



**The Hungarian Civil Liberties Union's
Opinion
on the draft bill No. T/12865.**

The draft bill No. T/12865. on amending the provisions of the Criminal Code (CC) – which entered into force a few months ago – for the purposes of the protection of human dignity and the preclusion of falsifying evidences (Draft Bill) is **a severe blow to the freedom of expression and destroys the authority of the Hungarian Parliament**, according to the Hungarian Civil Liberties Union (HCLU). It is the firm belief of the HCLU that both the protection of human dignity and the preclusion of fraudulent evidences are ensured by the currently available penal arsenal. However, **these new rules threaten with disproportionately severe consequences those who, by relying on the force of publicity, would be willing to disclose recordings which unveil violations of law: this would instantly freeze a democratically functioning media**. Moreover, by adopting a law as a reaction to a particular and ongoing criminal procedure it is clearly demonstrated that the **legislator does not have confidence in the justice system and subjects legislative procedures to political aims**, campaigns and grievances of the governing parties.

A. The Draft Bill contemplates to supplement the currently prevailing rules of defamation (Section 226 of the CC) with special provisions. 1. Any person who prepares a fraudulent or falsified voice or video recording or a recording with false content with the intention to offend others would be punishable by imprisonment for up to one year. 2. Those who provide access to any such recording for even only one other person with the intent to humiliate others may be punished with imprisonment for up to two years. 3. If such disclosure is made to a large public or causes considerable setback of interests the sanction may be increased to up to three years of imprisonment (meaning that it is no longer a misdemeanor but a serious crime).

The Draft Bill would therefore punish even the preparation of a fraudulent recording with criminal intent. This means that those persons who prepare a recording with false content just for self-entertainment would risk a criminal procedure even if the recording is not shown to third parties. Such is true since the possibility to demonstrate the absence of criminal intent – i.e. the lawfulness of the act – would only be given an opportunity during the criminal procedure, thereby allowing law enforcement authorities to intrude into the

privacy of citizens by legal coercive measures secured by the effective criminal procedure rules.

Naturally there are several good reasons why the falsifying of evidence indeed requires sanctions: HCLU does not argue that the disclosure of fraudulent recordings offensive? to others should be disseminated freely and without consequence. However, the Hungarian criminal law already provides the tools which are suitable to remedy any violation of human dignity and to sanction the falsification of evidence. Defamation is already prohibited, so that even today it is not allowed to make false statements which are injurious to the good reputation of any person and it is already considered as aggravating circumstances if such causes considerable setback of interests of others or if such is done involving broad publicity. Moreover the abuse of personal data is also forbidden (Section 219), so are false accusation (Sections 268-269), misleading authorities (Section 271), or the crimes against the order of elections (Section 350) – the latter being crimes against justice and the administrative sector, subject to public prosecution. Furthermore, criminal legislation is not the only set of rules protecting the legitimacy of elections. Based on the electoral legislation the violation of the rules applicable to elections and the breach of the fundamental principles thereof may be objected to by any and all participants, and these complaints are ultimately adjudicated by the competent courts. Taking into consideration all of the above, the aims if the Draft Bill may be achieved by the already available apparatus not entailing the limitation of constitutional rights and therefore it is the HCLU's belief that more stringent regulation is unnecessary.

According to the Draft Bill the CC would also sanction the perpetrator divulging voice or video recordings injurious to the good reputation of others who due to negligence is unaware of the false or fraudulent nature thereof. HCLU argues, however, that this would prevent certain persons who – by virtue of their profession (journalists, media) or simply because they are conscientious citizens – would desire to disclose recordings in their possession unveiling unlawful acts (or acts believed to be unlawful). The transparency of the public domain is primarily guaranteed by publicity and the freedom of criticism and therefore it is paramount for the sake of public good that the acts believed to be unlawful do not remain hidden. It would be difficult to give an exhaustive list of all occasions when such recordings shed light on the dysfunctions of public life and helped to expose public figures and in some cases even contributed to hold them liable for their acts. The same is true for intentional falsification of evidence: only publicity can be counted on to ensure that the public opinion is not misled by falsified recordings aimed to harm good reputation. The most important ramification of the scandal triggering the preparation of the Draft Bill is that the executive editor of an on-line daily newspaper admitted to have been at fault and resigned.

With respect to the above therefore, the HCLU is of the view that the Draft Bill would unnecessarily limit the freedom of expression and would be in complete contradiction with the constitutional obligation of the Hungarian State to recognize and defend the freedom and diversity of the press and ensure the conditions for free dissemination of information necessary for the formation of democratic public opinion. The current legal framework, especially the media laws, has already had a chilling effect on the Hungarian press. As of today the CC contains more limitations of the freedom of speech than what would constitutionally be justified. More specifically, the HCLU is of the opinion that the civil law remedies destined to indemnify the victims of defamation are sufficient as is and the possibility to lodge a criminal procedure is simply just an unnecessary burden for both the courts and those expressing a critical view. Furthermore, the conditions to freely criticize public figures and those holding public power are still absent. The government, therefore, remains to have some homework to do, but instead of concocting further restrictions, the legal barriers causing investigative actions to be handled with pre-caution should be dismantled.

B. The Draft Bill was not prepared by the Ministry of Public Administration and Justice but was submitted by four representatives of the governing parties and therefore no professional, public or inter-ministry debate was conducted beforehand which may lead one to consider that the text is just an *ad hoc* idea. The official justification of the text actually indicates that the amendment of the CC is merely a reaction of the government parties to the so called Baja-scandal (a fraudulent video-record on an alleged electoral abuse along an interim municipal election had been published), therefore the pure political intention behind it is beyond doubt.

What is more, there is currently an investigation taking place pursuant to a report to the police regarding the Baja-scandal for suspicion of crime against the order of elections, and another one for defamation, which brought to surface that the recording was fraudulent. This demonstrates that if such occurs in reality, law enforcement acts accordingly and does not allow the democratic institutions such as the elections to become unstable. Neither the official justification attached to the Draft Bill nor the statements of the spokesman of the governing party made at a press conference provided sufficient explanation as to why a specific legislation reacting to a specific breach of law is required to protect the democratic institutions from the harm inflicted by the falsifiers of the recording instead of just letting law enforcement authorities to achieve the same goals in the normal course of their operation.

HCLU believes that such overly active legislative reaction has the exact opposite effect because it is exactly such *ad hoc* amendments of criminal legislation foreseeing more



stringent consequences which raise the question as to whether democratic institutions such as the Parliament actually fulfill their constitutional roles or not and also deteriorate the trust in the lawfully operating justice system. A government respecting the rule of law does not have the luxury to allow these questions to be asked.

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