

Hungary: A new Act on classified information?

The Hungarian Government submitted the draft of a new Act on classified information (ACI) to parliament in early December 2005. Parliament discussed it in an expedited procedure and completed its first reading within two weeks. Debate continued throughout January. The only obstacle that arose came about because the government had not attached the Penal Code's amendments regarding the criminal sanctions of illegally disclosing classified information.¹ Although the press, and the smaller coalition party, raised this issue the adoption of the ACI appeared to be straightforward. This was the situation when three NGOs (the Hungarian Civil Liberties Union, Protect the Future and the Press Freedom Centre) intervened, calling a press conference to demand that the Government revoke the draft and prepare a completely new document.

The major concerns of the NGOs were the following:

According to the Government it was Hungary's accession to the European Union and to NATO that necessitated the need for a review of the Act on state and intelligence service secrets.² *Although it was reiterated that the high standards of these organisations both in technical and democratic means should be met, neither the adoption, nor the content, have confirmed this statement [don't understand this TH].*

Before submitting the draft to parliament there was no public debate and the media and NGOs working in the areas of freedom of speech and information were not consulted. Only the ministries and "professional bodies" (i.e. the secret services) consulted the draft before it was submitted to parliament. This resulted in a text more restrictive than that already in force. If approved the draft law would have enabled the government to deprive citizens from open debate on public issues and would also have prevented them from forming alternative positions that differed from the government's view.

Our major concern was the **threat to journalists**. According to the Penal Code journalists who disclose secret documents are subject to imprisonment, even in cases where it was not established that the journalist knew that the documents were classified.

According to the draft Secrecy Act these sections of the Penal Code would have stayed in force for an unknown length of time. In our view, it is unacceptable that during the drafting of the new ACI the relevant sections of the Penal Code were neither reviewed nor amended. There was a menacing possibility that if the draft ACI was approved alongside the relevant Penal Code sections presently in force, the latter would incapacitate genuine investigative journalism in Hungary.

Second, the right of an individual to have access to the data held on them is a constitutional right in Hungary. In theory, all citizens can – with certain conditions – acquire this information if they have been the subject of a secret service investigation. However, in the 16 years since Hungary's political transformation this constitutional right remains to be fulfilled. According to the draft law the disclosure of such information would depend on the discretionary decision of the state, instead of being its obligation.

¹ There were several criminal procedures pending against journalist for publishing leaked classified information which raised concern in the public of restricting freedom of the press.

² Act LXV of 1995 on State and service secrets was adopted in a rush as the 34/1994. (VI. 24.) decision of the Constitutional Court has annulled the Decree 5 of 1987 of the Presidential Council on State and service secrets, i.e. the state-party secrecy act. Although the 1995 Act has satisfied the requirements laid down by the Constitutional Court, unfortunately it has saved a lot from the previous non-democratic secrecy act.

Third, the draft law would reduce the time limit on releasing secret information to **80 years** from the present 90 years. In our view the time limit is still excessive. Furthermore, in cases involving state secrets the draft law would extend the time limit to 60 years from the present 20 years. In the draft law there were further limits on the freedom of information. Contrary to the present regulations - under particular circumstances and regarding cases classified for less than 15 years – the new law **would not even require a reason to be given for the classification of the information.**

Fourth, the draft law's definition of "secret" does not meet the standards of a democratic state. Moreover, if approved it would have undermined the freedom of information safeguards embedded in the Data Protection and Freedom of Information Act.

The criteria for data that can be classified as secret as set out by the new draft Secrecy Act did not comply with the requirements of "necessity and proportionality". The categories of the draft law's data specification were extensive. For example, there were sections which **classified statistical data** on public affairs and on public funds as secret. Additionally, the draft law would have enabled the government to classify all international affairs-related data, without regard to the relevant international conventions.

At the press conference we compiled a list of the possible effects the new Act would have had if it had been adopted. Citizens, among others, would not:

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- be able to check the adequacy of the measures taken by the government in case of a natural disaster;
- gain information related to permitting nuclear power plants, or damage control measures;
- gain information on how a nearby mine affects the environment;
- gain information on medication that is taken off the market;
- be able to check government measures related to bird flu
- have the possibility to get familiar with the proposals on the government's economic strategies;
- gain information on data regarding the preparation of the budget;
- gain information on what monetary help Hungary gave to other countries;
- know on the basis of what information the government based its decision on subsidies;
- know the concession contracts on highway constructions;
- have knowledge of the alternatives prior to the decision of modernising the state administration;
- be able to demand an account of the legality of widespread police raids;
- see the expert opinions and studies ordered by the Government from public funds.

Our protest was successful. In January the government postponed further parliamentary debate on the draft legislation and at the beginning of February parliament finished its winter session without adopting the ACI. The exact reasons for the Government's relinquishing of the draft are unclear (civil protest, tensions in the coalition, election campaign), but it was revoked only at the dissolution of the Parliament, when all pending drafts had to be withdrawn, in May.

The Socialist-Left Liberal government has been re-elected. Their manifesto ³ gives some hope:

³ New Hungary – Freedom and Solidarity, The Programme of the Government of the Republic of Hungary for a Successful, Modern and Just Hungary 2006-2010; page 67-68, (2006) *available at* http://www.miniszterelnok.hu/domain2/files/modules/module25/fileok/New_Hungary_Program.pdf

“The act on state secrets has to be adjusted to the act on publicity of public interest data. Public data may be classified only in the event when the public interest connected with secrecy is really stronger than the public interest requiring publicity; the burden of proof resting with the state. The list of data types allowed for classification, the possible duration and extension of the term of classification should be narrowed. The criminal law fact of state secrecy breach has to be modified. Protection granted to journalists and to their information sources, as well as the freedom of criticism concerning public activities of persons exercising public power and of other public personages have to be strengthened.”

If the government does not live up to its manifesto commitments and fails, for the second time, to engage in public debate on the new ACI, the proponents of freedom of information will have a harder job than before the elections. We will find out very soon.