



PEN International, Austrian PEN, English PEN, and German PEN Joint Submission to the UN Universal Periodic Review of Hungary

For consideration at the 24<sup>th</sup> session of the UN working group in April 2016

**22 September 2015**

1. PEN International, Austrian PEN, English PEN, and German PEN welcome the opportunity to contribute to the second cycle of the Universal Periodic Review (UPR) process of Hungary. This submission focuses on Hungary's compliance with its international human rights obligations with respect to freedom of expression.

**Executive Summary**

2. In the 2011 UPR, the Hungarian government received eight recommendations concerning freedom of expression and freedom of the press. Of these, Hungary accepted four general recommendations (from the Netherlands, Austria, the United States, and the United Kingdom) to bring its Media Law in line with international obligations on free expression.<sup>1</sup> Hungary noted three further recommendations (from Norway, Switzerland and Palestine) concerning specific actions aimed at reforming its controversial 2010 Media Law.<sup>2</sup>
3. This submission finds that the government of Hungary has made inadequate efforts to implement these recommendations into its 2011 constitution and legal framework. A ruling by the Constitutional Court in December 2011 and amendments adopted during 2011 and 2012 to meet objections from the European Commission did little to limit the power of a new media regulation authority, which is currently controlled by the ruling Fidesz party. Since 2011, the

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<sup>1</sup> Austria [Ensure that the recently enacted media laws are implemented in full respect for the fundamental right to freedom of opinion and expression], the United States, [Comply fully with its obligations and commitments related to freedom of expression, including for members of the press], Netherlands [Engage with the United Nations, the Organization for Security and Cooperation in Europe and the Council of Europe to ensure that their concerns about the media law are accommodated], and the United Kingdom [Monitor the functioning of media regulatory bodies and the application of penalties in order to ensure they remain separated from outside influence].

<sup>2</sup> Recommendations made by Norway [Look into the current regulatory framework so as to remove parts of the legislation that may challenge freedom of speech and independence of the press and other media], Switzerland [Introduce additional measures to ensure that the new Media Act complies with regional and international human rights standards] and Palestine [Reconsider legislation and laws in connection with freedom of opinion and expression and general freedoms].

situation for freedom of expression has worsened in Hungary with increasing pressure on the media and civil society.

4. This submission examines the following key freedom of expression issues:

**a. Constitutional restrictions on freedom of expression**

- i. 2011 Constitution
- ii. Restricting Political Expression
- iii. Violating the “Dignity” of the Hungarian Nation
- iv. National Media and Infocommunications Authority (NMHH)

**b. Legislative restrictions on freedom of expression**

- i. Media package
  1. *“Balanced” Content Requirement*
  2. *Separation of “Opinion and Evaluative Explanation” from Political News*
  3. *Expanded Liability for Internet Content Providers*
- ii. Sanctions on Media
- iii. Advertisement tax/ Tax requirements
- iv. Criminal Defamation

**c. Intimidation of journalists**

- i. Targeting Journalists and their Sources
- ii. Targeting Advertising Revenues

**d. Laws targeting the freedom of expression of minority groups**

**Constitutional restrictions on freedom of expression**

5. At the May 2011 UPR, Hungary accepted four general recommendations to bring its national legislation and practices in line with international obligations on free expression.
6. Hungary adopted a new Constitution (The Fundamental Law) in April 2011 (a month before the UPR) which entered into force in January 2012.
7. Despite Hungary’s UPR commitments, Hungary’s fourth<sup>3</sup> and fifth<sup>4</sup> amendments to its Constitution (passed in March and September 2013 respectively) undermine political expression, and encroach on freedom of expression.
8. Since the law's drafting stage, the Venice Commission (a body of independent experts providing advice on constitution-making and human rights under the Council of Europe) expressed serious concerns about the quality of its human rights provisions, finding issues with almost all the rights and freedoms recognised under the fundamental law. Despite international concerns, including by the Council of Europe’s Venice Commission, Secretary General and Commission for Human

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<sup>3</sup> The English translation of the amendment is available here:

<http://lapa.princeton.edu/hosteddocs/hungary/Fourth%20Amendment%20to%20the%20FL%20-Eng%20Corrected.pdf>

<sup>4</sup> Hungary’s Fundamental Law including notations of the first to fifth amendments are available here:

<http://www.mfa.gov.hu/NR/rdonlyres/8204FB28-BF22-481A-9426-D2761D10EC7C/0/FUNDAMENTALLAWOFHUNGARYmostrecentversion01102013.pdf>

Rights, as well as the European Commission, the government has made only piecemeal amendments to these laws which still do not align with European and international standards of free expression.

### Restricting Political Expression

9. Since its last UPR, political expression has been targeted and significantly suppressed by the fourth and fifth amendments to Hungary's constitution. These amendments enshrined regulations on political expression in the Constitution that the Hungarian Constitutional Court (CC) had previously determined to be contrary to freedom of expression.
10. In January 2013, the CC struck down a law banning political advertising on commercial media during an election campaign. The Court reasoned that the ban considerably restricted political speech, failed to serve, and in fact led to the opposite of, its stated purpose to provide balanced information because the ban specifically targeted the type of media that can reach the widest scope of voters.<sup>5</sup>
11. In March 2013, the Hungarian authorities amended the constitution a fourth time to reintroduce this ban, and further enforce that during election campaign periods only free political advertisements can be broadcast and only by the public media, significantly limiting political expression.<sup>6</sup>
12. The regulation on political advertising is better suited as a regulatory statute rather than a constitutional provision. Giving this regulation constitutional status immunises it from effective review and overrules the CC's previous decision.<sup>7</sup>
13. In response to international criticism, the Hungarian authorities amended the Constitution a fifth time in November 2013. The fifth amendment loosens the ban, allowing commercial media to also broadcast political advertisements but on the condition that the advertisements are free of charge. Banning paid advertising from commercial media in effect maintains the ban on political advertising because commercial broadcasters are reluctant to offer marketable advertising space free of charge.
14. During Hungary's 2014 parliamentary elections, none of Hungary's private media outlets broadcast any political advertisement.<sup>8</sup> In July 2014, the OSCE/ODIHR Limited Election Observation Mission of Hungary's 2014 parliamentary elections reported that "in [Hungary's] current media environment, the absence of other political advertisements on nationwide commercial television, combined with a significant amount of government advertisements, undermined the equal and unimpeded access of contestants to the media."<sup>9</sup>

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<sup>5</sup> Hungarian Constitutional Court, decision no. 1/2013, available at: [http://www.mkab.hu/letoltesek/en\\_0001\\_2013.pdf](http://www.mkab.hu/letoltesek/en_0001_2013.pdf) (page 22)

<sup>6</sup> Rui Tavares, June 2013, "Report on the situation of fundamental rights: standards and practices in Hungary" ("Tavares Report"), available at:

<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0229&language=EN>

<sup>7</sup> Venice Commission, June 2013, "Opinion on the fourth amendment to the fundamental law of Hungary", available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)012-e) (para 47)

<sup>8</sup> Nils Muiznieks, July 2014, "Report By Nils Muiznieks Commissioner for human rights of the Council of Europe following his visit to Hungary from 1 to 4 July 2014" ("Muiznieks Report"), available at:

[https://www.ecoi.net/file\\_upload/1226\\_1421659549\\_com-instranet.pdf](https://www.ecoi.net/file_upload/1226_1421659549_com-instranet.pdf)

<sup>9</sup> Office for Democratic Institutions and Human Rights, July 2014, "Hungary Parliamentary Elections 6 April 2014: OSCE/ODIHR Limited Election Observation Mission Final Report" ("OSCE/ODIHR 2014 Report"), available at: <http://www.osce.org/odihr/elections/hungary/121098?download=true>

### Violating the “dignity” of the Hungarian nation

15. Article 5 of Hungary's fourth constitutional amendment prohibits speech that violates the dignity of the Hungarian nation or the dignity of any national, ethnic or religious minority group. This constitutional provision likely violates article 10 of the European Convention on Human Rights (ECHR) to which Hungary is a signatory.<sup>10</sup>
16. PEN is concerned that this provision may be used to curtail criticism of Hungarian institutions and public office holders, further violating article 10 which provides that limitation on free expression must be necessary in a democratic society. This risk is particularly salient given the government's crackdown on political dissent.
17. Despite concerns expressed by the Venice Commission that the dignity provision likely violates article 10 of the ECHR, Hungary failed to examine this provision during its fifth constitutional amendment.

### The National Media and Infocommunications Authority (NMHH) & Constitutional Court Ruling

18. In July 2010, the Hungarian Government amended the 1949 constitution, removing a passage on the government's obligation to prevent media monopolies. This removal likely contravenes jurisprudence from the European Court of Human Rights (ECtHR) that article 10 of the ECHR imposes a positive obligation on Member States to ensure media pluralism.<sup>11</sup>
19. In addition to the amendment, the Hungarian government consolidated media regulation under the supervision of a single entity - The National Media and Infocommunications Authority (NMHH) - whose members are elected by a two-thirds majority in the parliament and whose leader also chairs a five-person Media Council tasked with content regulation. The law gives the head of the NMHH the right to nominate the executive directors of all public media.
20. The first president of the NMHH, Annamária Szalai, a former Fidesz politician, was appointed by Prime Minister Orbán for a nine-year term, initially without limits on reelection. The structure and broadly defined competencies of the new regulatory bodies were outlined in subsequent legislation, including the Press and Media Act of November 2010 and the Hungarian Media Law, which was adopted in December 2010 and came into effect on 1 January 2011. While the NMHH and Media Council are theoretically autonomous, both from the government and from each other, in practice they share a leader and consist entirely of Fidesz party nominees.

### Constitutional Court Ruling

21. The 2011 amendments to the Fundamental Law, Hungary's Constitution, significantly reduced the power of the Hungarian Constitutional Court, the body responsible for keeping the Hungarian parliament in check and ensuring that legislation abides by the constitution. This

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<sup>10</sup> Article 10(2) of the ECHR provides that a limit on free expression must be “foreseen by law”. Protecting the “dignity of the Hungarian nation” raises problematic restrictions on free expression which the European Court of Human Rights (ECtHR) recognized as a violation of article 10 in 2011 in the case of *Altug Taner Akcam v Turkey*. The Court overruled Turkey's limits on expression aimed at protecting “the Turkish nation” because the scope of these limits was too wide, preventing individuals from regulating their conduct or from foreseeing the consequences of their actions.

<sup>11</sup> See Tavares Report, para BJ, p. 15, cited above at note 6.

amendment resulted in further international criticism at the erosion of the foundations of Hungary's liberal democracy.

22. On 19 December, 2011, Hungary's Constitutional Court annulled several pieces of legislation from 2010 and 2011, including provisions of the Press and Media Act and some sections of the Media Law. The ruling excluded print and online media from the scope of the sanctioning powers of the NMHH; revoked the media authority's right to demand data from media service providers, publishers, and program distributors; deleted a provision limiting the confidentiality of journalists' sources to stories serving the public interest; and eliminated the position of media commissioner, an appointee of the NMHH president with the authority to initiate proceedings that do not involve violations of the law and whose decisions can be enforced by NMHH-issued fines and sanctions. The revisions were approved by the parliament in May 2012. Despite this push back from the Constitutional Court, in practice its recently-limited power means its ruling has done little to limit the power of a new media regulation authority.

## **II. Legislative restrictions on freedom of expression**

### Media Package

23. In 2010, Hungary introduced a "media package"—a bundle of new media laws including the Act CLXXXV of 2010 on Media Services and Mass Communication ("the Mass Media Act"),<sup>12</sup> Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content ("the Media Content Act"),<sup>13</sup> and other legislative amendments to media regulation— without adequate public consultation.
24. These laws specify new content regulations for all media platforms, outline the authorities of the media regulatory body, and set out sanctions for breaches of the laws. These provisions have served to turn the public service broadcaster into a government mouthpiece and in the case of the private press it has created the framework for monopolising the media and eliminating critical voices, creating a chilling effect.
25. During Hungary's first UPR, domestic and international condemnation of these laws led six countries - Austria, the Netherlands, Norway, Palestine, Switzerland and the United Kingdom - to urge Hungary to ensure that its media legislation complied with European and international standards regarding free expression. Hungary accepted three of these recommendations (from Austria, the Netherlands and the United Kingdom) but regrettably, noted three concerning the specific revision of the Media Laws (Switzerland, Norway and Palestine).

### **Media Content Regulations Limit Critical Political Discourse**

#### *A. "Balanced" Content Requirement*

26. Article 13 of the Media Content Act prescribes conditions which linear (broadcast) and on-demand media providers must ensure their news coverage meets. In 2010, the Act required that news coverage must be "diverse, comprehensive, factual, up-to-date, objective and balanced." In February 2011, then Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, recommended the deletion of article 13 because it imposed vague and subjective

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<sup>12</sup> English version available at: [http://hunmedialaw.org/dokumentum/153/Mttv\\_110803\\_EN\\_final.pdf](http://hunmedialaw.org/dokumentum/153/Mttv_110803_EN_final.pdf)

<sup>13</sup> English version available at: [http://nmhh.hu/dokumentum/162262/smtv\\_110803\\_en\\_final.pdf](http://nmhh.hu/dokumentum/162262/smtv_110803_en_final.pdf)

prescriptions on news media and information, preventing media providers from anticipating what content fit these requirements, and resulting in self-censorship of critical news media.<sup>14</sup>

27. In May 2012, Council of Europe Experts noted that “[a]ccording to [Council of Europe] standards, regulatory authorities should not exercise a prior control over programming.”<sup>15</sup>

Notwithstanding, Hungary kept article 13’s programming restrictions but amended it twice: in 2011 to require only broadcast media, and no longer on-demand media, to meet the restrictions; and in 2013 to eliminate the “diverse, comprehensive, factual, up-to-date, objective” requirements but retain the “balanced” requirement. However PEN believes that in this form, article 13 still imposes vague and subjective prescriptions on critical news media. Furthermore, in practice, the balanced content requirement has been used to propagate viewpoints of the far-right Jobbik party (see para 30).

### *B. Separation of “Opinion and Evaluative Explanation” from Political News*

28. Despite accepting the 2010 UPR recommendation from the Netherlands to engage with concerns the Council of Europe has regarding its media laws, Hungary has so far failed to acknowledge the Council’s numerous concerns regarding article 12 of the Mass Media Act. Article 12 prohibits the addition of any opinion or evaluative explanation to political news and requires all media services to clearly distinguish between opinion and evaluative explanation from political news.

29. In May 2012, Council of Europe experts noted the impossibility of applying a strict distinction between political news and opinion to new emerging media and the likely consequence that media outlets will refrain from expressing critical views. The experts further warned that this provision “could be used to punish effective exercise of editorial independence by media.”<sup>16</sup>

30. In June 2014, the Hungarian Supreme Court found that the TV station ATV violated article 12 by describing the party as “far-right”. The Court reasoned that ATV had inputted opinion because *Jobbik* does not consider itself an extreme-right party.

### *C. Expanded Liability for Internet Content Providers*

31. In May 2014, the CC ruled that Internet service providers are responsible for all comments (moderated or otherwise) appearing on their websites that violate media laws, regardless of efforts the content providers took to remove the impugned comments.

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<sup>14</sup> Thomas Hammarberg, February 2011, “*Opinion of the Commissioner for Human Rights on Hungary’s media legislation in light of Council of Europe standards on freedom of the media*”, (“*Hammarberg Report*”), <https://wcd.coe.int/ViewDoc.jsp?id=1751289>

<sup>15</sup> Eve Salomon and Joan Barata, May 2012, “*Expertise by Council Of Europe experts on Hungarian media legislation: Act CIV of 2010 on The Freedom Of The Press And The Fundamental Rules On Media Content and Act CLXXXV of 2010 on Media Services And Mass Media*”, “*CoE Expert Report*”, p. 42, available at: “[http://www.coe.int/t/dghl/cooperation/media/publications/Hungary/Hungary%20Media%20Acts%20Analysis%20-%20Final%2014-05-2012%20\(2\).pdf](http://www.coe.int/t/dghl/cooperation/media/publications/Hungary/Hungary%20Media%20Acts%20Analysis%20-%20Final%2014-05-2012%20(2).pdf)”

<sup>16</sup> See CoE Expert Report cited above at note 15.

32. This decision greatly expanded liability for internet content providers, leading to concerns that private companies are led to choose over-compliance and prevent all users from accessing perfectly lawful material.<sup>17</sup>

#### Sanctions on Media

33. Articles 185–187 of the Mass Media Act empower the Media Council and Media Authority to apply sanctions for any violation of the media regulation. Sanctions are severe. They include warnings; fines—as high as HUF 200 million (approx. USD 707,000)—that vary depending on the size of the media broadcaster rather than the seriousness of the violation; suspension of media providers; deletion from the media registry; or termination of public contracts.

34. In May 2012, Council of Europe experts found these sanctions problematic because they lack legal certainty, are disproportionately severe, not sufficiently clear and foreseeable, and provide the Media Council with too much discretion in the application of the sanctions. In its 2013 report on Hungary, Human Rights Watch cautioned that independent media outlets report that they have been forced to self-censor because of the unclear regulations and their inconsistent enforcement.<sup>18</sup>

35. In 2013, the Media Council imposed fines in 141 cases, varying from 10 000 to 12 000 HUF (approx. USD 35 to 44 100), for a total of 63 769 000 HUF (approx. USD 225 000).<sup>19</sup>

#### Tax on advertising

36. On 11 June 2014 parliament passed a new tax on advertising revenue, with a levy rising proportionally to income up to 40 percent.

37. In practice, only RTL Klub, Hungary's largest private broadcaster, is affected by the 40 percent rate and will provide half of the total tax intake. RTL filed a complaint with the EU commission calling the rate discriminatory and damaging to press freedom. Despite this, the Hungarian government plans to increase the top rate to 50 percent, further endangering RTL's presence in Hungary.

38. These taxes also pose negative effects on media pluralism. Germany's ProSiebenSat1, owner of a major Hungarian media outlet TV2, sold TV2 shortly after announcement of the tax.

39. Hungary has also repeatedly threatened freedom of expression through taxation. In 2014, Hungary made headlines with its planned Internet tax of 62-cent tax on every gigabyte of data used. After severe protests, the government relented on these plans.

#### Registration Requirements

40. The "media package" obliged print, online and on-demand media services, in addition to linear (broadcast) media services, to register before being authorised to provide services in Hungary. This authorisation scheme has been criticised on the grounds that, contrary to the licensing of

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<sup>17</sup> The Council of Europe Commissioner for Human Rights, December 2014, "*The rule of the Internet and in the wider digital world*", available at:

[http://www.coe.int/t/dghl/standardsetting/media/CDMSI/Rule\\_of\\_Law\\_Internet\\_Digital\\_World.pdf](http://www.coe.int/t/dghl/standardsetting/media/CDMSI/Rule_of_Law_Internet_Digital_World.pdf)

<sup>18</sup> Human Rights Watch, May 2013, "*Hungary: Rule of Law Under Threat*", available at:

<https://www.hrw.org/news/2013/05/16/hungary-rule-law-under-threat>

<sup>19</sup> Hungary Media Council, "*Annual Report to the Parliament 2013*", p. 136 cited in Muiznieks Report cited above at note 8.

broadcast media the mandatory registration of print and online media, beyond simple tax or business registration, is disproportionately onerous.<sup>20</sup>

### **Criminal Defamation**

41. Hungary criminalised defamation following amendments to its Criminal Code in 2012. Article 226 penalises libel—publishing any fact injurious to another’s reputation—with up to two years imprisonment and article 227 penalises defamation—using expression capable of causing harm to a person’s reputation notably in connection to his or her professional activity, public office or public activity—with up to one year imprisonment.<sup>21</sup> In November 2013, Hungary expanded these provisions to more severely punish video or sound recordings found to be defamatory with up to three years imprisonment.
42. PEN believes these penalties are disproportionate and may lead to the silencing of critical or differing views in the society. This is supported by Dunja Mijatovic, the OSCE representative on Freedom of the Media, who has warned that “the measures can have a chilling effect on investigative journalism and prevent satirical expression and critical points of view from being disseminated.”
43. Investigative journalists in Hungary are routinely targeted by these provisions. The Commissioner for Human Rights of the Council of Europe reported that in the past ten years, every investigative journalist in Hungary has been subject to a defamation procedure.<sup>22</sup>

### **Intimidation of journalists and broadcasters**

44. Political interference in the corporate structure and in the editorial content broadcast by Hungary’s public media amounting to censorship within the state broadcaster, MTVA. MTVA have endured three waves of dismissals following the release of Hungary’s media package.<sup>23</sup> Given that MTVA is not guaranteed financial or editorial independence from the politically influenced media council, high levels of dismissal raises serious concerns about the independence of the broadcaster, and the ability of journalists to report critically without fear of dismissal.
45. Journalists at private broadcasting houses are not immune from state intimidation. Gergő Sáling, the editor-in-chief of leading independent news website *Origo.hu*, was abruptly **replaced** on 2 June 2014 after the website published an investigation in May about luxurious expenses claimed by Orbán's chief of staff, Janos Lazar.
46. Dozens of editors and journalists of the newspaper resigned soon after Sáling's departure, claiming retaliatory **pressure** by Lazar on the website's owner, the Hungarian telecom **company** Magyar Telekom. Lazar denied the allegations.<sup>24</sup>

### **Targeting Journalists and their Sources**

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<sup>20</sup> Muiznieks Report cited above at note 8.

<sup>21</sup> English version available at: <http://www.legislationline.org/documents/section/criminal-codes>

<sup>22</sup> Muiznieks Report cited above at note 8.

<sup>23</sup> The Hungarian Media Monitor, January 2013, “MTVA chief discusses layoffs, censorship charges”, available at: <http://mediamonitor.ceu.hu/2013/01/mtva-chief-discusses-layoffs-censorship-charges/>

<sup>24</sup> 444.hu, June 2014, “Deutsche Telekom, Hungarian government collude to silence independent media”, available at: <http://444.hu/2014/06/05/deutsche-telekom-hungarian-government-collude-to-silence-independent-media/>



47. Article 6 of the Mass Content Act undermines Hungarian journalists abilities to protect the confidentiality of their sources. The article formerly provided that journalists must reveal their sources but did not provide enough foreseeability to allow journalists to invoke their constitutionally enshrined right to protect their sources. Investigations triggered by article 6 also lacked procedural safeguards to ensure political independence.
48. In December 2011, the CC annulled article 6 in part forcing Hungarian authorities to reform the provision. Notwithstanding, journalists and their sources remain under threat; a court may still initiate article 6 in specific criminal cases. Further, the reforms do not protect freelance journalists who are still vulnerable to reveal their sources.

#### **Censorship of the press over coverage of minority groups**

48. Act CCXI of 2011 on the Protection of Families excludes homosexual couples and their children from its definition of marriage and the family unit. In addition, the act stipulates that the media broadcast programmes that respect the institutions of marriage and family—as between a man and woman, and that family life should be part of the school curriculum. The law effectively enabled the inclusion of homophobic propaganda into the school curriculum,<sup>25</sup> and restricted LGBTI-friendly programming from the media.
49. Although the act’s restrictive definitions of marriage and the family unit were criticised by the European parliament,<sup>26</sup> and declared unconstitutional by the CC,<sup>27</sup> its inclusion into Hungary’s constitution immunises it from further scrutiny by the CC. Further, LGBTI communities may not enjoy constitutional protections against discrimination as sexual orientation and gender identity are not included as explicit grounds protected against discrimination. Although Hungary’s Criminal Code protects against discrimination based on sexual orientation, these laws are poorly implemented with LGBTI distrustful of the police to enforce these laws.<sup>28</sup> In effect, discrimination and silencing of the LGBTI community continues with impunity.
50. Hungary has prevented journalists from freely reporting on its treatment of migrants and refugees. The Office of Immigration and Nationality has repeatedly denied journalists access to record conditions within Hungary’s refugee camps, claiming that press access will harm refugees.<sup>29</sup> In another incident, police prevented journalists from capturing scenes of refugee distress at Biske train station in Budapest.<sup>30</sup> Hungary also controls the state broadcaster, M1’s, coverage of the unfolding refugee crisis presumably in an effort to control public opinion. M1’s coverage has been selective—demonstrations by migrants were quickly broadcast while protests against government policies on refugees received little attention. In fact, journalists at M1 were instructed not to broadcast images of children in its news coverage on migrants and refugees.<sup>31</sup>

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<sup>25</sup> Nikolaj Nielsen, May 2014, “Hungary and Finland in uphill battle for gay rights”, available at: <https://euobserver.com/lgbti/124097>

<sup>26</sup> European Parliament, June 2013, “Report on the situation of fundamental rights: standards and practices in Hungary”, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0229&language=EN>

<sup>27</sup> Human Rights Watch, May 2013. “Wrong Direction on Rights”, available at:

<https://www.hrw.org/report/2013/05/16/wrong-direction-rights/assessing-impact-hungarys-new-constitution-and-laws>

<sup>28</sup> Maddy French, February 2015, “Hungarian gay rights activist’s fight with fascism”, available at:

<http://www.aljazeera.com/indepth/features/2015/01/hungarian-gay-rights-activist-fight-fascism-150125100542416.html>

<sup>29</sup> Mapping Media Freedom, July 2015, “Hungary: Press denied access to refugee camps”, available at:

<https://mappingmediafreedom.org/#/1049>

<sup>30</sup> William Turvill, September 2015, “Journalists ‘pushed away’ from ‘distressing scenes’ involving migrants at Hungarian train station”, available at: <http://www.pressgazette.co.uk/journalists-pushed-away-distressing-scenes-involving-migrants-hungarian-train-station>

<sup>31</sup> Daniel Nolan, September 2015, “Hungarian TV ‘told not to broadcast images of refugee children’”, available at: <http://www.theguardian.com/world/2015/sep/01/hungarian-media-told-not-to-broadcast-images-refugee-children-memo>

## Recommendations

In light of these concerns, PEN calls upon the government of Hungary to significantly improve the overall conditions for freedom of expression.

### In particular, the government of Hungary should:

- Restore the powers of the Constitutional Court;
- Implement recommendations by the Council of Europe's Venice Commission, its advisory body on constitutional matters;
- Revise the media package to ensure that the new Media Act complies with regional and international human rights standards
- Establish a multiparty parliamentary nomination system for the president and other members of the Media Authority and Council in order to ensure their independence from government;
- Remove the vaguely defined "balanced content" requirement in the media legislation that may increase the risk of journalists of accruing high fines for breaches of the media laws;
- Print and internet-based media should be excluded from registration in order to comply with the ECtHR's case law. In 2011, the Council of Europe Commissioner for Human Rights emphasised that "the freedom of the press has been accorded deliberately broader protection in the ECtHR's case-law [*Gaweda v Poland*], acknowledging its role as the traditional watchdog of democracy."<sup>32</sup>
- Decriminalise defamation;
- Ensure that implementation of reforms to article 6 are in accordance with Council of Europe standards regarding freedom of the press, and that the reforms offer equal protection to freelance journalists and their sources;
- Reform legislation restricting positive expression in relation to non-heterosexual relationships.