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The Hungarian Media System. Stopping Short or Re-Transformation?

Abstract. As the institutions underlying the rule of law are being rolled back in Hungary, one of the increasingly obvious democratic deficiencies to emerge in the past few years has been a severe deficiency in the public sphere. Various measures enacted by the government have made this deficiency readily apparent. Yet the success of the government's actions shows that these deficiencies were characteristic of the Hungarian political and social system long before the current government took office. The public sphere's disorders can be traced back to political, economic, and social factors. The present study reviews the factors and processes that have been shaping the Hungarian public sphere since the 1990s in order to sketch its main characteristics, identify the key features of Fidesz's media policies, and assess their impact.

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Directions and Achievements of the Media System Transformation

The transformation of Central and Eastern European (CEE) media systems is a well-documented and thoroughly studied phenomenon.[1] The specific metamorphosis of the Hungarian media system followed general patterns evident elsewhere in the region, even if these were never uniform. Hallin and Mancini summarized the features of Central and Eastern European media transformation in the era of rapid and dramatic change after 1989, and the media's central role

[1] See particularly Péter Bajomi-Lázár, Party Colonisation of the Media in Central and Eastern Europe. Budapest, New York 2014; Peter Gross / Karol Jakubowicz (eds.), Media Transformations in the Post-Communist World. Eastern Europe's Tortured Path to Change. Plymouth 2012; Karol Jakubowicz, Rude Awakening. Social and Media Change in Central and Eastern Europe. Cresskin/NJ 2007; idem / Miklós Sükösd (eds.), Finding the Right Place on the Map. Central and Eastern European Media Change in a Global Perspective. Bristol 2008; Miklós Sükösd / Péter Bajomi-Lázár (eds.), Reinventing Media. Media Policy Reform in East Central Europe. Budapest 2003.

as "agents of mobilization and shapers of public opinion" under communist rule and during the democratization process. They referred to the interventionist character of the state, the political parties' dominance in the shaping of public life despite their weak social roots, and the primacy of foreign influence, especially foreign media ownership, in establishing the new media systems.[2] The media's transformation occurred as an element of comprehensive political and economic change. The "shock therapy" it received was part of a transformative wave of liberalization, privatization, and deregulation.[3]

Of course, there has been no clear endpoint to the post-communist transition. But, generally speaking, "transition and transformation were to bring the mass media and journalism in CEE countries into a state of Gleichschaltung with those of their Western brethren, and help achieve the same in the sociopolitical and economic realms.[4] The "spillover effects" of the media's transformation played a significant role in the democratic change affecting the entire social system.[5] Its success is a significant factor in, and a reliable indicator of, the democratization process as a whole. Without a free and pluralistic media, there is little chance that there will be transparent and effective governance, or a society whose citizens can substantively discuss and reach consensus about issues of shared concern.

The common European legal and constitutional frameworks regarding media systems aim to achieve these ends as well.[6] When considering objections to the Central and Eastern European media transformations one should acknowledge that they were tightly bound to these frameworks. Media freedom is possible if the general borders of expression (covering individual rights, hate speech, minors' protection, etc.) are proportional and clear enough, and if journalists' activities are guaranteed by effective legal means, especially by regulation of the

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[2] Daniel C. Hallin / Paolo Mancini, Comparing Media Systems between Eastern and Western Europe, in: Gross / Jakubowicz (eds.), Media Transformations in the Post-Communist World, 15-33.

[3] Hans J. Kleinsteuber, Comparing West and East: A Comparative Approach to Transformation, in: Bogusława Dobek-Ostrowska et al. (eds.), Comparative Media Systems. Budapest, New York 2010, 23-41, 34.

[4] Peter Gross / Karol Jakubowicz, The Slings and Arrows of Outrageous Fortune. When, How, and for What Purpose Is Media Transition and Transformation Undertaken (and Completed) in Central and Eastern Europe?, in: eadem (eds.), Media Transformations in the Post-Communist World, 1-15, 2. Also see, e.g., Kleinsteuber, Comparing West and East.

[5] Karol Jakobowicz / Miklós Sükösd, Twelve Concepts Regarding Media System Evolution and Democratization in Post-Communist Societies, in: eadem (eds.), Finding the Right Place on the Map, 9-41.

[6] See, e.g., Christina Holtz-Bacha, Medienpolitik für Europa. Wiesbaden 2006; eadem, Medienpolitik Für Europa II: Der Europarat. Wiesbaden 2011; Alison Harcourt, The Role of the European Institutions in National Media Regulation, in: Stylianos Papathanassopoulos / Ralph Negrine (eds.), Communications Policy. Theories and Issues. Basingstoke, New York 2010, 116-133.

protection of journalistic sources.[7] According to the European interpretation of media freedom, which varies in its details with regard to individual nations but possesses shared main objectives,[8] the "principle of pluralism" is what enables the media to serve "to impart information and ideas of general interest, which the public is moreover entitled to receive".[9] According to the definition from the European Council, "the media are pluralistic if they are multi-centred and diverse enough to host an informed, uninhibited and inclusive discussion of matters of public interest at all times".[10] Since 1992, the Hungarian Constitutional Court has also interpreted the freedom of the media to be a freedom that "serves the constitutional right of expression" by "magnifying the effect of individual expression of opinion and supporting the information of the democratic public opinion about public affairs and the expression of opinion about public affairs".[11] A pluralistic media system and the delivery of diverse media content require politically and economically independent supervision over private and public media that guarantees equal treatment for the varied media stakeholders and points of view. Though these normative frameworks do not determine media policy decisions per se, they provide some standards for the evaluation of media policy decisions by the national Constitutional Courts, the European Court of Human Rights, and the European Court of Justice. Nevertheless, these legal expectations are built on a vision of what a democratic public sphere should look like.[12] This vision gave direction to the post-communist media transformations.

Péter Bajomi-Lázár has defined media transition as a process resulting in a "democratic model" for basic media institutions.[13] However, it may be the case that particular media transitions, as manifestations of a "breakthrough

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[7] For a detailed list of the elements of media freedom, see Council of Europe Parliamentary Assembly, Indicators for Media in a Democracy, Resolution 1636 (2008), Strasbourg 2008, available at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta08/eres1636.htm>. All internet sources were accessed on 16 June 2015.

[8] See Constanza Farda, Europäische Medienpolitik. Eine Policy-Analyse der Fernseh- und der Antikonzentrationsrichtlinie. Wiesbaden 2000.

[9] Judgment of the European Court of Human Rights in the Case of Informationsverein Lentia and Others v. Austria, 24 November 1993, Paragraph 38, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57854#{%22itemid%22:[%22001-57854%22]}>.

[10] European Council, Commissioner for Human Rights, Media Pluralism and Human Rights – Issue Discussion Paper, Strasbourg, 6 December 2011, available at <https://wcd.coe.int/ViewDoc.jsp?id=1881589>.

[11] Constitutional Court of Hungary, Decision 37/1992 (VI.10) AB, Budapest, 8 June 1992, available at <http://public.mkab.hu/dev/dontesek.nsf/0/261126A74CAFE513C1257ADA005277C3?OpenDocument>.

[12] Gábor Polyák, The Constitutional Law Approach to Publicity and Media in the Light of Social Science Results, in: Zsolt György Balogh (ed.), Essays of Faculty of Law University of Pécs, Yearbook of 2013, Pécs 2013, 183-201.

[13] Péter Bajomi-Lázár, The Consolidation of Media Freedom in Post-Communist Countries, in: Jakobowicz / Sükösd (eds.), Finding the Right Place on the Map, 73-84.

moment",[14] ensures merely the formal criteria of a free media system. According to Bajomi-Lázár, the consolidation of media freedom aims at firmly establishing "the behavioural and attitudinal foundations" of free media. This behavioral dimension of the consolidation means that "no significant political group challenges the institutions safeguarding media freedom and the legitimacy of that freedom". The attitudinal foundation is "the commitment of citizens to media freedom as a legitimate value that is inseparable from a democratic system".[15]

Florian Töpfl divides the transition process into two phases. The first phase, "democratization of controlled media systems", creates the conditions for an "electoral democracy" of universal suffrage where citizens can regularly vote for parties within a competitive multi-party political system. A second phase achieves the pluralization of the democratic media system, in that "published opinion, which is still distorted in favour of the powers in the minimal democratic media system, increases in variety (plurality)".[16]

Analyses of the Central and Eastern European media transformations commonly conclude that these were not and are not purely success stories. "Consolidation" and "pluralization" have been only partly achieved at best, or rather they cannot be conceptualized as one-way processes. A significant symptom of the observable deviations from fully successful transformation is the essential political influence exerted on media players, referred to in the literature as "media capture",[17] the weakness of public-service broadcasting,[18] and the roles and qualifications of journalists, which are quite different from those of their counterparts in the West.[19] Colin Sparks has summarized the post-communist transformations as a form of "reestablished control" over the media, adminis-

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[14] Gross / Jakubowicz, The Slings and Arrows of Outrageous Fortune, 1.

[15] Bajomi-Lázár, The Consolidation of Media Freedom in Post-Communist Countries, 78.

[16] Florian Töpfl, Mediensysteme in Transformationsprozessen. Baden-Baden 2011, 130f. Töpfl borrows the concept of "electoral democracy" from Freedom House's "Freedom in the World Index". The achievements of the pluralization phase in Töpfl's theory can be measured by the media systems' adherence to the Freedom House criteria.

[17] Péter Bajomi-Lázár, The Party Colonisation of the Media. The Case of Hungary, *East European Politics & Societies* 27 (2013), no. 1, 67-87; Alina Mungiu-Pippidi, How Media and Politics Shape Each Other in the New Europe, in: Jakobowicz / Sükösd (eds.), Finding the Right Place on the Map, 87-100.

[18] Karol Jakobowicz, Finding the Right Place on the Map. Prospects for Public Service Broadcasting in Post-Communist Countries, in: idem / Sükösd (eds.), Finding the Right Place on the Map, 101-125.

[19] Péter Bajomi-Lázár / Ágnes Lampé, Invisible Journalism? The Political Impact of Investigative Journalism in Hungary, *Media Transformations* 9 (2013), 30-51.; Epp Lauk, How Will It All Unfold? Media Systems and Journalism Cultures in Post-Communist Countries, in: Jakobowicz / Sükösd (eds.), Finding the Right Place on the Map, 193-213.

tered by "new owners and new bureaucracies" after a brief period of "great freedom to report and discuss".[20]

In the face of a generally observable frustration regarding the media transformation in Hungary, it is difficult to assess whether recently imposed restrictions on media freedom, aiming explicitly at reshaping ownership structures and economic positions as well as the continuous verbal aggression directed against journalists by the governing party Fidesz's politicians, are a sort of déja vu of what happened during the first two decades after the collapse of communism. In fact, the Central and Eastern European countries have been facing the general problems afflicting all European media systems, from the weak financing of investigative journalism to the ever-stronger media-market and opinion-forming position of non-European intermediaries such as Google and Facebook.[21]

Yet what has recently happened in Hungary can no longer be interpreted as isolated violations of democratic standards. Rather, there has been a systematic policy shift, encompassing everything from the takeover of media regulatory organizations to the restriction of journalistic freedom to the total reallocation of market resources. These measures complement restrictive policies towards the public sphere as a whole, ranging from schools and universities to the institutions of civil society. The scope of the changes suggests a paradigm shift, and thus needs to be interpreted in terms of a newly forged transformative effort (see Graph 1).

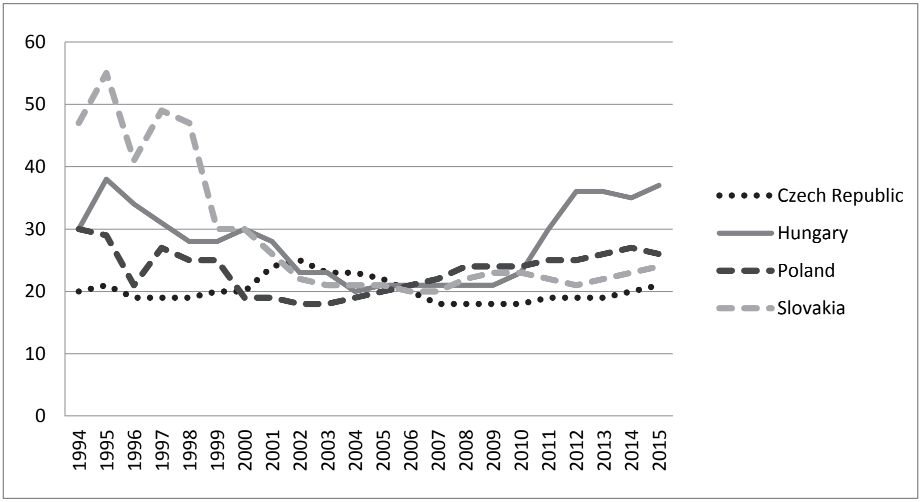
Spectacular confirmations of this retransformation can be found in Freedom House's annual Freedom of the Press indexes, which are based on an experimental analysis of the legal, economic, and political environment of media systems all over the world.[22] Although "remarkably vague about its methodology and its definitions",[23] the index reveals the tendencies evident in a given media system, and allows for comparisons. Recent indexes show that since 2010 the Hungarian situation, after a relatively lengthy period of consolidation, has been getting dramatically worse. The turning point occurred when new media laws were passed, a significant factor in the transfer of Hungary to the group

[20] Colin Sparks, Media Theory after the Fall of European Communism. Why the Old Models from East and West Won't Do Any More, in: James Curran / Myung-Jin Park (eds.), De-Westernizing Media Studies. London 2000, 35-49, 47.

[21] A Free and Pluralistic Media to Sustain European Democracy, Report of the High Level Group on Media Freedom and Pluralism, January 2013, available at <http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/HLG%20Final%20Report.pdf>.

[22] Cf. for example Freedom House, Freedom of the Press 2014, available at <http://www.freedomhouse.org/sites/default/files/FOTP_2014.pdf>. Countries scoring 0 to 30 are regarded as having "free" media; those scoring 31 to 60 as having "partly free" media; and those scoring 61 to 100 as having "not free" media.

[23] Craig L. Lamay, Exporting Press Freedom. Economic and Editorial Dilemmas in International Media Assistance. London 2009, 111.



Graph 1: Freedom of the Press in the Visegrád Group. Source: Freedom House, 2015 Freedom of the Press Data, available at <https://freedomhouse.org/report-types/freedom-press#.VU5XnZMpopR>.

of nations categorized as being only "partly free".[24] The other Visegrád Group countries – the Czech Republic, Slovakia, and Poland – have regressed as well, but to a much smaller extent.[25] Since 2010, the reshaping of legal and economic frameworks, along with systematic cutbacks directed at autonomous journalism and media activity, has reversed the impetus of the Hungarian media system's development and driven it backwards. The implementation of political aims has brought about a re-transformation process, which has gradually restricted

[24] Ibid. Similar tendencies are apparent in the indexes of Reporters without Borders. In 2009, Hungary was ranked 23rd with 5.5 points by this organization, while in 2014 Hungary had 26.73 points and was ranked 64th. The scores and the positions are based on a questionnaire, and they are complementary indicators that together assess the state of press freedom. Scores are ranged from 0 to 100, with 0 being the best possible score and 100 the worst. The rankings and an explanation of Reporters without Borders' methodology are available at <http://en.rsf.org/>.

[25] Phenomena similar to what one sees in Hungary can be observed mostly in the Czech Republic and Slovakia. See, e.g., Václav Štětka, From Multinationals to Business Tycoons. Media Ownership and Journalistic Autonomy in Central and Eastern Europe, *The International Journal of Press/Politics* 20 (2012), no. 4, 433-456, available at <http://hij.sagepub.com/content/early/2012/07/10/1940161212452449.full.pdf>. According to its self-definition, "The Visegrád Group […] reflects the efforts of the countries of the Central European region to work together in a number of fields of common interest within the all-European integration. The Czech Republic, Hungary, Poland and Slovakia have always been part of a single civilization, sharing cultural and intellectual values and common roots in diverse religious traditions, which they wish to preserve and further strengthen". Cf. About the Visegrád Group, available at <http://www.visegradgroup.eu/about>. In addition to serving as a means of enforcing common interests, the Visegrád Group, by its grouping, offers a basis for comparison among its nations.

the media system's capacity to act as a pluralistic source of diverse information for a wide audience.

Towards the Fidesz Government's Media Policy

During a short period of genuine democratization in 1989-1990, the media was transformed in Hungary, resulting in a press regime that was free of censorship and allowed free entry into the media market. However, the first freely elected Hungarian parliament refrained from deciding between stricter regulation and further liberalization of the broadcasting market, a clear symptom of a faulty transformation process: the political parties were debating over media control. There was some "consolidation" and "pluralization", but on the whole, the process was directed by the parties' attempts to dominate the media.[26] In fact, although the methods have varied and the intensity of the efforts has fluctuated, the goal of all media policies in Hungary since the regime transition of 1990 has been to secure political influence over the supervisory organizations, the public-service media, and all segments of the media market. Thus, even if the government takeover by Fidesz in 2010 was a turning point in the media system's evolution, the pivot had been thoroughly prepared for by previous manifestations of media policy.

A Media War

In fact, Hungary's first democratically elected government between 1990 and 1994 saw the eruption of a "media war", which revolved primarily around the control of public media.[27] The so-called National Roundtable that accompanied the regime transition consisted of a series of negotiations between the emergent opposition forces and the ruling communist party, the Hungarian Socialist Workers Party (*Magyar Szocialista Munkáspárt*, MSzMp). Although the Roundtable sought to lay the political and legal groundwork for the transition to democracy, it failed to bring about an agreement on media issues. The conservative government formed in 1990 also failed to solve the problem of regulating radio

[26] Mihály Gálik, Médiapolitika Magyarországon a rendszerváltozás után [Post-transition media policy in Hungary], *Infokommunikáció és Jog* 50 (2012), no. 3, 108-118.

[27] On the "media war" see Péter Bajomi-Lázár, A magyarországi médiaháború [The media war in Hungary]. Budapest 2001; Elemér Hankiss, The Hungarian Media's War of Independence. A Stevenson Lecture, *Media, Culture and Society* 16 (1994), no. 2, 293-312; Miklós Sükösd, Democratic Transformation and the Mass Media in Hungary. From Stalinism to Democratic Consolidation, in: Richard Gunther / Anthony Mughan (eds.), Democracy and the Media. A Comparative Perspective. Cambridge 2000, 122-164.

and television.[28] The legislative act outlining the appointment of executives in charge of public media, which consisted of a mere two articles, stipulated that the presidents and vice-presidents of public media institutions would be nominated by the prime minister and appointed by the president.[29] This legal framework led to conflicts between the prime minister and the president, who at that time represented opposing political sides, resulting in a crisis for Hungary's public-service media institutions. At the same time, as a response to the non-transparent privatization of the press,[30] the governing party, the Hungarian Democratic Forum (*Magyar Demokrata Fórum*, MDF), attempted to improve its position in the newspaper market by launching in 1991 a new daily, *Új Magyarország,* financed mostly by state-owned corporations. The newspaper ceased publication in 1997. The "media war" proved that purely political interests had shaped the media system, and cast its shadow on the structure of the media policy processes of the subsequent period.

The Media Law of 1996: Media in Party Captivity

Broadcasting was finally regulated in 1995. The draft bill drawn up by the governing parties of the social-liberal coalition was supported by all but one of the opposition parties in Parliament.[31] The passage of the media law was accompanied by a rethinking of the methods by which political influence can be brought to bear on the media.[32] The regulation gave party delegates access to the boards overseeing commercial and public media, but at the same time it put in place organizational and procedural guarantees to ensure that no single political entity would come to dominate these institutions. Especially the structure and decision-making mechanisms of the most prominent media institution, the National Radio and Television Authority (*Országos Rádió és Televízió Testület*, ORTT), helped compel the parties to cooperate when it came to dividing up media-market positions. Members of ORTT's governing board were nominated by parliamentary factions, who each were allowed to nominate one member. The Chairman of the Board was nominated jointly by the president and the prime minister. The voting rights and procedures were based upon a weighted

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[28] András Bozóki (ed.), The Roundtable Talks of 1989. The Genesis of Hungarian Democracy. Analysis and Documents. Budapest 2002.

[29] Law LVII of 1990 on the Appointment of the Leaders of the Means of Public Information (Hungarian Television, Hungarian Radio, Hungarian News Agency), available at <http://www.1000ev.hu/index.php?a=3&param=8713>.

[30] Anzelm Bárány, Média-, nyomda- és könyvszakmai privatizáció, 1988-1998 [Privatization in the media, printing and book market, 1988-1998]. Budapest 2001.

[31] Gálik, Médiapolitika Magyarországon.

[32] Law I of 1996 on Radio and Television Broadcasting, available at <http://mediatorveny.hu/dokumentum/8/1996_evi_I_torveny__Rttv.pdf>.

distribution, ensuring that members of one party could not make substantive decisions without the votes of appointees from other parties.[33]

The ORTT ensured media-market liberalization by tendering national and local frequencies for television and radio and by establishing access for a wide range of market players. Part of its mandate was to achieve a framework for the interpretation of content regulations. However, it soon became clear that its primary objective was the division of control over the media. Board members

> "did not take seriously the legal stipulation that they are bound by the law in the performance of their functions, are not subject to any outside orders in carrying out their duties as board members, that they had been independent from the nominating parties, and their false role-conception could have serious consequences".[34]

This behavior was obviously not suitable to guarantee either the professional functioning of the supervisory media authority or the autonomous operation of the market.

One piece of clear evidence of the ORTT's failure in this regard can be found in a binding court judgment, which declared that its tendering of national commercial television channels had violated Hungarian law.[35] Additionally, in the third year of the ORTT's operation, the national commercial radio stations obtained the authority to amend the most important conditions of their license;[36] and when the agreements serving as the basis for the national television channels' operations were extended before the legally set deadline, the Prosecutor's Office initiated an investigation into the matter. Furthermore, the adjudication process of frequency tenders was to a significant extent carried out arbitrarily and lacked transparency.[37] Nevertheless, the ORTT managed to develop an

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[33] Law I of 1996, § 33, § 44.

[34] Gálik, Médiapolitika Magyarországon, 112.

[35] Magyar RTL Inc. submitted an incomplete application, failing to attach certain required statements. Nevertheless, the ORTT chose its application as the winning submission. The losing applicants appealed the ORTT's decision in court, and in February 1999 the Supreme Court decided that RTL should have been disqualified from the proceedings. Before the case was concluded, Magyar RTL bought the Hungarian investments of the losing applicant. Cf. József Gábor et al. (eds.), Médiakönyv 1999 [Media book 1999]. Budapest 1999, 269-285; Péter Kóczián, Frekvencialovagok. Az ORTT szerepe a médiaprivatizációban [Frequency knights. The ORTT's role in the process of media privatisation], in: Ákos Csermely / Margit Ráduly / Miklós Sükösd (eds.) A média jövője [The future of the media]. Budapest 1999, 149-166.

[36] After the radio station *Sláger Rádió* refused to pay the license fee in 2001, the ORTT extended the license of both national commercial radio stations by five years, and the stations had to pay the original fee only during the extension period. Mihály Gálik / Gábor Polyák, Médiaszabályozás [Media regulation]. Budapest 2005.

[37] Gábor Polyák, Értékelési szempontok a műsorszolgáltatók kiválasztására irányuló eljárásban. A német, az osztrák és a magyar szabályozás összehasonlítása [Evaluation criteria in the proceedings used to select broadcasting service providers. Comparing German, Austrian

economically viable local television and radio market and contributed significantly to the strengthening of local non-profit radio stations.

Foreign media investors played a decisive role in all segments of the media market during this period.[38] The major players in the television market were the RTL (Clt-UFA) group, the Scandinavian Broadcasting System, and – since the acquisition of the latter in 2007 – the *ProSieben-Sat1* group. The *Modern Time Groups* also made a significant investment in the Hungarian television market. The leading company in the radio market was the American corporation *Emmis Communications*, though the *Daily Mail* group emerged as another important player. The stakes owned by the latter in the media market were sold and now belong to the Austrian Accession Mezzanine Capital Corporation. The most substantial player in the newspaper market has been the *Axel Springer* group, but the *Ringier* and *Sanoma* corporations (based in Switzerland and Finland, respectively) also entered the market at that time, as did the *Daily Mail* group. The German WAZ group was present through its ownership of regional daily newspapers and a weekly paper. *Deutsche Telekom* joined the media scene via an online news portal, which became one of the nation's most popular, and later entered the market for content-provision services with a group of television channels. Hungarian-owned companies were primarily to be found in local and online markets.

However, following Hungary's accession to the European Union in 2004, a growing share of television broadcasters has provided their services from abroad. The European Union's media regulations allow television broadcasting services to choose the country from which they broadcast.[39] This abandonment of the Hungarian television market was caused in equal parts by disproportionate regulatory burdens and the inconsistent application of the law by the authorities.[40] The major role played by media corporations active in Hungary but operating under foreign jurisdiction substantially undermines all forms of national media policy and media regulation efforts, and the simultaneously strict and vague legal framework harms the competitiveness of media undertakings based in Hungary. As a result, the outward migration of television channels

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and Hungarian regulations], *Médiakutató* 8 (2007), no. 2, 47-68, available at <http://www.mediakutato.hu/cikk/2007_02_nyar/04_ertekelesi_szempontok/>.

[38] Mihály Gálik, The Development of Media Economics in Eastern Europe, in: Jürgen Heinrich / Gerd G. Kopper (eds.), Media Economics in Europe. Berlin 2006, 25-38.

[39] About the regulation see Martina Hohensinn, Das Herkunftslandprinzip in der Mediendiensterichtlinie. Nationale Rechtshoheit und ihre Umgehung. Vienna 2010.

[40] Mihály Gálik / Krisztina Nagy, A hosszú menetelés Budapesttől Londonig, avagy a *Viasat3* csatorna kikerülése a magyar joghatóság alól [A long march from Budapest to London, or how *Viasat3* managed to get itself out from under Hungarian jurisdiction], *Infokommunikáció és Jog* 36 (2010), 23-29; Gábor Polyák / László Gergely Szőke, The Country of Origin Principle and Regulatory Régimes for Media Competition in East Central Europe, *Central European Journal of Communication* 2 (2009), no. 1, 83-99.

could not be stopped. Of the roughly one hundred Hungarian-language television channels, the Media Council currently has thirteen registered stations with nationwide broadcast coverage, and only one of them ranks among the ten most-watched television channels. What's more, the two national commercial television channels have each launched entertainment channels (*RTL II* and *Super TV2*) that are based abroad.

During this period, the system in place to oversee and control public media was based on interparty cooperation. The public television corporations (*Magyar Televízió*, *Duna Televízió*) and the public radio station (*Magyar Rádió*) were each overseen by a board in which party delegates sat alongside representatives from civil organizations. Of the two groups, the party delegates had broader duties: thus, for example, they called for applications and ultimately nominated the candidate to serve as president. The full board itself only voted to confirm the person nominated by the party delegates.[41] Beyond selecting the presidents of the public media institutions, these boards oversaw their financial management. "In practice", unfortunately,

> "the established institutional system combined low efficiency with high costs, and as a result the normative requirement that the public media institutions ought to work as autonomous organisations – to thereby rule out the possibility that those exercising public power would be able to substantially influence their operations – was never met."[42]

Between 1999 and 2002, i.e. under the first Fidesz government, there were no opposition delegates on the boards. The repeated failure over several months to elect presidents to lead the broadcast providers typifies the operational disorders that plagued the system.[43] Viewer ratings for public-television channels began to drop immediately after the launch of commercial channels,[44] a trend that continued in the years that followed. In 2008 the largest public channel was watched by 11% of Hungarian viewers; by 2012 the percentage had dropped to 9.2%.[45]

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41 Law I of 1996, § 66.

42 Gálik, Médiapolitika Magyarországon, 111.

43 "Public television was managed by executives with temporary appointments for a total period of seven years and nine months". Sándor Révész, Médiaháború 1989-2011 [Media war, 1989-2011], *Népszabadság*, 31 October 2011, available at <http://nol.hu/kritika/20111031-mediahaboru_1989_2011-1217751>.

44 In 1998, the largest public television channel was watched by only 23% of the public, half the average rating of the previous year. Anna Zelenay, Az AGB a tévé-piac szolgáltatója [The AGB is the television market's provider], *AGBNielsen.com*, available at <http://www.agbnielsen.com/Uploads/Hungary/res_000308mediak99.pdf>.

45 European Audiovisual Observatory, HU7 – TV Audience Market Share in Hungary (2008-2012), in: European Audiovisual Observatory, The Yearbook Online Premium Service. Strasbourg 2013, available at <http://www.obs.coe.int/eservices/premiumservice>.

The Re-Tendering of National Radio Licenses: A Turning Point

This period culminated in the 2009 competition for the frequencies of the national commercial radio stations, the so-called Sláger/Danubius case, which opened up a new era in media policy. The distribution of new tenders for the national radio frequencies was given to two Hungarian-owned companies, *Advenio Zrt.* (operating the radio station *Class FM*) and the *FM1 Consortium* (which operated the radio station *Neo FM* until 2012), whose applications were chosen over those of two stations that had been broadcasting on those frequencies for seven years, as well as other foreign media investors. The winning applicants were to pay the media authority 200 million Forints annually and, on top of that, either 55% of their net revenues in the case of *Advenio* or 50% in the case of *FM1 Consortium*, were to be handed over as license fees. An expert opinion prepared by Corvinus University of Budapest stated that "there is not the slightest hope that the applicants can ever achieve the figures projected in their business and financial plans, that they could ever really pay the broadcasting fees during the entire period for which they were licensed".[46] After the media authority's majority – nominated by the two main parties, the Hungarian Socialist Party (*Magyar Szocialista Párt*, MSzP) and Fidesz – declared these applicants the winners despite such serious reservations, the president of the media authority resigned in protest. In the lawsuits initiated by the commercial stations previously broadcasting on these frequencies, the court held in a binding decision that one of the applicants, the *Advenio Zrt.* company – owned by *Infocenter.hu Zrt.*, a key corporation in the right-wing segment of the media industry – had acquired the frequency unlawfully, because its application was invalid due to a formal mistake made by failing to put in a declaration about its ownership structure. Infocenter owns the political weekly *Heti Válasz*, which had been founded during Fidesz's first term in office (1999-2002). In recent years close to half its revenue has come from state advertising. The company also owns the political talk-radio station *Lánchíd Rádió*, which since 2010 has built a network of frequencies that effectively extends its broadcasting coverage across the entire country, as I will show in what follows. At the time of the radio tender, the majority owner and CEO of *Infocenter* was Tamás Fellegi, who then served as a minister in the Orbán government between 2010 and 2012.[47]

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[46] Budapesti Corvinus Egyetem Innovációs Központ Nonprofit Kft. [Corvinus University of Budapest Innovation Centre Non-Profit Ltd.], Az országos rádiós műsorszolgáltatási jogosultságokra érkezett pályázati ajánlatok üzleti és pénzügyi tervének értékelése [An evaluation of the business and financial plans of the applications for a licence to provide national radio broadcasting services]. Budapest 2009.

[47] Judgement no. Pfv.IV.21.908/2010/6. of the Supreme Court of the Republic of Hungary.

Fidesz, then enjoying a two-thirds majority in parliament, proposed amending the media laws to allow the continued operation of the radio station owned by *Advenio Zrt*. despite the court's verdict. Then, once the new media laws were passed, the new media authority entered into a new contract with the radio stations, so that there would be no possibility of enforcing the prior breach of the law. The new media authority significantly reduced the contractually agreed license fees pledged by the winning applicants.[48] One of them, the FM1 Consortium, which was controlled by companies with links to the Hungarian Socialist Party,[49] filed for bankruptcy in 2012, and the media authority awarded its frequency to a public radio station. In effect, this cemented the monopoly over the national radio market enjoyed by *Advenio Zrt*. through its operation of *Class FM*.[50] This unprecedented, flagrant division of the market was another turning point in the recent history of Hungarian media. From then on, the ever-stronger market positions of politically connected enterprises has been one of the hallmarks of the Hungarian media market.

The Means of Reshaping the Media System

The passage of the 1996 media law and its aftermath marked a period of compromise between the political sides, when the previous "war" was replaced by the division of the media market's spoils. In claiming their respective shares, the political forces involved, which were roughly equal in strength, were compelled to limit their scope of action. But eventually Fidesz, which by 2010 had become substantially stronger, was no longer interested in reining itself in.

The controversial media laws passed in autumn 2010 received extensive domestic and international attention – though the government elected in the spring of that year had already tried to transform the media system before enacting them. In fact, the new governing party was involving itself in media policy even before the election, in April 2010, when *Infocenter.hu Zrt*. acquired *IKO Média*

[48] MagyarLeaks: Itt az FM1 titkos műsorszolgáltatási szerződése [Here is the secret broadcasting service of FM1], *Átlátszó.hu*, 12 March 2013, available at <http://atlatszo.hu/2013/03/12/magyarleaks-itt-az-fm1-titkos-musorszolgaltatasi-szerzodese/>.

[49] On the party connections of the *Econet Rt*. and *Geoholding Rt*., see Erősödő baloldali média [Left-wing media gaining in strength], *Marketing & Média*, 13 September 2013, available at <http://www.mmonline.hu/cikk/erosodo_bal_oldali_media>.

[50] The companies that had previously broadcast over the frequencies turned to an international investment arbitration court. Citing a lack of jurisdiction, the court rejected their petition. For the judgment, see ICSID Case no. ARB/12/2 Emmis et al. v Hungary, 16 April 2014, available at <http://investorstatelawguide.com/documents/documents/IC-0157-04%20-%20Emmis%20v.%20Hungary%20-%20Award.pdf>. For a summary of the judgment, see Gábor Polyák, Sláger kontra Class FM: egy pályázat utóélete [Sláger v. Class FM: The afterlife of a frequency application], *Mérték Blog*, 20 May 2014, available at <http://mertek.hvg.hu/2014/05/20/slager-kontra-class-fm-egy-palyazat-utoelete/>.

Holding Zrt., thereby becoming owner of a 31% stake in the *M-RTL Zrt.*, which operates the *RTL Klub* television channel.[51] As mentioned above, *Infocenter.hu Zrt.* has close ties to Fidesz through its owners, and the ideological outlook of its media outlets is sympathetic to the party. In the end, the transaction fell through for financial reasons. Nevertheless, market expansion has remained a major instrument to further the current governing parties' media policy objectives.

The media laws of 2010 provide substantial support for the present media policy.[52] Nevertheless, the passage of these laws has directed the attention of Europe and the world at large to the ongoing assault on media freedom and constitutional democracy in Hungary. From the European Union and the OSCE to the European Council and the United Nations, virtually all the world's prominent organizations concerned with fundamental civil rights have severely criticized the new regulations, and their objections have been seconded by journalists' forums and NGOs.[53] The media laws established an institutional framework for the Fidesz government's media policy objectives to be realized, and have

[51] Bevásárolta magát az *RTL*-be a miniszteresélyes Fellegi excége [Fellegi's Former company buys a stake in *RTL*], *Origó.hu*, 26 April 2010, available at <http://www.origo.hu/itthon/valasztas2010/kampanynaplo/20100426-fellegi-tamas-eladta-az-infocenterhu-media-befektetesi-zrt-tobbsegi-tulajdonreszet.html>.

[52] Law CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content, available at <http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A1000104.TV&kif=m%C3%A9diatartalmak*>; Law CLXXXV of 2010 on Media Services and Mass Media, available at <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1000185.TV>. For a comprehensive analysis, see Gábor Polyák, Context, Rules and Praxis of the New Hungarian Media Laws. How Does the Media Law Affect the Structure and Functioning of Publicity?, in: Armin von Bogdandy / Pál Sonnevend (eds.), Constitutional Crisis in the European Constitutional Area. Theory, Law and Politics in Hungary and Romania. Oxford 2014, 125-150.

[53] For a summary of the criticism directed against the media laws, see Forced Maneuver: Proposals and Expectations Toward the Amendment of the Media Act, *Mérték Media Monitor*, 11 June 2012, available at <http://mertek.eu/en/article/forced-maneuver-proposals-and-expectations-toward-the-amendment-of-the-media-act>. The most comprehensive analysis is the expert opinion of the Council of Europe, which essentially recommended a complete revision of the media laws. Eve Salomon / Joan Barata, 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, 11 May 2012, available at <http://www.mediajogfigyelo.hu/uploads/files/0_Council_of_Europe_Hungary_Media_Acts_Analysis_-_Final_14-05-2012.pdf>. See also Karol Jakubowicz, Analysis and Assesment of a Package of Hungarian Legislation and Draft Legislation on Media and Telecommunications, Commissioned by the Office of the OSCE Representative on Freedom of Media, Warsaw, September 2010, available at <http://www.osce.org/fom/71218?download=true>. The most recent analysis is one that offers a very critical opinion of the Venice Commission: Opinion on Media Legislation (Act CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, adopted by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015), available at <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282015%29015-e>.

helped create a chilling legal environment where journalists and editors cannot anticipate the consequences of their public statements.

In what follows, I will summarize the legal and informal media policy instruments that have shaped the media system since 2010. More recently, since 2014, the government has tried to use these means to push aside several previously preferred players in the media market and make way for new favorites.

The Rise of Oligarchs

Media businesses with ties to the governing parties enjoyed strong market positions well before Fidesz retook its position as ruling party in 2010. The print media market now includes two national newspapers (*Magyar Nemzet*, *Magyar Hírlap*) and one national weekly (*Heti Válasz*); a free, small-circulation weekly (*Helyi Téma*) went bankrupt in March 2015. In the television market, there are two news channels (*Hír TV*, *Echo TV*); in the radio market, there are two Budapest-based talk-radio stations (*Lánchíd Rádió*, *Inforádió*) and a national commercial station launched in 2009 (*Class FM*); and in the online market there is the most popular news portal (*Index.hu*). All these media outlets had ties to enterprises that were either directly connected to Fidesz or solidly intertwined with that party. These political affiliations are especially apparent in party positions previously held by media owners that are now held by political executives,[54] or in governmental positions the present officeholder used to occupy.[55] These well-connected individuals routinely secure public contracts for other enterprises they own,[56] and some hold high positions in state-owned companies.[57]

In addition to Fidesz's upper-level supporters having a significant stake in the media market, individuals in the party's economic sphere of interest also acquired the free daily newspaper *Metropol*, which has the widest circulation among newspapers in Hungary.[58] Once more we see that the main objective of

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[54] For example Lajos Simicska, the owner of companies that operate numerous media outlets, is one of Fidesz's founders. He served as the party's financial director between 1993 and 1998 and as the president of the tax authority in 1998 and 1999.

[55] As already noted, the owner/CEO of the Infocenter group served as a minister in the Fidesz government between 2010 and 2012.

[56] For more about Lajos Simicska's company *Közgép*, see Nikita Hava, Na vajon melyik a kormány kedvenc cége? [Guess what the government's favourite company is?], *Index.hu*, 8 January 2014, available at <http://index.hu/gazdasag/2014/01/08/395_milliard_a_kozgep_2013-as_teljesitmenye/>.

[57] For example Zoltán Spéder, the owner of the largest online news portal, is also director general of the FHB Bank, which is partly owned by the Hungarian state.

[58] Ágnes Urbán, Médiapiaci folyamatok Magyarországon [Media policy processes in Hungary], in: Gábor Polyák / Erik Uszkiewicz (eds.), Foglyul ejtett média. Médiapolitikai írások [Captive media. Media policy writings]. Budapest 2014, 307-340, available at <http://mertek.eu/sites/default/files/files/szeliden_foglyul_ejteni.pdf>.

Fidesz's media-market expansion policies is to control those media outlets that reach the largest audiences. Another strategy of expansion in the newspaper market is represented by the acquisition of a business daily, *Napi Gazdaság*, by a group close to Fidesz.[59] After another change of ownership in 2015, this daily has been transformed into a general political newspaper.[60] This change is part of a restructuring of the right-wing media empire, which will be discussed later.

The influx of figures close to Fidesz into the radio market continued with the enlargement of *Lánchíd Rádió*'s coverage area. As a national network, *Lánchíd* broadcasts on thirteen frequencies in addition to its core Budapest frequency.[61] Another player that entered the Budapest radio market was *Prodo-Voice Ltd* (*Music FM*), which – considering its ownership – is also part of Fidesz's business circles.[62] As a result, content broadcast by Fidesz-friendly radio stations in the Budapest radio market allows these politically connected companies to reach all segments of the radio audience.

Fidesz's expansion into the radio market does not end with its having links to sympathetic radio broadcasters. Audience measurement and the sale of local radio advertising are also handled by companies with ties to the governing party.[63] As a result, Fidesz can influence even the potential revenue streams and the business latitude of independent local stations.

One of the most significant transactions affecting the television market was the ownership change of one of two nationally broadcasting commercial television channels, *TV2*, which had been owned by the German *ProSieben-Sat1* group.

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59 The owner of *Napi Gazdaság* is the *Századvég Gazdaságkutató Rgt*, which received 4.7 billion Forints from the Ministry of National Development between 2011 and 2014. The money was earmarked for public opinion surveys, studies, and consulting. Orbánék kedvence vette meg a Napi Gazdaságot [Orbán's favourite bought Napi Gazdaság], *HVG.hu*, 8 December 2013, available at <http://hvg.hu/gazdasag/20130812_Orbanek_kedvence_vette_meg_a_Napi_Gazdasa/>.

60 Liszkay megvette a Napi Gazdaságot [Liszkay bought Napi Gazdaság], *MNO.hu*, 20 April 2015, available at <http://mno.hu/belfold/liszkay-megvette-a-napi-gazdasagot-1282653>.

61 Krisztina Nagy, A Médiatanács frekvenciapályáztatási gyakorlata 2010-2013 [The media council's frequency tender practices, 2010-2013], in: Polyák / Uszkiewicz (eds.), Foglyul ejtett media, 68-104.

62 Ilona Gaal, Megkapott szavak. Jobboldali médiabirodalom 2 [Obtained words. Right-wing media empire part 2], *Magyar Narancs* 33, 18 August 2011, 10-12, available at <http://magyarnarancs.hu/belpol/jobboldali_mediabirodalom_2_-_megkapott_szavak-76731>.

63 Fidesz-közeli cég került helyzetbe a rádiós kutatásban [A Fidesz-friendly company is now in the best position in the market for radio research], *HVG.hu*, 22 December 2012, available at <http://hvg.hu/itthon/20121222_Fideszkozeli_ceg_kerult_helyzetbe_a_radi>; Ferenc M. László, Jelentős fordulat előtt áll a Simicska-médiabirodalom [The Simicska media empire is facing major change], *HVG.hu*, 23 May 2014, available at <http://hvg.hu/kkv/20140513_Jelentos_fordulat_elott_all_Simicskamedi/>; A rádiós reklámpiacon erősít Simicska üzlettársa [Simicska's business partner stakes out new positions in the radio market], *HVG.hu*, 18 February 2013, available at <http://hvg.hu/kkv/20130218_A_radios_reklampiacon_erosit_Simicska_uzl>.

Some foreign media corporations had also expressed interest in purchasing *TV2*, but press reports almost immediately assumed that it would be bought by an enterprise with ties to the government. The government introduced its first draft of the so-called advertising tax in May 2013, calling for a 20% tax on advertising revenue received by the national commercial television channels. Market analysts claimed that the prospect of the proposed tax made the acquisition of the long-unprofitable TV2 too risky for investors. The tax proposal's timing invites the suspicion that the governing parties were using it as a threat to scare away potential bidders, and so ensure the success of their preferred company in the acquisition of *TV2*.[64] Indeed, ultimately the tax was not introduced at that time, and when it was approved by Parliament in 2014 its terms were quite different.[65]

In the end, *TV2* was sold via a so-called vendor loan construction, allowing its previous owner to extend credit to its former CEO Zsolt Simon and former CFO Yvonne Dederick in order to help them acquire the channel.[66] In a meeting with staff members, Simon declared that the "company backing him was owned by Hungarians".[67] Simon's personal connections to Fidesz were also revealed by the media.[68] Already in 2012, *TV2* had received more than half of the state's advertising expenditure in the television market,[69] and in 2014 this percentage rose to 67%.[70] These facts point to political motivations behind *TV2*'s acquisition. Press reports suggest that the ownership change at *TV2* station is an important step in the building of a new media empire that will reliably align itself with Fidesz. According to the reports, the man behind this empire is the film producer Andrew G. Vajna, who is also the government commissioner responsible for the Hungarian film industry.[71] This media strategy is also part of the massive shifting of the power balance among different business interests associated with Fidesz.

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[64] Ferenc M. László / Gergő Nagy, A reklámadó lökheti Nyergesék kezébe a TV2-t [The advertising tax might push TV2 into the hands of Nyerges and company], *HVG.hu*, 27 May 2013, available at <http://hvg.hu/gazdasag/20130527_A_TV2_megszerzesere_lohetnek_a_reklamadov/>.

[65] See my later discussion of the terms of the tax.

[66] Simon Zsolt veszi meg a Tv2-t [Zsolt Simon is buying Tv2], *Kreatív.hu*, 1 December 2013, available at <http://www.kreativ.hu/cikk/simon_zsolt_veszi_meg_a_tv2_t>.

[67] Ibid.

[68] Gaal, Megkapott szavak.

[69] Urbán, Médiapiaci folyamatok Magyarországon.

[70] Gasping for Air – Soft Censorship in Hungarian Media 2014, Mérték Media Monitor, January 2015 (Mérték Booklets, 2), available at <http://www.mertek.eu/en/reports/gasping-for-air-soft-censorship-in-hungarian-media-2014>.

[71] Ferenc, M. László, Fordulat az Orbán–Simicska-háborúban: Andy Vajna a TV2-ben [A turn of events in the Orbán-Simicska war. Andy Vajna is now involved in TV2], *HVG.hu*, 21 November 2014, available at <http://hvg.hu/itthon/20141121_Fordulat_az_OrbanSimicska_haboruban_Andy>.

As in the radio market, the expansion of Fidesz's influence in the television market involves its entire value chain. The re-nationalization of *Antenna Hungária Zrt*., which operates broadcasting and the digital terrestrial television platform, has had a substantial effect on the television market. The company, which enjoys a monopoly in the market for terrestrial broadcast transmission services in Hungary, was bought back by the state in 2014 from the TDF S.A. corporation.[72] *Antenna Hungária* is the exclusive decision-maker with regard to the distribution of terrestrial digital capacities – though it acts within the framework established by Hungarian law.[73] In regulating the rules of digital switchover, the legislature decided that these capacities would be allocated on the basis not of tenders issued by the media authority, but on business decisions handed down by the operator of the digital terrestrial platform.[74] In effect, therefore, *Antenna Hungária* has significant influence over the content available to the television audience, and can also dictate which individual television providers are allowed to broadcast via the digital terrestrial platform. The company's nationalization has brought about new risks that the media market will be subject to partisan political influence.

Targeted Distribution of State Advertising

Another means of reshaping the media market is the targeted distribution of state advertising. State advertising – ads bought by state institutions and enterprises – makes up only 3-4% of the market's total advertising revenue.[75] Nevertheless, for some media outlets, income from state advertising may play a significant role, and the placement of state advertising potentially entails other market-related and political consequences. As early as the late 1990s, John Keane classified the distribution of state advertising as an instrument of political censorship:

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[72] Az államé lesz az Antenna Hungária [The state will buy Antenna Hungária], *Világgazdaság Online*, 26 March 2014, available at <http://www.vg.hu/vallalatok/infokommunikacio/az-allame-lesz-az-antenna-hungaria-424399>.

[73] Law LXXIV of 2007 on Digital Switchover and Amendment of the Broadcasting Act, available at <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700074.TV>. Among other things, the law mandates that the operator of the digital terrestrial platform is obliged to transmit the broadcasts of designated channels.

[74] On the rules of digital switchover see Gábor Polyák, A médiarendszer kialakítása. A piacra lépés és a hozzáférés alkotmányjogi, közösségi jogi és összehasonlító jogi elemzése [The development of the media system. A constitutional law, community law and comparative law analysis of market entry and market access]. Budapest 2008.

[75] Urbán, Médiapiaci folyamatok Magyarországon.

> "[W]hen governments threaten to withdraw their funds, then [media] are compelled to compromise in the face of this pressure, but in some cases media enterprises even collapse".[76]

According to a report by the Corruption Research Centre at Corvinus University, Budapest, "over the past decade and a half, the trends in advertising revenue stemming from the state's advertising purchases have been among the most sensitive points of contact between politics and the media sphere in Hungary".[77] The analysts who examined the print press came to the conclusion that

> "governments 'rewarded' the allied press by making state institutions and state-owned corporations buy advertising space in these press products. Fluctuations in the shares of state advertising printed in left-wing and right-wing press products very closely followed changes in control of government."[78]

Between 2008 and 2012, state advertising spending grew in all media markets, and the political orientation of the various media outlets played an increasing role in determining the division of advertisement purchases made by the state.[79] Whereas in 2008, the three greatest beneficiaries of the state's advertising received 59% of its total spending, by 2012 this percentage had risen to 74%. In 2008, media close to the left-wing government in power received a greater share of state advertising spending, but in 2012 state advertising spending accounted for up to 40% of the revenue of certain right-wing media outlets[80] – bearing no connection to their actual market performance – while other media organizations, especially if they were openly left-wing, were for all intents and purposes fully deprived of such income.

State advertising is also important because it influences the private behaviour of market advertisers: industry players have admitted in public professional forums that commercial advertisers loyally follow state advertisers in choosing where to place their ads, thereby exposing media concerns not supported (or undersupported) by state advertising to continual business risks.[81]

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[76] John Keane, Media és demokrácia [Media and democracy]. Budapest 1999, 80.

[77] Budapesti Corvinus Egyetem Korrupciókutató Központja, Kormányzati intézmények és állami cégek médiaköltései a nyomtatott sajtóban Magyarországon, 2003-2012. Leíró statisztikák és megfigyelések. I. Riport [Governmental institutions and media spending by state companies in the Hungarian print press, 2003-2013. Descriptive statistics and observations]. Budapest 2013, 25, available at <http://www.crc.uni-corvinus.hu/download/media_ah_2012_riport1_130430.pdf>.

[78] Ibid.

[79] Urbán, Médiapiaci folyamatok Magyarországon.

[80] According to (as yet unpublished) information by Kantar Media, in the first half of 2014 this percentage ranged between 37% and 44% for newspapers affiliated with the right (*Magyar Nemzet, Magyar Hírlap, Heti Válasz, Napi Gazdaság*).

[81] Újragondolt nyilvánosság – egy jövőbeni médiaszabályozás keretei konferencia [A reconceptualized public sphere – conference on the framework of a future media regulation], Roundtable discussion on the question, "How Did the Regulatory Changes in the Past Years

From Public-Service to State Media

The effects of the dysfunctional system described here have not been offset by the performance of public-service media. On the contrary: since 2010, several well-documented cases have demonstrated that self-censorship practices have become prevalent in public media and that these institutions create politically biased content to support the current government's goals. One of the most widely publicized cases of abuse was the manipulation of news about Daniel Cohn-Bendit, a member of the European Parliament. In 2010-2011 Cohn-Bendit, a German Green and long a fixture of the European left, became the target of a smear campaign by the Hungarian public-service stations due to his vocal criticism of the Hungarian government. News programs aired reports detailing pedophilia allegations against him dating from the 1970s, and during an April 2011 press conference, a Hungarian reporter confronted Cohn-Bendit with the revived accusations. Prime-time news coverage of the exchange was edited to give the impression that Cohn-Bendit had avoided answering the reporter's charges. However, an independent video confirmed that he had, in fact, responded to the accusations.[82]

During the 2014 Hungarian parliamentary campaign, according to an analysis published by the Organization for Security and Cooperation in Europe (OSCE), the largest opposition-party federation (*Összefogás*) was more frequently featured in public-service news programs than the governing parties. However, coverage of the opposition adopted a negative tone 85% of the time, whereas 95% of the news stories devoted to the governing parties took on a positive tone.[83] Such

Affect Individual Areas of the Media? What Change Can We Expect in the Next Years and What Would Be Needed?", Kossuth Club, 27 February 2014, available at <https://www.youtube.com/watch?v=VvihvhZ6hQs&feature=youtu.be>.

[82] Barbara Thüringer, Mi baja a Hírcentrumnak Cohn-Bendit-vel? [What is the problem of the News Centrum with Cohn-Bendit?] *Index.hu*, 8 April 2011, available at <http://index.hu/kultur/media/2011/04/08/a_hircentrum_meghamisitja_a_hireket/>. The unedited video is available at <http://indavideo.hu/video/Daniel_Cohn-Bendit>. For other cases of media manipulation, see WAN-Ifra / Mérték Media Monitor, Capturing Them Softly. Soft Censorship and State Capture in Hungarian Media. Paris 2013, available at <http://www.wan-ifra.org/sites/default/files/field_article_file/WAN-IFRA%20Soft%20Censorship%20Hungary%20Report_0.pdf>; Mérték Médiaelemző Műhely / Publicus Research, Közéleti tartalom az új médiatörvény előtt és után. Budapest 2012, available at <http://www.mertek.eu/jelentesek/kozeleti-tartalom-az-uj-mediatorveny-elott-es-utan>; for a summary in English, see Public Affairs in the Media – Impact of the Media Policy, Budapest 2012, available at <http://www.mertek.eu/en/reports/public-affairs-in-the-media-impact-of-the-media-policy>.

[83] OSCE / ODIHR, Hungary Parliamentary Elections, 6 April 2014, Limited Election Observation Mission, Media Monitoring Results, Warsaw, 11 July 2014, 12, available at <http://www.osce.org/odihr/elections/hungary/121098?download=true>.

bias is a consequence of the current structure of the public media – since 2010, as we have seen, a highly centralized and non-transparent entity.[84]

The law assigns the task of providing public media services to a private corporation, the *Duna Médiaszolgáltató Zrt.*,[85] owned exclusively by the Public Service Foundation and supervised by its Board of Trustees (hereafter: "Board"). However, the key entity in the system of public-service institutions is the Media Service Support and Asset Management Fund (hereafter: "Fund"). The National News Agency, which was also incorporated into the *Duna Médiaszolgáltató Zrt.*, makes its news freely available for other media outlets, and it buys entire news programs for broadcast on local radio stations.[86] There is no competitive, alternative news agency: the state-owned agency alone can exert its strong – and dubious – influence on news coverage.

Under the terms of the Media Act, the Fund exercises all ownership rights and obligations associated with public-service media assets, including the production and support of public-service programs.[87] This means that in practice all the assets of public media providers, and the majority of their employees, have been transferred to the Fund. Having no independent capacities, the providers are essentially confined to placing orders with the Fund for certain programs. The Fund is headed by an executive director appointed by the president of the media authority, the Media Council, who can also dismiss the executive director without explanation. The executive director does not report to the Board nor to any other external body.[88] A separate board, the Public Service Board, is supposed to implement broad-based measures aimed at social control. It comprises members chosen by organizations specified in the Media Act; journalists' and

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[84] The new structure was instituted in August 2010, before the passage of the new media laws. Law LXXXII of 2010 on the Amendment of Several Media and Telecommunication Acts, available at <http://www.complex.hu/kzldat/t1000082.htm/t1000082.htm>. For the current rules on public-service media, see Law CLXXXV of 2010 on Media Services and Mass Media.

[85] With the amendment of Law CLXXXV of 2010 on Media Services and Mass Media, the *Duna Médiaszolgáltató Zártkörűen Működő Nonprofit Részvénytársaság* (Duna Media Service Limited Non-Profit Company) was established as the legal successor of *Magyar Televízió* (Hungarian Television), *Duna Televízió* (Duna TV), *Magyar Rádió* (Hungarian Radio) and *Magyar Távirati Iroda* (Hungarian News Agency), which used to operate as independent companies, each with their own shareholders. As of 1 July 2015, *Duna Médiaszolgáltató Zártkörűen Működő Nonprofit Részvénytársaság* thus became the provider of all public-service television, radio, and online content services, as well as what is offered by public-service news agents. Law CVII of 2014 on the Amendment of Several Laws Concerning Public Media Services and the Media Market, available at <http://www.complex.hu/kzldat/t1400107.htm/t1400107.htm>.

[86] Babett Oroszi, Uniformizálódó rádióhírek: dömpingáron adják a kormánypropagandát [Making radio news uniform: government propaganda is sold on dumping price], *Átlátszó.hu*, 20 January 2014, available at <http://atlatszo.hu/2014/01/20/uniformizalodo-radiohirek-dompingaron-adjak-a-kormanypropagandat/>.

[87] Law CLXXXV of 2010 on Media Services and Mass Media, § 100 and 136.

[88] Law CLXXXV of 2010, § 136.

human rights organizations are conspicuously absent from the organizations included in the process.[89] The Media Act authorizes this body to propose that a broadcaster's executive director – but not the executive director of the Fund – be removed from office if it refuses to accept his or her annual report; it also gives the Public Service Board the power to revise the Public Service Code,[90] which sets forth the basic principles of public-service media provision and fine-tunes public-service objectives.

It is doubtful whether the financing of public-service media fulfills the requirements of the European Commission regarding transparency and independent external control.[91] The amount of the total budget is determined by the Media Act; in 2015 it is 80 billion Forints (about 260 million Euros).[92] Until 2015, the allocation of funds among the individual broadcasters had been the responsibility of the Public Service Fiscal Council. The amendment of the media law has settled this responsibility on the Fund, and the Public Service Fiscal Council retains only the right to render an expert opinion.[93] Because the Fiscal Council includes no members of the Board of Trustees or the Public Service Board, there is simply no external oversight over the allocation of resources, and the law fails to spell out the criteria for making decisions about the distribution of funds.

To sum up, the media laws of 2010 established a centralized and non-transparent public-service media system, and the modification of the law in 2014 continued this process of centralization. This system has proved incapable of performing public-service functions.

Taking Over the Media Authority

In addition to controlling the public media organization, the Media Council ensures that only the governing party's interests will be served via control over private media; other interests have been excluded.[94] Inevitably, "pluralism" – not something that can be precisely defined or enshrined as an abstract stand-

89 Ibid., § 97.

90 Ibid., § 95.

91 For more on the European requirements, see European Commission, Communication from the Commission on the Application of State Aid Rules to Public Service Broadcasting, 2009/C 257/01, 2009, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52009XC1027%2801%29&from=EN>.

92 Law LXIV of 2014 on the Unified Budget of the National Media and Information Authority in 2015, available at <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1400064.TV>.

93 Law CVII of 2014.

94 Though the Media Council is part of the National Media and Information Authority (*Nemzeti Média és Hírközlési Hatóság*, NMHH), it has a distinct scope of authority to make decisions, and it also has a partly distinct apparatus at its disposal. The NMHH is a so-called integrated/convergent authority, which handles oversight of the telecommunications and media markets within a single body.

ard requiring adherence – is predicated on the condition that the institutions supervising commercial and public-service media are themselves sufficiently pluralistic and autonomous in their decision-making.[95] However, the way the Media Council is regulated does not foster pluralistic and transparent decision-making. Direct instruction is not the only form of unilateral influence, which can be exercised, as the Constitutional Court has suggested, "by any means at will".[96] For instance, there can be indirect influence if the mechanism for nominating and electing members fails to guarantee participation in the Media Council by members of social groups and political forces outside the ruling parties or their associates.

In fact, the Media Act has resulted in nomination and election rules regarding the Media Council that make it impossible, given the present parliamentary relationships, for a non-ruling party delegate to be appointed as a member. According to the original guidelines set forth by the Media Act, the Media Council's president was appointed by the prime minister.[97] In 2013, as a result of consultations between the Hungarian government and the European Council, it was decided that Hungary's president would make this appointment; the prime minister was granted the right to nominate candidates for this position. As for the four members of the Media Council, they are nominated by an *ad hoc* parliamentary committee composed of members with a voting power commensurate with the number of members in the respective parliamentary faction that had elected them.[98] In the first round, members are nominated to the Media Council by unanimous vote of the nominating committee. If a unanimous decision cannot be reached, candidates are nominated by a two-thirds majority of the weighted votes in the second round. The European Council has more than once pointed out that a two-thirds majority vote is not in itself sufficient to ensure media freedom, in either the enactment of media laws or the process of electing members to the relevant bodies. The Council recommends instead that Hungary develop solutions that presuppose genuine cooperation and consensus between the ruling parties and the opposition. In the case at hand, there was very little chance that the five parliamentary parties would unanimously agree on four nominations. As expected, the ruling party went on in the second round

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[95] Karl-Heinz Ladeur, Einspeisung digitaler Fernsehprogramme. Zur Rechtsstellung von Kabelnetzbetreiber und Programmveranstalter. Zugleich ein Beitrag zum Verhältnis von Medien- und Telekommunikationsrecht unter Multimediabedingungen, *Kommunikation und Recht* 10 (2001), 496-506.

[96] Constitutional Court of Hungary, Decision no. 37/1992. (VI. 10.) AB.

[97] The president of the NMHH is also the president of the Media Council. The NMHH's president, who was appointed by the Prime Minister, is automatically nominated for the office of chairperson of the Media Council at the time of the appointment (see Law CLXXXV of 2010, § 125).

[98] Law CLXXXV of 2010, § 124.

to exclusively support its own nominees, who were then duly voted into office by the same two-thirds majority.

The consequences of this structure are clearly evident in the distribution of radio frequency tenders. Television tenders will no longer be given, because digital terrestrial capacities will be allocated by the operator of the digital terrestrial platform, which decides for itself which media services to include. Thus, the single legal condition for providing television services on any platform – cable, satellite, IPTV, digital terrestrial – will be a simple registration by the Media Council. The state's acquisition in 2013 of the platform operator *Antenna Hungária Zrt*. has opened up the possibility that the state can non-transparently determine the conditions for accessing terrestrial digital broadcasting capacities.

Based on the way the frequency tenders work, it can be stated unequivocally that the Media Authority intends to redraw the map for the radio market.[99] Media-market transformations have caused previously successful radio stations to either partly or completely disappear. *Rádió 1*, once a successful national network and now a mere brand name used by some local stations, suffered most under the Media Council's governance; its former owner has ceased operations. *Rádió Juventus* has also reduced its operations, and in autumn 2013 its owners sold the station.[100] The Media Council's tender practices have also liquidated the *Klubrádió* network, whose applications had been especially closely watched. Its Budapest-based network having covered large parts of the country, it was the only forceful opposition voice among Hungary's radio stations. Between 2010 and 2012, the station submitted fifteen applications to either retain or expand its previous market position. It failed to win even a single frequency, and all tender proceedings that it had participated in were declared invalid. Three binding judicial decisions were handed down concerning tenders involving the Budapest-based frequency that was considered to be the station's central frequency. In all these cases the court dismissed the Media Council's decision concerning *Klubrádió*, citing legal violations by the Council. *Klubrádió* needed four other court decisions to retain its community-radio status granted by the previous media authority in 2010.[101]

Finally, some preeminently successful players in these tenders have managed to emerge as radio stations with national coverage. One of these preferred players is the right-wing talk-radio channel *Lánchíd*, with the same owners as

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99 For a detailed analysis see Nagy, A Médiatanács frekvenciapályáztatási gyakorlata; Polyák / Uszkiewicz (eds.), Foglyul ejtett média, 68-105.

100 Nagy, A Médiatanács frekvenciapályáztatási gyakorlata.

101 Mertek Media Monitor, Summary of the Case of *Klub Radio* (2012), available at <http://mertek.eu/en/article/summary-of-the-case-of-klub-radio>; A *Klubrádió* ügye. A budapesti 95.3 és 92.9 MHz rádiós frekvenciák pályázati eljárásai [The *Klubrádió* Case. The tender procedures related to the Budapest 95.3 and 92.9 MHz frequences], *Médiatörvény.hu*, 10 May 2013, available at <http://mediatorveny.hu/dokumentum/90/Klubradio_osszefoglalo_final.pdf>.

Class FM. *Lánchíd Rádió* saw its coverage area increase by thirteen additional frequencies.[102] Hence their broadcasts do not serve local public discourse but disseminate homogeneous, centrally produced programming.

The "Chilling Effects" of Media Content Regulation

The most significant turn in the history of Hungarian media regulation occurred when the new media laws of 2010 extended the supervisory and sanctioning scope of the authority over print and online media. This new oversight was accompanied by uncertainty about the exact terms of the media laws' provisions and, thus, brought forth the prospect of severe sanctions. These developments pose a serious threat to media freedom. Since the adoption of the laws, their terms have been interpreted to accord with the expectations of the European Commission and the Hungarian Constitutional Court.[103] But legal sanctions and prospective fines can make it impossible for the press to conduct itself in certain ways. The most serious sanction against dailies and online press outlets is a fine of 25 million Forints (82,000 Euros). Television and radio broadcasters can be punished by having their licenses withdrawn; the steepest fine that can be levied against these providers is 200 million Forints (656,000 Euros) in the case of the providers with the largest audiences, and 50 million Forints (164,000 Euros) in other cases.[104]

The Media Council also introduced the practice of strictly applying the principle of gradualism: the first time a media organization infringes current regulations, it is given only a mild sanction, regardless of other infringements committed under prior law. However, the Media Council's case law has not

[102] Four religious stations can also be mentioned: *Magyar Katolikus Rádió* [Hungarian Catholic Radio], *Szent István Rádió* [St. Stephen Radio], *Európa Rádió* [Europa Radio], which is associated with the reformed churches, and *Mária Rádió* [Radio Mary], another Catholic station. As a result of tenders, *Magyar Katolikus Rádió* has sixteen new frequencies, *Szent István Rádió* has seven, while *Mária Rádió* won eight. Nagy, A Médiatanács frekvenciapályáztatási gyakorlata.

[103] For the amendment of the law see Law XIX of 2011 on the Modification of Act CIV of 2010 on the Freedom of the Press and on the Basic Rules Relating to Media Content, available at <http://mediajogfigyelo.hu/uploads/files/1157_2011_evi_XIX_tv_mediatv_EU_modositasok.pdf>; and Law CLXXXV of 2010 on Media Services and the Mass Media. See further Constitutional Court of Hungary, Decision no. 165/2011. (XII. 20.) AB, 19 December 2011, available at <http://public.mkab.hu/mkab/dontesek.nsf/0/C12579890041A608C125798F004FEC26>. For the subsequent amendment of the law see Law LXVI of 2012 on the Modification of Some Acts on Media Services and Press Products, available at <http://www.complex.hu/kzldat/t1200066.htm/t1200066.htm>.

[104] According to the law, the broadcasters liable to the largest fine fall into the category of "service providers with significant powers of influence", and must therefore comply with stricter obligations. See Law CLXXXV of 2010, § 38. For all others see ibid., § 185-187.

helped to establish a legal environment where journalists can clearly predict the consequences of their work.[105]

Legal restrictions on media content and journalists' activities arise not only from the media laws. Since 2010, the Hungarian Parliament has adopted a new Civil Code,[106] a new Criminal Code,[107] and a new law pertaining to freedom of information,[108] and has made several amendments to its rules concerning media content.[109] In May 2011, the Hungarian Parliament sought to severely restrict the freedom of information, based on arguments that to do so would reduce "abusive data request" practices. According to this bill, which was debated and passed in a single day, "the fulfillment of a request to access public data may not result in data access of similar depth and scope as that provided to oversight bodies with oversight privileges regulated by separate laws". The president was among those who found this attempted curtailment of freedom-of-information rights to be a vague proposal with disproportionate restrictions. He refused to approve the bill and sent it back to Parliament. Authors of a revised bill in Parliament responded with a new version, as broad in its reach as the previous bill had been, and even more vague. Nevertheless, it was approved by the president. The effects of the new regulation will depend — to an even greater degree than before — on the intentions and practice of those enforcing it.[110]

Struck down by the Constitutional Court was the section of the new Civil Code that limited press criticism of public figures to what was deemed "reasonable public interest". The Court concluded that the annulled provision had violated the rights to freedom of speech and freedom of the press and stated that free social debate is a constitutional interest of outstanding importance.[111] Criminal Code provisions stipulate that a court may order data to be "rendered permanently inaccessible" if making it publicly available constitutes, or is part of, a criminal offense. If the hosting service does not delete the data even after being

[105] Krisztina Nagy / Zsófia Lehóczki, A médiatartalomra vonatkozó előírások a Médiatanács gyakorlatában 2011-2013, in: Polyák / Uszkiewicz (eds.), Foglyul ejtett media, 105-148.

[106] Act V of 2013 of the Civil Code, available at <blog.volgyiattila.com/wp…/PTK-HungaryCivilLaw-ActVof2013.docx>.

[107] Act C of 2012 on the Criminal Code, available at <http://thb.kormany.hu/download/7/ec/a0000/14_Act%20C%20of%202012%20on%20the%20Criminal%20Code.pdf>.

[108] Law CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information, available at <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100112.TV>.

[109] For example, the Parliament drafted and adopted within the span of mere days such an amendment in response to the negligent publishing of a fraudulent election video, where several people discussed voter fraud in what appeared to be a staged discussion designed to mislead. Gábor Polyák, Három csapás a videóbűnözőkre [Three strikes against the video criminals], *Mérték Blog*, 29 October 2013, available at <http://mertek.hvg.hu/2013/10/29/harom-csapas-a-videobunozokre/>.

[110] Law XCI of 2013 on the Amendment of Law CXII of 2011.

[111] Constitutional Court of Hungary, Decision 7/2014. (III.7) AB, available at <http://www.mkab.hu/letoltesek/abk_2014_07.pdf>.

fined, the court can order communications networks to block its transmission; Hungarian courts may also order the blocking of foreign data if the authority in the originating country does not accede to a request to withdraw the material.[112] These examples, which could be added to, show how legislation has gradually restricted communication in the public sphere. In an environment where every third journalist has confessed to concealing or distorting information in order to avoid adverse consequences, where journalists are relegated to total existential insecurity if they lose their jobs, restrictive regulations will have the desired impact even without the actual application of sanctions.[113]

The Discriminatory Media Tax

After the 2014 elections, peculiar changes began to occur within the media policy framework designed during the previous parliamentary term. While the state is continually engaged in media-market interventions, there appear to be cracks and conflicts within Fidesz's own sphere of interest as well.[114]

During the recently launched second term of the re-elected government, the intervention in market relations began with the introduction of an advertising tax, which took effect in July 2014 and imposes a levy on income from advertising.[115] It extends to electronic, print, and online press products, and also to outdoor advertising. The applicable rate of the special tax rises progressively. Below an advertising income of 0.5 billion Forints (approximately 1.6 million Euros), the prevailing rate is 0%. It then rises to 1% for income over 0.5 billion but less than 5 billion. Above five billion Forints of advertising income, the rate is 10%, increasing by another 10% for each additional 5 billion up to a maximum rate of 40%, which kicks in for advertising income of 20 billion or more.[116] The

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112 Article 77 of Act C of 2012 on the Criminal Code. Also see Article 158/B-158/B of Law XIX on Criminal Procedure; and Article 91 of the Decree with the Force of Law no. 11 of 1979 on Penalties and the Implementation of Measures.

113 Szonja Navratil, A Mérték Médiaelemző Műhely sajtószabadság-indexe [Mérték Media Monitor's press freedom index], in: Polyák / Uszkiewicz (eds.), Foglyul ejtett media, 148-188.

114 On the so-called "Orbán-Simicska war" see, for example, Pál Dániel Rényi, Csak egy maradhat talpon, Orbán Viktor vs. Simicska Lajos [Only one will be left standing, Viktor Orbán vs. Lajos Simicska], *Magyar Narancs* 36 (2014), 11-14, available at <http://magyarnarancs.hu/belpol/csak-egy-maradhat-talpon-91576>; József Spirk, Ki kivel van az Orbán–Simicska-háborúban? [Who's on whose side in the Orbán-Simicska war?], *Index.hu*, 26 September 2014, available at <http://index.hu/belfold/2014/09/26/ki_kivel_utkozik_az_orban-simicska-haboruban/>.

115 Law XXII of 2014 on the Advertising Tax, available at <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1400022.TV>.

116 In the third week after the passage of the law, the original provisions were amended to expand the range of entities that are potentially liable to pay the tax. If the entity that disseminates the advertisement fails to pay the tax on its advertising revenue, then the tax owed must be paid by whomever ordered the advertisement. In that scenario the tax rate is a flat 20%,

tax is a serious financial and administrative burden, and due to its vagueness it also raises questions about its application,[117] even as it fails to generate much additional revenue for the state.[118] Its effect on the television market is that of a discriminatory state intervention, since it exerts far greater impact on one of the nationally broadcasting commercial channels, market leader *RTL Klub*, than on any other media outlet. The other leading national commercial TV provider, *TV2*, has been operating at a loss for years, and the law allows it to reduce its taxable income by 50% of its defined losses. *RTL Klub*, by contrast, which has been continuously profitable, has no such recourse – the result of an amendment[119] made specifically to pre-empt the possibility of *RTL Klub* writing off losses. Thus in 2014 the RTL Group paid 80% of the revenue generated from this tax.[120] For 2015, an amendment of the law increased the top tax rate by 10%. *RTL Klub* will be the only party subject to the tax that will be required to pay 50% of its advertising income as tax.

Thus, in concrete terms, the advertising tax is an open intervention in the market competition between *RTL Klub* and *TV2*. It weakens *RTL Klub*'s market position, thereby improving, relatively speaking, the business position of *TV2*, which was recently taken over by new owners but, as noted, has been losing money for years.[121] The RTL Group published a statement outlining its view of the tax:

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which must only be paid for advertising expenditures in excess of 2.5 million Forints (circa 8,000 Euros) a month. This amendment primarily aims at collecting tax payments for advertising placed (that is, the advertisers who order such ads) on multinational internet platforms such as Facebook, or for ads on channels registered abroad, which display Hungarian-language content aimed at the Hungarian public. For the time being, it is unclear whether a practical implementation of this legislative provision is possible and what degree of administration it will entail for the authorities involved. László Balogh, A Google és a Facebook nyomában a NAV [Hungarian tax authority in the wake of Google and Facebook], *Reklámadó Blog*, 4 April 2015, available at <http://reklamadoblog.hu/google-es-facebook-nyomaban-nav/>.

117 Még mindig nehéz a reklámadót értelmezni [It is still difficult to make sense of the advertising tax], *Piac & Profit*, 30 October 2014, available at <http://www.piacesprofit.hu/kkv_cegblog/meg-mindig-nehez-a-reklamadot-ertelmezni/>.

118 In 2014 the state income from the advertising tax was 7-8 billion Forints (approx. 23.3-26.5 million Euros); in 2015 the expected income is 10 billion Forints (approx. 33.3 million Euros). See a background study to the advertisement tax, Itt a kormány háttértanulmánya a reklámadó bevezetéséhez [Here is the government's background study to the introduction of the advertising tax], *átlátszó.hu*, 25 August 2014, available at <http://blog.atlatszo.hu/2014/08/megkaptuk-hattertanulmany/>.

119 Law XXXIV of 2014 on the Entry Into Effect of Law XXII of 2014 on the Advertising Tax with a Modified Text and on the Amendment of Other Tax Laws, available at <http://www.complex.hu/kzldat/t1400034.htm/t1400034.htm>.

120 Az RTL fizette szinte a teljes reklámadót [RTL has been paying almost the entire advertising tax], *Index.hu*, 28 August 2014, available at <http://index.hu/gazdasag/ado_es_koltsegvetes/2014/08/28/az_rtl_fizette_szinte_a_teljes_reklamadot/>.

121 Urbán, Médiapiaci folyamatok Magyarországon.

> "The effect of this unfair new tax is to challenge two key freedoms: the freedom of expression, via a media that is independent of the government; and the freedom of establishment for non-nationals."[122]

Following the adoption of the advertising tax this summer, *RTL Klub*'s news shows increased their coverage of public-affairs news, and criticisms of the government's policies have been given substantial space in its news items; it has also broadcast investigative reports centering on corruption and other abusive practices involving government politicians.[123]

After the introduction of the advertising tax, there was another episode that showed the legislature interfering with the free workings of the television market. Parliament passed a law that makes it impossible for *RTL Klub* and *TV2* to demand that cable companies pay a program service fee. The two national commercial broadcasters had long been planning to collect fees from cable, satellite, and IPTV operators. Thus far *RTL Klub* and *TV2*, unlike the other television channels, have been available for free for these operators, since before the digital switchover the Media Act prohibited the channels from requesting a program service fee.[124] In 2014, Parliament approved an amendment that stipulates that *RTL Klub* and *TV2* must continue to make their broadcasts available to the distribution companies for free – at least until the government works out a pricing formula, which could be the basis for the commercial channels' transition into fee-based providers.[125] This intervention may lead to a significant loss of revenue for both television channels,[126] and the law provides no guarantees that the government's eventual pricing formula will give the two channels the same terms. In such a thoroughly politicized media system it may well happen that a previously favored market player loses its political support, thereby compromising its market position.

By early 2015, confrontations between various rival factions within Fidesz's own sphere of interest erupted into open conflict on account of the prime min-

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122 Csaba Tóth, RTL Group Issues Official Position Paper on Hungary Ad Tax, *The Budapest Beacon*, 17 October 2014, available at <http://budapestbeacon.com/featured-articles/rtl-group-issues-official-position-paper-on-hungary-ad-tax/>.

123 Több a politikai hír az RTL-en [There is more political news on RTL], *Kreatív Online*, 26 June 2014 available at <http://www.kreativ.hu/media/cikk/megduplazodott_a_politikai_hirek_aranya_az_rtl_en>.

124 Law CLXXXV of 2010 on Media Services and Mass Media, Article 207.

125 Law XXXIX of 2014 on the Amendment of Certain Laws Relating to Budget Planning, as well as the More Efficient Provision of Financial and Public Utility Services, available at <http://www.complex.hu/kzldat/t1400039.htm/t1400039.htm>.

126 *TV2*'s CEO anticipated a revenue of 6-8 billion Forints from this fee. See Márton Galambos / Zsombor PÁL, Jó időben, jó helyen kell lenni. Interjú a TV2 új tulajdonosaival, Yvonne Dederickkel és Simon Zsolttal [You should be in place at the right time. Interview with the owners of TV2, Yvonne Dederick and Zsolt Simon], *Forbes.hu* 2 (2014), 64-68.

ister's efforts to shift the balance of power in the media market.[127] RTL turned to the European Commission to complain about the advertising tax.[128] As a result – and also because of the diplomatic dimension of the issue[129] – the government held out the possibility that it would review the regulation. According to the draft amendment covering the relevant rules,[130] the government plans to replace the existing tax structure with a 5.3% flat tax that will be paid on advertising income higher than 100 million Forints.[131] The revised regulation would no longer be discriminatory as it had been before, but it would levy a massive burden on smaller media outlets that had been exempt from the original tax.

Old Means, New Perspectives

At a meeting with the owners and managers of major pro-government media outlets – held before plans for the amendment of the advertising tax were first discussed – the prime minister announced that "in the future he would no longer consider it necessary" to support these outlets or to supply them with state advertisements, which in effect "will mean an end to the accustomed relations between Fidesz and these media".[132] The advertising tax had an unfavorable impact on the market positions of right-wing media, which then, for the first time, criticized the government's media policies.[133] Not long after the adoption of the advertising tax, affected right-wing outlets began trimming their editorial staffs.[134] These developments mesh with the assumption that the media market

[127] At the same time, the conflict has extended to all areas of Fidesz's unofficial business realm, from agriculture to construction. Spirk, Ki kivel van az Orbán–Simicska-háborúban?.

[128] Csaba Tóth, RTL Group Files Complaint with EC Over Hungary Ad Tax, *The Budapest Beacon*, 17 October 2014, available at <http://budapestbeacon.com/featured-articles/rtl-group-files-complaint-with-ec-over-hungary-ad-tax/>.

[129] Ferenc M. László, Diplomáciai nyomásra ült le Lázár tárgyalni az RTL-lel [Diplomatic pressure convinced Lázár to sit down and talk to RTL], *HVG.hu*, 29 January 2015, available at <http://hvg.hu/itthon/20150129_Diplomaciai_nyomasra_ult_le_Lazar_targyal>.

[130] The Draft Amendment is available at <http://www.kormany.hu/download/c/95/50000/reklamado_normaszoveg.pdf#!DocumentBrowse>.

[131] Egykulcsos lesz a reklámadó! – A nagyok nyernek [The advertising tax will become a flat tax – large media outlets will profit, *Portfolio.hu*, 3 February 2015, available at <http://www.portfolio.hu/vallalatok/adozas/egykulcsos_lesz_a_reklamado_a_nagyok_nyernek_3.209739.html>.

[132] András Kósa, Orbán elengedte a kormánypárti sajtó kezét [Orbán is leaving the pro-government press to fend for itself], *VS.hu*, 15 January 2015, available at <http://vs.hu/kozelet/osszes/orban-elengedte-a-kormanyparti-sajto-kezet-0115>.

[133] Péter Csermely, Egy szimbolikus összegről [On a symbolic amount], *Magyar Nemzet*, 3 June 2014, 7, available at <http://mno.hu/belfold/egy-szimbolikus-osszegrol-1230092>; Gábor Borókai, Rossz eszköz a reklámadó [The advertising tax is the wrong instrument], *Heti Válasz*, 5 June 2014, 7, available at <http://valasz.hu/itthon/rossz-eszkoz-a-reklamado-100314>.

[134] Imre Bednárik, Leépítés a Magyar Nemzetnél [Downsizing at the Magyar Nemzet], *Népszabadság*, 16 September 2014, 2, available at <http://nol.hu/belfold/leepites-a-magyar-nemzetnel-1486471>.

is emerging as an important arena in the conflicts among rival groups within the governing parties' sphere of interest.

Such an impression is reinforced by the state's intervention in the workings of the media-agency market – a significant market because media agencies decide on the placement of advertisements, and on occasion state advertisements, in various media. Through these decisions they exert a direct impact on revenue for media outlets; and in Hungary, as I pointed out, the agencies play a decisive role in the skewed distribution of state advertising. The public contracts for placing state advertisements were invariably won by one of three media agencies, and the greatest slice of state advertising was distributed by the *Inter Media Group* (IMG), which had previously not been a significant player in the media-agency market.[135] At the same time, in 2014 the government set up the National Communications Authority,[136] which it tasked with coordinating the communications activities of public entities funded by the central budget and of state institutions, as well as processing the public contracts associated with these activities and monitoring delivery. The centralization of state advertising spending makes it easier to rearrange the market positions of all media companies, including those of right-wing media. Media outlets that receive roughly half or more of their income from state advertising find themselves in a vulnerable, exposed position when the media market is transformed.

Responding to this predicament, Lajos Simicska, the owner of a right-wing media empire, declared a "total media war" against the government.[137] At this point, the prime minister has decisively severed all ties with the media empire that had served him without the slightest hint of criticism over the past several years. The conflict has forced the leaders and staff of the affected media outlets into making a choice. Many media executives and journalists, unequivocally siding with the government, quit their jobs.[138]

Nevertheless, the conflict that is reshuffling media-market positions is not intended to alleviate political pressure on the media market. On the contrary, even as this particular media empire is being dismantled, we see efforts taking shape to buttress other pro-Fidesz media enterprises and business interests. In addition to the acquisition of *TV2* and the aforementioned privatization of *An-*

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135 WAN-Ifra / Mertek Media Monitor, Capturing Them Softly.

136 See the government's decree 247/2014 (X.1) on the National Communications Office and the centralized public procurement systems for governmental communications procurements, available at <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1400247.KOR>.

137 Simicska: akkor totális háború lesz [Simicska: then there will be total war], *Népszava*, 8 February 2015, available at <http://nepszava.hu/cikk/1047595-simicska-akkor-totalis-haboru-lesz-veszelyben-a-demokracia>.

138 Lemondott Simicska Lajos médiabirodalmának több vezetője [Several leading figures in the Simicska media empire have resigned], *HVG.hu*, 6 February 2015, available at <http://hvg.hu/gazdasag/20150206_Lemondott_a_Hir_TV_a_Magyar_Nemzet_az_mno>.

tenna Hungária, the reorganization of public-service media is also a part of this process. As part of the transformed organizational structure that I have described here, there have also been changes in the selection of programming offered by public-service media – namely through the launch of a public-service news channel in March 2015. In the aforementioned meeting with leading figures in the right-wing media, the prime minister announced that "in the future we consider public-service media as the most important channel for conveying the messages of the government and Fidesz".[139] The new news channel is intended to be the key instrument in realizing this political objective, yet in its first phase it has managed to attract widespread public attention only with a series of massive blunders, which in one instance even resulted in an interruption of its broadcast.[140]

The goal of restructuring the balance in the media market is to give the prime minister even greater political control than he previously could exercise over the dissemination of information, eliminating even those politically loyal players who retained some autonomy thanks to the strength of their financial positions. Yet this change in the government's media policy also involves a degree of risk for the prime minister and the governing parties. Both the decentralized nature of the digital media environment and Hungary's EU membership make it impossible to take complete political control of the entire media system. Fidesz, acting on this realization, has reacted in two ways. First, it took over positions in the media market that it can use to address the masses of Hungarians who are politically less active. Second, over the years it has created a media portfolio that can satisfy the needs of its political base. The shifts in power relations have led to problems in both areas. The Simicska empire, which the government now seeks to dismantle, includes outlets that are effective both in reaching a broad mass audience and in serving the needs of Fidesz's base. Scaling back the influence of these media outlets is quite a challenge, for over the years they have accumulated vast amounts of capital, professional expertise, and loyal audiences – in large part due to their relations with Fidesz, which helped them achieve their impressive standing. They will thus remain essential players in the media market despite the government's success in luring away their managers and a significant portion of their journalists, the withholding of state advertisements, and the boycott by the governing party's politicians against them.[141]

Moreover, in building the new media empire, the prime minister is focusing on the television market. The acquisition of the second largest commercial channel

[139] Kósa, Orbán elengedte a kormánypárti sajtó kezét.

[140] Ádám Lestyánszky, M1 Maiden Broadcast an Unmitigated Disaster, *The Budapest Beacon*, 18 March 2015, available at <http://budapestbeacon.com/news-in-brief/m1-maiden-broadcast-an-unmitigated-disaster/>.

[141] Benjámin Novák, Fidesz MPs to Boycott Simicska "Opposition" Media Outlets, *The Budapest Beacon*, 17 March 2015, available at <http://budapestbeacon.com/news-in-brief/fidesz-mps-to-boycott-simicska-opposition-media-outlets/>.

is undeniably a successful step towards realizing the new media policies, but the restructuring of public-service media might still result in a massive failure. And a failure of the public-service news channel could endanger efforts to hold the governing parties' political camp together.[142] In the radio and the print-media markets, there is thus far no apparent alternative to the outlets operated by the Simicska media empire, and as far as online media is concerned, Fidesz has not yet been able to establish a strong position. If we therefore interpret recent events on the basis of the media policy objectives pursued by Fidesz and the prime minister, then we notice greater risks than were previously apparent. Yet a flourishing democratic public sphere requires more than merely the occasional frustration of the governing parties' political objectives.

Based on the above discussion, we can see that one pillar of Fidesz's media policy strategy involves the stabilization of its media-market positions and the incorporation of channels that reach a mass audience into the Fidesz media empire. Fidesz's understanding of media-market processes has led it to simultaneously regard the media as a tool of social control over politics that must be fully neutralized as well as an instrument that it needs to retain power.

The main pillar of this policy strategy is to keep those who work in the media system in a constant state of uncertainty. Excessive caution and a susceptibility to self-censorship are already integral elements of the professional socialization of journalists and media owners, and in such an environment vague regulations, all-powerful institutions that lack transparency, and the manipulation of media-market resources obviously serve to silence dissenting voices and encourage media professionals to adopt an attitude of quiet acquiescence to the status quo.

Since the elections in 2014, the state has continued its efforts to reshape the media market with great intensity. Its interventions have shown that political interference aimed at distorting the market can even shake the positions of foreign media-market investors, but it has also demonstrated that a sustainable business model cannot be based purely on nurturing strong ties with the leaders of the political realm. The most important insight to be gleaned here in terms of media freedom and the public sphere is that even within the framework of

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[142] The most likely task of the public-service news channel is to attract the audience of *Hír TV*, which is part of the Simicska empire. Based on general Hungarian media-consumption patterns, news channels are unlikely to attract a broader audience, which makes it questionable whether such an initiative was a good idea in the first place. For more information on Hungarian news consumption patterns, see Szonja Navratil, Hírfogyasztás, pluralizmus, demokratikus részvétel. A sokszínű tájékozódás esélyei 2013 [News consumption, pluralism, and democratic participation. The chances of diverse information 2013], *Mérték Media Monitor*, Budapest 2013, available at <http://mertek.eu/jelentesek/hirfogyasztas-pluralizmus-demokratikus-reszvetel-a-sokszinu-tajekozodas-eselyei-2013>; for a summary in English, see Eadem, News Consumption, Pluralism and Democratic Participation, *Mérték Media Monitor*, Budapest 2013, available at <http://www.mertek.eu/en/reports/news-consumption-pluralism-democratic-participation>.

the European Union, regulatory means can be implemented that distort these two crucial democratic fields by indirect methods, specifically by manipulating market relations and by influencing the behaviour of journalists in those segments of the media with access to a mass audience.

The Result of the Fidesz's Media Rampage: A "Mediterranean" System?

The media policy initiated and sustained by the Fidesz government, which, as we have seen, found fertile ground prepared by former media policy strategies, was clearly a turning point in the Hungarian media transformation. It exerted huge effects on the media market, on journalists (in terms of their behavior and the latitude they have been given), and the choice of available media for audiences to consume. To systematize the data about these effects, I will apply the analytical and comparative criteria developed by Hallin and Mancini.[143] They analyze media systems based on four criteria, which partially overlap with and influence one another: the structure of media markets, especially the newspaper market; political parallelism, which describes relations between the political system and the media system, their entanglement, and the former's influence over the latter; the professionalization of journalism, which includes journalists' education and training, the degree of autonomy and professional control they can exercise in carrying out their work, and the stability of professional rules and the field's overall ethos; and, finally, the role of the state as owner, regulator, and supporter of media actors.

Based on these criteria, Hallin and Mancini devised three basic models of Western media systems. A polarized pluralist or "Mediterranean" model gives rise to a weak media market, high levels of political parallelism, low levels of journalistic professionalism, and a meddlesome state. A strong media market with a limited amount of political parallelism, professionalism ensured by high levels of institutionalized self-regulation and means to keep state interventions in check (regulations, the upkeep of the institutional system for public-service media) is characteristic of the Northern/Central European or democratic-corporatist model. Finally, the third model is the liberal or North Atlantic model, which features mid-level newspaper circulation but a functioning commercial media market; information-centered journalism and, as a result, a low level of political parallelism; a high level of professionalism undergirded by voluntary self-regulation; and generally limited influence on the media markets by the state.

The analysis from Hallin and Mancini is not normative. However, their applied criteria ensure a general frame for a comprehensive description of a single

143 Daniel C. Hallin / Paolo Mancini, Comparing Media Systems. Three Models of Media and Politics. Cambridge 2004.

media system. Since the main objective of the current essay is to present primary attributes and characteristics, this analytical frame provides suitable means for the arrangement of facts pertaining to the Hungarian case. Shared historical experiences make the achievements of Western media systems "more easily transferable to Eastern Europe than to almost any other part of the world".[144] Even though model-building is not the object of my essay, it may be asserted that the characteristics of the Hungarian media system during the democratization process oscillated between those of the democratic-corporatist and those of the polarized pluralist model, but today the latter model's features apply more forcefully.[145]

Circulation of Newspapers, Characteristics of the Media Market

The long-term development of a media system has been theorized as being influenced by the circulation of print newspapers and magazines and by newspapers' ability to reach the masses rather than functioning merely as elite media. The Hungarian newspaper market has had rather low circulation figures, and the political press has indeed been read primarily by the upper strata.

The daily newspaper with the highest circulation, the left-wing *Népszabadság*, sold 205,000 copies in 2000, but this figure plummeted to 47,000 by 2013.[146] During the same period, *Magyar Nemzet,* the most widely read right-wing daily, dropped from 69,000 copies sold to 39,000.[147] This downward trend has characterized all political newspapers not distributed for free. Only some regional newspapers – which devote little space to public affairs – have managed to retain their market positions. The drop in circulation is accompanied by a decline in the print media's ability to shape public opinion. When respondents were asked in 2013 where they had been exposed to public-affairs information during the past week, a mere three percent mentioned various newspapers as their primary source of news.[148] Print publications devoted to politics have emerged as the

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144 Ibid., 15.

145 See ibid.; Jakobowicz / Sükösd, Twelve Concepts Regarding Media System Evolution and Democratization in Post-Communist Societies.

146 Data provided by the Hungarian Audit Bureau of Circulation (*Magyar Terjesztés-ellenőrző Szövetség,* MATESZ), available at <http://matesz.hu/oldalak/adatok/publikus-adatok?halfyear=2013/7>; for more on these trends see also Központi Statisztikai Hivatal, Médiatükör [Media overview], *Statisztikai Tükör* 110 (2010), 1-4.

147 Ibid.

148 Navratil, Hírfogyasztás, pluralizmus, demokratikus részvétel.

medium of only a narrow segment of the general media audience, a group that in any case tends to boast diverse news-consumption patterns.[149]

Internet news sites reach now reach a larger audience than the print press, though the news sources with the greatest audience reach remain the television news shows broadcast by the national commercial and public-television channels. The commercial channels' news shows are a regular news source for 72-73% of their viewers, as compared to analogous viewership patterns for 37% of the audience for public-television news programming.[150] The role of public television, Hungarian TV (*Magyar Televízió*), also enjoys greater importance than would appear from the channel's average ratings.[151] While national television news reaches almost all groups of consumers even outside its core audience, news published on the internet reaches only a quarter of the entire audience. The share of those for whom the internet is the primary source of information stood at 13%.[152]

Given the current situation, the newspaper market has gradually been losing its economic autonomy in recent years. As a result, publishers and editors are increasingly dependent on those who finance them, be they market players or those in charge of public funds. In an analysis written for the World Bank, Carrington and Nelson emphasized that the capacities of media to contribute to improved accountability, efficient markets, and information-rich societies are all "derived from the media's financial independence".[153] Unless journalists and editors are economically independent, however, their decisions will align with the interests of those who finance their publications and not necessarily with the public interest. In a 2013 survey on the media freedom in Hungary, 70% of Hungarian journalists and 60% of media managers claimed that the financial stability of a given media product depends or depends considerably on the

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149 According to Mertek Media Monitor's analysis of news consumption patterns, Hungarian media audiences can be divided into four groups. In the first group are those who obtain information from as many sources as possible; their share has risen from 4.4% in 2012 to 11% in 2013. In the second group we find those who look at various television channels, listen to public radio, and read county newspapers as well as freely distributed national newspapers. This group, making up 19% of the total audience, receives information from a wide range of media but has no special information needs and makes no distinct effort to obtain information. The third group, 13% of the audience, consists of persons who primarily rely on the internet as a source of news, and consider commercial television and county newspapers as their secondary sources of information. The fourth group is the largest and represents a majority of the media-consuming public: 57% fall into this category. They mainly receive their news from commercial television, public radio, and the county newspapers. For more details see Navratil, Hírfogyasztás, pluralizmus, demokratikus részvétel.

150 Ibid.

151 The total viewer figures for public-services television channels grew somewhat between 2010 and 2013, from 12.1% to 14.6%. Cf. ibid.

152 Ibid.

153 Cited by Lamay, Exporting Press Freedom, 84.

prevailing political situation.[154] As our previous discussion showed, the distribution of state advertisements has emerged as an important policy instrument. The media market, however, is also distorted by other economic pressures. In the same survey, 43% of responding journalists felt that they had experienced significant economic pressure in the media market, with 18% concluding that such pressure constrains press freedom. Among media owners and managers, these ratios stood at 42% and 24%, respectively.[155]

As one would expect, the recent economic crisis has significantly circumscribed the business opportunities of Hungarian media enterprises. Advertising revenue has been shrinking in almost all segments of the market. In the Hungarian television market it dropped by 42% between 2008 and 2013; print media saw a 48% decline.[156] Though digital media (internet and mobile) registered a 95% surge in advertising revenue during this period, most of this growth benefited global intermediaries (primarily Google) rather than Hungarian content providers.[157] In the small Hungarian media market, the recent policies that I have been discussing have destabilized the economic situation of the entire media market, thereby making the media substantially more susceptible to outside influence.

Political Parallelism, Instrumentalization

The media's vulnerability to outside influence is an important component of Hallin and Mancini's second assessment criterion, political parallelism. Although Hallin and Mancini suppose that political parallelism "as a stable relationship between media and parties" may not be an adequate criterion to evaluate the Eastern European media systems because of the lack of "broad and stable social interests or ideologies" in the region,[158] the Hungarian media system can be aptly described by this category.[159]

154 Navratil, A Mérték Médiaelemző Műhely sajtószabadság-indexe, 176.

155 Ibid. 172.

156 Urbán, Médiapiaci folyamatok Magyarországon.

157 Based on the expert estimate of a research project commissioned by the Association of Hungarian Content Providers (*Magyar Tartalomszolgáltatók Egyesülete*), the share of global players in the Hungarian digital advertising market reached 42% in 2012, and while between 2008 and 2012 international players managed to increase their revenue by about 38% annually, Hungarian providers suffered a decline of 0.5% annually. PwC / Magyar Tartalomszolgáltatók Egyesülete, A globális online aggregátorok működésének hatása a hazai tartalomszolgáltatás iparági folyamataira. Zöld könyv [The impact of global online aggregators on processes in the market for domestic content provision services. Green book]. Budapest 2013, available at <http://mte.hu/dokumentumok/PwC-MTE_TANULMANY_vegso_valtozat_2013.12.09.pdf>.

158 Hallin / Mancini, Comparing Media Systems between Eastern and Western Europe, 28.

159 For examples in other Central East European countries see Rick Lyman, Oligarchs of Eastern Europe Scoop Up Stakes in Media Companies, *The New York Times*, 26 November 2014, available at <http://www.nytimes.com/2014/11/27/world/oligarchs-of-eastern-europe-scoop-up-stakes-in-media-companies.html?_r=0>.

Political parallelism is a consequence of structural coupling. Florian Töpfl, for whom "decoupling" from political decision-makers is also the primary factor in media transformation,[160] defines structural coupling as

> "all forms of influence potentiality of the political decision-makers on the media system that concern a media system at the structural level, thus at the level of media organisation".[161]

Coupling, which can be carried out by the state or through the politically affiliated ownership of media outlets, the unfair sharing of radio and television frequencies, or biased decision-making in public-service media organizations, can enable the political decision-maker to occupy leadership positions within a media organization and thereby control media content. According to Töpfl, "procedural coupling" includes "all forms of influence potentiality of the political decision-makers on the media system that concern media system at the level of journalistic work processes".[162] The wide range of its means – direct censorship, violence against journalists, disproportionate and unpredictable regulations – limits the activity of journalists and distorts the choice of available content.

Hungarian political newspapers, thematic television channels, and news-radio stations openly declare their respective political orientations, and their readers, viewers, and listeners are rarely inclined to seek out other points of view in their media consumption.[163] A significant shift in political orientation occurred only once, in the case of the left-liberal daily *Magyar Hírlap*, which became a right-wing publication in 2005 after a change in ownership. Political parallelism has been one of the key system-shaping attributes of the Hungarian media system that has emerged since the transition from communism. The exceptions to this trend are certain weekly newspapers and online news portals, which cannot be readily identified with a particular political side in terms of content or their consumers' behaviour. The news shows of the two commercial television channels only recently began to show a more clearly politicized orientation. Between 2008 and 2011, the ratio of public-affairs news on these channels dropped by half, and no more than 20% of all news items dealt with political or economic issues.[164] Public-affairs news played a greater role in the news show broadcast on *RTL2*, the channel launched by the RTL Group in 2012, and by 2013 22% of

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160 Töpfl, Mediensysteme in Transformationsprozessen.

161 Ibid., 142.

162 Ibid., 150.

163 For an overview of consumption-related data see Navratil, Hírfogyasztás, pluralizmus, demokratikus részvétel.

164 Közéleti tartalom az új médiatörvény előtt és után [Public affairs content before and after the new media law], *Mérték Médiaelemző Műhely / Publicus Research*, 15 September 2012, available at <http://www.mertek.eu/jelentesek/kozeleti-tartalom-az-uj-mediatorveny-elott-es-utan>; for a summary in English, see Public Affairs in the Media – Impact of the Media

the audience indicated that they relied on *RTL2* as a news source.[165] Nevertheless, even during the 2014 national election campaign the ratio of public-affairs news on the national commercial television channels' news shows dropped back to the 2008 level.[166] After the advertising tax was adopted, however – as was noted above – there was a surge in the public-affairs content of *RTL Klub*'s news show. Public broadcasters' news programming had always favored the party currently in ascendency,[167] but this trend became more pronounced after 2010. A qualitative analysis of 2011 news shows concluded that public-television news programming is "staunchly propagandistic, and also to a sometimes lesser, sometimes greater degree manipulative".[168]

Media organizations also manifest political parallelism. The most prominent example of organizational entanglement, long a feature of the Hungarian media market, is the newspaper with the highest circulation, *Népszabadság*, in which the Hungarian Socialist Party retained an ownership stake of 28% until 2015.[169] Governing parties have always been prone to use public funds to bolster the media-market prospects of outlets representing their world-view. In the second democratic term – when the Socialist Party was the ruling party in a coalition with the liberals – the government asserted itself in the media market through a partially state-owned bank with a substantial media portfolio.[170] The creation of "balance in the media" was the mantra of the first Fidesz-led cabinet, which governed between 1998 and 2002,[171] meaning in practice the active government

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Policy, available at <http://www.mertek.eu/en/reports/public-affairs-in-the-media-impact-of-the-media-policy>.

165 Navratil, Hírfogyasztás, pluralizmus, demokratikus részvétel.

166 Két választás Magyarországon 2014. Kampányidőszakok a legnagyobb elérésű hírforrásokban [Two elections in Hungary 2014. Campaign periods in the news sources with the widest audience reach], *Mérték Médiaelemző Műhely / Publicus Research*, 25 November 2014, available at <http://www.mertek.eu/jelentesek/ket-valasztas-magyarorszagon-kampany idoszakok-a-legnagyobb-eleresu-hirforrasokban>.

167 As compared to the conditions prevailing in 2008, the most striking difference in 2011 was – in terms of a purely statistical comparison – that the presence of the largest opposition party (MSZP) on public-television news dropped to half the previous level. Közéleti tartalom az új médiatörvény előtt és után.

168 Ibid.

169 In 2014, to facilitate a merger between the Hungarian subsidiaries of Ringier and Axel Springer, Ringier sold its share to the Austrian firm Vienna Capital Partners after protracted legal proceedings. Vienna Capital Partners bought the ownership stake of the Hungarian Socialist Party in 2015.

170 On the role of the Postabank in the media market see D. J. Minek, Sajtópiaci változások: Az osztó fizet [Press market changes: the dealer pays], *Magyar Narancs* 31, 8 August 1999, available at <http://magyarnarancs.hu/belpol/sajtopiaci_valtozasok_az_oszto_fizet-62055>.

171 The essence of the idea of a new "media balance" was that the "left-liberal" media, which had inherited strong business positions from the pre-1990 socialist era, "had not attained their favourable position as a result of market competition, and hence it was morally justifiable to use positive discrimination to promote the presence of right-wing views" in the media market.

support of right-wing periodicals, such as the substantial subsidies channeled through a public foundation for the pro-Fidesz weekly *Heti Válasz*.[172] Between 2002 and 2008, two companies associated with the then-governing Hungarian Socialist Party held stakes in the media market,[173] while among the right-wing media *Magyar Nemzet* was consolidated in 2000,[174] and *Hír TV* in 2003,[175] both with the intense involvement of enterprises with close ties to Fidesz. As previously pointed out, after 2010 the organizational entanglement and the politically motivated instrumentalization of media enterprises emerged as the most important instruments of media policy. The connection between political and economic interests is now realized in a new form, primarily by promoting the market expansion of government-friendly enterprises, and this development extends to all aspects of the media-market value chain.

Media selection, audience demands, and the defining features of the media market as a whole all display particularities that indicate high levels of political parallelism. Such a media system can of course produce content representing varied viewpoints,[176] but it does not and cannot emerge as a basis for public discussion about public affairs.

Professionalism in Journalism and Self-Censorship

A weak media market does not facilitate professionalism in journalism, but at the same time the journalists' own understanding of their role also contributes to the degree of entanglement between politics and media. The high level of political parallelism is inevitably tied to a certain self-understanding among journalists and other media professionals: taking sides politically is favoured

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See Vince Paál, A magyar média a polgári kormány időszakában 1998-2002 [The Hungarian media in the era of the centre-right government, 1998-2002], in: idem (ed.), A magyarországi médiaháború története. Média és politika 1989-2010 [A history of the media war in Hungary. Media and politics, 1989-2010]. Budapest 2014, 123-199, 125.

172 Bálint Mészáros, Heti Válasz: az alapítástól a magánkézbe adásig: Végkiárusítás [Heti Válasz: from foundation to privatization: clearance sale], *Magyar Narancs* 24, 10 June 2004, available at <http://magyarnarancs.hu/belpol/heti_valasz_az_alapitastol_a_magankezbe_adasig_vegkiarusitas-56414>.

173 On the role of the *Békés Projekt Ltd*. and *Geomédia Kiadó Zrt*., see Gergely Kitta, A magyar média történetének fordulatos évei, 2002-2010 [The eventful years in the history of Hungarian media, 2002-2010], in: Paál (ed.), A magyarországi médiaháború története, 199-291.

174 Pál Dániel Rényi, Egy a tábor, egy a lap. A Magyar Nemzet története 2 [United under one flag, united in one newspaper. The history of *Magyar Nemzet*, part 2], Magyar *Narancs* 41, 9 October 2014, available at <http://magyarnarancs.hu/belpol/egy-a-tabor-egy-a-lap-92060>.

175 Kitta, A magyar média történetének fordulatos évei.

176 According to Hallin and Mancini these media systems are characterized by external pluralism, unlike those media systems in which individual media present the given social and political issues from many perspectives, hence realizing what is called internal pluralism. Hallin / Mancini, Comparing Media Systems.

over striving for impartiality and objectivity, and opinion journalism, rather than investigative reportage, is the preferred mode. An analysis of news shows has revealed that the questions asked about political issues typically tend to contrast viewpoints rather than offer facts.[177] Symptomatic of what has been called "clan journalism", these tendencies sustain political and social divisions.[178]

Hallin and Mancini believe that professional autonomy is the most fundamental ingredient of professionalization. Another study examined journalistic autonomy based on five factors.[179] This classification suggests that journalists have the widest professional latitude in selecting their sources of information, followed by choosing whom they want to comment on a given issue, the way they process and present the issue, and their choice of topic. Journalists feel that they are given the least latitude to comment on events. In a survey accompanying the study, fifty-six percent of responding journalists believed they possessed substantial autonomy in all the aforementioned aspects of their work,[180] while the percentage of those who believed they were given very narrow latitude was 8%.[181] According to a 2013 study, however, journalists feel that economic and political pressure conveyed by editors and the management is far stronger than pressure exerted by political players or advertisers.[182] In other words, journalists have no confidence that editorial decisions are exclusively the result of professional considerations – have been made, that is, within a framework of professional autonomy.

In the 2013 survey, half the journalists felt that political pressure was so immense that it limited the degree to which the principles of press freedom prevail in their work, while a mere 1% indicated that he or she felt no pressure at all. Every third journalist claimed that pressure from economic players alone was massive enough to constrain press freedom. Some 60% of journalists and 67% of editors stated that they had personally experienced political pressure in the year prior to the survey.[183]

One consequence of such pressure is self-censorship, which has regularly been a result of journalists' fears of actual or presumed negative repercussions. Correspondingly, even when the state has not reviewed their work, journalists tend to compile their pieces in compliance with actual or presumed expectations.[184]

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177 Közéleti tartalom az új médiatörvény előtt és után.

178 Péter Bajomi-Lázár, Média és politika [Media and politics]. Budapest 2010.

179 Mária Vásárhelyi, Foglalkozása: újságíró [Profession: journalist]. Budapest 2007.

180 These journalists gave all these factors at least a score of four on a five-point scale.

181 On a five-point scale, these journalists gave all these factors a score of less than three.

182 Navratil, A Mérték Médiaelemző Műhely sajtószabadság-indexe, 177.

183 Ibid. 174.

184 Róbert Takács, Sajtóirányítás és újságírói öncenzúra az 1980-as években [Press control and journalistic self-censorship in the 1980s], *Médiakutató* 2 (2005), 55-71, available at <http://www.mediakutato.hu/cikk/2005_01_tavasz/04_sajtoiranyitas>.

The previously cited 2013 survey revealed that in response to the question, "Have you in your professional work as a journalist ever concealed / distorted political or economic facts in the interest of avoiding some adverse consequences?", every third journalist responded yes. Self-censorship most frequently manifests itself in journalists' refusing to report on a particular topic, neglecting to ask certain experts to comment on the issues they're covering, and either avoiding the use of certain words or overusing them.[185]

The real safeguard against susceptibility to pressure, namely journalistic autonomy and independence, is not based on legal provisions originating outside the media organization, but stems instead from the adherence to certain professional and ethical norms.[186] For Hallin and Mancini, clearly delineated professional norms, or the absence thereof, is a crucial element in evaluating journalistic professionalization. Asked about the importance of codes of ethics to press freedom in the work of editorial offices (rating on a scale of 1-100), Hungarian journalists gave an average score of 69; they gave a score of 60 to the role of self-regulation vis-à-vis press freedom.[187] There are some examples of media industry self-regulation in the Hungarian system, be it through co-operation among editorial offices, for example through regular meetings of editors-in-chief, or via the internal professional and ethics regulations instituted by individual editorial offices.[188] Yet no overarching professional norms have emerged from this patchwork of fragmented initiatives, and hence there is no accepted standard for the community of journalists, or indeed the entirety of the media market, to follow in professional practice:

> "In addition to the impotence of professional associations of journalists and the internal problems they face, and the extreme degree of internal division in the profession – so aptly illustrated by the growing number of associations – neither professional nor media market factors have had a motivating effect on the creation of a self-regulation scheme."[189]

The Media Act established a co-regulation system as an alternative to official control. With the exception of television and radio, the law made it possible for media-market operators to implement regulations on content within a framework of self-regulatory bodies with certain exclusive legal powers. According to

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[185] Navratil, A Mérték Médiaelemző Műhely sajtószabadság-indexe, 185.

[186] Jostein Gripsrud, Médiakultúra, médiatársadalom [Media culture, media society]. Budapest 2007.

[187] Navratil, A Mérték Médiaelemző Műhely sajtószabadság-indexe, 167.

[188] The Hungarian Publishers Association, the Association of Hungarian Content Providers, the Association of Hungarian Electronic Broadcasters, and the Advertising Self-Regulatory Board.

[189] Tamás Tófalvy, Média a törvényen túl? Önszabályozás a magyar írott médiában: előzmények, kontextus, lehetőségek [Media beyond the law? Self-regulation in the Hungarian print press: antecedents, context, opportunities], *Médiakutató* 4 (2013), 85-95, 92, available at <http://www.mediakutato.hu/cikk/2013_04_tel/06_media_onszabalyozas.pdf>.

the law, the Media Council negotiated an administrative agreement with these self-regulatory bodies, and this agreement will also contain a code of conduct. The official scope of the self-regulatory bodies extends to the assessment of complaints concerning the activities of service providers, the settlement of disputes between media enterprises, and the supervision of the operation of service providers. The system does not achieve genuine self-regulation; it functions more as an outsourcing of official administrative tasks. The Media Council is obliged to review all decisions made by the self-regulatory bodies. The authority also acts as a forum for legal recourse: if any party appeals a given decision, the Media Council is obliged to review it within thirty days. A significant concern relating to impartiality is that the Media Council has financially supported the co-regulatory bodies. The amount of support or the rules to establish it are not regulated by the Media Act; however, the amount is published in agreements made with the self-regulatory bodies.

Soft Censorship and the Role of the State

The role of the state in shaping the media system is a distinct criterion of Hallin and Mancini's model. In the Hungarian case, the state, as both a regulator and a sponsor, plays a proactive role in this regard. Theoretically, this sort of active intervention seems compatible with European constitutional traditions, which deems state involvement in the shaping of media systems to be necessary for citizens to form informed opinions based on diverse sources of information.[190] As the European Court of Human Rights has concluded, a guarantee of pluralism is one of the preconditions for the properly democratic functioning of the media, and "the ultimate guarantor [of pluralism] is the state".[191] Yet this guarantor role can lead to the creation of a democratic public sphere only if the state itself operates democratically.

In assessing the state's role, it is important to consider the scope, severity, and efficacy of its legal regulations. In the case of Hungary, the role of regulations poses a significant paradox: in the 2013 survey, 80% of journalists felt that Hungarian media regulations are too severe, but only half felt that these regulations genuinely affect their work.[192] Informal factors influencing the work of journalists often override legal rules, which are not enforced consistently enough to exert a clear and unequivocal impact on journalistic activities.

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[190] For a review of the European constitutional courts' case law see Claudia Roider, Perspektiven einer europäischen Rundfunkordnung. Eine Untersuchung der gemeinschaftsrechtlichen Direktiven unter besonderer Berücksichtigung des Pluralismusgebots. Berlin 2001.

[191] Judgment of the European Court of Human Rights in the Case of Informationsverein Lentia and Others v. Austria, 24 November 1993, Paragraph 38.

[192] Navratil, A Mérték Médiaelemző Műhely sajtószabadság-indexe, 181.

Resources managed by the state – primarily the terrestrial broadcasting frequencies distributed by the state and supported by state advertising – play at least as substantial a role as legal regulations in shaping the Hungarian media system. As we have seen, the distribution of state advertising over the past four years has essentially resulted in the system's wholesale transformation.

Providing public-service broadcasting, and sustaining the relevant institutions to maintain it, fall within the state's sphere of responsibility. The way the public-service media operate is an important reflection of the prevailing political culture; only if it is making a genuine effort towards full democracy can political culture initiate and fund operations of content-provision services that are free from political influence, despite being practically owned by the government and operating with public funds. In themselves, legal guarantees and structural arrangements cannot ensure this expression of democracy. As I have demonstrated, the media legislation of 2010 dispensed with the legal safeguards for the media in precisely in this area.

Media policy interventions that substantially increase the chance that certain viewpoints will reach audiences and others will not, either by restructuring the media market or manipulating the distribution of its resources, fall into the category of "soft censorship" or indirect censorship.[193] These interventions cause long-lasting distortions in the operation of the public sphere. According to Don Podesta's definition, soft or indirect censorship

> "can be defined as the practice of influencing news coverage by applying financial pressure on media companies that are deemed critical of a government or its policies and rewarding media outlets and individual journalists who are seen as friendly to the government".[194]

Typical forms of such influence are the targeted placement of state (or municipal) advertisements (without consideration of market performance), pressure on commercial advertisers with the intent of achieving a targeted placement of advertisements, or direct payments made to journalists.[195]

In recent years, the Hungarian state has stimulated shifts in the media market through means that can be called soft censorship. Such measures have failed to reinvest the resources taken from the media and communications market into the promotion of a pluralistic media system. This diversion of resources has had a detrimental effect on the performance of the entire communication system, affecting the willingness and ability to realize public media policy objectives. On

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[193] WAN-Ifra / Mérték Media Monitor, Capturing Them Softly; Gasping for Air – Soft Censorship in Hungarian Media 2014.

[194] Don Podesta, Soft Censorship. How Governments Around the Globe Use Money to Manipulate the Media. Washington/DC 2009, available at <http://www.cima.ned.org/resource/soft-censorship-how-governments-around-the-globe-use-money-to-manipulate-the-media/>.

[195] Ibid.

account of their magnitude, the funds diverted can directly influence decisions regarding media content, or even the ability of individual media-market players to function. The measures employed have increased the political and economic vulnerability of individual players in the media system, and has made it more likely that editorial compromises are made in the interest of securing available resources. Last but not least, state actions have been unpredictable and unreliable, even overriding business plans in the midst of being implementation. In toto, the state's media policy has often been discriminatory, affecting certain market players much more severely than others, which ultimately indicates intentions to restructure the media market based on objectives that have little in common with the public interest.

Revealed Policy Goals: An Anti-Pluralistic Vision

Hungary's media policy can only be understood in its broader context. The media re-transformation meshes perfectly with other measures concerning social diversity. Fidesz's media policies are part of a general program that seeks to reshape all sectors and institutions that influence the range of information and opinions available in the public sphere. Control of the public sphere involves a whole range of issues: from new regulation of the education system and the churches all the way to the transformation of the state's relations with the country's NGOs. The state's aims are geared towards a single goal: to boost certain opinions in various public arenas and to significantly impair the chances that certain other opinions will reach the public. In sum, a coherent but consistently anti-pluralistic vision of society has emerged. The role of the public sphere in this vision is not to foster dialogue between society and the government, but merely to provide a forum for the government to present itself to society. Consequently, the media has been designed to become nothing but an instrument of state presentation.

Another important element to consider is the ongoing transformation of the education system, particularly the takeover of the vast majority of schools by the central government under the control of a single centralized institution.[196] The nationalization of the educational textbook market has practically abolished free choice in selecting textbooks for schools.[197] The autonomy of institutions of

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[196] Government decree 202/2012. (VII. 27.) on the Klebelsberg Institution Maintenance Centre, available at <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200202.KOR>; Anita Neizer, Államosítás után: csak a kréta el ne fogyjon [Post-nationalisation: let us hope the chalk does not run out], *HVG.hu*, 14 January 2013, available at <http://hvg.hu/itthon/20130114_iskola_atvetel_tapasztalatok>.

[197] Law CCXXXII of 2013 on the Supply of Textbooks in the National Public Education, available at <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300232.TV>; Ilda G. Tóth,

higher education has been curtailed by a constant reduction of available funds and the appearance of government-appointed chancellors, which put an end to the independent financial management of higher education institutions.[198] As for religious freedom, Parliament has claimed the power to decide which religious organizations will be recognized as churches by the state.[199] The official appointed to head the new organization that disburses state subsidies for civil organizations is one of the principal organizers of regular pro-government demonstrations – the so-called Peace Marches – and a significant portion of these funds flow to organizations close to Fidesz.[200] At the same time, the government uses the police and its tax authority to pressure the largest independent human rights organizations, which has elicited sharp international criticism.[201]

An important instrument of efforts to directly limit the political public sphere is the so-called disciplinary and security authority recently given to the Speaker of Parliament,[202] which the current speaker, László Kövér, uses to massively interfere with the opposition's rights of expression.[203] The introduction of major

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Bedarált tankönyvpiac [The consolidation of the textbook market], *HVG.hu*, 11 May 2014, available at <http://hvg.hu/itthon/201419_a_tankonyvpiac_bedaralasa_nem_kozepiskolas_>.

198 Law CCIV of 2011 on National Higher Education, available at <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100204.TV>.

199 Law CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities, available at <http://net.jogtar.hu/jr/gen/getdoc2.cgi?docid=A1100206.TV>. According to the European Court of Human Rights, this regulation constitutes a disproportional limitation on the rights of association and the free exercise of religion of those communities that have been deprived of their status as a recognized church. See European Court of Human Rights, Case of Magyar Keresztény Mennonita Egyház and Others vs. Hungary, Judgment, 8 April 2014, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-142196#{%22itemid%22:[%22001-142196%22]}>.

200 On the *Nemzeti Együttműködési Alap* [Fund of national cooperation], see Law CLXXV of 2011 on the Freedom of Association, on Public-Benefit Status, and on the Activities of and Support for Civil Society Organizations, available at <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100175.TV>. Cf. Illés Szurovecz, A Fidesz barátai kapják a civil pénzeket [Fidesz's friends get the NGO money], *Abcug.hu*, 18 November 2011, available at <http://abcug.hu/fideszes-bizniszekbe-toljak-civil-penzeket/>.

201 Hogyan él vissza a KEHI a hivatali hatalmával? [How does the government control office abuse its official powers?], *Norvég Civil Támogatási Alap*, available at <https://norvegcivilalap.hu/sites/default/files/dokumentumok/hogyan_el_vissza_a_kehi_a_hatalmaval.pdf>.

202 Law XXXVI of 2012 on the Hungarian Parliament, Sections 45-54, available at <http://www.njt.hu/cgi_bin/njt_doc.cgi?docid=148174>.

203 In several cases the speaker employed sanctions because opposition MPs held up placards criticizing various decisions by the government. In two judgments, the European Court of Human Rights held that these sanctions constituted a disproportionate restriction of the MPs' right of free expression. See European Court of Human Rights, Case of Szél and Others v. Hungary, Judgment, 16 September 2014, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-146385#{%22itemid%22:[%22001-146385%22]}>; and European Court of Human Rights, Case of Karácsony and Others v. Hungary, Judgement, 16 September 2014, available at <http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCUQFjAA&url=http%3A%2F%2Fhudoc.echr.coe.int%2Fwebservices%2Fcontent%2Fp

bills by individual MPs rather than the government has made it possible to eliminate otherwise mandatory social consultations, and has thereby significantly limited the possibilities of professional and social control for those not favored by the government. The new regulation of election campaigns also serves to limit the public sphere.[204] Through the regulation of election procedures, the governing party restricted the campaign to media platform where either there was a full Fidesz hegemony (outdoor advertisements) or there was only limited potential for reaching voters (print and online media). The commercial television channels were not involved in the campaign because they were unwilling to broadcast political advertisements for free.[205] According to the current regulations, the price of political advertisements should be published in advance, but these regulations fail to establish similar requirements for spaces to display outdoor campaign posters sold by companies within the business empire of Lajos Simicska, who at the time of the election campaign in 2014 was still seen as a "reliable" oligarch and acted in line with this assessment. As a result of all this, there was no real campaign to speak of.

To conclude: since its second takeover by the Fidesz party, Hungary's government has reshaped the media and hence the public sphere in ways that go far beyond what had been deemed possible within the framework of the European Union. Thus far, European decision-makers have failed to draw appropriate conclusions from this development.

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[204] Law XXXVI of 2013 on Electoral Procedures, available at <http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300036.TV>.

[205] According to Article IX of the Fundamental Law of Hungary, political advertisements may be published in the media during an election campaign for free.