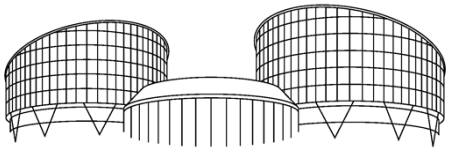

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ATV ZRT v. HUNGARY

(Application no. 61178/14)

JUDGMENT

Article 10 • Freedom of expression • Television company prohibited from describing political party as "far-right" on the basis of unforeseeable application of statutory ban on the communication of any "opinion" by a newsreader • Domestic legislation lacking precision and absence of domestic courts' common practice • Courts' failure to demonstrate, in light of the aim of the ban, whether the impugned term was capable of upsetting balanced and unbiased presentation of a matter of public interest • Courts' failure to consider factual circumstances of the case and arguments based on the veracity and factual accuracy of the impugned term • Courts required to ensure that the statutory ban did not turn into means of suppressing free speech

STRASBOURG

28 April 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of ATV Zrt v. Hungary,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Carlo Ranzoni,
Georges Ravarani,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian company, ATV Zrt ("the applicant company"), on 3 September 2014;

the decision to give notice to the Hungarian Government ("the Government") of the complaint concerning Article 10 of the Convention;

the parties' observations;

Having deliberated in private on 3 July 2018, 8 January 2019, 11 February 2020 and 17 March 2020;

Delivers the following judgment, which was adopted on that last date:

INTRODUCTION

The applicant company in the present case, the owner of a television channel, complained that the domestic courts' decision finding that it had infringed the Media Act, in particular its provision prohibiting the expression of opinions in news programmes, had violated its right to freedom of expression. The applicant company relied on Article 10 of the Convention.

THE FACTS

1. The applicant company is the owner of the TV channel ATV, with its registered place of business in Budapest. The applicant company was represented by Mr D. Karsai, a lawyer practicing in Budapest.

2. The Government were represented by their Agent at the Ministry of Justice, Mr Z. Tallódi.

3. ATV is an independent broadcaster, providing television and online services. Every evening it broadcasts televised news programmes that last for about 30 minutes. During the news programmes, a series of news items is introduced by a newsreader in a studio, and each news item is then presented by a different news reporter.

4. On 26 November 2012, in a speech delivered during a plenary session, a member of parliament from the political party *Jobbik*, Mr M.Gy., stated that "it is time ... that we made an assessment how many persons of Jewish origin, especially members of Parliament and government, there are who pose a risk to national security...".

5. On 29 November 2012 the applicant television company broadcast a news item on preparations for a demonstration organised by a number of political parties with the title "Mass demonstration against Nazism" to be held as a protest against the political party *Jobbik.* It was explained that the background to the event was Mr M.Gy.'s speech during the plenary session and the party's name was also mentioned. The newsreader introduced the news item by stating that "an unprecedented alliance is about to materialise on Sunday against the biased remarks of the parliamentary far right".

6. Following a complaint from the press officer of *Jobbik*, the National Media and Infocommunications Authority initiated proceedings against the applicant company, found that the latter had infringed section 12(3) and (4) of Act no CLXXXV of 2010 on Media Services and Mass Communication (hereinafter the "Media Act"), and prohibited it from repeating the statement. It declared that the expression "parliamentary far right" went beyond a factual statement and amounted to a value judgment. The Authority noted in its reasoning that it was irrelevant whether the statement had negative connotations or was based on fact or was shared by a number of people or was the opinion of the newsreader or the broadcasting company. The communication of any opinion by a newsreader was prohibited by the Media Act, to ensure that the public received unbiased news and political information.

7. The applicant company appealed, arguing that the term "far-right" was widely used in relation to *Jobbik*, that it had a scientific basis in political and social science, and that it reflected *Jobbik*'s position in Parliament.

8. By its decision of 17 April 2013 the Media Council of the National Media and Infocommunications Authority, acting as a second-instance authority, upheld the first-instance decision, endorsing its reasoning that the fact that a certain opinion was shared by the wider public did not change the nature of that opinion.

9. The applicant company sought judicial review of this decision. It maintained that the impugned statement constituted an integral part of a news item describing a certain parliamentary group. The term was widely used and thus unlikely to influence the audience. It pointed out that the international media referred to *Jobbik* as a far-right party and some of the information published on the party's own website also contained this term.

10. By a judgment of 30 September 2013 the Budapest Administrative and Labour Court overturned the decision of 17 April 2013 (see paragraph 8 above) and remitted the case to the Media Council of the National Media

and Infocommunications Authority. The judgment contained the following reasoning:

> "It is significant that nowadays the term 'right-wing' is not used solely in relation to extreme, chauvinistic movements in daily political life (for instance sympathisers of fascist or national socialist ideologies) but also in relation to right-wing political parties with a milder stance. It is a sociological fact that the term has lost its meaning as referring exclusively to 'extremists'. The same adjective could describe both truly radical, aggressive standpoints and also more moderate ideologies. It is a matter for political and sociological debate which category is to be referred to, but it is a fact that in current national and European public life [the term] is used to cover both. As a consequence, if a party whose founding document acknowledges its radical right-wing ideology is referred to in a news programme as 'far-right' – an adjective widely accepted in public and scientific life – this does not mean that an opinion is being expressed about the party, and especially not that it is associated with extreme chauvinistic ideas. It simply means that the political entity in question is being described, factually, using one of the various meanings of the adjective – not based on the plaintiff's subjective assessment – corresponding to its nature as accepted by current social and political public understanding. The fact that the term 'far-right' is used in conjunction with the adjective 'parliamentary' further diminishes the impression that it refers to extreme ideology."

11. The respondent requested a review of the judgment before the *Kúria.*

12. By a judgment of 16 April 2014 the *Kúria* overturned the first-instance judgment and upheld the Media Council's decision. It also ordered the applicant company to pay 91,000 Hungarian forints (HUF) (approximately 300 euros (EUR)) in court fees and HUF 80,000 (approximately EUR 260) for the respondent's legal costs before the domestic courts. According to the *Kúria:*

> "The term 'far-right' in the news programme is an opinion, not a statement of fact. According to the first-instance court, the term 'far-right' is the subject of political and social debate and if terminology is debated, it cannot be the subject of a factual statement. The debate was not about the meaning of the term 'far-right', but whether the term 'far-right' constitutes an opinion on a news item or a statement of fact. In the *Kúria*'s view the mentioning of the 'parliamentary far right' constitutes an expression of opinion. Jobbik does not consider itself a far-right party, and describing it using such an adjective constitutes an expression of opinion, creating an association with an extreme radical stance in the public's mind, and thus having a negative influence."

13. The applicant company lodged a constitutional complaint. It submitted, amongst other things, that political parties are regularly described using adjectives, such as the "Green" party or the "Christian" democrats, which do not reflect an opinion. Similarly, in the present case the use of the adjective reflected additional information about *Jobbik* that is accepted by the general public. It argued that the term should be analysed in its broader context, namely that it was expressed in connection to a demonstration triggered by an anti-Semitic comment of a *Jobbik* member. It also emphasised that the term was to describe the position of *Jobbik* in Parliament, which was factually on the far-right.

14. On 6 December 2016 the Constitutional Court dismissed the applicant company's complaint. The judgment contained the following reasoning:

> "Section 12 of the Media Act regulates the relationship between the media and the news, opinions and evaluative explanations they broadcast as a sub-rule of the obligation to provide balanced and factual coverage. Pursuant to this provision, in news and political information programmes of the media service provider, presenters, newsreaders or reporters cannot, as a general rule, add an opinion or an evaluative explanation to the political news they are transmitting, with the exception of providing background information. Any opinion or evaluative explanation added to the news provided in a programme must be made in a form that distinguishes it from the news itself, indicates its nature as such, and identifies its author.
>
> The legislation therefore does not envisage a simple prohibition on expressing opinions, since the expression of opinions is possible, but the public needs to be informed that the expression is an opinion and about its author, and it should be distinguished from the news itself.
>
> The Media Act sets the external, legislative boundaries of a fundamental right.
>
> The provisions [of the Media Act] do not require that an opinion has a factual basis and do not pose a restriction on the publication of opinions without any factual basis but regulate the manner of publication of any such opinion. The regulation balances the right to freedom of expression against the public's right to factual and unbiased information; it restricts the right to freedom of expression to a minimal extent by providing that media consumers should be duly informed about the fact that a particular term is an expression of opinion and about its author.
>
> ...
>
> 35. If a qualifying adjective expressed in context in connection with a news item cannot be traced back to an organisation or person unconnected with the media, or if the origin of the opinion is not clearly stated, it can create the impression in the public that it is the opinion of the broadcaster or newsreader.
>
> ...
>
> 43. In the Constitutional Court's view, classifications used in political science and everyday language are not exact categories, and opinions vary as to which political ideologies might be included. The legislation does not differentiate between positive or negative opinion, but restricts every opinion or explanatory comment on news items. Section 12 (3) and (4) forbid the expression of any opinion, and rather regulate the appropriate way of publication.
>
> ...
>
> 45. The self-definition of the political party in question is not an objective measurement, neither is the opinion of the general public. The aim of the legislation is, above all, to safeguard the public's interest in credible information.
>
> ...
>
> 47. In the case of news reporting, it can be assessed on a case-by-case basis whether the adjective used reflects a social consensus to such an extent that there is no doubt that the adjective represents a fact. However, if there is no such standard beyond doubt, or if there are grounds for believing that the expression is an opinion, further

individual assessment is needed to decide whether the adjective is the newsreader's opinion or whether it has other origins.

...

50. The expression was a quotation from one of the descriptions used by the organisers [of the demonstrations] (fascist, far-right)...but it was not made clear that it reflected the opinion and value judgment of the organisers.

...

52. Classifications in political science or in colloquial language that do not correspond to exact categories or undisputed facts are generally subjective opinions. Although the adjective was used to express the opinion of the organisers of the demonstration and therefore reflected the regularly used, well-established opinion of certain social groups, it is still necessary to distinguish it from the newsreader's opinion.

...

56. Even a widely used expression can influence public opinion, since public opinion changes over time and due to circumstances, so that even well-established public opinion can be reinforced or weakened by the use of an adjective. The recurring use of an adjective ... by newsreaders may fall foul of the prohibition on expressing an opinion, since such usage can infringe credibility and objectivity."

RELEVANT LEGAL FRAMEWORK

15. The relevant provisions of the Media Act provide as follows:

Information Activities
Section 12

"...

(2) Depending on the nature of the programmes, a balanced manner of information provision shall be ensured either within the given programme or within a series of programmes appearing regularly.

(3) Save for providing background information about the news in question, employees of the media service provider appearing regularly in the programmes and 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 that distinguishes it from the news itself, indicates its nature as such, and identifies its author."

Section 186

"(1) When the infringement is of minor significance and no re-occurrence can be established, the Media Council or the Office – after noting and issuing a warning about the occurrence of the infringement – may, setting a deadline of thirty days at the most, request that the infringer discontinue its unlawful conduct, refrain from infringement in the future, and act in a law-abiding manner, and it may also set the conditions hereof."

16. At its 103rd plenary session, held on 19 and 20 June 2015, the Venice Commission adopted an Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary (CDL-AD(2015)015). The relevant parts of the Opinion read as follows:

Provisions related to the positive obligation to give balanced press coverage

"47. Section 13 of the Press Act in its current form requires that linear media service providers (i.e. essentially radio and TV broadcasters) must provide 'balanced' information (see also Section 12 (2) of the Media Act). In addition, Section 12 (4) of the Media Act obliges the presenters of the news programs to distinguish clearly between 'facts' and 'opinions'. These requirements concern information programs. Section 181 of the Media Act establishes an administrative procedure to handle the infringements of the obligation of balanced information. This procedure will be initiated on request of 'the party subscribing to the unrepresented view, or any viewer or listener' and can lead to a decision of the Media Council to impose either the obligation to broadcast or publish the declaration of infringement or to provide an opportunity for the petitioner to make his viewpoint known. The Media Council's resolution in this respect is subject to judicial review.

48. It must be noted that Section 13 of the Press Act has already been amended, in response of the recommendations contained in the CoE expert examination of 2012. Namely, the requirement of the 'diverse, comprehensive, factual, up-to-date, objective' coverage was removed from the law. Furthermore, Section 13 of the Press Act is now applicable only to linear media service providers. Those amendments are welcome. The question is whether the remaining requirements ('balanced' news coverage and the obligation to distinguish between 'facts' and 'opinions') are justified.

49. Balanced and neutral news reporting is, indeed, a commendable professional standard for every journalist. Furthermore, it is perfectly legitimate to require that 'media system on the whole' is organised in such a manner as "to provide credible information, quickly and accurately" (see Section 10 of the Press Act). After all, Article 11 of the EU Charter specifically guarantees 'media pluralism', which is impossible without diverse and balanced media coverage of current events. As the Venice Commission held in its opinion on laws 'Gasparri'and 'Frattini' of Italy, "media pluralism is achieved when there is a multiplicity of autonomous and independent media at the national, regional and local levels, ensuring a variety of media content reflecting different political and cultural views'; further down it continued: 'while external pluralism relates particularly to the private sector, internal pluralism has increasingly become associated with the public sector'. In the Hungarian context, measures aimed at limiting over-concentration of the media and provisions fixing minimal quotas for national and European independent content providers are supposed to ensure diversity of opinions on the media market as a whole (see, in particular, Part Two of the Media Act, Chapters I, IV, V and VI).

50. However, it is questionable whether 'balance' should become an enforceable legal obligation of every particular media taken alone. The norms under consideration create a very complex obligation on the media and lack precision. How can information be 'balanced'? One can understand balance of opinion, but information (facts) needs to be thorough and accurate, not 'balanced'? How quickly has the

'balance' to be achieved when the programme is a 'series of programmes regularly shown'? Should the 'balance' be assessed in quantitative or more in qualitative terms? In addition, 'facts' cannot always be clearly distinguished from 'opinions'; after all, it is difficult to imagine an anchor-man not using any adjective, while every adjective gives a flavour of an 'opinion' to a statement of fact. In sum, the vagueness of the terms employed in two acts may turn those provisions into a tool of suppression of the free speech, even if originally it was supposed to promote non-opinionated news reporting.

51. It was reported during the visit that the above positive obligations of the media are not strictly enforced in respect of the public service media, and, at the same time, create additional burden for the private media. The Venice Commission understands the need to distinguish between facts and opinions and provide 'balanced' news coverage, especially when those requirements are applied to public service media. However, given the vagueness of those concepts and the risk of abusive interpretation of Section 13 of the Press Act and Section 12 of the Media Act, the Venice Commission recommends the Media Council to issue clear policy guidelines on the application of those provisions. Such guidelines should be developed by the Media Council jointly with the self-regulatory bodies, and should be published."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

17. The applicant company complained under Article 10 of the Convention that the domestic courts' decisions had entailed an interference with its right to freedom of expression that could not be regarded as necessary in a democratic society.

Article 10 reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

18. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant company

19. The applicant company claimed that the infringement of its right to freedom of expression had had no basis in clear and foreseeable practice, and that it had been punished for having employed what was a commonly used expression to describe *Jobbik.* It also maintained that the aim of the restriction had not been to protect the audience's interest in receiving unbiased information, but rather to protect the reputation of the political party. This was evident from the fact that its news programmes had not been considered biased in general, but only as regards the use of the adjective describing *Jobbik.*

20. It argued that the term "far-right" was not a reflection of its subjective opinion but was commonly accepted in Hungary when referring to *Jobbik*. It maintained that it had applied this term in good faith and disputed the criterion applied by the Constitutional Court and supported by the Government, namely that for a term to qualify as a statement of fact, there should be "no doubt" whatsoever in society about its accuracy. In its view, in these days of modern media all notions were likely to be the subject of public debate.

21. The applicant company further contested the Government's argument that – since there was no blanket prohibition on expressing opinions – it had not suffered significant prejudice and could have presented the alleged opinion in a different way. It argued that the newsreaders' job would be impossible if they were obliged to declare each time a term they used might constitute a value judgment.

22. The applicant company accepted that it was under an obligation to inform the public in an unbiased manner; however, it submitted that there could never be complete impartiality in news reporting (given that even the selection of news items represented a value judgment), which posed a natural limitation on its duties of impartial reporting.

(b) The Government

23. The Government argued that the complaint under examination was of a fourth-instance character, that the national courts had set out the reasons for their decisions, and that the Court would be acting beyond its jurisdiction if it overruled them.

24. In addition, the Government contested that the applicant company's rights under Article 10 of the Convention had been violated. They accepted that the injunction interfered with the applicant company's right to freedom of expression and was based on sections 12 and 186 of the Media Act. However, they maintained that the injunction had been necessary in a

democratic society in order to protect the right of others to receive balanced and unbiased information on matters of public life and current events and to guarantee pluralism of information and a democratic public opinion.

25. According to the Government, democratic public opinion could come about only through the provision of full and objective information. The measure in question served to protect freedom of the press and to prevent the emergence of monopolistic public opinion based on an "officially correct version". Since the provision was meant to ensure that service providers did not influence their audience surreptitiously by broadcasting subjective opinions, it was irrelevant whether the opinion had negative or positive connotations or a factual basis.

26. In this connection the Government emphasised that television programmes had a greater influence on the public since they reached a wider audience, even in the case of programmes knowingly chosen. Also, audio-visual content, by definition, influenced its audience differently.

27. Endorsing the findings of the *Kúria* and the Constitutional Court, the Government maintained that the impugned statement constituted an opinion. Since the expression "far-right" was not an exact category but a matter of political and social debate, it could not be argued that referring to a political party in those terms had been a factual statement. They pointed out that *Jobbik* had not identified itself as far-right party but as a conservative, value-based, national-Christian party "radical in its methods". Furthermore, there was no social consensus on the term, which could leave the audience with the impression that it had been a subjective opinion on the part of the newsreader. This was even more likely since the newsreader had failed to clarify that the use of the impugned adjective had been a quotation of the opinion of the organisers of the demonstration.

28. As to the proportionality of the measure, the Government explained that the Media Act did not impose a complete ban on the expression of opinion, but merely regulated the manner of publication thereof, requiring that opinions be expressed only if their origin was specified. Moreover, the sanction that had been imposed on the applicant company for its infringement of the Media Act had been the least severe one.

2. The Court's assessment

29. It has not been contested by the parties that the injunction in question amounted to an interference with the applicant company's right to freedom of expression provided for in Article 10 of the Convention.

30. Such an interference must be "prescribed by law", pursue one or more legitimate aims in the light of paragraph 2 of Article 10, and be "necessary in a democratic society".

31. In the present case the parties' opinions differed as to whether the interference with the applicant company's freedom of expression was prescribed by law. The applicant company argued that it had not been

foreseeable that the domestic courts would interpret the term "far-right" as an opinion rather than a statement of fact and would therefore penalise its usage in a news programme, relying on section 12 of the Media Act. The Government maintained that the interference had been based on the provisions of the Media Act.

32. The Court reiterates that the expression "prescribed by law" in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects. It is primarily for the national authorities, notably the courts, to interpret and apply domestic law. One of the requirements flowing from the expression "prescribed by law" is foreseeability. Thus, a norm cannot be regarded as a "law" within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable the citizen to regulate his conduct; he or she must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty. Whilst certainty is desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice. The level of precision required of domestic legislation – which cannot provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed. The Court has found that persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation, can on this account be expected to take special care in assessing the risks that such activity entails (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, §§ 122-125, ECHR 2016 (extracts), with further references).

33. The Court notes that section 12 of the Media Act, which served as the basis for the restriction of the applicant company's expressive activities, states that presenters, newsreaders or correspondents must not add any opinion or evaluative explanation to political news.

34. The Court had regard to the Opinion of the Venice Commission, which emphasises that "facts" cannot always be clearly distinguished from "opinions" and that the vagueness of the terms employed in legislation may turn the relevant provisions into a tool for the suppression of free speech, even if originally the legislation was supposed to promote non-opinionated news reporting (see paragraph 16 above). Nevertheless, in the present case the Court does not find it necessary to decide whether the above considerations alone can serve as a basis for finding a violation of Article 10

of the Convention (see, *mutatis mutandis*, *Chumak v. Ukraine*, no. 44529/09, § 48, 6 March 2018, with further references).

35. It follows from the principles stated above that the salient issue in this case is not whether section 12 of the Media Act is in principle sufficiently foreseeable, in particular in its use of the term "opinion", but whether when publishing the statement containing the term "far-right", the applicant company knew or ought to have known – if need be, after taking appropriate legal advice – that that expression would represent an "opinion" in the present circumstances.

36. It appears that the applicant company's case was the first in which the domestic courts had been called on to examine whether an adjective describing a political ideology constituted a statement of fact or an opinion – the courts examining the case did not refer to any previous domestic case-law, nor did the parties provide any examples of such case-law to the Court. Likewise, no standards as to the distinction between facts and opinions about political parties can be discerned from any other material which has been made available by the parties. The Court acknowledges that the very fact that the applicant company's case was the first of its kind does not, as such, make the interpretation of the law unforeseeable, as there must come a day when a given legal norm is applied for the first time (see *Sekmadienis Ltd. v. Lithuania*, no. 69317/14, § 67, 30 January 2018, and the cases cited therein).

37. For the Court the question whether the domestic courts' approach could reasonably have been expected is closely related to the issue whether in a democratic society it was necessary to ban the term "far-right" in a news programme in the circumstances of the present case and in light of the legitimate aim pursued by the restriction. The Court therefore considers that it is not necessary to address the question whether section 12 of the Media Act could, *in abstracto*, constitute a foreseeable legal basis for the interference complained of (see paragraph 35 above) and will continue the examination of the case, turning to the questions whether the interference pursued a legitimate aim and whether it corresponded to any "pressing social need".

(a) Whether the interference pursued a legitimate aim

38. The parties had somewhat divergent views with regard to the aim of the interference in issue. The applicant company agreed that the interference had pursued the aim of protecting the reputation of a political party. The Government maintained that the interference pursued the legitimate aim of protecting the right of others, which encompassed the right of the audience to receive information on matters of public life in respect of pluralism of information and a democratic public opinion.

39. The Court is satisfied that the measure in question was intended to ensure the audience's right to a balanced and unbiased coverage of matters

of public interest in news programmes, and thus pursued the aim of the "protection of the rights of others".

40. The pertinent question remains whether the restriction on the applicant company's freedom of expression was necessary in a democratic society.

(b) Whether the interference was necessary in a democratic society

(i) General principles

41. The fundamental principles concerning the question whether an interference with freedom of expression is "necessary in a democratic society" are well established in the Court's case-law and were summarised in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016).

42. The Court also reiterates the principles concerning pluralism in the audio-visual media set out in *Centro Europa 7 S.R.L. and Di Stefano v. Italy* ([GC], no. 38433/09, §§ 129-34, ECHR 2012).

43. As to the breadth of the margin of appreciation to be afforded to the respondent State, it depends on a number of factors. It is defined by the type of expression at issue and, in this connection, there is little scope under Article 10 § 2 for restrictions on debates on questions of public interest. The margin is also narrowed by the strong interest of a democratic society in the press exercising its vital role as a public watchdog: freedom of the press and other news media affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. It is incumbent on the press to impart information and ideas on subjects of public interest and the public also has a right to receive them (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 102, ECHR 2013 (extracts)). The task of imparting information necessarily includes, however, "duties and responsibilities" (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 89, ECHR 2015 (extracts)).

(ii) Application in the present case

44. The Court notes that in the present case many of the parties' arguments revolve around the assessment of whether the term "far-right" was a statement of fact or an opinion. The Government submitted that the domestic courts had rightly taken the view that the newsreader's comments amounted to an opinion, infringing section 12 of the Media Act. In the applicant company's understanding the newsreader had used in good faith a term generally accepted to describe the political party.

45. The Court must establish the necessity of the interference in the present case by examining whether applicant company could have foreseen that the courts would categorise the impugned term as an "opinion", having

regard to the circumstances of the present case and the aim of the restriction contained in section 12 of the Media Act.

46. The Court first notes that even though the notion of "opinion" in section 12 of the Media Act appears to be very broad and may cover all kinds of adjectives (see the Opinion of the Venice Commission, quoted in paragraph 16 above), it is clear that the aim of the ban on expressing opinions was to protect democratic public opinion from undue influence by media service providers and was in the interests of providing objective information (see paragraph 25 above). In the Court's view, in the absence of a definition in the legislation, the judicial review of any measure taken under section 12 had the role of developing a sufficiently specific interpretation of the provision to precisely address the risk of distortion which the State sought to avoid. It was thus for the domestic courts to interpret the term "opinion" in a manner that took into account the aim of the restriction and guaranteed the audience's right to a balanced and impartial coverage of matters of public interest, as well as the media's right to impart information and ideas. In other words, in view of the lack of precision in the legislation, the domestic courts were required to ensure that the contested provision concerned only expressions which were likely to upset balanced reporting on matters of public interest and which could arguably be restricted, and that it did not turn into a tool for the suppression of free speech, encompassing activities and ideas which are protected by Article 10.

47. As to the judicial review carried out in the present case, the Court observes that throughout the proceedings the domestic courts suggested different elements of analysis to decide on the nature of the impugned term. The Budapest Administrative and Labour Court qualified the newsreader's statement as one of fact, emphasising that the term "far-right" could describe a variety of political ideologies, but that the appropriate terminology was a matter of social and political debate. It also referred to the funding declaration of *Jobbik,* in which it identified itself as a radical right-wing party (see paragraph 10 above). On the contrary, the *Kúria,* acting as a second-instance court, found it relevant when establishing that the impugned statement had constituted an opinion, that *Jobbik* did not identify itself as a party with a far-right political stance (see paragraph 12 above). Lastly, to explain the difference between statements of fact and opinions, the Constitutional Court held that an adjective could be classified as a statement of fact if it was accepted beyond doubt in society. The term "far-right" was a disputed term which did not have a precise definition either in political sciences or in colloquial language; it therefore constituted a subjective opinion. According to the Constitutional Court, in the present case it represented the personal belief of the organisers of the demonstration against *Jobbik*, from which the newsreader had failed to distinguish himself (see paragraph 14 above).

48. The Court notes the variety of approaches applied by the domestic courts in determining the nature of the impugned term (see paragraphs 10, 12 and 14 above). It also observes that the Government did not demonstrate the existence of a common practice, either. This state of affairs casts doubt on whether the interpretation given by the higher-level domestic courts in the present case – namely, that a statement containing the term "far-right" constituted an opinion – could reasonably have been expected.

49. More importantly, there is no indication that the domestic courts sought to consider, when assessing the nature of the impugned notion, that the legislation was supposed to promote balanced news reporting. Although the Constitutional Court referred to the public's right to factual and unbiased information, in reaching its decision it simply found that public opinion could be influenced by the use of an adjective, without demonstrating whether in the circumstances of the present case the specific term at issue was capable of upsetting the balanced presentation of a matter of public interest.

50. The Court is mindful of the applicant company's argument, also adduced before the domestic courts, that hearing *Jobbik* referred to as a "far-right" party was sufficiently commonplace for the audience; it was a generally accepted category in the media, scientific discourse and colloquial language in relation to *Jobbik.* The Court also finds force in the applicant company's more general argument before the domestic courts that political parties were frequently defined with adjectives (green party, conservative party, and so on) that merely referred to their political objectives and programmes and did not constitute an opinion or value judgment about them, capable of creating bias in the audience (see paragraph 13 above).

51. The applicant company also relied on the factual circumstances of the case, namely that the disputed term was expressed in connection with a demonstration triggered by an anti-Semitic comment by a *Jobbik* member. In those circumstances, the Court finds that such factual elements were relevant for the contention that the term "far-right" did not concern an assessment of someone's conduct in terms of its morality, or a personal feeling of the speaker, but the position of a party within the political spectrum in general and in Parliament in particular. Nonetheless, the domestic courts did not consider the circumstances surrounding the information which formed the object of the reporting, but instead the Constitutional Court held that the provisions of the Media Act did not require that an opinion had a factual basis (see paragraph 14 above), thus implicitly considering irrelevant any defence by the applicant company based on the veracity and factual accuracy of the term employed.

52. Having regard to the domestic courts' divergent approaches to distinguishing facts from opinions, to the aim of the relevant provisions of the Media Act and to the circumstances of the present case, the Court finds that the applicant company could not have foreseen that the term "far-right"

would qualify as an opinion. Nor could it have foreseen that the prohibition of its use in a news programme would be necessary in order to protect unbiased reporting.

53. Therefore, the restriction placed on the applicant company in its use of the impugned term was a disproportionate interference with its right to freedom of expression, and thus not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

54. Lastly, the Government relied on the relatively lenient nature of the sanction imposed, but in the light of the foregoing conclusion, the Court does not have to examine this argument (see *Castells v. Spain*, 23 April 1992, § 49, Series A no. 236).

55. Accordingly, there has been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

57. The applicant company claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

58. The Government contested this claim.

59. The Court considers that the finding of a violation constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained by the applicant company.

B. Costs and expenses

60. The applicant company also claimed EUR 550 for the costs and expenses incurred before the domestic courts and EUR 6,000 plus VAT for those incurred before the Court. This latter sum corresponds to thirty hours of legal work billed by its lawyer.

61. The Government contested these claims.

62. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full sum claimed.

C. Default interest

63. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant company;

4. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,550 (six thousand five hundred and fifty euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 28 April 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Ganna Yudkivska
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Pinto de Albuquerque is annexed to this judgment.

G.Y.
A.N.T.

CONCURRING OPINION OF JUDGE PINTO DE ALBUQUERQUE

Introduction

The case of *ATV ZRT v. Hungary* concerns the first time the Hungarian authorities had to interpret section 12(3) and (4) of Act no CLXXXV of 2010 on Media Services and Mass Communication ("the Media Act"),[1] which provisions impose an obligation on broadcasters to distinguish between facts and opinions in news and political reporting. This case is also the first time the European Court of Human Rights ("the Court") has specifically dealt with the imposition of such an obligation on the media. The Court could have taken this opportunity to shape the media laws of Hungary and other Contracting Parties by carrying out a thorough analysis of the relevant law and putting forward guiding principles. It failed to do so. This opinion aims to fill this void.

This opinion contends that owing to the lack of foreseeability, as well as the lack of sufficient safeguards against abuse, the interference with the applicant company's right to freedom of expression was not properly "prescribed by law". The majority, on the other hand, despite acknowledging the potentially problematic nature of the relevant provisions of the Media Act, have opted to assess the interference in terms of its "necessity in a democratic society". However, numerous international instruments, some dealing specifically with Hungarian media law, demonstrate that the relevant law is at the very least detrimental to, if not categorically incompatible with, media freedom standards. Following an in-depth analysis of the law in the light of the principles enshrined in international instruments and the European Convention on Human Rights ("the Convention"), this opinion proposes an alternative to such heavy-handed content regulation.

Journalistic objectivity

The applicant company's Article 10 right was interfered with pursuant to section 12(3) and 12(4) of the Hungarian Media Act. According to these provisions, presenters, newsreaders or correspondents "may not add any opinion or evaluative explanation to the political news" appearing in "programmes providing news and political information". If the media wish to add an "opinion or evaluative explanation" to the news, this should be distinguished from the news and indicate that it is an opinion or evaluative explanation, and its author should be identified. Section 12 of the Media Act imposes an obligation to provide objective information, which could be

[1] Paragraph 37 of the judgment.

framed as a "duty of impartiality". This duty should be assessed in the light of the objectives of the provision in question, which is aimed at ensuring the "right to a balanced and unbiased coverage of matters of public interest in news programmes".[2] The impartiality requirement should be considered in relation to the "balanced coverage" requirement under section 13 of the Freedom of the Press Act as well, submitted by the Government as the overarching principle that aims to provide "objective information" to the public.[3]

Impartiality, along with accuracy and fairness, are widely accepted principles of the ethics of journalism. The European Broadcasting Union cites impartiality, fairness, and accuracy among its Editorial Principles catering to audience trust, which "underpins" its members' "existence".[4] In the words of the United Nations (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, "[t]he credibility of the press is linked to its commitment to the truth and to the pursuit of accuracy, fairness and objectivity".[5]

Such principles are not mere concerns of journalists. As accepted under international and European human rights law, States have a positive obligation to ensure media plurality and diversity,[6] which is closely related to impartiality, fairness, and accuracy.[7] The Court has held that "[i]t is of the essence of democracy to allow diverse political programmes to be proposed and debated"[8] on television and that States have "a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism". [9] Notably, the Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda by the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African

---

[2] Paragraph 40 of the judgment.

[3] Paragraphs 14 and 18 of the Government's observations.

[4] European Broadcasting Union, *Public Service Values: Editorial Principles and Guidelines*, 22 August 2014.

[5] Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/65/284, 11 August 2010, paragraph 22.

[6] Joint Declaration on Media Independence and Diversity in the Digital Age by the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 2 May 2018, paragraph 1(b)(iii).

[7] Parliamentary Assembly of the Council of Europe (PACE), Resolution 2066 (2015) on media responsibility and ethics in a changing media environment, 24 June 2015, paragraphs 6-7.

[8] *Centro Europa 7 S.R.L. and Di Stefano v. Italy* [GC], no. 38433/09, § 129, ECHR 2012.

[9] Ibid., § 134.

Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information states that the positive obligation to "promote a free, independent and diverse communications environment, including media diversity" is also a "key means of addressing disinformation and propaganda".[10] Accordingly, the limits and conditions of imposing restrictions on the media in order to further media diversity should be explored.

The obligation to differentiate between facts and opinions

One of the manifestations of journalistic objectivity is the obligation to differentiate between facts and opinion. Although not commonly reflected in national laws, the expectation to differentiate between facts and opinion is not unprecedented. In fact, it is reflected in international law, national laws of Council of Europe member States and, most commonly, journalistic codes of conduct. In assessing the impact of this obligation on the freedom of the press, it is important to consider its scope, as well as the enforcement mechanism envisaged, in each instrument that lays down such an obligation.

The European Convention on Transfrontier Television, to which Hungary has been a party since 1997, sets forth duties for States, along with responsibilities for broadcasters. This convention reflects various principles of media diversity. With regard to fairness, Article 7 § 3 provides that "broadcaster[s] shall ensure that news fairly presents facts and events and encourages the free formation of opinions".[11] This provision does not oblige broadcasters to differentiate between facts and opinions, but it aims to "guarantee the plurality of information sources and the independence of news programmes".[12] Significantly, the Explanatory Report notes in relation to Article 7 § 3 that journalists have a moral responsibility towards the audience both for their news reporting and "their comments on events and their developments".[13] Notwithstanding the media's responsibilities with regard to fairness, plurality and independence, the convention also lays down a significant, concomitant duty for States Parties. Article 6, entitled "Provision of information", provides that "[t]he responsibilities of the broadcaster shall be clearly and adequately specified in the authorisation issued by, or contract concluded with, the competent authority of each Party".[14] Accordingly, if a State Party wishes to impose a duty of

[10] Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, FOM.GAL/3/17, 3 March 2017, paragraph 3(a).

[11] European Convention on Transfrontier Television, ETS No. 132, Article 7 § 3.

[12] Explanatory Report to the European Convention on Transfrontier Television, paragraph 165.

[13] Ibid.

impartiality on the media, this duty should be "clearly and adequately specified" in the relevant law.

In its Resolution on the ethics of journalism, which enumerates ethical principles for journalism, the Parliamentary Assembly of the Council of Europe (PACE) notably states that clearly distinguishing news and opinions in a way that makes it "impossible to confuse them" is the "basic principle of any ethical consideration of journalism".[15] Finally, the Declaration of Principles on the Conduct of Journalists adopted by the International Federation of Journalists, which has been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression[16] and by the Council of Europe,[17] provides that journalists should "make sure to clearly distinguish factual information from commentary and criticism".[18]

Comparative law

Several member States of the Council of Europe require that private-sector and public-service media adhere to the principles of accuracy, impartiality and fairness.[19] In addition to Hungary, some other member States also impose a requirement to differentiate between facts and opinions in news reporting.

In the United Kingdom (UK), two impartiality obligations are codified under "Special impartiality requirements" in section 320 of the Communications Act of 2003. One of these is codified in section 320(1)(a) and 320(2), which provides that in all programmes, television services are obliged to exclude "all expressions of the views or opinions of the person providing the service" if the programme relates to "matters of political or industrial controversy" and "matters relating to current public policy".[20] The Office of Communications (Ofcom), the UK's regulatory authority for broadcasting, has drawn up the Ofcom Broadcasting Code pursuant to the Communications Act, in which section 320(1)(a) is transposed as the "exclusion of views or opinions", accompanied by definitions for "matters of political or industrial controversy" and "matters relating to current public policy".[21] Ofcom provides further guidance in relation to the exclusion of

---

[14] European Convention on Transfrontier Television, Article 6 § 1.
[15] PACE, Resolution 1003 (1993) on the ethics of journalism,1 July 1993, paragraph 3.
[16] Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/65/284, 11 August 2010, paragraph 22.
[17] See, for example, PACE, Resolution 2066 (2015), cited above, paragraph 2, and PACE, Resolution 2212 (2018) on the protection of editorial integrity, 25 April 2018, paragraph 1.
[18] International Federation of Journalists, Global Charter of Ethics for Journalists, 12 June 2019, paragraph 2.
[19] Cappello, M. (ed.), "Media reporting: facts, nothing but facts?", *IRIS Special*, European Audiovisual Observatory, Strasbourg, 2018, p. 5.
[20] UK Communications Act 2003, section 320.
[21] Ofcom Broadcasting Code, Section 5, Rule 5.4.

views or opinions in its Guidance Note (Rule 5.4).[22] The Guidance Note also refers to decisions rendered by Ofcom, which has a considerable body of rulings on the obligation to exclude views or opinions.

Germany and Slovakia are among States that require comments to be distinguished from facts in news coverage. The German Inter-State Treaty on Broadcasting (*Rundfunkstaatsvertrag*), written by Germany's *Medienanstalten* (association of the 14 regional media authorities), sets forth an obligation similar to section 12(3) of the Hungarian Media Act: "Comments must be clearly separate from the reports and must be identified as such, giving the name of the author."[23] The Slovakian Act on Broadcasting and Retransmission imposes a similar duty on broadcasters and specifies that for the purposes of "objectivity and impartiality of news programmes and political affairs programmes, opinions and evaluating commentaries must be separated from information of a news character".[24] A violation of this provision is not punishable by a fine, but "by a warning or the obligation to broadcast the announcement on the infringement of the law".[25]

It is vital to point out that it is not always possible to directly transpose media regulation in a particular country to another country. As noted by the Venice Commission, the functionality of a media law depends on the specific political and economic context of each country.[26] With regard to Hungary, the Venice Commission has referred to the "quasi-monopoly of the ruling coalition in the political sphere, powers and structure of the State regulatory bodies, [and the] size and the level of concentration of the media market" as factors that make Hungary unsuitable for a "mechanical" transposition of media law.[27] The Court also considers these factors when assessing media diversity/pluralism cases.[28]

Criticisms of the media legislation and section 12 of the Media Act

The Hungarian "media package", consisting of the Freedom of the Press Act and the Media Act, garnered strong criticism and demands for suspension from the day it was proposed by the Hungarian government in

[22] Ofcom Guidance Notes, Section Five: Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions, 22 March 2017, Rule 5.4.
[23] Interstate Treaty on Broadcasting and Telemedia (in the version resulting from the 22nd Amendment to the Interstate Broadcasting Treaties), entry into force 1 May 2019, Article 10 § 1.
[24] Act of 14 September 2000 on Broadcasting and Retransmission and on the amendment of Act No. 195/2000 on Telecommunications, Law no. 308/2000, section 16(3)(b).
[25] Cappello, M. (ed.), "Media reporting: facts, nothing but facts?", cited above, p. 120.
[26] Venice Commission, Opinion on Media Legislation of Hungary, CDL-AD(2015)015, 22 June 2015, paragraph 15.
[27] Ibid.
[28] See *Manole and Others v. Moldova*, no. 13936/02, § 108, ECHR 2009.

2010. Various international organisations, such as the UN, the Council of Europe, the OSCE and the European Union (EU), as well as civil society, called on the Hungarian government to amend or revoke many provisions of the proposed media legislation. A significant portion of the criticisms relating to content regulation provisions revolved around the excessive breadth and vague wording of the proposals.[29] The media package was consistently denounced for the latter[30] as the legislation was generally regarded as lacking clarity.[31] For instance, the European Parliament noted that the proposed legislation made "use of unclear definitions which are open to misinterpretation", and called on the Hungarian government to put "precise legislation" into place.[32] Following negotiations with the European Commission, some provisions of the legislation were amended in March 2011, while some were amended in May 2012 pursuant to the Constitutional Court decision of December 2011.[33]

In relation to the present case, the requirement for linear media services to provide "comprehensive, factual, up-to-date, objective and balanced information" under section 13 of the Freedom of the Press Act was limited to "balanced coverage", which remains controversial. Furthermore, the requirement to distinguish between opinions or evaluative explanations and political news under section 12 of the Media Act (the provision concerning the present case), which stems from the balanced-coverage requirement as per section 13 of the Freedom of the Press Act,[34] remained in place.

---

[29] See, for example, OSCE Representative on Freedom of the Media, Analysis and Assessment of a Package of Hungarian Legislation and Draft Legislation on Media and Telecommunications, September 2010, pp. 33-34 (finding that such content regulation amounts to *ex ante* restrictions and is also "impracticable and unenforceable"); Press statement delivered by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Frank La Rue, after the conclusion of his visit to Hungary, Budapest, 5 April 2011, p. 2 (stating that the content regulation provisions are "ambiguous and neither drawn narrowly nor with precision"); and Venice Commission, Opinion on Media Legislation of Hungary, cited above, paragraph 9, (noting that one of the main problems found by international bodies consists of the "unclear requirements for content regulation").

[30] See, for example, Office of the OSCE Representative on Freedom of the Media, Analysis of the Hungarian Media Legislation, 28 February 2011, p. 15 (noting the "[v]agueness of some notions in the law and the lack of impartiality of the governing body").

[31] See, for example, Opinion of the Council of Europe Commissioner for Human Rights, Hungary's media legislation in light of Council of Europe standards on freedom of the media, CommDH (2011)10, 25 February 2011, paragraph 5; Council of Europe Directorate General of Human Rights and Rule of Law, Expertise by Council of Europe experts on Hungarian media legislation, 11 May 2012, p. 11.

[32] European Parliament resolution of 10 March 2011 on media law in Hungary, P7_TA(2011)0094, recital F.

[33] European Parliament resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012), P7_TA(2013)0315, paragraph BW.

[34] See paragraph 15 of the judgment (referring to the Hungarian Constitutional Court

The obligation to differentiate between facts and opinions, as well as the overarching "balanced coverage" requirement in the media legislation, have been consistently criticised for their vagueness and possible chilling effect. Following his visit to Hungary in April 2011, the UN Special Rapporteur on Freedom of Opinion and Expression ("the Special Rapporteur") criticised the "balanced coverage" requirement for its ambiguity, breadth and lack of precision.[35] According to the Special Rapporteur, these deficiencies would prevent media providers from foreseeing their compliance with the requirement.[36] Significantly, he noted that such "imprecise concepts" could lead to "a climate of self-censorship" by the media.[37] The Special Rapporteur wrote another letter to the Hungarian government in 2012, reiterating his concerns and, in particular, pointing out that the media legislation "grants a considerable degree of discretion to the Media Authority to interpret" the content regulation requirements.[38] Furthermore, he noted that such requirements could actually undermine "the plurality and diversity of views and information transmitted via [the] media".[39] Similarly, the Human Rights Committee has recently noted that "the Media Council and the National Media and Infocommunications Authority lack sufficient independence to perform their functions and have excessively broad regulatory and sanctioning powers".[40]

Similar criticisms of the Hungarian media legislation have been voiced by the EU and by the OSCE Representative on Freedom of the Media. The European Parliament has raised concerns regarding the conformity of the Hungarian media legislation with the Audiovisual Media Services Directive, as well as the EU law *acquis*.[41] In particular, the European Parliament has

---

judgment of 6 December 2016).

[35] "Such wording leaves room for subjective interpretations and, while established in law, is ambiguous and neither drawn narrowly nor with precision. In practice, this means that an individual media provider cannot foresee whether its outlet or services comply with the requirements of the proper, authentic and accurate character of the information presented." Press statement delivered by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Frank La Rue, after the conclusion of his visit to Hungary, Budapest, 5 April 2011, p. 2.

[36] Ibid.

[37] "I am concerned that the amended media legislation, as it now stands, risks generating a climate of self-censorship due to various restrictions on the media, ranging from excessive fines based on imprecise concepts to suspension of their operations." Ibid., p. 4.

[38] UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Letter to the Government of Hungary, HUN 2/2012, 14 March 2012, p. 5.

[39] Ibid.

[40] UN Human Rights Committee, Concluding observations on the sixth periodic report of Hungary, CCPR/C/HUN/CO/6, 9 May 2018, paragraph 57.

[41] European Parliament resolution of 10 March 2011 on media law in Hungary, cited above; European Parliament resolution of 16 February 2012 on the recent political developments in Hungary, P7_TA(2012)0053; and European Parliament resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the

adopted various resolutions that emphasise the necessity for clear regulation, allowing for foreseeability in the interpretation of the law.[42] The OSCE Representative on Freedom of the Media has on many occasions pointed out the incompatibility of the Hungarian media legislation with editorial independence and media pluralism. The OSCE Representative on Freedom of the Media has also commissioned thorough analyses of the media legislation, in which it was found that the content regulation system envisaged by the legislation was unacceptable "in its sweep and reach"[43] and that it "endanger[ed] editorial independence and media pluralism"[44]. In particular, the analysis following the 2011 amendments called for content prescriptions to be removed from the law as they were "unclear" as to their implementation and also lacked "legal certainty".[45]

The Council of Europe Commissioner for Human Rights ("the Commissioner") has also repeatedly called on the Hungarian government to repeal or reformulate the balanced-coverage and impartiality requirements in the media legislation. With regard to the balanced-coverage requirement, the Commissioner has pointed out that the term alone is not sufficiently precise to enable media providers to foresee its application and may therefore have a "profound chilling effect".[46] Significantly, referring explicitly to the Hungarian Constitutional Court judgment against the applicant company in the present case, the Commissioner expressed the view that "the requirements imposed by [section] 12 are difficult to apply and [are] likely to lead some media to refrain from covering political news in practice".[47] Accordingly, the Commissioner called on the Hungarian Government to "repeal or reformulate" section 12 of the Media Act.[48] Similarly to the Commissioner for Human Rights, the authors of the Council of Europe expertise report have also concluded that the requirement to differentiate between information and opinion gives rise to "serious legal

---

European Parliament resolution of 16 February 2012), cited above.

[42] "… content regulations should be clear, allowing citizens and media companies to foresee in which cases they will be infringing the law and to determine the legal consequences of possible violations". European Parliament resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012), cited above, paragraph 51.

[43] OSCE Representative on Freedom of the Media, Analysis and assessment of a package of Hungarian legislation and draft Legislation on media and telecommunications, September 2010, p. 5.

[44] Office of the OSCE Representative on Freedom of the Media, Analysis of the Hungarian Media Legislation, 28 February 2011, p. 3.

[45] Ibid., pp. 5 and 15.

[46] Opinion of the Council of Europe Commissioner for Human Rights, Hungary's media legislation in light of Council of Europe standards on freedom of the media, cited above, paragraphs 11-12.

[47] Report by the Council of Europe Commissioner for Human Rights following his visit to Hungary from 1 to 4 July 2014, CommDH(2014)21, paragraph 19.

[48] Ibid., paragraph 42.

uncertainty" and that it could be "used to punish the effective exercise of editorial independence by media".[49]

Finally, following calls by the Council of Europe to identify provisions in the Hungarian media legislation that "pose a danger" to the right to freedom of expression, the Venice Commission issued an opinion analysing this legislation. Significantly, the Venice Commission pointed out that the law must be sufficiently clear and that its application must be foreseeable.[50] In particular, emphasising the vagueness of section 12 of the Media Act, the Venice Commission held that "'facts' cannot always be clearly distinguished from 'opinions'".[51] Highlighting this situation, the Venice Commission noted that even the use of an adjective, which is difficult for a news reporter to refrain from using, could easily be interpreted as expressing an opinion.[52] The Venice Commission also pointed out that the vague wording of the provision could turn it "into a tool of suppression of ... free speech" and called on the Hungarian Media Council to adopt "clear policy guidelines" on the application of the impartiality and balanced-coverage requirements.[53]

The above-mentioned opinions of various international bodies with particular expertise in media freedom demonstrate the problematic nature of section 12 of the Media Act. The consistent criticism of the law in terms of its lack of clarity and susceptibility to abuse should be a primary consideration in assessing the compatibility of the law with Article 10 of the Convention.

Applicable Convention principles

The present application is a novel case, one that does not lend itself to a directly applicable rule under the Court's case-law. The Court has tackled the question of fairness and accuracy with regard to current-affairs news reporting,[54] but has not specifically dealt with impartiality in terms of the State imposing an obligation to distinguish between "news" and "opinions". Nevertheless, principles emanating from the extensive jurisprudence of the Court on media freedom are relevant to the present case. In general, the Court's assessment turns on the nature of the expression and the way it is communicated.

---

[49] Council of Europe Directorate General of Human Rights and Rule of Law, Expertise by Council of Europe experts on Hungarian media legislation, cited above, pp. 16-17.
[50] Venice Commission, Opinion on Media Legislation of Hungary, cited above, paragraph 22.
[51] Ibid., paragraph 50.
[52] Ibid.
[53] Ibid, paragraphs 50-51.
[54] See, for example, *Halldórsson v. Iceland*, no. 44322/13, §§ 23 and 49, 4 July 2017, and *Frisk and Jensen v. Denmark*, no. 19657/12, § 73, 5 December 2017.

First and foremost, where news reporting (or current-affairs coverage) concerns "matters of public interest" and "matters of legitimate public concern", freedom of expression receives the highest protection under Article 10 of the Convention.[55] The medium used is also highly relevant to the Court's assessment. The Court has considered audiovisual media, which includes television, to be one of the most influential media,[56] with the "power to convey messages" and an "immediate and powerful effect".[57] Precisely because of the influential nature of broadcast media, the Court held in *Centro Europa 7 S.R.L. and Di Stefano v. Italy* that, in addition to the negative obligation to not interfere with the proposal and debate of "diverse political programmes",[58] the State had a positive obligation to adopt an "appropriate legislative and administrative framework to guarantee effective pluralism".[59] For instance, in the context of political advertising, this could manifest as the State's "desire to protect the democratic debate and process from distortion by powerful financial groups with advantageous access to influential media".[60] As the Court has recognised in *Manole and Others v. Moldova*, the State's obligation to ensure media pluralism serves the public's right to access "impartial and accurate information" through the audiovisual media, which should reflect the diversity of opinions in the country concerned.[61]

In addition to the obligation to promote the public's right to information through broadcast media, States have a positive obligation to ensure that those working in the audiovisual media are not inhibited from imparting this information and comment.[62] In relation to the corresponding Article 10 rights of broadcast media, the Court has recognised the discretion afforded to the media to determine "the methods of objective and balanced reporting" and has emphasised that neither the Court nor the national authorities may impose the "technique of reporting [that] should be adopted by journalists".[63] As much as States enjoy a certain margin of appreciation in fulfilling their positive obligations regarding audiovisual media services, they have less leeway to impose diversity requirements on private broadcasters.[64]

---

[55] *Kurski v. Poland*, no. 26115/10, §§ 52-53, 5 July 2016.

[56] See *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 117, ECHR 2013.

[57] See, among other authorities, *Centro Europa 7 S.R.L. and Di Stefano*, cited above, § 132; *Orlovskaya Iskra v. Russia*, no. 42911/08, § 109, 21 February 2017; and *Frisk and Jensen*, cited above, § 65.

[58] See *Centro Europa 7 S.R.L. and Di Stefano*, cited above, § 129.

[59] Ibid., § 134.

[60] See *Animal Defenders International*, cited above, § 112.

[61] *Manole and Others*, cited above, § 100.

[62] Ibid.

[63] *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298. See, *mutatis mutandis*, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 139, ECHR 2015.

[64] "Particularly where private stations are still too weak to offer a genuine alternative and

Furthermore, the Court has put specific emphasis on the editorial autonomy of journalists when imparting information and ideas on subjects of public interest.[65] It follows from these principles that the Convention affords extensive autonomy to journalists covering matters of public interest; this was clearly the case for the applicant company, which reported on a mass demonstration against a Hungarian political party.

Under Article 10 of the Convention, journalists also have certain "duties and responsibilities" in the enjoyment of the right to freedom of expression. The powerful impact of the broadcast media is one of the relevant factors in considering the duties and responsibilities of journalists who make use of such media.[66] The duty of "special care" for journalists is particularly relevant in this regard. The Court has held that journalists can "be expected to take special care in assessing the risks" of their professional activity as they are supposed to be "used to having to proceed with a high degree of caution when pursuing their occupation".[67] It appears from the Court's case-law that this autonomy in reporting on issues of public interest is conditional upon journalists acting in good faith and on an accurate, factual basis and providing "'reliable and precise' information in accordance with the ethics of journalism".[68]

It must also be noted that, since the impugned provision of the Media Act relates to news coverage, the Court's well-established stance on news as a "perishable commodity" should apply: delaying the publication of news could strip it "of all its value and interest".[69] This is relevant because if news reporters are requested to labour against the "impossible" task of distinguishing between facts and value judgments, they will necessarily have to spend an extensive amount of time doing so, which increases the risk of news perishing. This would be particularly relevant in situations involving "breaking news", where journalists are required to act quickly to deliver the news.

---

the public or State organisation is therefore the sole or the dominant broadcaster within a country or region, it is indispensable for the proper functioning of democracy that it transmits impartial, independent and balanced news, information and comment and in addition provides a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed" (*Manole and Others*, cited above, § 101).

[65] See *Orlovskaya Iskra*, cited above, §§ 129-30 and 134.

[66] See *Jersild*, cited above, § 31, and *Orlovskaya Iskra*, cited above, § 109.

[67] See *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 125, 17 May 2016.

[68] See *Couderc and Hachette Filipacchi Associés*, cited above, § 131, and *Wizerkaniuk v. Poland*, no. 18990/05, § 61, 5 July 2011.

[69] See Sunday Times *v. the United Kingdom* (no. 2), no. 13166/87, 26 November 1991, § 51, Series A no. 217, and Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, § 60, Series A no. 216.

Application of Convention principles to the case

The primary problematic aspect of the law is the difficulty of clearly distinguishing between facts and opinions or "evaluative explanations", which manifests in two forms. First, on a theoretical level, the definitions of "fact" and "opinion", that is to say, what constitutes a "fact" or an "opinion", is likely to be contentious. This is related to how a particular concept is to be categorised as a "fact" or an "opinion". To be sure, it is possible to spell out general principles distinguishing the two, but it will not be possible to find a rule that will be applicable to every concept. Furthermore, whether a particular concept qualifies as a "fact" or an "opinion" may also be disputed, as was the case in the present application. This vagueness has also been pointed out by the Venice Commission, as mentioned above.[70]

The contrasting interpretations by the Hungarian authorities are proof of the vagueness of the law. It must be noted that the law had not been applied previously,[71] and therefore there was no prior judicial guidance. The Hungarian Media and Infocommunications Authority had not provided any guidance either, despite the fact that the Venice Commission had called upon it to issue guidelines "given the vagueness of those concepts and the risk of abusive interpretation" of the relevant provision.[72] Indeed, four different authorities handled the case from four different perspectives. First, the National Media and Infocommunications Authority noted that it did not matter if the term "far-right" had a positive or a negative connotation or whether the Jobbik party was widely considered "far-right"; this was not a factual statement but a value judgment. The Media Council of the National Media and Infocommunications Authority also dismissed wide acceptance by the public as a distinguishing criterion. In contrast, the first-instance court noted the existence of the term in the founding document of the Jobbik party and the fact that "far-right" was widely accepted terminology, while also emphasising that it did not have extremist connotations. The *Kúria* introduced the argument that if a term was the subject of political and social debate, it could not be a fact, while also noting that the Jobbik party did not consider itself far-right, a term with negative connotations. Finally, the Constitutional Court considered the use of "qualifying adjective[s]" and "explanatory comment[s]" and references to "classifications used in political science and everyday language" to constitute indicators of an

[70] "... 'facts' cannot always be clearly distinguished from 'opinions'; after all, it is difficult to imagine an anchor-man not using any adjective, while every adjective gives a flavour of an 'opinion' to a statement of fact." Venice Commission, Opinion on Media Legislation of Hungary, cited above, paragraph 50.

[71] Paragraph 37 of the judgment.

[72] Venice Commission, Opinion on Media Legislation of Hungary, cited above, paragraphs 32 and 51.

opinion. The Constitutional Court held that neither the self-definition of the statement's addressee nor the opinion of the public was a determinative criterion.

The varying approaches of the domestic authorities demonstrate that the obligation to differentiate between facts and opinion, as legislated under section 12 of the Media Act, can lead to quite divergent interpretations. The law fails to provide guidance as to how domestic authorities should apply the obligation, thereby putting the media in a precarious position. The varying interpretations by the domestic authorities of the nature of an opinion or an "evaluative explanation", as well as of the aim of the law, highlight the law's lack of precision and its susceptibility to arbitrary interpretation.[73] This is also affirmed by the majority, who find that, on account of the "variety of approaches applied by the domestic courts in determining the nature of the impugned term", the applicant could not have reasonably been expected to know that "far-right" would be construed as an opinion.[74] Given that even the relevant authorities did not have a clear understanding of what the law called for, it is safe to conclude that the law was not formulated with "sufficient precision" to enable the applicant company to regulate its conduct.[75]

Although the majority agree that the impugned law lacks precision, they nevertheless conclude that this deficiency is justified. In particular, a significant portion of the majority's analysis turns exactly on the fact that the interference was not adequately "prescribed by law" as the law lacked both foreseeability and sufficient safeguards against abuse. In declining to analyse the case from this point of view, the majority point out that the salient issue was whether the applicant company could have known that the term it had used "would represent an 'opinion' in the present circumstances" (as opposed to knowing whether section 12 of the Media Act was sufficiently foreseeable in its use of the term "opinion").[76] This is a rather artificial distinction and unhelpful. The fact that the applicant company could not foresee that the term "far-right" would be construed as an opinion stems precisely from the lack of clarity in the law, which failed to provide any guidance to the applicant company on differentiating between a fact and an opinion. Similarly, throughout their reasoning, the majority refer to the lack of foreseeability of the law to support their analysis,[77] finally concluding that the applicant company "could not have foreseen that the term 'far-right' would qualify as an opinion".[78]

---

[73] See paragraph 50 of the judgment.
[74] See paragraph 49 of the judgment.
[75] See *Editorial Board of* Pravoye Delo *and Shtekel v. Ukraine*, no. 33014/05, § 51, ECHR 2011.
[76] Paragraph 36 of the judgment.
[77] Paragraphs 46-47 of the judgment.
[78] Paragraph 53 of the judgment.

It must also be noted that the approach of the Constitutional Court exemplifies the second manifestation of the difficulty of distinguishing between facts and opinions. On a practical level, it can be very challenging, and nearly impossible, for news coverage to completely exclude the use of "qualifying adjective[s]" or "explanatory comment", a matter also pointed out by the Venice Commission.[79] The fact that the law does not provide any guidance as to the consequences of such expressions further highlights its lack of foreseeability.

In addition to the vagueness of the law with regard to impartiality, the ambiguous sanctions set forth in the Media Act pose an additional risk of abuse. Pursuant to section 186, the Media Council is vested with the authority to "set the conditions" of compliance with the law.[80] Under the same section, the Media Council may "prohibit the unlawful conduct" and go as far as "set[ting] obligations to ensure observance" of the Media Act, and "apply[ing] legal sanctions".[81] Clearly, the danger stemming from section 12 of the Media Act is not "theoretical", and is further exacerbated by the virtually unlimited authority conferred upon the Media Council to impose sanctions. In the present case, the applicant company only had to pay the costs of the domestic proceedings, but it could have faced any of the severe and wide-ranging sanctions set out in section 187 of the Media Act. Accordingly, the law cannot be deemed to provide adequate safeguards as the applicant company could not "foresee to the appropriate degree the consequences"[82] which the expression of a possible "opinion" or "evaluative explanation" might entail. Furthermore, such a measure is, in itself, capable of creating a chilling effect on the right to freedom of expression.[83]

Finally, and most importantly, the fact that the law does not envisage a cumulative assessment of reporting by the media and can be used to "cherry-pick" statements to conveniently serve certain persons or interests demonstrates the law's proneness to abuse.[84] This selective enforcement of the law has also been pointed out by the Venice Commission, which noted that the impartiality requirements were not as "strictly enforced" against

---

[79] "... after all, it is difficult to imagine an anchor-man not using any adjective, while every adjective gives a flavour of an 'opinion' to a statement of fact." Venice Commission, Opinion on Media Legislation of Hungary, cited above, paragraph 50.

[80] Act no CLXXXV of 2010 on Media Services and Mass Communication, section 186(1).

[81] Ibid., section 186(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."

[82] *Editorial Board of* Pravoye Delo *and Shtekel*, cited above, § 66.

[83] See, for example, *Ghiulfer Predescu v. Romania*, no. 29751/09, § 61, 27 June 2017.

[84] This was also pointed out by the applicant – see paragraph 20 of the judgment.

public-service media in comparison to private media.[85] Such a law entails the risk of the State acting as a "Ministry of Truth", dictating how the media should present news, which does not conform to the media's fundamental right to editorial autonomy. As pointed out by the Venice Commission, the vagueness of the terms in the law may turn the provision into "a tool of suppression of ... free speech".[86] This danger is also reflected in the stance of the Council of Europe Committee of Ministers on the proposal to set up a "European Media Ombudsman" that would verify the accuracy of information, noting that "... [t]his would lead to the creation of a sort of European information authority, with the task of policing the accuracy and impartiality of information" which "would run directly counter to the Council of Europe's role as a guardian of press freedoms".[87] Accordingly, a law with such possible ramifications, which to a certain extent has materialised in the present case, clearly runs counter to the essence of media freedom.

For an alternative Convention-compatible regulatory model

The State should not dictate how news is reported even if it is acting with the best intentions. The Government contended that the purpose of the impugned law was to ensure the free formation of democratic public opinion.[88] However, imposing obligations on journalists could have the opposite effect: it could, in fact, limit the flow of information to the public and result in arbitrary restrictions on the media.[89] In the words of the Council of Europe Commissioner for Human Rights, "restrictive laws and other measures to control media tend to have a chilling effect on the media community but also a negative impact on society as a whole, including for the whole spectrum of human rights".[90] This has also been pointed out by the UN Special Rapporteur on Freedom of Opinion and Expression in relation to his criticism of the Hungarian media legislation; the Special Rapporteur has expressed doubts as to how dictating the media's news delivery through legal requirements would promote the freedom of expression.[91] Accordingly, States should reconsider any efforts to create

[85] Venice Commission, Opinion on Media Legislation of Hungary, cited above, paragraph 51.
[86] Ibid., paragraph 50.
[87] Committee of Ministers of the Council of Europe, Reply to Recommendation 1215 (1993) on the ethics of journalism, 24 March 1994, paragraph 9.
[88] Paragraphs 14 and 17 of the Government's observations.
[89] Office of the OSCE Representative on Freedom of the Media, *The Media Self-Regulation Guidebook*, Vienna, 2008, p. 15.
[90] Council of Europe Commissioner for Human Rights, *Ethical Journalism and Human Rights*, CommDH (2011)40, 8 November 2011, p. 4.
[91] Report of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Summary of cases transmitted to Governments and

legally binding journalistic obligations of impartiality, especially if complemented by sanctions that may have chilling effects.

If a State – understandably – wishes to be more proactive in ensuring media diversity and impartiality,[92] it should either opt for a co-regulatory model or proactively support media self-regulation instead of imposing a requirement through law with regulatory or legal sanctions. Such regulatory models have been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and particularly by the Council of Europe. In this context, it must be noted that the ethics of journalism are recognised by the Court as relevant principles under Article 10.[93]

The PACE has recognised media self-regulation "as a means of reducing the influence of the State and other sectors of society over media content".[94] In particular, in its Resolution on the ethics of journalism, the PACE has called on the media to set up self-regulatory bodies or mechanisms to supervise the implementation of ethical journalism principles.[95] The Council of Europe Commissioner for Human Rights has also pointed out the significance of media self-regulation for the prevention of media abuse.[96] According to the Commissioner, the objective of media self-regulation is to demonstrate to the State that intervention is not necessary since the media can structure themselves so that they are shielded from abuse by individuals or group interests, which also depends on the State's non-intervention.[97]

The UN Special Rapporteur on Freedom of Opinion and Expression has recently expressed the view that a country's democratic process depends on "a free, independent, self-regulating, professional media".[98] Along similar lines, joint declarations by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression, and the ACHPR Special Rapporteur on Freedom of Expression and Access to

---

replies received, 27 May 2011, A/HRC/17/27/Add.1, paragraph 844.

[92] See, for example, Puddephatt, A., *The Importance of Self Regulation of the Media in Upholding Freedom of Expression*, UNESCO CI Debate Series, BR/2011/PI/H/4, 2011, p. 10 (noting that "the construction of a modern media environment capable of supporting democracy and good governance may require a proactive role by the state" and that "to promote a media environment characterised by pluralism and diversity, state intervention is necessary").

[93] See, for example, *Couderc and Hachette Filipacchi Associés*, cited above, § 131, and *Wizerkaniuk*, cited above, § 61.

[94] PACE, Resolution 2066 (2015), cited above, paragraph 11.

[95] PACE, Resolution 1003 (1993), cited above, paragraphs 36-38.

[96] Council of Europe Commissioner for Human Rights, *Ethical Journalism and Human Rights*, cited above, p. 4.

[97] Hammarberg, T. et al., *Human rights and a changing media landscape*, Council of Europe, Strasbourg, 2011, p. 7.

[98] UN Special Rapporteur on the right to freedom of opinion and expression, Visit to Ethiopia, 2-9 December 2019, End of mission statement.

Information have repeatedly emphasised the merits of media self- and co-regulation. According to these joint declarations, self- and co-regulation can be instrumental in attaining content diversity[99] and addressing problematic issues such as hate speech,[100] and can even help to deal with emerging issues posed by new forms of media.[101] The OSCE Representative on Freedom of the Media has also noted the benefits of media self-regulation, which are as follows: preservation of editorial autonomy, minimisation of interference by the State, promotion of media quality and media accountability, and increased accessibility for the audience.[102] Notably, as part of the Council of Europe's advocacy of self- and co-regulatory mechanisms for the adoption of journalistic principles, the Parliamentary Assembly has promoted media self-regulation as a trait of democratic governments, and has called on legislators to actively encourage media self-regulation.[103] The Council of Europe Commissioner for Human Rights has also called on governments to promote "a system of effective self-regulation based on an agreed code of ethics".[104]

The Convention-compatible way for the State to fulfil its positive obligations regarding media freedom is either to opt for a self-regulatory model or to adopt a co-regulatory model. In relation to the Hungarian media law, the UN Special Rapporteur on Freedom of Opinion and Expression has explicitly called for the voluntary adoption of reporting principles by media organisations through "codes of conduct" which would not only promote the right to freedom of expression but also "a common standard of ethics and responsibility of the media".[105] The above-mentioned soft-law

[99] Joint Declaration on International Mechanisms for Promoting Freedom of Expression by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 20 December 2006.

[100] Joint Declaration on Freedom of Expression and the Internet by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 1 June 2011, paragraph 1(e).

[101] Preamble to the Joint Declaration on Media Independence and Diversity in the Digital Age by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 2 May 2018.

[102] Office of the OSCE Representative on Freedom of the Media, *The Media Self-Regulation Guidebook*, 2008, p. 12.

[103] PACE, Resolution 1636 (2008) on indicators for media in a democracy, 3 October 2008, paragraphs 8.25-8.26.

[104] Council of Europe Commissioner for Human Rights, *Ethical Journalism and Human Rights*, cited above, p. 5.

[105] Press statement delivered by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr Frank La Rue, after the

instruments, as well as the experience from the present case, clearly demonstrate that heavy-handed State regulation is not suitable for regulating the media, especially content. Among other resources, resolutions of the PACE provide valuable guidance to States in adopting self- or co-regulatory models.[106] In both cases, diverse bodies "comprising publishers, journalists, media users' associations, experts from the academic world and judges" would be an ideal composition that would represent a variety of stakeholders in society.[107] With regard to ensuring impartiality in the media, the relevant issue in the present case, the PACE has recommended that self- (or co-)regulatory bodies publish periodical reports on "truthfulness of the information broadcast by the media, comparing the news with the actual facts".[108] Instead of the State being the arbiter of truth, these reports would give the public an opportunity to compare viewpoints and decide for themselves whether a media outlet is credible.

Should a co-regulatory model be preferred, the Venice Commission has recommended that policy guidelines explaining the application of the impartiality requirement should be "developed by the Media Council jointly with the self-regulatory bodies".[109] Should self-regulation be favoured, it should not be forced upon the media, but should be adopted voluntarily by the media.[110] It is vital that self-regulation is not so "overregulated" as to prevent the media from creating and directing the system by themselves.[111] As the ACHPR put it in a famous case, self-regulation provides the best mechanism for the maintenance of ethical standards of journalists and for confrontation with manipulated and "fake news" in a democratic society, which demands the greatest possible amount of information and the least possible degree of State control and intrusion.[112]

Conclusion

Notwithstanding the limited co-regulation envisaged by Chapter 6 of the Hungarian Media Act,[113] the law should be reformulated to relinquish the impartiality requirement to a self-regulatory regime. In the present case, this duty should be interpreted as an implied trust in the editorial choices and

---

conclusion of his visit to Hungary, 5 April 2011, p. 2.

[106] PACE, Resolution 2066 (2015), cited above, paragraphs 9-14.

[107] PACE, Resolution 1003 (1993), cited above, paragraph 37.

[108] Ibid., paragraph 38.

[109] Venice Commission, Opinion on Media Legislation of Hungary, cited above, paragraph 51.

[110] PACE, Resolution 2066 (2015), cited above, paragraph 11.

[111] Office of the OSCE Representative on Freedom of the Media, Analysis of the Hungarian Media Legislation, 28 February 2011, pp. 12 and 16.

[112] ACHPR, *Scanlen and Holderness v Zimbabwe* (Communication no. 297/2005) [2009] ACHPR 96, 3 April 2009, §§ 107-15.

[113] Sections 190-202 of the Media Act.

autonomy of journalists, which limits the State's discretion to dictate how news should be delivered. Attaining impartiality in news reporting is a matter of content quality that should remain within the editorial independence of journalists.