, secrets protected by law,
j) exclusion,
k) the establishment of the facts of the case,
l) the procedural fine,
m) the public hearing,
n) the consultations with stakeholders on significant issues,
o) the public contract,
p) disclosure,
q) the legal remedies.

For reasons of brevity, here we shall only dwell on those institutions and rules on which discussion is absolutely necessary due to their practical significance.

21.3.1. Clients and applicants

The Media Act makes a sharp difference between clients and applicants, i.e. the legal capacity of the client and the legal institution of the applicant (Article 145). The Media Act does not provide for the concept of "client"; instead, it leaves this to the general provisions and jurisprudence of the Administrative Proceedings Act.

In the media administration procedures governed by the Media Act, anyone may have the "capacity of applicant", anyone may submit complaints, but applicants have no regulatory procedural or client capacity in the official matter subject to the complaint. The basis and substance of the distinction is that, in respect of the subject of the given official matter, the client may not have the legal status of applicant and the applicant may not have the legal status of client.

On the one hand, therefore, if a person makes a complaint in respect of an official matter, in respect of which they would otherwise have the status of client (the complaint has bearings on their rights or immediate legitimate interests), then the Media Council or the Office informs the applicant that, in respect of the complaint, they qualify as a client, and provides information on the regulatory procedures available for the assertion of their rights as a client.

On the other hand, if the person making the complaint has no legal status as client in respect of the case that is the subject of the complaint, in respect of any regulatory procedure initiated ex officio in relation to the subject matter of the complaint, this person shall not qualify as a client and shall have no procedural capacity.

21.3.2. The commencement of proceedings

In comparison with the general procedural rules provided for by the Administrative Proceedings Act, the Media Act contains four important differences in respect of the commencement of proceedings (Article 149).

a) It is on the basis of the authorisation provided by the Administrative Proceedings Act, rather than legislation deriving from the Act, that the Media Act provides that the Hungarian Media Authority may commence regulatory procedures ex officio in respect of the cases under its official purview. This method of the enforcement of rights, as provided for by the Administrative Proceedings Act is called for due to the special public, interest related to the field of media administration and the large number of users and concerned parties, as well as numerous other considerations.

b) With a view to the simplification of the order of procedure, cost efficiency, the close relationship between the individual cases and the minimisation of the public authority burden on the clients concerned, the Media Act allows the extension of the procedure ex officio if, during the procedure, legal violations become known that are directly or closely related to the official matter that is the subject of the procedure.

c) On the basis of their specific subject or the special costs involved, certain proceedings of the Media Council and the Office are subject to an administrative service fee rather than the flat-rate procedural duty provided for by Act XCIII of 1990 On Duties. The Media Act provides that the definition of the procedures subject to an administration service fee and the establishment of the amount of the fee fall within the scope of the regulatory power of the President [Decree No. 5/2011. (X. 6.) of the National Media and Infocommunications Authority].

d) On the basis of the possibilities, rationality and specifics of the official application of the law in respect of media content, as well as the consideration of the protection of fundamental rights and the aspect of constitutional "balance", the Media Act provides for the limitation period of the initiation of proceedings. In this respect the regulation differentiates between the subjective and objective deadline for the submission of the application for the commencement of the regulatory procedure and the deadline for the commencement of proceedings by the Media Council and the Office ex officio [Media Act Article 149 Paragraphs (4)–(5)].

21.3.3. The administrative deadline

The Media Act provides for a general administrative deadline of 40 days in the case of the proceedings of the Media Council and the Office. In respect of certain proceedings, the Act provides for a different administrative deadline; these special administrative deadlines are specified in the Media Act individually for the various legal institutions. Hence, the Media Council may, for example, adhere to a different administrative deadline in the case of media service tender procedures, special authority procedures or market surveillance procedures.

The administrative deadline is calculated as of the day following the date of the receipt of the request by the Media Council or the Office or, in the case of procedures initiated ex officio, as of the date of the commencement of the procedure.

In justified cases, the administrative deadline may be extended on one occasion, with a maximum of twenty days. The Media Council is required to notify the parties about the extension of the administrative deadline prior to the expiration of the original deadline.

21.3.4. The establishment of the facts of the case

Given its significance in media administration proceedings, within the system of instruments serving the establishment of the facts of the case the Media Act specifically provides for the different, supplementary rules of data provision and the issue of statements as well as the legal sanctions applicable in the event of the omission of data provision (Media Act Article 155).

On the basis of the applicable legislation, the Media Council and the Office have the right to view, examine and make copies and extracts of any and all instruments, deeds and documents containing data related to the media service, the publication of the press product, or the media service distribution, even if such instrument, deed or document contains secrets protected by law. On the basis of the authorisation conferred upon them by the Administrative Proceedings Act, the Media Council and the Office have the right to oblige the client, the other participants in the proceeding and their representatives and employees, as well as persons in other legal relationships with the client or the other participants of the proceedings, to disclose data, or to provide (either verbally or in writing) data in a comparable format as defined by the Media Council or the Office as well as to furnish other information.

In particularly justified cases, in the interest of the establishment of the facts of the case, the Media Council and the Office may oblige persons or organisations other than the client and the other participants in the proceedings to provide data or to hand over instruments of proof; however, the party obliged to provide data or to hand over instruments of proof may seek legal remedy with suspensive effect from the Metropolitan Court of Budapest against such an order.

The Constitutional Court also examined the constitutionality of this regulation and established, in Decision No. 165/2011. (XII. 20.), that although the procedural rules of the Media Act on the establishment of the facts of the case are not unconstitutional, a constitutional violation by omission had ensued due to the fact that the rules of the Media Act on the establishment of the facts of the case (Article 155) do not appropriately provide for the data provision obligation of media content providers in respect of the protection of journalists' sources and attorney–client privileged information. It is important to stress that, on the basis of the examination of the regulations mentioned, the Constitutional Court established the inadequacy of the regulation of procedural guarantees related to the protection of sources generally, in respect of the entire legal

system. As such, the general public administration rules and the rules of civil and penal procedure also fail to guarantee the protection of journalists' informants or sources.

It should be emphasised that, in respect of the statements made in the aforementioned decision of the Constitutional Court, an act of law adopted in June 2012 settled the issue of the protection of journalists' sources and professional secrets, including attorney–client privileges in respect of the entire Hungarian system and thus in respect of the Media Act, too.

In respect of the regulation of the Media Act on data provision, it should be noted that the powers of the Media Council and the Office related to data provision provided for by Article 175 of the Media Act as a special (separate) procedure were struck down by the Constitutional Court as entirely unconstitutional.

This provision authorised the Media Council and the Office to oblige, via an independent regulatory procedure, media service providers and media service distributors under the scope of the Media Act to provide data when necessitated by the tasks under their regulatory powers.

The Constitutional Court established in respect of this power and procedure related to data provision that, irrespective of the procedural guarantees and the independent legal remedy provided, there was no constitutionally acceptable objective or interest that would justify the continuous presence of the state's public authority related to such data provision, since the Media Council and the Office could obtain the data provided on the basis of the mentioned Article 175 via other regulatory procedures, too. Accordingly, the Constitutional Court deemed the independent data provision procedure provided for in Article 175 to be an unnecessary restriction of the freedom of the press.

21.3.5. The system of legal remedy in media administration

The provisions of the Media Act on the system of the forums of legal remedy follow the legal standing and public administration organisational system of the National Media and Infocommunications Authority. As the Media Council is an autonomous body of public administration, no legal remedy, i.e. appeal, exists against its decisions via the public administration (the Administrative Proceedings Act expressly precludes the possibility of appeal against the decisions of autonomous central public administration bodies, since in respect of these there is no superior public administration body that could adjudge such appeals); as such, any regulatory decisions of the Media Council may only be contested directly before a court of law via judicial review. In conformity with the provisions of the Administrative Proceedings Act, the Media Act clearly defines those who are entitled to legal remedy against the regulatory decisions of the Media Council [Article 163 Paragraph (1)].

Inter alia, this general regulatory system of the Media Act provides remedy for the shortcomings of the tender procedures of the former Radio and Television Broadcasting Act that were pointed out by the Constitutional Court. Constitutional Court Decision

No. 46/2007. (VI. 27.) stated that "on the basis of the Radio and Television Broadcasting Act the concerned party may not seek remedy from a court of law against a decision of the National Radio and Television Commission related to broadcasting. This means that the parties concerned may not request the decision of a court of law against decisions awarding radio and television broadcasting rights." Due to the lack of the prevalence of the freedom of the press, the Constitutional Court established a constitutional violation by omission.

In respect of the orders of the Media Council that can be challenged by independent legal remedy, the general procedural rules govern with the difference that the Media Act provides that applications for out-of-court proceedings—due to the specifics of media administration procedures that require more speedy decisions—must be submitted within 15 days from the date of the communication of the ruling rather than within 30 days as provided for by the general rules.

The rules of the Media Act related to the scope of the courts broaden and strengthen the extent of judicial review over the decisions of the Media Council, as it expressly provides that in respect of the review of the decisions of the Media Council the courts have the right of amendment, too. This is a significant difference from the general main rule that, by default, the court's scope is limited to striking down the decision and, in some cases, to ordering a new procedure (*cassatory power*) within the framework of judicial review. This right, limited to cassation (striking down), originates from the bases of constitutional law, since the courts are a branch of power separate from the executive; therefore—on the basis of the separation of the branches of power—within the framework of the judicial review of the regulatory decisions of the executive, the courts, by default, may have no right of amendment (i.e. "intervention"), that is, they may not decide the case on its merits. On the basis of the constitutional law context of media authority cases (and in the interest of ensuring the full prevalence of the fundamental rights related to the media), the Media Act exploits the constitutional possibility of strengthening the scope of judicial review and empowers the courts to amend the decision of the Media Council, i.e. to decide cases on their merits.

It should also be mentioned, furthermore, that although the filing of an action has no suspensive effect on compliance with an obligation provided for by a regulatory decision, the suspension of the procedure may be requested from the court in every case (in the case of express motions for suspension, the courts always decide upon such motions first).

On the basis of the Media Act [Article 164 Paragraph (3)], within the framework of the review of the regulatory decisions of the Media Council, the courts have the right of amendment (*reformatory right*) as well, which provides them with broader supervisory powers than the right to strike down decisions (*cassatory right*) provided for by the general rule. In respect of the judicial review of the contents of regulatory decisions, including the decisions of the Media Council, it may be stated in general that, according to the relevant legal provisions (the Constitution, the Administrative Proceedings Act, the Hungarian Code of Civil Procedure), the independent courts have full power of legal oversight in respect of administrative decisions. This power extends over the content

(material law issues), procedural law bases and form (procedural law issues) of administrative decisions as well as the legality and rationale of the review of the discretionary right and discretionary aspects embodied in such decisions.

The forum for appeal against the regulatory decisions passed by the office on the basis of the power conferred by the Media Act is the Media Council. The sphere of regulatory decisions that may be challenged by appeal is defined by the general procedural rules rather than the Media Act. Such decisions include regulatory decisions (with the exceptions of those against which appeal is precluded by the Administrative Proceedings Act), and the rulings that are independently appealable according to the Administrative Proceedings Act (rulings that are not appealable independently may be contested via an appeal against the decisive resolution).

The Media Act defines the sphere of those with a right of appeal against the decisions of the Office on the basis of the power conferred by the Administrative Proceedings Act. Accordingly, a decision of the Office may be challenged under an appeal only by the client who has participated in the proceedings of the first instance.

The rights holders may seek legal remedy against the second instance decisions of the Media Council passed in respect of the regulatory decisions of the Office before a court of law via judicial review.

The second instance decrees passed by the Media Council in respect of the decrees of the Office that may be challenged by independent appeal before the Media Council may be challenged before a court of law within the framework of out-of-court proceedings. Such out-of-court proceedings are governed by the general rules of procedure; the Media Act only diverges from the general rules of the Administrative Proceedings Act in respect of the deadline for the submission of the petition for legal remedy. That is, the petition for out-of-court proceedings against the first instance orders of the Office that may be challenged by independent appeal must be submitted within 15 days from the communication of the order.

In keeping with the provisions of the Hungarian Code of Civil Procedure, the Media Act provides that the Metropolitan Court of Budapest has sole jurisdiction in respect of the judicial review proceedings provided for by the Media Act. (The Media Act provides for several exceptions to this rule, e.g. statements of claim related to the decisions of the Media Council on balanced coverage [Media Act Article 181 Paragraph (6)] or the result and the establishment of the winner of a tender procedure [Media Act Article 62 Paragraph (5)] are to be lodged with the Budapest Court of Appeal).

22. The Sanction System of Media Administration

22.1. The types of sanction

Similarly to other branches of the law, the sanctions in the Hungarian media regulations may be put into two categories: substantive and procedural law sanctions. We wish to note, already at this early phase, that, since the President has no regulatory powers in the field of media administration, and, accordingly, has no right to conduct any regulatory procedure as a result of which sanctions could be applied, the President obviously has no right to apply sanctions either. Accordingly, on the basis of the Media Act, the other two organs of the National Media and Infocommunications Authority, the Media Council and the Office are entitled to apply (both types of) sanctions.

22.1.1. Substantive law sanctions

The Media Act provides a *taxonomic* definition of the substantive law sanctions applicable by the Media Council and the Office. These are the following:

a) exclusion from the tenders of the Media Service Support and Asset Management Fund (hereinafter referred to as the Fund),
b) the imposition of fines,
c) the so-called publicity sanction,
d) the suspension of the exercise of the media service provision right,
e) the deletion of the media service from the register, and
f) the termination of the public contract on the media service provision right with immediate effect [Media Act, Article 187 Paragraph (3)].

Point *a)* The sanction of exclusion from the tender of the Fund is only applicable to linear media service providers and on-demand or ancillary media service providers [Media Act, Article 187 Paragraph (6)]. In respect of the term of the exclusion, the Authority may exercise discretion on the basis of the severity of the infringement and the identity of the infringing party. When exercising such discretion, it is mandatory for the Authority to take these two considerations into account. It should be noted that, in comparison with the former regulations, this type of sanction constitutes a new element.

Point *b)* In respect of the substantive law fine, it should be mentioned that the Media Act specifies the maximum amount of each applicable fine [Media Act, Article 187 Paragraph (3) Point *b)*]; therefore fines are imposed in a differentiated manner according

to the individual infringements and the specific circumstances, in keeping with the legal requirement of proportionality. It is important to note that, in respect of the maximum amount of the fine, the Media Act differentiates between the various types of services and their effect and influence on the media market. Thus, for example, the maximum fine applicable in the case of a press product is significantly lower than the maximum fine applicable towards a linear media service provider, and the maximum amount is also defined separately for media service providers with significant market power and other linear media service providers.

Point *c)* Although the so-called "publicity sanction" does not put the infringing party at a direct financial disadvantage, in many cases it constitutes a more significant legal sanction than a fine. The effect of the publicity sanction is expressly directed at those persons affected by the infringement; it informs the audience of the fact of the infringement (e.g. by calling parents' attention to content detrimental to minors that is provided in violation of the law). In respect of the publicity sanction, it should be emphasised that, similarly to other sectors, the Media Act also enables the Media Council and the Office to order the infringing party to publish not only the decision, but also the statement of the case as contained in the decision. The reason for this is that a succinct summary statement is capable of conveying all relevant information, which enhances the ability of the sanction to bring about the desired legal effect. This sanction is primarily applicable when an infringement against the requirement of balanced coverage is established (at the same time we wish to note that the "publicity sanction" is the *only* sanction applicable in the case of a breach against the requirement of balanced coverage).

Point *d)* The suspension of the exercise of the media service provision right is not a new sanction in the field of media administration, as it has been part of the Hungarian legal system since the entry into force of the 1996 Radio and Television Broadcasting Act (obviously, this sanction is not applicable against publishers of press products).

In respect of the term of the "suspension", the Media Act provides a gradual, three-step application of the sanction, i.e. the exercise of the media service provision right may be suspended for a longer period in the case of serious violations, even for a term of one week in the case of a severe and repeated violation (in other cases the maximum period of the suspension is 24 hours). As a point of interest, we wish to note that the former Radio and Television Broadcasting Act specified 30 days as the maximum term of the suspension of the exercise of the media service provision right.

It is important to see that the qualification of an infringement as "severe" is something that cannot be defined comprehensively in advance; this is established by the authority on a case-by-case basis with respect to the specific circumstances of the case and the considerations it may apply at its discretion. The reasons and the basis of the considerations are to be recorded by the authority in the decision.

Point *e)* The final, *ultima ratio* sanction of the Media Act is the deletion of the service from the register and the termination of the public contract on the media service provision right with immediate effect. This sanction may only be applied by the Media Council and is conditional upon the severe and repeated nature of the infringement. For the sake of clarity, the Media Act defines the concept of "repeated" infringement on the basis of

warranty considerations. Accordingly, the infringement shall be deemed to have been committed repeatedly when the infringer engaged in the unlawful conduct established in the final regulatory decision on the same legal basis and in breach of the same provisions of legislation, on the same subject, at least two times within three hundred and sixty-five days, not including minor offences [Media Act, Article 187(4)]. It is important to note that deletion from the register means the deletion of the infringing service rather than the service provider, i.e. the infringer may continue to provide its other media services after deletion from the register, too.

22.1.2. Procedural law sanctions

On the basis of the Administrative Proceedings Act and the Media Act, the Media Council and the Office may impose a procedural fine on the client or other participants in the proceedings if these parties act in a manner aimed at the prolongation of the proceedings or preventing the actual facts of the case from being established, or in a manner which may result in the above (Media Act Article 156). Similarly to the case mentioned above, the Media Act provides for the differentiation of the procedural fine depending on whether the offender is a natural person, or an organisation.

22.2. Sanctions against executive officers

Besides organisational sanctions, the Media Act expressly provides for sanctions against executive officers, but only in the case of repeated infringements [Media Act Article 187(1)]. This type of sanction is a novelty in Hungarian media regulation, since the regulation prior to 2011 only provided for sanctions against media service providers committing infringements (although, on the basis of the former Press Act and the Civil Code, in certain cases the head of the editorial staff, the head of the organisation responsible for reproduction and the head of the publishing house could also be held personally liable).

The provisions of the Media Act on sanctions against executive officers take into account the fact that, in many cases, the executive officer only becomes aware of the infringement after the closure of the regulatory procedure and the communication of the regulatory decision; therefore sanctions are only applicable against executive officers if the infringement is repeatedly established by a final court ruling.

In respect of the amount of the fine applicable against executive officers, the Media Act takes into account that in this case the subject of the sanction is a natural person rather than an organisation and, accordingly, prescribes a lower maximum fine amount.

22.3. The principles of the application of sanctions, guarantees, and the legal institution of request

The Media Council and the Office may not apply unlimited sanctions in the interest of the attainment of the objectives of the sanctions. The framework and the primary principles of sanctioning are set out in the Media Act, according to which the Media Council and the Office are required

a) to adhere to the principle of equal treatment,
b) to act in line with the principles of proportionality, and
c) progressivity,
and
d) to apply the legal sanction proportionately in line with the gravity of the infringement and in proportion with the purpose of the legal sanction [Media Act Article 185 Paragraph (2)].

Point *a)* The requirement of equal treatment is a general requirement applicable to all official matters, the central element of which is that, when considering the case, the principle of factuality must be adhered to; no undue discrimination may be applied between the specific offenders and, inasmuch as possible, identical sanctions should be applied with regard to identical violations. Furthermore, in respect of the gravity and extent of the sanctions, infringing persons with similar characteristics who commit identical offences should be adjudged identically or similarly. As such, the principle of equal treatment essentially contains the prohibition of unwarranted discrimination.

Point *b)* On the basis of the principle of proportionality, in keeping with its purpose and detrimental effect, the sanction applied must be proportionate with the severity of the infringement, taking into account the relevant discretionary aspects of the case as well. On the basis of the Media Act, adherence to the principle of proportionality is mandatory during the application of all sanctions. The application of the principle of proportionality must be made clear in the statement of reasons of the regulatory decision on the basis of the individual and comprehensive assessment of the facts and aspects of the case, and their rationale.

Point *c)* In respect of the mandatory application of the principle of progressivity, a sharp distinction is made between the legal sanctions applicable to the "first" infringement and any further infringements. The principle of progressivity is not actually applied to the "first" sanction against the infringing party. When imposing the "first" legal sanction, this should be the most moderate sanction that is capable of achieving the desired legal effect. The gravity of the sanction may be increased in the event of repeated infringements. Hence, the significance of the principle of progressivity is related to repeated sanctioning; progressivity increases in proportion with the repetition of the infringement (either by the application of a higher fine or longer suspension, or by the joint application of several sanctions) and is manifested in the predictability of the practice of sanctioning. A special legal institution of the principle of progressivity is a request (Media Act 186), whereby

the Media Council or the Office calls upon the offender to cease and desist from the infringement.

At this point it should be noted that, as of the entry into force of the Media Act on 1 January 2011, the law enforcer disregards the sanctions applied by the National Radio and Television Commission when applying the principle of progressivity. Thus, by applying the principle of *tabula rasa,* the Media Council and the Office did not assess any legal offences committed prior to the entry into force of the Media Act and did not apply any legal sanctions in respect of such.

In respect of the institution of requests, the Media Act provides the law enforcer with discretionary scope, since a request may only be applied instead of a sanction if the infringement is of lesser weight (subject to discretion) and not repeated (not subject to discretion) [Media Act Article 186 Paragraph (1)].

22.4. Discretion

Within the framework of the application of media law sanctions, the role of discretion is not limited to the establishment of the amount of the fine. First of all, the Media Council or the Office is required to consider whether to apply a specific sanction or to issue a request. If they opt to apply a sanction, it must be considered on the merits of the specific case which sanction is most fit to achieve the desired legal effect.

A general procedural requirement and guarantee related to discretionary jurisdiction is that the discretionary considerations applied must be evident from the decision on the merits closing the procedure, as must the rationale behind the said discretionary considerations. Rationale means justification and justified consideration in respect of all discretionary elements.

The Media Act expressly defines the mandatory aspects of consideration during the application of sanctions. These are:

a) the gravity of the infringement,
b) the singular, or repeated, *ad hoc,* or continuous nature of the infringement and its duration,
c) the pecuniary benefits earned as a result of the infringement,
d) the harm to interests caused by the infringement, the number of persons aggrieved or jeopardised by the harm to interests,
e) the damage caused by the infringement,
f) the impact of the infringement on the market, and
g) other aspects that may be taken into account in the particular case [Media Act Article 187 Paragraph (2)].

Given the fact that specific infringements may be extremely diverse, it is the task of the practice of the application of the law to draw up the detailed contents of the individual aspects of consideration. It should be emphasised that, besides the principles of the application of sanctions and the aspects of consideration provided for by the Media Act,

several other general principles and requirements of procedural law must be taken into account when applying sanctions. For example, the Media Council and the Office is bound by the principle of *ne bis in idem*, i.e. the prohibition of assessing the same deed twice. In the interest of the prevalence of the principle of *ne bis in idem*, circumstances that are inherent to the delict may not be assessed as aggravating circumstances. That is, if a specific provision of the Media Act expressly assesses a circumstance (e.g. the market position of media service providers with significant market power), the law enforcer may not then include the assessment of such a circumstance when applying the sanction (e.g. the fact that a media service provider possesses significant market power in the case of a breach against the provision on the limitation of media market concentration by a media service provider with significant market power).

It is important to stress that the aforementioned aspects do not exhaust the entire list of the set of aspects of proof and consideration. The above consideration criteria are only comprehensive in the sense that these must always be reviewed by the Media Council and the Office with regard to all proceedings directed at the application of sanctions (with the exception of the sanctions provided for by the public contract in the event of a breach against such contract). Over and above these consideration criteria, however, the Authority may take into account other aspects of consideration and elements of proof, too, according to the particulars of the specific case and the clarification of the facts thereof.

Finally, it should be noted here that the various sanctions of substantive law may be applied not only independently, but also in combination with each other in the event of legal violations, which further increases the law enforcer's discretionary scope.

Part IX

Co-Regulation

23. Co-regulation in media administration

23.1. The theoretical bases of co-regulation

The essence of the co-regulation system of the Media Act is that it provides an opportunity for self-regulatory organisations to participate in the arrangement of cases which fall under the competence of the Media Council. In comparison with other types of self-regulation found in other sectors and administrative areas (e.g. alternative dispute resolution procedures such as conciliation or mediation), this is a stronger—the strongest possible and still constitutional—authorisation conferred upon self-regulatory organisations to conduct proceedings prior to the Media Council exercising its administrative powers. During the course of its activities, based on the authorisation conferred by the Media Council in an administrative contract, the self-regulatory organisation exercises a public function. This justifies the prescription of rules by the Media Act on oversight of the procedure of the organisation, the supervision of its activities and the termination of the administrative contract, which rules may be considered constitutional and guaranteed. Moreover, because of the provision of a public function, the Media Act permits the Hungarian Media and Infocommunications Authority to provide financial assistance to the self-regulatory organisation in the interest of the performance of its duties. The organisation is required to provide the Authority with itemised accounts annually.

The definition of the scope of the organisations participating in the co-regulation system and the type of press products and media services included in the scope of co-regulation, as well as the definition of the provisions of the Media Act and Press Freedom Act that can be monitored, is not a constitutional issue, but a license from the Parliament stemming from its legislative and organisational power. In this respect, it can only be examined, from a perspective of constitutionality, whether the relevant rules satisfy the requirements of the rule of law and legal certainty. These constitutional principles are not violated in any respect by the provisions of the Media Act on co-regulation.

By way of introduction, we wish to make it clear that the term "co-regulation" refers to cooperation between professional organisations and the Authority in the interest of ensuring compliance with statutory regulations. However, as these organisations are, by nature, primarily self-regulatory and may also define norms that are binding on their own members, the term "self-regulation" shall also be used in the text.

The Media Act and the regulations established by the Act and described in the present chapter thereby acknowledge the significance of the self-governing activity of self-regulatory organisations in media administration, which is recognised by the AVMS Directive as well.

23.2. General overview of the system of co-regulation

The chapter on co-regulation (Part Four, Chapter VI) is a wholly novel element of the Media Act in comparison with the previous media regulations and it enables professional self-regulatory bodies to cooperate in the application of the law. On the basis of the system of co-regulation provided for by the Media Act, the Media Council may authorise, by way of an administrative contract, the self-regulatory bodies defined in the Act to proceed in lieu of the Media Council in respect of the regulatory tasks also defined by the Act within the framework of self-regulation, but with no regulatory or executive powers, towards the members and all others who voluntarily submit themselves to the co-regulation procedure. Due to the regulatory powers affected, for guarantee reasons the Act sets out in detail the contents and the framework of the authorisation and lays down the basic rules of the proceedings of the co-regulatory organisation. As such, the performance of co-regulatory functions has a bearing on the official matters belonging under the scope of the Media Council; these functions are performed by the Authority in cooperation with the co-regulatory bodies.

The specific characteristics of this division of the performance of public functions may be summarised as follows:

a) The Media Act specifies precisely and in detail the sphere of those regulatory tasks which the Media Council may "pass on" to the co-regulatory bodies within the framework of co-regulation.

b) The legal basis and framework of the "transfer of public function" is the administrative contract concluded between the Media Council and the co-regulatory body.

c) The co-regulatory body performs the public functions transferred to it with no public administrative, executive or regulatory powers. Accordingly, in respect of the subjects of the law concerned, the co-regulatory body may only perform public functions on the basis of voluntary commitment [Media Act Article 192 Paragraph (1)]. The co-regulatory body is required to maintain a register of its members and the undertakings that accept the code of conduct containing the detailed rules concerning the subject of the legal authorisation, in order to ensure that the sphere of persons in respect of whom the co-regulatory body may perform its functions is clearly identifiable [Media Act Article 192 Paragraph (1)].

d) A central element of co-regulation is that the Media Council may not proceed in respect of the "transferred" public function and may not exercise its official authority, i.e. the "transferred" public function is not additional to, but specifically replaces the exercise of the regulatory powers of the Media Council [Media Act Article 197 Paragraphs (2)–(3)].

e) Notwithstanding the fact that the co-regulatory body has no regulatory powers and may only perform its functions on the basis of voluntary commitment, the Media Act expressly provides the fundamental guarantee elements of the performance of the "transferred" function and the related co-regulatory procedure, which are therefore binding on the contents of the administrative contract and both contracting parties.

f) As we have mentioned previously, the legal and constitutional guarantee of the performance of public functions by the co-regulatory body is the judicial oversight (by the Media Council) of the "transferred" powers.

g) Finally, it should be noted that co-regulation includes not only the regulatory powers defined in the Media Act, but all other non-regulatory functions related to the media and media administration that may be subjected to co-regulation within the framework of cooperation.

23.3. The system of co-regulatory powers

In the administrative contract, the Media Council may grant authorisation to co-regulatory bodies to manage the following types of official matters as non-regulatory tasks:

– the oversight of the provisions of the Press Freedom Act on (printed and online) press products,
– the oversight of the provisions of the Press Freedom Act on on-demand media services,
– the oversight of the provisions of the Media Act on the content of on-demand media services.

Accordingly, it is important to point out that the system of co-regulation does not apply to linear media services. In the case of linear media services, the Media Act does not allow the authorisation of co-regulation; therefore, in respect of these types of media services the Media Act provides that the oversight of the related legal provisions is the task of the Authority exclusively.

The Media Act provides certain other conditions in respect of the transfer of the above powers. Among these, the most important is that the Act defines the sphere of the co-regulatory bodies that may be entrusted with the above public functions, i.e. their "personal scope". Media service providers, ancillary media service providers, publishers of press products, media service distributors, intermediary service providers, professional self-regulatory bodies and alternative dispute resolution forums of media service providers qualify as co-regulatory bodies [Media Act Article 190(1)].

A further condition stipulated is that the Media Council may conclude the administrative contract with those co-regulatory bodies, the registered scope of activities of which covers or directly affects the official matter for which the authorisation was granted and that maintain a precise and verifiable register of the undertakings under the scope of the co-regulation.

The method of regulation is that, in respect of the official matters that are subject to the administrative contract between the Media Council and the co-regulatory body on the basis of the authorisation granted by law, the authority "retires" from the application of the law and gives rein to private- and self-administration. In respect of the issues subject to the authorisation, it is the co-regulatory body that proceeds with regard to those who voluntarily submit to the exercise of this function.

23.4. The legal relationship established by the administrative contract

The competences defined in the Media Act that may be subjected to co-regulation may only be transferred to the self-regulatory bodies via administrative contract.

The most important general characteristic of administrative contracts is that, within the framework of these, public administration has no public authority or any other administrative powers over the legal subjects participating in the public administration legal relationship established by the administrative contract.

In general, judicial practice regards administrative contracts as civil law contracts; therefore, in respect of such, the courts basically regard the provisions of civil law as governing (with the exception of those elements of the contract that are regulated by public law).

The professional code or code of conduct (hereinafter referred to as Code of Conduct) is a mandatory element of the administrative contract and is a condition of its substantive validity. The Code of Conduct is a validity condition and an especially important element of the administrative contract, too, because this is what defines the professional substance of the scope granted within the framework of co-regulation and the domain of the interpretation and application of the law as well as the procedural guarantees and the (voluntary) obligations of the members. Naturally, the decisions of self-regulatory bodies passed within the framework of co-regulation according to the Media Act are only binding upon those who belong under the scope of the Code of Conduct.

The Code of Conduct specifies in detail the rules on procedures and guarantees related to the co-regulatory tasks to be performed by the co-regulatory body, the relevant rights and obligations of the members, the relationship between the members and the self-regulatory body within the context of the authorisation, and the types, system and the legal impact of decisions within the discretion of the co-regulatory body. Furthermore, the 'substantive' part of the Code of Conduct describes the rules and conditions concerning the activities, services and conduct designated by the scope of the authorisation. On the basis of this, the Code of Conduct consists of two parts: the substantive part and the procedural part.

Beside the provisions on the scope of the Code of Conduct and the fundamental principles governing its application, the substantive part contains the fundamentals of the legal application of co-regulation, especially the co-regulation requirements arising from the relevant provisions of the Media Act and the Press Freedom Act, the framework and criteria of the discretionary scope in respect of individual cases and the types of decisions that may be passed by the professional body. The procedural part sets forth the fundamental guarantee provisions governing the co-regulation procedure, including, especially, the co-regulation procedural fee, the initiation and commencement of proceedings, the content elements of the application, the procedural deadline, the course of the first instance proceedings and the detailed rules of legal remedy and proceedings initiated ex officio. In is important to note, however, that, in the interest of the protection of the rights of the participants of the proceedings, the underlying regulations of the

procedural part of the Code of Conduct are the general procedural regulations of the Administrative Proceedings Act and the Media Act.

Finally, it should be mentioned that the National Media and Infocommunications Authority is entitled to provide financing for the co-regulatory body to perform its tasks; the self-regulatory body is required to submit an itemised account of its usage of such financing to the Authority annually [Media Act Article 193 Paragraph (3)]. The details of the agreement on such financing are also provided in the administrative contract.

23.5. The judicial oversight of co-regulatory tasks

In the interest of the supervision of their activities, co-regulatory bodies are required to submit annual reports (Media Act Article 202). The judicial oversight of the Media Council over co-regulation is significantly limited. The main limitations are the following:

A) This judicial oversight does not extend over the hierarchical organisational level supervision of the operation and organisation of the co-regulatory body, but is limited to its co-regulatory activity exclusively. This purview of the supervision is expressly provided for by the Media Act [Media Act Article 201 Paragraph (1)], according to which the Media Council exercises supervision over the activities of the co-regulatory body under the administrative contract. Within the framework of such supervision, the Media Council may monitor, on a continuous basis, the fulfilment of the provisions of the administrative contract concluded with the co-regulatory body and their delivery in accordance with the contract.

B) The supervisory and administrative controls available to the Media Council are also limited, since, on the basis of the Media Act, the Media Council may only gain insight into the activities performed by the co-regulatory body in connection with the administrative contract and may oblige the co-regulatory body to provide data only to this end [Media Act Article 201 Paragraph (1)].

C) The supervisory powers of the Media Council (i.e. the decisions passed as a result of the supervisory activity) are also limited by the relevant legal regulations. In this respect the Media Act provides for a narrow range of decision types and instruments.

The Media Council has no licence to strike down or amend any decisions of the co-regulatory body that are in violation of the law and has no supervisory powers whatsoever to impose sanctions in respect of the infringing conduct or decisions of the co-regulatory body. The supervisory powers of the Media Council are limited in two respects: on the one hand, the Media Act expressly specifies the cases in which the Media Council may establish a "legal infringement" while, on the other hand, even if such infringement of the law is established, the Act forests out the manner of application and the type of supervisory instrument, the "legal sanction", that may be applied. That is, the Media Act defines both the sphere of the cases of infringement and their scope, too. The extent of the supervisory power and the scope within which legal infringement may be established are limited to the scope, procedure and cases subject to the authorisation conferred by the administrative contract.

The sphere of the cases or the "factual framework" of the infringement:
- the proceedings of the co-regulatory body contradict relevant legislation [Media Act Article 201 Paragraph (5)] or the provisions of the Code of Conduct,
- the applications are not adjudged by the co-regulatory body according to the relevant legislation or the provisions of the Code of Conduct,
- the decisions of the co-regulatory body do not conform to the content requirements of the relevant legislation or the provisions of the Code of Conduct, or
- the co-regulatory body fails to verify the compliance with or the observance of its decisions or fails to take measures to ensure that the provisions of its decisions are fulfilled [Media Act Article 201 Paragraph (3)].

In the event of the establishment of a legal infringement or a breach of the administrative contract according to the above, the Media Act provides both the method of application and the type of regulatory instrument applicable. In the event of the establishment of a legal infringement (or a breach of the administrative contract), at first the Media Council may only call upon the co-regulatory body to ensure the conformity of its conduct to the provisions of the law and the administrative contract.

If the co-regulatory body fails to comply with this request by the deadline provided, the Media Council may take action according to the following.
- The Media Council may consider the termination of the administrative contract with immediate effect or with a period of notice defined in the contract.
- The Media Council has no discretionary scope and is required to institute a regulatory procedure in the subject covered by the procedure and the decision, i.e. in this case it is mandatory for the Media Council to exercise its regulatory powers. The mandatory institution of the regulatory procedure is contingent upon the establishment of the fact that the proceedings and decision of the co-regulatory body contradict relevant legislation or the provisions of the administrative contract or the Code of Conduct which constitute an integral part thereof. It is only in such a case (in respect of the regulatory procedure instituted within the scope of legal oversight) that the Media Council is not bound by the procedure and decision of the co-regulatory body.

As such, it may be stated that the Media Council has no power to strike down even co-regulatory decisions that are in infringement of the law. In such a situation, the regulatory decision of the Media Council passed within the framework of a regulatory procedure and the co-regulatory decision passed in the same case are concurrently valid. Naturally, in this event only the decision of the Media Council has public law effect, since the decision of the Media Council qualifies as a regulatory decision, while the decision of the co-regulatory body does not.

Appendix

The Basic Law of Hungary (25 April 2011)
Article IX

Article IX

(1) Every person shall have the right to express his or her opinion.

(2) Hungary shall recognise and defend the freedom and diversity of the press, and shall ensure the conditions for free dissemination of information necessary for the formation of democratic public opinion.

(3) The detailed rules for the freedom of the press and the organ supervising media services, press products and the communications market shall be regulated by a cardinal Act.

Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content[1]

Having realised that new regulations need to be formulated to promote community and individual interests and social integrity, to ensure proper operation of the democratic order and to strengthen national and cultural identity, in line with the norms of international law and the European Union and developments in technology, the Parliament, giving due heed to ensuring the freedom of expression, speech and the press, and considering the key importance of media services in cultural, social and economic terms and to ensuring competition on the media market, hereby adopts the Act on the Freedom of the Press and the Fundamental Rules of Media Content as well as the Fundamental Rights and Obligations of Media Content Providers and the General Public, as follows:

TITLE I

DEFINITION OF TERMS

Article 1 1. *Media service* shall mean any independent service of a commercial nature, as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union, provided on a regular basis, for profit, by taking economic risks, for which the media service provider bears editorial responsibility, the primary aim of which is the delivery of programmes to the general public for informational, entertainment or educational purposes through an electronic communications network.

2. *Media service provider* shall mean the natural or legal person, or a business association without legal personality who or which has editorial responsibility over the composition of the media services and determines their contents. Editorial responsibility shall mean the responsibility for the actual control over the selection and composition of the media content and shall not necessarily result in legal responsibility in connection with the media service.

3. *Programme* shall mean the series of sounds or moving images with or without sound, which form a separate unit in the programme schedule or the catalogue of

[1] As effective from 3 July 2012.

programmes selected by the media service provider and the form and content of which is similar to that of radio or television media services.

4. *On-demand media service* shall mean the media services where, on the basis of a catalogue of programmes compiled by the media service provider, the user may, at his/her own request, watch or listen to the programmes at any time of his/her own choice.

5. *Linear media services* shall mean the media services provided by a media service provider that allow for the simultaneous watching or listening to programmes on the basis of a programme schedule.

6. *Press products* shall mean individual issues of daily newspapers or other periodical papers, online newspapers or news portals, which are offered as a business service, for the content of which a natural or legal person, or a business association without legal personality has editorial responsibility, and the primary purpose of which is to deliver textual or image content to the general public for information, entertainment or educational purposes, in a printed format or through any electronic communications network. Editorial responsibility shall mean the responsibility for the actual control over the selection and composition of the media content and shall not necessarily result in legal responsibility in connection with the press product. Business service shall mean any independent service of a commercial nature provided on a regular basis, for profit, by taking economic risks.

7. *Media content* shall mean any content offered in the course of media services and in press products.

8. *Media content provider* shall mean the media service provider or the provider of any media content.

9. *Commercial communication* shall mean the media content aimed to promote, directly or indirectly, the goods, services or image of a natural or legal person, or a business association without legal personality carrying out business activities. Such contents accompany or appear in media contents against payment or similar consideration or for the purpose of self-promotion. Forms of commercial communication shall include amongst others advertisements, the display of the name, the trademark, the image or the product of the sponsor, or teleshopping or product placement.

10. *Surreptitious commercial communication* shall mean any commercial communication, the publication of which deceives the audience about its nature. Communications serving the purposes of commercial communications may qualify as surreptitious commercial communications, even if no consideration is paid for their publication.

11. *Advertisement* shall mean communications, information or form of representation intended to promote the sale or other use of marketable tangible assets – including money, securities and financial instruments and natural resources that can be utilized as tangible assets – services, real estates, pecuniary rights or to increase, in connection with the above purposes, the public awareness of the name, designation or activities of an undertaking, or any merchandise or brand name.

12. *Sponsorship* shall mean any contribution provided by an undertaking to finance media content service providers or media contents with the purpose of promoting its own name, trade mark, image, activities or products, or those of others.

TITLE II

SCOPE OF THE ACT

Article 2 (1) This Act shall apply to media services provided by media content providers established in Hungary.

(1a) The scope of this Act – with the exception of Article 13, Paragraph (1) of Article 14, Paragraphs (1), (2) and (4) of Article 19, the second sentence of Paragraph (8) of Article 20, and Paragraph (9) of Article 20 – shall also apply to the press products published by media content providers established in the territory of Hungary.

(2) For the purposes of this Act, a media content provider shall be deemed as established in Hungary if it meets the following criteria:

a) the analogue distribution of the media service provided by it is performed through the use of a frequency owned by Hungary, or the press product is primarily accessible through the electronic communications identifier designated for the users of Hungary;

b) the seat of its central administration is located on the territory of Hungary and the editorial decisions related to the media service or the press product are made on the territory of Hungary;

c) if either the seat of its central administration or the place where editorial decisions are made is located on the territory of Hungary, however the significant part of the media content provider's staff being employed on the territory of Hungary;

d) if a significant part of the media content provider's staff is employed both in and outside the territory of Hungary but the seat of its central administration is located on the territory of Hungary; or

e) if either the seat of its central administration or the place where editorial decisions are made is located on the territory of Hungary, however its activity was commenced on the territory of Hungary and it maintains actual and continuous contact with the players of the Hungarian economy.

(3) This Act shall also apply to media services provided by media content providers not meeting the criteria set forth in Paragraphs (1)-(2) above, provided that such media content providers use a satellite uplink station located on the territory of Hungary or use such transmission capacity of the satellite that is owned by Hungary.

(4) If, on the basis of Paragraphs (1)-(3), it cannot be determined whether a particular media content provider falls under the jurisdiction of Hungary or some other Member State, the media content provider shall fall under the jurisdiction of the state where it is established, according to the provisions of Articles 49-55 of the Treaty on the Functioning of the European Union.

Article 3 (1) This Act shall apply to media services and press products which, although outside the scope of Article 2 (1)-(4), are targeted at or distributed or published on the territory of Hungary, subject to the conditions set forth in Articles 176-180 of Act CLXXXV of 2010 on Media Services and Mass Media (hereinafter: the Media Act).

(2) This Act shall also apply to the media services and press products targeted at or distributed or published on the territory of Hungary by such media content providers that are not deemed as established in any Member State of the European Economic Area, provided

that their media services or press products are not subject to the jurisdiction of any one of the Member States either.

(3) This Act shall apply to media content providers rendering media services or publishing press products that fall under the scope of the Act pursuant to Article 2 and Paragraphs (1)-(2).

(4) In case this Act is violated, the Media Council of the National Media and Info-communications Authority may proceed and apply sanctions in accordance with the provisions of the Media Act on regulatory procedures.

TITLE III

FREEDOM OF THE PRESS

Article 4 (1) Hungary recognises and protects the freedom and diversity of the press.

(2) The freedom of the press also includes independence from the State and from any organisation or interest group.

(3) The exercise of the freedom of the press may not constitute or encourage any acts of crime, violate public morals or the moral rights of others.

Article 5 (1) Legislation may set official registration as a precondition for the commencement or pursuit of media services and the publication of press products. The conditions set for registration may not restrict the freedom of the press.

(2) When limited state-owned resources are used by the media service provider, successful participation in a tender procedure announced and conducted by the Media Authority may also be set as a condition for the commencement of the media service.

Article 6 (1) A media content provider or a person in an employment relationship or in other work-related legal relationship with a media content provider shall be entitled, as stipulated by the respective Act, to keep the identity of a person delivering information to him/her in connection with the media content provider's activities (hereinafter as: journalists' source) in the course of court or regulatory procedures, as well as to refuse to hand over any documents, objects or data carriers that could potentially reveal the identity of the journalists' source.

(2) In order to investigate a crime, the court has the right – in exceptionally justified cases as defined by law – to oblige the media content provider or a person in an employment relationship or in other work-related legal relationship with a media content provider to reveal the identity of the journalists' source or to hand over any document, object, or data carrier that could potentially identify the journalists' source.

Article 7 (1) Persons employed by or engaged in any other work-related legal relationship by the media content provider shall be entitled to professional independence from the owner of the media content provider or from natural or legal persons or business associations without legal personality sponsoring the media content provider or placing commercial communications in the media content, as well as to protection against any

pressure from the owner or the sponsor aimed to influence the media content (editorial independence and journalistic freedom of expression).

(2) No sanctions set forth in the labour laws or originating from any other work-related legal relationship may be applied against any person employed by or engaged in any other work-related legal relationship by the media content provider for their rejection to comply with any instruction that would have violated editorial freedom or the journalistic freedom of expression.

Article 8 (1) The media content provider and the persons employed by or engaged in any other work-related legal relationship by the media content provider may not be held liable for any breach of law committed by it in connection with obtaining information of public interest provided that the particular piece of information could not have been obtained by it in any other manner or the difficulties endured while obtaining such information would be out of proportion, unless such breach of law constitutes a disproportionate or serious violation and unless such information was obtained in breach of the Act on the protection of qualified data.

(2) The entitlement laid down in Paragraph (1) does not constitute an exemption from the enforceability of claims under civil law for compensation of damages caused to property by such unlawful conduct.

Article 9 State and local government bodies, institutions, officers, public officers, persons entrusted with public functions and directors/managers of business associations in the majority ownership of the State or local governments shall be obliged to assist the media content providers in performing their obligation of information supply by providing the necessary information and data to the media content providers in a timely manner and in accordance with the legislation on the disclosure of data of public interest and the freedom of information.

TITLE IV

THE RIGHTS OF THE GENERAL PUBLIC

Article 10 All persons shall have the right to receive proper information on public affairs at local, national and European level, as well as on any event bearing relevance to the citizens of Hungary and the members of the Hungarian nation. The media system as a whole shall have the task to provide authentic, rapid and accurate information on these affairs and events.

Article 11 Public media service is operated in Hungary in order to preserve and strengthen national and European identity, foster and preserve national, family, ethnic and religious communities, and promote and enrich Hungarian language and culture and the languages and culture of other nationalities and meet the needs of citizens for information and culture.

TITLE V

THE RIGHT TO REQUEST CORRECTIONS IN THE PRESS

Article 12 (1) If false facts are stated or disseminated about a person or if true facts related to a person are represented as false in any media content, such person may demand the publication of a corrective statement suitable to identify the part of the statement that was false or unfounded, or the facts that the statement has distorted, while also presenting the true facts.

(2) For newspapers, online press products and news agencies, the corrective statement shall be published within five days from receipt of the respective request, in a manner and to an extent similar to the contested part of the statement. In case of on-demand media services, the corrective statement shall be made within eight days from receipt of the respective request, in a manner and to an extent similar to the contested part of the statement, in case of other periodicals the corrective statement shall be published eight days after receipt of the request, in the next issue/edition, in a manner and to an extent similar to the contested part of the statement, and in case of linear media services within eight days in a manner similar to contested part of the statement and during the same time of the day in which the contested part was published.

TITLE VI

OBLIGATIONS OF THE PRESS

Article 13 Linear media services engaged in the provision of information shall provide diverse, comprehensive, factual, up-to-date, objective and balanced coverage on local, national and European issues that may be of interest for the general public and on any events and debated issues bearing relevance to the citizens of Hungary and the members of the Hungarian nation, in the general news and information programmes broadcasted by them. The detailed rules of this obligation shall be set forth by the Act with a view to ensure proportionality and democratic public opinion.

Article 14 (1) The media service provider shall respect human dignity in the media content that it publishes.

(2) No wanton, gratuitous and offensive presentation of persons in humiliating, exposed or defenceless situations shall be allowed in the media content.

Article 15 (1) It is prohibited to abuse the consent granted to the media content provider regarding the publication of statements intended for public disclosure or regarding the appearance in the media content.

(2) The media content provider shall present the statement intended for public disclosure to the person who made the statement or appears in the media content before publication, upon his or her request, and may not publish it if the person concerned refuses to consent to publication because the media content provider has materially

modified or distorted the statement and if it is detrimental to the person who made the statement or appears in the media content. The relevant rules of civil and criminal law shall apply to cases where publication was made despite of such consent having been withdrawn, or where the publication was detrimental to the reputation or honour of the person concerned.

(3) Without prejudice to the case specified in Paragraph (2), the statement or appearance may not be withdrawn, if

a) it was made by the person concerned in relation to an event of local, national, or European public life,

b) it is related to an event which is important to Hungarian citizens or members of the Hungarian nation, or

c) it was made by a person entrusted with a public function or by a politically exposed person in relation to the performance of his or her public function.

(4) Media content providers shall not enter into such agreements with persons appearing in media content which, within the scope of the agreement, limit the enforceability of the right of the person appearing in media content to his or her reputation, honour or privacy, or the right to withdraw the statement or appearance pursuant to Paragraphs (1) and (2). Such contractual provisions shall be null and void.

Article 16 Media contents shall not violate the constitutional order.

Article 17 (1) The media content may not incite hatred against any nation, community, national, ethnic, linguistic or other minority or any majority as well as any church or religious group.

(2) The media content may not exclude any nation, community, national, ethnic, linguistic and other minority or any majority as well as any church or religious group.

Article 18 [not in effect]

Article 19 (1) Linear media services may not include media content that could materially damage the intellectual, psychological, moral or physical development of minors especially by broadcasting pornography or extreme or unreasonable violence.

(2) Access to media content in on-demand media services that could materially damage the intellectual, psychological, moral or physical development of minors especially by displaying pornography or extreme or unreasonable violence may only be granted to the general public in a manner that prevents minors from accessing such content in ordinary circumstances.

(3) Access to media content in the press products that could materially damage the intellectual, psychological, moral or physical development of minors especially by displaying pornography or extreme or unreasonable violence may only be granted to the general public in a manner that prevents minors, by the application of an appropriate technical or other solution, from accessing such content. In case the application of such solution is not possible, the given content may only be published with a warning label informing about its possible harm to minors.

(4) Media content in linear media services that could damage the intellectual, psychological, moral or physical development of minors may only be published in a manner that ensures, either by selecting the time of broadcasting or by means of a

technical solution, that minors do not have the opportunity to listen to or watch such content under ordinary circumstances.

(4a) Minors may not be presented in media content in a manner that may substantially jeopardise their psychological or physical development corresponding to their respective ages.

(5) The detailed rules on the protection of minors against media content are laid down in separate legislation.

Article 20 (1) Commercial communications in the media content must be easily recognisable.

(2) Advertisements in the media content must be distinguishable from other media content.

(3) No surreptitious commercial communication may be published in the media content.

(4) Commercial communications in the media content may not use techniques that cannot be perceived by the conscious mind.

(5) No such commercial communication can be presented in media content that offends religious or ideological convictions.

(6) Commercial communications presented in media content may not encourage a conduct that could be harmful to health, safety or the environment.

(7) The media content may not contain commercial communications aimed to promote or present tobacco products, weapons, ammunition, explosives, gambling games organised without the permission of the state tax authority, prescription medication and therapeutic procedures. This restriction shall not apply to the exemptions set forth in the Act on commercial advertising and other relevant legislation.

(8) The party sponsoring the media content shall be named concurrently with or immediately before or after the publication of such content. Audiovisual media services and the programmes thereof may not be sponsored by other undertakings providing audiovisual media services or producing audiovisual programmes or cinematographic works.

(9) The media content published and sponsored in the media service may not encourage, call for or discourage the purchase or use of products or services of the sponsor or a third party defined by the sponsor.

(10) The sponsor may not influence the media content or the publication thereof in a manner that could affect the liability or editorial freedom of the media content provider.

TITLE VII

RESPONSIBILITY

Article 21 (1) The media content provider, subject to the provisions of applicable legislation, shall make its decision on publication of the media content in its sole discretion and shall be responsible for compliance with the provisions of this Act.

(2) The provisions of Paragraph (1) shall not affect the responsibility, as defined in other legislation, of persons providing information to the media content provider or those persons employed by or engaged in any other work-related legal relationship by the media content provider who participate in production of the media content.

TITLE VIII

AMENDED LEGISLATION

Article 22 [not in effect]

TITLE IX

ENTRY INTO FORCE

Article 23 (1) This Act shall enter into force on 1 January 2011.

(2) Article 22 of this Act shall be repealed on the day following the entry into force of this Act.

Article 23/A Articles 1-9 and 12-21 of this Act shall qualify as organic law provisions pursuant to Paragraph (3) of Article IX of the Fundamental Law of Hungary.

TITLE X

SHORT TITLE OF THE ACT

Article 24 This Act shall be referred to in other legislation as "Smtv." <Press Freedom Act>.

TITLE XI

COMPLIANCE WITH EUROPEAN UNION LAW

Article 25 This Act serves the purposes of compliance with the following legislative acts of the European Union:

a) Directive 2010/13/EU of the European Parliament and of the Council 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 (codified version) (Audiovisual Media Services Directive);

b) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce);

c) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version);

d) Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products;

e) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive');

f) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the community code relating to medicinal products for human use.

Act CLXXXV of 2010
on Media Services and Mass Media[1]

The Parliament, with a view to promote community and individual interests and social integrity, to ensure proper operation of the democratic order and to strengthen national and cultural identity, with due respect to the Fundamental Law, the constitutional principles, and the norms of international law and of the European Union, by taking into consideration the circumstances created by the developments in technology, by preserving the freedom of expression, speech and the press, and considering the key importance of media services in cultural, social and economic terms, and the importance of ensuring competition on the media market, hereby adopts this Act on Media Services and Mass Media, as follows:

PART ONE

GENERAL PROVISIONS

Chapter I

SCOPE OF THE ACT

Article 1 (1) The Act shall apply to media services and press products provided and published by media content providers established in Hungary.

(2) For the purposes of this Act, a media content provider shall be deemed as established in Hungary if it meets the following criteria:

a) the analogue distribution of the media service provided by it is performed through the use of a frequency owned by Hungary, or the press product is primarily accessible through the electronic communications identifier designated for the users of Hungary;

b) the seat of its central administration is located on the territory of Hungary and the editorial decisions related to the media service or the press product are made on the territory of Hungary;

c) if either the seat of its central administration or the place where editorial decisions are made is located on the territory of Hungary, however the significant part of the media content provider's staff being employed on the territory of Hungary;

[1] As effective from 3 July 2012.

d) if a significant part of the media content provider's staff is employed both in and outside the territory of Hungary but the seat of its central administration is located on the territory of Hungary; or

e) if either the seat of its central administration or the place where editorial decisions are made is located on the territory of Hungary, however its activity was commenced on the territory of Hungary and it maintains actual and continuous contact with the players of the Hungarian economy.

(3) The scope of the Act shall also cover media services provided by media content providers which do not qualify as a media content provider established on the territory of Hungary based on Paragraphs (1)-(2) and which do not qualify as a media content provider established in another Member State either, provided that such media content providers use a satellite uplink station located on the territory of Hungary or use such transmission capacity of the satellite that is owned by Hungary.

(4) If, on the basis of Paragraphs (1)-(3), it cannot be determined whether a particular media content provider falls under the jurisdiction of Hungary or some other Member State, the media content provider shall fall under the jurisdiction of the state where it is established, according to the provisions of Articles 49-55 of the Treaty on the Functioning of the European Union.

(5) This Act shall also apply to media services and press products which, although outside the scope of Paragraphs (1)-(4), are targeted at or distributed or published on the territory of Hungary, subject to the conditions set forth in Articles 176-180.

(6) The Act shall also apply to the media services and press products targeted at or distributed or published on the territory of Hungary by such media content providers that are not deemed as established in any Member State, provided that their media services or press products are not subject to the jurisdiction of any one of the Member States either.

(7) The Act shall apply to media content providers rendering media services or publishing press products that fall under the scope of the Act pursuant to Paragraphs (1)-(6).

Article 2 (1) In certain instances stipulated herein, the scope of the Act shall also cover ancillary media services, and their providers, that are provided within the territory of Hungary or that are related to media service distribution provided within the territory of Hungary.

(2) In certain instances stipulated herein, the scope of the Act shall cover

a) media service distribution, carried out wholly or partially with electronic communications equipment installed within the territory of Hungary or transmitting to the territory of Hungary;

b) the technical activities of the media service provider in connection with the media service distribution stipulated in Point (a);

c) the activity of the ancillary media service provider in connection with the media service distribution stipulated in Point (a);

d) publications.

(3) In certain instances stipulated herein, the scope of the Act shall cover natural or legal persons or other organizations without legal personality and the executive officers of such persons or entities carrying out the activities or providing the services stipulated under Paragraph (2) or carrying out any activity or providing any service related thereto.

(4) In certain instances stipulated herein, the scope of the Act shall also cover the intermediary service provider transmitting the media service or the press product and the services of such provider.

(5) In certain instances stipulated herein, the scope of this Act shall also cover the viewers, the listeners or the readers of the media services, ancillary media services and press products and the user, consumer and subscriber of the media service distribution falling within the scope of the Act.

Chapter II

FUNDAMENTAL PRINCIPLES

Article 3 Media services may be provided and press products may be published freely, information and opinions may be transmitted freely through the mass media, and Hungarian and foreign media services intended for public reception may be accessed freely in Hungary. The content of the media service and the press product may be determined freely, nevertheless the media service provider and the publisher of press product shall be liable for compliance with the provisions of this Act.

Article 4 The diversity of media services is a particularly important value. The protection of diversity shall also include the avoidance of the formation of ownership monopolies and any unjustified restriction of competition on the market. The provisions of this Act shall be interpreted in consideration of the protection of diversity.

Article 5 The right to information and the right to be informed of those living within the territory of Hungary and of the members of the Hungarian nation and, in connection with this, the development and strengthening of publicity in the democratic society are fundamental constitutional interests. The provisions of this Act shall be interpreted with a view to the interests of democratic public opinion.

Article 6 Existence of public media services represents an essential condition of the appropriate functioning of a democratic social order. The interests of public media service shall be considered with particular emphasis in the course of the application of this Act.

Article 7 (1) In the course of carrying out the tasks falling within the scope of this Act, the media service providers, publishers of press products, ancillary media service providers and media service distributors shall act as required by good faith and fairness, and in accordance with the provisions of this Act shall be obliged to mutually cooperate with one another and the viewers, the listeners, the readers, the users and the subscribers.

(2) The media service distributors, media service providers, and ancillary media service providers shall be obliged to operate and provide the electronic communications networks, electronic communications services, digital programme flows and ancillary

media services between each other in accordance with a set of coordinated technical criteria, so that these form a unified system required to establish the necessary connection and to provide the service either directly or with the incorporation of proper interfaces, network parts, elements, devices or services.

Article 8 The professional self-regulatory bodies comprising the media service providers, publishers of press products, intermediary service providers and media service distributors, as well as the various self- and co-regulatory procedures applied play an important role in the field of media regulation and in the application of and compliance with the provisions of this Act. Such bodies and procedures shall be respected in the application of this Act.

PART TWO

GENERAL RULES OF MEDIA SERVICES AND PRESS PRODUCTS

Chapter I

REQUIREMENTS REGARDING THE CONTENT OF MEDIA SERVICES

Protection of Children and Minors

Article 9 (1) A media service provider providing linear media services shall assign a rating to each and every programme it intends to broadcast in accordance with the categories under Paragraphs (2)-(7) prior to broadcasting, with the exception of news programmes, political programmes, sports programmes, previews and advertisements, political advertisements, teleshopping, public service advertisements and public service announcements.

(2) Category I shall include programmes which may be viewed or listened to by persons of any age.

(3) Category II shall include programmes which may trigger fear in persons under the age of six or may not be comprehended or may be misunderstood by such viewer or listener owing to his/her age. These programmes shall be classified as "Not recommended for audiences under the age of six".

(4) Category III shall include programmes which may trigger fear in persons under the age of twelve or may not be comprehended or may be misunderstood by such viewer or listener owing to his/her age. These programmes shall be classified as "Not recommended for audiences under the age of twelve".

(5) Category IV shall include programmes which may impair the physical, mental or moral development of persons under the age of sixteen, particularly because they refer to violence or sexuality, or are dominated by conflicts resolved by violence. These programmes shall be classified as "Not recommended for audiences under the age of sixteen".

(6) Category V shall include programmes which may impair the physical, mental or moral development of minors, particularly because they are dominated by graphic scenes of violence or sexual content. These programmes shall be classified as "Not recommended for audiences under the age of eighteen".

(7) Category VI shall include programmes which may seriously impair the physical, mental or moral development of minors, particularly because they involve pornography or scenes of extreme and/or unjustified violence.

(8) The Media Council of the National Media and Infocommunications Authority (hereinafter as: the Media Council) shall issue recommendations on the most important conceptual aspects of the enforcement practice applied by it concerning the detailed criteria governing the ratings as per Paragraphs (2)-(7), the signs to be used prior to and in the course of broadcasting the various programmes and the method of communicating the rating, if justified by public interest related to the protection of minors or by the uniform approach to the protection of minors.

(9) Upon request of the media service provider the Media Council shall adopt a regulatory decision on the rating of the programme within fifteen days from having received the programme in question, for an administrative service fee.

(10) It shall not qualify as the violation of Paragraphs (1)-(7) if the media service provider rates a programme into a higher category than it would be required pursuant to Paragraphs (2)-(6).

Article 10 (1) In linear media services

(a) programmes classified into Category II cannot be aired between programmes intended for persons under the age of six, but may, at any time, be aired using the proper rating;

(b) programmes classified into Category III cannot be aired between programmes intended for persons under the age of twelve, but may, at any time, be aired using the proper rating;

(c) programmes classified into Category IV may be aired between 9.00 p.m. and 5.00 a.m. using the proper rating;

(d) programmes classified into Category V may be aired between 10.00 p.m. and 5.00 a.m. using the proper rating;

(e) programmes classified into Category VI may not be aired;

(f) a preview may not be aired at a time when the programme it introduces or presents is not allowed to be aired or at a time when upon the proper rating of such preview it is not allowed to be aired;

(g) the preview of a programme classified into Category III may not be aired during the interval of or immediately prior or subsequent to a programme intended for persons under the age of twelve;

(h) sports programmes, commercial communications and public service advertisements may not be aired at such times when it is foreseeable that these would not be allowed to be aired, if they were provided with a proper rating based on their content.

(2) In linear media services

(a) a programme may only be aired in compliance with its rating, subject to the exceptions provided by this Act;

(b) the rating of the programme shall be communicated at the time the airing of the programme begins.

(3) In the case of linear radio media services, the rating does not have to be communicated if

(a) the programme falling within Categories II or III is aired between 9.00 p.m. and 5.00 a.m.;

(b) the programme falling within Categories IV or V is aired between 11.00 p.m. and 5.00 a.m.

(4) In linear audiovisual media services, at the time the specific programme is aired, a sign corresponding to the rating of the programme shall also be displayed in the form of a pictogram in one of the corners of the screen so that it is clearly visible throughout the entire course of the programme. The pictogram shall indicate with numbers the age group affected by the given category. In case of programmes falling into Category I it is not necessary to display the sign. In case of a linear radio media service it is not necessary to use permanent signs.

(5) In case of linear audiovisual media services the continuous display in accordance with Paragraph (4) of the sign corresponding to the rating of the programme may be disregarded, provided that

(a) the programme classified as Category II or III is aired between 9.00 p.m. and 5.00 a.m.;

(b) the programme classified as Category IV is aired between 10.00 p.m. and 5.00 a.m.; or

(c) the programme classified as Category V is aired between 11.00 p.m. and 5.00 a.m.

In this case the sign corresponding to the rating of the programme shall be displayed when the programme begins, and at the time the programme is continued following the commercial break.

(6) The stipulations in Points (c)-(f) and (h) of Paragraph (1) and under Paragraphs (2) and (4) shall not be applied if the media service contains the programme in an encrypted form and decryption may only be executed by using a code, which the media service provider or the media service distributor only made accessible to subscribers over the age of eighteen, or which uses another effective technical solution to prevent viewers or listeners under the age of eighteen from accessing the programme. The Media Council shall issue recommendations in respect of effective technical solutions subsequent to holding a public hearing, if necessary.

(7) The rating of each and every programme in accordance with Article 9 shall be displayed in a conspicuous manner in the press product specifying the programme flow of the media service provider, on the website, noninteractive teletext and teletext of the media service provider, provided it has any of these.

Article 11 (1) The provisions under Article 9 (6)-(7) shall be applied to on-demand media services.

(2) Pursuant to Article 19 (2) of Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content (hereinafter referred to as: Press Freedom Act), the media service provider or the media service distributor (distributing the given service) of an on-demand media service shall use an effective technical solution to prevent minors from accessing its programmes classified as Category V or VI programmes.

(3) The Media Council shall issue recommendations in respect of effective technical solutions mentioned in Paragraph (2) subsequent to holding a public hearing, if necessary.

Information Activities

Article 12 (1) The information activities of media services shall comply with the obligation set forth under Article 13 of the Press Freedom Act.

(2) Subject to the nature of the programmes, the balanced nature of the information provision shall be ensured either within the given programme or within the series of programmes appearing regularly.

(3) Save for the explanation of the news, employees of the media service provider appearing regularly in the programmes providing news service and political information as presenters, newsreaders or correspondents may not add any opinion or evaluative explanation to the political news appearing in the programme aired by any media service provider.

(4) Any opinion or evaluative explanation added to the news provided in a programme shall be made in a form distinguishing it from the news themselves, indicating its nature as such and identifying its author.

Article 13 [not in effect]

Warning about Offensive Content

Article 14 The viewers or listeners shall be given a forewarning prior to the broadcasting of any image or sound effects in media services that may hurt a person's religious, faith-related or other ideological convictions or which are violent or otherwise disturbing.

Managing Crisis Situations through the Media Services

Article 15 During a state of distress, state of emergency or state of extreme danger, or in the event of the unforeseen invasion of the territory of Hungary by foreign armed groups, or in connection with operations for the protection of the state's territory by air defence and air forces of the Hungarian Army, the Parliament, the Defence Council, the President of the Republic and the Government, as well as the persons and organizations defined by law may order the media service provider, to the extent necessitated by the existing state of affairs or situation, to publish, free of charge, any public service

announcements in connection with the existing state of affairs or situation, in the prescribed form and time, or may prohibit the publication of certain announcements or programmes. The Fund shall be responsible for providing the conditions necessary for publishing. At the time of publication, the person or institution ordering the publication must be clearly identified.

Exclusive Broadcasting Rights

Article 16 (1) The audiovisual media service provider may not exercise the exclusive broadcasting right so as to deprive a substantial part – more than twenty percent – of the Hungarian audience having access to the audiovisual media services of the possibility to follow the events, live or in a subsequent broadcast, regarded to be events of major importance to society, through an audiovisual media service accessible without the payment of a subscription fee.

(2) In connection with the audiovisual media service providers determined under Paragraph (1), the events of major importance to society shall be defined by the Media Council in its regulatory decision, subsequent to a public hearing. In this decision the Media Council shall also establish whether the events of major importance to society should be broadcasted live or subsequently. When adopting the decision, it should also be given consideration that a wide range of viewers should show interest in the event classified as one of major importance, and that the event should be a world- or Europe-wide event, or one with Hungarian significance, which, save for events exclusively of Hungarian significance, is aired in a significant number of European countries.

(3) The Media Council shall, in the form of an order, inform the audiovisual media service providers on the commencement of the regulatory procedure referred to under Paragraph (2). Such notification shall only contain the subject-matter of the case and a brief description thereof. The Media Council shall publish such notifications through public notices. In the course of such a regulatory procedure only clients participating in the procedure shall be entitled to exercise the respective client rights.

(4) The Media Council shall communicate its regulatory decision defined under Paragraph (2) through a public notice.

(5) The Media Council may amend its regulatory decision as per Paragraph (2) in accordance with the discretionary criteria defined under Paragraph (2). The provisions of Paragraph (4) shall be applied regarding the notification of the amended decision.

(6) In the course of the judicial review of the decisions defined under Paragraphs (2) and (5), the filing of the statement of claim shall not have a suspensive effect on the enforcement of the decision and the court cannot suspend the enforcement of the decision challenged by the statement of claim. The decision shall be enforceable immediately, irrespective of the filing of the statement of claim.

(7) Paragraph (1) and Article 18 (1) shall not be applied regarding the exclusive rights lawfully acquired prior to the notification of the first decision adopted according to Paragraph (2) and the notification of its subsequent amendment.

Article 17 (1) The exclusive broadcasting right shall not be exercised so as to deprive a substantial part of the audience in a Member State from following those events of major importance for them via an audiovisual media service, which are indicated on the list compiled and published in advance by the Member State concerned.

(2) Exclusive audiovisual broadcasting rights obtained subsequent to the effective date of the Act promulgating the Protocol on the amendment of the European Convention on Transfrontier Television signed in Strasbourg on 5 May 1989 (hereinafter, for the purposes of this Paragraph and Article 18: "Protocol"), promulgated by Act XLIX of 1998, shall be exercised in conformity with the provisions on the broadcasting of events of major importance for society in the States which are party to the Protocol.

Article 18 (1) If exercising of the exclusive broadcasting right would deprive at least twenty percent of the Hungarian audience from following the events as per Article 16 (2) via an audiovisual media service, the audiovisual media service provider shall be obliged to make a contract proposal – subject to reasonable terms and conditions and in exchange for consideration appropriate under the prevailing market conditions – to the linear audiovisual media service provider (hereinafter as: contracting authority), who provides services accessible for at least eighty percent of the citizens of Hungary without the payment of a subscription fee, when approached by such service provider, for the broadcasting of the said event live or subsequently. Under such circumstances, the media service provider having obtained exclusive rights may not refer to not being entitled to transfer the exclusive right.

(2) Any media service provider, that acquired exclusive rights for the broadcasting of an event through audiovisual media service which has been designated by any State being a party to the Protocol as being of major importance to society, shall be required to make a contract proposal – subject to reasonable terms and conditions and in exchange for consideration appropriate under the prevailing market conditions – to the foreign linear audiovisual media service provider – who falls within the jurisdiction of that State, complies with the requirements defined by that State, and is accessible without a subscription fee by at least eighty percent of the citizens of that State by taking any and all media service distribution techniques into consideration – when approached by such a service provider concerning the broadcast of the said event.

(3) Any media service provider, that acquired exclusive rights for the broadcasting of an event that has been designated by a Member State as being of major importance to society, shall be required to make a contract proposal – subject to reasonable terms and conditions and in exchange for consideration appropriate under the prevailing market conditions – to the foreign audiovisual media service provider – who falls within the jurisdiction of that Member State and complies with the requirements defined by that Member State – when approached by such a service provider concerning the broadcast of the said event.

(4) The parties concerned shall agree on the detailed terms and conditions of the contracts defined under Paragraphs (1)-(3).

(5) In the cases specified under Paragraphs (1)-(3) the parties shall be subject to an obligation to contract. In the event the parties fail to conclude an agreement or fail to

agree on the fees within fifteen days subsequent to the offer having been made, the contracting authority or the media service provider with exclusive broadcasting rights may initiate the legal dispute procedure stipulated in Articles 172-174. Within the framework of such legal dispute procedure, the Media Council shall adopt its decision within fifteen days. The administrative deadline may be extended by fifteen days, if justified.

(6) For the purposes of Articles 16 and 18, the records of the Media Council shall prevail as far as the accessibility of the media services are concerned.

Short News Reports

Article 19 (1) Any linear audiovisual media service provider established within the territory of the European Union may have, for the purpose of a short news report, access in a fair, reasonable and non-discriminatory manner to the broadcast on the event of major importance, which appears on the list defined under Article 16 (2) published by the Media Council or designated as such in any Member State and broadcasted under an exclusive broadcasting right by the audiovisual media service provider established in Hungary. The access may take place by obtaining the signal of the media service, by making a record at the location of the event or by receiving the footage recorded on the event.

(2) If an audiovisual media service provider, who is established in the same Member State where the audiovisual media service provider requesting the access is established, obtained exclusive rights in connection with the event of major importance, access may only be requested from this audiovisual media service provider.

(3) In the case specified under Paragraph (1) the parties concerned shall be subject to an obligation to contract. The contract shall be entered into upon reasonable terms and conditions; the consideration for the right of access may not exceed the costs arising directly as a result of providing access. In the event the parties fail to conclude an agreement within fifteen days subsequent to the offer having been made, any of the parties may initiate the legal dispute procedure stipulated in Articles 172-174. Within the framework of such legal dispute procedure, the Media Council shall adopt its decision within fifteen days. The administrative deadline may be extended by fifteen days, if justified.

(4) The audiovisual media service provider, which obtained a right of access, may freely select the parts of the programme it intends to broadcast in the short news report.

(5) The total length of the parts to be broadcasted may not exceed ten percent of the total length of the programme concerned, but fifty seconds at most. The contract may permit the broadcasting of parts with a longer total length.

(6) The audiovisual media service provider having obtained a right of access shall identify the holder of the exclusive broadcasting right with which it entered into an agreement on broadcasting.

(7) The parts of the programme, which may be used on the basis of the agreement, cannot be broadcasted individually but only as part of general news and information programmes. If the linear audiovisual media service provider intends to broadcast the short news report in an on-demand audiovisual media service as well, it may only do so if the programmes containing the short news report are identical in both the linear and in the on-demand audiovisual media services.

Programme Quotas

Article 20 (1) The media service provider

a) shall allocate over half of its annual total transmission time of linear audiovisual media services to broadcasting European works and over one-third of its transmission time to broadcasting Hungarian works;

b) shall allocate at least ten percent of its annual total transmission time of linear audiovisual media services to broadcasting such European works, and at least eight percent of its transmission time to broadcasting such Hungarian works that were ordered by it from an independent production company, or were purchased from an independent production company within five years of production.

(2) Over one-quarter of the total length of the programmes made available in a given calendar year in the form of on-demand audiovisual media services shall be European works, and at least ten percent shall be Hungarian works.

(3) The public media service provider shall be obliged to allocate its total annual transmission time of linear audiovisual media services in the following way:

(a) over sixty percent of its annual transmission time to broadcasting European works;

(b) over half of its annual transmission time to broadcasting Hungarian works;

(c) over one-quarter of its annual transmission time to European works which were ordered by it from an independent production company or which were purchased from an independent production company within five years of production.

(4) The obligation stipulated under Paragraphs (1)-(2) in terms of the broadcasting of Hungarian works shall be applied exclusively for the media services targeted at the territory of Hungary.

Article 21 (1) In linear radio media services at least thirty-five percent of the total annual transmission time dedicated to broadcasting musical works shall be allocated to broadcasting Hungarian musical works.

(2) In average, annually at least twenty-five percent of the Hungarian musical programmes to be broadcasted in linear radio media services shall consist of musical works released within five years or from sound recordings produced within five years.

Article 22 (1) The provisions laid down in Articles 20-21 shall not apply to

(a) media services dedicated exclusively for advertising purposes and the broadcasting of teleshopping;

(b) media services advertising exclusively the media service provider or another media service of the media service provider;

(c) the media service which broadcasts its service exclusively in a language other than the languages of the Member States of the European Union; where programmes are broadcasted in this language or languages in the significant part of the transmission time, the provisions shall not apply to the respective part of transmission time;

(d) the local media service with the exception of community media service;

(e) the media service which is exclusively broadcasted in countries outside of the European Union.

(2) The media service provider may, upon its request addressed to the Media Council, also attain the proportions defined in Articles 20-21 gradually, in a manner stipulated in a public contract concluded with the Media Council. Such an exemption in a public contract may only be granted for a maximum period of three calendar years upon the condition that the media service provider – until it reaches the prescribed proportions – shall gradually increase the proportion of broadcasted Hungarian and European works and works produced by an independent producer in its media service.

(3) A public contract entered into with a media service provider offering radio media services and on-demand media services may, in justified cases, permit a long-term or permanent deviation from the proportions defined in Articles 20-21. A public contract entered into with a media service provider offering linear audiovisual thematic media services may, in justified cases, permit the media service provider to fulfil its obligation under Article 20 (1) (b) and Article 20 (3) (c) by broadcasting works produced over five years earlier.

(4) Save for the case stipulated under Paragraph (3), no general exemption may be granted from compliance with the provisions concerning programme quotas.

(5) The proportion of European works set forth in Article 20 (1) (a) and the proportions set forth in Article 20 (3) (a) and 21 (1), as well as the proportions specified in the public contract concluded according to Paragraphs (2)-(3) of this Article – in relation to Point a) of Article 20 (1), Point a) of Article 20 (3), and Article 21 (1) – must also be ensured during the transmission time of the different media services between 5.00 a.m. and 12.00 p.m.

(6) Media service providers providing more than one media service shall attain the proportions defined in Articles 20-21 as an average of the total transmission time of all of their media services, with the provison that the proportion of Hungarian musical works shall be at least twenty percent of the transmission time for each media service in relation to the performance of the obligation set forth in Article 21 (1). This provision can be applied only for those media services concerning which the media service provider was not granted an exemption as per Paragraphs (2)-(3) of Article 22, specified under the public contract.

(7) For the purposes of Articles 20-21, transmission time devoted to news programmes, sports programmes, games, advertisements, teleshopping, political advertisements, public service announcements, sponsorship announcements, public service advertisements and the noninteractive teletext shall not be considered in the course of determining the total transmission time.

(8) The media service provider shall provide data monthly to the Media Council for the verification of compliance with the provisions concerning programme quotas. The application for exemption, with justifications attached, regarding the forthcoming calendar year in accordance with Paragraphs (2)-(3) shall be filed to the Media Council by 30 September each year at the latest. In the case of a new media service, the application may be lodged at the same time when the registration procedure is initiated.

Commercial Communications

Article 23 The provisions laid down in Article 20 (1)-(7) of the Press Freedom Act shall also be applied to commercial communications broadcasted in media services.

Article 24 (1) The commercial communication broadcasted in the media service

(a) shall not violate human dignity;

(b) shall not contain and shall not support discrimination on grounds of gender, racial or ethnic origin, nationality, religion or ideological conviction, physical or mental disability, age or sexual orientation;

(c) shall not directly call upon minors to purchase or rent products or to use services;

(d) shall not directly call upon minors to persuade their parents or others to purchase the advertised products or to use the advertised services;

(e) shall not exploit the special trust of minors placed in their parents, teachers or other persons or the inexperience and credulity of minors;

(f) shall not show minors in dangerous situations, if this is not justified;

(g) shall not express religious, conscientious or ideological convictions except for commercial communications broadcasted in thematic media services with religious topics;

(h) shall not violate the dignity of a national symbol or offend religious conviction.

(2) Commercial communications broadcasted in media services pertaining to alcoholic beverages

(a) shall not be aimed specifically at minors;

(b) shall not show minors consuming alcohol;

(c) shall not encourage immoderate consumption of such beverages;

(d) shall not depict immoderate alcohol consumption in a positive light and refraining from alcohol consumption in a negative light;

(e) shall not show exceptional physical performance or the driving of vehicles as a result of the consumption of alcoholic beverages;

(f) shall not create the impression that the consumption of alcoholic beverages contributes to social or sexual success;

(g) shall not claim that the consumption of alcoholic beverages has stimulating, sedative or any other positive health effects or that alcoholic beverages are a means of resolving personal problems;

(h) shall not create the impression that immoderate alcohol consumption may be avoided by consuming beverages with low alcohol content or that high alcohol content is a positive attribute of the beverage.

Article 25 The person who orders the publication of the commercial communication and the person who has an interest in such publication may not exert editorial influence over the media service, except for the time of publication.

Sponsoring Media Services and Programmes

Article 26 (1) Provisions of Article 20 (8)-(10) of the Press Freedom Act shall be applicable to the sponsorship of media services and programmes.

(2) In the case of a sponsored media service or programme the identification of the sponsor – pursuant to Article 20 (8) of the Press Freedom Act – may take place by reference to the name or the trademark of the sponsor or another undertaking designated by it, or by the publication or use of a symbol of the sponsor or another undertaking designated by it, or by reference to its product, activity or service or the publication or use of the distinguishing sign or logo of the aforesaid.

(3) The publication under Paragraph (2) may take place simultaneously with the programme, prior to the programme or subsequent to the end of the programme in a manner not damaging the nature and content of the sponsored programme.

Article 27 (1) The following entities may not sponsor media services or programmes:

a) political parties, political movements;

b) undertakings manufacturing tobacco products;

c) undertakings organising gambling games without the permission of the state tax authority.

(2) In addition to the provisions of Point (b) of Paragraph (1), undertakings, which – as their core business – manufacture products that may not be advertised pursuant to the provisions of this Act or under any other piece of legislation or which provide services related to such products, may not sponsor media services or programmes by the display or promotion of such products or services.

(3) The prohibition laid down in Article 20 (7) of the Press Freedom Act shall not apply to the sponsorship tied to the publication of the name and trademark of an undertaking in connection with a medicine or a therapeutic procedure, or sponsorship tied to the promotion of medicines, medicinal products or therapeutic procedures, which may be used without a medical prescription. Programmes sponsored by an undertaking engaged in the manufacture or distribution of medicines, medicinal products or the supply of therapeutic procedures may not promote medicines, medicinal products or therapeutic procedures accessible only upon medical prescriptions.

(4) The name, slogan or emblem of a political party or a political movement may not appear in the name or the displayed name of the sponsor.

(5) It shall not qualify as the sponsorship of an audiovisual media service or programme or as a surreptitious commercial communication, if a public event, or the name or logo of the sponsor of the participants of the event, or the name of the product or the service of the sponsor is displayed on the screen in the course of the broadcast from the event – including the interviews made in connection with the event before or after the event or

during the interval of the event –, provided that the media service provider has no material interest in such appearance and the manner of appearance does not provide the sponsor with an unjustified emphasis.

(6) If a person or an undertaking sponsoring another person or undertaking, which appears in a programme of the audiovisual media service provider or the name, the symbol or the logo of such sponsoring person or undertaking appears in the programme – with the exception of the case referred to under Paragraph (5) –, the rules concerning the sponsorship of media services and programmes shall be applicable, not including the obligation to identify the sponsor.

Article 28 (1) The following may not be sponsored in audiovisual media services:

(a) news programmes and political programmes;

(b) programmes reporting about the official events of national holidays.

(2) Programmes reporting about the official events of national holidays may not be sponsored in a radio media service.

(3) The restriction defined in Point (a) of Paragraph (1) does not affect the sponsorship of thematic media services broadcasting news and political programmes.

Article 29 [not in effect]

Product Placement in Programmes

Article 30 (1) With the exceptions provided under Paragraph (2), product placement in media services shall be prohibited.

(2) Product placement in programmes shall be permitted

(a) in cinematographic works intended for showing in movie theatres; cinematographic works or film series intended for showing in media services; sports programmes and entertainment programmes;

(b) in programmes other than those stipulated in Point (a), provided that the manufacturer or distributor of the product concerned, or the provider or intermediary of the service concerned does not provide the media service provider or the producer of the given programme with any financial reward, neither directly nor indirectly, beyond making available the product or service free of charge for product placement purposes.

(3) No product placement shall be used

(a) in news programmes and political programmes;

(b) in programmes intended specifically for minors under the age of fourteen, with the exception of the case specified in Point (b) of Paragraph (2);

(c) in programmes reporting about the official events of national holidays;

(d) in programmes with religious or ecclesiastic content.

(4) Programmes shall not contain product placements of the following products:

(a) tobacco products, cigarettes or other products originating from undertakings, the primary activity of which is the manufacture or sale of cigarettes or other tobacco products;

(b) products that may not be advertised pursuant to this Act or other pieces of legislation;

(c) medicines, medicinal products, or therapeutic procedures, which may only be used upon medical prescription;

(d) gambling services provided without the permission of the state tax authority.

Article 31 (1) Programmes containing product placements shall comply with the following requirements:

(a) their content – and in the case of linear media services, the programme schedule – may not be influenced so as to affect the responsibility and editorial independence of the media service provider;

(b) they shall not call upon the purchase or rent of a product or the use of a service in a direct manner;

(c) they shall not give unjustified emphasis to the product so displayed, which does not otherwise stem from the content of the programme flow.

(2) Viewers and listeners shall be unequivocally informed on the fact of product placement. At the beginning and at the end of the programme containing the product placement, and when the programme resumes after advertisements, attention shall be drawn to the fact of product placement in an optical or acoustic form.

(3) The obligation stipulated under Paragraph (2) shall not apply to programmes which were not produced or ordered by the media service provider or another media service provider or production company operating under the qualifying holding of its owner.

(4) The Media Council – subsequent to holding a public hearing, if necessary – may publish recommendations concerning the compliance of the product placement and the related warning with the provisions stipulated in this Act.

Political Advertisements, Public Service Announcements, Public Service Advertisements

Article 32 (1) The person or entity ordering the publication of political advertisements, public service announcements, public service advertisements, and the person or entity with an interest in the publication thereof shall not exert editorial influence over the media service, except for the time of publication.

(2) The political advertisement, public service announcement and public service advertisement shall be immediately recognizable in nature and distinguishable from other media contents. The method of distinguishing from other media contents in linear media services

(a) shall take place in the form of optical and acoustic notice in the case of audiovisual media services;

(b) shall take place in the form of acoustic notice in the case of radio media service.

(3) During election campaign periods, political advertisements may only be published in accordance with the provisions of the acts on the election of members of Parliament, members of the European Parliament, representatives of local and county governments, mayors and the election of the local governments of nationalities. Outside of election campaign periods, political advertisements may only be published in connection with

referendums already ordered. The media service provider shall not be responsible for the content of the political advertisement, if the request for the publication of the political advertisement is in compliance with the provisions of the Act on election procedures, and in such case the media service provider shall be obliged to publish the advertisement without further consideration.

(4) Upon the publication of political advertisements, public service announcements and public service advertisements, the person or entity ordering the publication shall be identified unequivocally.

(5) The media service provider may not request any remuneration for the publication of public service announcements.

(6) The public or community media service provider or the media service provider with significant market power shall be obliged to publish the public service announcements of the professional disaster management agency if it provides information on the potential occurrence of danger to safety of life or property, on the mitigation of the consequences of an event that has already occurred or on the tasks to be carried out. Such publication shall take place in the media service of the media service provider which has the highest audience share per year on average and in the manner defined by the media service provider, with the exception of the instance stipulated under Article 36 (6). The obligation of publishing shall also apply to the media service provider of the local media service operating in the reception area where the given events take place.

(7) The duration of the public service announcement may not exceed one minute. This restriction shall not apply to public service announcements specified in Article 15 and in Paragraph (6).

(8) Upon request of the media service provider, the Media Council shall decide – within fifteen days of receipt of the request and against an administrative service fee – by a regulatory decision whether the announcement in respect of which the request is lodged qualifies as a public service announcement, a public service advertisement or a political advertisement.

(9) Information concerning the corporate social responsibility of an undertaking shall not qualify as a surreptitious commercial communication, but such reports may only contain the name, logo and trademark of the undertaking and its product or service, if it is closely connected to its social responsibility. The slogan of the undertaking or any parts of its commercial communication may not appear in the report and the information may not expressly encourage the purchase of the product or the use of the service offered by the undertaking.

Advertisements and Teleshopping in Linear Media Services

Article 33 (1) The method of distinguishing advertisements and teleshopping from other media content in linear media services

(a) shall take place in the form of an optical or acoustic notice in case of advertisements and teleshopping broadcasted in an audiovisual media service;

(b) shall take place in the form of an optical and an acoustic notice in the case of teleshopping windows broadcasted in an audiovisual media service;

(c) shall take place in the form of an acoustic notice in the case of a radio media service.

(2) In linear media service the advertisement or teleshopping broadcasted by interrupting the programme – taking natural breaks, the duration and nature of the programme into consideration – may not interfere with the coherence of the programme to an unjustified extent or violate the rights or legitimate interests of the holder of the copyrights or the related rights to the programme.

(3) The programme broadcasted in a linear media service, which

(a) broadcasts political news or contains political information and its duration does not exceed thirty minutes;

(b) is intended for minors under the age of fourteen and its duration does not exceed thirty minutes;

(c) reports about the official events of national holidays;

(d) has religious or ecclesiastic content, save for cinematographic works, may not be interrupted with advertisements or teleshopping.

(4) The average volume, or the volume perceived by the viewer or the listener, of advertisements, teleshopping and previews broadcasted in a linear media service, and that of the acoustic notice indicating the broadcasting of advertisements or teleshopping or previews may not be higher than the volume of adjacent programmes.

(5) Virtual advertisements may only be broadcasted in a linear audiovisual media service if the media service provider draws attention to such broadcasting by an optical or acoustic notice immediately prior to the given programme and also immediately after the given programme. This obligation shall not apply to programmes which were not produced or ordered by the media service provider or another media service provider or production company under the qualifying holding of its owner.

(6) Virtual or split screen advertisements may not be published in a programme broadcasted in a linear audiovisual media service, which programme

(a) contains political news or political information and its duration does not exceed thirty minutes;

(b) is intended for minors under the age of fourteen and its duration does not exceed thirty minutes;

(c) reports about the official events of national holidays;

(d) has religious or ecclesiastic content; or

(e) is a documentary and its duration does not exceed thirty minutes.

(7) Split screen advertisements may only be broadcasted in a linear audiovisual media service if these are separated from the programme in terms of visual appearance in a clearly recognizable manner, on half of the screen at most, indicating the nature of the advertisement on the screen in a clearly visible manner.

Article 34 (1) In sports programmes and other programmes featuring natural breaks, broadcasted in linear media services, advertisements may only be broadcasted between

the parts and during such breaks, with the exception of split screen advertisements and virtual advertisements.

(2) A cinematographic work, news or political programmes, the duration of which exceeds thirty minutes – with the exception of television series or documentaries – broadcasted in a linear audiovisual media service may only be interrupted with advertisements or teleshopping once every thirty minutes, including the duration of advertisements and previews as well.

Article 35 (1) The duration of advertisements broadcasted in linear media services may not exceed twelve minutes within any 60-minute period, i.e. hour to hour (from the top of the hour), including split screen advertisements, virtual advertisements and the promotion of the programmes of other media services, with the exception provided for in Point (e) of Paragraph (2).

(2) The time restriction defined under Paragraph (1) shall not apply to

(a) teleshopping windows;

(b) political advertisements;

(c) public service announcements;

(d) public service advertisements;

(e) previews on the own programmes of the media service or the programmes of another media service operating under the qualifying holding of the given media service provider or its owner;

(f) sponsorship announcements as defined under Article 26 (2);

(g) product placements;

(h) noninteractive teletext, if it is broadcasted in a local media service;

(i) virtual advertisements appearing in programmes which were not produced or ordered by the media service provider or another media service provider or production company operating under the qualifying holding of the given media service provider or its owner;

(j) media service providers solely broadcasting advertisements and teleshopping;

(k) linear audiovisual media services advertising exclusively the media service provider or its other media services;

(l) announcements intended solely for the purpose of advertising the media service itself or the products complementing the programmes broadcasted in the media service.

(3) The transmission time used for broadcasting teleshopping windows may not exceed three hours per calendar day, not including the transmission time of the thematic media service broadcasting primarily teleshopping or teleshopping windows.

Advertisements and Public Service Announcements in Public and Community Media Services

Article 36 (1) The duration of the advertisements and teleshopping broadcasted in the linear media service of the public media service provider may not exceed eight minutes within any 60-minute period, i.e. hour to hour (from the top of the hour). The duration of

the advertisements and teleshopping broadcasted in the community media service may not exceed six minutes within any 60-minute period, i.e. hour to hour (from the top of the hour).

(2) The broadcasting of noninteractive teletext containing advertisements shall also be counted into the duration of advertisements defined under Paragraph (1) in the case of public media service.

(3) Advertisements in public and community media services may only be broadcasted in between the individual programmes – in the case of complex programmes composed of several parts, between the individual parts of the programme –, or before or after the programmes. In sports and other broadcasts with natural breaks, advertisements may also be broadcasted in between the parts and during the breaks.

(4) Presenters, reporters or newsreaders appearing regularly in the news and political programmes broadcasted in public and community media services cannot appear or play a role in advertisements or political advertisements broadcasted in any media service, except for the self promotion of public media services.

(5) In public and community media services, split screen advertisements and virtual advertisements may only be broadcasted in conjunction with the broadcast of sports programmes.

(6) The public media service provider shall be obliged to reserve two minutes of transmission time for the broadcasting of public service announcements in each two hour period – i.e. from the top of the hour – in respect of the entire annual transmission time of its media service which has the highest audience share per year on average. This provision shall not apply to the periods from hour to hour (from the top of the hour), when such a programme is broadcasted which is longer than two hours and may not be interrupted due to its nature. In absence of a request for the broadcast of a public service announcement, this period may also be used for other programmes. The public media service provider shall be obliged to broadcast the public service announcement as per Article 32 (6) by interrupting its programme flow, if justified on the basis of the decision of the disaster management agency and if such decision was communicated to the media service provider in due time. The obligation stipulated in this Paragraph shall also apply to the media service provider of the community media service.

Disclosure Obligation

Article 37 (1) The media service provider shall ensure that the following data are continuously available to the public

(a) its name or company name;

(b) its address or registered office or mailing address;

(c) its electronic mailing address;

(d) its telephone number;

(e) the name and contact details of the regulatory or supervisory authorities that are competent to proceed against it upon violation of rules concerning media administration;

(f) the name and contact details of the professional self-regulatory bodies authorised by them to proceed against the media service provider.

(2) The media service provider shall publish the data specified under Paragraph (1) on all of its websites and teletext pages connected to its media services, provided that it has any such websites or teletext pages. In the case of on-demand media services, such data shall also be published at the access point of the media service. Moreover, the media service provider shall also ensure that the interested parties may also receive information about the data defined in Points (a)-(c) and (e)-(f) on the telephone.

Public Service Obligations of Media Service Providers with Significant Market Power

Article 38 (1) Linear audiovisual media service providers with significant market power shall be obliged to broadcast a news programme or general information programme of at least fifteen minutes in duration on each working day between 7:00 a.m. and 8:30 a.m., and a separate news programme of at least twenty minutes in duration on each working day between 6:00 p.m. and 9:00 p.m. without interruption. Linear radio media service providers with significant market power shall broadcast a separate news programme of at least fifteen minutes in duration on each working day between 6:30 a.m. and 8:30 a.m. without interruption. News content or reports of a criminal nature taken over from other media service providers, or the news content or reports of a criminal nature which do not qualify as information serving the democratic public opinion, shall not be longer in duration on an annual average than twenty percent of the duration of the news programme.

(2) The linear media service provider with significant market power shall meet its obligation stipulated under Paragraph (1) above and in Article 32 (6) in its media service which has the highest annual average audience share.

(3) Linear media service providers with significant market power shall ensure in the course of all of their media services transmitted by digital media service distribution, that at least one quarter of the cinematographic works and film series originally produced in a language other than Hungarian, broadcasted between 7:00 p.m. and 11:00 p.m., shall be available in their original language, with Hungarian subtitles, including programmes starting before 11:00 p.m. but ending later.

Programmes Accessible to People with Impaired Hearing

Article 39 (1) Media service providers of audiovisual media services shall make efforts to gradually make their programmes accessible to people with impaired hearing as well.

(2) Public and – in respect of their media services with the highest annual average audience share – linear media service providers with significant market power shall be obliged to ensure that

a) all public service announcements, political advertisements, news programmes (including traffic news, sports news and weather forecasts) and political programmes, as well as programmes about people with disabilities or equal opportunities, are also accessible with Hungarian subtitles – for example through teletext – or with sign language;

b) cinematographic works, games and programmes serving public service objectives defined under Article 83, during the transmission time between 06.00 and 24.00, are also accessible with Hungarian subtitles – for example through teletext – or with sign language,

ba) for at least six hours on each calendar day in 2012;

bb) for at least eight hours on each calendar day in 2013;

bc) for at least ten hours on each calendar day in 2014.

(3) The obligation stipulated under Point b) of Paragraph (2) must be performed by the media service providers specified therein throughout the entire duration of their transmission time from 2015.

(4) Media service providers shall provide subtitles or sign language throughout the entire duration of a programme that was begun with subtitles or with sign language, without interfering with the coherence of the programme, as well as in the case of programme series which are organically and closely connected to each other.

(5) It shall be indicated in media services prior to subtitled programmes that the respective programme is also available in that form through the teletext service connected to the media service. The subtitled version of the text of each programme shall be accurate and synchronised to the events displayed on the screen.

(6) Media service distributors shall be obliged to transmit the teletext signal or other subtitles provided by the audiovisual media service provider, synchronously with the image and sound signals, on all transmission systems, networks or media service distribution transmission platforms.

Rules Concerning Ancillary Media Services

Article 40 Articles 14-18, Article 19 (2) and Article 20 of the Press Freedom Act shall apply to ancillary media services *mutatis mutandis*.

Chapter II

THE RIGHT TO PROVIDE MEDIA SERVICES AND PUBLISH PRESS PRODUCTS

General Provisions

Article 41 (1) The provision of linear media services subject to this Act provided by media service providers established in Hungary may commence subsequent to the

notification of and registration by the Office of the National Media and Infocommunications Authority (hereinafter as: the Office), with the exception of analogue linear media services using state-owned limited resources, which may be provided subject to winning a tender announced and completed by the Media Council and entering into an agreement thereto.

(2) On-demand media services and ancillary media services provided by media service providers established in Hungary, as well as press products published by a publisher established in Hungary, falling under the scope of this Act, shall be notified to the Office for registration, within sixty days from commencement of the service or activity. The registration shall not be a precondition for starting such a service or activity.

(3) Under the framework of this Act, the notifier initiating such registration may be any natural person, legal entity or organization without legal personality.

(4) The Office shall keep a register of

a) linear audiovisual media services;

b) linear radio media services;

c) audiovisual media services, the providers of which obtained the media service provision rights via tendering;

d) radio media services, the providers of which obtained the media service provision rights via tendering;

e) on-demand audiovisual media services;

f) on-demand radio media services;

g) ancillary media services;

h) printed press products;

i) online press products and news portals.

(5) In the event a media service provider provides both linear and on-demand services, or if a press product publisher publishes both printed and online press products, it shall notify each of its media services or press products separately.

(6) The data recorded in the registers mentioned in Paragraph (4) concerning the names, contact information of media service providers, press product founders and publishers, as well as the names and titles of the media services and press products shall be publicly available and accessible on the website of the National Media and Infocommunications Authority (hereinafter as: the Authority). For the purposes of monitoring media services and press product publishing, the Authority shall handle the identification data of natural person media service providers and of natural persons founding and publishing press products until such data are deleted from the register.

(7) Linear media service provision rights shall not be transferable.

Linear Media Service Provision Rights Based on Notification

Article 42 (1) The registration of linear media services may be initiated by the future media service provider thereof. Notifiers intending to provide linear media services

without using state-owned limited analogue resources shall notify the Office of the followings at least forty-five days prior to taking up the media service provision activity:

a) particulars of the notifier:

aa) name,

ab) address (registered office), designation of place(s) of business directly affected by the media service provision,

ac) contact information (telephone number and electronic mailing address),

ad) name and contact information (telephone number, postal and electronic mailing address) of its executive officer, representative, and of the person appointed to liaise with the Authority,

ae) company registration number, or registration number,

b) the notifier's effective Deed of Foundation and specimen of signature authenticated by a notary public [except for the case stipulated under Paragraph (2a)], if the notifier is not a natural person;

c) basic particulars of the planned media service:

ca) kind (radio or audiovisual),

cb) type (general or thematic),

cc) character (commercial, community),

cd) permanent name,

ce) name, address (registered office), contact information (telephone number and electronic mailing address) of the electronic communications service provider likely to perform broadcasting,

cf) planned number of subscribers,

cg) type of the electronic communications network planned for broadcasting,

ch) name of the settlements affected by broadcasting,

ci) media service transmission time, transmission time schedule and planned programme flow structure,

cj) daily, weekly, monthly minimum transmission time intended for broadcasting public service programmes, programmes dealing with local public affairs, or programmes supporting local everyday life,

ck) minimum transmission time intended for daily regular news programmes,

cl) planned daily minimum transmission time serving nationalities,

cm) planned ancillary media services,

cn) the media service signal, and – in case of audiovisual media services – the emblem of the media service,

co) the fact of expansion of the reception area, or connecting to the network, if applicable.

d) in case of satellite media services, a statement of intent from the provider of the satellite capacity the notifier plans to use, with respect to the lease of the channel, also indicating its frequency, technical specifications and fee,

e) data on the size of direct or indirect ownership stake held by the notifier or by any other person with a qualifying holding in the notifier undertaking, in any undertaking

providing media services, or applying for media service provision rights, within the territory of Hungary,

f) planned date of launching the media service.

(2) The notifier shall make a statement that no grounds for exclusion under the Act would arise against it in case of its registration.

(2a) If the notifier is a company registered in the company register and if it has submitted to the court of registration the specimen of signature of its representative authenticated by a notary public or countersigned by an attorney-at-law and this fact is indicated in the company register, the Office shall obtain the given deed by downloading it electronically directly from the company register.

(3) Linear media service provision may only be commenced after the completion of registration. The Office shall adopt a regulatory decision on the registration of the linear media service within forty-five days, wherein it shall set forth the media service provision fee payable after each linear media service by the media service provider.

(4) In the event that the Office fails to adopt the decision on the registration within forty-five days after the notification, the notification shall be deemed as registered, with the provision that the rights holder shall be informed about the fact of registration and the amount of the media service provision fee by virtue of a decision within fifteen days.

(5) In the course of the registration procedure, the Office shall examine whether the jurisdiction of Hungary can be established in relation to the notified media service pursuant to this Act.

(6) The Office shall refuse the registration of the linear media service, if

a) a conflict of interests set forth in Article 43 exists *vis-à-vis* the notifier,

b) the notifier, or any of its owners, has overdue fees from earlier media service activities,

c) it would be in violation of the provisions set forth in Article 68 on the prevention of media market concentration,

d) the notification does not contain the data provision required under Paragraph (1), even after notice to remedy the deficiencies,

e) the name of the notified media service is identical with – or is confusingly similar to – the name of a linear media service already registered, having valid records at the time of notification, or

f) the notifier failed to pay the administrative service fee.

(7) The Office shall delete the linear media service from the register, if

a) refusal of registration would be applicable,

b) the media service provider requested its deletion from the register,

c) the media service provider failed to pay its overdue fees within thirty days from the Office's written notice thereto,

d) the rights holder fails to commence the media service within six months from the date of registration, or interrupts the ongoing service for more than six months, except if the media service provider provides adequate justification thereto,

e) a final decision by a court has ordered the cessation of trade mark infringement perpetrated through the use of the media service's name and barred the infringer from further violation of the law, or

f) based on repeated and serious violation of the media service provider, the Media Council ordered the application of this legal sanction with regard to the provisions of Articles 185-187.

(8) The provisions of Paragraphs (1)-(7) shall also apply to linear media service provision via satellite involving the use of satellites not subject to Government control.

(9) The media service provider of a linear media service shall notify the Office about any changes concerning its registered data within fifteen days after the change.

(10) The Office shall have the right to impose a fine as per Points (ba) or (bb) of Paragraph (3) of Article 187 on the media service provider in case of late performance or non-performance of the notification on such data changes.

(11) The permission of the Media Council granted in the form of a regulatory decision in line with the provisions set forth in Article 64 of this Act shall be required for every media service provider to connect to the network or to expand their reception area.

Conflict of Interest Rules of Linear Media Service Providers

Article 43 (1) For persons authorized to provide linear media services, the provisions set forth in Article 118 (1) (a)-(c) concerning the Authority's President, Vice-President, Director General and Deputy Director General shall be applicable.

(2) Furthermore, the following persons shall not be entitled to provide linear media services:

a) judges and public prosecutors;

b) executive officers of public administration bodies, the National Bank of Hungary, the Hungarian Competition Authority, and the Hungarian State Holding Company (Magyar Nemzeti Vagyonkezelő Zrt.), the President, Vice-President, secretary general, executive officer, or auditor of the State Audit Office of Hungary, and Members of the Hungarian Competition Council;

c) the Authority's President, Vice-President, Director General, Deputy Director General, and any person in work-related legal relationship with the Authority;

d) a close relative of persons falling within the scope of Article 118 (1) (a)-(b) and of those specified under Points (b)-(c) above.

(3) The following organisations shall not be entitled to provide linear media services:

a) political parties or undertakings established by political parties;

b) state and public administration bodies, unless provided otherwise by legislation applicable in the event of an extraordinary situation or state of emergency;

c) undertakings in which the Hungarian state has a qualifying holding;

d) undertakings in which any of those listed under Paragraphs (1)-(2) hold a direct or indirect ownership stake, or have acquired the right to influence its decisions pursuant to

a separate agreement or by other means; or a person or organisation otherwise subject to acquisition restrictions.

(4) An undertaking shall not be entitled to provide local linear media service in a reception area of which at least twenty percent falls within the limits of local government jurisdiction, if any local government representative or employee, the Mayor, Deputy Mayor, the Mayor of Budapest, the Deputy Mayor of Budapest, or any of their close relatives hold an office in the Board of Directors, management or the Supervisory Board of such an entity, or in the Board of Trustees of a Foundation or a Public Foundation.

(5) For the purposes of Paragraph (3) (d), an undertaking in which the Mayor of Budapest, the Deputy Mayor of Budapest, the Mayor, or Deputy Mayor, the chairperson or deputy chairperson of the county-level general assembly, or a close relative of a member of the local or county level government holds a direct or indirect qualifying holding, or is entitled to influence the decisions thereof under a separate agreement or otherwise, may not be entitled to provide linear media services if the reception area of the respective media service covers at least twenty percent of the territory of the affected local government.

Media Service Provision Fee

Article 44 (1) Persons or entities entitled to provide linear media services by virtue of registration shall pay a media service provision fee specified by the Office.

(2) The media service provider shall pay a quarterly media service provision fee in advance, as a consideration. In the event of connecting to a network, the networked media service provider shall pay the media service provision fee payable by the media service provider joining the network in proportion to its networked transmission time.

(3) In the event of late payment of the fee, the Media Council may terminate the agreement with a fifteen day notice period.

(4) Default in fee payment shall be deemed a serious breach of law.

(5) With respect to media services subject to public contract or broadcasting agreement, the media service provision fee shall be the sum total of the media service provision basic fee applicable to the given media service provision rights and the fee instalment undertaken by the tenderer winning the tender procedure. The Media Council shall determine the media service provision basic fee in the invitation to tender.

(6) The media service provision basic fee shall be proportionate to the area of the given media service's reception area. At the same time, it shall give due consideration to the purchasing power indicator of the given area's population, as well as to the market share attained by media service provider groups grouped according to their reception area, media service type, mode of distribution, or other significant criteria.

(7) The media service provision fee payable on linear media services subject to registration shall be proportionate to the reception area of the given media service. At the same time, it shall give due consideration to the purchasing power indicator of the given area's population, as well as to the market share attained by media service provider

groups grouped according to their reception area, media service type, mode of distribution, or other significant criteria.

(8) When setting the media service provision fee payable with respect to linear media services provided via terrestrial digital broadcasting systems or satellite systems accessible without payment of a subscription fee, due consideration shall be given to data about the reception area of the given media service, as well as to the availability (prevalence) of equipment suitable for reception of such media service.

(9) No media service provision fee shall be payable for community media services.

(10) In the event of expansion of the reception area, the media service provision fees established for each individual reception area shall be added up.

Notification of On-Demand Media Services

Article 45 (1) The registration of on-demand media services may be initiated by the media service provider thereof. The notification to the Office of the on-demand media service shall include:

a) particulars of the notifier:

aa) name,

ab) address (registered office or place of business), designation of place(s) of business that are directly affected by the media service provision,

ac) contact information (telephone number and electronic mailing address),

ad) name and contact information (telephone number, postal and electronic mailing address) of the executive officer, representative of the media service provider, and of the person appointed to liaise with the Authority,

ae) company registration number, or registration number,

b) basic particulars of the planned media service:

ba) kind (radio or audiovisual)

bb) name

bc) type (general or thematic)

c) the planned date of launching the media service.

(2) The following shall not be entitled to provide on-demand media services: the National Media and Infocommunications Authority's President, Vice-President, Director General, Deputy Director General, or the Chairperson or member of the Board of Trustees of the Public Service Foundation or the Chairperson or member of the Board of Public Services, the CEO of the Fund, the President, Deputy President or member of the National Council for Communications and Information Technology, the CEO of the public media service provider, the Chairperson or member of the Supervisory Board thereof, members of the Media Council, and persons in work-related legal relationship with any of the aforesaid organizations. The notifier shall make a statement that no conflict of interest under the Act exists or would arise *vis-à-vis* him/her/it as a result of registration of the media service.

(3) The Office shall register the on-demand media service within thirty days.

(4) The Office shall withdraw the registration if

a) a conflict of interests exists *vis-à-vis* the notifier, or

b) the name of the notified media service is identical with – or is confusingly similar to – the name of an on-demand media service already registered, having valid records at the time of notification.

(5) The on-demand media service shall be deleted from the register, if

a) the registration is to be withdrawn pursuant to Paragraph (4),

b) the media service provider requested its deletion from the register,

c) the media service is not commenced for more than a year, or the ongoing media service is interrupted for more than a year, or

d) a final decision by a court has ordered the cessation of trade mark infringement perpetrated through the use of the media service's name and barred the infringer from further violation of the law.

(6) The media service provider of an on-demand media service shall notify the Office about any changes concerning its registered data within fifteen days.

(7) In the event of a change in the media service provider's person, the media service provider making the original notification shall initiate a modification of the data on record. Paragraphs (1)-(4) shall be applied *mutatis mutandis* to such procedure.

(8) In the event the media service provider fails to comply with its obligations related to registration, the Office may impose a fine up to one million forints, taking into consideration the principles set forth in Article 185 (2).

Notification of Press Products

Article 46 (1) Registration of a press product may be initiated by its publisher. In the event that the founder and publisher of a press product are different persons or undertakings, they shall enter into an agreement wherein they shall define their relationship, and their responsibilities and rights regarding the press product.

(2) Notifications for the registration of press products shall contain the following information:

a) particulars of the notifier:

aa) name,

ab) address (registered office or place of business),

ac) contact information (telephone number and electronic mailing address),

ad) name and contact information (telephone number, postal and electronic mailing address) of its representative, and of the person appointed to liaise with the Authority,

ae) company registration number, or registration number,

b) the title of the notified press product,

c) in the event the founder and the publisher are different persons or undertakings, the particulars of both of them, as defined in Point (a).

(3) The following persons may not be founders or publishers of press products: the National Media and Infocommunications Authority's President, Vice-President, Director

General, Deputy Director General, or the Chairperson or member of the Board of Trustees of the Public Service Foundation or the Chairperson or member of the Board of Public Services, the CEO of the Fund, the President, Deputy President or member of the National Council for Communications and Information Technology, members of the Media Council, not including the founding or publishing of press products aimed to publish scientific results or to disseminate popular science. The notifier shall make a statement that no conflict of interest under the Act exists or would arise *vis-à-vis* him/her/it as a result of registration.

(4) The Office shall register the press product within fifteen days.

(5) The Office shall withdraw the registration if

a) a conflict of interests exists *vis-à-vis* the notifier, or

b) the title of the notified press product is identical with – or is confusingly similar to – the title of a press product already registered, having valid records at the time of notification.

(6) The press product shall be deleted from the register, if

a) the registration is to be withdrawn pursuant to Paragraph (5),

b) the founder or – if the founder and the publisher are different undertakings, with the approval of the founder – the publisher requested deletion from the register,

c) publication of the press product is not commenced within two years from the date of registration, or ongoing publication is interrupted for over five years, or

d) a final decision by a court has ordered the cessation of trade mark infringement perpetrated through the use of the title of the press product and barred the infringer from further violation of the law.

(7) The publisher and founder of the press product shall notify the Office about any changes concerning the registered data within fifteen days.

(8) In the event of a change in the publisher's person, the publisher on record shall initiate modification of the data on record. In case of failure of this, the founder may also initiate the modification. Paragraphs (1)-(5) shall be applied *mutatis mutandis* to such procedure.

(8a) In the event the publisher or the founder fail to comply with their obligations related to registration, the Office may impose a fine up to one million forints, taking into consideration the principles set forth in Article 185 (2).

(9) Press products and – unless legislation provides otherwise – other publications must display the key editorial and publication data (imprint). The imprint shall display the following information:

a) publisher's name, registered office, and the name of the person responsible for publishing,

b)-c)

d) the name of the person responsible for editing.

(10) An international identifier of printed press products (ISSN), other international markings, and the price of the publication shall be determined and displayed pursuant to separate legislation.

(11) Legislation may also prescribe the use of a short imprint, the obligation of displaying special data, or other specific rules.

(12) For academic and administrative purposes, a free legal deposit copy of printed press products and other publications shall be provided to the bodies designated by separate legislation. The legal deposit copy shall remain in the ownership of the body entitled thereto. Detailed rules for making available legal deposit copies shall be regulated by a government decree.

(13) Free legal deposit copies of printed press products and other publications shall be delivered to the bodies designated by separate legislation in order to preserve cultural assets, to ensure national bibliographical accounting and public library services. The legal deposit copy shall remain in the ownership of the body entitled thereto.

(14) A legal deposit copy for preservation purposes may only be removed from the public collection records, if it was destroyed or has become irreparably damaged.

Notification of Ancillary Media Services

Article 47 The registration of ancillary media services shall be subject to the regulations applicable to the registration of on-demand media services.

Chapter III

OBTAINING THE RIGHT TO PROVIDE LINEAR MEDIA SERVICES VIA TENDER

General rules

Article 48 (1) Analogue linear media services using state-owned limited resources may be provided – unless provided otherwise by this Act – subject to winning a tender announced and conducted by the Media Council and entering into a public contract.

(2) The procedures applied for tenders announced concerning the rights to provide linear media services using state-owned limited resources (hereinafter as: tender procedure) shall be governed by the provisions of the Act on the General Rules of Administrative Proceedings and Services (hereinafter as: the Act on Administrative Proceedings), subject to the deviations set forth in this Act.

(3) The Media Council shall – subject to the deviations set forth in this Act – be in charge of managing the tasks related to the tender procedure.

(4) For a specific time period, but for a maximum of three years, the Media Council shall be entitled to authorise, without a tender procedure, an undertaking to provide media services for the sake of carrying out public duties. This media service provision right shall be granted by the Media Council, in its regulatory decision, to the first applicant submitting a request for such right, based on a call for applications announced by the Media Council, provided that such media service provider meets the conditions

required to perform the public duties. For the purposes of this Paragraph, the following shall be deemed as public duties:

a) media service provision in the event of and in relation to a state of emergency, a natural disaster or an industrial disaster affecting a significant territory of the country, or

b) duties serving a community's special educational, cultural, information needs, or needs associated with a specific event affecting the given community.

(5) The right to provide analogue linear media services using state-owned limited resources shall, in the case of radio, be valid for a maximum period of seven years or, in the case of audiovisual media service provision, for a maximum period of ten years, and it may be – upon expiry – renewed one time for a maximum of five years without a tender procedure upon the media service provider's request, with the provision that the audiovisual media service provision agreements shall expire on the date set forth under Article 38 (1) of Act LXXIV of 2007 on the Rules of Media Service Distribution and Digital Switchover. The request for renewal must be notified to the Media Council fourteen months prior to the expiry. Renewal shall be refused in case of failure to meet this deadline.

(6) [not in effect]

(7) The right may not be renewed, if

a) the Media Council established, in its final and binding decision, that the media service provider repeatedly or seriously violated the provisions set forth in the agreement or in this Act,

b) the media service provider had been subject previously to the sanction specified in Article 112 (1) (b) of Act I of 1996 on Radio and Television Broadcasting due to any breach of the agreement, or

c) the media service provider is in arrears with the media service provision fee at the time of submitting the request.

(8) The Media Council, with due regard to the appropriate application of the provisions of Chapter III and the unique characteristics deriving from the nature of these media service facilities, shall determine and publish on its website the principles of the tender procedure regarding the small community media service facilities. Small community media service facilities may not be subject to tendering and may not be operated commercially.

(9) Upon the Media Council's request, the Office shall compile the register of media service facilities.

Preparation of Tender Procedures for Media Service Provision

Article 49 (1) The Media Council shall, for purpose of preparing tender procedures regarding media services, request the Office to draw up frequency plans.

(2) In the request as per Paragraph (1), the Media Council shall establish the conceptual criteria required for drawing up a broadcast frequency plan, in particular:

a) the objective of frequency use,

b) the preferences to be applied in frequency planning,

c) the frequency planning schedule.

(3) The frequency plan prepared shall contain:

a) the broadcasting stations' nominal places of business, and other technical requirements of installation,

b) the expected reception area of the stations,

c) the frequency band according to the International Radio Regulation markings.

(4) The Media Council may return the frequency plan for modification.

(5) The Office shall publish the frequency plan for at least fifteen days, prior to approval by the Media Council. The Office shall issue a public notice on the website of the Media Council concerning the publication of the plan and its location, at least one week prior to the starting date of publication of the plan. During the period when the frequency plans are published and for five days after closing the frequency plans, any person may submit written comments – addressed to the Media Council – with respect to the frequency plans.

(6) The Media Council shall make a decision with respect to the approval of the frequency plan and the preparations for a draft invitation to tender within forty-five days from the last day of publication.

(7) The frequency plans and the conceptual criteria of planning shall be public and available for inspection at the Office.

(8) For the purpose of planning the media service facility, the Authority may, in exchange for a fee and upon the request of clients, provide data, provided that the Media Council approved the planning of media service facility in advance with respect to the reception area specified in the request and with due consideration of media market and media policy considerations. Media service facilities thus planned shall henceforth be subject to the provisions of this Act applicable to tender procedures.

Draft Invitation to Tender

Article 50 (1) The Media Council shall, with a view to preparing the invitation to tender, compile a draft invitation to tender about the tender conditions. The Media Council shall publish the draft invitation to tender, with justification, via public notice and on its website.

(2) Between the twentieth – the earliest – and the thirtieth – the latest – day from publishing the draft invitation to tender, the Office shall hold a public hearing (hereinafter as: hearing).

(3) The Office shall publish, via public notice and on the Media Council's website, an announcement about the time and venue of the hearing, at least ten days prior to the hearing.

(4) Anyone may comment on the draft invitation to tender verbally or in writing, at the hearing and anyone may lodge a question or submit a comment to the Office in writing within five days from the hearing.

(5) Minutes of the hearing shall be prepared within eight days and shall be available for inspection at the Office.

(6) The Media Council shall decide about the finalisation of the draft invitation to tender within forty-five days from the hearing, and, as far as possible, it shall take into account the comments received and the recommendations made at the public hearing.

The Tender Procedure

Article 51 (1) The tender procedure shall – with the exceptions specified in this Act – commence ex officio with the publication of the invitation to tender.

(2) The administrative deadline for the tender procedure shall be eighty-five days. This deadline shall not include – beyond those set forth in the Act on Administrative Proceedings – the time period from the day the invitation to tender is published to the submission of the tender. In justified cases, the deadline may be extended on one occasion, with the maximum of twenty days.

The Invitation to Tender

Article 52 (1) The Media Council shall publish invitations to tender for the utilisation of media service facilities.

(2) The invitation to tender shall include:

a) the data of the media service facility as per Article 49 (3),

b) the objective of the invitation to tender,

c) the fundamental rules governing the rules of procedure,

d) the tender fee and the payment method thereof,

e) the minimum amount of the media service provision fee (media service provision basic fee), below which media service provision rights cannot be awarded, with the exception of the provision of community media services,

f) the form of and deadline for the submission of tenders,

g) the required contents of tenders,

h) the principles of evaluation and the criteria to be taken into consideration during evaluation, the categories for evaluating tenders, the quantified evaluation framework allocated to specific evaluation categories, as well as the rules of evaluation based on which the Media Council adopts its decision about the winning tenderer,

i) the starting date of the provision of the media service,

j) the term of the media service provision right,

k) the formal requirements of tenders,

l) the validity criteria of tenders concerning their form and contents,

m) other criteria according to the Media Council's decision.

(3) In addition to the criteria defined under Paragraph (2), the invitation to tender may also include the following criteria, in particular:

a) commitment concerning the offer validity of the submitted tenders, the term thereof,

b) the specific proportion of programmes serving public service objectives set forth in Article 83,

c) the ratio of programmes on subjects related to local public affairs or facilitating local everyday life,

d) predefined extent of service to nationalities and other minority needs,

e) the obligation to provide news services,

f) tender criteria for connecting to a network and expanding the reception area,

g) criteria for the provision of ancillary and value-added media services.

(4) The Media Council shall publish the invitation to tender through a public notice and on its website.

(5) The invitation to tender shall be announced so that, from the day of its publication

a) at least sixty days are available for the submission of tenders for the provision of national media services,

b) at least forty days are available for the submission of tenders for the provision of regional media services,

c) at least thirty days are available for the submission of tenders for the provision of local media services.

Amending and Withdrawing the Invitation to Tender

Article 53 (1) The Media Council shall be entitled to amend the invitation to tender along the principles of an objective, transparent and non-discriminative procedure.

(2) The invitation to tender may be amended until no later than the fifteenth day prior to the submission of the tenders.

(3) Any amendment to the invitation to tender shall be published in accordance with the rules governing the publication of the invitation to tender.

(4) In the event the invitation to tender is amended, the Media Council shall be obliged to extend the deadline for the submission of tenders, ensuring that the period available for the submission of tenders as defined under Article 52 (5) remain available from the date of the publication of the invitation to tender.

(5) The Media Council may withdraw the invitation to tender until no later than fifteen days prior to the deadline for submission of the tenders, by taking into consideration media market and media policy aspects. The Media Council shall publish this decision in the same manner as the invitation to tender, and give reasons for its decision.

The Tender Fee

Article 54 Tenderers submitting a tender shall pay a tender fee. The tender fee shall be five percent of the published media service provision basic fee. Eighty percent of the tender fee shall be offset against (deducted from) the media service provision fee.

The Tenderer

Article 55 (1) Only those undertakings may participate in the tender procedure that

a) have no customs or social security contributions overdue for longer than sixty days or overdue taxes registered by the central tax authority, or any overdue payment obligations to separate state funds, except if the creditor has agreed to the payment of the debt at a subsequent date in writing,

b) are not under bankruptcy, liquidation, members' voluntary liquidation, or other winding up proceedings, and

c) in regard to which no final public administration ruling has established a serious breach of obligations stemming from a broadcasting agreement or a public contract undertaken on the basis of a previous tender procedure – closed not more than five years ago – and the broadcasting agreement or public contract of which has not been terminated,

d) does not have overdue debts to the Media Council.

(2) Any undertaking with a qualifying holding in the tenderer or in which the tenderer has qualifying holding must also meet the criteria laid down under Paragraph (1) (a)-(d).

(3) Only those entities shall be eligible to participate in the tender procedure that comply with the provisions on conflict of interests defined under the Act. A conflict of interest shall hold, regarding the tenderer in the tender procedure announced in terms of the national analogue media service provision right, if the given tenderer or an undertaking having a qualifying holding in the tenderer is declared by the Media Council as the winner of another ongoing tender procedure. A conflict of interest shall hold, regarding the tenderer in the tender procedure announced in terms of the regional or local analogue media service provision right, if the given tenderer or the undertaking having a qualifying holding in the tenderer is declared by the Media Council as the winner of another ongoing tender procedure announced in terms of the reception area of the local or regional media service, except if the extent of overlapping between the reception areas of the two media service provision rights does not exceed twenty percent.

(4) If the tenderer, or the undertaking having a qualifying holding in the tenderer, or the undertaking in which the tenderer holds a qualifying holding, has a media service provision right falling under the scope of this Act which excludes acquisition of the right announced in the invitation to tender, it may only submit a tender if it declares in a legally binding declaration, forming part of its tender, that if it is declared as the winner of the tender, it shall either relinquish the affected media service provision right or any claim to such right as of the date of the conclusion of the agreement, or undertake to terminate the situation violating the restrictive provisions in another manner, as of this same date.

(5) Undertakings holding a qualifying holding in one another, or an undertaking in which the other undertaking holds a qualifying holding, or in which the same third party holds a qualifying holding shall not be permitted to participate in the tender procedure simultaneously.

The Tender

Article 56 The tender shall contain:

a) the particulars of the tenderer:

aa) name,

ab) address or registered office,

ac) company registration number or registration number,

ad) contact details (telephone number and electronic mailing address),

ae) name and contact information (telephone number, postal and electronic mailing address) of its executive officer, representative as well as the specimen of signature certified by a notary public or countersigned by an attorney-at-law,

b) the tenderer's effective Deed of Foundation,

c) the tenderer's declaration on the ownership share, either direct or indirect, held by the tenderer or by another undertaking holding an ownership share in the tenderer, in the undertaking providing media services in the territory of Hungary or applying for media service provision rights in Hungary,

d) basic particulars of the planned media service:

da) type (general or thematic),

db) reception area,

dc) the broadcasting transmission facility wished to be used,

de) kind (commercial, community),

df) the transmission time and transmission time schedule of the service,

dg) the planned ancillary media services,

dh) permanent name and signal of the media service,

di) the fact of expansion of the reception area, or connecting to the network, if applicable,

dj) the planned programme flow structure,

dk) daily, weekly, monthly minimum transmission time intended for broadcasting programmes serving the public service objectives set forth in Article 83, programmes dealing with local public affairs, or programmes supporting local everyday life,

dl) daily, weekly, monthly minimum transmission time intended for broadcasting news programmes,

dm) planned daily minimum transmission time serving the needs of nationalities or other minorities,

e) with the exception of community media service, the offer for the media service provision fee,

f) the media service provider's business and financial plan,

g) a bank certificate confirming that the amount required to cover the operating costs of the planned media service for at least the first three months of operation, excluding advertising revenue, is available for the tenderer on a separate current account,

h) the tenderer's declaration stating that no grounds for exclusion, as defined in this Act, exist *vis-á-vis* it, and that the possible acceptance of another pending tender of the tenderer will not create such grounds for exclusion either,

i) any other data, documents and declarations defined in the invitation to tender.

Evaluation and Formal Validity of Tenders

Article 57 (1) The Media Council shall examine whether the tenderer complies with the applicable formal and content requirements.

(2) Tenders shall be deemed formally invalid if

a) the tenderer does not meet the personal or participation criteria set forth in Article 55, or the conflict of interest requirements under this Act,

b) the tender was not submitted by the deadline, at the place, in the number of copies or in the form or manner defined in the invitation to tender,

c) the tender fee was not paid in time,

d) the tender does not comply with the formal requirements defined in the invitation to tender,

e) the data and information listed in Article 56 are not included in the tender or are included inadequately.

(3) Only those deficiencies revealed in terms of the requirements of form specified in Article 57 (2) shall be allowed to be remedied which relate to the information and data as per Article 56 (b), (c), (dc), (df)-(dm), and (f)-(i).

(4) Deficiencies may be remedied by the tenderer within fifteen days of delivery. If the tenderer duly remedies the deficiencies within the deadline set forth in the invitation to tender, the tender shall be deemed as if it was correct and complete right from the start. The deadline defined for remedying deficiencies represents the expiry of the limitation period; no petition for excuse may be submitted after its expiry. No remedy of deficiencies is permitted with regard to those elements of the tender that are subject to evaluation pursuant to the invitation to tender.

(5) Fifty percent of the tender fee shall be reimbursed in the case of formally invalid tenders.

Tender Register and Formally Invalid Tenders

Article 58 (1) The Media Council shall record the tenderers having submitted a formally valid tender in an official register (hereinafter referred to as: tender register) within forty-five days of expiry of the submission deadline. The Office shall notify the tenderers – i.e. participants from then on – of their entry into the tender register, and publish the list of tenderers recorded in the tender register on the Media Council's website.

(2) In the case of tenders that are formally invalid pursuant to Article 57 (2), the Media Council shall reject the registration of the tenderer in the tender register by way of an order. The order rejecting the registration shall terminate the tenderer's client status

under the procedure. The tenderer may request the Budapest Court of Appeal to review the order rejecting the registration in the tender register on grounds of a breach of law, within eight days of the communication of the order. The court will pass its decision, based on the hearing of the parties, if necessary, in out-of-court proceedings within fifteen days. No appeal can be lodged against the decision of the Budapest Court of Appeal. If a request is submitted for an out-of-court proceeding, the Media Council shall suspend the tender procedure until the final decision of the court is made. No independent legal remedy against the Media Council's order to suspend the tender procedure can be obtained.

(3) If the Media Council discovers causes of formal invalidity only after registration in the tender register, in the course of the tender's evaluation on the merits, it shall not establish the formal invalidity of the tender in a separate order; rather, it shall stipulate such invalidity in the decision closing the tender procedure.

Substantive Validity of Tenders

Article 59 (1) When examining the substantive validity of the tenders, the Media Council shall evaluate and check the tender submitted by the tenderer entered into the tender register both as a whole and also in respect of each tender component separately.

(2) If the tender is deficient in terms of content, the Media Council shall call on the tenderer to remedy the deficiencies. Article 57 (4) shall apply to the remedy of deficiencies. If the tender is not adequately clear, the Media Council may, without prejudice to the principle of equal opportunities, request clarification from the tenderer. The tenderer shall have fifteen days for clarification from the date of delivery of the respective request. Clarification may not result in modification of any financial or other commitments pertaining to value or other material statements; it may only serve the interpretation thereof.

(3) A tender shall be deemed substantively invalid if

a) it contains – among the commitments forming part of the evaluation criteria of the invitation to tender – incomprehensible, contradicting or clearly unfeasible commitments or conditions that impede the evaluation of the tender on the merits,

b) in the opinion of the Media Council, the tender contains commitments that are unfeasible, excessive or insufficient or highly disproportionate, or contains such clearly irrational or unfounded commitments or conditions that contradict the facts and data available to the Media Council, and thus render evaluation in accordance with the set of criteria defined in the invitation to tender impossible,

c) the tender is unsuitable for achieving or implementing the objectives defined in this Act and in the invitation to tender since the tender itself is unfounded, or

d) it does not comply with the substantive requirements defined in the invitation to tender.

(4) The Media Council shall not establish the substantive invalidity of the tender in a separate order; rather, it shall stipulate such invalidity in the decision closing the tender procedure.

(5) Fifty percent of the tender fee shall be reimbursed in the case of substantive invalidity.

Evaluation of Tenders

Article 60 (1) Tenders shall be evaluated on the basis of the principles and criteria defined in the invitation to tender. Evaluation criteria shall be based on quantitative or other assessable factors, and be in line with the subject of the tender or the material conditions of the public contract.

(2) The Media Council may, in connection with a tender component related to the evaluation criteria, determine, in the invitation to tender, a requirement compared to which no less favourable offer can be made.

(3) The evaluation principles shall be transparent, free from discrimination and proportionate.

(4) Tenders must be evaluated in the way defined in the invitation to tender: no deviation shall be allowed in this respect.

Termination of the Tender Procedure

Article 61 (1) The Media Council may terminate the tender procedure through an order if

a) no tenders are submitted for the invitation to tender,

b) the tender procedure loses its original purpose due to circumstances or conditions arising in the course of the tender procedure, thus in particular if the national or international economic environment changes substantially following the invitation to tender, or if the economic, legal, spectrum management or media service market circumstances or conditions prevailing at the time of the publication of the invitation to tender change materially,

c) in the opinion of the Media Council, the media policy aspects or the fundamental principles or objectives defined under this Act or in the invitation to tender cannot be guaranteed by executing the tender procedure, or

d) based on the tenders submitted or the information available, the Media Council establishes that none of the tenders submitted by the tenderers satisfy the objectives or basic principles laid down in this Act, or that declaring any one of the tenderers as the winner would jeopardise the responsible, proper and effective management of frequencies constituting state property.

(2) The Media Council shall publish its decision as per Paragraph (1) in the same place and in the same manner as the invitation to tender.

Result of the Tender Procedure, Announcement of the Result and Public Availability of Tenders

Article 62 (1) The Media Council shall establish through a regulatory decision

a) the success or the failure of the tender procedure, and

b) the winner of the tender procedure in the case of a successful procedure.

(2) The tender procedure shall be unsuccessful if all submitted tenders are invalid in terms of form or content.

(3) Only such a tenderer may be declared winner that have consistently complied with the participation requirements laid down in this Act and in the invitation to tender from the date of the submission of the tender. In case of tenders on local media services, if only one tenderer meets the statutory requirements or the requirements of the tender, the Media Council determines the winner of the tender in line with Point b) of Paragraph (1).

(4) The Media Council shall publish its decision as per Paragraph (1) in the same place and in the same manner as the invitation to tender.

(5) A judicial review of the Media Council's decision as per Paragraph (1) may be requested from the Budapest Court of Appeal within fifteen days of the decision's announcement on grounds of breach of law, with the provision that following the expiry of the limitation period of thirty days from the date of the decision, the decision may not be contested even if such decision was not communicated, in addition to the known clients, to other third parties entitled to legal remedy, or even if such parties did not gain knowledge thereof prior to the expiry of the deadline.

(6) The Media Council shall forward the statement of claim, together with the documents and representations of the case, to the Budapest Court of Appeal within fifteen days of receipt thereof. The Budapest Court of Appeal shall assess the statement of claim for a judicial review in a board comprised of three members, within thirty days from the submission of the statement of claim by the Media Council to the Budapest Court of Appeal. No appeal may be lodged against the decision of the Budapest Court of Appeal, and no retrial or review can be requested.

(7) The tender shall qualify as a secret protected by law as defined under Paragraph (2) of Article 153, right until the completion of the tender procedure. The tender shall be handled by the Media Council within the document folder separately, as restricted data. The Media Council shall not disclose any information concerning the data contained in the tenders to third parties until the contract is concluded.

(8) Eighty percent of the tender fee shall be reimbursed in the case of tenders which are valid in terms of form and content, but which have not been declared winner.

Public Contract

Article 63 (1) Simultaneously with notifying the winning tenderer about the decision as per Article 62 (1) (b), the Media Council shall, ex officio, launch a regulatory procedure for the purpose of concluding a public contract with the winner of the tender procedure. The administrative deadline of such regulatory procedure shall be forty-five days.

(2) If the winning tenderer does not participate in the regulatory procedure specified under Paragraph (1), or if the winning tenderer hinders the conclusion of the public contract, the public contract may not be concluded beyond the administrative deadline defined under Paragraph (1). In such cases, the Media Council shall terminate the procedure on the forty-fifth day from the starting date of the procedure. No petition for excuse may be lodged in the procedure.

(3) [not in effect]

(4) If the procedure of the Budapest Court of Appeal has been requested according to Article 62 (5), the public contract may not be concluded until the final and binding decision of the Budapest Court of Appeal. The duration of the review procedure of the Budapest Court of Appeal shall not be included in the administrative deadline of the regulatory procedure.

(5) The Media Council may, pursuant to Article 187, impose fines if the winning tenderer withdraws its tender or does not conclude the public contract.

(6) The Media Council may, in addition to imposing a fine, also oblige the winning tenderer to bear and pay all the costs arising from the withdrawal of the tender or from hindering the conclusion of the public contract.

(7) The conditions pertaining to the production, safekeeping, availability and disclosure of the information required for verifying the fulfilment of the media service provider's obligations must be determined in the public contract.

(8) If the media service is not provided by the deadline specified in the public contract – due to reasons within the tenderer's reasonable control – the Media Council may, in addition to enforcing the legal sanctions determined in the public contract, terminate the public contract with immediate effect.

(9) The media service provider shall pay the media service provision fee defined in the public contract in advance on a quarterly basis. Upon obtaining the media service provision right, the media service provision fee shall be paid in advance for the following half year.

(10) If the media service provider is in default with the payment of or fails to pay any portion of the media service provision fee, the Media Council may, in addition to enforcing the legal sanctions determined in the public contract, terminate the public contract with a fifteen-day notice period.

(11) The consequences of breach of contract must be defined in the public contract.

(12) The media service provider shall be entitled and obliged to broadcast the programme flow meeting the requirements specified under the public contract, via its own network maintained by it, using its own equipment and instruments or using an electronic communications service provider (broadcasting service). No telecommunications license is required for the media service provider's broadcasting or distribution activity using own equipment. This, however, does not affect the obligations of the media service provider to acquire other permits and licenses required by legislation.

(13) The original applicant as per Article 49 (8) may claim from the winner of the tender the reimbursement of the justified expenses incurred in relation to data disclosure and planning.

(14) The media service provider shall report to the Media Council within five days any changes taking place to its ownership structure or its data indicated in the public contract.

Connecting to a Network, Expansion of the Reception Area, Amendment of the Agreement

Article 64 (1) The Media Council shall decide on connecting to a network based on the joint request of those connecting to the network, within the framework of a regulatory procedure. If the permission is granted, the Media Council shall amend the public contract of the media service providers.

(2) Community media service providers may only connect to a network with other community media service providers. National media service providers shall not be allowed to connect to a network.

(3) Connecting to a network shall not be allowed if

a) the length of the regional or local media service provider's own media service does not reach the daily threshold of four hours,

b) any of the media service providers owe overdue media service provision fees to the Media Council,

c) as a result of connecting to the network, any of the media service providers would not meet the conditions laid down in Article 71,

d) the reception area of the networked media service provider and the media service provider connecting to the network overlaps in excess of twenty percent,

e) as a result of connecting to the network, the media service provider would depart from its original commitments made in its tender.

(4) The Media Council shall adopt its decision about expansion of the reception area, within the framework of a regulatory procedure, initiated at request. If the permission is granted, the Media Council shall amend the public contract of the media service provider.

(5) The condition for permitting the expansion of the reception area shall be that the reception areas of the media service provider's rights of similar nature are situated at a distance of at most forty kilometres from each other.

(6) Expansion of the reception area shall not be permitted

a) if the media service provider owes overdue media service provision fees to the Media Council,

b) if, as a result of expansion of the reception area, the media service provider would not meet the conditions laid down in Article 71.

(7) No new rights shall be created through the expansion of the reception area. The validity period of the expanded reception area right shall remain unchanged, with the full right remaining in force until the expiry of the extended basic right. The media service provider shall broadcast the same programme flow over the entire reception area throughout the entire transmission time.

(8) If the media service provider's reception area increases from local to regional or from regional to national as a result of an increase in the population reached with the

media service distribution system, or as a result of connecting to a network, or as a result of the reception area expansion, the Media Council shall amend the public contract on condition that the media service provider satisfies the requirements applicable to the media service with the increased reception area, as defined under this Act.

(9) At the media service provider's request, the Media Council may – based on media market and media policy considerations, and with due regard to essential public interests – offer, in place of the existing media service provision right, another media service provision right registered in the register of media service facilities under similar terms and conditions, with regard to the frequency band and the frequency, without inviting tenders. Such amendment shall not affect the term of the media service provision right.

Temporary Media Services

Article 65 (1) Upon request, the Media Council may – taking into consideration media market and media policy considerations – conclude provisional public contracts for a period of at most thirty days for the utilization of such local media service facilities

a) the frequency plan of which has been published by the Office as per Article 49 (5), but for which no public contract has been concluded yet,

b) for which another party has already acquired a media service provision right, but the media service provision by the rights holder has not commenced within sixty days from the completion of the temporary media service, or

c) regarding which the Authority certifies that the media service may be pursued without disturbing others and without violating international requirements.

(2) The applications shall include:

a) the name, address, registered office, telephone number of the applicant,

b) the effective Deed of Foundation of the applicant undertaking,

c) the purpose of the proposed temporary media service,

d) the planned transmission time broken down by day, week or month,

e) the programme flow plan,

f) the starting and ending date of the proposed temporary media service,

g) the media service provider's declaration on the starting date of the media service in the case of applications as per Paragraph (1) (b),

h) the description of the media service facility or in case of Paragraph (1) (c) the place of business of the proposed temporary media service.

(3) Applications shall be evaluated within twenty days of their submission. If the application does not meet the conditions set forth under Paragraph (2), the Media Council shall call on the applicant to remedy the deficiencies. Applicants shall have five days from the date of delivery to remedy the deficiencies. The deadline set for remedying deficiencies represents a limitation period; if it is not met, the Media Council shall reject the application. The Media Council shall reject the application without examining it on the merits if at least thirty days have not passed between the date of submission of the application and the start date of the proposed temporary media service.

(4) If several applications are submitted regarding a media service facility, the Media Council shall evaluate the applications in the order they were received. If the Media Council concludes a public contract based on an application received earlier, the provisions of Paragraph (5) shall be applied regarding the evaluation of applications received later, and applicants shall be called upon to amend the dates under Paragraph (2) (f), if necessary.

(5) A provisional public contract may be concluded

a) once a year with the same undertaking,

b) three times a year in the same public administration area. A period of at least fifteen days shall elapse between the terms of two provisional public contracts.

(6) The media service provider authorised to provide temporary media services may not initiate connection to a network with another media service provider, nor the expansion of its reception area.

(7) The community media service provider shall not be required to pay a media service provision fee based on the provisional public contract.

(8) The requirements defined under Article 71 shall not be taken into account when applying Paragraphs (1)-(7).

(9) The temporary media service provision period specified under Paragraph (1) may not be extended.

(10) If the audiovisual media service provision right expires between 1 January 2010 and the target date set in Article 38 (1) of the Digital Switchover Act in a way that it cannot be renewed pursuant to Article 48 (5), the Media Council may conclude a provisional public contract at the media service provider's request concerning the media service provision right, until the deadline defined in legislation as the target date of digital switchover of media service distribution provided by audiovisual media service providers.

(11) If the linear radio media service provision right expires after having been renewed on one occasion by the Media Council, and the tender procedure for the given media service facility has already been started, the Media Council shall have the right to conclude a provisional public contract with the media service provider formerly holding the right, even on several occasions, at the request of such media service provider, for a term of sixty days at most. The provisional public contract based on this Paragraph can only be concluded until the completion of the tender procedure or until the judicial review procedure is terminated in a final and binding manner, if a judicial review procedure was started against the decision adopted on the merits of the tender procedure or against the order terminating the tender procedure. The provisional public contract shall be terminated as of the day when the public contract is concluded with the winner of the tender procedure.

(12) When applying Paragraphs (10)-(11), Paragraphs (1)-(5) and Paragraph (9) shall not be applied.

(13) For the purposes of Paragraphs (10)-(11), the Media Council may conclude a provisional public contract, if the media service provider has no overdue debts toward the Media Council and certifies, on the day of conclusion of the contract at the latest, the

payment of the media service provision fee payable for the entire period – in case of audiovisual media services, for six months – of the provisional right.

Chapter IV

COMMUNITY MEDIA SERVICES

Article 66 (1) Linear community media services

a) are intended to serve or satisfy the special needs for information of and to provide access to cultural programmes for a certain social, national, cultural or religious community or group, or

b) are intended to serve or satisfy the special needs for information of and to provide access to cultural programmes for residents of a given settlement, region or reception area, or

c) in the majority of their transmission time such programmes are broadcasted which are aimed at achieving the objectives of public media services as defined in Article 83.

(2) The media service provider providing linear community media services shall define in its media service policy

a) the objective of its activity,

b) the cultural areas and topics which it has undertaken to present,

c) the objectives of public media services which it has undertaken to serve,

d) the community or communities (social groups or residents of a specific geographic area) that it intends to serve,

e) if it serves the needs of a specific community as per Paragraph (1) (a)-(b), then such community and the minimum percentage ratio of the programmes targeted at such community as compared to the total transmission time shall be defined.

(3) The media service provider shall report annually to the Media Council on compliance with the applicable legislative provisions governing community media services and with the media service policy.

(4) Linear community media service shall

a) provide information about social or local community news regularly, and perform other news services,

b) broadcast cultural programmes,

c) strive to take into consideration the needs of persons with impaired hearing, in the case of audiovisual media services,

d) operate, in the case of audiovisual media services, in line with the requirements of Article 20 pertaining to Hungarian and European programme quotas, without applying the exemption opportunity specified under Paragraph (2) of Article 22, excluding any possible exemptions regarding programme quotas, as per Paragraph (2) of Article 22, applicable to independent production companies,

e) have at least four hours of daily transmission time allocated to it,

f) broadcast weekly at least four hours of programmes aired for the first time (not reruns) prepared and edited by it during the given calendar year,

g) broadcast programmes serving public service objectives set forth in Article 83 in over two-thirds of its weekly transmission time, including the news programme, political programme and cultural programme aimed at the community served by it, as well as other similar programmes not primarily aimed at the community in question,

h) allocate, in the case of radio media services, at least fifty percent of its weekly transmission time committed to programmes presenting musical works to the presentation of Hungarian musical works.

(5) The recognition of local or regional media services as community media services shall be established through the Media Council's decision, adopted within the framework of the tender procedure started by the Media Council pursuant to this Act regarding the usage of the media service provision rights, on the winner of the media service tender or under the Media Council's procedure initiated specifically for this purpose, based on the Media Council's decision. This procedure may be initiated by the media service provider following the registration of the media service in the register in accordance with the provisions of Article 42. In the course of its procedure, the Media Council shall examine whether the existing or proposed media service and the provisions of its respective media service policy satisfy the criteria laid down under Paragraphs (1)-(4), and issue a regulatory decision within sixty days. National media services may not be recognised as community media services.

(6) Following recognition as per Paragraph (5), the Media Council shall, ex officio, examine the operation of the media service provider in depth, over a period of at least seven days of service, at least every two years – and also following the first year in the case of new services –, and for that purpose the media service provider shall disclose detailed data regarding the programmes broadcasted by it and the contents of the media service. If, in the opinion of the Media Council, the media service examined does not meet the criteria of linear community media services, the Media Council shall, through a decision passed by it, withdraw recognition as community media service.

(7) In case a decision on the refusal or withdrawal of the recognition as a community media service is adopted, the media service provider may not initiate the proceeding under Paragraph (5) within six months of communication of the decision on the refusal or withdrawal.

Chapter V

PREVENTING MARKET CONCENTRATION AND MEDIA SERVICE PROVIDERS WITH SIGNIFICANT MARKET POWER

General Rules on the Prevention of Media Market Concentration

Article 67 The market concentration of media service providers providing linear media services may be limited within the framework of this Act in order to maintain the diversity of the media market and to prevent the formation of information monopolies.

Article 68 (1) Linear audiovisual media service providers with an average annual audience share of at least thirty-five percent, linear radio media service providers, and media service providers having a joint average annual audience share of at least forty percent on the linear audiovisual and linear radio markets, any owners of the media service provider and any person or undertaking having a qualifying holding in the media service provider's owner

a) may not launch new media services, may not acquire shares in undertakings providing media services, and

b) shall take measures in order to increase the diversity of the media market by modifying the programme flow structure of its media services, by increasing the proportion of Hungarian works and programmes prepared by independent production companies, or in any other way.

(2) In the case presented under Paragraph (1) (a) if the media service provider affected by the rule restricting media market concentration wishes to acquire a share in a company providing media services, the Media Council shall be obliged to reject the approval of the special authority under the procedure as per Article 171.

(3) In the case presented under Paragraph (1) (b), in order to determine the measures aimed at increasing diversity, the Media Council may conclude a public contract – for a term of at least one year – with the media service provider, at the media service provider's request, and under such procedure the Media Council shall be entitled to assess whether it accepts the obligations the media service provider wishes to undertake or not. Such applications may be submitted within thirty days from the communication of the Media Council's regulatory decision as per Article 70 (7). If the public contract – due to failure to reach an understanding – is not concluded within three months from the communication of the regulatory decision specified in Article 70 (7), the Media Council shall terminate the procedure by a decision.

(4) In the absence of the conclusion of a public contract specified under Paragraph (3), the media service provider shall submit its application for the approval of its measures aimed at increasing media market diversity, within six months of the communication of the Media Council's regulatory decision specified in Article 70 (7). In its procedure conducted regarding the approval of the application, the Media Council shall assess whether the proposed measures are suitable for decreasing the former information monopoly and for increasing media market diversity and information pluralism. In the event of the late fulfilment of such obligation, the Media Council shall impose a procedural fine.

(5) If the application complies with the conditions specified under Paragraph (4), the Media Council shall approve it by its decision.

(6) In case of any doubt, it is the media service provider's responsibility to prove that the proposed measures comply with the conditions specified under Paragraph (4).

(7) If the Media Council does not approve the proposed measures, it shall adopt a decision wherein it shall identify the causes of non-compliance, as far as the principles specified under Paragraph (4) are concerned.

(8) In the case presented under Paragraph (7), the media service provider shall submit a new plan for proposed measures by the deadline set by the Media Council, but, within thirty days at most, taking into account the considerations specified in the Media Council's decision as per Paragraph (7). In the event of the late fulfilment of such obligation, the Media Council shall impose a procedural fine. If the measures specified in the new application also fail to satisfy the criteria defined under Paragraph (4), the Media Council may enforce the respective legal sanctions in accordance with Articles 185-187.

(9) The Media Council shall supervise the implementation of the measures approved through its decision within the framework of general regulatory supervision.

(10) The average annual audience share jointly reached on the linear audiovisual and linear radio market shall, for the purposes of Paragraph (1), be determined by adding the individual average annual audience shares, expressed as a percentage, attained separately on the linear audiovisual and linear radio markets.

Identifying Media Service Providers with Significant Market Power

Article 69 (1) Linear audiovisual media service providers and linear radio media service providers with an average annual audience share of at least fifteen percent shall qualify as media service providers with significant market power, provided that the average annual audience share of at least one their media service reaches three percent.

(2) The Media Council shall regularly monitor the fulfilment of the obligations prescribed for media service providers with significant market power under Article 32 and Articles 38-39.

(3) The Authority may conclude an agreement with an external contractor for measuring the average annual audience share defined in Article 68 and Paragraph (1). The contracting party shall be selected in an open tender procedure. When preparing the agreement and determining the tender result, the Authority shall cooperate with the media service providers. The agreement shall define the method for measuring audience share, the professional criteria thereof, and the procedure for auditing the results.

(4) The Authority shall publish on its website the methodology used for measuring audience share and the average annual audience share of media services for the previous calendar year.

Rules of Procedures Aimed at Preventing Media Market Concentration and Identifying Media Service Providers with Significant Market Power

Article 70 (1) For the purposes of the procedures aimed at the prevention of media market concentration and at identifying media service providers with significant market power, the Media Council shall examine market facts and circumstances important (hereinafter as: relevant) for the assessment of the level of concentration, in particular the media service provider's average annual audience share for the previous calendar

year, under the regulatory inspection as per the Act on the General Rules of Administrative Proceedings and Services, with the deviations defined under Paragraphs (2)-(6).

(2) In order to clarify the relevant facts and circumstances, the Media Council may require the media service providers to provide data in the course of its regulatory inspection, by way of an order. No independent legal remedy shall be available against the order; the order may be challenged in a legal remedy procedure brought against the decision on the merits made in a procedure that may follow the regulatory inspection and is aimed at the prevention of media market concentration and at identifying media service providers with significant market power.

(3) In the event of failure to provide data or upon inadequate provision of data, the Media Council may, pursuant to Article 175 (8), impose a procedural fine. Over and above the fine, if the data are not provided or if data are provided inadequately, the Media Council shall be entitled to, and in case of a repeated breach of law, shall be obliged to impose a fine ranging from fifty thousand forints to three million forints on the officer or registered representative, as per Article 45 (1) (ad), of the media service provider found in breach of the law.

(4) The following shall be taken into account when determining audience share, or added to the audience share

a) the audience share of all linear media services distributed by the media service provider on the territory of Hungary,

b) the audience share of the linear media services distributed on the territory of Hungary by media service providers in whom the affected media service provider has a qualifying holding, and

c) the audience share of linear media services distributed on the territory of Hungary by a media service provider in whom any owner of the affected media service provider, or the owner of the owner thereof has a qualifying holding.

(5) If, based on the regulatory inspection, the Media Council established that there is a circumstance providing grounds for conducting a procedure aimed at the prevention of media market concentration and at identifying media service providers with significant market power, then, notwithstanding the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services, it shall only decide to launch the procedure in an order.

(6) No procedure shall be launched by the Media Council if it establishes on the basis of the regulatory inspection that neither the media service provider affected by the rules restricting media market concentration identified in the decision made earlier as per Paragraph (7), nor the group of media service providers with significant market power identified in the decision as per Paragraph (7) or in the public contract as per Paragraph (10) have changed.

(7) In the procedure aimed at the prevention of media market concentration and at identifying media service providers with significant market power, the Media Council shall identify the media service provider affected by the rules restricting media market concentration as per Article 68 or the media service provider with significant market

power as per Article 69 in a regulatory decision, and shall decide on the termination of such status determined in its earlier decision.

(8) In its decision made within the framework of a procedure aimed at identifying media service providers with significant market power, the Media Council shall also define the exact contents of the obligations imposed on the media service provider with significant market power pursuant to Article 32 and Articles 38-39, taking into account the assessment criteria defined therein.

(9) The provisions of Article 163 shall apply, as appropriate, to the review of the decision made within the framework of the procedure aimed at the prevention of media market concentration and at identifying media service providers with significant market power, with the provision that the client or some other participant of the procedure may request the Budapest Court of Appeal to review the Media Council's final decision on grounds of violation of the law, by bringing an action against the Media Council's decision. The Budapest Court of Appeal shall adjudge the statement of claim in court proceedings, within thirty days.

(10) In the procedure aimed at identifying media service providers with significant market power, the Media Council, rather than issuing a decision, may also conclude a public contract with the media service provider in order to identify whether the media service provider has significant market power and to define the exact contents of the obligations imposed on the media service provider with significant market power pursuant to Article 32 and Articles 38-39. In such case, the parties may depart from the assessment criteria for determining the obligations specified in Article 32 and Articles 38-39 with the provision that the media service provider with significant market power may not be exempted, not even in the public contract, from its obligations defined therein.

(11) The Media Council shall conduct its procedure aimed at the prevention of media market concentration and at identifying media service providers with significant market power, with the deviations determined under Paragraph (6), by 30 September each year. When identifying media service providers with significant market power, their average audience share during the previous calendar year shall be taken into account. Media service providers with significant market power shall fulfil their obligations from 1 January of the year following the Media Council's decision. The Media Council's decision made within the framework of the procedure aimed at the prevention of media market concentration and at identifying media service providers with significant market power and also the public contract concluded shall remain in force until the entry into force of the subsequent decision made, or public contract concluded on the same subject as a result of a procedure conducted in the following year.

(12) For the purposes of Paragraphs (1)-(11), sales revenue shall mean the net sales revenue achieved by the participant of the procedure through sales relating to media service activities in the course of the previous business year.

Rules Governing Media Service Providers of Analogue Linear Radio Media Services Acquiring Media Service Provision Rights by Virtue of a Public Contract or Broadcasting Agreement

Article 71 (1) Those authorised to provide analogue linear radio media services based on a public contract or broadcasting agreement shall have the right to simultaneously provide

a) maximum one national analogue linear radio media service,

b) maximum two regional and four local analogue linear radio media services, or

c) maximum twelve local analogue linear radio media services.

(2) With the exception of thematic analogue linear radio media services, providers authorised to provide national analogue linear radio media services and those having a qualifying holding therein may not acquire a qualifying holding in undertakings providing or distributing other media services.

(3) The same undertaking may only acquire a qualifying holding in organisations authorised to provide analogue linear radio media services within the limits defined under Paragraph (1).

(4) The media service provider's own rights and the rights of the undertakings in which it has a qualifying holding shall be taken into account jointly for the purposes of Paragraphs (1) and (3).

(5) A regional or local linear radio media service provider or its owner may not, with the exceptions defined under Paragraph (6), acquire a qualifying holding in other undertakings providing regional or local linear radio media services falling within the reception area of their media services, and the regional or local linear radio media service provider or its owner may not provide another regional or local linear radio media service falling within the reception area of their media services.

(6) The restriction defined under Paragraph (5) shall not be applied if

a) the reception areas of the two media service providers overlap up to twenty percent at most, or

b) unused transmission time remains following the evaluation of the tender and, parallel to an invitation being issued to a new tender, an agreement is concluded with the media service provider defined under Paragraph (5) in respect of the unused transmission time, provided that the transmission time thereby acquired by it differs from its existing transmission time by eighty percent, and neither transmission time exceeds four hours.

(7) Concentration of companies as per the Act on the Prohibition of Unfair and Restrictive Market Practices shall not be permitted if such were prejudicial to this Act.

Chapter VI

PROTECTION OF DIVERSITY IN MEDIA SERVICE DISTRIBUTION

Diversity in Media Service Distribution

Article 72 (1) The number of media services in the media service providers of which the same undertaking has a qualifying holding shall not exceed one quarter of the audiovisual media services or half the radio media services distributed on the given transmission system.

(2) The number of media services the providers of which also perform media service distribution activities or in the providers of which the same media service distributor undertaking has an ownership stake shall not exceed one quarter of the audiovisual media services or half the radio media services broadcasted on the given transmission system.

(3) The ratios defined under Paragraphs (1)-(2) shall also apply to the programme package, offered by the media service distributor undertaking to viewers or listeners, which had the highest number of subscribers at the end of the previous calendar year in the given transmission system.

(4) The obligations defined under Paragraphs (1)-(3) shall not apply to media service distribution activities carried out by public media service providers.

"Must carry" Obligation regarding Media Services

Article 73 (1) In order to preserve, protect and further develop Hungarian and European culture and the culture of nationalities, support and sustain the languages of nationalities, satisfy the information needs of citizens and facilitate their participation in democratic public affairs and preserve diversity of opinions, the media service distributor defined under Paragraphs (2)-(3) shall be subject to the obligations defined in Articles 74-75 (hereinafter as: "must carry" obligation).

(2) Media service distributors distributing media services on a transmission system or network used for broadcasting radio and audiovisual media services to the public shall be subject to a "must carry" obligation.

(3) Transmission systems or networks used for broadcasting radio and audiovisual media services to the public include, in particular, cable television networks, satellite and terrestrial media service distribution networks (with the exception of analogue audiovisual broadcasting networks), as well as transmission systems allowing for transmission of media services by use of Internet Protocol, if the nature and conditions of the service are identical to those of media service distribution, or if this substitutes the media service distribution carried out by any other means.

(4) The "must carry" obligation shall also extend to service providers and operators distributing media services on other transmission systems or networks, if this transmission system or network is the one which is widely used by subscribers and users as the main

instrument for receiving radio and audiovisual media services. The Media Council shall monitor such transmission systems or networks regularly, but at least every three years, as far as compliance with the "must carry" obligation is concerned, and shall perform their analysis within the framework of such monitoring. If, in the course of the regulatory procedure launched, if necessary, as a result of such monitoring, the Media Council establishes that it is reasonable to impose a "must carry" obligation in respect of the given transmission system or network, then it shall, in its decision, establish such "must carry" obligation in respect of all service providers and operators distributing media services on the given transmission system or network.

(5) The "must carry" obligation shall not apply to radio media services in a media service distribution network or transmission system used primarily for broadcasting audiovisual media services to the public.

(6) If the media service distributor simultaneously provides media service distribution on several transmission systems, media service distribution networks, or media service distribution transmission platforms, the "must carry" obligation as per Paragraphs (1)-(4) shall apply to the media service distributor for each transmission system, media service distribution network or media service distribution transmission platform separately, except if the media service distributor provides a unified, complex programme package, containing several media service distribution transmission platforms. Where a unified, complex programme package containing several media service distribution transmission platforms is provided, the "must carry" obligation shall apply to the media service distributor separately for each programme package.

(7) A media service distributor shall qualify as influential from a media market perspective (hereinafter as: influential media service distributor) if

a) the number of subscribers to its media service distribution, irrespective of the media service distribution platform or network used, exceeds one hundred thousand, or

b) in case of publicly accessible media service distribution available without payment of a subscription fee, the reception area of the media service distributor covers more than one-third of the population of Hungary,

and the sales revenue of the media service distributor or any undertaking having a qualifying holding in it or in its owner, or of any other undertaking operating under the qualifying holding of the media service distributor or its owner, arising from media service distribution or related services, with the exception of analogue broadcasting transmission, performed in the territory of Hungary, exceeds one billion forints annually.

(8) In case of any doubt, the influential media service distributor shall be obliged to prove that the conditions defined under Paragraph (7) do not prevail.

Article 74 (1) The media service distributor shall be obliged to transmit a total of four linear audiovisual media services and three linear radio media services of the public media service providers free of charge, with the exception of media service distribution performed by means of broadcasting transmission. The media service distributor may not claim an additional fee from subscribers in excess of the costs of access related to ensuring access to such media services. The public media service provider shall not

claim consideration from the media service distributor for the distribution of its media services.

(2) The media service distributor shall transmit the public media services defined in Paragraph (1) and falling under the scope of the "must carry" obligation as a basic service in such a manner that these services, with the exception of analogue media service distribution networks, may also be available to subscribers as a separated subscription service. The media service distributor may not claim an additional fee for the use of such subscription service packages from subscribers in excess of the costs of access related to ensuring access to such media services. In case of analogue media service distribution networks, all public media services falling under the scope of the "must carry" obligation shall be made available to subscribers in all programme packages.

(3) The public media service provider shall make its media services as per Paragraph (1), distributed using broadcasting transmission, available to subscribers free of charge.

(4) The Office shall monitor due performance of the provisions defined under Paragraphs (1)-(3) ex officio or upon request.

(5) The Office shall monitor due performance of the provisions defined under Paragraphs (3)-(4) ex officio or upon request.

Article 75 (1) The media service distributor shall, up to ten percent of its total capacity but in respect of three media services at most, be subject to an obligation to contract regarding the technically and economically founded contract offers made by the media service providers regarding the provision of their regional or local audiovisual community media services.

(2) The media service distributor shall – in respect of no more than two further media services – be subject to an obligation to contract, regarding the technically and economically founded contract offers made by the media service provider with a local reception area, regarding the provision of its audiovisual media service, provided that, based on the data in the register of the Authority, the reception area of the given media service provider falls within the given media service distributor's reception area or within the separate service area as per Paragraph (4), and that it provides its media service specifically for the given area's population. Pursuant to Paragraphs (1)-(2), the media service distributors performing their services via satellite or terrestrial broadcasting networks shall not be subject to the "must carry" obligation in respect of the local media services subject to the "must carry" obligation.

(3) Over and above the media services falling under the "must carry" obligation defined under Article 74 (1) and Paragraphs (1)-(2), the Media Council may, ex officio or upon the media service provider's request, define in a regulatory decision no more than two additional linear public media services or one linear community media service, serving the media policy objectives of public interest laid down in this Act, in respect of which the media service distributor has an obligation to contract according to a technically and economically founded contract offer. When passing its decision, the Media Council shall assess the extent by which the decision contributes to the diversity of the media market and information, to the achievement of the public service objectives defined in

this Act and to the preservation and improvement of culture. Media service distributors shall not have the legal status of a client in such regulatory procedures.

(4) If the transmission system of the media service distributor, as per Paragraphs (1)-(3), consists of parts serving several areas that can be technically distinguished from each other, the media service distributor shall be subject to the obligations, as per Paragraphs (1)-(3) *mutatis mutandis*, in respect of each technically distinguishable area separately. As far as the "must carry" obligation is concerned, technically distinguishable area shall mean the geographical area served by those parts of the transmission system within which no other media service can be installed into or removed from the transmitted complex programme signal under economically or technically reasonable conditions, in other words within such an area all users choosing the same programme package shall have access to an identical programme structure.

(5) For the purposes of Paragraphs (1)-(2) and (7), the media service provider shall be considered as being entitled to be the beneficiary of the "must carry" obligation in respect of that media service provided by it

a) in respect of which it requests the media service distributor to distribute the media service, and

b) in respect of which it proceeded in good faith and in line with the requirements of fairness in the course of the contract offer procedure and the negotiations held to prepare the conclusion of the contract, and it negotiated on the merits regarding the responses, statements and requests for information given to the media service distributor in connection with the contract offer of the media service provider, in order to bring about the conclusion of the contract.

For the purposes of Paragraph (3), the Media Council may appoint only linear community media services provided by media service providers other than those providing linear community media services under Paragraphs (1)-(2).

(6) For the purposes of Paragraphs (1)-(4), neither the media service distributor's information channel nor such media service shall be taken into account in the provider of which, or in the owner of the provider of which the media service distributor undertaking or its owner has a qualifying holding.

(7) The influential media service distributor shall have an obligation to contract in respect of three further linear community audiovisual media services at most in addition to those defined under Paragraphs (1)-(3), according to the technically and economically founded contract offers made by the media service providers for distributing their audiovisual community media services.

(8) The obligation to contract must be performed according to the order of the offers. The order of the contract offers, as far as the performance of the obligation to contract is concerned, shall be determined on the basis of the day when the written contract offer regarding the distribution of the media service was received (in an evidenced manner) by the media service distributor, or on the basis of the day when the media service distributor obtained knowledge (in an evidenced manner) of the verbally communicated contract offer. The fact of receipt of the offer by the media service distributor or of obtaining

knowledge of the offer by the media service distributor shall be evidenced, verified in case of any doubt, by the media service distributor. If, in the course of joint fulfilment of the "must carry" obligation specified under Paragraphs (1) and (2) or on the basis of the "must carry" obligation specified under Paragraph (7), the media service distributor is only obliged to transmit one authorised media service provider but several authorised media service providers simultaneously also require transmission, the media service distributor shall be obliged to assess the authorised media service providers' contract offers, impartially and based on objective criteria, under a public and transparent procedure.

(9) Offers may be rejected on objective technical grounds if the service requirement indicated in the offer jeopardises the safety of operation or the unity of the network.

(10) Offers may be rejected on objective economic grounds if the service claim indicated in the offer jeopardises the operation of the media service distributor and thereby the agreement is impossible.

(11) In case of any doubt, the media service distributor shall be responsible to prove that transmission of the programme flow is either economically or technically unfounded.

(12) The Media Council shall notify the affected media service providers about the launch of the regulatory procedure as per Paragraph (3) in an order. Such notification shall only contain the subject-matter of the case and a brief description thereof. The Media Council shall publish such notifications through public notices. In the course of such a regulatory procedure only clients participating in the procedure shall be entitled to exercise the respective client rights. The Media Council shall announce its regulatory decision issued in the course of this procedure through public notices.

(13) Taking into account the assessment criteria defined under Paragraph (3), the Media Council may amend its regulatory decision as per Paragraph (3) if this is justified by a substantial change in circumstances. The provisions of Paragraph (12) shall apply to the communication of the amended decision.

(14) The submission of a statement of claim within the framework of the judicial review of the regulatory decision specified under Paragraphs (3) and (13) shall not have a suspensive effect on the enforcement of the decision, and the court shall not suspend the enforcement of the regulatory decision challenged by the statement of claim. The decision shall be enforceable immediately, irrespective of the filing of the statement of claim.

(15) The Media Council may, ex officio or on the basis of a complaint specified in Article 145, may monitor the due application and performance by the media service distributor of the provisions laid down in Paragraphs (1)-(11) within the framework of general regulatory supervision.

(16) If the Media Council concludes, as the result of the regulatory inspection, that the media service distributor had violated the provisions laid down in Paragraphs (1)-(11) and the violation may be rectified by termination of the violating behaviour or by restoring the lawful situation – without completing another regulatory procedure, the Media Council shall notify the media service distributor about the violation of law and shall, in the form of an order, oblige the media service distributor to terminate such

violation by setting a deadline of at least twenty days for compliance and including a warning on the consequences of failure to comply.

(17) If the deadline set in the notification mentioned in Paragraph (16) expires without result or if the provisions contained in Paragraph (16) cannot be applied, the Media Council shall ex officio launch the proceeding falling within its own competence.

(18) The contents and framework of the "must carry" obligation of the public media service designated according to Paragraph (3) by the regulatory decision of Media Council, as well as the respective rights and obligations shall remain unaffected even if the number of "must carry" public media services specified in Article 74 (1) are reduced subsequent to the decision on the designation as per Paragraph (3) became final.

Article 76 (1) The media service provider shall be entitled to initiate the legal dispute procedure as per Articles 172-174 if

a) none of the agreements, as per Paragraphs (1)-(3) and (7) of Article 75, is concluded within thirty days of the offer being made, despite the media service provider's attempts to reconcile with the opposing positions on the merits, or

b) the media service distributor violates the authorised media service provider's media service distribution right or legitimate interest set forth by law or an agreement.

(2) If the media service provider requests the Media Council to bring the contract into existence or determine its content, under a legal dispute procedure, in the absence of an agreement regarding the content of the contract, in line with the provisions of Article 172 (3), the Media Council, in the course of exercising its powers, shall have the right to determine the content of the contract, provided that the application is substantiated, only in the following manner:

a) the media service is also distributed in the subscription service or programme package of the media service distributor providing the largest access,

b) the media service distributor shall not have the right to receive any consideration (including the fee for the installation of the reception of the programme distribution) for the transmission of the media services as per Paragraphs (1)-(3) and (7), and the media service provider shall not have the right to receive a programme fee,

c) the term of the contract concluded in terms of the distribution of the media service shall be one year, with the proviso that if neither party notifies the other contracting party, in writing, of its intention to discontinue the contract at least 90 days in advance of the expiry of the term of the contract, the term of the contract shall be automatically extended by one year, on one occasion, under unchanged contractual conditions.

Article 77 (1) The media service distributor shall send to the Office all agreements concluded with media service providers within the framework of its "must carry" obligation defined in this Chapter, as well as the amendments thereto, within thirty days from their conclusion or amendment, and shall notify the Office of the termination of such agreements within thirty days following the date of termination.

(2) The media service distributors and media service providers shall provide data upon the Authority's request in connection with the "must carry" obligation regulated in this Chapter.

Obligation to Offer Media Services

Article 78 (1) Media service providers with significant market power and media service providers in which or in the owner of which an influential media service distributor or the owner thereof has a qualifying holding (for the purposes of Articles 78-81 hereinafter jointly referred to as obliged media service provider) shall be subject to the obligations defined under Paragraph (2) in respect of all their linear media services.

(2) The obliged media service provider shall have an obligation to contract in respect of all its linear media services according to the fair and reasonable contract offers of the media service distributor. The obliged media service provider shall be subject to an obligation to contract in respect of each linear media service separately.

(3) The conclusion of an agreement subjecting any of the other media services of the obliged media service provider, which are not essential for the distribution of the given media service, or the purchase or use of other services or products may not be set by the obliged media service provider as a precondition of the conclusion of an agreement pertaining to any of its media services or of the determination of the material contents of such agreement (prohibition on tying).

(4) The obliged media service provider and media service distributor shall determine the agreement and the contractual terms and conditions thereof – in particular, but not exclusively, the fee – in line with the principle of equal treatment, by setting an affordable price level and by taking into account the principles of technological neutrality and economies of scale. In the course of this, the obliged media service provider shall not differentiate between the contract offers of the media service distributors, unless it is justified. Parties shall be entitled to amend the agreement in terms of the fee once a year, reckoned from the date the agreement was concluded.

(5) For the purposes of this Act it shall be regarded as a behaviour violating the principle of equal treatment, in particular, if the obliged media service provider

a) unreasonably subjects distribution of the programme flow to technical conditions which a decisive proportion of media service distributors are unable to meet, or

b) determines such pricing terms and tariffs – including volume discount – in the course of determining the fee payable by the media service distributors, so that upon application of these terms and tariffs, the most advantageous terms would become available only to a few media service distributors.

(6) The offer may be rejected if performance of the commitments contained in the offer is impossible due to objective technical or economic reasons, and the parties cannot come to an agreement regarding these terms within the framework of the procedure aimed at conclusion of the agreement.

(7) In case of any doubt, the obliged media service provider shall be responsible to prove that refusal of the offer was well-founded.

Article 79 (1) In order to ensure the proper and transparent satisfaction of the obligation to contract defined in Article 78 (2), the obliged media service provider shall determine the general contractual framework conditions related to the distribution of its media service, and shall publish such conditions on its website.

(2) The obliged media service provider shall determine its general contractual framework conditions as per Paragraph (1) in line with the requirements of rationality in such a way as to ensure that they are justified, transparent and verifiable. Conditions contrary to these shall not be applied.

(3) The provisions of Paragraphs (1)-(2) shall apply to the following contractual terms and conditions:

a) the contractual framework conditions regarding the programme fee payable to the obliged media service provider, in particular the principles, method, period of application of the pricing policy of the obliged media service provider and the method and date of payment,

b) the procedure applicable for the conclusion of the agreement, the method and terms for using the service and its technical, economic or other restrictions, if any,

c) cases and conditions of amendment or termination of the agreement,

d) cases of interruption of the service,

e) breach of the agreement and the legal sanctions thereof.

(4) In the event of modification of the contractual terms and conditions, the obliged media service provider shall make the new contractual terms and conditions available at least thirty days prior to the entry into force of the new contractual terms and conditions.

(5) The Office shall monitor the fulfilment of the obligations set forth under Paragraphs (1)-(4).

Article 80 (1) The media service distributor shall be entitled to initiate the legal dispute procedure as per Articles 172-174 if

a) the agreement as per Article 78 (2) is not concluded within thirty days of making the offer, or

b) the obliged media service provider has violated the authorised media service distributor's right or legitimate interest laid down by law or in an agreement, affecting distribution of the media services.

(2) If the amount of the fee payable by the media service distributor is contested, the obliged media service provider shall be responsible to prove the legitimacy of the pricing and that the proceedings have been conducted in line with the requirement of equal treatment.

Article 81 (1) The obliged media service provider shall send to the Office all agreements, and the amendments thereof, concluded with media service distributors within the framework of the obligation defined in Article 78 within thirty days of their conclusion or amendment, and shall notify the Office of the termination of such agreements within thirty days of termination.

(2) The obliged media service providers and the media service distributors shall provide data upon the Authority's request in connection with the obligation defined in Articles 78-79.

PART THREE

PUBLIC MEDIA SERVICES

Chapter I

BASIC PRINCIPLES AND OBJECTIVES OF PUBLIC MEDIA SERVICES

Basic Principles of Public Media Services

Article 82 Public media service is characterised by the following:

a) it operates independently from both the State and from economic operators, furthermore the managers of the public media service providers and those involved in its activities have professional autonomy within the applicable legislative framework,

b) its system ensures accountability and the existence of social control,

c) its operations are financed primarily from the joint voluntary contributions of those living in Hungary, from public funding,

d) its activities cannot be primarily focused on profit-making.

The Objectives of Public Media Services

Article 83 (1) The objectives of public media service are as follows:

a) to provide media services which are comprehensive in both the social and the cultural sense, aiming to address as many social classes and culturally distinct groups and individuals as possible,

b) to support, sustain and enrich national, community and European identity, culture and the Hungarian language,

c) to promote and strengthen national cohesion and social integration, and to respect the institution of marriage and the value of family,

d) to provide information about and support constitutional rights, the fundamental values of law and order and the rules of democratic social order,

e) to satisfy the media related needs of nationalities, religious communities and other communities, present their culture, support and sustain the mother tongues of nationalities,

f) to satisfy the media service related special needs of underprivileged groups who are at a great disadvantage due to their age, physical, mental or psychological state or social circumstances, as well as of people with disabilities,

g) to serve the cultural needs of Hungarians living abroad, promote preservation of their national identity and mother tongue and enable them to have spiritual relations with their mother country,

h) to broadcast programmes serving the physical, mental and moral development and interest of minors and widening their knowledge, as well as educational and information programmes serving child protection purposes,

i) to accomplish educational and information tasks and present the latest scientific findings,

j) to disseminate information promoting healthy lifestyles, protection of the environment, nature and landscape conservation, public security and transport safety,

k) to present programmes about the social, economic and cultural life in Hungary and of various areas within the Carpathian Basin,

l) to present Hungary and Hungarian culture, as well as the culture of the nationalities living in Hungary to Europe and to the world,

m) to provide a balanced, accurate, thorough, objective and responsible news service and information,

n) to confront dissenting opinions with one another, conduct debates about community affairs, contribute to the freedom of opinion based on the provision of reliable information,

o) to broadcast a rich palette of diverse programme flows representing different values, present high quality entertainment, as well as programmes generating widespread interest,

p) to implement high quality programme-making across every segment of the programme flow, reasonable and justified involvement in media market competition.

(2) Public media service strives to:

a) ensure innovation in the media profession, the continuous improvement of professional standards and the use of high ethical standards in the media service,

b) boldly use new technologies and methods serving media service distribution, play a pivotal role in discovering new digital and Internet media services and exploit these in the public's interest,

c) promote acquisition and development of knowledge and skills needed for media literacy through its programmes and through other activities outside the scope of media services,

d) support Hungarian cinematographic art and present new Hungarian cinematographic works,

e) serve public interest through activities outside the scope of media services, such as book publishing or active involvement in theatre events.

(3) The public media service provider shall contribute to the long-term preservation, archiving and professional collection and care of cultural values and documents of historical significance that come into its possession in the course of performing its activities.

Chapter II

THE PUBLIC SERVICE FOUNDATION

General rules

Article 84 (1) The Parliament establishes the Public Service Foundation (hereinafter as: Public Foundation) to ensure the provision of public media service and public news service and to protect their independence. The Public Foundation is the owner of the Hungarian Television Non-Profit Private Limited Company, Duna Television Non-Profit Private Limited Company, Hungarian Radio Non-Profit Private Limited Company and

the National News Agency Non-Profit Private Limited Company (hereinafter collectively as: public media service providers).

(2) The initial assets of the Public Foundation shall be determined by the Parliament in a parliamentary decision.

(3) The Parliament shall adopt and may amend the Public Foundation's Statutes by a two-thirds majority of the Members of Parliament present. Issues relating to the operation and organisational structure of the Public Foundation not regulated in this Act or the Statutes shall be specified in the Public Foundation's By-laws.

(4) Unless otherwise specified by this Act, the general rules governing foundations shall apply to the Public Foundation.

Board of Trustees of the Public Service Foundation

Article 85 (1) The managing body of the Public Foundation is the Board of Trustees.

(2) The responsibilities and the framework of the activities of the Board of Trustees shall be determined in the Public Foundation's Statutes, in line with this Act.

(3) The Board of Trustees shall, within the framework of this Act and the Public Foundation's Statutes, define and adopt its own procedural rules, as well as the Public Foundation's By-laws. These procedural rules shall include the rules governing the substitution of the Chairperson of the Board of Trustees.

(4) The activities of the Board of Trustees shall be supported by the Board of Trustees' Office (hereinafter as: Board of Trustees' Office). The administrative, management and procedural duties of the Board of Trustees shall be fulfilled by the Board of Trustees' Office. The Board of Trustees and the members of the Board of Trustees shall be entitled to avail themselves of expert assistance via the Board of Trustees' Office. The terms and conditions of employing experts as well as the operating conditions of the Board of Trustees' Office shall be set out in the Public Foundation's By-laws.

Composition of the Board of Trustees

Article 86 (1) The Parliament shall elect six members to the Board of Trustees by voting for each member individually, by a two-thirds majority vote of the Members of Parliament present.

(2) Half of the members who may be elected by the Parliament to the Board of Trustees shall be nominated by the governing factions, while the other half shall be nominated by the opposition factions. Both the governing factions and the opposition factions shall agree among themselves upon the candidates who may be nominated by the respective side.

(3) Nominations for candidates shall be made within eight days following the commencement of the election procedure. The election shall be held within eight days of the nomination of candidates.

(4) Should any faction fail to participate in the nomination, the other factions of the given side may exercise the given side's right to nominate.

(5) A new candidate shall be nominated in place of a non-elected candidate within eight days, and the new election shall be held within the subsequent eight days. A person who did not receive at least one-third of the votes of all the Members of Parliament in the course of the previous election may not be renominated.

(6) The Chairperson of the Board of Trustees and one other member shall be delegated by the Media Council for a term of nine years.

(7) The Board of Trustees shall be deemed to have come to existence when its members have been elected, and its Chairperson, and one other member, have been delegated by the Media Council. The member of the Board of Trustees elected by the Parliament shall take an oath according to the provisions of the Act on the Oath and Pledge of Certain Public Law Officials, whereas the Chairperson and the delegated member shall take the oath upon taking up their offices, in front of the President of the Parliament, with text determined under the Act on the Oath and Pledge of Certain Public Law Officials.

(8) The formation of the Board of Trustees shall not be prevented by failure of either the governing or the opposition side to make a nomination, or by not all nominees obtaining the necessary majority or, upon the application of Paragraph (5), by the new nominee not obtaining the necessary majority. In this case the Board of Trustees shall come into existence with the election of at least three members.

(9) When formed with less than the full headcount, the Board of Trustees may be completed up to the full headcount in accordance with the provisions of Article 87.

(10) Members of the Board of Trustees shall be elected by the Parliament for a term of nine years. The mandate of the elected and delegated members shall expire at the same time, i.e. after nine years from the date of election of the elected members by the Parliament.

Article 87 (1) If the mandate of an elected member terminates before the expiry of the period defined in Article 86 (10), the nomination and election of the new member shall take place in accordance with Paragraphs (2)-(7).

(2) If the nomination of a new member takes place within the same Parliamentary cycle as the one in which other members of the Board of Trustee are elected, or if no change has occurred in respect of the factions of the governing side and the opposition side following Parliamentary elections held after this Parliamentary cycle, then the provisions of Article 86 (2)-(4) shall apply to the nomination, with the provision that the right of nomination shall be vested in that (governing or opposition) side that originally nominated the member (who was elected) and who is to be replaced through the new nomination process, after his/her mandate expired.

(3) If the nomination of a new member takes place after the Parliamentary cycle during which the members of the Board of Trustee were elected, then, provided that there is a change regarding the factions of the governing and the opposition side following the Parliamentary elections held after the Parliamentary cycle during which the Board of Trustees was elected, a nominating committee consisting of one member of each Parliamentary faction shall propose a candidate by unanimous vote within fifteen days following the establishment of the nominating committee.

(4) Should the nominating committee fail to nominate a member within the deadline defined under Paragraph (3), the nominating committee may then propose a candidate within another period of eight days with at least two-thirds of the votes. In the course of this, the number of votes held by the individual members of the nominating committee shall be proportionate to the size, at the time of voting, of the Parliamentary faction nominating the given member.

(5) In the course of candidate nomination under Paragraphs (3)-(4), the nominating committee shall take into consideration any changes taking place regarding the governing and the opposition side, such as when a Parliamentary faction changes the side to which it belongs, or in case of establishment of a new faction or the termination of an existing faction.

(6) Should the nominating committee fail to nominate a sufficient number of candidates even under the scenario defined in Paragraph (4), a new nominating committee shall be established.

(7) After a successful nomination, the Parliament shall elect the new member by a two-thirds majority of the Members of Parliament present for the remaining term of the mandate of the members of the already operational, elected Board of Trustees. The new member of the Board of Trustees shall take an oath according to the provisions of the Act on the Oath and Pledge of Certain Public Law Officials.

(8) In case of early termination of the mandate of the Chairperson of the Board of Trustees or a Board of Trustees member delegated by the Media Council, the Media Council shall, within fifteen days, delegate a new Chairperson/member for the period lasting until the mandate of the members of the Board of Trustees expires.

Article 88 (1) Conflict of interest rules stated in Article 118 (1)-(2) pertaining to the Chairperson and members of the Board of Trustees, the President, Vice President, Director General and Deputy Director General of the Authority, as well as the rules stated in Article 118 (3) shall apply as appropriate.

(2) Neither the Chairperson of the Board of Trustees nor its members may be engaged in an employment relationship with the Public Foundation, and may not accept remuneration under any legal title from any public media service provider under their supervision.

(3) The Chairperson and members of the Board of Trustees may not establish any work-related legal relationship with any public media service provider within one year following the termination of their mandate.

(4) If the Chairperson of the Board of Trustees or any of its members fail to meet their verification obligation despite being asked to do so as defined in Article 89 (4) due to their own fault, or if any conflict of interest arises in respect of a member of the Board of Trustees or its Chairperson, and the conflict of interest is not eliminated within thirty days of the emergence of the cause of the conflict of interest or of the date of the meeting establishing the conflict of interest, the plenary meeting of the Board of Trustees shall adopt a decision terminating the Board membership of the Chairperson or the member of Board of Trustees. The Chairperson or member of the Board of Trustees may not exercise

his/her powers arising from his/her office as of the date of the adoption of the decision establishing a conflict of interest.

(5) The mandate shall be terminated by way of dismissal if the Chairperson or any member of the Board of Trustees is placed under guardianship affecting his/her legal capacity.

(6) The mandate shall be terminated by exclusion, if

a) the Chairperson or member of the Board of Trustees is unable to fulfil his/her responsibilities arising from his/her mandate for more than six consecutive months for reasons within his/her control, or

b) if as a result of criminal proceedings instituted against any member or the Chairperson of the Board of Trustees, the Chairperson or member is declared guilty by the court's final judgement delivering a term of imprisonment, or banning him/her from exercising his/her profession corresponding to the activities of the Board of Trustees or prohibition from participation in public affairs.

(7) The mandate of the Chairperson or a member of the Board of Trustees shall terminate upon his/her death.

Article 89 (1) Termination of the mandate of the Chairperson or a member of the Board of Trustees due to conflict of interest, dismissal or exclusion shall be established and announced by the plenary meeting of the Board of Trustees.

(2) In the plenary meeting of the Board of Trustees adopts a decision about a conflict of interest, dismissal or exclusion, the Chairperson or member affected by such decision may not take part in the voting process, and the unanimous decision of those entitled to vote is required to resolve such matters. If an unanimous decision is not reached in case of a repeated voting concerning the issues mentioned above, the Chairperson of the Board of Trustees shall initiate the decision making of the Parliament on the subject matter. In this case, the Parliament shall adopt a decision on the conflict of interest, dismissal or exclusion by a two-thirds majority of the Members of Parliament present.

(3) If any suspicion of a conflict of interest arises in relation to the Chairperson of the Board of Trustees, then the member designated in the procedural rules of the Board of Trustees shall exercise the powers of the Chairperson in the proceedings defined under Paragraphs (5)-(6).

(4) If any information comes to light suggesting that any of the legal sanctions defined in Article 88 (6) (b) are applicable to any member of the Board of Trustees, then the Chairperson of the Board of Trustees shall call upon the concerned member of the Board of Trustees in writing, by designating a deadline and by specifying the legal sanctions of failure to comply, to verify having a clean criminal record and not being banned from exercising a profession corresponding to its activities with the Board of Trustees or prohibited from participating in public affairs.

(5) The Chairperson of the Board of Trustees shall be in charge of handling the personal data of the members of the Board of Trustees that have come to his/her knowledge pursuant to Paragraph (4) until termination of the mandate of the member of the Board of Trustees.

(6) The provisions of Paragraphs (4)-(5) shall apply to the Chairperson of the Board of Trustees, with the difference that the Chairperson of the Board of Trustees shall fulfil his/her verification obligation defined under Paragraph (4) to the Board of Trustees, whereas the right defined under Paragraph (5) shall be exercised by the Board of Trustees. The Chairperson of the Board of Trustees shall not be involved in exercising the powers of the Board of Trustees defined in this Paragraph.

Powers and Responsibilities of the Board of Trustees

Article 90 (1) The Board of Trustees:

a) monitors whether the objectives of the public media service are fulfilled through the activities of the public media service providers,

b) if, according to the opinion of the Board of Trustees, the behaviour of a public media service provider seriously violates or threatens the attainment of public media service objectives, then it may initiate the Media Council's proceedings,

c) safeguards the independence of the public media service provider,

d) establishes and amends the Statutes of public media service providers, and publishes these in the Hungarian Gazette,

e) elects the CEOs of the public media service providers, and determines the terms and conditions of their employment contracts and remuneration,

f) may terminate the employment relationship of the CEOs of the public media service providers,

g) elects the Chairperson and members of the joint Supervisory Board of the public media service providers, and may also remove these,

h) appoints the auditor of the public media service providers, and may terminate the mandate of such auditor. The responsibilities, powers and competence of the auditor are regulated by the Board of Trustees in the Statutes of the public media service provider, in accordance with the provisions of the Act on Business Associations and the Accounting Act,

i) approves the annual financial management plan of the Public Foundation and adopts its balance sheet,

j) exercises the rights of the General Meeting pursuant to the Act on Business Associations in relation to public media service providers, subject to the deviations set forth in this Act,

k) manages the Public Foundation's assets in its capacity as trustee of the Public Foundation,

l) may increase or decrease the equity capital of the public media service providers, as regulated by the Public Foundation's Statutes,

m) approves the principles and key accounts of the public media service providers' annual financial management and financial plans,

n) approves the public media service providers' balance sheet and profit and loss statement,

o) monitors the funding and financial management of the public media service providers in terms of compliance with applicable requirements of the European Union,

p) may grant prior authorisation for negotiating such contracts having a value of more than three hundred million forints which public media service providers wish to conclude,

q) may grant the prior approval necessary for the public media service providers to take out a loan or to conclude contracts having a value of more than one hundred million forints, or to amend or terminate any of the contracts concluded according to the above mentioned provisions,

r) carries out other duties defined in this Act.

(2) For the purposes of Paragraph (1) (p)-(q), the value of the services to be provided by the public media service provider under various contracts concluded with the same contracting party during the same calendar year, regardless of their content, shall be aggregated.

Article 91 (1) The Public Foundation shall exercise the founders' and shareholders' rights defined by the Act on Business Associations in respect of the public media service providers. However, it is not entitled:

a) to change the basic scope of activities of the public media service providers,

b) to terminate, merge, demerge the public media service providers or transform them into another organisational form,

c) to withdraw assets from the public media service providers,

d) to define the programme flow structure of a public media service provider, as well as the content of its programme flow, services or programmes,

e) to give instructions to the CEO of a public media service provider in respect of the employer's rights exercised by such CEO,

f) to decide in matters falling within the competence of the CEO of another organisation or of a public media service provider pursuant to this Act.

(2) The Public Foundation's Board of Trustees cannot extend its powers defined in Article 90, not even with the founder's rights defined by the Act on Business Associations, but not included in Article 90.

Operation of the Board of Trustees

Article 92 (1) The Board of Trustees shall meet with the frequency required for fulfilling its responsibilities, but at least once every month. The CEO of the affected public media service provider shall be invited to attend the discussions of any items on the agenda relating to General Meeting issues. The Chairperson of the Board of Trustees shall convene an extraordinary meeting of the Board of Trustees within eight days if the majority of the members of the Board of Trustee so requests by determining the agenda of such meeting. In case of failure to do so, the initiators are collectively entitled to convene the extraordinary meeting.

(2) Members of the Board of Trustees, including the Chairperson of the Board of Trustees, shall have equal voting rights. In the event of a tie vote, the vote of the Chairperson shall be decisive.

(3) The Board of Trustees has quorum when more than half of its members are present.

(4) The Board of Trustees shall adopt its decisions by a simple majority of the votes of its members and the Chairperson, unless otherwise stipulated by the Act.

(5) The Chairperson of the Board of Trustees shall draw up the agenda for the meeting and preside over the meeting. Any member may make a proposal concerning the agenda in advance and in writing, the placement of such proposed item on the agenda shall be decided upon by the meeting.

Remuneration of the Chairperson and Members of the Board of Trustees

Article 93 The Chairperson of the Board of Trustees shall be entitled to a honorarium equalling sixty-five percent of the remuneration of state secretaries, whereas members of the Board of Trustees shall be entitled to forty percent of the remuneration of state secretaries, and they may require reimbursement of expenses up to fifty percent of the amount of their honorarium at most. Further rules pertaining to the rate of reimbursement of expenses shall be set forth in the Public Foundation's By-laws.

Financial Management of the Public Foundation

Article 94 (1) The revenues of the Public Foundation shall comprise the following:

a) financial support received from the Fund to finance operations,

b) the proceeds from the assets of the Public Foundation,

c) the proceeds from the utilization of assets managed by the Public Foundation,

d) other revenues serving foundation purposes (subsidies, targeted subsidies from the state budget, payments made to the foundation).

(2) The expenditures of the Public Foundation comprise the following:

a) contributions to the operating and development expenses of the public media service providers,

b) the Public Foundation's own expenses, expenditures.

(3) The Public Foundation may not carry out for-profit economic activities, may not found other business associations and may not acquire shares in other operating business associations, and is not entitled to establish foundations.

(4)

Chapter III

THE PUBLIC SERVICE CODE AND THE BOARD OF PUBLIC SERVICES

The Public Service Code

Article 95 (1) The Public Service Code (hereinafter as: the Code) contains, in accordance with this Act, the basic principles governing public media services and fine-tunes the public service objectives defined in this Act. The Code may have a general

content and also a content relating to individual public media service providers separately. Fundamentally, the Code is meant to provide guidance to public media service providers regarding the appropriate operating principles of the public media services within the framework of the Act.

(2) The Code will first be adopted by the Media Council with the consent of the Board of Trustees and with a view to the opinion of the CEOs of the public media service providers.

(3) The Code may be amended by the Board of Public Services, following its first approval in accordance with Paragraph (2), with the Board of Trustees' consent. Apart from the Board of Public Services, an amendment may also be initiated by the Board of Trustees and the CEOs of public media service providers.

(4) The Institute for Media Studies operating under the aegis of the Media Council shall provide professional support to the drafting and amendment of the Code.

(5) Enforcement of the rules defined by the Code shall be supervised by the Board of Public Services.

Article 96 The Code can, among other things, regulate the following:

a) the means and method of attaining the statutory objectives of public media service,

b) the basic principles of independence from political parties and political organisations,

c) the principles regarding the presentation of the diversity, objectivity and balanced nature of news and timely political programmes, presentation of disputed matters and the diversity of opinions and views,

d) the criteria for supporting and sustaining the mother tongue culture,

e) the principles of the rules of presenting the culture and life of the nationalities living in Hungary,

f) the principles of presenting cultural, scientific, ideological and religious diversity,

g) the principles of performing tasks with regard to the protection of minors,

h) the principles relating to ethical norms governing the broadcasting of commercial communications, advertising activities and the sponsorship of programmes,

i) the principles of communicating public service announcements,

j) the principles relating to the extent and guarantees of the autonomy and responsibility of production companies employed by the public media service provider, and to the guarantees of their participation in the definition of the principles of the production and editing of programmes,

k) the principles of keeping members of the Hungarian nation living abroad adequately informed, and also of providing adequate information about them,

l) the principles of formulating basic ethical rules, other than those in this Act, applying to staff members, with special regard to those employed in relation to news and political programmes.

The Board of Public Services

Article 97 (1) The Board of Public Services is composed of fourteen members, its Chairperson is elected by its own members from among themselves, it adopts its decisions with a simple majority of votes, unless this Act stipulates otherwise. In the event of a tie vote, the vote of the Chairperson shall be decisive.

(2) Members of the Board of Public Services are delegated by the nominating organisations defined in Annex 1 of this Act for a term of three years, in the manner as defined in the Annex. Members may be delegated several times. Failure by any of these organisations to exercise their delegation right shall not impede the operation of the Board of Public Services.

(3) Members of the Board of Public Services shall be delegated at least thirty days prior to the expiry date of the previous members' mandate.

(4) The secretarial duties of the Board of Public Services shall be provided for by the Public Foundation's Office and its costs – including the honorarium of the Chairperson and the members – shall be borne by the Public Foundation.

(5) The Chairperson of the Board of Public Services shall be entitled to a honorarium equalling forty percent of the remuneration of state secretaries, whereas its members are entitled to twenty-five percent of the remuneration of state secretaries. In addition to this, the Chairperson and members may require reimbursement of their travel expenses as necessary for performing their tasks relating to the Board. The conflict of interest rules defined in Article 118 shall be applied regarding the Chairperson and the members – with the exception of those stipulated in Point e) of Article 118 (1) – as appropriate.

(6) The Board of Public Services guarantees social control over the public media service providers.

(7) The Board of Public Services constantly monitors how public service orientation is manifested, and exercises control in accordance with Paragraphs (8)-(13) over the public media service providers in relation to the enforcement of the provisions of this Act.

(8) Once every year, by 28 February of the year following the current calendar year, the CEOs of the public media service providers prepare a report on whether the media service provider under their management, according to their own assessment, has fulfilled the requirements outlined in this Act regarding the objectives and basic principles of public media service.

(9) The Board of Public Services shall discuss the report and decide on the acceptance thereof by a simple majority.

(10) If the Board of Public Services, after having personally interviewed the CEO, decides to reject the report, the Board of Public Services may consider submitting a proposal to the Board of Trustees for the termination of the CEO's employment relationship. Adopting such a proposal requires the two-thirds majority of the members of the Board of Public Services.

(11) The Board of Trustees shall put on its agenda and debate the proposal for the termination of the CEO's employment relationship within eight days. The CEO and the Chairperson of the Board of Public Services shall be invited to the meeting of the Board of Trustees.

(12) The Board of Trustees shall decide on the proposal to terminate the employment relationship by a simple majority of the members present. The decision needs to be accompanied with a justification.

(13) If the Board of Trustees does not terminate the CEO's employment relationship despite the proposal, then in three months time the Board of Public Services shall put a new hearing of the CEO on its agenda.

(14) If the CEO's employment relationship was terminated due to his/her failure to ensure implementation of public service objectives and principles, then he/she may not be re-nominated for the CEO's position of a public media service provider for a period of ten years.

Chapter IV

PUBLIC MEDIA SERVICE PROVIDERS

General rules

Article 98 (1) Public media service providers are responsible for implementing the objectives of public media service as defined in Article 83. Public media service providers shall fulfil their responsibility by joint effort – by coordinating their actions as much as possible – while retaining their autonomy.

(2) The provisions of the Act on Business Associations pertaining to companies limited by shares shall apply, as appropriate, to the public media service providers, including the common rules applicable to business associations as well, unless otherwise provided for by this Act.

(3) Each public media service provider shall hold one non-marketable share.

(4) Public media service providers shall not pay any media service provision fee.

(5) Public media service providers shall provide at least one radio and at least one audiovisual linear public media service to the overwhelming majority of the population of Hungary. Services provided to the overwhelming majority of the population shall mean, for radio media services, terrestrial media services that may be received by eighty percent of the population in the 87.5 to 108.0 MHz frequency band, or, for audiovisual media services, media services available to ninety percent of the population.

(6) In addition to its national media services, public media service providers may also provide local or regional media services.

(7) The Media Council shall decide on the media service facilities used by the individual public media service providers – including media services targeted at foreign countries as well – on the basis of technical, economic, and media policy considerations and after consultation with the CEO of the Fund.

(8) In relation to public audiovisual and radio media services, the Media Council – after consultation with the CEO of the Fund and taking into consideration economic and budgetary planning related considerations for the next year, and with regard to the fulfilment of the public service objectives set forth in Article 83 of this Act – may supervise the system of public media services annually and may decide whether to maintain the existing media services of public media service providers or to change the system thereof.

Appearance of Nationalities in Public Media Service

Article 99 (1) All nationalities recognised by Hungary are entitled to support and sustain their culture and mother tongue, and to be regularly informed in their mother tongue by way of separate programmes aired through public media service.

(2) The responsibility defined under Paragraph (1) shall be fulfilled by the public media service provider via national or, having regard to the geographic location of the nationality, via local media services by airing programmes satisfying the needs of the nationality in question, or via audiovisual media services using subtitles or broadcasting in multiple languages, as required.

(3) The national local governments of nationalities, or (in the absence of such local governments) their national organisations, shall independently decide on the principles of allocation of the transmission time made available to them by the public media service provider. The public media service provider shall abide by these principles, but these may not affect the contents and editing of the programme.

Public Service Media Assets and the Archive of Public Media Service Providers

Article 100 (1) All ownership rights and obligations associated with public service media assets shall be exercised by the Fund, with the exceptions set forth under Paragraph (2).

(2) The Fund may not alienate, transfer or encumber public service media assets in any way, neither in full nor in part. This prohibition does not exclude the utilisation of copyright and usage rights existing with respect to certain items of the public service media assets.

(3) The Fund shall be responsible for the storage, safekeeping and utilisation of public service media assets, as well as of physical data carriers containing works and other subject matter subject to copyright law and acquired by the public media service providers and the Fund, but not falling within the scope of public service media assets (hereinafter jointly referred to as: the Archive). The Archive shall qualify as a public collection with a nationwide collection area.

(4) The detailed archiving rules as well as detailed rules of preserving, maintaining and utilisation of the Archive shall be defined by the Fund's CEO in a regulation, with the agreement of the Media Council.

(5) The Fund may use the works in the Archive in accordance with the provisions of the Copyright Act and in accordance with the terms and conditions of the agreement concluded with the copyright owners and holders of related rights.

(6) The Fund shall execute an asset management agreement with the public media service providers for the utilisation of public service media assets. This agreement confers on the public media service providers the right to use those items of the public service media assets free of charge which are under their management, including the right of communication to the public under the aegis of public media service.

(7) Copyrighted works and other intellectual property located in the Archive but falling outside the scope of public service media assets may be used by public media service providers within the framework of the Copyright Act as well as the terms and conditions of agreements concluded with copyright owners and holders of related rights. The Fund may transfer to the public media service providers, for the purpose of communication to the public, works belonging to public service media assets, along with copyrighted works and other intellectual property which fall outside the scope of public service media assets but in respect of which the Fund has a usage right, where such public media service providers shall not need any separate authorisation and shall not have to pay any fees for the privilege of doing so.

(8) If it cannot be decided whether a copyrighted work held in the Archive falls within the scope of public service media assets and if such work is presented in public media service, the holder of the copyright or related rights, stepping up following such presentation, may prohibit any further use of the work. In case of usage that has already taken place, the holder of the aforementioned rights stepping up is entitled to an adequate remuneration from the media service provider. In case of dispute, the amount of the remuneration shall be determined by the court.

(9) Possible holders of copyrights – other than the Fund – on works belonging to public service media assets shall also be entitled to adequate remuneration. In case of dispute, the amount of the remuneration shall be determined by the court.

(10) Unless otherwise agreed or unless otherwise provided for by the asset management agreement under Paragraph (6), the acquisition of usage rights by public media service providers over those items of public service media assets which are under their management, as well as the free transfer of certain public service media asset items between public media service providers shall be exempted from the provisions of Article 30 (3) of Act LXXVI of 1999 on Copyrights.

Special Responsibilities of the National News Agency

Article 101 (1) The National News Agency Non-Profit Private Limited Company (in Hungarian: Magyar Távirati Iroda Zártkörűen Működő Nonprofit Részvénytársaság), as national news agency, shall perform the following public service tasks in addition to being responsible for the attainment of the objectives defined in Article 83:

a) provides news items, news reports, photographs, data carriers, background materials, graphic images and documentary information about events of general public interest, taking place either in Hungary or abroad,

b) provides access to all such news items and news reports, which the general public needs to know in order to adequately enforce community and individual rights and interests,

c) plays a role in transmitting public service announcements made by public authorities, other organizations or natural persons to the printed and electronic media,

d) provides regular and factual information about the actions of parliamentary parties, other political parties, significant non-governmental organizations, the Government, public administration entities, local governments, courts and prosecutor's offices, and shall make the official communications related to the above public,

e) provides regular and factual information to foreign countries about the most important events taking place in Hungary and the main processes in the country's life,

f) provides information regularly and factually about the lives of Hungarians living outside the borders of Hungary, and provides news services to them,

g) provides regular and factual information about the life of nationalities living in Hungary,

h) ensures provision of information, as outlined in a separate Act, during election periods,

i) in a state of national crisis or state of emergency performs the duties outlined in a separate Act,

j) ensures long-term preservation and protection of cultural values and original documents of historical importance that come into its possession in the course of performing its activities,

k) participates in the work of international news agency organisations.

(2) The national news agency, in order to fulfil its public service responsibilities, shall operate

a) a network of correspondents covering all counties of Hungary as well as the Hungarian capital,

b) a network of correspondents covering all areas within the Carpathian Basin which have a Hungarian population,

c) a network of foreign correspondents as the country's international relations and interests may require.

(3) In case of a national crisis, state of emergency or state of danger, or if the territory of Hungary is subject to unexpected attack by foreign armed groups, furthermore, in the event of having to defend the territorial integrity of the country by the anti-aircraft and stand-by air forces of the Hungarian Defence Forces, the Parliament, the National Defence Council, the President of the Republic and the Government, and/or persons and entities defined by law may, to the extent necessitated by the given situation, order the national news agency, in accordance with Article 32 (6), to provide information.

(4) The national news agency has an exclusive right to produce news programmes for other public media service providers, and also operates the integrated news portal of public media service providers, along with other online press products of the public media service providers as well as their on-demand media services accessible via the Internet.

Electing the CEOs of Public Media Service Providers

Article 102 (1) The public media service providers shall be managed by the CEO, as there is no Board of Directors. The CEO shall, within the framework of this Act, exercise all the powers referred to the Board of Directors of a company limited by shares by the

Act on Business Associations. An employment contract shall be executed with the CEO, and his/her remuneration shall be defined as a monthly sum payable by the public media service provider under his/her management.

(2) The Board of Trustees shall exercise the employer's rights in respect of the CEOs of public media service providers, which includes the appointment of CEOs and the termination of their employment relationship. The CEOs shall be nominated and appointed in the following step-by-step order:

a) the President of the Media Council proposes two CEO candidates to the Media Council in relation to each public media service provider;

b) if the Media Council approves of these candidates, then it shall submit the nominations to the Board of Trustees, in order to have one of the candidates selected;

c) if the Media Council does not approve of one of the candidates proposed by the President of the Media Council, then the President of the Media Council shall propose a new candidate; the Media Council may make a proposal to the Board of Trustees only if it had approved two candidates;

d) the Media Council may also make a proposal regarding the contents of the CEO's employment contract;

e) during the first round of voting, the Board of Trustees shall come to a decision concerning the appointment of the CEO by a two-thirds majority of all of its members, including its Chairperson;

f) if the Board of Trustees cannot make a selection from the two candidates by a two-thirds majority within thirty days from the date on which they were nominated by the Media Council, then a new nomination procedure shall be conducted;

g) in the course of the new nomination, two new candidates shall be proposed for each public media service provider;

h) during the vote, taking place after the new nomination, the Board of Trustees shall come to a decision concerning the appointment of the CEO by a simple majority of all of its members, including its Chairperson.

(3) The Board of Trustees shall come to a decision by vote concerning the appointment of the CEO and the terms and conditions of his/her employment contract, drawn up with a view to the Media Council's proposal. The CEO's employment contract shall be concluded for an indefinite period. Should the elected CEO refuse to accept the terms and conditions of the draft employment contract determined by the Board of Trustees, then the Board of Trustees shall take a repeated vote on the employment contract containing the amended terms and conditions. If no agreement can be reached on the terms and conditions of the employment contract, then a new CEO shall be elected.

(4) The CEO's employment relationship shall terminate in the following cases:

a) upon his/her dismissal;

b) by termination with notice as per his/her employment contract;

c) upon his/her death;

d) in the event regulated by Article 97 (10)-(12), provided that the Board of Trustees decides in favour of termination based on the proposal made by the Board of Public Services.

(5) The CEO's employment relationship shall be terminated by dismissal, if

a) he/she is placed under guardianship affecting his/her legal capacity;

b) if, as a result of criminal proceedings instituted against him/her, he/she is pronounced guilty by the court's final judgement delivering a term of imprisonment;

c) he/she is unable to fulfil his/her responsibilities for three consecutive months for reasons beyond his/her control;

d) he/she is in breach of conflict of interest rules, and fails to eliminate such conflict of interest within thirty days of the date on which such conflict of interest has arisen;

e) he/she has been banned by the court from exercising his/her profession or has been prohibited from participating in public affairs.

(6) In case of dismissal, the termination of employment shall be established by the Board of Trustees.

(7) The CEO may appoint two Deputy CEOs. The terms and conditions of the employment contracts of the Deputy CEOs shall be approved by the Board of Trustees.

Article 103 (1) Persons eligible for the position of the CEO of a public media service provider include those Hungarian citizens with a clean criminal record and a diploma of higher education, who have at least five years of relevant work experience.

(2) Relevant work experience shall include previous experience in programme-making, broadcasting, information, as well as related technical, legal, managerial, administrative, economic, cultural, scientific and opinion polling activities.

(3) Those, who at any time during the two years prior to the date of election, held the post of President of the Republic, Prime Minister, member of the Government, State Secretary, State Secretary for Public Administration, Deputy State Secretary, Member of Parliament, Mayor of Budapest, Deputy Mayor of Budapest, Mayor, Deputy Mayor, or officer of a national or local organisation of a political party, may not be appointed as the CEO of a public media service provider.

(4) The process to be applied for the verification of the clean criminal record of the CEO of a public media service provider and applicable legal sanctions shall be governed by the Labour Code.

Conflict of Interest Rules Applicable to the Executives of Public Media Service Providers

Article 104 (1) The conflict of interest rules under Article 118 (1) (a)-(c) and (f) pertaining to the Authority's President, Vice-President, Director General, Deputy Director General, as well as the grounds for exclusion under Article 118 (3) shall apply to the CEO and executive employees of the public media service provider throughout the term of their employment relationship, as appropriate.

(2) Apart from the conflict of interest rules under Paragraph (1), the CEO and executive employees of the public media service provider or their close relatives cannot be shareholding members or executive officers or Supervisory Board members in a business association which has a business relationship with a public media service provider

headed by the CEO or employing the executive employee. If this rule is violated by a close relative of the public media service provider's CEO or executive employees, then it shall be considered as conflict of interest arisen in respect of the CEO or the executive employee, and the appropriate legal sanctions shall be applied.

(3) Throughout the term of their employment relationship, the CEO and executive employees of a public media service provider shall not be engaged in any revenue generating profession, with the exception of scientific, educational, literary, artistic and other activities under copyright protection, and shall not be entitled to receive any remuneration from the public media service provider under their management not even by virtue of these titles.

(4) The CEO of a public media service provider shall make a written statement, prior to entering into its employment contract, that no grounds for a conflict of interest exist in respect of him/her.

(5) The CEO or executive employee of a public media service provider cannot conclude, on behalf of the public media service provider, an agreement in which he/she, or a close relative of him/her, or such business association is the other contracting party, in which he/she or his/her close relative holds an indirect or direct ownership share, has some other pecuniary rights, or a personal interest. Contracts within the sphere of interest of those affected by this restriction cannot be concluded by any other employee of the public media service provider either.

Article 105 (1) The CEO shall direct the public media service provider within the framework of this Act, other legal regulations, the Statutes of the Public Foundation and the public media service provider and the decisions of the Board of Trustees.

More particularly, he/she shall:

a) decide on the programme schedule;

b) establish the By-laws;

c) ensure that the Public Service Code is enforced;

d) draw up and submit to the Board of Trustees for approval the annual financial management plan, and ensure that it is implemented;

e) draw up the balance sheet and profit and loss statement, and submit both to the Board of Trustees for approval;

f) submit proposals for the authorisation of contracts or those needing prior approval, in line with Article 90 (1) (p)-(q);

g) exercise the employer's rights in respect of the employees of the public media service provider, including the employment of the Deputy CEOs;

h) provide for the preparation of all further submissions as may be required by this Act and the Statutes of the Public Foundation or a decision of the Board of Trustees;

i) ensure, in collaboration with the Fund, that those engaged in or contributing to the public media service provider's activities receive regular in-service training in media;

j) have a seat in the Public Service Fiscal Council;

k) exercise all the rights, subject to the provisions of this Act, which are referred to the Board of Directors of a company limited by shares by the Act on Business Associations.

(2) The CEO of a public media service provider shall receive no remuneration from the Public Service Foundation under any legal title, other than the allowances outlined in his/her employment contract.

The Supervisory Board of Public Media Service Providers

Article 106 (1) The joint Supervisory Board monitors the management of public media service providers (hereinafter as: Board). The Board is entitled to request reports or information from the CEOs, the employees of public media service providers, and may inspect the books, bank accounts, documents and petty-cash of the public media service providers at any time, or hire an expert to carry out such inspection at the cost of the public media service providers.

(2) The Board consists of a Chairperson and four members.

(3) The Chairperson of the Board and its members are elected by the Board of Trustees for a term and under the terms and conditions as defined in the Public Foundation's Statutes, with the exception of the Board member elected by the employees.

(4) The Board of Trustees determines the remuneration of the Board's Chairperson and the members thereof.

(5) The Board defines its own operating rules, and the Board of Trustees approves its rules of procedure.

(6) The Board shall be responsible for inspecting all such reports to be submitted to the Board of Trustees that relate to matters of fiscal nature of the public media service providers, falling within the scope of competence of the General Meeting of the Board of Trustees.

(7) The internal audit organisations of the public media service providers are under the control of the Board.

(8) Otherwise, the organisational structure and operations of the Board is governed by the provisions of the Act on Business Associations, and the Public Foundation's Statutes and By-laws.

The Auditor of Public Media Service Providers

Article 107 (1) The joint auditor of the public media service providers is elected by the Board of Trustees for a term of two years. It is also the Board of Trustees' competence to terminate the auditor's mandate.

(2) The powers and responsibilities of the auditor shall be defined in the Statutes of the public media service provider, within the framework of the Act on Business Associations.

Funding and Financial Management of Public Media Service Providers

Article 108 (1) The Fund supports the fulfilment of the responsibilities of the public media service providers from its resources defined in Article 136 (3), supports and is

directly involved in the production, ordering and purchasing of their programmes, as well as their information and other activities.

(2) The Public Service Fiscal Council (hereinafter as: Council) decides on the distribution of the amount available pursuant to Paragraph (1) between the public media service providers.

(3) The Council is composed of seven members, its members are the following:

a) the CEOs of the public media service providers;

b) the CEO of the Fund;

c) two members delegated by the Chairperson of the State Audit Office on an ad hoc basis. The remuneration for these members shall be determined by the CEO of the Fund and the conflict of interests rules laid down in Articles 104 and 118 shall be applied to them as appropriate.

(4) The Council decides by 30 September each year on the distribution of the funds defined under Paragraph (1) and available for the programmes and the fulfilment of public service responsibilities of the public media service providers in the following year. Its decision shall be made with a view to the public service objectives outlined in this Act and the Code, and to the special tasks of certain public media service providers. The Council adopts its decisions by simple majority and publishes its decision on the Fund's Internet website. In particularly justified cases the Council may subsequently amend its decision by a two-thirds majority of votes. The decision concerning the amendment may be initiated by the Fund's CEO.

(5) The Council shall be convened by the Fund's CEO, who is also the Council's Chairperson, no later than by 30 June each year. The Council shall establish its own operating rules and rules of procedure within the framework of this Act.

(6) The Fund, acting on behalf and in the interest of the public media service providers, shall conclude the agreements concerning the distribution of the linear media services of the public media service providers from its own budget. The provisions laid down in Paragraph (8) shall be applied to media service distribution agreements under which the public media service provider realizes any revenues in return for the distribution licence.

(7) The CEO of the public media service provider shall report to the Board of Trustees concerning the activities of the media service provider under his/her management, approval of the balance sheet and the profit and loss statement shall take place within the framework thereof. The CEO's report shall be submitted to the Board of Trustees together with the opinion of the Supervisory Board of the public media service providers.

(8) A public media service provider may engage in business activities if those serve to promote its public service objectives. Any profits generated may be used exclusively for provision or development of public media service. The right to pursue business activities – with regard to the activities performed by the Fund without remuneration in order to support public media services – may be assigned to the Fund. Any revenues generated from this by the Fund may be used only to realize the objectives of the public media service providers.

(9) A public media service provider cannot have a share in other media service providers and cannot set up foundations. Business associations under the qualifying holding of public media service providers may launch and provide public media services.

(10) A public media service provider shall keep a separate register for its contracts. This register shall include the current data allowing for the company identification of the contracting parties, as well as the services to be performed by each of the contracting parties and the consideration thereof.

(11) Public media service providers enjoy individually granted exemption from the payment of duties and are not subject to corporate tax. For the purposes of Article 8 of Act CXXVII of 2007 on Value Added Tax, the Fund and the public media service providers shall be considered as affiliated companies, which affiliated relationship may be joined by a new person by separate statutory provision only.

(12) Procurements taking place within the legal relations between the Fund and the public media service providers are not covered by the application scope of the Public Procurement Act.

(13) Pursuant to the guidelines set forth by Parliamentary Decision no. 109/2010. (X. 28.), the Media Council is responsible for determining the detailed rules governing the utilisation of transferred assets and the management of such assets, including the terms and conditions under which the public media service providers may avail themselves of the certain asset components and property items for the purpose of discharging their public service responsibilities.

(14) [not in effect]

PART FOUR

SUPERVISION OF MEDIA SERVICES AND PRESS PRODUCTS

Chapter I

THE NATIONAL MEDIA AND INFOCOMMUNICATIONS AUTHORITY

General rules

Article 109 (1) The National Media and Infocommunications Authority (hereinafter as: Authority) is an independent regulatory body solely subject to the law.

(2) The Authority participates in the implementation of the Government's policy – as defined by law – in the areas of spectrum management and communications. Any function may be assigned to the Authority only by law or other legislation issued pursuant to law.

(3) The Authority comprises the following entities with independent powers: President of the National Media and Infocommunications Authority (hereinafter as: President), the Media Council of the National Media and Infocommunications Authority and the Office of the National Media and Infocommunications Authority.

(4) The President of the Authority reports to the Parliament on the activities of the Authority once every year.

(5) In relation to the communications sector, the Authority is responsible for ensuring – particularly in line with the objectives and basic principles of the Electronic Communications Act – the smooth and effective functioning and development of the communications market, safeguarding the interests of the users and of those pursuing communications activities, fostering the development and maintenance of fair and efficient competition within the electronic communications sector, and for the supervision of legal compliance of the conduct of organizations and persons pursuing communications activities.

(6) The Authority performs its tasks and exercises its powers independently, in compliance with applicable legislation.

(7) The communications regulatory powers of the Authority cannot be withdrawn in any way.

(8) The Government's public administration function pertaining to non-civilian spectrum management shall be provided for by the Spectrum Management Authority (hereinafter as: KFGH).

(9) Within the organisational structure of the Office and under the control of the Director General, KFGH operates as an organisational unit with independent competence.

Article 110 In relation to the communications sector and subject to separate legislation, the Authority shall:

a) comment on legislative and amendment requests and proposals concerning its competence;

b) assess and continuously analyse the functioning of the communications market and of related information technology markets;

c) continuously evaluate the state of the communications market and prepare comparative analyses;

d) conduct market analysis;

e) proceed in connection with the fulfilment and breach of certain obligations imposed on the obliged service providers;

f) take action in connection with any breach of communications related provisions, as well as in proceedings launched in relation to legal disputes arising from the conclusion of contracts;

g) perform regulatory tasks provided for under other pieces of legislation in respect of electronic communications and postal services;

h) as part of its management functions, the Authority shall exercise – in accordance with this Act and other pieces of legislation – the state ownership rights pertaining to radio frequencies and identifiers, and shall manage the radio frequencies and identifiers for civilian purposes;

i) perform other regulatory and non-regulatory tasks defined by other pieces of legislation.

Article 110/A (1) The Authority shall establish the principles related to its personnel policy independently, in order to retain the specialist personnel with the special expertise and competences required for the performance of its duties as detailed under Articles 109-110.

(2) The Director General and Deputy Director General of the Authority, as well as the employees of the Authority, shall perform their activities within the framework of a public service legal relationship, and their legal relationship shall be governed by the provisions of the Act on Civil Servants applicable to civil servants, subject to the differences specified under this Act.

(3) The president of the Authority shall determine the system of the different posts of employment required for performance of the tasks of the Authority, the amount of the resources required for the performance of the tasks, and define, under the By-laws of the Authority, those employment positions not falling under Paragraph (2), where the employees perform their tasks under an employment relationship.

(4) The president of the Authority, within his/her own powers which cannot be transferred, shall decide upon the principles of the remuneration policy of the Authority, the fringe benefits, the basic salary, and any deviations thereof.

(5) The president of the Authority can determine a special personal remuneration to civil servants who are in an employment position requiring a special, unique expertise or to civil servants in more than one executive position. Personal remuneration can be granted up to the maximum of twenty percent of the active employee headcount of the Authority and can be withdrawn without the need for any explanations. The president of the Authority shall determine the possible rules restricting the employment of the persons in the above-mentioned posts of employment, applied upon termination of the legal relationship of these persons, and these rules shall be specified in detail in the employment document.

(6) The President of the Authority shall, on his/her own initiative, determine in the Public Service Policy of the Authority the detailed rules related to the performance assessment system and the related remuneration, recruitment and selection policies, as well as the planning and execution of the in-service training, courses, and individual development.

(7) The Authority, being an independent regulatory body, shall not be subject to the data provision obligation related to public administration personnel activities.

The President and Vice-President of the National Media and Infocommunications Authority

Article 111 (1) The President shall

a) perform the management of the National Media and Infocommunications Authority;

b) from the powers defined in Article 110, exercise the powers conferred upon the President by separate legislation;

c) submit the annual draft budget and annual institutional budget report of the Authority in accordance with Article 134;

d) propose amendments to legislation concerning communications and media services;

e) make decisions about the classification of data handled by the Authority in the course of performing its activities, in line with the provisions of the Act on the Protection of Classified Information.

(2) Further responsibilities of the President are the followings:

a) if elected as President of the Media Council, convene and chair the meetings of the Media Council;

b) if elected as President of the Media Council, arrange for the meetings of the Media Council to be prepared;

c) appoint the Vice-Presidents and exercise the employer's rights over them, including dismissal and removal;

d) appoint the Director General of the Office and exercise the employer's rights including dismissal and removal;

e) appoint, dismiss or remove the Deputy Directors General upon the Director General's proposal;

f) appoint, dismiss or remove the Media and Communications Commissioner and exercise the employer's rights;

g) adopt the Authority's By-laws;

h) represent the Authority, particularly when keeping contact and consulting with the European Commission and with regulatory authorities from Member States;

i) publish, by 28 February of each year, the annual work schedule of the Authority and key figures of its draft budget, and, by 30 June, the annual assessment of the Authority's financial management for the previous year;

j) outline, on a yearly basis, tasks to be carried out in connection with professional preparatory works;

k) notify the Minister responsible for electronic communications of any circumstances that may jeopardise the safety of communications and make recommendations for the measures deemed as necessary;

l) proceed before international organisations on behalf of the state as mandated;

m) sign cooperation agreements annually on behalf of the Authority with the consumer protection authority and the competition authority;

n) act as second-instance authority on the field of communications concerning the official matters of the Office defined by law;

o) appoint, dismiss or remove the Director of the KFGH, upon the Director General's proposal.

(3) The President shall be appointed by the Prime Minister for a period of nine years.

(4) The person who can be elected at the election of Members of Parliament, has a clean criminal record, is not banned from exercising an occupation aligned with his/her activities, possesses a higher education degree and at least three years of work experience in media service distribution, media services, regulatory supervision of the media services, electronic communications, or work experience in economics, social science, law, technology or management (including membership of management bodies) or in

administration with a focus on the regulatory supervision of communications, can be appointed as President.

(5) After the expiry of the period defined in Paragraph (3), the President may be appointed again.

(6) The President may not be instructed with respect to his/her actions and decisions associated with the performance of his/her duties and exercise of powers. The President may not instruct the Office to take ad hoc decisions in respect of the Office's official matters defined by law.

Article 112 (1) The President is entitled to appoint two Vice-Presidents for an indefinite term. The provisions of Article 111 (4) shall be applicable to the appointment of Vice-Presidents, as appropriate.

(2) The President may be substituted by the Vice-President if the conditions specified in the By-laws are met. The President may delegate his/her second-instance regulatory decision-making powers to the respective Vice-President by virtue of an appropriately detailed authorisation. When acting within this delegated competence, the Vice-President may not be instructed in relation to making second-instance regulatory decisions. Other tasks of the Vice-President shall be defined by the By-laws.

(3) The President shall be entitled to the remuneration and allowances of Ministers, whereas the Vice-President shall be entitled to the remuneration and allowances of State Secretaries. Any issues not regulated by this Act shall be governed by the provisions of other laws pertaining to the legal status of Ministers as far as the President is concerned, and those pertaining to the legal status of State Secretaries as far as the Vice-President is concerned.

(4) Rules applicable to those engaged in public service relationship shall be applicable to the social security status of the President and the Vice-President. The term of their mandate shall be regarded as time spent in public service relationship and pensionable service time.

(5) The President shall – immediately upon being appointed – present an official certificate in verification of his/her clean criminal record and not being banned from occupations aligned with the scope of his/her activities. Should the President fail to fulfil this certification obligation for reasons attributable to him/her, the legal sanctions of conflict of interest shall apply.

(6) The Prime Minister shall be responsible for handling the President's personal data disclosed pursuant to Paragraph (5) until the end of the President's mandate, and may call upon the President at any time to verify the data outlined in Paragraph (5).

(7) The provisions of Paragraph (5) shall be applied to the Vice-President, whereas the powers defined under Paragraph (6) shall be exercised by the President in relation to the Vice-President.

Article 113 (1) The President's mandate shall be terminated if

a) his/her mandate expires;

b) he/she resigns;

c) he/she dies;

d) he/she is dismissed by the Prime Minister in accordance with Paragraph (2);

e) if he/she is not elected as President of the Media Council by the Parliament within 30 days from his/her appointment, or, if such appointment takes place outside the parliamentary session, within 15 days from the starting date of the forthcoming parliamentary session.

(2) The Prime Minister shall dismiss the President, if

a) he/she fails to eliminate the conflict of interest as outlined in Article 118 (1) within thirty days of the date of appointment or the emergence of the ground for the conflict of interest;

b) if as a result of criminal proceedings instituted against the President, the President is pronounced guilty in a final judgement of the court sentencing the President to imprisonment, or barring him/her from exercising an occupation aligned with his/her activities as President;

c) the President is placed under guardianship affecting his/her legal capacity;

d) the President fails to fulfil the responsibilities arising from his/her mandate for more than six months for reasons attributable to him/her.

(3) In case the President's mandate is terminated pursuant to Paragraph (1) (a) or (b), the President shall be eligible to severance pay equivalent to two months' remuneration at the time of termination. If the President has been in office for less than three years, then the prohibition outlined under Paragraph (8) shall be applicable for six months after the termination of the President's mandate, and in this case the President shall be entitled to severance pay equivalent to one month's remuneration.

(4) The Vice-President's mandate shall be terminated, if

a) he/she resigns;

b) he/she dies;

c) he/she is dismissed by the President pursuant to Paragraph (5);

d) he/she is removed by the President pursuant to Paragraph (6);

e) based on the mutual agreement of the President and the Vice-President.

(5) The President shall dismiss the Vice-President, if

a) he/she fails to eliminate the conflict of interest as outlined in Article 118 (1) within thirty days of the date of appointment or the emergence of the ground for the conflict of interest;

b) if as a result of criminal proceedings instituted against the Vice-President, the Vice-President is pronounced guilty in a final judgement of the court sentencing the Vice-President to imprisonment, or barring him/her from exercising an occupation aligned with his/her activities as Vice-President.

(6) The President may also terminate the Vice-President's mandate by removal. No justification for the removal shall be required.

(7) In case the Vice-President's mandate is terminated pursuant to Paragraph (4) (a) or (d), the Vice-President shall be eligible to severance pay equivalent to two months' remuneration at the time of termination. If the Vice-President has been in office for less than three years, then the prohibition outlined under Paragraph (8) shall be applicable for six months after the termination of the Vice-President's mandate, and in this case the Vice-President shall be entitled to severance pay equivalent to one month's remuneration.

(8) For one year after the termination of their mandate, the President and the Vice-President

a) may not be engaged in any form of employment or other work-related relationship with a business association;

b) may not establish regular business relationship in the capacity of executive officer or company owner with a business association; and

c) may not acquire an ownership share in a business association;

the rights or lawful interests of which were affected by his/her decisions while serving as President or Vice-President.

(9) With regard to the employment related prohibition affecting the operational sector set forth in Paragraph (8), the President and the Vice-President, upon termination of their mandate, shall be entitled to a compensation, the rate of which shall be the sum of the previous 12 months' net – that is reduced by personal income tax – salary paid by the Authority. The compensation shall be paid from the budget of the Authority. The flat rate compensation determined this way shall be tax-free in the context of compensating for damage. The same provision shall be applicable in relation to the prohibition laid down in Article 129 (9) which is applicable upon the termination of the mandate of the President and members of the Media Council.

(10) If the mandate of the Vice-President is terminated under Paragraph (4) (d), the provisions applicable upon the withdrawal of the executive mandate during the public service relationship shall be applied to the termination of the mandate.

Office of the National Media and Infocommunications Authority

Article 114 (1) The Office shall be headed by the Director General appointed by the President for an indefinite period.

(2) From the powers defined in Article 110, the Office shall exercise powers that are conferred upon the Office by separate legislation, furthermore it shall fulfil its functions conferred upon it by laws or by the President under the framework of this Act and other legislation.

(3) The Office shall provide the President, the Vice-Presidents, the Media Council, and members of the Media Council with professional assistance for the performance of their duties.

(4) KFGH shall be headed by a Director appointed by the President for an indefinite period based on the recommendation of the Director General, in relation to whom the employer's rights shall be exercised by the Director General, with the exception of appointment, dismissal and removal. The provisions under Article 117 pertaining to the Deputy Director General shall be applied to the conditions of appointment, dismissal and removal of the Director of KFGH.

(5) KFGH shall proceed in relation to non-civilian spectrum management in matters defined in separate legislation.

The Director General and Deputy Director General of the National Media and Infocommunications Authority

Article 115 (1) The Director General shall be appointed by the President.

(2) The provisions of Article 111 (4) shall be applicable to the appointment of the Director General, as appropriate.

(3) The Director General shall be entitled to the remuneration and allowances of State Secretaries.

(4) The Director General may not be instructed with respect to his/her first-instance powers in regulatory decision-making.

(5) The mandate of the Director General shall be terminated, if

a) he/she resigns;

b) he/she dies;

c) he/she is dismissed by the President pursuant to Paragraph (6);

d) he/she is removed by the President pursuant to Paragraph (7);

e) based on the mutual agreement of the President and the Director General.

(6) The President shall dismiss the Director General, if

a) he/she fails to eliminate the conflict of interest as outlined in Article 118 (1) within thirty days of the date of appointment or the emergence of the ground for the conflict of interest;

b) if as a result of criminal proceedings instituted against the Director General, the Director General is pronounced guilty in a final judgement of the court sentencing the Director General to imprisonment, or barring him/her from exercising an occupation aligned with his/her activities as Director General.

(7) The President may also terminate the Director General's mandate by removal. No justification for the removal shall be required.

(8) For a period of one year following the termination of his/her mandate, the Director General

a) may not be engaged in any form of employment or other work-related relationship with a business association;

b) may not establish regular business relationship in the capacity of executive officer or company owner with a business association; and

c) may not acquire an ownership share in a business association;

the rights or lawful interests of which were affected by his/her decisions while serving as Director General.

(9) In case the Director General's mandate is terminated pursuant to Paragraph (5) (a) or (d), the Director General shall be eligible to severance pay equivalent to two months' remuneration at the time of termination. If the Director General has been in office for less than three years, then the prohibition outlined under Paragraph (8) shall be applicable for six months after the termination of the Director General's mandate, and in this case the Director General shall be entitled to severance pay equivalent to one month's remuneration.

(10) The provisions of Article 112 (5) shall be applicable to the Director General, and the powers defined in Article 112 (6) shall be exercised in respect of the Director General by the President.

Article 116 Responsibilities of the Director General shall include the following:

a) perform the organisational and professional leadership of the Office, with the exception of the organisational units subordinated directly to the President, and act as the President's deputy in respect of the management of the Office;

b) exercise the powers conferred upon the Director General by separate legislation from those defined in Article 110;

c) ensure the efficient operation of the Authority's organisation;

d) make recommendations to the President for the appointment, dismissal and removal of Deputy Directors General, exercise employer's rights in relation to his/her Deputies and the employees of the Office, with the exception of organisational units subordinated directly to the President;

e) ensure the publication of information defined in this Act;

f) attend meetings of the Media Council with consultative powers on the basis of the invitation from the President of the Media Council;

g) ensure that the Office provides professional assistance to the extent and in the manner as defined by the President – in case of the Media Council and the members thereof, as the President of the Media Council – to the President, the Vice-Presidents, the Media Council and members of the Media Council as necessary for the performance of their duties;

h) fulfil the duties and exercise the powers conferred upon him/her by law or by the President – as the President of the Authority and as the President of the Media Council – within the scope of this Act.

Article 117 (1) Upon the Director General's proposal the President shall be entitled to appoint Deputy Directors General. The number of Deputy Directors General and the scope of their responsibilities shall be defined in the By-laws of the Authority.

(2) The person who can be elected at the election of Members of Parliament, has a clean criminal record, is not banned from exercising an occupation aligned with his/her activities, possesses a higher education degree and at least three years of work experience in programme distribution, media services, regulatory supervision of the media services, electronic communications, or in economics, social science, law, technology or management (including membership of management bodies) or in administration with a focus on the regulatory supervision of communications, can be appointed as Deputy Director General.

(3) The Deputy Director General is entitled to the remuneration and allowances of State Secretaries.

(4) The provisions of Article 115 (5)-(10) pertaining to the Director General shall be also applicable to the Deputy Director General.

Conflict of Interests Rules

Article 118 (1) The following persons shall not be eligible for the position of President, Vice-President, Director General and Deputy Director General:

a) the President of the Republic, the Prime Minister, members of the Government, State Secretaries, the State Secretary for Public Administration, Deputy State Secretaries, the Mayor of Budapest, the Deputy Mayor of Budapest, Mayors, Deputy Mayors, chairpersons of county-level general assemblies and their deputies, Members of Parliament, Members of the European Parliament;

b) the Chairperson and members of the Board of Trustees of the Public Foundation for Public Service Media and of the Public Service Board, the CEO and Deputy CEO of the Fund, the Chairperson, Deputy Chairperson or members of the National Council for Communications and Information Technology, the CEOs of public service media providers and the Chairperson and members of the Supervisory Board thereof, members of the Media Council, the President of the Media Council with the exception of the President of the Authority, and persons engaged in any other work-related relationship with any of the foregoing organisations;

c) local or county-level municipal representatives, government officials, officials of the national or local organisations of political parties, and persons engaged in any work-related relationship with political parties;

d) executive officers, management board members, supervisory board members of communications or media service providers, media service distributors, advertising agencies, press publishing and newspaper distribution companies;

e) persons engaged in any form of employment or other work-related relationship with a communications or media service provider, programme distributor, media service distributor, advertising agency, press publishing and newspaper distribution company;

f) persons holding direct or indirect ownership share in an undertaking providing communications or media services, pursuing programme distribution, media service distribution, press publishing, advertising agency or newspaper distribution activities;

g) direct and indirect owners of business associations – in case of public limited company, with an ownership share of more than five percent – and persons engaged in any work-related relationship with the such companies, which are involved with the organisations defined in Point (d) under an agency or service agreement;

h) the close relatives of the persons under Points (a)-(b) and (d).

(2) For the purposes of Paragraph (1) (e), other work-related relationships entailing scientific work, the publication of scientific results and the dissemination of scientific information shall not be regarded as grounds for conflict of interest.

(3) The President, the Vice-President, the Director General and Deputy Director General may not be engaged in party politics or make representations on behalf of political parties.

Report of the President of the National Media and Infocommunications Authority

Article 119 (1) By 31 May of each year, the President of the Authority shall submit a report to the Parliament to give account of the activities of the Authority during the previous year. In this report the President shall:

a) evaluate the functioning and development of the electronic communications market;

b) evaluate the decisions adopted in protection of the interests of providers and users of electronic communications services, as well as measures taken in the electronic communications sector to promote the development and maintenance of fair and effective competition;

c) provide information on the supervision of compliance by entities and individuals engaged in electronic communications with applicable legislation; and

d) evaluate the consequences of its management of state-owned limited resources.

(2) The report shall be published both in printed format and on the websites of the Authority and of the Ministry overseen by the Minister responsible for electronic communications.

The National Council for Communications and Information Technology

Article 120 (1) The National Council for Communications and Information Technology (hereinafter as: NHIT) is a counselling and advisory body to the Government on information technology and communications related matters.

(2) The NHIT shall consist of five members. The Chairperson and Deputy Chairperson of NHIT shall be appointed and dismissed by the Prime Minister.

(3) Members of the NHIT – including its Chairperson and Deputy Chairperson – shall be appointed from persons having at least five years of experience in the field of communications or information technology.

(4) Of all NHIT members

a) two members shall be delegated by the Media Council; and

b) one member shall be delegated by the Hungarian Academy of Sciences.

(5) The NHIT shall be solely subject laws and its members may not be instructed with respect to their activities.

(6) The Chairperson and Deputy Chairperson as well as members of the NHIT shall be mandated for four years.

(7) Vacant seats shall be filled by the authorized organisation or person within thirty days.

(8) Government officials and civil servants too are eligible for the position of NHIT's Chairperson, Deputy Chairperson or member.

(9) The remuneration of the Chairperson of NHIT shall be equal to sixty-five percent of the remuneration of State Secretaries, the remuneration of the Deputy Chairperson of NHIT shall be equal to sixty percent of the remuneration of State Secretaries, and the remuneration of the members of the NHIT shall be equal to fifty-five percent of the

remuneration of State Secretaries during the period between their appointment and the termination of their mandate, and the Chairperson, Deputy Chairperson and members shall also be entitled to a reimbursement of expenses.

Article 121 (1) On the field of information technology, communications and the media related matters, the NHIT shall provide its opinion to the Government on

a) the program for building an information society and strategic decisions concerning the promotion of information culture and information society;

b) setting directions for research and development;

c) decisions targeting dissemination of social attitudes and culture; and

d) developing the regulatory framework of the communications market, fostering equal opportunities for market players;

e) ensuring the harmonisation of government and civil spectrum management;

f) the Hungarian position to be represented at international conferences concerning radio communications; and

g) strategic submissions for regulating the infrastructure of the information society, and decisions concerning the program for building an information society.

(2) The NHIT shall provide the Government its opinion on:

a) the drafts of Government and Ministerial decrees;

b) all submissions, ad hoc decisions and draft legislation on communications and information technology, upon request from the Government, the Prime Minister, the Minister responsible for electronic communications, or the Minister responsible for information technology;

c) strategic submissions for regulating the infrastructure of the information society, and the program for building an information society;

in relation to which any submission may be presented to the Government after obtaining the comments by the NHIT and with the opinion of the NHIT only.

(3) The Chairperson of the NHIT shall participate with consultative powers in state executive meetings preceding Government meetings and, by invitation, on Government meetings discussing submissions mentioned in Paragraphs (1)-(2).

(4) The Chairperson of the NHIT may invite with consultative power the representatives of organizations interested in the utilisation of examined frequency bands and services provided thereon.

(5) In line with the Government program on the field of information technology, communications, and media, the NHIT, in relation to the topics mentioned in Paragraphs (1)-(2), may make independent recommendations and initiatives toward the Government, and toward bodies, other organizations controlled or supervised by the Government or a Minister, in order to increase the efficiency of the performance of the public functions concerning such topics. The head of the body or organization shall notify the Chairperson of the NHIT about its comments on the independent recommendation or initiative within 30 days.

(6) Upon invitation by the Government or the Prime Minister, the NHIT shall, on the basis of communication, IT scientific, practicality, and economic considerations, examine the EU and other tenders of bodies and other organization controlled by the Government

or a Minister and the implementation of such tenders, and their other projects and procurements as well, in the field of communications and information technology. The opinion of NHIT prepared upon completion of the examination shall be sent to the Prime Minister. On the basis of the examination, the NHIT may also submit independent recommendations and initiatives under Paragraph (5). The bodies and other organizations controlled or supervised by the Government or a Minister shall cooperate with NHIT in the course of completing the examination.

(7) NHIT shall have quorum when more than half of its members are present, and at least the Chairperson or Deputy Chairperson is also present. With the exception of decisions regarding conflicts of interest, the NHIT shall adopt its decisions by majority voting, and in case of parity of votes, the vote of the Chairperson shall decide.

(8) NHIT shall establish its own operational rules.

(9) The resources needed for the operations of the NHIT shall be ensured from the budget of the Authority. These resources may not be reallocated for any other purpose.

(10) The financial operation of the NHIT shall be audited by the State Audit Office. The NHIT shall report on the fulfilment of its duties to the relevant Committee of the Parliament on an annual basis.

Article 122 (1) The NHIT's Office (hereinafter as: NHIT Office) shall be an organizational unit of the Authority, the head of which shall be entitled to use the title of head of office.

(2) The NHIT Office shall perform tasks related to the operations of the NHIT, and shall perform the necessary administrative activities in relation thereto.

(3) The Policy of Functions and Competences of the NHIT Office shall be approved by the President of the Authority, with the consent of Chairperson of the NHIT.

(4) The administrative activities of the NHIT Office shall be overseen by the head of the NHIT Office, in accordance with decisions of the NHIT and with the instructions of the Chairperson of the NHIT.

(5) Based on Article 121 (1)-(2), the NHIT Office shall prepare for the NHIT preparatory documents for negotiating and decision-making concerning the opinion to be provided by the NHIT to the Government or the Prime Minister.

(6) The Chairperson of the NHIT shall directly control the professional activities of the Office to be carried out in relation to drafting preparatory documents for negotiating and decision-making associated with the tasks defined in Article 121 (1)-(2).

(7) Of employer's rights pertaining to the head of the NHIT Office, the right of appointment and terminating the public service relationship shall be exercised by the President of the Authority based on the proposal of the Chairperson of the NHIT; in all other respects, the employer's rights shall be exercised by the Chairperson of the NHIT.

Chapter II

THE MEDIA COUNCIL OF THE NATIONAL MEDIA AND INFOCOMMUNICATIONS AUTHORITY

Legal Status and Organisation of the Media Council

Article 123 (1) The Media Council shall be a body of the Authority with independent powers under the supervision of the Parliament and having legal personality. The Media Council shall be the legal successor of the National Radio and Television Commission.

(2) The Media Council and its members shall be solely subject to laws and may not be instructed with respect to their activities.

(3) The registered office of the Media Council shall be in Budapest.

(4) The Office shall be the administrative unit of the Media Council.

(5) On the basis of a mandate given through the Office, the Media Council and its members may also employ external experts.

Electing the Media Council

Article 124 (1) The President and the four members of the Media Council shall be elected by the Parliament – with the two-thirds majority of the votes of Members of Parliament present – for a period of nine years by simultaneous voting by list, except if the mandate of the President is terminated for any of the reasons specified under Points *b)-e)* of Paragraph (1) of Article 113, or if the mandate of the member is terminated for any of the reasons specified under Points *b)-f)* of Paragraph (1) of Article 129. In the latter case, the Parliament shall vote separately regarding the president or member candidate.

(2) The person who can be elected at the election of Members of Parliament, has a clean criminal record, is not banned from exercising an occupation aligned with his/her activities, possesses a higher education degree and at least three years of work experience in media service distribution, media services, regulatory supervision of the media services, electronic communications, or in economics, social science, law, technology or management (including membership of management bodies) or in administration with a focus on the regulatory supervision of communications, can be appointed as President or member of the Media Council.

(3) Media Council members shall be nominated

a) not earlier than sixty and not later than thirty days before the expiry of the mandate of members,

b) with the exception of cases outlined in Point (a), within thirty days from gaining knowledge of the termination of a mandate,

by the unanimous vote of an ad hoc committee consisting of one member of each parliamentary faction (hereinafter as: nominating committee).

(4) In each voting round, members of the nominating committee shall have a number of votes corresponding to the headcount of the parliamentary faction they were appointed by.

(5) The parliamentary decision instituting the nominating committee shall specify the time period available for the parliamentary factions to appoint members to the nominating committee. The nomination process may commence even if a faction fails to appoint a member to the nominating committee within the deadline set by the parliamentary decision.

(6) If, in the case outlined under Paragraph (3) (a), the nominating committee fails to nominate four members within the stated deadline, the nominating committee may propose a candidate in the second round of nomination with at least a two-thirds majority of votes.

(7) If, in the case outlined under Paragraph (3) (a), the nominating committee fails to nominate four members within eight days in the second nomination round, its mandate shall be terminated and a new nominating committee shall be set up.

(8) If, in the case outlined under Paragraph (3) (b), the nominating committee fails to nominate a member within the deadline stated therein, the nominating committee may propose a candidate with at least a two-thirds majority of votes.

(9) If, in the case outlined under Paragraph (3) (b), the nominating committee fails to nominate four members within eight days in the second nomination round, its mandate shall be terminated and a new nominating committee shall be set up.

Article 125 (1) The President of the Authority appointed by the Prime Minister shall become a candidate for the President of the Media Council by virtue and from the moment of appointment.

(2) The President and members of the Media Council shall take office upon being elected or – if elected before the termination of the mandate of the predecessor – upon the termination of the mandate of the predecessor.

(3) If the mandate of the President of the Authority is terminated pursuant to Points *b)-d)* of Paragraph (1) of Article 113, his/her mandate as President of the Media Council shall be terminated simultaneously as well. In the event that the mandate of the President of the Authority expires the provisions of Article 216 (8) shall be applied. The new President of the Authority appointed by the Prime Minister shall become a candidate for the President of the Media Council by the fact and from the moment of appointment. His/her election shall be decided upon by two-thirds of the Members of Parliament present, with a vote by list or with a separate vote in line with Article 124 (1).

(4) [not in effect]

(5) The members and President of the Media Council may be re-elected, provided that their mandates have been terminated for reasons other than conflict of interest, dismissal or exclusion.

(6) The mandate of a new member shall be for the period remaining from the mandate of previously elected members of the Media Council.

(7) The duration of the mandate of the President of the Media Council corresponds to the duration of the mandate of the President of the Authority, except for the case specified under Article 216 (8).

Article 126 (1) Once elected, members of the Media Council shall promptly verify to the President of the Media Council, by presenting an official certificate, that they have a clean criminal record and are not barred from exercising an occupation aligned with their activities as members of the Media Council.

(2) The President of the Media Council shall handle the personal data of Media Council members that were disclosed to him/her pursuant to Paragraph (1) until the termination of their respective mandates and may call upon members at any time to verify the data under Paragraph (1).

(3) Provisions of Paragraphs (1)-(2) shall apply to the President of the Media Council, with the deviation that the verification obligation of the President of the Media Council defined under Paragraph (1) shall be performed toward the Media Council, whereas the right defined under Paragraph (2) shall be exercised by the Media Council. The President of the Media Council shall not be involved in exercising the power of the Media Council defined in this Paragraph.

Conflict of Interests Rules

Article 127 (1) The conflict of interest rules defined in Article 118 (1) with respect to the President and members of the Media Council, the President and Vice-President of the Authority, and the Director General and Deputy Director General, as well as the grounds for exclusion defined in Article 118 (3) shall be applied as appropriate.

(2) With respect to members of the Media Council, employment relationships and other work-related relationship entered into with publishers or founders of press products for the performance of scientific activities, the publication of scientific results and the dissemination of scientific information shall not constitute a conflict of interests.

The Duties of Members of the Media Council

Article 128 (1) Members of the Media Council shall keep all and any classified data and business secrets disclosed to them in relation to the fulfilment of their duties.

(2) The President and member of the Media Council shall take an oath according to the provisions of the Act on the Oath and Pledge of Certain Public Law Officials.

(3) Members of the Media Council shall make an asset declaration in accordance with the rules applicable to Members of Parliament, in the first instance within thirty days upon being elected. Such asset declarations shall be handled, registered and controlled in accordance with rules pertaining to the handling, registration and control of the asset declarations of Members of Parliament.

Termination of the Mandate of Members of the Media Council

Article 129 (1) The mandate of the Media Council member shall be terminated upon
a) the expiry of the Media Council's term of mandate;
b) his/her resignation;
c) the establishment of a conflict of interest;
d) his/her dismissal;
e) his/her exclusion;
f) the member's death.

(2) The mandate of the President or a member of the Media Council shall be terminated on the ground for conflict of interests, if such a ground for conflict of interests arises in relation to the President or member, or if the President or member refuses or fails to fulfil his/her obligations of making an asset declaration, or if his/her asset declaration contains misrepresentations of important data or facts, or if he/she fails to meet the verification obligation under Article 126 (1) for reasons attributable to him/her.

(3) If a ground for conflict of interests is established in relation to the President or a member of the Media Council, and if the ground for conflict of interests is not eliminated within thirty days of the conflict of interests taking effect or the date of the meeting establishing the conflict of interests, the plenary session of the Media Council shall establish, by way of a decision, the termination of the Media Council membership of the President or member. Once the decision establishing the conflict of interest is adopted, the President or member of the Media Council may no longer exercise his/her powers associated with his/her position.

(4) Termination of the mandate of a member of the Media Council shall be established and announced by the President of the Media Council in case of Paragraph (1) (b) and (f), and by the plenary session of the Media Council in case of Paragraph (1) (c), (d) and (e). Termination of the mandate of the President of the Media Council shall be established and announced by the plenary session of the Media Council.

(5) The mandate shall be terminated by dismissal, if the President or member of the Media Council is placed under guardianship affecting his/her legal capacity.

(6) The mandate shall be terminated by exclusion, if

a) the President or a member of the Media Council fails to meet his/her responsibilities arising from the position for more than six months for reasons attributable to him/her,

b) as a result of criminal proceedings instituted against the President or member of the Media Council, the President or member is pronounced guilty in a final judgement of the court sentencing the President or member to imprisonment, or barring him/her from exercising an occupation aligned with his/her activities.

(7) If the session of the Media Council decides on a conflict of interests, dismissal or exclusion, the President or member affected may not take part in the voting process, and the unanimous decision of those entitled to vote is required in such matters. If unanimous decision is not reached on the subject matter even in a repeated voting procedure, the President of the Media Council shall recommend to the Parliament to decide on the

matter. In such cases, the Parliament shall adopt a decision on the conflict of interests, dismissal or exclusion with a two-thirds majority of the Members of Parliament attending.

(8) If the proceedings outlined under Paragraphs (3), (6) and (7) concern the President of the Media Council, the President's powers shall be exercised by a member designated in the procedural rules.

(9) For one year after the termination of their mandate, the President or member of the Media Council

a) may not be engaged in any form of employment or other work-related relationship with a business association;

b) may not establish regular business relationship in the capacity of executive officer or company owner with a business association; and

c) may not acquire an ownership share in a business association;

the rights or lawful interests of which were affected by his/her decisions while serving as President or member of the Media Council.

(10) If the mandate is terminated pursuant to Paragraph (1) (a) or (b), the President or member of the Media Council shall be eligible to severance pay equivalent to two months' remuneration at the time of termination. If the President or member has been in office for less than three years, the prohibition outlined under Paragraph (9) shall be applicable for six months from the termination of the mandate, and in this case the President or member shall be entitled to severance pay totalling one month's remuneration.

Remuneration of the Members of the Media Council

Article 130 (1) The President of the Media Council shall be entitled to a remuneration equal to sixty percent of the remuneration of Ministers and to the reimbursement of expenses.

(2) Members of the Media Council shall be entitled to a remuneration equal to seventy-five percent of the remuneration of State Secretaries and to the reimbursement of expenses.

Operation of the Media Council

Article 131 (1) The Media Council shall set its own rules of procedure, which shall be published in the Hungarian Gazette.

(2) If the President of the Media Council is unable to attend a meeting of the Media Council due to being detained elsewhere or if the Media Council does not have an elected President, the powers and responsibilities of the President and representation of the Media Council shall be performed by the members of the Media Council in turn, in the way defined in the procedural rules. The member performing the tasks of the President may participate in voting.

Responsibilities of the Media Council

Article 132 In accordance with Articles 182-184 the Media Council shall:

a) oversee and guarantee the freedom of the press under this Act and the Press Freedom Act;

b) ensure the performance of tasks related to the tendering and contract awarding procedure for media service provision rights using state-owned limited resources made available for media services;

c) perform the supervisory and control tasks prescribed by this Act – by recording programme flows or programmes or examining the programme flows recorded by the media service provider, or by making official requests;

d) operate a programme flow monitoring and analysis service through the Office;

e) express its opinion regarding draft legislation on media and communications;

f) review regularly compliance with public contracts concluded with it;

g) elaborate official positions and proposals with respect to the theoretical aspects of developing the Hungarian system of media services;

h) initiate proceedings with respect to consumer protection and the prohibition of unfair market practices;

i) prepare a report to the European Commission on the fulfilment of obligations with regard to programme quotas;

j) be entitled to initiate amendments to this Act as may be necessary vis-à-vis the Minister responsible for audiovisual policy;

k) undertake a pioneering role in developing media literacy and media awareness in Hungary and, in this context, coordinate the activities of other state actors in the area of media literacy, assist the Government in drafting its upcoming interim report to the European Union on the subject matter;

l) perform other tasks defined by this Act and by other legislation issued under the authorization of this Act.

The Report of the Media Council

Article 133 (1) By 31 May of each year, the Media Council shall submit a report to the Parliament to give account of its activities for the previous year. In this report it shall evaluate:

a) the state of the freedom of speech, expression and the press, as well as balanced information provision;

b) changes in the ownership status of media service providers and media service distributors;

c) the status of spectrum management serving to satisfy needs for media services;

d) the economic situation and changes in the financial conditions of media services.

(2) The report shall be published both in printed format and on the websites of the Authority and the Ministry overseen by the Minister responsible for audiovisual policy.

Financial Management of the Authority and the Media Council

Article 134 (1) The Authority shall manage its finances in accordance with the legislation applicable to the financial management of budgetary entities as appropriate, shall be entitled to manage state assets under statutory provisions applicable to central budgetary entities, it shall cover costs incurred in connection with the fulfilment of its duties from its own revenues and from central budget funding, and its accounts shall be managed by the Hungarian State Treasury. Every year, the Authority may set aside a reserve from its own revenues defined under Paragraph (4) – with the exception of fines – up to twenty-five percent of its effective revenue for the subject year. The reserve thus generated may be used in subsequent years to finance the Authority's operations and the fulfilment of its duties but may not be allocated for any other purpose.

(2) The consolidated budget of the Authority shall be approved by the Parliament in the form of separate legislation in accordance with the provisions of this Act, relying on resources specified under Paragraph (4), and Article 136 (3), which legislation shall also regulate the utilisation of residual amounts, if any, that may have been generated in the Authority's budget for the previous year – with the exception of reserves referred to under Paragraph (1) and residual amounts upon which a commitment had been established by 31 December of the same fiscal year when they were generated. Residual amounts earmarked by way of a commitment by 31 December of the same fiscal year when they were generated may be used in accordance with the terms set out in the legal statement serving as the basis for the commitment. The President shall be entitled to make reallocations between target expenditures stated in the already approved consolidated budget, with the provision that the authorisation of the Media Council shall be obtained for reallocations affecting the budget of the Media Council. Within the consolidated budget of the Authority, the Media Council shall enjoy financial independence as described in Article 135.

(3) The Parliament's budgetary committee shall submit to the Parliament the draft law comprising the Authority's consolidated budget by 31 October of the year preceding the subject year – based on the proposal sent by the President by 15 September, which includes the draft budget of the Media Council as approved by the Media Council. The Authority and the Media Council shall operate on the basis of their previously approved budget until the new budget is approved.

(4) The Authority's own revenue shall comprise frequency charges, fees received for the booking and use of identifiers as well as for regulatory procedures; it shall also include supervisory fees, which shall be used to ensure the efficient and highly professional operation of the Authority. Statements indicating the inflow and utilisation of own revenue, and the utilisation of central budget funding shall be published by the Authority on its website every year.

(5) The amount of frequency charges and fees payable for the booking and use of identifiers shall be regulated by the President of the National Media and Infocommunications Authority in a decree. Portions of frequency charges, that were not used by the Authority for operating purposes – under the Act defined under Paragraph (2)

– or were not used to generate reserves as outlined under Paragraph (1), shall be paid into the Fund as instructed by the President. The President shall designate in his/her instructions the public purpose for which, and the manner, in which the amount paid into the Fund in accordance with this Paragraph may be used. Any amount transferred pursuant to this Paragraph may be used by the Fund strictly as instructed and for the purpose designated by the President. The CEO of the Fund may, in the course of utilising such amounts, request the President to amend the ordained purpose of use or utilisation rules, if necessitated by public interests. The President may reject or approve either wholly or partially the request of the CEO of the Fund, or may specify a new purpose of public interest or new utilisation rules. If the amount transferred is used by the Fund in violation of the instructions of the President, the Fund, upon notice by the President, shall reimburse the corresponding amount to the Authority without delay. The Authority shall generate reserves from such refunds, which, based on the President's decision, may be used to subsidise the Fund by designating a new purpose in the public interest, or may be used – wholly or partially – directly for a public purpose linked to communications and related markets, or for improving the living standards of consumers. With the exception of subsidies financed from reserves, the Authority shall complete such payments by 31 March of the year following the subject year. Parts of frequency charges earmarked by the President by 31 December of the subject year for payment into the Fund, and the reserves generated in accordance with this Paragraph – also in view of the provisions of Paragraphs (2) and (12) – shall not be deemed as effective residual amounts.

(6) A supervisory fee shall be paid by electronic communications service providers to cover the costs incurred in connection with the communications regulatory activity of the Authority, and by postal service providers to cover the costs incurred in connection with the postal supervisory activities. This fee shall be maximum 0.35 percent of net sales revenue generated by the electronic communications services of the electronic communications service provider in the course of the previous business year, and maximum 0.2 percent of net sales revenues generated by the postal services of the postal service provider in the course of the previous business year, or – in the absence of sales revenue from the previous year – a prorated part of sales revenue for the subject year projected for the entire year. The amount of the supervisory fee shall be defined every year by the President of the National Media and Infocommunications Authority in a decree within the limitations permitted by law.

(7) The supervisory fee shall be paid to the Authority on a quarterly basis, by the end of every quarter.

(8) If the Authority's supervisory revenues as defined by this Act exceed the amount of costs incurred in a budgetary year in connection with the performance of its statutory responsibilities, any surplus amount shall be credited, once the Authority's annual report was adopted, in the form of supervisory fees payable during the year following the subject year, in proportion of supervisory fees paid during the subject year and up to their amount.

(9) The Authority shall use the entire amount of fines collected during the previous year from actors of the communications and media market for developing the informed

decision-making culture of consumers in the area of communications and the media, including particularly for supporting academic and training programmes concerning communications and media law, competition and consumer protection policy, for training professionals specialising in communications and media law and consumer protection policy, and disseminating information in order to increase awareness concerning communications and media policy and consumer decision-making. Any amount earmarked for this purpose but not used in the subject year may be rolled over to the following year, and may be spent on developing the informed decision-making culture of consumers.

(10) The Parliament shall make its decision about implementing the separate legislation referred under Paragraph (2) by adopting the draft law of final accounts as proposed in accordance with the procedure outlined under Paragraph (2), including the annex referred to in Article 136 (15). The deadline for the submission of this Final Accounts Act shall be 31 May of every year.

(11) [not in effect]

(12) For the purposes of Paragraph (2), any legal statement made in accordance with the internal policies of the Authority and of the Fund and giving rise to a payment obligation to be financed from the consolidated budget in accordance with separate legislation as specified under Paragraph (2) shall be considered a commitment.

(13) The fees and administrative service fees payable to the Authority and imposed in any piece of legislation issued under the authorization granted in this Act or in a decision of the Authority, as well as the fines imposed under this Act shall qualify as public debts to be collected as taxes.

Article 135 (1) The Media Council shall manage its finances in accordance with statutory regulations pertaining to the financial management of budgetary entities, and its accounts shall be managed by the Hungarian State Treasury.

(2) The budget of the Media Council shall be approved by the Parliament – in the Act on the budget of the Authority – as part of the consolidated budget of the Authority as a separate item thereof, to be financed from the amount that may be used to cover the operating costs of the Media Council from the Fund's resources defined in Article 136 (3) of this Act. The Media Council may re-allocate sums between target expenditure headings within its already approved budget.

Media Service Support and Asset Management Fund

Article 136 (1) The Fund shall be a separated asset management and monetary fund responsible for promoting the structural transformation of public media services, the Public Service Foundation, community media services and public media service providers, for the production and support of public service programmes, supporting contemporary musical works and cinematographic works intended to open at cinemas, for the careful management and expansion of the Archive and of other assets, as well as for promoting and implementing other activities related to the foregoing.

(2) Assets held by the Fund may be used strictly for the purposes specified in this Act.

(3) The Fund's revenues shall consist, in particular, of the following: media service provision fees, tender fees, default penalty and compensation levied for the breach of broadcasting agreement, fines, public service contributions, surplus frequency fee amounts transferred by the Authority to the Fund pursuant to Article 134 (5), support paid by media service providers providing linear audiovisual media services based on Paragraph (8), target subsidies from the central budget, proceeds from the disposal of assets and from business activities, interest received and voluntary payments received.

(4) Every year the Hungarian State shall pay a public service contribution based on the number of households using equipment suitable for receiving linear audiovisual media services. The amount of this public service contribution shall be defined in Annex no. 4 of this Act. The public service contribution shall be paid by the State in twelve equal instalments, always in advance by the third day of every month, by transfer to the Fund's bank account. With the consent of the Media Council, the Fund shall be entitled to assign its revenues received from public service contributions.

(5) Acting on behalf of the Hungarian State, the Minister responsible for audiovisual policy may enter into agreement with the Fund for a maximum period of seven years on the payment of the public service contribution. The separate authorisation from the Parliament prescribed by the Public Finances Act shall not be required for the conclusion of this agreement.

(6) The Fund shall be a legal person and an economic organization, and shall be managed by the Media Council. The Fund shall be the legal successor of the Broadcasting Fund and of the Broadcasting Support and Asset Management Fund.

(7) The Fund must have a payment account with the Hungarian State Treasury, however, in addition to its payment account, it shall have the right to have other payment accounts at any credit institutions.

(8) Media service providers with significant market power, providing linear audiovisual media services shall use two and a half percent of their annual advertising revenues on supporting new Hungarian cinematographic works. This obligation may be performed either by paying the relevant amount to the Fund, or by providing financial support for new cinematographic works specified in an agreement concluded by and between the Fund and the media service provider. The media service provider may deduct this amount paid or used as support from its corporate tax base.

(9) Voluntary payments made into the Fund shall qualify as public service commitment. If the voluntary payment into the Fund is based on a commitment undertaken in a public contract made with the Authority or the Media Council or an agreement made with the Media and Communications Commissioner, the voluntary payment shall used in accordance with the provisions of such agreements.

(10) The Fund's support and subsidy policy, business plan and annual report shall be adopted by the Media Council. The Media Council's prior consent shall be obtained before the Fund's financial resources and the assets in the accounts can be used for any purpose not stated in the Fund's support and subsidy policy or business plan, and for

undertaking commitments to be financed from the foregoing, or for making payments that exceed the threshold amount defined by the Media Council.

(11) The CEO shall be entitled to represent the Fund. All employer's rights vis-à-vis the Fund's CEO – including his/her appointment, determining his/her salary and allowances, and termination of his/her employment by the employer – shall be exercised by the President of the Media Council.

(12) The CEO shall make a proposal to the President of the Media Council for the appointment of the Fund's Deputy CEOs as well as for termination of their employment, who shall decide about the appointment, wage and allowances, and termination by the employer. In other respects the CEO shall exercise the employer's rights in relation to Deputy CEOs.

(13) The rules of conflicts of interests defined in Article 118 (1)-(2) pertaining to the President and Vice-President, as well as the Director General and Deputy Director General of the Authority, and the rules of exclusion defined in Article 118 (3) shall be applicable to the CEO and Deputy CEO of the Fund as appropriate.

(14) The Chairperson and four members of the Fund's Supervisory Board shall be appointed and removed by the President of the Media Council. Their remuneration shall be established by the President of the Media Council.

(15) The Fund's annual budget shall be approved by the Parliament as an annex to the separate legislation referred to in Article 134 (2).

(16) The detailed rules of managing the Fund shall be defined by the Media Council.

(17) Under Parliamentary Decision No. 109/2010 (X. 28.) OGY, the entirety of the ownership rights and obligations (asset management rights) concerning the assets transferred to the ownership of the Hungarian State shall be exercised by the Fund. Exercising the ownership rights and obligations by the Fund concerning the assets transferred under the management of the Fund and other assets acquired by the Fund in relation to its economic activities, utilizing, encumbering, or otherwise managing such assets shall not fall within the scope of the Act on State Property. The detailed rules for utilizing the assets managed or owned by the Fund shall be established by the Media Council.

(18) The Fund shall be personally exempted from the payment of duties and shall not be subject to corporate tax or local tax obligations.

Article 137 (1) Support for public service programmes, community media service providers, cinematographic works intended to open at cinemas – with the exception of cinematographic works supported as defined in Article 136 (8) of this Act –, and contemporary musical works shall be provided for by way of open tendering.

(2) The general conditions of tendering elaborated by the Fund shall be approved by the Media Council.

(3) The Fund shall prepare and publish its invitation to tender based on the already approved general conditions of tendering. The method for evaluating tender bids shall be regulated among the general conditions of tendering.

(4) In order to achieve the purposes of public media services as defined in Article 83, the Fund shall provide further training for persons engaged in producing public service media content in order to promote the creation of media content of appropriate quality. The Fund shall be entitled to make the necessary training arrangements within the scope of its commercial activity.

Institute for Media Studies of the Media Council

Article 138 (1) The Institute for Media Studies of the Media Council (hereinafter as: Institute) is an independent entity of the Authority, assisting the operation of the Media Council, and pursuing independent scientific activity. The head and members of the Institute are all civil servants of the Authority.

(2) Work at the Institute is supervised by the Media Council.

(3) The Institute's tasks shall be as follows:

a) support the operation of the Media Council by way of performing research and analysis;

b) conduct social science research connected to the media;

c) publish professional materials;

d) organise professional conferences;

e) perform other tasks defined for the Institute by the Media Council.

(4) The Institute may also engage the services of external experts.

Chapter III

THE MEDIA AND COMMUNICATIONS COMMISSIONER

General rules

Article 139 (1) The Media and Communications Commissioner (hereinafter as: Commissioner) operates as part of the Authority. The Commissioner contributes to the promotion of the equitable interests of users, subscribers, viewers, listeners, consumers of electronic communications services or media services, as well as the readers of press products, regarding electronic communications, media services and press products. The Commissioner shall act in matters vested in him/her under this Act.

(2) The Commissioner shall be appointed and removed by the President, who shall also exercise the employer's powers over him/her. The Commissioner is a civil servant in the position of a Head of Division. In performing its duties specified in this Chapter, the Commissioner may not be given instructions.

(3) The provisions of Article 111 (4) shall apply *mutatis mutandis* to the Commissioner.

(4) The Commissioner is assisted in performing its duties by the Office of the Media and Communications Commissioner (hereinafter as: Commissioner's Office) headed by the Commissioner, the civil servants of the Commissioner's Office shall be appointed

and removed by the President; the employer's other powers over these civil servants shall be vested with the Commissioner.

(5) The operation, organisational structure, internal and external relations of the Commissioner's Office is defined in the By-laws of the Authority and the rules of procedure of the Commissioner's Office. The rules of procedure of the Commissioner's Office are prepared by the Commissioner and are approved by the President.

(6) The budget of the Commissioner's Office shall be determined separately within the budget of the Authority.

Article 140 (1) On detecting a conduct related to the provision of a media service, press product or electronic communications service, which conduct does not constitute a breach of a regulation on media administration or electronic communications and falls outside the scope of competence of the Media Council, the President or the Office, but is, or may be suitable to cause harm to the equitable interests of the users, subscribers, consumers, viewers, readers and listeners of media services, press products or electronic communications services,

a) the person affected by the harm to interests (for the purposes of this Chapter, hereinafter as: harm to interests) or exposed to the direct danger of such damage to interests; or

b) an association representing the interests of consumers, subscribers, users, listeners, or readers

may file a complaint with the Commissioner's Office.

(2) Requests and notifications received by the President, the Office or the Media Council that meet the conditions laid down under Paragraph (1) in terms of content and contain all the data required under Article 141 (5) shall be transferred to the Commissioner by the President, the Office or the Media Council within eight days, and the Commissioner shall adjudge such requests and notifications as complaints received by him/her. This fact, as well as the fact of the transfer shall be communicated to the requesting party or the complainant concurrently with the transfer.

(3) The Commissioner shall act pursuant to the provisions specified under Article 142 in the case of complaints concerning electronic communications services, and shall act pursuant to the provisions specified under Article 142/A in the case of complaints concerning media services or press products.

The common rules applicable to proceedings of the Commissioner

Article 141 (1) The proceedings of the Commissioner shall not be deemed as a regulatory procedure, and the Commissioner shall not have the right to exercise regulatory powers. The complaints defined in Article 140 (1) shall not be deemed as official matters. The Commissioner may apply regulatory instruments – as stipulated in Article 142 – only in case of complaints concerning electronic communications services.

(2) The Commissioner may proceed upon having received a complaint only. The Commissioner shall examine the complaint and if it is obviously unfounded or if the

harm to interests therein described is of minor importance, or if the case falls outside the Commissioner's scope of competence, he/she shall notify the complainant accordingly within fifteen days. In his/her notification, the Commissioner shall – to the necessary extent – inform the complainant of his/her rights and obligations under the legislation on electronic communications and/or media administration or under the subscription contract, as well as the course of action and means of legal remedy available for such complainant.

(3) If the Commissioner detects in the course of the conciliation procedure conducted according to Article 142 (4) or 142/A (1) that the complaint is unfounded or the harm to interests therein described is of minor importance, or if the case falls outside the Commissioner's scope of competence, he/she shall terminate the proceeding, and shall notify the complainant and the parties to the conciliation procedure accordingly within fifteen days. In his/her notification, the Commissioner shall – to the necessary extent – inform the complainant of his/her rights and obligations under the legislation on electronic communications and/or media administration or under the subscription contract, as well as the course of action and means of legal remedy available for such complainant.

(4) The complainant shall have the right to request the restricted handling of his/her personal identification data and address. In such cases, the Commissioner, with a view to ensuring the right of access to the documents, shall make an extract of the complaint in a manner which prevents the identity of the complainant from being established. Only this extract may be disclosed to third parties by the Commissioner. For the purposes of investigating the complaint, the Commissioner will handle the personal data of the complainant disclosed to the Commissioner in the course of the procedure and directly related to the complaint until the procedure on the complaint is completed. This fact shall be brought to the complainant's attention.

(5) The complaint shall contain the name, address or mailing address of the complainant, the particulars of the harm to interests that call for action by the Commissioner, or the action or conduct that suggest the harm to interests, as well as the circumstances that suggest or substantiate that the other conditions laid down in Article 140 (1) are fulfilled. In case of complaints filed with insufficient information, the Commissioner shall invite the complainant in any phase of the proceeding to rectify the deficiencies within a specified deadline. If the complainant fails to rectify the deficiencies appropriately despite of being invited to do so, the application may not be deemed as a complaint, and therefore the Commissioner shall not proceed. If the proceeding has already been launched, the Commissioner shall terminate the proceeding and shall notify the complainant and the other parties to the conciliation procedure thereof within fifteen days. In his/her notification, the Commissioner shall – to the necessary extent – inform the complainant of his/her rights and obligations under the legislation on electronic communications and/or media administration or under the subscription contract, as well as the course of action and means of legal remedy available for such complainant.

Proceeding by the Commissioner in case of complaints concerning electronic communications services

Article 142 (1) In order to investigate the harm to interests as defined in Article 140 (1) which the Commissioner has become aware of from the complaint, the Commissioner shall have the right to request data related to the harm to interests from any electronic communications service provider, by applying in the appropriate manner the measures defined in the Act on the General Rules of Administrative Proceedings and Services regarding regulatory inspections and the other measures stipulated in this Act concerning the establishment of the facts of the case. The electronic communications service provider concerned shall furnish the Commissioner with the requested data, information, documents or records (for the purposes of this Subtitle, hereinafter collectively as: data) within fifteen days, even if the particular data qualifies as a business secret. The Commissioner shall keep the business secrets revealed to him/her confidential and handle them at the request of the data supplier as a document with restricted access.

(2) The Commissioner shall complete its proceedings under this Article within the deadline laid down in Article 151. This deadline shall not include

a) the period between the date of invitation to rectify deficiencies as per Article 141 (5) and the date of such rectification,

b) the period between the date of requesting data according to Paragraph (1) and the date of the actual data provision,

c) the period of time necessary for the procedure as defined in Paragraph (3),

d) the period between the invitation to make a statement according to Paragraph (5) and the date of making such statement.

(3) If the particular electronic communications service provider fails to furnish the Commissioner with the requested data within the specified deadline, the Commissioner shall resort to the Office. The Office shall initiate verbal or written conciliation with the electronic communications service provider concerned about the necessity of such data provision and the scope of data to be provided. After such conciliation, the Office shall oblige the particular electronic communications service provider to furnish the data related to the harm to interests as specified by the Commissioner in accordance with Paragraph (1) and with the results of the completed conciliation procedure. An appropriate deadline of at least fifteen days shall be set for the provision of the particular data. The provisions of Paragraphs (5)-(7) of Article 155 shall be applied *mutatis mutandis*. The obliged electronic communications service provider may seek legal remedy with suspensive effect by requesting the judicial review of the order by the Metropolitan Court of Budapest. The Metropolitan Court of Budapest shall decide in an out-of-court proceeding within eight days, and no further legal remedies may be sought against its order. In the event the electronic communications service provider fails to furnish the Office with the requested data, or furnishes it improperly or falsely, the Office may apply the legal sanctions defined in Article 156. The Office shall provide the Commissioner with the received data.

(4) the Commissioner, in the course of his/her proceedings, will conduct verbal or written conciliation with the electronic communications service provider on the harm to interests (for the purposes of this Article, hereinafter as: conciliation procedure). The Commissioner will involve the complainant in the conciliation procedure, if the Commissioner finds it expedient and if it is requested by the complainant, and, if the matter concerns a large number of consumers, the Commissioner may also involve the representative of the association engaged in the protection of consumer interests.

(5) In the conciliation procedure the Commissioner will furnish the electronic communications service provider with the description of the harm to interests with the request to provide a statement with their response within a specific deadline of at least fifteen days.

(6) In justified cases, the Commissioner, on the basis of the written statement of the electronic communications service provider, will call the representative of the particular electronic communications service provider and/or, if needed, the complainant or the representative of the association engaged in the protection of consumer interests to attend a personal consultation.

(7) If the Commissioner and the electronic communications service provider fail to reach an agreement to remedy the harm to interests, the Commissioner shall record the results of the conciliation procedure in a report and proceed as defined under Paragraph (9). If the conciliation procedure results in an agreement, the Commissioner and the electronic communications service provider concerned shall incorporate the agreement in writing, which the Commissioner shall send to the complainant and shall post the agreement on his/her website. In the agreement the parties shall provide for the manner of remedying the harm to interests.

(8) The agreement is a concordant and voluntary legal statement of the parties, concluded between the Commissioner and the electronic communications service provider concerned whereby the contractual rights shall entitle the users, subscribers, and consumers, resorting to the electronic communications service. The agreement may not result in any obligations imposed on the users, subscribers, or consumers. The provisions of the agreement shall constitute part of the legal relationship – by modifying such legal relationship – of the particular users, subscribers, and consumers with the particular electronic communications service provider, whereby the provisions of the agreement will be applicable in individual cases and the particular users, subscribers, or consumers may make a reference to these provisions in individual cases, and the Authority will have the right to verify compliance with the provisions of the agreement in the course of a regulatory inspection. The extent of cooperation demonstrated by the electronic communications service provider concluding the agreement as per this Paragraph with regard to the effective enforcement of consumer interests shall also be taken into account by the Authority in other official matters involving the given electronic communications service provider.

(9) The Commissioner shall make a report of the results of the successful conciliation procedure as necessary, and shall make a report of any and all conciliation procedures not resulting in an agreement. Such reports shall be sent to the complainant, to the

electronic communications service provider concerned, and to any associations representing the interests of consumers in the proceeding. In addition to the particulars of the harm to interests, in its report the Commissioner shall describe the conduct of the electronic communications service provider in detail regarding the handling of the harm to interests, and, in particular its willingness to cooperate in remedying the harm to interests and enhancing consumer well-being. The Commissioner shall publish his/her report if it affects or may affect a large number of consumers, or can issue a recommendation or guideline for the consumers for the purpose of avoiding further harm to interests. If no agreement was concluded, the electronic communications service provider concerned shall notify the Commissioner about the measures taken within the deadline of at least fifteen days specified by the Commissioner.

Proceeding by the Commissioner in case of complaints concerning media services and press products

Article 142/A (1) The Commissioner, in the course of his/her proceedings, will conduct verbal or written consultations regarding the harm to interests as per Article 140 (1) (for the purposes of this Article, hereinafter as: conciliation procedure), with the professional, interest representing or self-regulatory bodies of media content providers (for the purposes of this Article, hereinafter collectively as: professional organisation).

(2) The Commissioner shall not proceed in relation to the complaint, unless

a) the complaint concerns such an activity causing harm to interests, which arises repeatedly in the course of activities by the media content provider, or which arises in the course of activities of more media content providers, and

b) the harm to interests specified in the complaint affects a significant part of the viewers, listeners, or readers.

(3) The Commissioner shall notify the media content provider about any and all complaints concerning its activities, and shall ensure for the media content provider the possibility to present its position in all stages of the conciliation procedure.

(4) The Commissioner shall, in the course of the conciliation procedure, forward the description of the harm to interests affecting a significant part of viewers, listeners, or readers to the professional organisations for commenting thereto within a specified deadline.

(5) The Commissioner shall, in the course of the conciliation procedure, prepare a proposal for remedying the complaint, and shall forward such proposal to the professional organisations. The Commissioner shall prepare its proposal in a way so to represent the interests of viewers, listeners, and readers, while taking into consideration the observations made by the professional organisations and the media content provider concerned.

(6) Based on the response given by the professional organisations and the media content provider concerned regarding the proposal, the Commissioner, in justified cases, shall invite the complainant, the professional organisations concerned, and the media content provider concerned to a personal conciliation.

(7) The Commissioner shall prepare a report of the results of the conciliation procedure, and shall forward the report to the complainant, the media content provider concerned, and the professional organisations concerned. In addition to presenting the circumstances of the harm to interests, the Commissioner shall present in the report the prepared proposals, and the respective responses and observations made by the media content provider and the professional organisations. The Commissioner may not publish its report.

(8) For the purposes of this Article, the deadline specified in Article 142 (2) shall be applied regarding the preparation of the proposal mentioned in Paragraph (5). This deadline shall not include

a) the period for making observations as defined in Paragraph (4),

b) the time used to prepare the expert opinion, provided that an expert is required to be involved in the conciliation procedure.

The Commissioner's Report

Article 143 The Commissioner shall prepare a quarterly report on his/her observations regarding the proceedings carried out, the results of the proposals, as well as on his/her reports and proposals, for the President concerning the cases affecting the electronic communications service providers, and for the Media Council concerning the cases affecting the media content providers. The report prepared for the Media Council shall include only the general observations of the Commissioner, without disclosing any specific data concerning any individual media content provider.

Chapter IV

PROVISIONS ON THE PROCEDURES BY THE MEDIA COUNCIL AND THE OFFICE OF THE NATIONAL MEDIA AND INFOCOMMUNICATIONS AUTHORITY

Application of the General Rules on Administrative Proceedings

Article 144 (1) The Media Council and the Office (hereinafter for the purposes of this Chapter: Authority) shall act in accordance with the provisions of the Act on the General Rules of Administrative Proceedings and Services subject to the provisions of this Act.

(2) The members and the President of the Media Council shall have votes of identical value, that is, each person shall have one vote.

(3) The Media Council shall be deemed to have quorum when a simple majority of the members, including the President of the Media Council, are present.

(4) The decisions of the Media Council shall be passed with the simple majority of the votes of all members of the Media Council, including the President, with the exception of the case defined in Article 129 (7).

The Complainant

Article 145 (1) Anyone not deemed to be a client for the purposes of the subject of the notification (hereinafter as: complainant) may lodge a complaint addressed to the Authority in matters falling within the scope of powers and responsibilities of the Authority defined in this Act, claiming infringement of the rules on media administration.

(2) The complaint shall contain the data of the complainant, the circumstances providing the grounds for the Authority's proceedings, the action or conduct that suggests infringement of the rules on media administration, as well as the facts providing the grounds for the complaint.

(3) Based on the complaint the Authority shall have the right to initiate proceedings ex officio at its sole discretion. If the Authority does not initiate proceedings on the basis of the complaint, it shall duly notify the complainant in an official letter, without having to specify the reasons for its decision.

(4) The complainant shall not become a subject in the legal relations arising under the regulatory procedure initiated on the basis of the complaint, the complainant shall not have the right to seek legal remedy against the regulatory decision of the Authority passed in the administrative proceedings initiated ex officio on the basis of the complainant's complaint.

(5) The complainant may request the restricted handling of his/her data as stipulated in Article 153 (2).

(6) [not in effect]

Legal Succession

Article 146 (1) The client having acquired rights under a final decision may be replaced by its legal successor.

(2) The client bound by an obligation under a final decision is replaced by its legal successor, provided that such replacement is not impossible. In case of an obligation established under a final decision the legal successor may voluntarily fulfil the obligation, within a deadline extended upon its request, in justified cases, on one occasion at the most. The Authority and the legal successor may agree on the above in a public contract as well.

(3) In case of an obligation established under a final decision, the third party to whom the original (legal predecessor) client, bound by an obligation, assigns the terms of its operations under a contract, shall also be deemed as a legal successor to such client.

(4) If the legal succession arises in the course of the regulatory procedure and is based on a statutory legislation, the Authority shall establish the fact of legal succession in its order. No separate appeal shall lie against such order.

(5) In the event that the legal succession arises in the course of the regulatory procedure and is based on a contract, the Authority shall establish the fact of legal succession necessary for exercising its regulatory powers in its order. No separate appeal shall lie against such order.

Confidentiality

Article 147 (1) During the term of their employment and after the termination thereof, persons currently or formerly employed by the Authority as civil servants or in other work-related relationship shall keep confidential any personal data, classified data and business secrets they may have learnt in relation to the operation and actions of the Authority as well as any other data, fact or circumstance that the Authority is not obliged to make accessible for the public, excepting those that are to be disclosed to other entities under relevant legislation.

(2) The persons listed under Paragraph (1) may not unlawfully disclose, utilize or make known to any third party, any data, fact or circumstance they may have learnt in the course of performing their tasks.

Communications via Electronic Means

Article 148 In its scope of competence and procedures defined under this Act the Authority may require that contact is maintained via electronic means.

Commencement of Proceedings

Article 149 (1) In matters falling within its competence the Authority may initiate proceedings ex officio, except if under this Act the proceeding may be initiated only upon application.

(2) If the Authority becomes aware of a breach of law falling beyond the scope of the particular official matter yet closely or indirectly related to such matter, it may ex officio extend its proceedings to that particular matter, before passing its regulatory decision. In accordance with the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services the clients shall be notified of the fact that the proceedings were ex officio extended to the particular matter. On the ex officio extension of the proceedings, the administrative deadline of the proceedings shall be extended by the period of time applicable to the particular proceedings.

(3) The proceedings of the Authority defined in separate legislation shall be subject to an administrative procedural service fee.

(4) Proceedings of the Authority in relation to violations concerning media contents may be initiated (by request, notification) within three months of publication of the media content or, in case of continuous publication, after the first publication.

(5) If the applicant gained knowledge about the violation only subsequently or was otherwise prevented from filing the request or notification, the deadline set forth in Paragraph (4) shall start from the date of gaining knowledge or from the date the obstacle was overcome. No regulatory procedures may be initiated in relation to violations concerning media contents after six months of publication of the media content or, in case of continuous publication, after the first publication. This deadline shall represent the expiry of the limitation period.

(6) Upon violation of Articles 14-20 of the Press Freedom Act, as well as Articles 9-11, Article 12 (3)-(4), Article 14, and Articles 23-36 of the Media Act, the authority may launch the regulatory procedure ex officio within one year after the media content was published or – in case of continuous publication – after the media content was published at the first time.

Assessment of Competence and Jurisdiction

Article 150 If the Authority has no competence or jurisdiction concerning a certain issue, the Authority shall have the right to reject the respective application and/or terminate the proceedings without examination thereof on the merits, without determining the competent authority and without transferring the case to such authority.

Administrative Deadline

Article 151 (1) Unless otherwise provided for in this Act the administrative deadline of the proceedings conducted by the Authority shall be forty days.

(2) The period may be extended in justified cases on one occasion, by thirty days at the most.

Application

Article 152 The client shall submit its application in the appropriate official form of the Authority, and in case contact via electronic means, in electronic form, in the notification procedures defined in Articles 42-47.

Access to Documents for Inspection, Secrets Protected by Law

Article 153 (1) Persons participating in administering the case and employed by the Authority as civil servants or engaged in other work-related relationship with such Authority, shall have unlimited access to the secrets protected by law.

(2) The client and other participants involved in the proceedings may designate the range of data they deem necessary to be treated as restricted data, by reference to the protection of the secrets protected under the law, in particular business secrets, to other equitable interests as well as to any significant media policy considerations, save for data made public for general public interests and data defined in relevant legislation that may not be rated as data restricted under the law. In this case the client and/or other participants involved in the proceedings shall also prepare a version of the document which does not contain the data defined above.

(3) Data defined under Paragraph (2) shall be handled by the Authority within the document folder separately, as restricted data. The Authority shall ensure that restricted data are not accessible for unauthorised persons in the course of the procedural acts.

(4) Only the officer, the keeper of Minutes, the executives of the Authority, the member of the Media Council, the competent public prosecutor and, in case of judicial review, the acting judge shall be entitled to access the restricted data.

(5) To the extent so required to perform their duties connected to the subject of the official matter, other administrative authorities or government entities may also have access to restricted data, as deemed appropriate by the Authority, provided that such entities ensure at least the same level of protection for the data thus transferred as at the disclosing authority.

(6) With a view to ensuring the right of access to documents for inspection, the Authority shall prepare an extract of the document generated in the course of the proceedings, which document is otherwise in compliance with statutory requirement as to form and content, whereby no conclusions may be made as to the data defined under Paragraph (2).

(7) If the proper enforcement of the law, the enforcement of rights and the exercising of client rights justify it, the Authority may request that the client and other participants involved in the proceedings lift the restriction placed on the data management as defined under Paragraph (2).

(8) In case the client or other participant in the proceedings does not lift the restrictions defined under Paragraph (2), the Authority – if such action is indispensable for law enforcement or for the enforcement of rights vested with clients – may provide for in its order that the restricted data management be lifted. This order may be challenged by the client or the other participant in the proceedings by submitting an appeal to the Metropolitan Court of Budapest with a suspensive effect; the court shall decide in the matter with priority in out-of-court proceedings within eight days. No further appeal shall be available against the order of the Metropolitan Court of Budapest.

Exclusion

Article 154 (1) In addition to those specified in the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services on exclusions, no person may participate in handling of the case on the merits, who had a legal relationship as defined in Point (a) with the client or with an enterprise with a qualifying holding in the client or with an enterprise operating under the client's qualifying holding within one year of the commencement of the proceedings, or whose relative

a) is in employment relationship, other work-related relationship or membership relationship with the client, or is an executive officer thereof;

b) holds an ownership share in the client;

c) is in employment relationship, other work-related relationship or membership relationship with a private individual, legal person or association without a legal personality that is in regular business relations with the client, or is an executive officer thereof, or has a shareholding in the above;

d) is in a work-related relationship with an organisation that is a supervisory or subordinate entity to the client and/or which has provided any support or exclusive licence for the client, excluding the work-related relationship with the Foundation or the Authority.

(2) The acting officer of the Office shall forthwith report to the Director General any grounds for exclusion on his/her part. The acting officer of the Office shall be bear disciplinary and financial liability for his/her failure to or delay in, making a notification. The decision on the exclusion of a particular officer of the Office shall be made by the Director General and, if necessary, he/she shall designate the officer acting on behalf of the Office.

(3) The Director General shall forthwith report to the President any grounds for exclusion on his/her part. The Director General shall bear disciplinary and financial liability for his/her failure to or delay in, making the notification. The decision on the exclusion of the Director General shall be made by the President. When there are grounds for the exclusion for the Director General, the President – in making its decision – shall consider whether the Director General may proceed in the particular case under the condition that he/she shall notify the President of his/her decision, or whether the President will select one of the Deputy Directors General to exercise the scope of competence.

(4) If the report submitted by the client with the aim of exclusion is obviously unsubstantiated, in the order on rejecting the exclusion the client may be subjected to a procedural fine laid down in Article 156.

(5) The decision on the exclusion of a Media Council member shall be made by the Media Council. The member thus excluded may not participate in handling of the case on the merits. When, as a result of exclusion, the Media Council does not have a quorum, the Media Council will proceed with the involvement of the excluded members in accordance with the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services, irrespective of their grounds for exclusion, with such members also having a right to vote.

(6) When there are grounds for exclusion in the case of the President, the Vice-President designated by the President shall proceed in handling of the case on its merits.

Establishing the Facts of the Case

Article 155 (1) In establishing the facts of the case, the Authority shall apply the provisions of the Act on the General Rules of Administrative Proceedings and Services on establishing the facts of the case and on regulatory inspections subject to the provisions specified under Paragraphs (2)-(10).

(2) In order to establish the facts of the case, the Authority shall have the right to view, examine and make duplicates and extracts of any and all instruments, deeds and documents containing data related to the media service, the publication of the press

product or the media service distribution, even if such instrument, deed or document contains business secrets.

(3) In order to establish the facts of the case, the Authority shall have the right to oblige

a) the client and

b) other participants in the proceeding, the agents and employees of the client or of the other participants in the proceeding, and persons in other legal relationship with the client or the other participants in the proceeding, and – in exceptionally justified cases – other persons or organisations (for the purposes of this Article, hereinafter as: other participants)

– while warning them about the legal sanctions specified in Article 156 that can be applied if this obligation is not met in the appropriate manner – to make a statement, to provide data, or to provide either verbally or in writing data in a comparable format as defined by the Authority, and to furnish other information (for the purposes of this Article, hereinafter as: data provision).

(4) The order mentioned in Paragraph (3) may be challenged by the other participants obliged to provide data by submitting an appeal to the Metropolitan Court of Budapest, and such appeal shall have a suspensive effect. The court shall decide in the matter with priority, within the framework of an out-of-court proceeding, within eight days. No further appeal shall be available against the order of the Metropolitan Court of Budapest.

(5) For the purposes of Paragraphs (2) and (3),

a) the deeds, instruments, and documents generated during or for the purposes of the communications between a client and his or her legal representative or recording the contents of such communication, provided, in all above cases, that this characteristic is apparent directly from the deed, instrument or document itself, may not be used as evidence, may not be examined, may not be seized, and their holder may not be obliged to produce it during an inspection;

b) the Authority may not oblige the media content provider or a person in an employment relationship or in a work-related legal relationship with a media content provider to provide any data, or to hand over any deed, instrument or document that would reveal the identity of the person delivering information to him/her in connection with the media content provider's activities.

(6) The exemption specified under Paragraph (5) shall remain valid even after the legal relationship justifying the exemption is terminated. The client may grant an exemption regarding the prohibition stipulated in Point a) of Paragraph (5).

(7) Any client or other participant obliged to provide data or to hand over or present any deed, instrument, or document despite of having recourse to the exemption stipulated in Paragraph (5) may seek legal remedy with suspensive effect from the Metropolitan Court of Budapest against the order of the Authority, and the court shall decide in the matter with priority, within the framework of an out-of-court proceeding, within eight days. No further appeal shall be available against the order of the Metropolitan Court of Budapest.

(8) A witness may be heard on the business secret of the client even if the client has not granted him/her an exemption regarding the obligation of confidentiality.

(9) In particularly justified cases, the Authority shall have the right to resort to the deeds, data, documents and other means of evidence generated in the course of a regulatory procedure also for the purposes of another procedure, when necessary for reducing the procedural burden on clients or for proper and effective law enforcement.

(10) The media service provider shall keep the authentic documentation on its programme flow, including the full recording of output signals of the media service, for a period of sixty days from the date of broadcast or, in case of on-demand media services, from the last day the concerned content was made available. For the purposes of regulatory inspection, the Authority shall be entitled to oblige the media service provider – within the period of statutory retention – to deliver the authentic documentation on its programme flow without delay and free of charge. In case of a regulatory procedure instituted or a legal dispute arising in relation to a media service, the media service provider shall keep the documentation for a period of one year from the conclusion of the proceedings with a final force.

Procedural Fine

Article 156 (1) In case of hindrance on the proceedings, the Authority shall have the right to impose procedural fine on the client, other actors in the proceedings or other persons obliged to cooperate with a view to establishing the facts of the case, when these parties act in a manner aimed at the prolongation of the proceedings or preventing the actual facts of the case from being established, or in a manner which may result in the above.

(2) The maximum amount of the procedural fine is twenty-five million forints or, for private person clients, one million forints.

(3) In addition to the provisions of Paragraphs (1)-(2), the Authority shall have the right, and in case of repeated offence, shall be obliged, to impose a procedural fine also on the executive officer of the breaching entity in case of hindering the proceedings or in case of failure or improper fulfilment of the obligation to furnish data, in the maximum amount of three million forints.

(4) When setting the amount of the procedural fine, the Authority shall take into account especially the net sales revenue generated by the breaching entity in the previous year and the fact whether the offence was committed on one or more occasions.

Public Hearing

Article 157 (1) When so required under this Act or to the extent it deems necessary and justified to perform its duties, the Authority, with a view to familiarizing itself with legislation on media administration and the measures pertaining to its enforcement, and with the experts' positions and opinions on the preparation and implementation of law

enforcement procedures, shall hold a public hearing, inviting media service providers, entities providing ancillary media services, publishers of press products, media service distributors, intermediary service providers, self-regulatory professional organisations, civil associations and others.

(2) Unless otherwise provided for in this Act, the Authority shall publish the date, time, place and subject of the public hearing at least thirty days before the scheduled date thereof.

(3) The Authority shall publish the preparatory documents related to the subject of the public hearing, excepting business secrets, at least ten days before the scheduled date of the hearing.

Article 158 (1) Eight days before the scheduled date of the public hearing the Authority shall post on its website the documents received by it in an electronic format in relation to the public hearing.

(2) The Authority shall prepare a summary or a protocol on the public hearing containing comments and proposals given and voiced at the hearing, excepting data classified by the commenter or proposer as business secret. The Authority shall publish the summary within thirty days of the date of the hearing.

Consultations with Stakeholders in Significant Issues

Article 159 (1) To the extent it deems necessary, the Media Council may initiate consultations with stakeholders in matters falling within its regulatory powers (hereinafter as: consultations). In so doing, the Media Council – at least fifteen days before passing its regulatory decision – shall publish the draft decision and preparatory documents necessary for the consultations, with the exception of data subject to restricted data handling within the proceedings.

(2) Within eight days of publication of the draft regulatory decision as defined under Paragraph (1), anyone may submit to the Media Council in writing his/her position, proposal and other comments he/she may have concerning the draft decision (hereinafter as: comment). The Media Council shall not be bound by the comments so received, which serve for information purposes only, with no obligation on the part of the Media Council to take them into account for the purposes of passing its regulatory decision.

(3) In its regulatory decision the Media Council shall not be under obligation to justify the necessity to hold consultations or – when it initiates consultations – to justify the reasons why comments were taken or not taken into account.

(4) By virtue of the fact of submitting comments, the stakeholders having submitted comments as defined under Paragraph (2) will not become a party to the procedural relationship involving the regulatory decision being the subject matter of the consultations. Stakeholders shall not be entitled to legal remedies within the scope of its comments, even in relation to the portions of the regulatory decision pertaining to the comments.

Public Contract

Article 160 (1) In cases defined herein, the Authority shall have the right to conclude a public contract with a client, based on the provisions of the Act on the General Rules of Administrative Proceedings and Services and subject to the provisions of this Act.

(2) Under the public contract concluded with the Authority, the client may assume obligations that are beyond the Authority's regulatory powers, and compliance therewith on the part of the client could not be prescribed otherwise under a regulatory decision. In this case, under the public contract the client agrees that in case of non-compliance on the client's part with the provisions of the agreement the entire agreement shall be regarded as a final and enforceable regulatory decision.

(3) Regarding those contractual terms and conditions which could be imposed on the contractual party by way of regulatory decision under the law, the approval of third parties whose rights and lawful interests are affected by the contract is not a condition to the public contract being validly concluded.

(4) The administrative deadline for the completion of the official matter by a public contract as defined in Article 151 shall apply subject to the provisions of this Act.

Article 161 (1) The Authority shall check compliance with the provisions of the public contract in the course of a regulatory inspection. When under the regulatory inspection the Authority establishes breach of the public contract by the client, it shall assess, with a view to the facts revealed in the inspection, the gravity of the breach, the effective enforcement of rights, the social, economic and legal relations affected by the contract, the relevant media administration principles and objectives, and the effective enforcement of public interest underlying the contract, whether to initiate in the case involving the breach of the decision the enforcement proceedings as defined in the Act on the General Rules of Administrative Proceedings and Services, or the regulatory procedures to apply the legal sanctions specified in this Act.

(2) When the Authority initiates enforcement proceedings, the client may seek review of the order on enforcement, by claiming infringement of law, at an administrative court within fifteen days of the order being announced. The court will pass its decision, based on the hearing of the parties, if necessary, in out-of-court proceedings within fifteen days. The submission of the application for out-of-court proceedings shall have a suspensive effect on the enforcement of the order. No appeal may be lodged against the order of the Metropolitan Court of Budapest.

(3) When the Authority, under Paragraph (1), initiates proceedings to apply legal sanctions specified in this Act, no independent legal remedy shall lie against the institution of the proceedings.

(4) In the regulatory procedure initiated as a result of the regulatory inspection and on account of breach of contract by the client, the Authority may apply the legal sanctions defined in Article 187 and in the public contract.

(5) In case of material or repeated breach of contract by the client, the Authority, unless otherwise provided for in the public contract, shall have the right to terminate the public contract with immediate effect.

(6) An action brought before the court for the amendment of the public contract, shall not affect the fulfilment and enforcement of the public contract and shall not have a suspensive effect on the fulfilment and enforcement of the public contract.

Disclosure

Article 162 (1) The Authority shall comply with the provisions of the Act on the General Rules of Administrative Proceedings and Services on disclosure to the general public by notification posted through its website.

(2) The Authority shall publish its regulatory decisions and the relevant court decisions through its website, having regard to the protection of personal data and restricted data handled in the proceedings.

(3) When the law allows notification through public notice, the notice shall be made public by posting the notice on the bulletin board of the Authority and by posting such notice on the website of the Authority.

Legal Remedies

Article 163 (1) No appeal may be lodged against the regulatory decision of the Media Council passed in its capacity as authority of the first instance. Review of the regulatory decision of the Media Council may be requested only by the client, and as regards the provisions expressly applicable to him/her, the witness, the official witness, the expert, the interpreter, the holder of the object under inspection, the representative of the client and the liaison officer, by claiming infringement of law, at the court proceeding in administrative cases, within thirty days upon announcement of the regulatory decision, by bringing an action against the Media Council.

(2) The court proceedings instituted on the basis of the statement of claim for review of the Media Council's decision shall be subject to the provisions of the Act on the Code of Civil Procedure on public administration lawsuits, subject to the provisions of this Act.

(3) The submission of the statement of claim shall not have a suspensive effect on the enforcement of the decision; the court may be requested to suspend the enforcement of the regulatory decision challenged by the statement of claim.

(4) The Media Council shall forward the statement of claim, together with the documents and representations of the case, to the court within fifteen days of receipt thereof.

(5) The application for out-of-court proceedings against the orders of the Media Council which can be challenged by an independent legal remedy shall be submitted within fifteen days of the notification of the order.

(6) No supervisory proceedings may be instituted concerning the regulatory decisions of the Media Council.

Article 164 (1) In proceedings specified under Article 163, courts of both first and second instance shall pass judgement within thirty days.

(2) The judicial review proceedings shall fall within the exclusive competence of the Metropolitan Court of Budapest.

(3) The court shall have the powers to alter the decision of the Media Council.

Article 165 (1) The client shall have the right to appeal against the regulatory decision of the Office passed according to this Act at the Media Council, with the exception of decisions against which no appeal may be lodged under the Act on the General Rules of Administrative Proceedings and Services or under this Act.

(2) The decision of the Office may be challenged under an appeal only by a client who has participated in the proceedings of the first instance.

(3) Review of the second instance decision of the Media Council may be requested only by the client, and as regards the provisions expressly applicable to him/her, the witness, the official witness, the expert, the interpreter, the holder of the object under inspection, the representative of the client and the liaison officer, by claiming infringement of law, at the court proceeding in administrative cases, within thirty days upon announcement of the regulatory decision, by lodging a statement of claim.

(4) The submission of the statement of claim shall not have a suspensive effect on the execution of the decision, the court may be requested to suspend the execution of the regulatory decision challenged by the statement of claim.

(5) The application for out-of-court proceedings against the orders of the Office which can be challenged by independent legal remedy shall be submitted within fifteen days of the notification of the order.

(6) The judicial review proceedings shall fall within the exclusive competence of the Metropolitan Court of Budapest.

Specific Proceedings of the Authority

Article 166 In conducting its proceedings defined in Articles 68-70 and 167-181, the Authority shall apply the provisions of the Act on the General Rules of Administrative Proceedings and Services and this Act subject to the deviations determined for the various types of proceedings.

General Regulatory Supervision

Article 167 (1) At request or ex officio, the Authority, within the context of its scope of powers and responsibilities, shall have the right to supervise within a regulatory inspection or regulatory procedure the enforcement and observance of the provisions laid down in this Act and the Press Freedom Act, as well as fulfilment of the terms and conditions set forth in its regulatory decisions, broadcasting agreements and in the public contracts concluded by the Authority.

(2) Should the Authority establish infringement of the provisions laid down in its regulatory decision as revealed in the supervision of compliance with its regulatory decision, it shall assess, on the basis of all circumstances of the case, the facts revealed in the inspection, the gravity of the infringement and the effective enforcement of rights, whether to resort to the enforcement procedure as defined in the Act on the General Rules of Administrative Proceedings and Services, or institute a regulatory procedure to apply the legal sanctions specified in this Act, in the case involving violation of the decision.

(3) The Authority shall have the right to apply the legal sanctions defined in Chapter V in cases of infringements revealed in the course of general regulatory supervision.

Market Surveillance

Article 168 (1) The Media Council, within its scope of competence, with a view to protecting the smooth, fruitful and diverse operation of the media market and protecting the interests of those engaged in media service distribution and media service provision, publishers of press products, viewers, listeners, readers, subscribers and users, as well as preserving the diversity of the national culture and opinions, promoting the maintenance of fair and effective market competition, familiarization with market trends and the comprehensive assessment, analysis and regulatory supervision of media policy considerations and other purposes defined in this Act, shall perform market surveillance activities.

(2) The specific market surveillance procedure may include a number of regulatory powers and official matter types, as defined in the Press Freedom Act and this Act, as a comprehensive regulatory procedure.

(3) The Media Council, in performing its duties defined under Paragraph (1), shall prepare an annual market surveillance plan by 1 December of the year preceding the subject year – taking into consideration the market surveillance experiences of the previous year – and shall publish the same on its website within fifteen days thereof. The Media Council shall ensure that its market surveillance plans are in accordance with one another. The plans may be reviewed on the basis of its findings made in the first six months at the end of that half, and – if necessary – the Media Council shall have the right to modify these plans accordingly. The Media Council shall post its modified market surveillance plan on its website within fifteen days of its modification.

(4) The market surveillance procedure shall be instituted ex officio.

(5) The administrative deadline of a market surveillance procedure shall be sixty days. The period may be extended in justified cases on one occasion, by forty-five days at the most.

(6) In its comprehensive and consolidated regulatory decision, the Media Council, as the purpose and as a result of the market surveillance procedure, shall

a) assess compliance of services and activities subject to the procedure with applicable legislation. In so doing, the Media Council shall establish the occurrence of infringements,

make an assessment of these instances both on an individual and aggregate basis and shall determine the legal sanctions by suitably applying the provisions of Chapter V. In its market surveillance decision, the Media Council may impose obligations and define the terms of their fulfilment, when no infringement has occurred,

b) determine the directions, methods, criteria for development and reshaping (if any), and media policy conclusions of state intervention with a view to preventing infringement of legislation, promoting voluntary compliance with the law and smooth flow of market trends.

(7) The Media Council shall prepare an annual report on the fulfilment of the objectives in its market surveillance plans, the results and findings of its market surveillance operations and its proposals on amendment of legislation arising on the basis of market surveillance decisions. The Media Council shall post its report on its website within fifteen days of its approval.

(8) The Media Council shall have the right to conduct market surveillance activities ex officio beyond the scope of the market surveillance plan.

Inspection of the Media Market

Article 169 (1) With a view to assessing compliance with the provisions of this Act and revealing whether regulatory powers specified in this Act should be applied, when the price changes or other market circumstances suggest that competition in the media service market is being distorted or is restricted, the Media Council, in order to gather information on market trends and asses such trends, shall institute a regulatory inspection by its order.

(2) This procedure of the Media Council shall be without prejudice to the competence of the Hungarian Competition Authority to conduct an inspection under the Act on the Prohibition of Unfair and Restrictive Market Practices.

(3) The Media Council shall inform through public notice the media service providers of the commencement of the regulatory inspection, which – in deviation from the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services – must contain the subject of the case and a brief description thereof. The explanatory section of the order shall designate the market conditions that gave rise to the inspection. The order shall be announced through public notice by posting on the bulletin board of the Authority and on the website of the Authority. The order on the institution of the procedure shall be deemed duly served on the fifteenth day from the posting of the notice on bulletin board of the Authority.

(4) The amount of the procedural fine that may be imposed in an inspection, taking into account the net sales revenue generated by the breaching entity in the previous year and the fact whether the offence was committed on one or more occasions, shall be equal to 0.5 % of the sales revenue of the breaching entity, or, in the absence of revenues or reporting on revenues, it shall be minimum fifty thousand forints and maximum fifty million forints. In addition, in case of non- or improper provision of data, the Media

Council shall have the right, and in case of repeated infringement, shall be obliged, to impose a fine on the executive officer of the breaching media service provider in the amount between fifty thousand forints and three million forints.

Article 170 (1) If the Media Council, on the basis of the findings of the regulatory inspection, establishes that the market trends under review may cause distortions or restrictions in competition in the market for media services, and in its opinion these circumstances may not be remedied by exercising the powers available according to this Act, it shall initiate that the commencement of the Hungarian Competition Authority's competition authority proceeding in the matter.

(2) The Hungarian Competition Authority will not commence the competition authority proceeding initiated by the Media Council as defined under Paragraph (1) if there is an inspection in progress in the same subject and for the same period or, if the Hungarian Competition Authority had already completed an inspection in the same subject for the same period beforehand. The Hungarian Competition Authority shall notify the Media Council of this fact.

(3) When there are no grounds for, or due to absence of competence it is impossible to initiate competition authority proceeding, or when the market distortion may not be remedied within the scope of competence of the Media Council or the Office, it shall duly notify the body entitled for legislation.

Proceedings of the Media Council as Special Authority

Article 171 (1) The Hungarian Competition Authority shall obtain the position statement of the Media Council for the approval of concentration of enterprises under Article 24 of the Act LVII of 1996 (hereinafter as: the Competition Act) on the Prohibition of Unfair and Restrictive Market Practices, which enterprises, or the affiliates of at least two groups of companies as defined in Article 15 of the Competition Act bear editorial responsibility and the primary objective of which is to distribute media content to the general public via an electronic communications network or a printed press product.

(2) If the level of independent opinion sources following the merger would still ensure the right for diversity of information within the particular market segment of media content service, then the Media Council, with the exception of the case defined in Article 68 (2), cannot reject granting an approval as special authority.

(3) With regard to applying the provision or condition imposed by the Media Council as special authority in a decision on the merits of a case, Article 30 (3) of the Competition Act shall appropriately apply.

(4) The position of the Media Council as special authority shall bind the Hungarian Competition Authority, however, this fact does not prevent the Hungarian Competition Authority from

a) prohibiting a merger that has already been approved officially by the Media Council as special authority, irrespective of any condition the Media Council may have set; or

b) imposing a condition or an obligation as defined in Article 30 (3) of the Competition Act that the Media Council has failed to set.

(5) The statutory period for the proceedings of the Media Council as a special authority shall be twenty days, which may be extended on one occasion by another twenty days. The statutory period of the competition authority proceeding shall not include the period of proceedings of the Media Council as special authority. Failure by the Media Council to issue its position within the prescribed statutory period shall be deemed as an approval on its part.

(6) The amount of the administrative service fee payable to the Media Council for its procedure as special authority shall equal two million forints, which is payable to the Hungarian Competition Authority together with the procedural fee as defined in Article 62 (1) of the Competition Act, except when the applicant had submitted a request for a prior approval of the special authority as defined under Paragraph (7).

(7) On payment of the administrative service fee defined under Paragraph (6), at the request of the applicant defined in Article 68 of the Competition Act, the Media Council shall issue prior approval as a special authority. The applicant shall have the opportunity to request prior approval until the date of submitting a request for approval of merger but not later than the end of the period defined in Article 28 (2) of the Competition Act, and this approval can be used within six months from the date of issue, provided that facts, the market and the regulatory circumstances decisive for the purposes of the approval have – remained unchanged since the date of the position issued by the special authority. The prior approval issued by the Media Council as special authority or the request for approval shall be attached to the form set forth in Article 68 (2) of the Competition Act. When a specific requirement or condition laid down in the prior approval issued by the Media Council as special authority contradicts an obligation or condition deemed necessary by the Hungarian Competition Authority in part or in full, the government entities involved shall proceed as described in Article 45 (2) of the Act on the General Rules of Administrative Proceedings and Services.

Proceeding in Case of Legal Disputes

Article 172 (1) In case of infringement of the rights or lawful interests concerning media administration – defined in an agreement concluded under a rule on media administration or in a rule on media administration – of a media service provider, an entity engaged in providing ancillary media services, a publisher of press products or a media service distributor, by another media service provider or media service distributor, and in cases defined in this Act, the affected party may resort to the Media Council to conduct a legal dispute procedure (hereinafter as: legal dispute procedure). The legal dispute procedure may be initiated within six months after the occurrence of the infringement. If the applicant gained knowledge about the infringement only subsequently or was otherwise prevented from filing the request, the period of six months shall start from the date of gaining knowledge or from the date the obstacle was overcome. The legal dispute procedure may not be initiated after one year of occurrence of the infringement serving as ground for such procedure. This deadline shall represent the expiry of the limitation period.

(2) The application for conducting a legal dispute procedure shall clearly describe, in addition to the requisites defined in the provisions of the Act on the General Rules of Administrative Proceedings and Services on applications, the facts and circumstances serving as grounds for claims under Paragraph (1), the legislative and contractual provisions that provide the grounds for the application and verification of its rights and lawful interests.

(3) When the applicant requests the Media Council to bring the contract into existence or to determine its contents, he/she shall expressly and clearly define the particulars of the contractual provisions he/she wishes to be brought into existence or established, in a clear-cut text.

(4) The application may also include a motion for evidence.

(5) When the application for the legal dispute procedure does not contain or contains improperly the requisites laid down under Paragraph (2), the Media Council shall request the applicant to remedy deficiencies within eight days at the latest. Should the applicant fail to, or improperly remedy the deficiencies within the specific deadline, the Media Council shall reject the application within fifteen days without assessment of the case in its merits.

(6) When the application for the legal dispute procedure does not contain or contains improperly the requisites laid down under Paragraph (3), the Media Council shall request the applicant to remedy deficiencies with a deadline of five days. Should the applicant fail to, or improperly remedy the deficiencies within the specific deadline, the Media Council shall not adopt a decision in the context of bringing the contract into existence or determining its contents, and as regards the subject of the case and the infringement it shall adopt its decision in reliance on the data at its disposal, or it shall terminate the proceedings altogether.

(7) The Media Council shall send the application, provided that it does not reject the same without assessing the case in its merits, to the adverse client and shall request such client to submit its position and the evidence at its disposal within a period of ten days at the most and to concurrently send the same to the adverse client.

(8) If the Media Council holds a hearing in the course of the proceedings, it shall attempt to mediate a settlement between the parties in the course of the hearing.

Article 173 (1) The parties and other stakeholders may attend the hearings as per Paragraph (8) of Article 172 in person or through their representatives, may make statements, put forward their comments and submit their pieces of evidence by the end of the hearing. The hearing shall not be public.

(2) Absence of persons duly summoned to and notified of the hearing shall not prevent the hearing from being held and the case from being concluded. In justified cases, persons summoned to and notified of the hearing may seek prior exemption from attending the hearing; in which case the Media Council shall have the right to postpone the hearing.

(3) Absence from the hearing may not be subsequently excused. However, if the Media Council deems necessary to hear one of the persons who failed to appear, then, with regard to the above and by setting a new date, the Media Council may postpone the hearing.

(4) Unless otherwise provided in this Act, the applicant shall provide credible evidence to verify the factual and legal grounding of the contents of the application.

(5) The Media Council shall have the right to call upon or oblige the adverse client to provide data and/or put forth statements on his/her part.

(6) The Media Council shall have the right to issue an interim injunction in the ongoing case at request or ex officio, if it can be established that in lack of such interim injunction the breach of the present Act – and in particular its core principles – will result in a grave and otherwise unavoidable infringement of rights or interests, or in the danger thereof, and provided that the disadvantages arising from issuing the injunction cannot exceed the advantages that may be achieved under the injunction.

(7) As an interim injunction, the Media Council may order that the activity at issue be discontinued, may set the conditions for the activity and may also set obligations.

(8) The interim injunction shall be in place until the conclusion of the proceedings with a final force. During the proceedings the Media Council shall have the right to modify or cancel the interim injunction at request or ex officio.

(9) If the Media Council resorts to an interim injunction, the client may lodge an application for remedy against the interim injunction to Metropolitan Court of Budapest. The court will pass its ruling in the case in out-of-court proceedings within fifteen days. No appeal may be lodged against the order of the Metropolitan Court of Budapest. The submission of the application shall not have suspending effect on the execution of the order.

(10) The Media Council will not issue a separate order on rejecting an application for an interim injunction; the grounds for rejection shall be set forth in the decision concluding the legal dispute procedure on its merits.

Article 174 (1) In a legal dispute procedure, the Media Council shall have the right to bring into existence, modify and determine the contents of the agreement, if there is an obligation to contract under the rules on media administration and the parties fail to agree on the contents thereof, in case of an application in accordance with Article 172 (3).

(2) If under this Act a legal dispute procedure may be instituted also in relation to the consideration for the media service distribution and the media service, the Media Council may prohibit the further application of the consideration and shall have the right to set the amount of the rightful price within the framework of this Act and may oblige the media service provider or the media service distributor to apply such a rightful price.

Data Provision

Article 175 [not in effect]

Proceedings Against a Media Content Provider Established in Another Member State

Article 176 (1) When the linear audiovisual media service of a media service provider established in another Member State is aimed only at the territory of Hungary, the Media Council shall have the right to apply the legal sanctions defined in Article 187 (3) (c)-(d) regarding the media services distributed on the territory of Hungary, for the period of the infringement but up to one hundred eighty days at the most provided that the following conditions are met:

a) the media service clearly and materially violates Article 17 (1), Article 19 (1) or Article 19 (4) of the Press Freedom Act or Article 9 or Article 10 (1)-(3) of this Act,

b) the media service violated the provisions set forth under Paragraph (a) on at least two occasions within the twelve months prior to the decision to be issued by the Media Council under this Paragraph on the limitation of distribution;

c) Hungary, at the initiative of the Media Council, notified in writing the media service provider involved and the European Commission of the instances of infringement as defined in Point (a) and the measures the Media Council intends to take in case of future infringement; and

d) no agreement is made between Hungary and the Member State in which the media service provider is established within fifteen days from the notification defined in Point (c) on the basis of the consultations made with the Member State involved and the European Commission and the infringement described in Point (a) still exists or is committed repeatedly.

(2) The Media Council shall send the decision defined under Paragraph (1) to the European Commission concurrently with the announcement thereof.

(3) If the European Commission obliges the Media Council to withdraw the decision passed under Paragraph (1) in a decision passed within two months of the notification defined under Paragraph (2), the Media Council shall proceed as provided for in the decision of the European Commission.

Article 177 (1) When the on-demand audiovisual media service of a media service provider established in another Member State is aimed at the territory of Hungary or is distributed or published on the territory of Hungary, the Media Council shall have the right to apply the legal sanctions defined in Article 187 (3) (c)-(d) regarding the media services transmitted on the territory of Hungary, for the period of the infringement but up to one hundred eighty days at the most provided that the following conditions are met:

a) the measures are necessary for the protection of public order, the prevention, investigation and prosecution of criminal acts, necessary on account of infringement of the prohibition of inciting hatred against communities, for the protection of minors, public health, public security, national security and consumers and investors;

b) the measures are taken against a media service provider of an on-demand media service that violates or presents a serious risk on any of the interests defined in Point (a); and

c) the measure is proportionate to the interests to be protected.

(2) Prior to the institution of the proceedings intended for formulating the decision defined under Paragraph (1), the Media Council shall request the Member State under whose jurisdiction the media service provider rendering on-demand media services as defined under Paragraph (1) belongs to take appropriate measures. When the Member State fails to take, or improperly takes the measure within the reasonable time set forth in the request lodged by the Media Council, the Media Council shall send the draft version of the decision defined under Paragraph (1) to the European Commission and the particular Member State. If the European Commission obliges the Media Council to withdraw the draft decision, it shall proceed as provided for in the decision of the European Commission.

(3) In cases of exceptional urgency, and with a view to protecting viewers' interests, in the case defined under Paragraph (1) the Media Council shall have the right to pass a temporary decision. The temporary decision shall be enforceable with immediate effect. The Media Council shall send the temporary decision to the European Commission and the Member State involved concurrently with the announcement thereof. The Media Council shall resolve as to whether to uphold or withdraw the temporary decision as provided for in the decision of the European Commission.

Article 178 (1) When the radio media service or the press product of a media content provider established in another Member State is aimed at, distributed or published on the territory of Hungary, the Media Council shall have the right to apply the legal sanction as defined in Article 187 (3) c) against the media service provider under its decision for the period of the infringement but up to one hundred eighty days, if the following conditions are met:

a) the measures are necessary for the protection of public order, the prevention, investigation and prosecution of criminal acts, necessary on account of infringement of the prohibition of inciting hatred against communities, for the protection of minors, public health, public security, national security and consumers and investors;

b) the measures are taken against a media content provider of radio media service or press product that violates or presents a serious risk on any of the interests defined in Point (a); and

c) the measure is proportionate to the interests to be protected.

(2) Prior to the institution of the proceedings intended for formulating the decision defined under Paragraph (1), the Media Council shall request the Member State under whose jurisdiction the media service provider rendering radio media services or the publisher of press product as defined under Paragraph (1) belongs to take appropriate measures. The Media Council may institute the proceedings defined under Paragraph (1) provided that the Member State fails to, or improperly takes the measure within the reasonable time set forth in the request lodged by the Media Council.

(3) In cases of exceptional urgency, and with a view to protecting listeners' and readers' interests, the Media Council shall have the right to pass an interim decision defined under Paragraph (1). The temporary decision shall be enforceable with immediate effect. The Media Council, concurrently with its announcement, shall send the temporary decision to the Member State under whose jurisdiction the media service provider

rendering radio media services or the publisher of a press product as defined under Paragraph (1) belongs and shall request such Member State to take appropriate measures. When the Member State takes the measures within the reasonable time set forth in the request, the Media Council shall resolve on the withdrawal of the temporary decision, while in case of failure, or improper delivery of the measures, it shall resolve on upholding the temporary decision.

Proceedings Against a Media Content Provider Established in Another Member State in Case of Circumvention of the Law

Article 179 (1) This Act and Articles 13-20 of the Press Freedom Act shall be applicable to the linear audiovisual media service of the media service provider established in another Member State, in accordance with the provisions of Paragraphs (2)-(5) of this Act, on condition that the media service provider established in another Member State aims the particular linear audiovisual media service for use in the territory of Hungary in its entirety or to a large extent and the media service provider was established outside the territory of Hungary with a view to avoid the applicability of more stringent rules thereon under this Act and the Press Freedom Act.

(2) In its assessment as to whether the conditions defined under Paragraph (1) are met, the Media Council shall examine, among others, in which of the Member States the major sources of the advertisement and subscription revenues of the media service provider established in another Member State are to be found as regards its linear audiovisual media service, which is the primary language of the media service, in which Member State can the majority of its broadcast sites be found, and which Member State's audiences the programmes within the media services are addressed to.

(3) When the conditions defined under Paragraph (1) are met, on infringement of the provisions of this Act and the Press Freedom Act, the Media Council shall request measures to be taken by the Member State under whose jurisdiction the media service provider rendering the media service defined under Paragraph (1) belongs.

(4) The Media Council may apply the legal sanctions as defined in Article 187 (3) (b)-(d) against the media service provider defined under Paragraph (1) under its decision when it established that the Member State with jurisdiction as defined under Paragraph (3) failed to take the measures within two months, or improperly took such measures.

(5) The Media Council shall send the draft decision defined under Paragraph (4) to the European Commission prior to the notification thereof. If the European Commission obliges the Media Council to withdraw the draft decision, it shall proceed as provided for in the decision of the European Commission.

Article 180 (1) This Act and Articles 13-20 of the Press Freedom Act shall be applicable to the radio media service and the press product of the media content provider established in another Member State in accordance with the provisions of Paragraphs (2)-(3) hereunder, on condition that the media service provider established in another Member State aims the particular radio media service or press product for use in the

territory of Hungary in its entirety or to a large extent, and the media content provider was established outside the territory of Hungary with a view to avoid the applicability of more stringent rules thereon under this Act and the Press Freedom Act.

(2) In its assessment as to whether the conditions defined under Paragraph (1) are met, the Media Council shall examine, among others, in which of the Member States the major sources of the advertisement and subscription revenues of the media content provider established in another Member State are to be found as regards its radio media service or press product, which is the primary language of the media service or press product, in which Member State can the majority of its broadcast and report sites be found, and which Member State's audiences the programmes and other media content within the media services or press product are addressed to.

(3) When the conditions defined under Paragraph (1) are met, the Media Council, on infringement of the provisions of this Act or the Press Freedom Act, shall request measures to be taken by the Member State under whose jurisdiction the media service provider rendering the media service or the publisher of the press product defined under Paragraph (1) belongs.

(4) The Media Council may apply the legal sanctions as defined in Article 187 (3) (b)-(c) against the media service provider defined under Paragraph (1) under its decision when it established that the Member State with jurisdiction as defined under Paragraph (3) failed to take the measures within two months, or improperly took such measures.

Proceedings in Case of Infringement of the Obligation of Balanced Coverage

Article 181 (1) In case of infringement of the obligation of balanced coverage defined in Article 13 of the Press Freedom Act and Article 12 (2) of this Act, the holder of the viewpoint that was not expressed, or any viewer or listener (hereinafter for the purposes of Paragraphs (2)-(6): applicant) may initiate a regulatory procedure. The powers to assess a request concerning the media services rendered by media service providers with significant market power and public media service providers shall be with the Media Council, while in case of other media services with the Office. The Authority shall not have the right to institute proceedings ex officio in case of infringement of the obligation of balanced coverage.

(2) Prior to requesting regulatory procedure defined under Paragraph (1), the applicant shall resort to the media service provider with its objection. The applicant, within seventy-two hours from the broadcast of the contested information or, in case of re-broadcast, from the date of the last broadcast, shall have the right to request in writing that the media service provider broadcast the viewpoint required for a balanced coverage, properly, under circumstances similar to the contested information. The applicant may not exercise his/her right of challenge if another representative of the same viewpoint has already been given an opportunity to present the viewpoint not presented earlier, or if this opportunity has been given to the applicant but has failed to take advantage thereof.

(3) The media service provider shall decide on the acceptance or refusal of the objection within forty-eight hours of the receipt thereof. The decision shall be communicated to the applicant in writing without delay. The applicant, within forty eight hours of the decision being notified, shall have the right to initiate at the Authority that a regulatory procedure be instituted, or, when the decision is not communicated, within ten days of the broadcast of the challenged or objected communication, together with the exact name of the challenged programme and the particular media service provider. A procedure may also be initiated at the Authority if the media service provider fails to comply with the contents of the objection in spite of its statement of acceptance. In this case, the regulatory procedure must be initiated at the Authority within forty-eight hours of the expiry of the deadline undertaken for complying with the objection. The statutory period of proceedings conducted by the Authority shall be fifteen days, which may be extended in justified cases on one occasion, by eight days at the most.

(4) At the request of the Authority, the media service provider shall furnish the Authority with the recording of the challenged programme without delay.

(5) Should the Authority, in its decision, establish that the media service provider has infringed the obligation of balanced coverage, the media service provider shall broadcast or publish the decision passed by the Authority or the notice defined in the decision, without any assessing comment thereon, as provided for in the decision of the Authority, in the manner and at the time specified by the Authority, or shall provide an opportunity for the applicant to present his/her viewpoint. In addition to the foregoing, the legal sanctions as defined in Articles 186-187 may not be applied against the breaching entity.

(6) The procedure defined under Paragraphs (1)-(5) shall be exempt from dues and charges, and the applicant may not be obliged to pay administrative service fee either. As regards legal remedy against the decision passed in the proceedings, the provisions of Articles 163-165 shall be applied respectively, with the provision that the client or other participant in the proceedings may seek review of the final decision of the Media Council by lodging a statement of claim against the Media Council before the Budapest Court of Appeal, by claiming infringement of law, within fifteen days. The Budapest Court of Appeal shall adjudge the statement of claim in court proceedings, within thirty days.

The Scope of Powers and Responsibilities of the Authority

Article 182 Acting in its regulatory powers, the Media Council, in accordance with Article 132,

a) shall perform general regulatory supervision over public contracts concluded thereby;

b) shall perform regulatory supervision regarding the following statutory provisions defined in this Act:

ba) standards on the protection of children and minors;

bb) standards on the broadcast of events of major importance;

bc) rules on the broadcast of parliamentary sessions;

bd) provisions on extraordinary situations concerning media services;

be) requirements on programme quotas;

bf) requirements defined in Articles 23-25 on commercial communications;

bg) provisions on product placement;

bh) provisions on political advertisements, public service announcements and public service advertisements [except for the provisions of Article 32 (7)];

bi) requirements on advertisements and teleshopping as defined in Article 33;

bj) must-carry obligation rules applicable to media service distributors;

bk) obligations related to the offering of media services;

bl) provisions on the diversity of media service distribution;

bm) rules on the performance of tasks in public media service;

c) shall supervise compliance with the requirements laid down in Article 14 and Articles 16-20 of the Press Freedom Act,

d) shall exercise the regulatory powers in relation to infringements committed by media content providers established in another Member State;

e) shall adopt a regulatory decision on the rating of a programme, at the request of a media service provider;

f) shall conclude a public contract with the media service provider on exemption from the requirements on programme quotas;

g) shall determine the amount of the media service provision basic fee;

h) shall perform the tasks concerning the tendering of media service provision rights for radio and concerning media service provision rights granted for performing public duties;

i) shall proceed in official matters related to the renewal of media service provision rights for analogue, linear media services;

j) shall proceed in official matters related to media service public contracts;

k) shall perform the tasks related to the connecting to the network by media service providers and extension of reception area;

l) shall exercise the powers on the classification of media service provision as community media service provision, and shall supervise their operation;

m) shall identify the media service providers with significant market power and shall define the obligations encumbering media service providers with significant market power;

n) shall act in the context of fulfilment of obligations defined for media service providers with significant market power, excluding obligations defined in Article 39;

o) shall perform the regulatory tasks related to control over market concentrations;

p) shall conduct an inspection in the media market;

q) shall conduct market surveillance procedure;

r) shall act in legal disputes defined in this Act;

s) shall perform the tasks related to public contracts on temporary media service provision;

t) shall perform its tasks as a special authority in cases defined in this Act and the Act on the Prohibition of Unfair and Restrictive Market Practices;

u) shall proceed in relation to complaints on imbalanced coverage that may arise in media services provided by media service providers with significant market power and by public media service providers [under Article 13 of the Press Freedom Act and Article 12 of this Act];

v) shall define events of major importance for the society under its regulatory decision;

x) shall determine under its regulatory decision the public service media services and community media services falling under a must carry obligation [Article 75 (3)];

y) shall perform regulatory tasks related to the proceedings and decisions of self-regulatory bodies;

z) shall exercise other regulatory powers as defined by law.

Article 183 (1) Acting in its non-regulatory powers, the Media Council, in accordance with Article 132,

a) shall elaborate the recommendations on classifications of media content prescribed for the protection of minors;

b) shall elaborate the recommendations on requirements for the effective technical solution to enable access to media content for viewers or listeners over eighteen years of age only;

c) may publish its recommendations on ensuring compliance of product placement and the relevant call with the provisions of this Act;

d) shall provide information to the Parliament on the observance of the constitutional principle of the freedom of the press and the reasons and circumstances of exemptions from programme quotas granted to media service providers;

e) shall decide on the reallocation of approved budgetary appropriations of expenditures;

f) shall define and publish its rules of procedure;

g) shall provide its opinion on draft legislation concerning spectrum management and communications;

h) shall prepare positions and recommendations in certain media policy issues;

i) shall formulate the concept of spectrum management effecting media service provision;

j) shall prepare an annual report for the Parliament on the operation of the Media Council and the Office;

k) shall manage the Fund, accept the subsidy policy, annual plan and report of the Fund, define and publish the detailed rules on the management of the Fund and approve the general conditions of tendering elaborated by the Fund;

l) shall prepare a report for the European Commission on certain programme flow structure requirements;

m) shall elaborate the rules concerning the utilization of assets handed over to the Public Service Foundation and asset management;

n) shall cooperate with the media authorities of other Member States;

o) shall supervise the operation of the Institute for Media Studies;

p) shall perform the non-regulatory tasks related to the actions of self-regulatory bodies;

q) shall perform other, non-regulatory, tasks defined by law.

(2) The Media Council shall be responsible for implementing regulation 2006/2004/EC of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws in relation to intra-Community infringements of the laws of the Member States transposing Articles 19-26 of Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services. In so doing, the Media Council shall proceed in the context of mutual assistance in accordance with Commission Directive 2007/76/EC.

Article 184 (1) The Office, acting in its regulatory powers, shall

a) maintain the official registers defined in this Act;

b) determine the amount of the media service provision fee payable by media service providers having acquired the right for media service provision through registration;

c) supervise observance of the following provisions of this Act:

ca) the provisions of Article 32 (7) on political advertisements, public service announcements and public service advertisements;

cb) regulations on advertisements published in public and community media service and public service announcements (Article 36);

cc) regulations on programmes made accessible to people with a hearing disability (Article 39);

cd) regulations on changes in the ownership structure and other data of media service providers, publishers of press products and ancillary media service providers, the relevant reporting of such changes and the publication of certain data;

ce) regulations on the ownership structure of the linear media service provider and ownership concentration of companies (Article 43);

cf) provisions on media content with violence and suitable to raise disturbance and regulations on the protection of religious convictions (Article 14);

cg) certain provisions on advertisement and teleshopping (Articles 34-35);

ch) regulations on the sponsorship of media services and programmes (Articles 26-29);

ci) the obligations to provide data set forth in Article 175 (12);

d) perform the tasks related to the discontinuation and termination of media service provision right in the event of failure to commence service provision;

e) act in the settlement of complaints involving the obligation to provide balanced information, excepting cases defined in Article 182 (u) (Article 13 of the Press Freedom Act and Article 12 of this Act);

f) check observance of obligations on transmission of public media services (Article 74);

g) check observance of the provisions on general contractual framework and conditions within the context of the obligation to offer media services (Article 79);

h) exercise other powers vested with it as defined by law.

(2) The Office, acting in its non-regulatory powers, shall

a) perform the preparatory tasks in cases falling within the scope of powers and responsibilities of the Media Council;

b) perform the preparatory tasks regarding the procedure for tendering media service provision rights, hold a public hearing;

c) perform market analysis, assessment and other inquiry activities by the programme monitoring and analysis service;

d) shall perform other non-regulatory tasks defined by law.

Chapter V

LEGAL SANCTIONS APPLICABLE IN CASE OF INFRINGEMENT

Article 185 (1) The Media Council or the Office shall have the right to apply the legal sanction on parties infringing rules on media administration in accordance with the provisions of Articles 186-189.

(2) In applying the legal sanction, the Media Council and the Office, under the principle of equal treatment, shall act in line with the principles of progressivity and proportionality; shall apply the legal sanction proportionately, in line with the gravity and rate of re-occurrence of the infringement, taking into account all circumstances of the case and the purpose of the legal sanction.

Article 186 (1) When the infringement is of minor significance and no re-occurrence can be established, the Media Council or the Office, on noting and warning on the fact of the infringement, may request, setting a deadline of thirty days at the most, that the infringer discontinue its unlawful conduct, refrain from infringement in the future and act in a law-abiding manner and may also set the conditions thereof.

(2) In the context of the request defined under Paragraph (1), the considerations defined in Article 187 (2) shall not be applicable.

(3) When, considering all the circumstances of the case, the request may not be applicable or would prove inefficient to force compliance with the obligation to discontinue the infringement, the Media Council or the Office, without stating the reasons for dispensing with making a request, shall prohibit the unlawful conduct and/or may set obligations to ensure observance of the provisions of this Act and may apply legal sanctions.

Article 187 (1) In case of repeated infringement, the Media Council and the Office shall have the right to impose a fine on the executive officer of the infringing entity in an amount not exceeding two million forints, in line with the gravity, nature of the infringement and the circumstances of the particular case.

(2) The Media Council and the Office shall impose the legal sanction, depending on the nature of the infringement, taking into account the gravity of the infringement, whether it was committed on one or more occasions, or on an ad hoc or continuous basis, its duration, the pecuniary benefits earned as a result of the infringement, the harm to interests caused by the infringement, the number of persons aggrieved or jeopardized by

the harm to interests, the damage caused by the infringement and the impact of the infringement on the market, and other considerations that may be taken into account in the particular case.

(3) The Media Council and the Office, taking into account Paragraph (7), shall have the right to impose the following legal sanctions:

a) it may exclude the infringer for a definite period of time from the opportunity to participate in the tenders of the Fund;

b) it may impose a fine on the infringer in line with the following limits:

ba) in case of infringement by a media service provider with significant market power and a media service provider affected by the regulations on the limitation of media market concentration, the fine shall be of an amount not exceeding two hundred million forints;

bb) in case of infringement by a media service provider not covered under Point (ba), the fine shall be of an amount not exceeding fifty million forints;

bc) in case of a daily newspaper of nationwide distribution, the fine shall be of an amount not exceeding twenty-five million forints;

bd) in case of a weekly newspaper or periodical of nationwide distribution, the fine shall be of an amount not exceeding ten million forints;

be) in case of other daily newspapers or weekly newspapers or periodicals, the fine shall be of an amount not exceeding five million forints;

bf) in case of an online press product, the fine shall be of an amount not exceeding twenty-five million forints;

bg) in case of a media service distributor, the fine shall be an amount not exceeding five million forints;

bh) in case of an intermediary service provider, the fine shall be of an amount not exceeding three million forints;

c) the infringer may be obliged to publish a notice or the decision on the opening page of its website, in a press product or a designated programme in the manner and for the period of time specified in the decision;

d) it may suspend the exercise of the media service provision right for a specific period of time:

da) the period of suspension may last from fifteen minutes up to twenty four hours;

db) the period of suspension in case of serious violation of law may last from one hour up to forty eight hours;

dc) the period of suspension in case of repeated and serious violation of law may last from three hours up to one week;

e) it may delete the media service from the register as defined in Article 41 (4) in which the infringement was committed and may terminate the public contract on the media service provision right with immediate effect on repeated serious violation of law by the infringer. The media service deleted from the register may not be made accessible for the public once it has been deleted.

(4) For the purposes of Paragraphs (1)-(3), the infringement shall be deemed as committed repeatedly when the infringer committed the unlawful conduct established in the final regulatory decision on the same legal basis and in breach of the same provisions of legislation, in the same subject, at least two times within three hundred sixty-five days, not including minor offences.

(5) The legal sanctions defined under Paragraph (3) may also be imposed jointly.

(6) Media service provider of a linear media services may be subjected to the legal sanctions defined under Paragraph (3) (a)-(e), providers of on-demand or ancillary media services to the legal sanctions defined under Paragraph (3) (a)-(d), and publishers of press products to the legal sanctions defined under Paragraph (3) (b)-(c).

(7) The power to apply legal sanction defined under Paragraph (3) (e) shall be with the Media Council.

(8) In case of media service providers with broadcasting agreements the penalty defined in the contract and other legal sanctions may be enforced by the Media Council against the media service providers only by way of an administrative procedure.

Responsibility of Media Service Distributors and Intermediary Service Providers for Transmission of Media Services and Press Products

Article 188 (1) The media service distributor may be obliged to suspend or terminate the transmission of the media service specified, in accordance with Article 189, by virtue of the regulatory decision adopted by the Media Council, acting in its regulatory powers.

(2) Intermediary service providers may be obliged to suspend the broadcasting of media services and online press products, in line with Article 189, by virtue of the regulatory decision adopted by the Media Council, acting in its regulatory powers.

(3) The media service distributor shall not be responsible for the content of the programme flow of the broadcaster under the jurisdiction of a state party to the Agreement on the European Economic Area and European Convention on Transfrontier Television and in its supplementary Protocol signed in Strasbourg on 5 May 1989 and promulgated by Act XLIX of 1998. The media service distributor, however, may be obliged, by virtue of the regulatory decision adopted by the Media Council, acting in its regulatory powers, to suspend the distribution of the media service under Article 189, taking into account of the provisions of Articles 176-180.

Article 189 (1) When the Media Council resorts to the legal sanction against the media service provider defined in Article 187 (3) (e), the media service distributor shall, on the basis of the regulatory decision issued in an ex officio regulatory procedure by the Media Council after the decision has become final, terminate the distribution of the media service constituting the subject of the decision containing the applicable legal sanctions.

(2) When, in case of repeated infringement, the Media Council or the Office applies legal sanctions defined in Article 187 (3) (b)-(d) against the media service provider, and the media service provider fails to fulfil the terms of the final and executable decision

containing legal sanctions at the request of the Media Council or the Office, the media service distributor may be obliged to suspend the distribution of the media service subject to the regulatory decision adopted in an ex officio regulatory procedure by the Media Council, and containing legal sanctions.

(3) When, in case of on-demand or ancillary media services, the Media Council or the Office applies legal sanctions defined in Article 187 (3) (b)-(d) against the media service provider, and the media service provider fails to fulfil the terms of the final and executable decision containing legal sanctions at the request of the Media Council or the Office, the intermediary service provider may be obliged to suspend the broadcasting of the linear, on-demand or ancillary media service subject to the regulatory decision adopted in an ex officio regulatory procedure by the Media Council and containing legal sanctions.

(4) When, in case of online press products, the Media Council or the Office applies legal sanctions defined in Article 187 (3) (b)-(c) against the publisher of the press product, and the publisher fails to fulfil the terms of the final and executable decision containing legal sanctions at the request of the Media Council or the Office, the intermediary service provider may be obliged to suspend the transmission of the online press product subject to the regulatory decision adopted in an ex officio regulatory procedure by the Media Council and containing legal sanctions.

(5) The decision mentioned in Paragraphs (1)-(4) shall contain the method, terms, performance deadline, and period of the termination or suspension, as well as the bearing and reimbursement of the costs associated with the termination or suspension of the distribution or broadcasting of the media service by the media service distributor and intermediary service provider, or with the suspension of the broadcasting of the press product.

(6) The period of suspending the distribution or broadcasting set forth in Paragraphs (2)-(4) shall be proportionate to the weight and extent of the underlying legal sanction, and may not exceed the date of performance by the media service provider or by the publisher of the online press product – as set forth in the relevant final and enforceable decision – increased by the period necessary to terminate the suspension. The period of terminating the suspension by the media service distributor or intermediary service provider may not exceed fifteen days, including the notification of the media service distributor or intermediary service provider by the Media Council.

(7) The costs incurred by the media service distributor or intermediary service provider in connection with the termination or suspension of media service distribution or broadcasting shall be borne by the condemned media service provider or publisher of the press product.

(8) No appeal may be lodged against the decision of the Media Council as defined under Paragraphs (1)-(4). The client may seek review of the decision by claiming infringement of law, from the court proceeding in administrative cases within fifteen days of notification of the regulatory decision. The court will pass its decision, based on the hearing of the parties, if necessary, in out-of-court proceedings within fifteen days. The submission of the application for out-of-court proceedings shall not have a suspensive

effect on the enforcement of the decision. The court may not be requested to suspend the execution of the regulatory decision challenged by the application, and it may not be suspended by the court. The decision shall be enforceable immediately, irrespective of the filing of the application for an out-of-court proceeding. No appeal may be lodged against the order of the Metropolitan Court of Budapest.

(9) If the media service distributor or the intermediary service provider fails to comply with the provisions of the decision under Paragraphs (1)-(4), the Media Council shall launch a regulatory procedure against the media service distributor or the intermediary service provider and may apply the legal sanctions set forth in Article 187 (3) (bg) or (bh).

(10) The provisions laid down in Article 188 and in this Article may not be applied until the decision of the court of first instance is adopted in the course of judicial review proceeding initiated on the suspension of the execution of the decision containing the legal sanction set forth in this Article, and may not be applied – until the final closure of the respective public administration lawsuit – if the court had suspended the execution of the decision containing the legal sanction.

Chapter VI

CO-REGULATION IN MEDIA ADMINISTRATION

General rules

Article 190 (1) With a view to effective achievement of the objectives and principles set forth in this Act and the Press Freedom Act, facilitating voluntary observance of law and achieving a more flexible system for law enforcement on media administration, the Media Council shall cooperate with the professional self-regulatory bodies and alternative dispute resolution forums of media service providers, ancillary media service providers, publishers of press products, media service distributors and intermediary service providers (hereinafter for the purposes of this Chapter: self-regulatory bodies).

(2) In the context of the cooperation defined under Paragraph (1), the Media Council shall have the right to conclude an administrative contract with a self-regulatory body established and operating in accordance with the pertaining legislation, with a view on the shared administration of cases falling within the regulatory powers expressly specified below, as defined in the present Chapter, and the cooperative performance of tasks, related to media administration and media policy, not defined as regulatory powers under legislation, but nevertheless compliant with the provisions of this Act.

Article 191 (1) Under the administrative contract defined in Article 195 (hereinafter as: administrative contract), the Media Council shall have the right to authorise the self-regulatory body to perform self-management tasks, as non-regulatory tasks, in relation to its registered members and media service providers, media service distributors, intermediary service providers or publishers of press products agreed to be bound by the terms of the Code of Conduct as defined in Article 194 (hereinafter jointly as: undertakings

under the scope of the Code) in official matters specifically defined in Article 192 (2), within the powers vested with it under the administrative contract, prior to specific exercise of regulatory powers.

(2) The authorisation granted under Paragraph (1) shall not vest public administrative, executive and regulatory powers on the self-regulatory body, and the self-regulatory body shall not be deemed as an administrative authority, or a subject of the system of public administration under this authorisation.

(3) The authorisation granted under the administrative contract shall not prejudice the powers of the Media Council under this Act, the Media Council shall have the right to act in official matters, irrespective of this authorisation, subject to the provisions of this Chapter.

Article 192 (1) The Media Council shall conclude the administrative contract with the self-regulatory bodies fulfilling the conditions set forth in Article 190 (2), whose registered scope of activities covers or directly affects the official matter for which the authorisations was granted and that maintain a precise and verifiable register of the undertakings under the scope of the Code.

(2) In the administrative contract, the Media Council shall have the right to grant authorisations to self-regulatory bodies to manage the following types of official matters as non-regulatory tasks, in relation to the undertakings under the scope of the Code:

a) exercise supervision regarding compliance with Articles 14-20 of the Press Freedom Act or any of those provisions in relation to printed press products,

b) exercise supervision regarding compliance with Articles 14-20 of the Press Freedom Act or any of those provisions in relation to online press products,

c) exercise supervision regarding compliance with Articles 14-20 of the Press Freedom Act or any of those provisions in relation to on-demand media services,

d) exercise supervision regarding compliance with Part Two, Chapter I of this Act or any of those provisions in relation to on-demand media services.

(3) The authorisation granted to the self-regulatory body by the Media Council for the official matter type defined under Paragraph (2) shall cover:

a) handling individual cases related to undertakings under the scope of the Code (including the procedure on applications and complaints involving the activities of the members);

b) settlement of disagreements and legal disputes – involving the scope of the authorisation – between undertakings under the scope of the Code;

c) supervision of the operation and conduct of undertakings under the scope of the Code in relation to the authorisation.

Article 193 (1) Under the administrative contract, the Media Council and the self-regulatory body may agree on joint performance of tasks, and implementing principles of activity and service development, programmes of public concern not regulated in legislation but closely linked to media administration and media policy, and any other objective related to media.

(2) The rules on the tasks of the self-regulatory body, under an authorisation in an administrative contract, defined in this Chapter are laid down in detail in the administration contract.

(3) The Authority shall have the right to provide financing for the self-regulatory body to perform its tasks defined in this Chapter; the self-regulatory body shall give an account of its usage to the Authority each year by 31 May, on an item-by-item basis.

Article 194 (1) The administrative contract concluded by the self-regulatory body and the Media Council shall include a professional code of conduct as a substantive part thereof, developed by the self-regulatory body, defining the self-regulatory performance of tasks as defined in this Chapter (hereinafter as: Code of Conduct).

(2) The Code of Conduct shall be prepared by the self-regulatory body in the course of the conclusion of the administrative contract and shall be sent to the Media Council for consultation purposes. The Media Council shall examine the Code of Conduct as to whether it complies with relevant legislation. The condition for the validity of the conclusion of the public contract shall be that an agreement is reached by and between the Media Council and the self-regulatory body concerning the Code of Conduct.

(3) The Code of Conduct shall specify in detail, within the scope of the authorisations granted in accordance with Article 192, the provisions on proceedings and guarantees related to the self-regulatory tasks to be performed by the self-regulatory body, the relevant rights and obligations of the members, the relationship between the members and the self-regulatory body, within the context of the authorisation, and the types, system and the legal impacts of decisions, within the discretion of the self-regulatory body.

(4) In addition to the provisions of Paragraph (2), the substantive part of the Code of Conduct shall describe the rules, conditions and requirements concerning the activities, services and conduct designated by the scope of the authorisation.

Article 195 (1) The relationship between the Media Council and the self-regulatory body under this Chapter shall be regulated by the parties in detail in the administration contract.

(2) The Media Council shall pass a decision in relation to the conclusion of the administrative contract.

(3) The administrative contract may be concluded in writing only.

(4) The Media Council, following the conclusion of the administrative contract, shall have the right to inspect the register maintained on the undertakings under the scope of the Code and may request that the self-regulatory body provide data from the register so that it may perform its tasks defined in this Chapter concerning the self-regulatory body.

(5) In respect of administrative contracts, the general provisions of the Civil Code of Hungary shall apply, subject to the provisions of this Act.

Article 196 (1) The Media Council shall have the right to terminate the administrative contract with immediate effect, in the event that the self-regulatory body:

a) commits a grave or repeated breach of the provisions of the administrative contract; or

b) performs its tasks defined in the administrative contract in deviation from the agreement terms or the terms of the Code of Conduct.

(2) The administrative contract concluded for an indefinite period of time may be terminated by either of the parties with a thirty day notice.

Proceedings of the Self-regulatory Body

Article 197 (1) The self-regulatory body shall act in official matters subject to the authorisations granted thereto in relation to its members as an entity performing the tasks within its own scope of competence and not as tasks under the regulatory powers of authorities, as provided for in this Chapter and the administrative contract. In so doing, its involvement shall have priority over and supplement the activities of the Media Council acting in its regulatory powers (hereinafter as: self-regulatory procedure).

(2) In official case types defined in the administrative contract the Media Council shall have the right to proceed against the members of the self-regulatory body only if in its opinion the particular action of the self-regulatory body does not comply with relevant legislation or the provisions of the administrative contract concluded by the parties.

(3) The self-regulatory procedure on the part of the self-regulatory body shall precede the regulatory procedure of the Media Council.

(4) The self-regulatory body shall be responsible for elaborating, accepting and enforcing an internal regulation of procedure regarding its members that is capable of ensuring proper and effective performance of tasks defined in this Chapter and the appropriate observance of the rules contained in this Chapter. When due to failure to fulfil the provisions set forth above, the self-regulatory body is unable to properly perform its tasks defined in this Chapter and the administrative contract concluded with the Media Council, the Media Council shall have the right to terminate the administrative contract.

Article 198 (1) The self-regulatory body shall act upon an application requesting its self-regulatory procedure. Irrespective of the foregoing, the self-regulatory body shall also have the right to institute proceedings in cases falling within its scope of competence based on its own decision.

(2) The statutory period for the self-regulatory procedure by a self-regulatory body shall be thirty days, which – in justified cases and with due heed to the complexity of the case and the difficulties that may arise in revealing the facts of the case – may be extended by fifteen days. A shorter period may also be provided for under the administrative contract.

(3) When the Media Council receives an application in a subject falling within self-regulatory procedure, it shall forward the application to the self-regulatory body, considering the membership of the self-regulatory body and other associations subject to the Code of Conduct. When the case does not fall within the competence of the self-regulatory body after all, or the undertaking involved in the application is not subject to the Code of Conduct, the self-regulatory body shall forthwith return the application to

the Media Council. When the self-regulatory body institutes its proceedings on the basis of the application forwarded by the Media Council, it shall refund to the applicant any dues and fees paid concurrently with the initiation of the proceedings of the Media Council.

(4) In the case defined under Paragraph (2), the application for the initiation of the proceedings of the Media Council shall not be deemed as an application giving rise to the obligation to institute proceedings as defined in the Act on the General Rules of Administrative Proceedings and Services, except when the application is returned by the self-regulatory body to the Media Council. In such cases, the regulatory procedure of the Media Council shall be commenced on the day that the application returned by the self-regulatory body arrives to the Media Council.

(5) When the self-regulatory body receives an application that falls beyond the scope of its competence but is related to the powers of the Media Council, the self-regulatory body shall forthwith inform the applicant about the relevant powers of the Media Council, the opportunities to initiate proceeding and the rules thereof.

Article 199 (1) The self-regulatory body shall assess the application in light of this Chapter, the administrative contract concluded with the Media Council and in particular the Code of Conduct constituting an integral part thereof and shall pass its decision in the case. The decision of the self-regulatory body has a binding force on the undertakings subject to the Code of Conduct and may set forth obligations. When the decision sets forth obligations, the self-regulatory body shall set an appropriate deadline to allow compliance therewith. The self-regulatory body shall inform the Media Council of the decision containing obligations within ten days of the expiry of the deadline. The Media Council shall review the decisions containing obligations sent by the self-regulatory body. When the review of the self-regulatory body's decision is requested by the applicant or the party obliged under the decision, the Media Council shall review such decision within thirty days.

(2) When the Media Council establishes that the decision of the self-regulatory body does not comply with the provisions of the administrative contract concluded with the self-regulatory body and in particular the provisions of the Code of Conduct, or when in its judgement the decision contradicts legislation, or when it establishes that the self-regulatory body is unable to have its decision properly observed, it will institute a regulatory procedure in the case covered by the application. In its procedure the Media Council shall not be bound by the procedure and decision of the self-regulatory body.

Article 200 (1) The proper and effective performance of the tasks and activities falling beyond the scope of the regulatory powers of the Media Council but covered by the administrative contract concluded with the self-regulatory body shall be an independent task of the self-regulatory body, in line with practice formulated thereby. The Media Council shall cooperate with the self-regulatory body on a continuous basis, providing support and incentive for performing its tasks.

(2) The parties shall notify one another on a continuous basis of their experiences regarding the performance of non-regulatory tasks defined under Paragraph (1) and the execution of other procedures. The self-regulatory body shall perform these tasks based

on the administrative contract concluded with the Media Council and the Code of Conduct constituting an integral part thereof. To the extent possible, the Media Council shall take into account the experience earned in performing these tasks in exercising its regulatory powers, executing its regulatory procedures, performing market analysis, assessment and – in particular – drafting legislation.

Supervision over the Activities of the Self-regulatory Body Provided for in this Chapter

Article 201 (1) The Media Council shall exercise supervision over the activities of the self-regulatory body under the administrative contract. In so doing, the Media Council shall have the right to check fulfilment of the provisions of the administrative contract concluded with the Media Council on the part of the self-regulatory body on a continuous basis and their delivery in accordance with the contract. In the context of supervision, the Media Council shall have the right to familiarise itself with all the activities performed by the self-regulatory body in connection with the administrative contract, and to this end, may oblige the self-regulatory body to provide data.

(2) To the extent deemed necessary, the Media Council shall monitor the procedures and decisions of the self-regulatory body defined in Articles 197-200 to comprehensive inspection. In so doing, the Media Council shall assess the decisions of the self-regulatory body, in terms of their compliance with the provisions of the administrative contract and the Code of Conduct constituting an integral part thereof on an individual and aggregate basis.

(3) When, in the context of the supervision, the Media Council establishes that the self-regulatory body failed to act or acted improperly in cases subject to the authorisations granted under the administrative contract, in particular

a) the self-regulatory body conducted the proceedings defined in Articles 197-200 in deviation from the provisions of the Code of Conduct;

b) it assesses the applications in deviation from the provisions of the Code of Conduct;

c) it passes its decisions with their content being in deviation from the provisions of the Code of Conduct; or

d) it fails to check compliance with or observance of its decisions and/or fails to take measures to ensure that the provisions of its decisions are fulfilled;

then the Media Council shall request that the self-regulatory body acts in accordance with the provisions of the administrative contract, setting an appropriate deadline.

(4) When the self-regulatory body fails to fulfil the request defined under Paragraph (3) within the specified deadline, the Media Council shall have the right to terminate the administrative contract with immediate effect or with a period of notice defined in the contract.

(5) When, on the basis of the inspection, the Media Council establishes that the proceedings and decision of the self-regulatory body contradict relevant legislation or the provisions of the administrative contract or the Code of Conduct that constitutes an integral part thereof, the Media Council, concurrently with establishing the fact of

infringement, shall institute a regulatory procedure in the subject covered by the procedure and the decision.

Article 202 The self-regulatory body shall prepare a report to the Media Council on its activities and tasks performed under the administrative contract on a continuous basis, but at least annually, while on the course, content, subjects of its self-regulatory proceedings, types, content and observance of its decisions at least every six months, in writing. The Media Council shall assess the report under its decision.

Article 202/A The provisions stipulated in this Chapter, pertaining to co-regulation, shall neither affect nor restrict the right of media content providers to accept and apply self-regulatory initiatives, within the scope of their activities, by organising themselves, within the frameworks of this Act. The Media Council and the Authority shall support and respect these initiatives, in conformity with Article 8.

PART FIVE

INTERPRETATION

Article 203 1. *Audiovisual media service* shall mean media services offering programmes which contain moving images, still images with or without sound.

2. *Transmission system* shall mean the system of technical processes, electronic communications and other instruments ensuring the analogue or digital media service distribution of television or radio broadcast signals, which is connected to the transmission medium used for media service distribution, in particular the air and radio frequency, the vacuum, the coax cable, the stranded twin wire cable, the fibre optic cable.

3. *Qualifying holding* shall mean:

a) direct and indirect ownership in an undertaking, which – in aggregate – provides control in excess of twenty-five percent over the undertaking's assets or voting rights; the direct and indirect shareholding of close relatives shall be added together;

b) a situation which ensures significant influence over the undertaking on the basis of a contract, the articles of association (statutes) or the preferred stock, through the appointment (removal) of the members of the decision-making or the supervisory bodies, or in any other way.

4. *Surreptitious commercial communication* shall mean any commercial communication, the publication of which deceives the audience about its nature. Communications serving the purposes of commercial communications may qualify as surreptitious commercial communications, even if no consideration is paid for their publication.

5. *Documentary* shall mean a non-fictional cinematographic work, the aim of which is to document reality. For example nature, scientific and educational films, historical documentaries, biographical and report films qualify as documentaries.

6. *Electronic communications service* shall mean services provided to another person, generally for consideration, which are entirely or predominantly composed of the

transmission and – where applicable – the routing of signals through electronic communications networks; however it shall not include the services of providing content transmitted through the electronic communications networks and electronic communications services or the services of editorial control over such content; furthermore it shall not include services – defined in other laws – in connection with the information society, which not primarily consist of the transmission of signals through the electronic communications networks.

7. *Electronic communications service provider* shall mean the operator of an electronic communications network, and a natural or legal person, or a business association without legal personality engaged in the provision of electronic communications services.

8. *Subscriber* shall mean a natural or legal person, or a business association without legal personality, who or which is in a contractual relationship – concerning the use of the below services – with the provider of publicly accessible media services or electronic communications services or with the publisher of press products.

9. *European work* shall mean:

(a) any Hungarian work;

(b) any work originating in a member state of the European Union;

(c) any work originating in a European state which is a party to the European Convention on Transfrontier Television, adopted in Strasbourg on 5 May 1989, promulgated by Act XLIX of 1998;

(d) any work produced under the co-production of the production companies of a member state of the European Union and a state outside the European Union, provided that the majority of the total co-production costs is provided by the co-producers from a EU member state, and the production is not controlled by one or more producers who are established in a country other than an EU member state; or

(e) any work produced in co-production, within the framework of an agreement concluded between the European Union and third countries concerning the audiovisual sector, and which complies with the conditions of the applicable agreements.

The works mentioned in Points (b)-(c) are works which were produced by authors and with the contribution of professionals having their addresses in one or more states defined under points (b)-(c), provided that the given work meets one of the following three conditions:

1. it is the work of one or more producers established in one or more of the above-mentioned states;

2. its production is supervised and actually controlled by one or more producers established in one or more of the above-mentioned states;

3. the contribution of co-producers from the above-mentioned states to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside the above-mentioned states.

The works defined under Points (c) and (e) can qualify as European works if no discriminatory measures apply to the works originating from the members states in the given affected state outside the European Union.

10. *User* shall mean a natural or legal person, or a business association without legal personality, who or which uses or requests electronic communications services or media services.

11. *Cinematographic works* shall mean cinematographic works as defined in the Copyright Act, excluding, amongst others, news and political programmes, programmes on current affairs and services, sports programmes or programmes broadcasting other events, game shows and quiz shows and commercial communications. Feature films, television films, television series, animation films and documentaries are in particular regarded as cinematographic works.

12. *Independent production company* shall mean a production company, in which neither the concerned media service provider nor the owner with a qualifying holding in such a media service provider has a direct or indirect shareholding; and neither any director, executive employee of the media service provider nor any of their close relatives is in a work-related relationship with or has an ownership share in such production company.

13. *Connecting to the network* shall mean the interconnection of two or more media service providers providing linear media services or of two or more linear media services, for the simultaneous or virtually simultaneous broadcasting of the same programme or programme flow.

14. *Networked media service provider* shall mean any media service provider providing linear media services, whose programme flow or programme is distributed in networked media services.

15. *Local media services* shall mean media services with a reception area covering the annual average population of maximum one hundred thousand people or maximum five hundred thousand people within a city.

16. *Professional disaster management agency* shall mean a law enforcement body participating in carrying out disaster management and executing administrative duties as well.

17. *News programme* shall mean a programme which devotes at least ninety percent of its duration to cover the current events of Hungarian and international public affairs, not including traffic, weather and sports news programmes.

18. *Information society service* shall mean the services defined as such in the relevant act on certain issues concerning the information society services.

19. *Game show* shall mean a programme in which members of the audience or participants in the game show shall answer questions or solve problems in accordance with certain rules, generally for the purpose of winning the prize put up by the media service provider or a third party. Talent search programmes and telephone or interactive games qualifying as teleshopping or teleshopping windows shall not qualify as game shows.

20. *Commercial communication* shall mean the media content aimed to promote, directly or indirectly, the goods, services or image of a natural or legal person, or a business association without legal personality carrying out business activities. Such contents accompany or appear in media contents against payment or similar consideration

or for the purpose of self-promotion. Forms of commercial communication shall include amongst others advertisements, the display of the name, the trademark, the image or the product of the sponsor, or teleshopping or product placement.

21. *Noninteractive teletext* shall mean any programme broadcasted in linear audiovisual media services that are used primarily to provide text-based information, and may also include still or moving images, sounds, or computer graphics.

22. *Publication* shall mean:

a) any book in a printed or an electronic format, on a disk, cassette or any other physical medium; online and downloadable book;

b) any press product in a printed or an electronic format; online and downloadable periodical publication;

c) any other printed material (address registers, name registers, publications containing graphics, drawings or photos, maps; flyers; printed postcards, greeting or similar cards; printed pictures, samples, photos; printed calendars; printed business advertisements, catalogues, brochures, poster ads and similar items; other textual publications) excluding printed stickers, postal-, excise duty-, duty-, etc. stamps; stamped papers, cheques, bank notes, share certificates, security papers, bonds, deeds and the like;

d) any products of film-, video-, and television programme production (films intended for public showing on celluloid, video cassette, video disc, other physical medium; downloadable films, videos);

e) any sound recordings (intended for public showing, recorded tapes, discs, downloadable sound content);

f) any musical works (printed musical works, musical works in electronic format, downloadable musical works)

23. *Ancillary media services* shall mean all services – also containing content provision – which are transmitted through a media service distribution system and which qualify neither as media services nor as electronic communications services. For example, electronic programme guides are ancillary media services.

24. *Small community media services* shall mean – in the case of stereo reception – the local linear radio community media services operating in a reception area covering a geographical area corresponding to a circle with a maximum radius of one kilometre from the transmitting station.

25. *Regional media services* shall mean media services, whereof reception area exceeds that of the local media services, however less than half of the country's population resides within the reception area of such services.

26. *Close relative* shall mean spouses, registered partners, dependent relatives, adopted-, step- and foster children, adoptive-, step- and foster parents and siblings.

27. *Public service announcement* shall mean any announcement released without consideration, originating from an organization or a natural person fulfilling state or local governmental responsibilities, which provides specific information of public interest for the purpose of attracting the attention of the viewers or the audience, and does not qualify as political advertisement.

28. *Audience share* shall mean the ratio expressed in percentage points of the total time of viewing the programmes of the concerned linear audiovisual media services or listening to the programmes of the concerned linear radio media services to the total time of viewing all the linear audiovisual media services or listening to all the linear radio media services in the examined period. In the course of determining the audience share, the market of linear audiovisual media services and linear radio media services shall be examined separately within the territory of Hungary.

29. *Indirect ownership* shall mean the ownership share or the voting rights held by the owners of another undertaking (hereinafter as: intermediate undertaking), which has shareholding or voting rights in the undertaking. If there is any proportional difference between the ownership share and the voting rights, the greater one shall be taken into account. The ratio of indirect ownership shall be determined by multiplying the ownership share or voting rights held in the intermediate undertaking by the ownership share or voting rights held by the intermediate undertaking in the original undertaking. If the undertaking has majority ownership in the intermediate undertaking, it shall be considered as a whole. In the case of natural persons, the ownership shares and voting rights held or exercised by close relatives shall be added together.

30. *Intermediary service provider* shall mean the service provider providing information society services, which

a) is engaged in the transmission of the information supplied by the recipient of services through telecommunications network or in providing access to such telecommunications network (simple data transfer and network access);

b) is engaged in the transmission of the information supplied by the recipient of services through telecommunications network, and essentially serves the improvement of efficiency concerning the transmission of information initiated by other recipients of services (caching);

c) is engaged in the storage of the information supplied by the recipient of services (hosting);

d) is engaged in providing the recipient of services with tools to facilitate the finding of information (discovery services).

31. *Public media service* shall mean media services provided by public media service providers.

32. *Public media service provider* shall mean only media service providers described – with the purpose of achieving the objectives of public media services – in Article 84 (1) of this Act, and media service providers established by public media service providers described in Article 84 (1), and media service providers established by economic organizations under the qualifying holding of public media service providers described in Article 84 (1).

33. *Public service media assets* shall mean cinematographic and other audiovisual works, radio programmes, sound recordings and other documents ancillary to media services representing cultural values, copyrights and certain related rights of photographs or any other licenses of the aforementioned, and the physical media containing the aforementioned works (e.g. discs, tapes, cassettes, paper based documents, music scores)

ordered by the public media service providers, their predecessors, the Media Service Support and Asset Management Fund, produced on any legal grounds, procured by way of a sale and purchase transaction, obtained or created in whole or in part by way of a licensing or any other agreement; furthermore costumes, props, film sets and other copyright material, provided that the copyrights and certain related rights are owned or used to be owned by any of the public media service providers prior to the Act entering into force or by the Media Service Support and Asset Management Fund subsequent to the Act entering into force; and also those, over which any of the public media service providers obtained rights subsequent to this Act entering into force.

34. *Publication* shall mean posting on the bulletin board of the Authority or publishing on the website of the Authority. The effective date of the publication shall be the day of posting on the bulletin board.

35. *On-demand media service* shall mean the media services where, on the basis of a catalogue of programmes compiled by the media service provider, the user may, at his/her own request, watch or listen to the programmes at any time of his/her own choice.

36. *Linear media services* shall mean the media services provided by a media service provider that allow for the simultaneous watching or listening to programmes on the basis of a programme schedule.

37. *Hungarian works* shall mean:

(a) works originally made in the Hungarian language in their entirety;

(b) works originally made in several languages, but when considering their overall length, their parts originally made in Hungarian are longer than any of their other parts made in any other language;

(c) works originally made in the languages of any of the nationalities recognised by Hungary, provided their subject matter concerns the life or culture of the given nationality in Hungary;

(d) a music programme performed in Hungarian or performed in the language of any of the nationalities recognised by Hungary, provided its subject matter concerns the culture of the given nationality related to Hungary;

(e) an instrumental music programme, which, primarily because of its composer or performer, forms part of Hungarian culture or the Hungary-related culture of any of the nationalities recognised by Hungary; or

f) a cinematographic work which qualifies as a Hungarian work in accordance with the Act on Motion Pictures.

38. *Hungarian musical work* shall mean a textual or instrumental musical work, which qualifies as a Hungarian work.

39. *Rules on media administration* shall mean this Act and Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content, and any legislation issued in respect of the implementation of the aforementioned acts; any directly applicable legal instruments of the European Union concerning media administration; any broadcasting agreement, any public contract entered into by and between the Media Council and the Office, and the regulatory decision issued by the Media Council and the Office.

40. *Media service* shall mean any independent service of a commercial nature, as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union, provided on a regular basis, for profit, by taking economic risks, for which the media service provider bears editorial responsibility, the primary aim of which is the delivery of programmes to the general public for informational, entertainment or educational purposes through an electronic communications network.

41. *Media service provider* shall mean the natural or legal person, or a business association without legal personality who or which has editorial responsibility over the composition of the media services and determines their contents. Editorial responsibility shall mean the responsibility for the actual control over the selection and composition of the media content and shall not necessarily result in legal responsibility in connection with the media service.

42. *Media content* shall mean any content offered in the course of media services and in press products.

43. *Media content provider* shall mean the media service provider or the provider of any media content.

44. *Programme flow* shall mean a series of radio or audiovisual programmes edited and publicly, continuously transmitted.

45. *Preview* shall mean any programme, which introduces, describes or promotes a programme or programmes the media service provider intends to transmit at a later time.

46. *Transmission time* shall mean the total time of the programmes continuously transmitted in the course of the media service during a specific period of time.

47. *Programme* shall mean the series of sounds or moving images or still images with or without sound, which form a separate unit in the programme schedule or the catalogue of programmes selected by the media service provider and the form and content of which is similar to that of radio or television media services.

48. *Programme related products* shall mean a product or service directly connected to the content of a programme and distributed by the media service provider, which enables the fuller enjoyment of the programme, for example by promoting the interactivity of the viewers or the listeners.

49. *Broadcasting transmission* shall mean the media service distribution in the course of which analogue or digital radio or audiovisual media services are transmitted to the subscriber or user, by means of a terrestrial transmission system that uses radio frequencies – other than frequencies allocated primarily for satellite services – and usually enabling one-way data transmission. Broadcasting transmission shall also include media service distribution implemented by using a digital broadcasting network or broadcasting station.

50. *Media service distribution* shall mean an electronic communications service implemented by using any type of transmission system, in the course of which the analogue or digital broadcasting signals generated by the media service provider are transmitted from the media service provider to the receiver of the subscriber or user, irrespective of the applied transmission system or technology. In particular, media service distribution includes broadcasting transmission, satellite media service

distribution, media service distribution via a hybrid optical-coaxial transmission system, furthermore the transmission of media services using the Internet Protocol through certain transmission system, if the nature and circumstances of the service are identical to those of media service distribution or if it replaces media service distribution implemented in any other manner. Media service distribution shall also mean such media service distribution to which the subscriber receives access for a special fee or for a fee paid for a package that also contains the fee of some other electronic communications service. Signal transmission through a transmission system suitable for the connection of less than ten receivers shall not qualify as media service distribution.

51. *Media service distributor* shall mean the provider of media service distribution, including the operator of a digital broadcasting network, if it provides the media service distribution itself. If the transmission network is not operated by the media service distributor, the service provider defining the conditions of the services provided to the subscriber or user and/or concluding the contract with the subscriber shall qualify as media service distributor.

51a. *Media service distribution transmission platform* shall mean the transmission system, typically analogue or digital, ensuring the transmission of signals of the same technology.

52. *National media service* shall mean the media services, in the reception area of which at least fifty percent of the population of Hungary resides.

53. *Split screen advertisement* shall mean an advertisement covering a particular portion of the screen displayed during a programme, not qualifying as a commercial communication in the course of audiovisual media service.

54. *Composite programme* shall mean a combination of several programmes bearing a single main title or other distinctive attribute.

55. *Political advertisement* shall mean any programme transmitted for or without consideration, promoting or advocating support for a party, political movement, or the Government, or promoting the name, objectives, activities, slogan, or emblem of such entities, which appears and is transmitted in a manner similar to that of advertisements.

56. *Political programme* shall mean a programme, which devotes at least ninety percent of its duration to the analysis, coverage and evaluation of Hungarian or international political or current public affairs and to the exploration of the background of such affairs or events, which does not qualify as a news programme.

57. *Programme package* shall mean media services offered or provided by the media service distributor to the subscriber in one group.

58. *Radio media services* shall mean media services featuring programmes composed of the sequence of sounds.

59. *Advertisement* shall mean any communication, information or representation, qualifying as a programme, intended to promote the sale or other use of marketable tangible assets – including money, securities, financial instruments and natural resources that can be utilized as tangible assets – services, real estates or pecuniary rights or to increase, in connection with the above purposes, the public awareness of the name, designation or activities of an undertaking, or any merchandise or brand name.

60. *Press products* shall mean individual issues of daily newspapers or other periodical papers, online newspapers or news portals, which are offered as a business service, for the content of which a natural or legal person, or a business association without legal personality has editorial responsibility, and the primary purpose of which is to deliver textual or image content to the general public for information, entertainment or educational purposes, in a printed format or through any electronic communications network. Editorial responsibility shall mean the responsibility for the actual control over the selection and composition of the media content and shall not necessarily result in legal responsibility in connection with the press product. Business service shall mean any independent service of a commercial nature provided on a regular basis, for profit, by taking economic risks.

61. *Sports programme* shall mean a programme broadcasting a sports event (simultaneously with the event, in a delayed or an edited format), excluding news reports on sports events and programmes containing discussions of sports related topics.

62. *Member State* shall mean a member state of the European Economic Area.

63. *Sponsorship* shall mean any contribution provided by an undertaking to finance a media service provider or a programme with the purpose of promoting its name, trade mark, image, activities or products.

64. *Public service advertisement* shall mean any communication or message with a public purpose, which does not qualify as a political advertisement, is not for profit and does not serve advertising purposes, is transmitted for or without consideration, and which aims to influence the viewer or the listener of the media service in order to achieve a goal of public interest.

65. *Teleshopping* shall mean an advertisement, which contains direct offers for the sale, purchase or other utilisation of goods, services, rights and obligations for payment or consideration, by way of establishing contact with the distributor or the service provider, including phone-ins operated as business undertakings transmitted in the media service.

66. *Teleshopping window* shall mean a teleshopping facility, the uninterrupted duration of which is at least fifteen minutes.

67. *Thematic media service* shall mean any media service, which broadcasts programmes of a similar theme in eighty percent of the daily transmission time in case of a linear media services and in eighty percent of the total time of all the programmes broadcasted in case of on-demand media services; such as the news or political programmes, programmes for minors, sports programmes, music programmes, educational programmes or programmes introducing a certain lifestyle.

68. *Product placement* shall mean any form of commercial communication, which contains products, services, the trademark of the above or any reference to them and appearing in a programme for payment or similar consideration.

69. *Election campaign period* shall mean the time period as defined in the Act on Election Procedure designated for pursuing the electoral campaign.

70. *Undertaking* shall mean natural persons, sole entrepreneurs, business associations, other legal entities, or business associations without legal personality.

71. *Reception area:*

a) in case of media services provided through broadcasting transmission and media service distribution via satellites, accessible without the payment of a subscription fee, the number of the population residing in a geographically identifiable territory in which the level of the effective signals of the broadcasting transmission service transmitting the programme flow and the calculated level of interference protection reach the minimum values stipulated in the recommendations of the International Telecommunication Union;

b) in case of media services provided through other transmission systems for media service distribution accessible without the payment of a subscription fee, the product of the number of households connected to the transmission system and the average number of persons living in a single household as defined by the Hungarian Central Statistical Office; or

c) in case of media services accessible in return for a subscription fee, the product of the number of households subscribed to such media service or to the media service distribution containing such media service and the average number of persons living in a single household as defined by the Hungarian Central Statistical Office.

72. *Virtual advertisement* shall mean an advertisement inserted, digitally or by any other method, subsequently into the programme signal or the programme.

PART SIX

CLOSING PROVISIONS

Chapter I

ENTRY INTO FORCE

Article 204 (1) This Act – with the exception defined under Paragraph (2) – shall enter into force on 1 January 2011.

(2) Articles 222 and 228 (3) of this Act shall enter into force on 2 January 2011. Article 229 shall enter into force on the day when the provision of the Constitution granting regulatory rights to the President of the National Media and Infocommunications Authority enters into force. Article 223 (6)-(8) of this Act and Annex no. 5 to this Act shall enter into force on 2 January 2011.

(3) Articles 220-228 of this Act shall be repealed on 3 January 2011.

Chapter II

SHORT TITLE OF THE ACT

Article 205 This Act shall be referred to as the “Media Act” in other legislation.

Chapter III

AUTHORIZATIONS

Article 206 (1) The President of the National Media and Infocommunications Authority shall be authorised to establish by decree

a) the frequency fees, the fees payable for the reservation and use of identifiers, as well as the supervisory fee for communications and postal service providers, the method and conditions of payment of these amounts, the rules of the related supervisions,

b) the administrative service fee of the regulatory procedure related to the rating of programmes and classification of communications,

c) the method and terms of the payment of the fees of the procedures conducted by the Authority and the Media Council as well as the amount and the rules of calculating such fees.

(2) Until the decrees defined under Paragraph (1) are not adopted by the President of the National Media and Infocommunications Authority, the ministerial decrees governing the relevant issues shall remain in force.

(3) The Government shall be authorised to regulate and define in a decree the suppliers of legal deposits, exemptions from the number of copies provided for by law, the method and deadline for providing legal deposits, the rules of implementation, the list of organisations entitled to receive legal deposits, the method of distribution, the rules of the storage and the use of legal deposits, as well as the procedural rules to be followed in case of failure to provide legal deposits.

(4) The Minister responsible for culture shall be authorised to regulate by decree the detailed rules of providing the imprints of publications.

(5) The Minister responsible for audiovisual policy shall be authorised to establish by decree the detailed rules governing the administrative service fee payable for the proceedings as special authority defined in Article 171, as well as the management, registration and reimbursement of such fees.

Article 206/A Point (b) of Paragraph (1) of Article 42 and Paragraph (2a) of Article 42 of this Act, determined by Act LXXXV of 2012 on Simplification of certain family law and company law procedures, shall be applied regarding the applications submitted on or after 01 February 2013.

Chapter IV

TRANSITIONAL PROVISIONS

Transitional Arrangements for the Broadcasting Agreements

Article 207 (1) The analogue terrestrial broadcasting right defined in Act I of 1996 on Radio and Television Broadcasting (hereinafter as: Radio and Television Broadcasting Act) and the analogue linear media service provision right using state-owned limited resources as defined in this Act can only be exercised on the basis of the public contract

concluded with the Media Council, with the exception of the procedure defined under Paragraph (4) of Article 48 and the media services of the public media service providers as per Paragraph 32 of Article 203.

(2)-(5) [not in effect]

(6) The media service provider of analogue terrestrial national audiovisual media services may not request a programme fee for the provision of its media services until the date specified in Article 38 (1) of the Digital Switchover Act.

(7) The broadcasting agreement may not be terminated if such agreement could not have been concluded due to a breach of law, however the media service provider is not solely responsible for such breach of law.

(8) [not in effect]

(9) Violations concerning subjects described in the broadcasting agreement and falling under the scope of the Press Freedom Act or of Chapter I of Part II of this Act shall be considered under the Press Freedom Act or the relevant provisions of this Act, instead of the provisions set forth in the broadcasting agreement.

Transitional Arrangements for the Requirement of Notification

Article 208 (1) Media services listed in the register kept by the National Media and Infocommunications Authority pursuant to the Radio and Television Broadcasting Act at the time of the entry into force of this Act shall provide the data specified in the rules on the notification procedure set out in this Act and not listed in the register, within thirty days, without the initiation of a new notification procedure.

(2) Press products that are listed in the register kept by the National Office of Cultural Heritage (hereinafter as: National Office of Cultural Heritage) pursuant to Act II of 1986 on the Press (hereinafter as: Press Act) at the time of the entry into force of this Act, shall provide the data specified in the rules on the notification procedure set out in this Act and not listed in the register, within thirty days, without the initiation of a new notification procedure.

(3) Until 1 January 2012, the National Office of Cultural Heritage shall be responsible for the regulatory tasks related to the registration of printed press products and the management of newspaper registration. As of 1 January 2012, the Authority shall perform the duties related to the registration of printed press products on the basis of this Act.

(4) Media services, online press products already operating at the time of the entry into force of this Act, however not registered by the Authority or the National Office of Cultural Heritage, shall be notified to the Authority by 30 June 2011 at the latest, while printed press products shall be notified to the National Office of Cultural Heritage by 30 June 2011 at the latest.

(5) If the publisher of printed press products registered in the register kept by the National Office of Cultural Heritage at the time of entry into force of this Act, however not published during the three years preceding the entry into force of this Act, fails to re-launch regular publication of the press product by 31 December 2012, then the press

product shall be deleted from the register. In other cases, the period specified in Article 46 (6) (c) subject to the deletion obligation, shall commence on the day of the entry into force of this Act.

Articles 209-210 [not in effect]

Transitional Arrangements for the Members and Office Holders in the Bodies Defined by this Act

Article 211 (1) The entry into force of this Act shall not affect the mandate and the term of office of Presidents, Vice-Presidents, Deputy Presidents, Directors General, Deputy Directors General, CEOs, Deputy CEOs and members of the organisations and bodies specified in this Act.

(2) Delegation to the Board of Public Services and the drawing of lots — set forth in Annex no. 1 — preceding such delegation shall be carried out by 31 March 2011.

(3) If the President, the members of the new joint Supervisory Board, and the joint auditor of public media service providers are not elected by the date of the entry into force of this Act, the term of office of the members, presidents of the previous supervisory boards and the auditors shall end when the new Supervisory Board and the auditor are elected.

Transitional Arrangements for the Public Media Service Providers

Article 212 (1) The drafters of the Public Service Broadcasting Regulation drafted pursuant to the Radio and Television Broadcasting Act shall harmonise the Regulation with the Public Service Code or, in the absence thereof, shall repeal it.

(2) Regarding the term of employment of the persons having worked as public service employees at the Hungarian Radio, the Hungarian Television and the Hungarian News Agency prior to the establishment of Hungarian Radio Pte. Ltd., Hungarian Television Pte. Ltd., and Hungarian News Agency Pte. Ltd. and their employment having been uninterrupted at the same public media service provider ever since, the period spent as public service employees at the Hungarian Television, the Hungarian Radio and the Hungarian News Agency shall be considered as periods worked at the private companies limited by shares.

(3) Notwithstanding Paragraph (2), in respect of the notice period and severance allowance, the term of employment at Hungarian Radio Ltd., Hungarian Television Ltd. and Hungarian News Agency Ltd. shall be calculated from the date of the public service employment having been transformed into an employment relationship. The notice period and severance allowance based on the term of the previous public service employment in compliance with the relevant rules defined in the Act on the Legal Status of Public Service Employees effective at the time of the transformation of the status shall be added to the extent of the notice period and severance allowance.

(4) Regarding claims arising from the public service employment and arising prior to the transformation of the legal status specified under Paragraph (2), the provisions of the Act on the Legal Status of Public Service Employees in effect at the time the claim arose shall apply, and the provisions of Act XXII of 1992 on the Labour Code shall apply to the procedure of enforcing such claims.

Article 213 (1) In 2011, the Board of Trustees of the Public Service Foundation, the Fund and public media service providers shall receive the sponsorships defined in the State Budget Act for 2011. The methods and amount of public service financing set out in this Act (public service contribution) shall be first applied for the year 2012. In 2011, the operational fee defined in the Radio and Television Broadcasting Act shall also form part of the Fund's financial resources.

(2) Regarding the reduction of share capital of the company limited by shares required in relation to the assets transferred pursuant to the Parliamentary Decision no. 109/2010 (X. 28.), the rules set out in Articles 271-272 of Act IV of 2006 on Business Associations may not be applied.

(3) The transfer of assets specified under Paragraph (2) shall be exempted from charges. The historical cost of the assets transferred free of charge to the Fund pursuant to Act C of 2000 on Accounting shall be equivalent to the book value of the assets recorded by the public media service provider at the time of transfer of such assets.

(4) The public media service providers may transfer their rights and obligations arising from their contractual relations established prior to the entry into force of this provision to the Fund as a whole and on the same terms and subject to the same conditions. The change of the subject due to the transfer shall not affect the original rights and obligations of the contracting parties. Accordingly, in respect of the changes of the subject of contractual relations, the provisions defined in the Public Procurement Act pertaining to contract amendments shall not be applicable. The rights granted to and the obligations undertaken by the public media service provider as contracting authority in public procurement procedures initiated prior to the entry into force of this Act and still ongoing, are transferred to the Fund by the relevant declaration of the public media service provider aiming such transfer.

(5) In the course of the transfer of assets conducted pursuant to the Parliamentary Decision no. 109/2010 (X.28.), additional claims – to be borne by the public media service provides – which have not been barred by limitation and arising from agreements already performed and from obligations already fulfilled, shall continue to be borne by the public media service provider. Such claims shall not be enforceable vis-à-vis the Fund.

(6) The state taxation authority may, on the basis of the application of the Fund and the public media service providers based on Paragraph (3) of Article 8 of Act CXXVII of 2007 on Value Added Tax, approve the group taxpayer status as of the date mutually specified by the Fund and the public media service providers.

(7) Paragraph 6 of this Article and Article 108 (11) shall be applicable as of 1 January 2011.

Article 214 (1) In order to enforce the provisions of this Act, media service distributors and public media service providers may initiate with the other contracting party the review and amendment of media service distribution agreements concluded before 31 December 2010. None of the parties may refuse to negotiate the amendment of such agreements.

(2) If the parties cannot reach an agreement within three months from the communication of the other party's offer regarding the review and amendment of the agreement, any of the parties may initiate a legal dispute procedure before the National Media and Infocommunications Authority pursuant to the rules of the Electronic Communications Act.

Article 215 In order to preserve artistic standards, the Fund shall be responsible for the maintenance and development of the artistic groups of Magyar Rádió Nonprofit Zrt. following the entry into force of this Act. The Minister responsible for culture and the Fund may conclude an agreement on changing the person responsible for maintaining the artistic groups.

Transitional Arrangements for the Authority and its Procedure

Article 216 (1) Following the entry into force of this Act, the provisions specified in this Act — subject to the exception provided for in Paragraphs (2)-(5) — shall be applicable in the ongoing procedures before the Media Council or the Office and falling within the scope of this Act.

(2) In tender procedures started before the entry into force of this Act, the Media Council and the Fund shall proceed in line with the rules of procedure effective at the time of the execution of the procedural action, as follows:

a) in tender procedures where the Media Council selected the winner of the tender prior to the entry into force of this Act, the Media Council and the Fund shall conclude a public contract with the winning tenderer following the entry into force of this Act, proceeding in line with the provisions of this Act;

b) in ongoing tender procedures where tenderers have already submitted their tenders, but the Media Council has not yet announced the winner or has not declared the tender procedure as unsuccessful, the Media Council shall, following the entry into force of this Act, proceed in line with the provisions of Act I of 1996 on Radio and Television Broadcasting pertaining to the general conditions of tendering and the invitation to tender, the examination, evaluation and assessment of tenders, with the proviso that its decisions are made in a regulatory procedure in accordance with the rules of procedure defined in this Act and that it concludes a public contract with the winning tenderer. These ongoing tender procedures shall, following the entry into force of this Act and pursuant thereto, qualify as official matters and legal relations of regulatory procedure;

c) in tender procedures for the usage of analogue linear radio media service provision rights started prior to 6 September 2010, the Media Council may review and amend the draft invitation to tender and the wording of the invitation to tender accepted by the legal

predecessor Board. If the Media Council decides to amend the draft invitation to tender or the invitation to tender, the Media Council shall publish the consolidated version of the text and hold a hearing as per Article 50. If the draft invitation to tender or the invitation to tender in the tender procedure has already been published, the Media Council shall notify the public on the reasons for the repeated publication and hearing in a notice posted on its bulletin board as per Article 50 (3) and on its website.

(3) In case of breach of law committed prior to the entry into force of this Act, the provisions of substantive law shall apply, which were in force at the time the breach was committed.

(4) The regulatory procedure specified in this Act may only be initiated after 1 July 2011, for breach of law committed after this date, against the media service provider of on-demand media services or publisher of press products in the event of violations of Articles 14-20 of the Press Freedom Act, and against the media service provider of on-demand media services in the event of violations of the provisions specified in Chapter I of Part Two of this Act. Media service providers and media service distributors shall comply with the obligations defined in Article 9 (3), Article 10 (1) (a), Article 72 (3) and Article 74 (3) of this Act following 1 April 2011. Regulatory procedures for violation of the above obligations may only be initiated against them for breach of law committed after this date.

(5) The stipulations set out in Article 171 shall also be applicable to ongoing procedures, with the proviso that no subsequent special authority fee will be charged.

(6) In 2011, the financial management by the Authority and the Media Council shall be performed from the funds defined in Act CXLVI of 2010 on the 2011 Budget of the National Media and Infocommunications Authority and the Media Council of the National Media and Infocommunications Authority, in accordance with the provisions laid down in Article 134. The remaining uncommitted funds in the budgets of the National Media and Infocommunications Authority and the Media Council, as well as the legal predecessors thereof, accumulated in the course of 2009 and 2010 — including the uncommitted surplus accumulated in the Media Council's budget and the amount held by the National Communications Authority and blocked in 2010 pursuant to the Government's decision — shall be used to generate reserves for funding the public duties related to the implementation of the digital switchover, as well as the Fund's public service- and community media service-related activity. The committed remaining funds reserved until 31 December 2010 shall be used by the Authority in line with the legal statement forming the basis of the commitment.

(7) For the purposes of the Act on the 2011 Budget of the Republic of Hungary, Act CXLVI of 2010 on the Budget of the National Media and Infocommunications Authority and the Media Council of the National Media and Infocommunications Authority, and the contractual obligations, the Broadcasting Support and Asset Management Fund referred to in these acts and in the contracts shall refer to the Media Service Support and Asset Management Fund.

(8) In the case specified in Article 129 (1) (a), the date of termination of the mandate of the President and members of the Media Council shall be the commencement date of

the mandate of the recently elected President and members. In the case specified in Article 113 (1) (a), the date of termination of the mandate of the President of the Authority shall be the commencement date of the mandate of the recently appointed President. If the new President of the Authority is not elected as President of the Media Council by the Parliament within 30 days from his/her appointment, or, if such an appointment takes place outside the parliamentary session, within 15 days from the starting date of the forthcoming parliamentary session; the mandate of the former President of the Media Council shall continue until the election of the new President of the Media Council. If the Authority does not have an elected President, the powers and responsibilities of the President shall be performed by the President of the Media Council, or by the member of the Media Council in the case specified under Paragraph (2) of Article 131.

Article 217 The provisions of this Act determined by Act LXVI of 2012 on amendment of certain acts related to media services and press products shall be applied to ongoing procedures as well, provided that the provisions of substantive law in force at the time the given offence was committed shall be applied regarding the offences committed prior to the entry into force of the above-mentioned provisions.

Article 218 The management, maintenance and operation of the National Audiovisual Archive (hereinafter as: National Audiovisual Archive) shall be carried out by the Authority from 31 March 2011. The transfer of National Audiovisual Archive to the Authority shall be carried out by this date, including the transfer of the prorated part of the budgetary support granted for operation.

Chapters V-VI

Articles 219-228 [not in effect]

Chapter VI/A

COMPLIANCE WITH THE REQUIREMENT OF THE FUNDAMENTAL LAW PERTAINING TO ORGANIC LAW PROVISIONS

Article 229 Articles 1-203, 206-218 and Annexes 1 and 4 of this Act shall qualify as organic law provisions pursuant to Paragraph (3) of Article IX and Article 23 of the Fundamental Law of Hungary.

Chapter VII

COMPLIANCE WITH EUROPEAN UNION LAW

Article 230 (1) This Act serves the purpose of compliance with the following legal instruments of the European Union:

a) Directive 2010/13/EU of the European Parliament and of the Council 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 (codified version) (Audiovisual Media Services Directive);

b) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce);

c) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive);

d) Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services;

e) Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, Articles 2 (1) and 4 (1).

(2) This Act establishes the provisions within the scope of tasks and procedures of the National Media and Infocommunications Authority required to the implementation of the following legal instruments of the European Union:

a) Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws;

b) Commission Decision 2007/76/EC of 22 December 2006 implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance;

c) Commission Decision 2008/282/EC of 17 March 2008 amending Decision 2007/76/EC implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance.

Annex no. 1 to Act CLXXXV of 2010

The Nominating Organisations listed below may delegate members to the Board of Public Services as follows:

1. Nominating Organisations:

a) Hungarian Academy of Sciences

b) Hungarian Catholic Church

c) Hungarian Reformed Church

d) Hungarian Evangelical Church

e) Alliance of the Jewish Communities of Hungary

f) Hungarian Olympic Committee

g) Hungarian Rectors' Conference

h) Hungarian Chamber of Commerce and Industry

i) alliances and organisations of the local governments of Hungary

j) national local governments of nationalities living in Hungary

k) Hungarian cultural organisations with more than one hundred members registered in the neighbouring countries of Hungary

l) advocacy groups registered in Hungary falling under the scope of the Act of the Right of Association protecting and representing the interests of families, the by-laws of which reflect the national scope of their operations

m) advocacy groups registered in Hungary falling under the scope of the Act of the Right of Association protecting and representing the interests of persons living with disabilities, the by-laws of which reflect the national scope of their operations

n) professional organisations active in the field of literature, theatre, film, performing arts, music, dance, fine or applied arts registered in Hungary, falling under the scope of the Act on the Right of Association, the by-laws of which reflect the national scope of their operations, and the members of which are primarily persons and organisations active in the above listed fields.

2. The organisations listed under Points (a)-(h) may delegate one member each.

3. The organisations listed under Points (i)-(n) may participate in the delegation process if they register with the Office at least thirty days prior to the delegation. The Office shall decide on the registration in a regulatory decision, against which decision no appeal may be lodged, however its judicial review can be requested.

4. The organisations listed under Points (i)-(n) may delegate one member each in a manner that the organisations listed under the same Point may delegate only one member. The organisations listed and registered under the same Point may come to an agreement regarding the delegated person. If no such agreement is reached, the Office shall draw lots to determine the organisation whereof a candidate may be delegated.

Annex no. 2 to Act CLXXXV of 2010

Annex no. 3 to Act CLXXXV of 2010

Annex no. 4 to Act CLXXXV of 2010

The amount of the public service contribution in 2012 – based on a calculation taking into account four million Hungarian households each contributing a monthly amount of one thousand three hundred and fifty forints – will be 64,800,000,000 forints that is sixty-four billion and eight hundred million forints. This amount shall be indexed annually as from 2013 at least by the Hungarian index of consumer prices of the year preceding the year under review.

Annex no. 5 to Act CLXXXV of 2010

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