

Liquidation of freedom of expression and of the press as a key moment in the establishment of an authoritarian state

(The Hungarian case)

„Freedom from the state requires that neither parliament nor government should have a decisive influence in an organization capable of influencing the content of programs; just as the influence of political parties, groups formed for an identical mission or the representation of the same interest should not be decisive” (CC resolution No 37/1992, 227, 231 (VI. 10.).”

From press freedom to press slavery. The history of the events of the establishment of the Orbán regime supports the thesis that it is not only a theoretical prerequisite that is evoked from time to time, but also an experimental fact that just as a liberal democracy cannot exist without freedom of the press, in the same way, illiberal states, authoritarian or (semi-)dictatorial regimes cannot exist, subsist without a strong restriction of the freedom of ideas, expression and the press. Although multifactorial analyses are not useless, it can be concluded that this marker alone is sufficient to classify political systems (we will come back to this affirmation).

Historical background

Among the pioneers praising freedom of expression, we first mention John Milton who, having raised his voice against censorship, considered already in 1644 that it was impossible for truth to fail in the face of lies in a free and open struggle, because truth is "the strongest thing next only to God".¹

According to Kant „[a]ll maxims that (in order not to miss its purpose) needs publicity is consistent with both law and policy.”²

¹ John Milton published the pamphlet *Areopagitica* on November 23, 1644 in which he argued against censorship and in favor of freedom of speech.

² Kant: *Perpetual Peace*, Id. Hannah Arendt: *A sivatag és az oázisok (Oases in the desert)*. Gond–Palatinus, Budapest, 2002, p. 308.

The greats of the Hungarian reform era spoke with the same voice as the greatest figures of the English, German, French and Scandinavian Enlightenment.

„...where speech is limited, language is a prisoner and only speaks as a prisoner.”³

„Therefore, if a nation can be enriched only by intelligence, but intelligence can be developed only by the free friction of opinions, and this cannot take place without a free press, therefore a free press under good laws, which are also the natural consequences thereof, is the guardian and not the disturber of public silence ... our constitution is either good and just or bad and unjust. If it is good and just, it will stand the test of the fire of the free friction of opinions; if it is bad and unjust: it must fall, I do not want to protect the unjust, and if it is unjust, I want to see the righteous brought by legislation.”⁴

„...take all, leave me alone the free press, and I will not despair of the freedom and happiness of my nation; either the freedom of printing or the suppression of freedom. There is no middle way here!”⁵

There is no question of not seeing in the history of ideas and public law of Hungary, even if with a certain delay, a synchronicity of content with the ideal of freedom in Western Europe.

And even if today it is considered an illusion that Kant regarded freedom of the press as a guarantee of eternal peace, we must share the idea that even if it does not protect us from wars and arbitrariness, but not only inhibits both, it remains to this day the most important indicator and guarantee of individual and public freedom.

Mihály Babits considered it his moral obligation to translate the Perpetual Peace whose genre was foreign to him. As a translator, he professed on the topicality of book in the 20th century: „A publishing house recently called me to translate Perpetual Peace, Kant's booklet.

I didn't want to accept it at first. I am not a jurist. Thank God, I'm not very well versed in politics, and unfortunately in scientific ethics either. And Kant's work is one of them. It's a very difficult work. It has no formal, literary interest.

However, I accepted the mandate. Since I feel that in today's times, no one has the right, for any reason whatsoever, under any pretext, to evade the most burdensome task, that one is capable of doing, if one can only do the slightest service to the idea of peace.

I think this task is one of them.

... the goal of my work is therefore less philosophical or philological than agitational.”⁶

In 1918, the most terrible year of the war's blood pump, Babits campaigned for freedom of the press *and* peace.

³ István Széchenyi, Hitel (Credit), Pest, Petrózai Trattner J. M. és Károlyi István Könyvnyomtató-intézetében (printing Institute), 1830, p. 37.

⁴ Lajos Kossuth Beszéd a Zemplén Megyei Gyűlésen (speech in county assembly). <https://mek.oszk.hu/02200/02223/html/01.htm>

⁵ Lajos Kossuth: ib. <http://mek.oszk.hu/02200/02223/html/01.htm>

⁶ Mihály Babits: Kant és az örök béke (Kant and Perpetual Peace), Nyugat, 1918, No 16. link: <https://epa.oszk.hu/00000/00022/00252/07506.htm>

This same legacy is shared by the young Karl Marx who, attached to the freedom of the press,⁷ quoted Montesquieu's *Esprit des lois* about the law on the theft of timber „There are two types of depravity: one when the people do not respect the laws, the other when the laws distort the people. It is an incurable disease because it is hidden in the remedy itself.” This, by the way, is an idea that often recurs in Montesquieu's oeuvre.⁸

The old ingenious aphorism is still valid for the manifestations, the falsehood of the enemies of press freedom in the 20th and 21st century: „*Hypocrisy is a homage that vice pays to virtue*”.⁹

In any case, it is very typical that, for example, the Hungarian Council Republic of 1919 restricted the press by alleging a *shortage of paper*.

Viktor Orbán's statement, made after the massacre of a considerable part of the Hungarian free press and before the destruction of the rest, belongs to this category: „*We would never go to silence those who disagree with us.*”.¹⁰ Recording shows that the European Parliament laughed out loud.

The allegation that the ideals of freedom of the press of the 18th century can no longer be considered valid in the light of the experiences of the 20th century, rich in totalitarian regimes, is erroneous. On the contrary, the hitherto elapsed public history of the 21st century justifies rather than refutes the history of the ideas of freedom of expression and of the press, which is not exempt from naivety. In the centuries of Enlightenment, freedom of expression and of the press became one of the most cherished social values, an idea that also served as a consensual basis for communication between distant thinkers. The same goes for today. More precisely, it should not be otherwise!

With the right-wing and left-wing dictatorships of the 20th century behind us, but even in our less destructive world, burdening the press with various manipulations, the question remains whether the pedestal of freedom of expression and of the press is still justified. The mass media undoubtedly operate according to different principles, of a different nature than the variant experienced by the formulators of press freedom. According to Luhmann, for example, in the field of news and reporting, these media "spread ignorance in the form of facts that have to be repeated over and over again so that no one notices it."¹¹ The phenomenon of the multilevel, multidirectional manipulation of mass media, its functioning as a self-poiétique system, the particularities of the reality they present are real problems, but having here a different perspective on another subject, another phenomenon, we do not approach Luhmann's criticism either, which is not the object of the present study.

⁷ Comments on the latest Prussian censorship instruction (excerpt) MEM 1 pp. 110–147. Karl Marx: *Deliberations of the 6th Rhine Landtag. Article 3. Debates on the law on the theft of timber.*

⁸ Montesquieu on the same: " There is no more cruel tyranny than that which is exercised in the shadow of the laws and with the colors of justice. The one who executes his victims by means of the law intended to save the victims." (A rómaiak nagysága és hanyatlása (Considerations on the causes of the greatness of the Romans and their decadence), Magyar Helikon, Budapest, 1975.).

⁹ Francois de La Rochefoucauld's famous maxim.

¹⁰ This sentence was stated by the Hungarian Prime Minister in the debate on the Sargentini report in Strasbourg on September 11, 2018. The deputies laughed at him.

¹¹ See: Niklas Luhmann: *Reality of the Mass Media*, Gondolat-AKTI, Budapest, 2008, p. 35.

Freedom of expression and of the press is a guarantee of social autonomies and is an autonomy in itself

What interests us is the series of attacks on social autonomies, the systematic liquidation of the autonomies. Basically, we do not analyze principles, but draw conclusions by presenting the history of the events of the devastation. The multicolored elements of the free press range from traditional informative and analytical journalism to written and electronic tabloid press, from audiovisual media, news sites through social media to the world of bloggers and vloggers. If we look through the semidarkness of the authoritarian system, we see that the privileged role of freedom of the press has certainly not run out in the functioning of democracy. The media are ideal-typically the network of collective and individual autonomies that influence each other through interactions and that function of course laden with state and market influences and consumer expectations. Yet it cannot be overemphasized that where press freedom prevails, the cause of freedom is not lost. But, by its very nature, it is always and everywhere threatened because of the sinister interests of power and the market. Where there is no freedom of the press, civil liberties can no longer be alive. This is therefore one of the closest possible correlations.

There is little need to point out that prevarication around freedom of the press is dangerous, as it is fundamentally a yes or no question. It is not lacking from the moment when the last free press product has ceased to function, but sometime from the time when the keeping, operation of such a product involves serious political risks or can barely exist by virtue of power. One can speak of the existence of freedom of the press where the free press shapes public opinion. There is no freedom of the press in a country where the free press has already been pushed into the ghetto. If the Hungarian press had been free, Orbán could have presented the lost referendum on the quota, following the opposition's call for a boycott, as a prodigious victory, at least with difficulty, rather not at all.

There is a kind of international populist community of interest that goes far beyond superficial sympathy. The most direct friends of Orbán are found among the tyrants most of the time bloodthirsty of the East, the Near and Middle East, but the Hungarian prime minister has mutual political sympathy with Berlusconi and Trump as well. His political practice resembles theirs rather than that of the Eastern tyrants. It is not so much the political aspirations, quite similar, of these three people, which give aspects for the nature of their reign, i.e. the description of the social difference between the United States of America, Italy and Hungary, but this is rather demonstrated by the manifest differences between the functioning of the branches of power, the historical differences whose structure of social public sphere is a faithful reflection in the United States of America, Italy and Hungary.

Weimarization conservation plan against democratization

At the time of Fidesz's successful seizure of power in the free elections of 2010, freedom of speech and of the press, a remnant of the 1989 rule of law revolution, still functioned more or less. However, we were only twenty years after the fall of the party state, all the institutions of freedom were fragile, their operators were people with a lack of self-confidence, prone to submission, of a weak moral foundation. The fact that the operating principle of the relatively weakly cohesive institutions of European integration is consensus-building also worked in Orbán's favor. These institutions, including in particular the Council of Europe and the European Union, react almost automatically to all conflicts, blackmailing by trying to find an arrangement, by making concessions.

In the Orbán system, the State is not the only subject of the concentration of power, but the latter is more than once accompanied by the destruction of the State. The occupation of independent state institutions, their demoralizing into vassal status, the long-term election/appointment of their leaders, socialized to serve Orbán on the one hand, and the phantom privatization of state tasks and institutions without private capital, clearly implemented with public funds that have already reached a considerable part of higher education and manifested with distinction in the transformation of the ownership of the press, are taking place at the same time.

The power of the State goes beyond the frameworks of the State. On the one hand, public funds make state universities, due to sham privatization, foundation formations in which the powers of the institutions of university autonomy: senate and rector are assigned to the politically appointed trusteeship. On the other hand, more than four hundred formally non-state media companies were taken over and placed under central political control in the Central European Press and Media Foundation (KESMA) on August 30, 2018. The whole state and pseudo-private conglomerate is a uniformly managed and controlled pyramidal edifice, reminiscent of the system of feudal dependence, but it constitutes a chain that is not only non-transparent, but also non-homogeneous since it is a conglomerate of partly private, partly state elements.

The meaning of its operation is that it itself gives birth to power and wealth. Last but not least, it serves to prevent a possible electoral defeat from leading to a loss of power and to serve as a basis for later revenge. This underlines the very strange peculiarity of the system: the Orbán system that does not respect the principles of the rule of law trusts, paradoxical as this statement may be, in the rule of law: it believes that the opposition that may win the election will not be able to act, within the framework of the constitution, against its largely privatized power structure. If parliament and government were to fall into the hands of the new, election-winning majority, the counterweight would not be the state itself, because the power factors embodying the democratic counterweight of government would remain, in the face of democracy, in the invisible hands of the authoritarian power that has just failed. Privatized institutions, previously withdrawn from the functioning of the State by the autocrat could represent an opposite pole facing the State partially taken over. Behind all this, and this is the paradoxical element of Orbán's plan, is the not unfounded expectation that a reconstructed rule of law cannot use tools similar to those it used to break and then liquidate the power of the rule of law and economic constitutionality.

It definitely needs securities. The informal hierarchy of the system, in contrast to the sustainability of the vassal chain that has represented the natural order of the world for centuries, is unstable simply because of its secrecy. It is no accident that authoritarian systems sometimes collapse at the height of their power, seemingly because of an insignificant breeze.

In addition to the fragility of such a system, its adaptability cannot be ignored, its capacity for survival is not to be underestimated either in the deep structures below the surface of the rule of law, at the level of attitudes, behavioral cultures. It has a good chance to survive as the new master's server under the coating of the rule of law. The power-serving, in name "independent" Constitutional Court, Court of Auditor General, Ombudsmen, will offer their voluntary services to the new master after the regime change governed by the rule of law if there is a need for it, and why would there not be one. The danger of this can hardly be underestimated.

Freedom with brief antecedents is easy prey

In addition to the Hungarian political community, European bodies, above all the Council of Europe chaired by Thorbjørn Jagland, pronouncing the final approval of the Media Act, bear an important responsibility for the destruction of press freedom in Hungary. But, if one wants to identify the institutional responsible, the Constitutional Court has no less responsibility either, which even though it has trimmed a number of unconstitutional peripheral provisions of the law abolishing press freedom, it has only failed to consider motions relating to essential elements that not only violate press freedom, but liquidate it (as in the Hungarian saying: he talks about something else like *Bodóné* when asked about the price of wine). Subsequently, the President of the Council of Europe judged, after a long, cordial, friendly and tiring tugging, acceptable the freedom-destroying law subject to transparent cosmetic changes (Thorbjørn Jagland was even decorated afterwards by Orbán).

The people at both institutions knew very well what they were doing.

Among the other responsible actors, we could name the national political community and a number of institutions from political parties to corporations, but their responsibility cannot be compared to that of these two actors. The impact has been far-reaching: if Orbán had not been able in 2010 to quarantine the still essentially intact democratic press, he would not have been able to build his current authoritarian hegemonic power either (the process of concentration of Orbanian power has not yet been completed until today, we are currently in the process of state controlling culture and the academic sphere). We cannot know, because the related statements of the system's insiders do not agree either, that the assault on press freedom that immediately followed the 2010 election was perpetrated by Orbán, often called *chief engineer* by subordinates according to a pre-established master plan, but it is proven that the crackdown on press freedom was the logical opening of the series of attacks against the autonomies.

Hungarian Interpretation of Freedom of the Press

As the first claim of the twelve points of the 1848 Hungarian Civil Revolution¹², the idea of freedom of the press certainly occupied its place in positive law early on as well. The laws of April 1848 elevated the freedom of the press into the Hungarian constitutional tradition. The first two paragraphs are: «Sect. 1. Everyone is free to communicate freely and to freely disseminate their thoughts through the press. Sect. 2. By communication through the press, we mean all communications, whether in the form of words or images, by printing, lithography and engraving, and whose publication, whether through free distribution or the sale of prints has already begun.»¹³ The two paragraphs, archaic to our ears today, can be an ornament to any press law even today.

Freedom of the press is a delicate good. It should be pointed out that where press freedom is broken, political freedoms no longer prevail either, e.g. free elections are not possible either.

¹² „We want freedom of the press, the abolition of censorship.”

¹³ Article of law XVIII of 1848, law on the press

It is appropriate to bear in mind the basic constitutional requirement of the model of media governance used, which emerged in liberal democracy: „Without free media, independent civic expression and thus democracy is not possible.”¹⁴

With secrets against the publicness

The laws whose purpose was publicness - Act CIV of 2010 on Freedom of the Press and Basic Rules of Media Content (Smtv. Act), Act CLXXXV of 2010 on Media Services and Mass Communication (Mtv. Act) - were drafted in deep secrecy while laws guaranteeing a strict freedom of information, exemplary in the European Union, were in force at that time in Hungary. The bills should have been published, professional and societal debates should have taken place on them under the Legislation on Freedom of Information. On the other hand, those concerned: citizens and journalists' organizations could not be aware of the draft laws on media regulation. The obligation of public debate on the laws was thwarted so that the laws were not submitted by the government, but by completely unfamiliar parliamentary deputies acting as government agents. This is because publicity guarantees are not applicable to individual bills.

It is rarely contested in the professional literature that some kind of control, regulation of the media, even if not equally and not concerning the press as a whole, is inevitable. The question of whether a given regulation is acceptable or not can only be shown in a public debate. The media law, drawn up in secret, not only cannot serve freedom because it has been torn from the legal culture, because of its unreflectiveness and the intended absence of the social context, but it has necessarily come into being despite civil liberty. The burden of the secret preparations of a law regulating publicness could only be assumed for the purpose of restricting freedom¹⁵. Jeremy Benthamne is right that secrecy is incongruous and that corruption, be it business or political, does indeed abound in secret corners.

The whole of regulation is inseparable from its political character: when its social dimensions are invisible and it becomes politically monolithic (the dominant political group has even excluded its faithful ally, the Christian Democrats, from the preparation, then from the steering), it follows that the law interpreted by the authority thus constructed also bears this character. It is therefore sufficient to make partisan politics, especially one-party politics, the regulatory authority, responsible for sanctioning. The meaning of the provisions on sanctions, frequencies, broadcasting licenses, media policy, subsidies becomes tyrannical according to the Orwellian newspeak, in substance independently of the direct meaning of the legal text.

¹⁴ Manuel *Puppis*: Introduction to Media Policy. In: Médiapolitikai szöveggyűjtemény (collections of media policy texts) (edited by Gábor Polyák). AKTI-Gondolat, Budapest 2010. p. 27.

¹⁵ We can refer not only to the laws on legislation and freedom of electronic information. See, for example, Act CXXXI. of 2010 on social participation in the preparation of legislation „Sect. 2., par. (1) Social consultation should ensure that the widest possible range of views - in particular the views of disadvantaged and socio-economically marginalized groups - is reflected in the review process. Par. (2) During the process of developing new legislation, it is important to ensure that consultations are transparent and that they are communicated to the public to the greatest extent possible. (3) Within the framework of social consultations, participants are required to act in a constructive interaction.”

International standards and constitutional court of a state governed by the rule of law¹⁶

In line with the practice of the constitutional courts of Western Europe and the European Court of Human Rights, the Hungarian Constitutional Court also emphasizes that freedom of opinion and freedom of the media expect not only abstention, but also "positive action with guarantees" from the state.¹⁷ The objective side of freedom of opinion means a guarantee granted to "public opinion as a fundamental political institution"¹⁸, because the functioning, the free formation of public opinion "are indispensable for democracy"¹⁹. The particular situation of the media is due to the fact that democratic public opinion can only be created on the basis of "complete and objective" or "complete, balanced and truthful" information, whereas the media is "not only a tool for the expression of free opinion, but also that of information, i.e. it plays a fundamental role in the orientation constituting a condition for the formulation of opinion".²⁰ On the basis of the rights to information contained in the Constitution and later in the Fundamental Law of Orbán, the Constitutional Court also imposes a quality requirement on public opinion as an institution: *public opinion must be democratic*.

The State's obligation to defend institutions extends to the point where the establishment and functioning of democratic public opinion make State intervention absolutely necessary. In its aforementioned resolution, the Constitutional Court stressed that the different types of media justify different levels of intervention: while pluralistic information is achieved even without specific regulations to this effect in the case of the printed press, in the case of radio and television broadcast on terrestrial radio frequencies, "the exercise of the fundamental right must be adapted to the exiguity of the technical conditions of implementation".²¹ In other words, the extent of regulation guaranteeing democratic public opinion and complete, balanced and truthful information that provides a basis for the former depends on the characteristics of the regulated medium. On the basis of the corresponding national and foreign practice of the Constitutional Court, two factors can be established that influence the scope of regulation in all cases: barriers to access that, due to the scarcity of a resource or just for economic considerations, affect the possibility of access to the communication system, as well as the characteristics of the medium (e.g. abundance of choice, interactivity, filtering possibilities), which determine the efficiency with which the public can shape the content offering available to them itself. These factors essentially determine the extent to which the development of multicolored media offer makes it necessary to regulate the structure and functioning of the media system and also the possible tools of such regulation.

We find arguments against the separation of the subjective side and the institutional protection side of freedom of opinion in the practice of the Constitutional Court. The Constitutional Court has pointed out that three closely related factors, conditioned to each other, can be classified within the perimeter of constitutional protection of the freedom of opinion: the individual expression of the opinion, the public opinion developing according to its own laws, as well as, in interaction with these two, the possibility of forming an individual opinion based on the

¹⁶ In this section, in discussing the legal evolution of the CC, I draw verbatim on the study by László Majtényi-Gábor Polyák: A szabadság hagyományainak megtagadása – új médiatörvények Magyarországon (Denial of Traditions of Freedom - New Media Laws in Hungary), *Közjogi Szemle*, 2011/1 pp. 1-13.

¹⁷ CC Resolution No 37/1992. (VI. 10.)

¹⁸ CC Resolution No 37/1992. (VI. 10.)

¹⁹ CC Resolution No 30/1992. (V. 26.)

²⁰ CC Resolution No 37/1992. (VI. 10.)

²¹ CC Resolution No 37/1992. (VI. 10.)

widest information.²² The free expression of opinions is a basic condition for a diversified public sphere which is a basic condition for a well-founded formation of opinion, which is essential for the expression of opinion. From this train of thought emerges the conclusion that the institutional side of freedom of opinion meets the constitutional requirements only if in the meantime the subjective individual freedom of expression is implemented to the greatest extent; public opinion is created as a result of the expressions of individual opinions and is at the same time the point of departure for them. Therefore, the two justifications for freedom of expression not only do not exclude each other, but on the contrary, one presupposes the other. Just as freedom of expression protects the expression of individual opinion "regardless of its content of value and truth"²³, neither can public opinion be interpreted as the sum of valuable or correct positions. Public opinion can only fulfill its constitutional function if offensive, shocking, irritating communications are also included and are accessible.²⁴

This concept seems to be supportable, particularly in the context of a media system in which the diversity of communication technologies and services offers more opportunities for expression and obtaining information than ever before.

With regard to the historical dimension: in the case of the printed press, the intervention of the State with regard to content is not presentable, and has even been odious since the civil revolutions abolished absolutism, that is, since the 18th-19th century. Democratic states realized early on that they were obliged to refrain from restrictions on content, technology and distribution.

However, in the electronic media, for example in the USA, laws have established since the 1920s that no one has a subjective right to enter the radio market, the State regulates, on the other hand, by invoking the reason of public interest, the possibility to penetrate the market through State monopoly and frequency distribution as well. Subsequently, State monopolies have been reduced in radio and television broadcasting, media systems have been liberalized, but both the role of the State and political influence, albeit to a decreasing extent and with great national and even geographical differences – for example, Hallin and Mancini's geographical categories (apparently, because they are of course cultural) are convincing, allowing him to distinguish between the Mediterranean model and the Northern European models²⁵ – have so far existed in the audiovisual media market.

In the digital age, the constitutional *arguments* for access and content regulation have either lost strength or weakened; nevertheless, even if development points in the direction of breaking down barriers, these demands still exist today, also in the form of an obligation on Member States to maintain the content regulatory authority in Community law, the weakening of the arguments is not automatically followed by a decrease in intervention²⁶.

The new media were born free although they are not an unregulated area, they hardly tolerate censorship, disciplinary office. ²⁷

²²CC Resolution No 30/1992. (V. 26.)

²³ CC Resolution No 30/1992. (V. 26.)

²⁴See summary of the related case law of the European Court of Human Rights: *Observer and Guardian v. The United Kingdom* (1991. 11. 26.; Ser. A 216).

²⁵ Daniel C. *Hallin* - Paolo *Mancini*: *Médiarendszerek* (Comparing Media Systems). AKTI-Gondolat, Budapest 2008. p.366.

²⁶ László *Majtényi*: *Az ORTT szabadságjog-védelmi szerepe* (ORTT's role in the protection of liberties). *Fundamentum* 2010. No 2, pp. 102-107.

²⁷ See for intervention: CASE OF DELFI AS v. ESTONIA <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-155105%22%5D%7D>

With regard to the justifiability of restrictions, there are differences between production and distribution as well. The printed press is also called "consultative media". It is that the initiative for the consumption of normal press products is taken by the reader, who can thus be considered an active, voluntary and responsible partner just like book buyers or members of a theater audience. Interestingly, however, the classification of movies is accepted, as well as that of video games, to which the previous definition fits very well. It can be assumed behind this that on the one hand logic is not absolute and on the other hand "mass" is also an important guiding principle of regulation, the elite culture tolerating in any case less the intervention than the object of mass consumption.

In the case of the following model (common carrier), communication takes place from a given point to a given point, such as mail, telegraph, telephone and, with some restrictions, some internet media can also be classified here. These media connecting everyone individually with everyone else are fundamentally private and professional uses, which, except for law enforcement cases, do not normally tolerate intervention. Moreover, because they develop into huge networks, they acquire particularities, but they do not deserve our further attention here.

The following model has been called broadcasting since the twenties of the last century, which are "one to many" means of mass communication heading from one point to many points. The basis, the peculiarity of their regulation was, until today, the frequency limit (and then the exceptional capacity to influence) which in itself justified the State's interventions²⁸.

The separation of the three models diminished from the last third of the twentieth century, but did not cease to exist. Note that we can classify among the recent evolutions the community pages that we could also call networks going from many points to many points (many to many) which become a source of community information, an entertaining and cultural community medium and which, contrary to broadcasting, have freedom from state regulation as a fundamental operating principle.

In its resolution No. 37/1992. (VI. 10.), the Constitutional Court stated: "The freedom of the press has mainly external barriers (materializing in special institutions corresponding to the specificities of the press, such as press rectification or the criterion of general public in criminal law). However, the freedom of the press is above all guaranteed by the non-intervention of the state in the content; to this corresponds, for example, the prohibition of censorship and the possibility of the free establishment of a newspaper." The resolution explicitly contrasts such a strict restriction on the regulation of the printed press with the regulation of radio and television: „In addition to the peculiarities relating to freedom of the press, the service of freedom of expression of opinion and information requires further conditions relating to radio and television." Of course, this does not lead to a single concrete regulatory solution, just, as we have developed above, that the different media make necessary and acceptable state interventions on different scales.

The constitutionality of the restriction is, however, linked to the fulfillment of another condition: that of proportionality, so that "the importance of the objective to be achieved and the severity of the violation of the fundamental right committed for this purpose are in appropriate proportion to each other". In addition, "the legislator must, within the framework of the restriction, apply the least restrictive tool appropriate to achieve the given goal." In addition, "it is unconstitutional to restrict the content of the right when this is done without compelling reason, arbitrarily, or when the weight of the restriction is disproportionate to the objective to be achieved."²⁹ The examination of proportionality involves, on the one hand, fact-

²⁸ We do not address here whether this justification is sufficient. But we notice that obviously not.

²⁹ CC Resolution No 30/1992. (V. 26.)

finding in media law and, on the other hand, an assessment of the full range of instruments available for the protection of fundamental rights and constitutional values to be protected against the expression of opinion.

It is justified to refer at greater length to the quotation from the Constitutional Court, chosen as motto:

„...it is strange for a special representation, guaranteeing the freedom of expression of opinion, that only the political representation of society is present in an exclusive or determining manner. The consensus of parties, much less that of parliamentary parties, is not suitable for providing a constitutional guarantee of full freedom of expression. On the contrary: freedom from the state requires that neither parliament nor the government can have a decisive influence on the organization capable of influencing the content of programs; similarly, the influence of political parties, groups formed for the same tasks or to represent the same interests should not be decisive either.”³⁰

Creation of one-party Orbanist media, construction of dictatorship replacing institutional protection

This unparalleled anti-freedom regulation, as we shall see again, in many cases violates the basic requirements of constitutionality, but we believe that its most important *characteristic feature* is the *openly centralized, authoritarian institutional and management structure*. Although institutional protection always has, needless to say, a certain paternalistic character, it plays an important role in constitutional law. In media law, institutional protection has served, in the previous correct interpretation of the Constitutional Court, the promotion, the assurance of the development of democratic public opinion, the legitimization of the latter. Its place was taken by the construction of a conglomerate making the development of democratic public opinion impossible, breaking media pluralism, *bringing into line (gleichschalten)* first politically, then organizationally, and unifying even stylistically, recalling the voice of the dictatorships of the 20th century in its political provocative campaigns, its intonation.

The basic features of the adopted law have not changed subsequently either, but we will still discuss the changes and proposals for amendments to it. In any case, the highly hierarchical model of pyramidal management, institutionalizing political influence, which compromises in sum the independence of the management body, the media, and the programs, is of international curiosity. The President of the National Media and Communications Authority with increased powers, made convergent and overseeing the technological side and content regulation is appointed by the Prime Minister for more than two parliamentary cycles (9 years) and may be appointed more than once according to the original intent of the law. The president appoints a vice-president who *may be dismissed* by the president without having to give reasons. Appointed and also dismissed by the president at any time without having to give reasons, a general manager is at the head of the office. He or she appoints an unlimited number of Deputy General Managers and dismisses them in the same way, in accordance with the provisions of the Rules of Organization and Operation.

Similarly, it is the President who appoints and dismisses the head of Media Service Support and Asset Management Fund, which manages the assets of the public media and the subsidies

³⁰ CC Resolution No 37/1992, 227, 231 (VI. 10.)

distributable in the media system. The economic independence of the previously economically independent public service broadcasters (Hungarian Radio, MTV, Duna Television, Hungarian News Agency) cease to exist, all their assets being transferred to the Fund under the authority of the President. It is therefore not an exaggeration to say: certainly, through an organization under the direction of a manager appointed by the president, but the *authority itself* becomes the owner of the public service broadcasters. Thousands of broadcasters' journalists have been transferred to the same organization. Public service broadcasters no longer produce programs, but they will order them from the Fund. News production will remain centralized. Under the pretext of economy, a single organization will produce programs on events of interest to the public for all channels of all public service broadcasters. There can no longer be any importunate questions in the public service.

The president of the authority is at the same time the president of the Media Council, the body taking the most important substantive decisions. Only persons nominated by the governing party were elected to the Media Council, benefiting from a two-thirds majority and the abolition of the parity system previously in force.

The preponderance of the ruling political party is also ensured in the Curatorship of the Public Service Public Foundation, which is common for public service broadcasters, although the ruling party and the opposition may nominate the same number of candidates (3-3), as the president and one other member are appointed by the Media Council. It is this body that elected without call for applicants the general directors, considered as political appointments, of the public service broadcasters only by vote of the Fidesz delegates (!).

The Civil Service Code summarizing the tasks of public media service providers was also defined for the first time by the Media Council. There is no provision in the law to involve professional organizations, and in this case, the Public Service Panel was not even supposed to be listened to. The Public Service Panel in which corporate organizations (historical churches, Academy, minority organizations, family protection organizations...) not covering the Hungarian society articulation delegate members and in which neither professional organizations nor human rights organizations participate is only entitled to amend the Code with the agreement of Civil Service Curatorship with pro-governmental majority. Since the law does not provide for the regular revision of the Code, there is no guarantee that the Code adopted for the first time will ever be amended (sect. 95).

Even beyond that, the Media Council and its chairperson have unprecedented powers in the operation of public service media. On the proposal of the President, the Media Council appoints the managing directors of public service corporations without a call for applicants (Sect. 102). Similarly, it is the Media Council that delegates the Chairman and one member in the Public Service Curatorship that decides on the appointment and, as the case may be, the dismissal of the Directors General, thus guaranteeing a clear pro-government majority. The General Manager of the Media Services Support and Asset Management Fund, disposing of the assets, employees and archives of the public service media, is also appointed and dismissed by the President of the Media Council (Sec. 136). Not only the Public Service Panel, but also the Civil Service Curatorship has no place of representation in the Public Service Budget Council that decides on the financing of the public media (Sec. 108). The pyramid model if it resembles anything, then it resembles the structure of armies much more than the institutional side of implementing press freedom.

Needless to say, all this *would* be completely unacceptable according to the practice of the Constitutional Court.

It is difficult to argue that at the time or before the adoption of the Hungarian media laws, the dangers lurking for democracy, the liquidation of the autonomies could not have been foreseen. In fact, the situation was completely clear. Anyone who wanted to see clearly could do so.

On June 23, 2010, the European Federation of Journalists (EFJ) issued a statement of protest regarding the new Hungarian media law, which, according to them, would "reverse the course of time" in Hungary with regard to press freedom. „The law before the Hungarian Parliament is a restrictive measure that hinders the freedom of expression and therefore the freedom of speech," said Aidan White, General Secretary of EFJ. "This is not in line with European standards of diversity and pluralism and sets the clock back to a time when Hungary was living under communist rule and in the shadow of state control of the media." According to the EFJ statement, the law subjects a large part of the print and audiovisual media to the state regime and they fear that the new rules will be applied arbitrarily and that this will give way to intervention from above. The Hungarian government has been asked to withdraw the bill and start an intensive public debate and dialogue with the media community and journalists. According to the EFJ, this dialogue should aim at establishing media regulation that meets European standards and respects freedom of expression and speech. Any new law must include legal guarantees of journalistic and editorial freedom and must support ethical practices.³¹

The following day, on June 24, Dunja Mijatovic, Representative on Freedom of the Media of the OSCE (Organization for Security and Cooperation in Europe) invited the Hungarian government one week before the parliamentary vote to stop the draft media law and to finally start public debates with the participation of professional actors in order to amend the bills.

„The proposed laws raise serious concerns about the freedom of the media in your country," she wrote in her letter to Foreign Minister János Martonyi. „Their adoption may lead to all broadcasting being subject to political decisions."³²

„While the government has the parliamentary force to amend the constitution and laws regulating freedom of expression, it is very important that the government does not use this force to weaken guarantees of media freedom and place the media under government control and that it does not violate international and OSCE standards for ensuring freedom of speech and the media... A pluralistic management system for broadcasters, including key professional actors and civil society is a prerequisite for media pluralism..."

Failure of the constitutional revision

These warnings have had no effect. Defense of freedom of the press and speech awaited the Hungarian Constitutional Court. However, Resolution No. 65/2011. (XII. 20.) AB of the Constitutional Court has rather become a milestone in the destruction of the freedom of speech and the press, the liquidation of autonomies than in the defense of them.

It is that the resolution was born on an important frontier point. The Constitutional Court is by nature a precedent-setting court. As we have seen, prior to the Orbanian turn, the Constitutional Court expressed its doctrines on freedom of expression and the press at a high level even according to the relevant international standards in force. At the time of the decision, the Hungarian Constitutional Court was still autonomous. But the muscles of power eating away at the constitution can be seen. We are well aware of the phenomenon where judges are not necessarily deaf to the desires of force and power. Apart from radical coups d'état, the colonization of public law generally occurs step-by-step. In our country, the rearrangement of

³¹ 23 June 2010 European Journalists Reject the new Hungarian Media Bill and Call for New Talks

³² <https://www.osce.org/fom/69491>

power basically took place in silence. The slowing, moderating assistance of national constitutional institutions and international organizations has affected the visibility of the authoritarian reshuffle rather than the effectiveness of the power reshuffle. During the transition of power, it is equally important to pay attention to what the authors of the application of the constitution **talk** about, but also what they do not talk about. The markedly voluminous decision of the Constitutional Court acts as if, on the merits, partial problems arose on the periphery of constitutional regulation and not only does it lower its voice in speaking of the vicious unconstitutionality of the basic concept, but it also turns a blind eye to the monolithic limitlessness of authoritarian power in the media management. Indeed, it remains silent on this. This is covered by a reasoning of high professional quality that detaches and destroys rules that are important in themselves, yet incidental to the ability to destroy freedom so as to leave intact notably the center of this ability, the party dictatorship placed above media regulation. In this respect, the most important paragraph of the resolution hides almost in the sea of texts: **„Considering that a significant part of the motions raised constitutional concerns regarding the uniform regulation of printed and Internet press products and other media services, the Constitutional Court devotes the present resolution to the consideration of the said subject. Hereunder, it describes and judges the elements of motions received on this topic.”**

In other words, the resolution elaborated with great theoretical apparatus deals with everything but the one-party domination of the media. The sentence quoted is revealing: the Constitutional Court says: we are only dealing here with a part of the motions, those submitted on certain subjects. It goes without saying that the Constitutional Court has still not ruled, in other matters, on the rules consolidating in concrete the power of the one-party media authority who knows why, we ask the rhetorical question.

We take the risk of saying: if it had ruled on them, the authoritarian system could not have been established in Hungary, at least not so peacefully, maintaining the appearance of a constitutional process. It should be noted here that the blindness voluntarily accepted in the interest of the excessive media power of the government is also manifested in the fact that evoking the meagre argument of mediaconvergence, the Constitutional Court a priori qualified as constitutional the regulatory philosophy of uniform state control, extended to the print, electronic and online media. Moreover, in order to ensure that the Constitutional Court did not touch on the substance of the regulation, it had to reject motions alleging the nullity of public law, i.e. that even the manner in which media laws are passed is unconstitutional (to which the Constitutional Court's inconsistent practice in this regard gave it an opportunity). In addition to this, it establishes a rather restrictive starting point, according to which "the principle of the rule of law is certainly violated by a solution of the legislator which makes it extremely difficult, possibly excludes the possibility of knowing, adapting and adopting a culture of respect for the rules, but which provides for sanctions for illicit acts".

It does not fail to note that the law adopted on December 21 without a social debate and to be published "urgently" appeared in the official gazette on December 31, 2010 after being signed by the Speaker of the National Assembly and the President of the Republic and, with the exception of certain provisions, came into force on January 1, 2011, i.e. "There is therefore no doubt that the legislator did not guarantee, in a formal approach, the possibility for the circle of persons provided for by the Mttv. law to be aware of the new regulations and to take the necessary measures to adapt to them". The reader can ponder on the meaning of the turn "the formal approach" in the text of the Constitutional Court.

According to the interpretation of the Constitutional Court: "since the preparation of the bill is not part of the legislative process, the lack of a legal obligation for consultation or the lack of

organization of societal debate generates a political responsibility on the part of the legislator, but does not lead to the nullity of the law at the level of public law". Thus, the Constitutional Court rejected the motions alleging the public law invalidity, the unconstitutionality of the Mttv. law obtruded upon the society without any consultation as unfounded. Given that the repeal of the authoritarian media laws was equal for the Constitutional Court to an opposition to the *raison d'Etat*, a prohibition running the risk of anathema, it is seen as a sign of a new willful blindness/eye closure causing a mixture of cause and effect in the resolution that since the deliberative obligations governing bills are not applicable to the motions of MPs, the Constitutional Court nevertheless used in its reasoning this abuse, this circumstance to support the public law validity of the bill while knowing that such a complex project reshaping the basic structures of society cannot be elaborated by an MP (he or she is not capable of doing so). This already corresponds to the declining era of the Constitutional Court, abandoning its activism.

In the meantime, the resolution argument seeks to remain within the framework of the institutional tradition. He agrees when he quotes the previous argumentation of the Constitutional Court according to which "the distancing of the State from the activity of the press as an institution is *a priori* a guarantee for the implementation of press freedom"! ³³.

The Constitutional Court is fully aware of what and how it must protect. „Even if the privileged role of the right to freedom of expression does not lead to this right, analogous to the right to life or human dignity, being unlimited, it does mean in any case that the right to freedom of expression must in fact give way to very few rights, since laws limiting freedom of opinion must be interpreted restrictively.”³⁴. It finds that the freedom of the press is asserted in front of the State, it obliges the State to abstain, not to intervene in the exercise of the fundamental right.

The Constitutional Court, while it finds it constitutionally acceptable that the powers of the media authority also extend to the print, electronic and internet press, comes to the exact conclusion here that there is no reason for a restriction "which allows the intervention of the public power in case of violation and enforceability of rights of personal interests. In the case of subjective violations caused in print and Internet media products by the exercise of the right to freedom of the press, legal institutions allowing for individual action were available even before, since the official procedure called for on the side of individual application of the right, supplementing it, could not be constitutionally justified and therefore constitutes a disproportionate restriction of the freedom of the press." In the case of print and online press products, administrative action based on human dignity, the rights of the person making a statement, human rights and the protection of privacy is an unnecessary and disproportionate restriction of the freedom of the press, the provisions constituting a violation of the freedom of the press shall be annulled.

The Constitutional Court qualifies as constitutional the compulsory registration of press products with the media authority with the proviso that "registration must be a purely administrative act and that the state acting as an authority must not have any discretionary power with regard to the registration application (prohibition of censorship) and that a deletion from the register hindering dissemination, publication (prohibition) can only be ordered in exceptional cases, on the basis of a legal provision based on a thoughtful consideration. ³⁵

³³ CC Resolution No 37/1992. (VI. 10.)

³⁴ CC Resolution No 30/1992. (V. 26.), ABH 1992, 167, 171)

³⁵ CC Resolution No 34/2009. (III. 27.), ABK, 2009, 282, 287.

The expertise of the Council of Europe of May 11, 2012 is not so permissive: they find, for example, that: "the reasons for refusing the registration of linear or on-demand media services must be reconsidered."

In the area of the protection of sources, which is an important cause, let's admit it, the Constitutional Court is gathering its courage. In the court's interpretation, freedom of the press and of expression is one of the essential foundations of a democratic society, with the press playing a pre-eminent role. Maintaining the confidentiality of journalists' sources is part of press freedom, is a content element of press freedom, a "cornerstone of press freedom". Without journalists' sources, the press cannot face the task of informing the public on issues of general interest. Thus, a regulation compelling the journalist to disclose his sources is a significant restriction of press freedom.

The resolution annulled the provisions relating to the mandatory issuance of documents containing classified data without judicial review and also cut the obligation to release information almost out of bounds for the press. It qualified the protection of classified data as a necessary restriction of the freedom of the press, but in its view, the express primacy of the protection of classified data in general (i.e. not only in duly justified exceptional cases) over the freedom of the press is a disproportionate restriction of the freedom of the press in the absence of prior judicial review, weighing the circumstances of the case at hand.

Subsection (1) of section 6 of Smtv. refers to the person transmitting an information. Neither Smtv. nor Mttv. includes in the protected circle the documents, the records, the data accessible on other data supports guaranteeing, helping the identification of the person of the informant. It comes correctly to the conclusion that the regulation of the protection of sources remains declaratory when even if the journalist cannot be obliged to identify the source, but the authority or the investigating authority can oblige him to hand over all records, documents, data carriers relating to the case, suitable for the identification of the source, an obligation in respect of which he cannot make any recourse of a preventive nature.

In the light of the considerations set forth, the Constitutional Court, acting ex officio, has generally established, with regard to the legal order as a whole, the regulatory shortcomings of the procedural guarantees relating to the protection of sources. It explains that the institution of the protection of sources becomes a real protection when the journalist is entitled to refuse to make a statement, to provide data within the framework of a procedure conducted by an investigative authority as well as any other authority, at least as far as the protection of his sources is concerned, and that the procedural laws clearly regulate the exceptional cases in which he is nevertheless obliged to cooperate with the authorities under the control of the courts.

Digression: watchdog or police dog, the case of the Commissioner for Media and Infocommunication

It's really typical. The Commissioner for Media and Infocommunication is a kind of fistula through which we can have an insight into the public law perception of anonymous authors of media laws, free from any hindrance of the rule of law. One of the most important topics in the literature on the ombudsman is that the ombudsman is the protector of our freedoms and rights, a watchdog, acting in the interest of citizens. Independent, without the right of decision, issuing, following its investigations, not resolutions, but recommendations. The lack of decision-making powers is compensated for by its extensive rights to obtain information and investigation. We are familiar with various ombudsman institutions that are usually institutions of public

authority, but corporate bodies and independent ombudsmen of different products of the press, away from power are especially widespread in the press world.

Newspaper, press and media ombudsmen operate in many countries of the world,³⁶ there are examples for a Justitiekansler, as a state authority, to monitor press freedom as well and for a media self-regulatory body to work on behalf of the Press Council. Such an ombudsman³⁷ has been in place in Sweden since 1916, albeit only for the print press - institutions such as ombudsmen have spread to other parts of the world as press enterprises.³⁸ The main type is the newspaper ombudsman (we usually mention first the Japanese Public Editor Asahi Shimbun in 1922), but the institution is a common practice also in the USA /Public Editor/. It is the newspaper or broadcaster that usually calls it to life for the benefit of its consumers, in order to control the work of its editorial staff(s) so as to give an interface to the ombudsman that it writes itself to criticize the activity of the given media. It is said that he or she is the "internal enemy", the one who "reveals everything".

Any media ombudsman, whether working in the interest of a press product or being a representative of a professional organization, is a body, specifically an *independent*, prestigious control person, generally of a well-known authority.

We cannot recognize at all the features of the portrait sketched here of the institutional face of the media ombudsman created by NER's (System of National Cooperation) media regulation, on the contrary: ours was perhaps the most perverse media ombudsman in the history of the media.³⁹ Our Commissioner is not independent, but a delegate of the President of the Authority, who may be replaced at any time. The Commissioner shall be appointed and dismissed by the President, who shall exercise employer's rights over the Commissioner. The Commissioner is an official classified as a department head who reports to the President and the Media Council on his or her activities. The president of the authority appoints and dismisses him or herself and all his or her subordinates at his sole discretion. Its competence includes all press products, providers of electronic communications services.

It acts in cases of violation of interests of indeterminate content, particularly in cases where the authority to which the Ombudsman reports *has no* powers of inspection or control. It's funny, he doesn't have any power, but his subordinate who depends on him does. The Authority shall refer complaints received by it for which it does not have jurisdiction to the Commissioner for review. The electronic and print media and the media company must provide the commissioner with any data and information that the latter deems to be justified. The Commissioner shall prepare reports on his activities and actions for the attention of the President.

³⁶<http://newsombudsmen.org>,

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/Events/Journalism_Ethics_and_Self-regulation_in_Europe/background_papers/Yavuz%20Baydar%201.pdf

³⁷ <http://www.po.se/english>

³⁸ The naturalization of László Majtényi and Zoltán Miklósi in Hungary was also successfully tested at Népszabadság and Magyar Hírlap under the rule of law. http://ekint.org/lib/documents/1479659627-A_N%C3%A9pszabads%C3%A1g_ombudsmanja.pdf, http://ekint.org/lib/documents/1479661067-A_Magyar_H%C3%ADrlap_ombudsmanja.pdf, <http://www.ekint.org/ekint/ekint.news.page?nodeid=128>.

³⁹ It is not an unknown phenomenon that the *ombudsman* is sometimes a fake stamp, possibly a beauty patch on the unattractive face of a dictatorship: the Parliament of the despotic President Marcos (1979) in the Philippines or the military dictatorship in Nigeria created by decree (1975) a pseudo institution of ombudsman. The institution is sometimes a disguise of the lack of democracy, but this commissioner for media and communication has not simply disguised a lack of democracy, but has been entrusted with the role of auxiliary tool of the representative of authoritarian power.

Instead of loosening the already stifling surveillance of the State through the institution of the media commissioner, the legislator has created an institution that actually extends the control of the state in an almost unlimited way.

Quote from the Media Commissioner's web page: „The Commissioner may request data, information and statements related to the prejudice from any media or communication service provider or publisher of press products in order to investigate a prejudice brought to his knowledge by a complaint or otherwise, and may duly use the *tools available in the context of the traditional official control and clarification of facts by the Authority (!)*. The media or communication service provider concerned is obliged to provide the requested data, information and statements to the Commissioner within fifteen days, even if the data is considered a business secret. The Commissioner is required to maintain the confidentiality of the business secret brought to his knowledge. (The web page does not mention in this respect that the obligation of confidentiality does not apply to the Commissioner's boss.)... The Commissioner prepares a report on the outcome of the initiative and informs the President.” In relation to this, the current Media Commissioner stressed in his first statement that „it is important for me to encourage a conscious use of the media ... while maintaining the position of commissioner independent of the authority”. Presumably, he is referring to the fact that, according to the law, orders cannot be given to him in terms of the content of his investigation. It seems however insufficient. Little is known about the commissioners (and their activities) acting as heads of departments for a short period of time in 2011 (Péter Takács, then Jenő Bodonovich dr.)⁴⁰. The first conducted a survey of RTL Klub and TV2's SMS voting and proposed "to operate a call center to continuously inform voting viewers and handle complaints, the second "makes proposals on how to present news about suicides in the media", the media ombudsman planned a procedure against Népszava in the case of a commentary, but fortunately did not open the investigation. The media ombudsman was not designed to be the defender of freedom. The resolution of the Constitutional Court repealed the relevant regulation, while the expertise of the Council of Europe recommended to forget the whole as it is. This institution, as can be seen, has by chance bled to death as a result of the resolution of the Constitutional Court and the expertise of the Council of Europe.

Council of Europe expertise on media laws

The expertise of the Council of Europe published on May 11, 2012, fortunately elaborated not by politicians, but by experts, did not spare, but smashed to pieces the brand new media law of the Orbán regime.⁴¹ The following are the main findings of the Council's critique.

The appointment of the President of the National Media and Communications Authority should be changed to ensure the professionalism and independence of the President's position. The only possible candidate for the position of President of the Media Council is the President of NMHH (National Media and Infocommunication Authority) who is, however, appointed by the Prime Minister of Hungary.⁴² If the National Assembly refuses to confirm his appointment, the President, albeit with reduced powers, will still preside over the work of the Media Council.

⁴⁰<https://computerworld.hu/karrier/bemutakozott-dr-bodonovich-jeno-84630.html>,
https://www.youtube.com/watch?v=Syb_5VRNnKk

⁴¹ https://mertek.eu/wp-content/uploads/2016/12/et_velemenye_2012.pdf We have changed the order of expert proposals.

⁴² In the spirit of Jagland's Compromise, the Prime Minister proposes, the President of the Republic appoints.

The members of the regulatory authority are not independent. The law does not protect members of the Media Council from political influence, although this is an explicit stipulation of the Council of Europe's recommendations.⁴³ The aim is always to strengthen the independence. Since "**the Media Council is not independent from the outset**", the right of appointment of the President and one other member of the Curatorship should be withdrawn from the Media Council until the power of appointment is changed in accordance with Council of Europe independence standards. Nine-year appointments to the Civil Service Curatorship is unacceptable.

The Media Council should not be able to adopt the Civil Service Code and should not be able to determine the scope of public service broadcasting. The competences of the Media Council as an authority should be limited to the supervision of services, it should not play a role in the appointment of media directors, as this is in violation of their independence.

Judicial review of media authority decisions is not effective - Council of Europe experts say.

The Media Council may interfere with the functioning of self-regulatory bodies in an inadmissible manner. These provisions resemble more the language of a subcontract than the recognition of the work and powers of a self-regulatory body; the provisions relating to the "code of conduct" remove all autonomy from the self-regulatory body.

There is no logical explanation for the role of the Commissioner for Media and Communication in relation to the monitoring of media services and press products, so they recommend the abolition of this institution.⁴⁴

If the court may order disclosure of sources in criminal proceedings, the law should specify that disclosure of sources may be requested or ordered only if there is a clear need to do so and if there is a vital public or private interest in disclosure that overrides the interest in the confidential handling of sources. Failure to do so poses a serious threat to investigative journalism.

Applicants must be granted the right to seek judicial review of the call for applications.

Instead of the registration procedure, they just propose an obligation of prior notification, but they are of the opinion that it is not justified to require even this from print and online media services. The registration requirement is contrary to the principle of proportionality, enshrined in the case law of the ECHR.⁴⁵ The basic principles relating to public service broadcasting must be reformulated in line with the expectations of the Council of Europe. As for the Public Service Public Foundation, the meaning of imposing a qualified majority would be, in particular, to allow far-reaching decisions to benefit from multiparty support. A new voting mechanism is needed to enable any significant changes to the media law to be made with true multiparty support.

The "compromise"

All controversial issues related to media laws have been settled with the "objective help" of Thorbjørn Jagland, declared László Trócsányi in 2014.

On the proposal of the Prime Minister and the resolution of the President of the Republic, László Trócsányi awarded the Medal of the Middle Cross of the Hungarian Order of Merit with the

⁴³ See, for example, the Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector adopted on 26 March 2008.

⁴⁴ The provisions relating to the institution of the Commissioner were annulled by the Constitutional Court.

⁴⁵ See *Gaweda v. Poland*, 14 March 2002, Application No. 26229/95 ECtHR

star (Civil division) to Thorbjørn Jagland, Secretary General of the Council of Europe.⁴⁶ (We have no knowledge that Orbán's decoration would have burnt Thorbjørn Jagland's hands or that he would have sent it back, after noticing the consequences.)

„The dialogue between the Hungarian government and the Council of Europe has come to an end regarding media regulation, we have received a satisfactory response from the Hungarian government to the concerns, the media regulatory body is thus independent and is different from what the government originally wanted to set up” said Thorbjørn Jagland, Secretary General of the Council of Europe in his speech at the European Policy Centre on the agreement between the government and the Council of Europe on media regulation and controversial justice issues. According to the agreement, the president of the Media Council and the National Media and Communications Authority (NMHH) will be appointed in the future not by the head of government, but by the president of the republic for the duration of a cycle, on the proposal of the prime minister. ... Jagland added: "thus, we managed to separate the appointment of the president from the executive power, because the head of state must represent the whole nation.”. He also said that they had not investigated the election of members of the Media Council, as this falls within the remit of the parliament.

As for the regulation of content, Jagland said that a certain number of wordings, such as "transversal, factual, up-to-date, objective" would be removed from the regulations because they risked giving rise to subjective interpretations. „These are substantial changes", argued the Secretary General of the Council of Europe, adding that these changes would set up an independent media system. He developed that under the original rule, the Prime Minister would have put his ally at the head of the new institution for nine years who could have remained in office forever unless a new one was elected by two-thirds of the vote. – „We have changed that and that's very important", laid down the Secretary General, who also said: "with that, they have not compromised with the European standards".

The procedure of the Constitutional Court in relation to the revision of media laws is relatively easy to interpret and its human side is understandable, with knowledge of domestic circumstances. It is easy to understand in the light of the management of favors à la Orbán that, knowing the retributive and punitive capacity of the power and considering the point that the Constitutional Court reached in the service of the power in the years following this resolution, it can be credited to them that they have remained faithful in substance to their organizational culture, their traditions at least on the matters they have judged.

This is the so-called compromise of the Council of Europe, which has no reasonable explanation. There is no excuse for this, the context of the decision being completely opaque, it can be said at most that among the member states of the Council of Europe there are a number of authoritarian regimes, similar to the Orbán regime, or even worse, more oppressive. But the Council of Europe should hardly have the task of levelling down. On the contrary, we believe that it would be in charge of defending the level of protection and freedom, known in constitutional protection, applied even by the Constitutional Court, which has already been reached, and to implement non-regression in this regard. Since either there is a freedom of expression and of the press or there is not. If there is, it's natural, like breathed air or drinkable water. On the other hand, beyond that, almost all transitional states can be described as a lack of freedom of the press. A partially free press is not free. Admittedly, even in authoritarian regimes there is a free press forced to a ghetto life, but maintaining it generally requires extra courage. However, we cannot speak of freedom

⁴⁶ https://www.magyarhirlap.hu/belfold/Trocsanyi_Parbeszeddel_a_megoldasig

of the press in such situations. It remains to be seen what is the responsibility, apart from the behavior of the Hungarian Constitutional Court, the Council of Europe and the European Union (not analyzed by this study), which often turn a blind eye to the activity of the Hungarian government, the Hungarian political society, the existing autonomies here and there. Admittedly, neither civil society organizations committed to the values of freedom of expression and of the press (except for rare personal exceptions), nor the Association of Hungarian Journalists, nor the academic sphere teaching the media have yet submitted themselves to the authoritarian power dismantling press freedom. This is illustrated by the eyewitness testimony of a public service media contributor who notes the following in December 2010: „A girl is crying in the newsroom – „No way I can find a single media lawyer who would defend this crap, everyone in the clip will be jeering at it. I will be fired for this.”, she says.”⁴⁷

However, as the state destroyed the freedom of the press, suppressing one independent print and online bulletin after another, in ever smaller numbers and with ever less access, the voice of critics weakened, and the public eager to be entertained and to consume news was content, for want of better, with the political chewing gum it received. If the Constitutional Court and Europe had not given Orbán complete freedom of action to destroy the free press, Hungarian democracy would surely have survived its ephemeral royalty.

Subjugation to the authority of the media and freedom of private law together defeat freedom of the press

We mentioned that in our vision, the Hungarian political system called national cooperation, commonly: Orbán's regime does not follow the power patterns of the despotic eastern regimes willingly befriending him, but it does not hesitate to resort to the tools of privatization of the press up to the world of the universities thanks to public funds, which uses the private patrimonies enormously inflated, disguised as coming from the market economy as important tools of the reign. In other words, one of the most important power innovations of the Orbán regime is the occupation of the more particularly lucrative and politically sensitive spheres of the market, disguised as commercial transactions.

The most popular internet portals, previously independent from the government, weekly newspapers with a large readership, and large-circulation county dailies have been transferred one after the other, in one way or another, but in the context of commercial transactions, in the ownership of Orbán's darlings or have simply disappeared, have ceased to exist.

This is how the media power becomes two-pillar: hegemonic for the situation of power, but dictatorial for its tone. Every decision of the media authority and the Media Council made up of "independent" candidates from a single party, both those responsible for enforcing the law and those authorizing the provision of services, and the modification of the latter, meet political expectations and considerations and can therefore only make a fair decision by chance and not according to the internal algorithm. This is a necessary but insufficient tool for the domination of public opinion.

Thus, in cases outside the authority's field of action, a particular „market” logic of the extension of power is asserted: when they are not under the influence of the government, then the most

⁴⁷ <https://mertek.eu/2012/06/11/oncenzura-a-magyar-sajtoban/> Attila Mong's article appeared in *Élet és Irodalom*, year LVI., No 16, April 20, 2012.

read, most valuable daily (Népszabadság) goes bankrupt, and the entire editorial staff protesting political intervention by the owner who has become familiar with NER leaves the most visited news site by far after the owner, alleging a business emergency, throws the editorial staff on a slippery slope threatening to lose independence. The business decisions of the buyers acting on behalf of Orbán are exclusively of a political nature. The purchase price is uninteresting, the business purpose is sometimes just the maximization of financial losses (the buyer acquires, as the case may be, the negotiable media company, representing a significant market value to liquidate it in the short term at a large loss).

The most important players in the Hungarian printed press market were Axel Springer, Ringier and Sanoma operating with a background of German, Swiss, Finnish owners in the structure established after the regime change. In the case of Axel Springer and Ringier, the Hungarian authority prevented the attempt to merge the two companies. The government apparently had plans for those two major portfolios. In 2014, Vienna Capital Partners (VCP) acquired a large part of the portfolio of these two companies and changed its name to Mediaworks. In October 2016, completely unexpectedly, the government suspended both the print and online editions of Népszabadság, a political daily and market leader (!) in Hungary, which had become its property, by invoking, of course, commercial interests. Incomprehensible item in itself from the commercial point of view of the coup-like liquidation of the most popular daily newspaper: the closure of the profitable online mutation, with one of the richest databases. The owner of the publishing house, Heinrich Pecina, well known for his dubious business internationally and by the Austrian authorities and courts sold the company, after the killing of the newspaper, to Opimus Press belonging to the sphere of interest of the Prime Minister's most beloved tycoon, but before that, he still bought Pannon Lapok Társasága in September 2016 to transfer to Opimus a total of 12 county newspapers with millions of readers together with the previous portfolio.⁴⁸ The enumeration goes on at length with the sad fate of the daily and weekly newspapers, with the history of offshore companies with an ownership structure that is sometimes untraceable. These cases would require a separate study.

While the Orbán regime still cannot be called a dictatorship in our opinion, it is nevertheless important to establish that the tone of the propaganda press, including the public service media, even if there is a difference in terms of harshness and insulting voices, in addition to simply serving the government, often attune their consumers with hate campaigns against political opponents and groups of people designated by the politics of resentment (e.g., refugees) while violating the basic requirements of human dignity.

As an example of the direct steering of public service media by the party/government, Szabad Európa (Free Europe) published sound recordings in 2020 in which the editor-in-chief of MTVA spoke of mandatory loyalty to the ruling party⁴⁹. The Media Council did not even want to investigate the case by invoking the "protection of editorial freedom".⁵⁰

The national press agency even checks the photos as does the centrally monitored press of dictatorships. „In case of sensitive subject matter, photos and captions should be sent for review to the editor-in-chief of MTI (National Press Agency) and the Prime Minister's Cabinet Office”. As for the image representation of the subject of refugees, the people concerned reported: "the

⁴⁸ See mor details: https://mertek.eu/wp-content/uploads/2016/11/mertek-mediatalajdonosok_final.pdf

⁴⁹ <https://www.szabadeuropa.hu/a/szerkesztoi-utasitas-a-koztevenel-ebben-az-intezmenyben-nem-az-ellenzeki-osszefogast-tamogatjak-mtva-fidesz/30940923.html>

⁵⁰ <https://www.szabadeuropa.hu/a/mediatanacs-nmhh-vizsgalat-karas-monika-mtva-hangfelvetel/30989934.html>

instruction was unequivocally to photograph only vigorous men" - said one of our sources. The other added that men should not be portrayed as fallen. MTI communicates photos of opposition politicians almost only during the campaign period and during a parliamentary speech, but sometimes not at all."⁵¹ Rhetorical question: in which political and media system does the "public service" operate according to such or similar rules?

Central European Press and Media Foundation, keystone of the State's media hegemony

The Central European Press and Media Foundation was established in 2018. The so-called businessmen previously made owner by the Orbán regime offered to the Foundation, in a way unprecedented in the history of the Hungarian and international press, their audio-visual, printed and online press products worth tens of billions of forints, *without any compensation* (!) (in 2017, the cumulative turnover of these companies was well over HUF 50 billion).⁵² This media mammoth includes more than 400 media companies. Its creation was a transgression of the law, even under the law of the Orbán regime, the GVH - Office of Economic Competition and the Media Council should have prevented the merger (we mentioned above that the Media Council had prohibited the merger of the significantly smaller Axel Springer and Ringier as an undesired concentration of capital). In December 2018, however, the government labeled the merger "of national economic importance" which is a watchword that no longer requires substantial justification which allows/obliges the Office of Economic Competition and the Media Council not to review the legality of the merger. This is how they proceeded (according to Mérték Médiaelemző (measure - media analysis), the Media Council's non-decision still means a continuous infringement⁵³). According to a number of press articles and daily experience, the political content and news of the media monster are edited in a coordinated way.⁵⁴

A free, democratic and solidary Hungary is unimaginable without press freedom and a free press. This sentence designates two tasks, because the constitutionally guaranteed freedom of the press is a kind of framework, an opportunity, whereas the free press is a cultural phenomenon that interacts closely with social life and changes organically. It is always easier to destroy than to build. Today, there is no public service media in Hungary, its place has been taken by depraved, inappropriate fellows in a democracy, the free press having mostly been liquidated, the rest having been pushed into a ghetto. Rebuilding is not only difficult but also risky, as it presupposes moral and professional preparation handed down by generations.

The missed opportunity: speaking and writing freely, breach the steel dome of state propaganda

We have written above about the responsibility borne by the Constitutional Court and the Council of Europe in the construction of autocracy. Only the actors concerned are also responsible for restoring press freedom. In the current situation, the European Union is one of the factors that can

⁵¹ <https://www.szabadeuropa.hu/a/mti-foto-fenykep-cenzura-mtva/31042333.html>

⁵² <https://mertek.atlatszo.hu/a-sajtoszabadsag-lapzartaja/>

⁵³ „Only the GVH could avoid the task of thwarting perfectly clear expectations, not the Media Council. This is because the legal requirements apply not only to the merger process, but also to the entire duration of the operation. And if the infringement does not stop, the Media Council will have to act again and again, applying increasingly severe sanctions.” <https://mertek.atlatszo.hu/a-sajtoszabadsag-lapzartaja/>

⁵⁴ <https://mertek.atlatszo.hu/mindent-beborit-a-fidesz-kozeli-media/> <https://444.hu/2019/04/25/oriasi-a-fideszes-tulsuly-a-mediaban>

be named which may even investigate in the Central European Press and Media Foundation, case with very limited competences.⁵⁵ However, we find the main responsible in the country, in the ranks of the opposition. It is hardly enough for the opposition to announce a program to restore press freedom after an election victory. They should get a result right away using the means at their disposal. Only an informed political community can win an election. For today, information about the country's and the world's business has in fact become the luxury of the highly qualified citizens of Budapest and the major cities in Hungary. In recent years, NER has covered a steel dome of propaganda (a very different kind from the hyper-analyzed information bubble) on millions of Hungarian citizens, many of them offline, who acquire their knowledge mainly from billboards, one-party state electronic media, free propaganda newspapers, county and municipal newspapers. If we want a normal country, we need to breach that steel dome as soon as possible. There are heroic attempts. *Nyomtass te is! (Print you too!)* is a free newsletter, launched in 2017, distributed by the community identifying itself as samizdat of the 21st century. It seeks to transmit abbreviated articles from independent news portals, sometimes its own articles thus counterbalancing the overweight of state propaganda in the media. The newspaper consisting of two A4-size pages can be freely printed and distributed by anyone in his entourage.

But in the meantime, big cities are in the hands of the opposition. In the fall of 2019, the opposition had considerable success in the municipal elections. Whole press portfolios fell from the sky for the victorious opposition in Budapest, in the districts, in big cities. These include city press holdings including TV, radio, city newspaper and internet newspaper.

We should not moan about the lack of freedom of the press, but something must be done as soon as possible for the free press, sometimes less, sometimes more, with the tools that are available at the time or that can be created.

The legislation on press freedom and the monitoring of media services, press products and the telecommunications market is indeed a cardinal legislative subject, but the propaganda chains of KESMA, a monster created in violation of the constitution and laws, the government media mentioned as being of public service, the tabloids and gutter-papers together with the online surfaces stolen by the Orbán regime "dominate" the domestic public in a depressing way. It hardly needs two thirds to put counterweights in place.

It is not true in several respects, therefore, that we can do nothing for the free press in the shadow of two thirds of Fidesz. Not only two thirds, or barely a majority, but even one third is not necessary to defeat Fidesz's media hegemony. The most excellent or the bravest ones wrote free press in Samizdat even in a totalitarian State.

It is not an equally frightening competitor of Central European Press and Media Foundation, that should be maintained with funds from the opposition local authorities through the local press often socialized to sycophancy, but immediate action should have been taken to change the current structure for freedom of information in and around big cities. The financing of the city's newspapers and televisions should have been made independent by pooling resources and, thanks to the hundreds of millions of forint available for this purpose, should have been penetrated under the steel dome of propaganda that covers millions of Hungarians. To this end, the Association of Free Cities still existing only on paper could have organized the extended municipal press in a press holding company made up of independent, regime-critical elements, freely denouncing even the local authorities participating in the financing and could have trusted the more important press products to the control of a press ombudsman or citizens'

⁵⁵ <https://hu.euronews.com/2019/04/29/vizsgalja-az-europai-bizottsag-a-kormanykozeli-mediaalapitvanyt> (the European Commission examines the media foundation close to the government)

committees and not to the mayor. Without this or without such solutions, we will certainly not get close to the desired free Hungary. Of course, it would have been ideal to do all this, as we pointed out at the time, immediately after the municipal elections⁵⁶ and not in the current situation where the government's policy of confiscation of reserves is plunging local communities into misery. The ready-made answer to this is that it's not worth wriggling, because municipalities are totally at the mercy of the government. That's true, of course, but let's return the question. Is their vulnerability greater without the free press owned by local authorities or in possession thereof?

The press worker applies to the new master

The name and the place are almost indifferent. The phenomenon itself is petrifying. The municipal newspaper called "*Bácskai Napló*" (Bácska's Diary) became famous in last fall's municipal campaign for publishing voluntarily ugly, "photoshopped" photos of opposition elected officials.

The editor-in-chief reacted before the elections to the scandal that erupted with an offensive note entitled "*There is no forgery!*" Then, following the municipal elections, the editor-in-chief, still at the head of the newspaper, not only apologized, but even offered, now courageously raising his voice for press freedom, yet in a humble voice, his pen as an honest journalist to the new opposition mayor: „The beginning is encouraging. *Bácskai Napló* has been the subject of many attacks in recent years, but especially at election time, having called to account for balanced, objective support," but the new mayor of Baja has just offered an olive branch and is a proponent of press freedom, "so the editorial staff will now be able to operate in that spirit!" If, unfortunately, we could not serve the cause of press freedom before, we can now, with the same forces and tools reminiscent of the old ones in 21,000 prints twice a month per issue in the case evoked.

All this may even be an ominous predictor of the conditions for a "free", "democratic" and "solidary" Hungary after the future fall of Viktor Orbán. do not only with regard to the press.

Nevertheless there are positive signs as well. The democratic press is not the only newsletter of the public affairs debate. The Municipality of Budapest is preparing the reactivation of the right to petition, also proposed by us at the time of the municipal elections, which means that the general assembly is required to discuss, while assuming the related political risks, the matters deemed important by a large number of citizens and falling within the competence of the municipality in a public debate.

The as yet unfulfilled mission of the municipal press is to give space to local public affairs, to provide an interface for sharp public debates, to talk about culture, to have a word about the shadows of life, misery, crime, the sometimes scary state of the environment. Tell the truth.

⁵⁶ <https://www.es.hu/cikk/2019-10-25/majtenyi-laszlo/az-onkormanyzati-gyozelem-terhei.html>

The democrat, the constitutional man is always in favor of freedom of the press. It is here and now that he does what he can for an informed society, because he knows that there is no free, democratic and solidary Hungary without a free press, without independent and critical media.