

Main elements of the draft concept on 'media authority'

1. Originally, our concept concerning the future of the Media Authority suggested its full dismantling, based primarily on the dire experiences with the institution in Hungary. However, during the elaboration of the detailed concept, we reached the conclusion that the elimination of the authority cannot be accomplished with full consistency. Nevertheless, we believe that the current authority should be replaced with a decentralized structure of institutions having a very narrow scope of appreciation. This would at the same time give more importance to certain media regulatory fields than before.
2. Concerning most of the current tasks and duties of the Media Authority, we believe - partly based on international examples, partly based on the current activities of the institutions in question - that they can be transferred to other authorities, or in certain cases to other state entities (e.g. media ombudsman) with no special authority powers and/or self-regulatory bodies.
3. The main duty of the media ombudsman would be to examine the different social phenomena on the basis of the analysis of the media content, and raise awareness about these trends. Its prime mission would be to deal with the issues of hate speech and the protection of human dignity in media.
4. The issues concerning the media diversity, the market entry, the market expansion would be dealt with a body which - in its composition - should reflect the diversity of the society. This institution would use the manpower and infrastructure of telecommunications authority, however, rules about its operations should be set respecting its utmost professional autonomy.
5. The regulation should aim that the decisions concerning the media structure would be made based on objective criteria. If this expectation can be consistently respected during the media market regulation, then a permanent body can be replaced with one which functions like the National Election Committee.

Which are the local particularities which have until now hampered the establishment of a politically independent, professionally authentic media authority?

It has become evident by now that the different regulatory and institutional solutions which perform well in a Western European context, do not work at all in a Hungarian environment. The formal guarantees cannot counterbalance the attempts of the political interference. The selection of persons to work in the institutions, the distorted ideas concerning the media of the different parties, their power games, the total lack of a well-thought media policy created such operational conditions among which the professionally authentic performance of the institutions became impossible. While the political influence in the case of ORTT (National Radio and Television Authority - the

former Hungarian media authority), the former media authority was diverse, the current Media Council reflects the intention of the establishment of a one-party rule in the media system. A total political independence is, naturally, just an illusion, and over a certain point it is by no means a regulatory question. However, it is possible to use legal means to eliminate the attempts of a one-party rule or a one-sided interference of the media system. Moreover, such a regulatory framework should be set up which foster professional autonomy and the channelling of the widest possible interests of the society into the media system.

Which are the different tasks concerning the application of the law, the regulatory functions which can be defined as duties in relations to the supervision and the administration of the media system?

We can differentiate the various tasks of the current media authority along several aspects. We can find duties, especially among the media content supervision tasks, which are parallel with the mission of other authorities or the courts, and we can also define ones over which no other state body exerts control.

It is worth sorting the different media authority tasks on the basis of **the extent of the scope of appreciation** during the decision making process. The more quantified or quantifiable the given task, or the more evident the consequence is of the infringement of the norm - or the fulfillment of the conditions of the norm - the less the scope of appreciation.

A further aspect in differentiating among the different authority tasks may be **the extent and the direct or indirect nature of the impact the task makes on the achievement of the constitutional media regulatory goals, and the establishment of a diverse media structure capable of fostering social dialogue**. In fact, the wider the media policy scope of appreciation in a given task, the more influence it has on the media structure as a whole, and thus the achievement of the media policy goals. Until now, the Hungarian media regulation gave the media authority a considerable and barely limited leeway, which increased the risk of arbitrary decision-making.

What organizational framework is needed in order to fulfill the tasks concerning the supervision of the media content and the media market? What are the advantages and risks of the different options?

We believe that the experiences of the Hungarian media regulation justify an organizational solution which puts only to **the least possible degree the question of the media supervision in the focus of political discussions**. We are also convinced that the **technological and economic transformation** of the media market will in the next few year lead to the rethinking of the media supervision in other markets, too. These changes will, independently from the Hungarian situation, result in the narrowing of the regulatory leeway, the irrelevance of the traditional authority operation.

The characteristics of the ideal supervisory system, in our opinion, are the following:

- the supervisory tasks concerning the media content and the media market should be decentralized, certain task (mostly the ones which are independent from the type of the media) should be relocated to different state bodies which otherwise deal with these issues;
- the media policy scope of appreciation should be considerably narrowed, and the media policy decisions should be codified, whenever it is possible;
- a significantly weakened (both from the point of jurisdiction, competence and organization) state entity similar to the previous media authority (before 2010) should be preserved. It would serve as a special media policy decision making forum for the issues directly influencing the media system, and - by necessity - including media policy considerations;
- the main focus of state intervention should be the monitoring, analysis and continuous discussion of tendencies detected on the basis of individual cases;
- preference should be given to self regulation in the media supervision.

Is it possible to fulfil the responsibilities of the state concerning the supervision of the media content and the media market without a media authority established specifically for these purposes?

In the current media landscape, it is appropriate to formulate general content requirements valid for all media types. As opposed to the media laws in effect, these requirements should not be regulations enforced by individual sanctions, but rather expectations included in the **general legal framework** (civil, penal codes, data protection legislation). In all issues where this solution can be applied, there is no need for the designation of an authority for applying the rules. First and foremost, the prohibition of hate speech, and the protection of human dignity can be mentioned in this respect.

In our opinion, most of the supervisory tasks which ultimately necessitate sanctions could be delegate to institutions which **currently also deal with duties concerning the operation of the media system**. Another part of these tasks can be solved in the framework of the self-regulatory system. The duties concerning child protection would be principally dealt with the self-regulatory entities of the various media industry segments, and an autonomous body could make the necessary coordination and the supervision of tasks outside the self-regulation. The rules of the advertising time, the sponsorship and the product placement should be supervised by the consumer protection authority. The duties concerning the application of the rules on political advertisements could be dealt with the National Election Committee, or the below-mentioned new media policy decision-making body. The rules on the media

concentration should be established in such a way that during the market entry process they can be applied without discretion, or during the market competition authority process.

The tasks concerning the frequency tendering and the distribution of other broadcast capacities would necessitate an institutional background which **excludes the government's or any political interference into the media system**. The administrative background necessary for these tasks could stay with the telecommunications supervisory authority, however the decisions significant from a constitutional or media policy point of view should be made by the decision-making body which reflects the diversity of the society. In the case when the tendering and capacity distribution tasks could also be dealt within **a formal procedure, with the least discretion possible**, the independence of the decision-making body has less significance. If the distribution of the frequencies are made in respect of objective criteria exclusively, then the tendering itself does not bear special risks for one-sided political interference.

We believe it is necessary to operate a media supervisory institution which - instead of individual complaints - concentrate its efforts on the integrality of the media system and the public discourse. We therefore suggest the creation of an **ombudsman-type institution**. The ombudsman-character of such an institution should be manifested fundamentally in its separation from the administrative hierarchy, that is in its independence, and in the lack of obligatory decisions and sanctions. Unlike however the traditional ombudsman institutions, the entity we suggest should focus on the societal trends. The phenomena discovered in this way and the individual cases behind the trends could thus mean an important impulse for.