

Content regulation in the practice of the Media Council: Balanced coverage, human dignity, incitement to hatred, protection of minors

Critical accounts of Hungary's new media regulations have typically centered on reservations and concerns over content-related stipulations in terms of scope of application, semantic ambiguity, and possible sanctions. In this study, we propose to examine whether the Media Council has succeeded to fill the new provisions with predictable substance, and the ways in which it has applied the tool of sanctions in its practice. In addition to presenting the numerical data that characterize the actions of the authority in this regard, we will assess the Media Council's interpretation of the law, which is certainly capable of influencing editorial decisions, programming, and the media content selection on offer. Our report focuses on legal application, with only tangential critical comments on the theoretical aspects of the law.

Our findings are based on the analysis of resolutions issued by the authority before April 30th, 2012. The sources have been the resolutions posted in the public domain as well as the Media Council's own 2011 report submitted to the National Assembly. As background to our report, we prepared a longer study discussing in greater depth of detail four highlighted fields of content regulation (balanced coverage, human dignity, incitement to hatred, protection of minors), which we posted in Hungarian concurrently with this report on the web site of *Mérték/Standards Media Monitor*.

1. General findings

1. During the first year and a half, the authority's activities were characterized by moderate intervention. Compared with the complete 2009 data of the National Radio and Television Board (ORTT), the former media authority, the number of resolutions determining a violation is down by two-thirds. True enough, some of the official powers of the former authority have been vested with the Office of the National Media and Infocommunications Authority (NMHH), but this split delegation of tasks hardly explains such a radical decrease in the number of these resolutions. With a few exceptions, the processes were prompted by petitions addressed to the authority. Ex officio processes were only brought in connection with advertising violations, minors protection, default on media service contracts, and non-compliance with reporting obligations.
2. Barring a few large fines imposed on entities violating the rules of minors protection, the authority's use of sanctions is dominated by warning notices and lesser fines. The reason behind the authority's limiting fines to moderate amounts probably has to do with the top-priority official principle of gradual phase-in as well as a restrictive interpretation of what constitutes a repeat offense within the meaning of the law. In the summer of 2011, the

sanctioning policy adopted by the authority made it clear that a “tabula rasa” had been opened along with the entry into force of the new regulations, to allow providers that had operated for years to start anew with a clean slate. In assessing repeat offenses, the authority confined its investigations to violations of the new provisions, even if the relevant provision had not changed materially from the former media law. In determining new sanctions, the media authority disregarded any fines imposed by the predecessor agency.

3. The ORTT itself had come under criticism from many corners for its sluggish response to momentous cases. On occasion, it did not pass a resolution in cases of consequence for the entire media market and the available spectrum of media services until after the fallout of the phenomenon had settled down. This practice seems to have remained unchanged in the way the Media Council applies the law. Where the resolutions suffered significant delay has been in the area of minors protection, specifically including the comprehensive investigations of certain program types, as well as in connection with issues of human dignity and incitement to hatred. The time frames have routinely exceeded the processing deadlines stipulated by law.
4. The ratios of specific case types in the total case load remained unchanged compared to the practice of the predecessor authority. The largest number of resolutions were issued in the field of minors protection, with those investigating advertising and sponsorship violations lagging not far behind. A significant number of resolutions condemned entities in default of obligations set forth in their media service contracts and of their reporting obligations. Although the latter clearly does not affect content directly, it certainly represents a large portion of the sanctions imposed by the authority.
5. In respect of all types of media content except for television and radio, the new Media Act allows market actors to enforce all media content rules through their own self-regulating organizations. These organizations, including the Hungarian Publishers’ Association, the Association of Hungarian Content Providers, the Association of Hungarian Electronic Program Providers, and the Hungarian Advertising Self Regulatory Board, observe the stipulations of their administrative contracts with the Media Council in acting upon consumer complaints regarding print and online press products — a scheme known as co-regulation. Only five complaints have been filed to date, and some of these investigations are still in progress as of writing this; certainly not enough of a corpus for us to talk about a mature regulatory practice. The amendment of the media laws in June affected the elbow room of co-regulation, leaving open the question of whether the institution of co-regulation will ever be met with genuine social approval. In any event, the small number of complaints filed to date does not necessarily mean that the current regulatory scheme will not place a major burden upon the providers.

6. During the adoption of the Media Act, one of the most hotly contested issues was how to regulate measures against television service providers operating in the Hungarian media market that are subject to a foreign jurisdiction. In view of data available in the public domain, the Media Council has hardly ever exercised its law-given rights in this regard. We only found a single resolution condemning a provider under foreign jurisdiction for a violation — a remarkably low occurrence given the proclaimed objective of the regulation and the number of channels concerned. Indeed, three out of four television channels broadcasting Hungarian language programs are not under Hungarian jurisdiction, and local action against them is severely limited by European media regulations. Contrary to what legislators in Hungary originally had in mind, the authority has been unable in its day-to-day practice to broaden the scope of domestic regulations.
7. During the period under review, the authority's decisions were contested in court in very few cases only, mostly in connection with issues of balanced coverage. The analysis of sentencing practices in such cases will form the subject of a future report.

2. Main characteristics of enforcing rules of balanced coverage

In what follows we present our general findings concerning the ways in which the authority has applied balanced coverage provisions.

1. Only in a fraction of the cases investigated has the Media Council determined a violation of the requirement of balanced coverage.
2. A conspicuously large portion of petitions were rejected or not investigated on the merits due to formal lapses. In addition to the rather strict formal criteria, the Media Council, during some of the period under review, acted upon interpretations that did not follow from the language of the law in calculating processing deadlines and in connection with electronically submitted petitions. This caused a significant hindrance to enforcing claims.
3. While the media authority's restrictive interpretation of the requirement of balanced coverage must be considered a welcome move, it also highlights the contradictory nature of the regulation and its application. The Media Council does not separately hold coverage to the test of truth to facts, up-to-dateness, and objectivity — all qualities prescribed by law. The question then arises whether declarative rules and legal institutions are really necessary when the regulatory agency cannot, or will not, have anything to do with such legal requirements.

4. Even admitting the restrictive interpretation favored by the authority, it seems safe to say that the new regulation permits application that is more subjective than that allowed by the superseded provisions. Under the old media law, complaints were only allowed to be filed by the wronged party or someone whose relevant opinion was left out of the coverage. The requirement of “concerned” status made the relevant positions in individual cases clearly identifiable. Whether certain coverage was “factual” and “balanced” could be determined more objectively than with recourse to the new Media Act, which allows anyone to file a complaint but leaves it up to the Media Council to decide, in any given case, what qualifies as “relevant” opinion, and to what extent the various opinions expressed are to be regarded as identical. In the practice of the authority, all that “balanced coverage” presupposes is the presentation of opinions that are relevant and distinct from other opinions. This obviously gives more slack for a subjective assessment.
5. That the legal practice is rather pliant can be felt in the evaluation of specific cases on the merits as well as in the authority’s decisions as to whether it should intervene at all or reject the complaint on grounds that the subject of the objection is an ethical matter. A number of resolutions emphasize that whether a certain coverage is balanced cannot be determined by some mechanical, quantitative scrutiny but with reference to quality factors. Although we concur with this approach, we have found that the Media Council often evaluates the same quality index, such as the generic properties of a newscast, differently from case to case, without clearly stating the reasons for doing so. [Cf. 1437/2011. (X.19), 109/2012. (I.18.)]
6. The only media outlets where the authority determined a violation were commercial television stations, despite the fact that many of the high-profile cases that elicited the protest of most viewers were associated with public media. It seems as if criticizing public service media were a taboo for the authority. Although several petitions were filed against these programs, the authority often ignored to launch a procedure or, if it did, it never concluded the case with a condemning resolution.
7. The Jobbik Party filed 46 complaints during the period under review, for the most part objecting to the failure of one medium or another to cover a certain party event or a position expressed by the party. The Jobbik Party considered the legal category of balanced coverage to be a tool of political marketing. Our examination of the Media Council’s practice clearly reveals the authority’s attempt to preserve the original function of this legal institution in respect of these petitions as well, even if it does not always apply the law consistently in every aspect.
8. The overall picture that emerges is that the very controversial institution of “balanced coverage” has been exploited by a single political party, namely the Jobbik, to win recognition for its interests. The fact that condemning resolutions were exclusively confined to cases initiated by the Jobbik at once suggests that the institution of balanced coverage and its application by the media authority do not play an appreciable role in the operation of

public democratic discourse, or in paving the way toward comprehensive, factual, and objective reporting.

3. Human rights, dignity, hate speech

1. The Media Council found violations of human dignity almost exclusively with tabloid-type programs. In cases with political implications, the authority has so far refrained from intervening.
2. No comprehensive, targeted investigation has been conducted specifically addressing issues of human dignity and hate speech. In the absence of such a comprehensive investigation, any intervention on the part of the authority had to be unsystematic and ad hoc. Consequently, the media authority has so far failed to act upon phenomena and disputes in public discourse concerning extremist demonstrations of social exclusion.
3. To help assess the necessity of intervention using the weapon of media law, the Media Council introduced the category of “enforcing public interests against threats to democratic disclosure.” Unfortunately, the authority has neglected to elaborate the interpretation and criteria of this category in its resolutions, thereby creating an opening for random, unpredictable application.

4. Child protection

In the area of applying child protection provisions, the number of resolutions determining a violation has dropped dramatically compared to previous years. In 2009 and 2010, 164 and, respectively, 152 condemning resolutions were issued, compared to only 66 such resolutions in 2011, and close to 20 in the first quarter of 2012.

As a sign of a conscious media policy, the majority of condemning resolutions sanctioned the failure of providers to rate certain programs 16, which cannot be aired before 9 p.m. In these cases, the authority has intervened with the very legitimate aim of removing from daytime and early evening slots all content that may pose a threat to the healthy development of a child’s personality.

Another area where premeditation on the part of the authority seems obvious is in the way it handles reality shows. During the period under review, three such series attracting large audiences were aired by two channels: RTL Klub ran *ValóVilág4* and *VV5* from late fall 2010 to May 2011 and, respectively, from the fall of 2011; TV2 ran *Összeesküvők* from October to December 2011. Both *Összeesküvők* and *VV4* had an age 12 rating and aired in an early-evening slot. In several sanctioning resolutions, the authority found that the channels assigned the wrong rating to the shows on each day they aired. Thy type of content in question would have called for a higher age limit and airing strictly after 9 p.m.

However, the relevant resolutions were issued belatedly, so the entire series in question went on air with the objectionable editorial decision. Nevertheless, the imposed sanctions did produce the desired result for future reference: By the time RTL Klub relaunched the VV5 series in the fall of 2011, it had changed the rating logo to 16 and chosen a slot later in the evening.

5. Summary

To date, the Media Council's interventions with a view to enforcing content regulations can be characterized as restrained. Our analysis permits the conclusion that the Media Council deliberately strives to interpret content rules as restrictively as possible. Sometimes, this produces a welcome freedom of editorial discretion from undue intrusions by the authority. In other cases, however, it renders the overall regulatory scheme vacant and dysfunctional, and may achieve a result diametrically opposed to the explicit or tacit legislative intent. Pertinent examples include the formalistic interpretation of balanced coverage, the uncertainty of the intervention threshold in human dignity cases, and tardy official action in matters relevant to child protection. In our view, the overall practice of the authority in applying the law has been unable to refute early criticisms of the regulatory concept.