



# EVALUATION OF THE FREEDOM ON THE NET 2023 REPORT

**National Media and Infocommunications Authority**

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## Foreword

- The National Media and Infocommunications Authority (NMHH) considers it its duty to continuously monitor the various reports on the developments in the media and communications market and the state of media freedom in Hungary, with the aim of providing constructive comments to assist in the factual and professional evaluation of the issues under review. In this spirit, we have prepared our [analysis](#) entitled *Evaluation of the Media Freedom Reports*, published on 27 July 2023, in which we examined the methodology and content of the reports published by international media freedom organisations since the establishment of the NMHH.
- In this document, we review the findings, methodology and conclusions of Freedom House’s annual thematic report on internet freedom, *Freedom on the Net 2023*, which, in addition to the above-mentioned terms of reference, is justified by the prominent and growing role of online communication in the public sphere.

## Executive summary

- As part of the Freedom on the Net project, **Freedom House publishes a global report and country reports with scoring** on internet freedom.
- **The focus of this year’s global report was on artificial intelligence (AI)**, which, according to the paper, could further increase the level of repression in the online space by making censorship more sophisticated and effective, as well as producing large amounts of fake news. **According to the report, the global level of internet freedom has continued to deteriorate this year**, with China receiving the lowest score and Iceland the highest.
- **The methodology for the country reports has remained unchanged this year**, with three areas – obstacles to access, limits on content and violations of user rights – still being examined. Scores in each area are added together, resulting in a score for each country of between 0 and 100. Based on the scores, the report classifies the states into one of three categories: free, partly free, not free.
  - **Freedom House invites at least one expert or organisation per country to score and draft the report**, who submits a draft report to the organisation. The results are subsequently verified in regional meetings and then by the Freedom House staff.
- **Hungary’s overall score is the same as last year, having once again scored 69 points, which means that it remained in partly free category.** However, the composition of the score has changed, as Hungary has lost one point in the area of the indicator on obstacles to access and gained one point in the area of the indicator on violation of user rights.
- **In view of the growing importance of online publicity, the NMHH welcomes the fact that Freedom House has published a separate report on internet freedom**, which aims to provide a comprehensive overview of the issue. In addition to its critical remarks – the factual errors of which are dealt with in the relevant subsection – **the report makes some positive observations** in relation to the state of internet freedom in Hungary, such as access to the internet, enforcement of net neutrality rules or possibility to enter the telecommunications market. In addition, **there are a number of observations which can be considered factual in themselves, but which should be read in conjunction with other facts and considerations.**
- **The report’s methodology continues to suffer from the shortcomings** identified in our previous analysis, the *Evaluation of the Media Freedom Reports*.

- **This time, too, the report on Hungary is based on the assessment of a single person, and the sources include articles from media and organisations that are typically one-sidedly critical.** The sources used **are sometimes outdated**, for example, the report refers to a document published in 2007 on the access of certain social groups to the internet. In addition, as in previous years, the report misleadingly interprets a study based on a questionable methodology in relation to the diversity of the online media market.
- Furthermore, **this year's document also contains several factual errors and unsupported subjective claims.**
  - The former category includes, for example, that according to the report, the Media Council is also responsible for allocating television frequencies, while according to the legislation, the licensing procedure for frequency allocation is only carried out for linear radio media services using limited resources.
  - The latter is exemplified in the report, when it uncritically quotes the Council of Europe's Human Rights Commissioner's unsubstantiated subjective opinion that media pluralism and freedom of expression have been eroded in Hungary, for which the media authority is partly to blame.

## 1. Overview of the global report

- **Global internet freedom has continued to show a downward trend this year**, with more countries lowering their score than improving it, **according to Freedom on the Net.**<sup>1</sup>
  - **China scored the lowest again this year**, but Iran and Myanmar have also seen a sharp decline in internet freedom, according to the report. Elections have also been behind the decline in several countries, such as Turkey and the Philippines, where the report found that governments have introduced repressive regulations restricting freedom of expression.<sup>2</sup>
  - In contrast, **Iceland**, closely followed by Estonia, **scored the highest** for the fifth year in a row. In addition, several countries, such as Argentina, have made progress: here, the highest court reinforced the right of access to information when it rejected a celebrity's attempt to remove links to news articles about her connection to a corruption scandal from Google search results in the country.<sup>3</sup>
- According to the report, **attacks on freedom of expression grew more common.** In 55 of the 70 countries covered by the report, people faced legal repercussions for expressing themselves online, while people were physically assaulted or killed for their online commentary in 41 countries. **The most egregious cases occurred in Myanmar and Iran**, where death sentences were carried out for online comments.<sup>4</sup>
- **The Global Report 2023 focuses on AI** and its impact on the online space.
  - The organisation has already found evidence in at least 47 states that governments are using opinion leaders to influence the dialogue in the online space. According to the paper, **the much greater availability of generative AI tools is expected to further increase the amount of fake news in the online space**, which could make it easier for states to influence the information available online. Freedom on the Net cites Venezuela, among others, as an example, where in early 2023, the state media outlets used social media to distribute videos produced by Synthesia AI model that depicted

<sup>1</sup> Freedom House: Freedom on the Net 2023 – The Repressive Power of Artificial Intelligence. Freedomhouse.org. [\[LINK\]](#)

<sup>2</sup> Freedom House: Freedom on the Net 2023 – The Repressive Power of Artificial Intelligence. Freedomhouse.org. pp. 1–2 [\[LINK\]](#)

<sup>3</sup> Freedom House: Freedom on the Net 2023 – The Repressive Power of Artificial Intelligence. Freedomhouse.org. p. 6 [\[LINK\]](#)

<sup>4</sup> Freedom House: Freedom on the Net 2023 – The Repressive Power of Artificial Intelligence. Freedomhouse.org. p. 1 [\[LINK\]](#)

“news anchors” from a non-existent international English-language channel spreading progovernment messages. The report says such processes could undermine public confidence in the democratic process.<sup>5</sup>

- In addition, at least 21 governments, such as India, have legal incentives for digital platforms to use AI and machine learning to remove unwanted content. In most countries, AI is used to make content inaccessible that is illegal under local law. A problem is that in many countries certain political or religious topics may be considered illegal, so AI may be used to suppress discussion of such sensitive but socially important issues. **The report suggests that censorship will become even more widespread and sophisticated as AI tools proliferate.**<sup>6</sup>
- The report considers it important that **states legislate to regulate AI as soon as possible**, as self-regulation by companies is unlikely to be sufficient. It is essential that this is transparent, that there is effective public oversight and that fundamental rights are upheld. In order to set the right standards, the report argues that it is essential to involve members of civil society in the legislative process.<sup>7</sup>

## 2. Overview of the report on Hungary

### 2.1. Methodology of the report

- According to the methodology,<sup>8</sup> **the report aims to assess the extent of internet freedom in the 70 countries surveyed.** This year, the project again produced country reports with scoring, which, like the global report, covered the period from June 2022 to May 2023.
- According to the methodology, the report’s values are based on international human rights standards, in particular freedom of opinion and expression, as set out in Article 19 of the *Universal Declaration of Human Rights*. In particular, the project focuses on the free flow of information, the protection of freedom of expression, access to information, privacy and data protection, and the potential legal and extra-legal consequences of online activities.
- **The Freedom on the Net methodology description explains that it seeks to assess the actual enjoyment of rights and freedoms by individuals.** Accordingly, it is stated that the report seeks to assess the activities of non-state actors, including major tech companies, in addition to those of states.
- This year, the report again assesses **three main areas: the obstacles to access, limits on content and the violations of user rights.**
  - The **obstacles to access** indicator, with a maximum score of 25, focuses on the potential economic, legal and political barriers to accessing the internet.
  - The **limits on content** category focuses on the legal regulation of content on the internet and other means of censorship, such as technological ones. The maximum number of points in this area is 35.
  - A maximum of 40 points is available in the **violations of user rights** area. The indicator looks at legal guarantees and barriers to freedom of expression, data security and surveillance, and the legal and extra-legal consequences of online activity.
- **The scoring and the text of the country report is prepared by at least one analyst or organisation,** who submits a draft report, which is reviewed in two rounds: first, regional expert meetings are held to critique drafts and adjust scores. Then, the Freedom House staff will carry out fact-checking and editing,

<sup>5</sup> Freedom House: Freedom on the Net 2023 – The Repressive Power of Artificial Intelligence. Freedomhouse.org. pp. 8–11 [\[LINK\]](#)

<sup>6</sup> Freedom House: Freedom on the Net 2023 – The Repressive Power of Artificial Intelligence. Freedomhouse.org. pp. 14–15 [\[LINK\]](#)

<sup>7</sup> Freedom House: Freedom on the Net 2023 – The Repressive Power of Artificial Intelligence. Freedomhouse.org. pp. 19–22 [\[LINK\]](#)

<sup>8</sup> Freedom House: Freedom on the Net Research Methodology. [\[LINK\]](#)

during which they will also check the scores given to each country. The organisation’s staff also identifies global experiences and emerging trends for the year based on a qualitative assessment of each country.

- **The Freedom on the Net project requires the author of the country report to complete a questionnaire consisting of 21 main questions** (five related to obstacles to access, eight related to limits on content and violations of user rights, respectively) and nearly 100 sub-questions. Each question has a fixed maximum score. Sub-questions are intended for the guidance of the respondent and are not scored independently. The scores in each area are added together to give a score of between 0 and 100 points for internet freedom in each country. **Countries are then divided into three categories: not free for scores between 0 and 39, partly free for scores between 40 and 69, and free for scores between 70 and 100.**

## 2.2. Results of Hungary in previous reports

- **Hungary has been under scrutiny in the Freedom on the Net reports since 2012.** The scoring of the reports has changed since 2018: while before, a score of 100 was the most unfavourable score, from 2018 onwards a score of 100 is the most favourable score for a given state.<sup>9</sup>
- It can be seen that **Hungary’s rating has been on a downward trend since 2012**, with stagnation in 2018 and a temporary improvement in 2019. As a consequence, in 2022, Hungary was moved to the **partly free** classification.

| 2012 | 2013 | 2014 | 2015 |
|------|------|------|------|
| 19   | 23   | 24   | 24   |
| free | free | free | free |

*Hungary’s Freedom on the Net scores between 2012 and 2015. 0 points is the best possible result. (Source: Freedom House)<sup>10</sup>*

| 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022        | 2023        |
|------|------|------|------|------|------|-------------|-------------|
| 73   | 71   | 71   | 72   | 71   | 70   | 69          | 69          |
| free | free | free | free | free | free | partly free | partly free |

*Hungary’s Freedom on the Net scores between 2016 and 2023. 100 points is the best possible result. (Source: Freedom House)<sup>11</sup>*

## 2.3. Results of Hungary in the 2023 report

- **Once again, Hungary scored 69** out of a maximum of 100 points, as it did in 2022, **so it remains in the partly free category.**<sup>12</sup> The individual indicators have changed as follows:
  - **In the area of obstacles to access, Hungary scored 21 out of a maximum of 25 points.** This represents a one-point loss compared to last year’s score, but as in previous years, it is still the area with the most favourable score proportionally.
  - In the area of **limits on content**, Hungary scored **a total of 24 out of a maximum of 35 points**, unchanged for this year.
  - Hungary again this year scored the lowest score in the **area of violations of user rights proportionally**, despite improving its score by one point to **24 out of a maximum of 40.**

<sup>9</sup> The 2016, 2017 and 2018 reports were, therefore, originally produced according to the old methodology (0–30 points: free, 31–60 points: partly free, 61–100 points: not free), but their results have been recalculated and made available according to the new calculation introduced in 2018 (70–100 points: free, 40–69 points: partly free, 0–39 points: not free). This allows the data to be plotted with the same scoring between 2016 and 2022, as we have done in this analysis. Freedom House: Freedom on the Net. Research Methodology. [\[LINK\]](#)

<sup>10</sup> Freedom House Freedom on the Net reports between 2012 and 2015. [\[LINK\]](#)

<sup>11</sup> Freedom House Freedom on the Net reports between 2016 and 2022. [\[LINK\]](#)

<sup>12</sup> Freedom House: Freedom on the Net 2023. 2023 – Hungary. [Freedomhouse.org \[LINK\]](#)

### 3. Evaluation of the report on Hungary

#### 3.1. Evaluation of the report's methodology

- **The NMHH welcomes the fact that Freedom House is addressing the issue of internet freedom in a separate report**, as the increasing shift of the public into the online space is a defining process of the 21st century.
  - The report aims to provide a comprehensive overview of the issues raised by internet freedom, from access to the internet, to content restrictions and to the enforcement of users' rights.
- Compared with previous years' reports, **the 2023 edition of Freedom on the Net is less inclined to include issues not closely related to the subject of analysis.**
- However, **the criticisms highlighted in our previous analysis** of media freedom reports can be reiterated with regard to **the methodology of this year's report on Hungary.**
  - The **report on Hungary** is again based on the assessment of **only one person**, a staff member of the NGO Hungarian Civil Liberties Union (with its Hungarian acronym: TASZ), who has been named by Freedom House as the author of the document several times in recent years.<sup>13</sup> No detailed or meaningful information on the method of selection of experts was provided this year either.
  - Sometimes the **report recalls events that happened years ago**, despite the fact that the period under review falls between June 2022 and May 2023: for example, in the context of online media diversity, it recalls the temporary closure of the daily Magyar Nemzet in 2018.
  - **In some cases, the sources cited are outdated, for example, the report refers to a document published in 2007 on the access of certain social groups to the internet.** In addition, the references sometimes point to articles that are no longer available.<sup>14</sup> Furthermore, sometimes the report tries to support its claims by referring to legislation that is no longer in force.<sup>15</sup> **This is linked to the fact that the text of the document has not been updated in several places, literally repeating the evaluation of previous years**, which is a questionable practice for a report covering a specific (annual) period.
  - **The sources continue to include a larger number of sites and organisations that are one-sidedly critical of the Hungarian media situation**, such as 444.hu, szabadeuropa.hu or media1.hu, Mérték Média Monitor, and the Hungarian Civil Liberties Union, led by the author. The contributors of the report did not seek to include in their assessment views and approaches different from those of these platforms.
  - **As in previous years, the report misleadingly interprets a study based on a questionable methodology** in relation to the diversity of the online media market. As we presented in our July 2023 analysis entitled *Evaluation of the Media Freedom Reports*, the Freedom on the Net reports make recurring reference to a 2019 analysis by Mérték Media Monitor (Mérték Médiaelemző Műhely). The organisation also used the same source for this year's assessment, citing it to claim that 41.3 percent of the Hungarian online media market is under pro-government control. Meanwhile, the analysis only took into account the annual revenue of the four leading sites and, within that, the share of revenue of the origo.hu news site.<sup>16</sup> The report does not provide any information on the methodological limitations and misleadingly projects the results of the research to the entire

<sup>13</sup> Áprilistól három igazgató vezeti a TASZ-t. Társaság a Szabadságjogokért. 6 April 2023 [\[LINK\]](#)

<sup>14</sup> Freedom House: Freedom on the Net 2023 report, references No. 33, 59, 63, 105 [\[LINK\]](#)

<sup>15</sup> Footnote 13 of the Freedom on the Net 2023 report, which refers to Act CXIII of 2011, which was repealed on 31 October 2022. [\[LINK\]](#)

<sup>16</sup> Ágnes Urbán (2019): Mérték Media Monitor. Soft censorship 2018. Mérték Booklets. No. 18, pp. 51–57 [\[LINK\]](#)



Hungarian online media market.

- **The report continues to contain a number of subjective findings.** As we noted in our analysis in the *Evaluation of the Media Freedom Reports*, although Freedom on the Net reports strive to **present findings that are not factually supported not as their own assessment, but as the opinions of those quoted, the selection of these is usually biased.** In this year’s evaluation, a good example of this is when, in the context of the decriminalisation of defamation and libel for the purpose of free discussion of public affairs in the press or media, the report notes that *“the law was welcomed by experts, although they pointed out that the political intent behind the amendment may be to protect progovernment media commentators from criminal charges that are brought against them for coordinated smear campaigns of opposition figures.”*<sup>17</sup>
- It is important to note that the **degree of freedom of the online sphere today is at least as much, if not more, determined by the activities of non-state actors,** such as platforms owned by global corporations, **than by government or regulatory activities as examined in the country reports.** Freedom on the Net refers to this aspect in its methodological introduction, but **the country report does not seem to reflect it much,** as the questions and the accompanying **textual assessments focus mainly on the role of the state and regulation.**

### 3.2. Appreciative findings of the report on communications and media situation in Hungary

- In addition to its critical remarks – the factual errors of which are dealt with in subsection 3.4 – **the report makes some positive observations about the state of internet freedom in Hungary.**
- The report makes a number of factual claims about internet access opportunities in Hungary. The document states in its introduction that *“Hungary enjoys high levels of overall connectivity and relatively affordable internet access”*<sup>18</sup>. This is also supported by data from the European Commission’s *Digital Economy and Society Index*, also cited by Freedom on the Net, which shows that **97 percent of households in Hungary have access to the internet,** with an upward trend compared to 2021.
  - The report also points out that public wireless internet (Wi-Fi) hotspots are widely available in Budapest and other major cities.<sup>19</sup> **At the relevant question, the report reiterates that the cost of internet access is not prohibitive in Hungary.**<sup>20</sup>
- While **the report** is critical of the acquisition of Vodafone telecoms in the context of market concentration, **it concludes that there are no significant legal, regulatory or economic barriers to entry in the telecoms sector in Hungary.**<sup>21</sup>
- The document **draws attention to the NMHH’s work to enforce EU net neutrality rules,** referring to cases where the Authority has fined internet service providers for discriminatory practices in favour of specific services.<sup>22</sup>
- The report **recognises that the NMHH has fulfilled its responsibilities in the context of the decision of the Council of the European Union to suspend the distribution and transmission of content broadcast by certain Russian state-linked organisations.**<sup>23</sup>

<sup>17</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question C2 [\[LINK\]](#)

<sup>18</sup> Freedom House: Freedom on the Net 2023 – Hungary. Overview. [\[LINK\]](#)

<sup>19</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question A1 [\[LINK\]](#)

<sup>20</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question A2 [\[LINK\]](#)

<sup>21</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question A4 [\[LINK\]](#)

<sup>22</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question B6 [\[LINK\]](#)

<sup>23</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question B1 [\[LINK\]](#)

### 3.3. Factual findings of the report where additions can be made

- The document **contains a number of findings that are factual in themselves, but it is worth drawing attention to additional facts and considerations in order to assess the issue.**
- Freedom on the Net – based on the above-mentioned report of the European Commission – factually identifies that 5G coverage in 2021 was 18 percent in Hungary, which is below the EU average.<sup>24</sup> However, **Hungary has made a significant improvement in this area during 2022, as the European Commission’s latest report on the same subject shows that 5G coverage in Hungary has increased to 58 percent.** While this is still below the average coverage in the EU, the 40 percent increase is also considered a “*significant progress*” by the Commission’s document.<sup>25</sup>
- Referring to an outdated publication from sixteen years ago, the report **notes that internet access rates vary according to geographical and social conditions**, with a particular focus on rural areas, lower income groups and Roma, given that these social and ethnic groups typically have lower internet access.<sup>26</sup> In this context, it is worth noting that **one of the measures of the National Digitalisation Strategy mentioned in the report aims precisely at “supporting the social inclusion and integration of vulnerable social groups through digitalisation”.** In this context, the strategy also specifically mentions people living in extreme poverty, the Roma and elderly people living alone in rural areas.<sup>27</sup>
- According to the report, **the Media Council has on several occasions used the 2021 amendment to the Child Protection Act to request restrictions on the showing of “LGBT content” to minors on platforms outside its jurisdiction (such as Netflix).**<sup>28</sup> In this respect, it should be noted that in the cases mentioned in the report, the NMHH exercised the legal possibility provided by the EU Audiovisual Media Services Directive to approach the counterpart authorities in relation to the on-demand audio-visual media service in question.<sup>29</sup> It is noted that Act CLXXXV of 2010 on Media Services and Mass Media (hereinafter: Media Act) only allows the Media Council to take action in the case of programmes which “*have as their main element the promotion and representation of gender non-conformity, gender reassignment and homosexuality*”. In addition, it is important to note that according to Section 182(b) and (ba) of the Media Act, the Media Council is responsible for the official supervision of “*the provisions on the protection of children and minors*”. Accordingly, when the **Media Council** has acted to enforce the provisions adopted by the legislature in this context, it **has acted in fulfilment of its statutory duty.**
- Freedom on the Net **rightly draws attention to the reduced protection of the personality rights of public figures** and the related 1994 Constitutional Court decision<sup>30</sup>, in which the Constitutional Court stated that “*the scope of expression protected by the right to freedom of expression, which is not constitutionally punishable, is, however, wider in relation to the expression of opinions about persons exercising public authority and politicians in public office than in relation to other persons.*”<sup>31</sup> However, with regard to the current **Civil Code, the report merely mentions** that under the law the **exercise of**

<sup>24</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question A1 [\[LINK\]](#)

<sup>25</sup> European Commission: Digital Decade Country Report 2023 – Hungary. pp. 5–6 [\[LINK\]](#)

<sup>26</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question A2 [\[LINK\]](#)

<sup>27</sup> Nemzeti Digitalizációs Stratégia 2022–2030. p. 114. [\[LINK\]](#)

<sup>28</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question B3 [\[LINK\]](#)

<sup>29</sup> Directive 2010/13/EU of the European Parliament and of the Council. [\[LINK\]](#)

<sup>30</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question C2 [\[LINK\]](#).

<sup>31</sup> 36/1994 (VI. 24.) AB határozat. [\[LINK\]](#)

**fundamental rights** to freely discuss public affairs **may limit the protection of the personality rights of public figures without prejudice to human dignity**, and **does not emphasise the importance of codifying a general clause on the reduced protection of the personality of public figures as such**, whereas similar normative provisions in favour of freedom of expression are found in only a few European states.<sup>32</sup>

- This year’s Freedom House report, under the question on anonymous communication, reports that users are required to give their personal data when buying a SIM card in order to sign a contract with a mobile operator.<sup>33</sup> It is worth noting, however, that in order to protect public security, **it is not possible to buy a SIM card without this information in several EU countries, including Germany, Italy and France.**<sup>34</sup>

### 3.4. Factual errors and subjective findings

- **The report**, like the documents examined in our previous *Evaluation of the Media Freedom Reports*, **contains factual errors and subjective findings in several places**. These are summarised in the first column of the table below, and their evaluation is given in the second column.

| Statement in the report   | Evaluation   |
|---|--|
| <b>Category 1: Obstacles to Access</b>  |  |
| The report, referring to a report by the International Press Institute, once again <b>questions the transparent operation and independence of the NMHH.</b> <sup>35</sup> | As we wrote in our analysis entitled the <i>Evaluation of the Media Freedom Reports</i> published in July this year, the Media Act clearly states that <b>the NMHH is an independent regulatory body subject only to the law. The members of the Media Council are also subject only to the law and cannot be instructed in their activities.</b> <sup>36</sup> A two-thirds majority does indeed give the government a wider legislative power, but it does not follow that any non-governmental administrative body is under the political influence of the government. <sup>37</sup><br>Although the report criticises the transparency of the NMHH – which it fails to define more precisely –, <b>the Media Act precisely defines the operational framework, tasks and competences of the organisation.</b> <sup>38</sup><br>It should also be noted that more than 22,000 decisions of the NMHH are publicly available on its website. <sup>39</sup> |
| <b>Category 2: limits on content</b>  |  |
| The report mentions that, <b>at the request of the</b>  | <b>The report’s lack of timeliness is highlighted by</b>   |

<sup>32</sup> András Koltay: A Közéleti szereplők hírnév- és becsületvédelme Európában. Áttekintő vázlat. In: Quaerendo et Creando: Ünnepi kötet Tattay Levente 70. születésnapja alkalmából. Universitatis Catholicae de Petro Pázmány Nominatae Facultas Iuris et Scientiarum Politicarum – Xenia. Szent István Társulat, Budapest, pp. 329, 331. [\[LINK\]](#)

<sup>33</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question C4 [\[LINK\]](#)

<sup>34</sup> Privacy International: Timeline of SIM Card Registration Laws. 11 June 2019 [\[LINK\]](#)

<sup>35</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question A5 [\[LINK\]](#)

<sup>36</sup> Section 109(1) and 123(2) of the Media Act.

<sup>37</sup> NMHH: Evaluation of the Media Freedom Reports. Nmhh.hu. 27 July 2023. p. 49 [\[LINK\]](#)

<sup>38</sup> Section 132 and 182 of the Media Act.

<sup>39</sup> NMHH: Jogalkotás és jogalkalmazás. [\[LINK\]](#)

|  |   |
|--|---|
| <p><b>National Tax and Customs Administration of Hungary</b> (hereinafter: NTCA), <b>operators try to block unlicensed betting sites, but these sites often circumvent this restriction by changing the URL.</b><sup>40</sup></p>  | <p><b>the fact that</b>, according to the author, the NTCA is asking internet service providers to block unlicensed online betting sites. In fact, <b>since October 2021, it is the Supervisory Authority for Regulated Activities that has been supervising gambling, and can therefore take action against unlicensed online betting sites.</b><sup>41</sup></p>  |
| <p>The report says that <b>the restrictions on the internet are proportionate</b>, but that <b>there is a risk of illegal removal of content due to the vague wording of the legislation.</b> In this context, it criticises the fact that media content can be restricted in Hungary on the basis of the concept of public morality that is not defined by the legal system.<sup>42</sup></p> | <p>In contrast, as we pointed out in our analysis, the <i>Evaluation of the Media Freedom Reports</i>, <b>there is no possibility in Hungary to restrict press freedom on the grounds of the general principle of the protection of public morals, since the provision of Act CIV of 2010 on Freedom of the Press and the Fundamental Rules of Media Content (hereinafter: Press Freedom Act) referred to (Section 4(3)) is “a declarative rule that does not create any specific legal obligation, and therefore the Media Council has no power to supervise content that violates public morals”.</b> The protection of minors can be derived from public morality, but this is already contained in specific provisions (Section 9 of the Media Act, Section 19 of the Press Freedom Act). The Constitutional Court’s Decision 165/2011 (XII. 20.) AB also stated that “<i>as a result of the regulation, the principles contained in Section 4 of the Press Freedom Act cannot be the basis for official supervision</i>”.<sup>43</sup> In other words, in no case has the Media Council invoked a breach of public morality, nor could it have done so.</p> <p>We note that the <b>concept of public morality is not defined by legal systems or international legal sources</b>, but the European Convention on Human Rights, to which Hungary is a party, explicitly allows in its Article 10(2), for restrictions on freedom of expression in order to protect morals.<sup>44</sup></p> |
| <p>The document reports that <b>the Media Council can fine news portals up to HUF 25 million in certain cases</b>, while in case of repeated violations, the NMHH can remove them from its register, making it illegal for them to publish. The report also says that</p>  | <p>The Media Act does allow the Media Council and the NMHH to impose fines of up to HUF 25 million on online press products<sup>46</sup>, however, <b>the largest fine imposed on online press products so far has been only HUF 250,000</b>, which is only a fraction of the</p>   |

<sup>40</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question B1 [\[LINK\]](#)

<sup>41</sup> Supervisory Authority for Regulated Activities: Cracking down on illegal online gambling. [\[LINK\]](#)

<sup>42</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question B3 [\[LINK\]](#)

<sup>43</sup> Koltay, András (2019): A közérkölcés védelme. In: András Koltay: Magyar és európai médiajog. Wolters Kluwer Hungary, Budapest, p. 314, 165/2011 (XII. 20.) AB határozat. [\[LINK\]](#)

<sup>44</sup> Koltay, András (2019): A közérkölcés védelme. In: András Koltay: Magyar és európai médiajog. Wolters Kluwer Hungary, Budapest, p. 309, Article 10(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. See Act XXXI of 1993 on the proclamation of the Convention. [\[LINK\]](#)

<sup>46</sup> Section 187(4)(f) of the Media Act.

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| <p>the EU’s Audiovisual Media Services Directive allows <b>the NMHH to monitor video-sharing platforms like YouTube and Facebook</b>, which could face fines of up to HUF 100 million.<sup>45</sup></p>   | <p>amount mentioned in the report.</p> <p>Pursuant to Section 1(1a) of Act CVIII of 2001 on Electronic Commerce and Information Society Services (hereinafter: “E-commerce Act”), “<i>this Act shall apply to video-sharing platform providers established in the territory of Hungary</i>”. Pursuant to Section 15/C(1) of the E-commerce Act, the NMHH shall keep a public register of video-sharing platform services. A review of the database shows that it does not include either YouTube or Facebook. It is therefore important to clarify that as <b>these companies are not established in Hungary, the NMHH cannot take action against them.</b><sup>47</sup></p>   |
| <p><b>The report</b> refers to the creation of the Central European Press and Media Foundation (hereinafter: “KESMA”), in the context of which it <b>accuses the Media Council of politically motivated decision-making, claiming that the organisation prevented the merger of independent media, while contributing to the creation of KESMA.</b><sup>48</sup></p>          | <p>As opposed to this, as we noted in our analysis of the KESMA case in the <i>Evaluation of the Media Freedom Reports</i>, <b>the Media Council did not have the opportunity to investigate transaction.</b></p> <p>The case could not be investigated by the Hungarian Competition Authority either, since the Government, in its Decree 229/2018 (XII. 5.), classified the concentration as being of national strategic importance in the public interest.<sup>49</sup> As the Media Council has the possibility to examine concentrations in the media market in the context of the merger control procedure conducted by the Competition Authority, it can be concluded that the Media Council was not in a position to consider the intervention.<sup>50</sup></p> <p>We also note that the <b>Media Council’s practice on market concentration is criticised by reference to a document that does not contain any examples or justification.</b><sup>51</sup></p> |
| <p>According to the Freedom House document, <b>the information on the internet is heavily manipulated in favour of the ruling party</b> due to the takeover of online media by pro-government businessmen. Citing a 2019 study by Mérték Media Monitor, the organisation finds that 41.3 percent of the online media market is under pro-government control.<sup>52</sup></p> | <p>If we look at the cited study<sup>53</sup>, we can see that its authors examined <b>only four online news sites (24.hu, origo.hu, index.hu, 444.hu), which Freedom House misleadingly portrays as the entire online media market.</b> As we have already pointed out in the <i>Evaluation of the Media Freedom Reports</i>, the 41.3 percent share is actually the share of the revenue of origo.hu in 2018 in the total revenue of the four sites</p>  |

<sup>45</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question B3 [\[LINK\]](#)

<sup>47</sup> NMHH: Videómeosztóplatform-szolgáltatások. [\[LINK\]](#)

<sup>48</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question B6 [\[LINK\]](#)

<sup>49</sup> GVH: Továbbra sem vizsgálhatja a KESMA fúziót a GVH. 29 January 2020 [\[LINK\]](#)

<sup>50</sup> Section 171 of the Media Act; NMHH: Evaluation of the Media Freedom Reports. 27 July 2023, p. 58 [\[LINK\]](#)

<sup>51</sup> IPI: Conclusions to the joint international press freedom mission to Hungary. 3 December 2019 [\[LINK\]](#)

<sup>52</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question B5 [\[LINK\]](#)

<sup>53</sup> Ágnes Urbán et al.: “Centralised Media System – Soft Censorship in Hungary 2018,” Mérték Média Monitor, December 2019. pp. 55–57 [\[LINK\]](#)

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|  | under study. <sup>54</sup> Freedom on the Net misleadingly draws conclusions from this figure for the Hungarian online media market as a whole.   |
| According to the report, “ <i>The Media Council is the NMHH’s decision-making body in matters related to media outlets. Its responsibilities include allocating television and radio frequencies and penalizing violators of media regulations.</i> ” <sup>55</sup>  | As we have already noted in our analysis in the <i>Evaluation of the Media Freedom Reports</i> , contrary to Freedom House’s claim, the relevant provisions of the Media Act provide that the Media Council only authorises linear radio media services using limited resources by means of a tender procedure, otherwise only a notification is required. <sup>56</sup> Licensing procedures related to spectrum management are only relevant for radio media services, so the statement in the report concerning television frequencies is not correct. <sup>57</sup>   |
| <b>Category 3: violations of user rights</b>   |   |
| The report notes that <b>the Fundamental Law protects press freedom, but there is no separate piece of legislation that specifically does the same for the online space.</b> <sup>58</sup>   | The suggestion is incomprehensible. It goes without saying that freedom of the press extends to online media, just as freedom of expression protects speech on the internet. Numerous court decisions attest to this. Even <b>Decision 30/1992 (V. 26.) AB of the Constitutional Court stated that freedom of the press encompasses the freedom of all media.</b> <sup>59</sup>   |
| According to the report, <b>several pieces of legislation have the potential to penalise legitimate online dialogue</b> if misused. The report mentions the criminal offences of blasphemy of national symbols, use of symbols of totalitarianism, open denial of nazi crimes and communist crimes and incitement against a community. <sup>60</sup> | <b>With regard to the statutory elements of blasphemy of national symbols, the Constitutional Court</b> in its Decision 13/2000 (V. 12.) took a stand in favour of increased and special protection of national symbols, <b>stating that these statutory elements were constitutional</b> and that “ <i>national symbols had a force of preserving and maintaining the idea of sovereignty even in times of loss or limitation of independent statehood.</i> ” <sup>61</sup><br>The Constitutional Court also <b>confirmed the constitutionality of the open denial of nazi crimes and communist crimes</b> , stating “ <i>that the denial of the crimes of national socialist and communist regimes is an abuse of freedom of expression that seriously offends the dignity not only of the community of victims, but also of the citizens committed to democratic values</i> ”. <sup>62</sup><br>The statutory elements of the <b>use of symbols of</b> |

<sup>54</sup> NMHH: Evaluation of the Media Freedom Reports. 27 July 2023, p. 53–54 [\[LINK\]](#)

<sup>55</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question B6 [\[LINK\]](#)

<sup>56</sup> Section 41 of the Media Act

<sup>57</sup> NMHH: Evaluation of the Media Freedom Reports. 27 July 2023, p. 65 [\[LINK\]](#)

<sup>58</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question C1 [\[LINK\]](#)

<sup>59</sup> 30/1992. (V. 26.) AB határozat, paragraph 2.1 [\[LINK\]](#)

<sup>60</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question C2 [\[LINK\]](#)

<sup>61</sup> 13/2000. (V. 12) AB határozat, Section IV [\[LINK\]](#)

<sup>62</sup> 16/2013 (VI. 20.) AB határozat, paragraph [50] [\[LINK\]](#)

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|  | <p><b>totalitarianism</b> do not prohibit the use of totalitarian symbols in general, but <b>only acts against the use of these symbols in a way that disturbs public peace</b>, limiting their applicability and solving the constitutional problems that had arisen earlier.<sup>63</sup></p> <p><b>By criminalising incitement against a community, the legislator has met an EU requirement.</b> The Framework Decision 2008/913/JHA of the Council of the European Union requires Member States to criminalise incitement to hatred.<sup>64</sup></p> <p>It should be noted that the above offences are very rare in Hungary, but all of them are in line with both EU rules and the case law of the European Court of Human Rights.</p> |
| <p>The report notes that the regulation obliges <b>communications service providers to provide data to the authorities, but the process is not sufficiently transparent.</b><sup>65</sup></p>  | <p>Although the report does not define precisely to which provisions of Act C of 2003 on Electronic Communications (Electronic Communications Act) it refers to, <b>the legal provisions relating to the provision of data by electronic communications service providers clearly and transparently describe in which cases and in connection with which tasks the Authority may oblige the service provider to provide data.</b> A decision imposing such an obligation may be challenged by the provider by way of an action with suspensive effect.<sup>66</sup></p>   |
| <b>Subjective findings</b>   |   |
| <p>The report <b>covers the resignation of Monika Karas</b>, noting that <i>“Critics saw her change of position as a means to ensure that Fidesz was able to select her successor prior to the 2022 general elections.”</i><sup>67</sup></p>   | <p>This year’s Freedom House report also <b>presents speculations of a political nature</b> regarding the resignation of the former president of the NMHH, repeating word for word the relevant part of the 2022 assessment.<sup>68</sup></p>   |
| <p>According to the Freedom House report, <i>“The government and its allies sometimes employ court orders to pressure publishers and content hosts to delete content.”</i> It cites, among other examples, the cases of the weekly Magyar Narancs and Forbes from 2020, when courts ordered the removal of articles related to Hell Energy on the grounds that they violated the GDPR. They also present the cases of two well-known individuals: in one case, the data subject asked the hosting service providers of internet sites to</p> | <p>The text of the report refers to the pressure exerted by the <i>“government and its allies”</i> through the courts, <b>but in two of the examples cited, the removal of content deemed to be infringing was initiated with an intermediary (hosting) provider, and in the other cases, although court decisions were issued, the report gives the unsubstantiated impression that the courts did not act in accordance with the law.</b> The courts in Hungary represent a separate branch of power independent of the government, and</p>   |

<sup>63</sup> András Koltay: A gyűlöletbeszéd tilalma és a társadalmi közösségek védelme a gyűlölködéssel szemben. In: András Koltay: Magyar és európai médiajog. Wolters Kluwer Hungary. Budapest, pp. 268–269

<sup>64</sup> Article 1(1) of Council Framework Decision 2008/913/JHA. [\[LINK\]](#)

<sup>65</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question C6 [\[LINK\]](#)

<sup>66</sup> Act C of 2003 on Electronic Communications (Electronic Communications Act), Section 47

<sup>67</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question A5 [\[LINK\]](#)

<sup>68</sup> NMHH: Evaluation of the Media Freedom Reports. 27 July 2023. p. 71 [\[LINK\]](#)

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| <p>remove content that was deemed to be infringing, and in the other, the Curia ruled that the content in question infringed personality rights. Finally, the report mentions that in 2022 Facebook removed 17 pieces of content at the request of the National Food Chain Safety Office.<sup>69</sup></p> | <p>according to Act CLXI of 2011 on the Organisation and Administration of the Courts (Court Organisation Act), <b>judges</b> and lay judges are independent, <b>make decisions in accordance with their convictions under the law, and cannot be influenced or instructed</b> in the context of their judicial activities.<sup>70</sup> <b>In light of this, the Freedom on the Net finding can be considered a subjective statement.</b></p>                          |
| <p>The report quotes the Council of Europe’s Commissioner for Human Rights as saying that, among other things, <b>“the politically controlled media regulatory authority”</b> has eroded media pluralism and freedom of expression in Hungary.<sup>71</sup></p>  | <p>The questioning of the independence of the NMHH has already been dealt with in the section on factual errors. It is worth mentioning, however, in the scope of subjective findings that Freedom on the Net <b>uncritically quotes the Council of Europe’s Commissioner for Human Rights’ unsupported opinion</b> that media pluralism and freedom of expression have been eroded in Hungary and that, among others, the media authority is responsible for this.</p> |

#### 4. Conclusions

- **The NMHH welcomes the fact that Freedom House has published a separate report on internet freedom** and its various aspects, given the distinct importance of the online sphere. **As a national regulatory authority** in this field, **we consider it particularly important that each country’s assessment** of this issue **should be based on a balanced peer review that respects the facts, which is why we have decided to share our comments** on Freedom on the Net 2023 report.
- **Freedom on the Net contains some positive findings about Hungary.** These include comments on internet access, the enforcement of net neutrality and the possibility to enter the telecommunications market. **In some cases, the report makes statements that are factual in themselves, but for which we felt it necessary to provide the necessary context and additional comments** to help the assessment. Examples include the reduced protection of personality rights of public figures, the extent of 5G coverage or the reporting of data required to buy a SIM card.
- **As regards the methodology** of the report, **the shortcomings presented in our analysis in the July 2023 *Evaluation of the Media Freedom Reports* are also present in this year’s Freedom on the Net report.** **As in previous years, the scoring of Hungary is based on the assessment of the sole author of the textual report.** The document continues to **use analyses and articles by organisations and media outlets that are largely one-sidedly critical as sources,** does not seek to present views and opinions that differ from these, and the **sources used are sometimes outdated** or not directly accessible. A typical shortcoming of the report is that **it presents one-sided, subjective assessments without criticism and without presenting opposing opinions.** In addition, **for the fourth time in a row, the annual report refers to a study** on the diversity of the online media market, **which takes into account the revenues of only four online media, and misleadingly interprets the results of this report** in relation to the

<sup>69</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question B2 [\[LINK\]](#)

<sup>70</sup> Act CLXI of 2011 on the Organisation and Administration of the Courts (Court Organisation Act), Section 3

<sup>71</sup> Freedom House: Freedom on the Net 2023 – Hungary. Question B7 [\[LINK\]](#)



Hungarian market as a whole. It remains a criticism that the **text of the document has not been updated in several places, literally repeating the assessment of previous years**, which is a questionable practice for a series of reports covering specific annual periods. Lastly, Freedom on the Net's compliance with the requirement in its methodology that the study should take account of the activities of non-state actors is limited.

- **Again**, the report **contained factual errors in several places. In some cases** – such as the independence of the NMHH, the concentration investigation into the creation of KESMA or the “*television frequencies*” – there are **repeated misstatements** that have been made for years. As regards methodology, we have already mentioned the one-sided presentation of subjective opinions. One such type of assessment is when the report uncritically quotes the Council of Europe Commissioner for Human Rights' unsubstantiated, subjective opinion that, among other things, “*the politically controlled media regulatory authority*” has eroded media pluralism and freedom of expression in Hungary.
- Overall, it can be concluded that **despite the factual findings on some issues, the shortcomings in the methodology of the report and the factual errors in the document raise questions about the professional soundness and balance of the country report.**