

'SLAPPED by GDPR' - How the General Data Protection Regulation can restrict press freedom

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The Hungarian Civil Liberties Union (HCLU) has been addressing data protection (GDPR)-based SLAPP¹ issues for several years. We represent numerous affected editorial offices and actively participate in the dialogue on the anti-SLAPP directive at the European level. However, given the emergence of a new anti-press tool, our current priority is to understand this novel phenomenon thoroughly. We aim to share our knowledge and initiate a dialogue among relevant stakeholders. To achieve this objective, we conducted a press survey in the summer and autumn of 2023 and summarised the findings in this report.²

First, we will discuss the general situation of the press in Hungary (I. The State of the Press in Hungary), followed by a brief description of the research (II. The Impact of the GDPR on the Press - What We Researched and Why). Next, we will delve into the legal aspects of the problem (III. A New Legal Instrument of Censorship - The Legal Background of the GDPR Cases). Finally, we will present the lessons learned from the interviews (IV. The Experience of the Interviews).

I. The State of the Press in Hungary

The state of the Hungarian press has been a consistent subject of public discourse and expert analysis since the Fidesz-KDNP attained a two-thirds majority and government assumption in 2010. Initial apprehensions regarding the state of press freedom in Hungary surfaced with the enactment of the Act on Media Services and Mass Media in 2011, during the tenure of the party-alliance government.

¹ Strategic Litigation against Public Participation.

² Thank you to the journalists who participated in the press survey and the roundtable held on December 13, 2023, for their valuable contributions and insights. The presentation from the roundtable is available at the following link: <https://drive.google.com/file/d/1VDxDHPxA4ysdmOHHfrDIIXkiy-absJU07/view>

Nevertheless, it quickly became apparent that the authorities were not aiming to curtail press freedom through traditional 20th-century methods, such as censorship, violence against journalists, or imprisonment for their written expressions.

Instead, two parallel trends emerged. The government embarked on constructing a media empire that, while formally independent, disseminates messages exclusively favourable to it – either by praising the ruling parties or consistently criticising perceived or actual opponents. This media empire has expanded extensively, encompassing provincial newspapers, nationwide-reaching radio stations, and hundreds of other media outlets, including print and online newspapers, television, and radio channels. Most of these entities are consolidated under KESMA, the Central European Press and Media Foundation.³ Additionally, numerous pro-government press products exist outside the Foundation, considering that newspapers and news sites of individual municipalities also serve as typical disseminators of the pro-government narrative.

These press entities frequently face a notably higher rate of losing press correction procedures than independent press outlets. Typically, these legal actions, including personality rights lawsuits, do not stem from well-intentioned errors but result from deliberate, politically motivated dissemination of defamatory material. The propaganda press often publishes materials founded on persistent and false statements of fact against specific political and public figures. In numerous instances, the harm inflicted is rectified after the affected individual has departed from political or public life.⁴

Unacceptably in a constitutional state, the public service media⁵ has become integrated into the pro-government media ecosystem, displaying an unprecedented level of bias and one-sidedness unparalleled in the Western federal system. Notably, the prevalence of pro-government politicians, experts, and opinion influencers among interviewees within the public service media is striking. Opposition politicians are predominantly granted access to the studio during campaign periods, often limited to the obligation imposed on public service media to provide 300 seconds for all candidates to present their programs. The M1 news channel stands out within the public service media in this regard, although similar content is also disseminated through radio stations and sports channels in their news segments. Various well-documented⁶ public recordings,⁷ substantiate the systemic bias of the public service media.

Within the public service media landscape, it is noteworthy to highlight the Hungarian Telegraphic Office, which consistently aids the governing parties by systematically

³ <https://mertek.atlatszo.hu/mindent-beborit-a-fidesz-kozeli-media/>

<https://mertek.eu/2019/12/13/kozpontosított-mediarendszer-lagy-cenzura-2018-mertek-fuzetek-17/>

⁴ <https://www.youtube.com/watch?v=ego4aQLZKIQ>

⁵ <https://mertek.eu/2019/12/13/kozpontosított-mediarendszer-lagy-cenzura-2018-mertek-fuzetek-17/>

⁶ <https://www.szabadeuropa.hu/a/szerkesztoi-utasitas-a-koztevenel-ebben-az-intezmenyben-nem-az-el-lenzekei-osszefogast-tamogatjak-mtva-fidesz/30940923.html>

⁷ <https://24.hu/belfold/2019/01/14/kozmedia-propaganda-mtva-ifj-lomnici-zoltan/>

rejecting the dissemination of critical statements from opposition political figures.⁸ This is often justified on the grounds of protecting personality rights or the reputation of public media. Another discernible trend is the ongoing effort to impede the operation of independent press outlets, accomplished through various means.⁹ In certain instances, the authorities eliminate the independent nature of press products¹⁰ or the outlets themselves¹¹ through commercial and economic measures.

The primary objective, however, is to hinder the effective functioning of independent press outlets, preventing them from producing content critical of the government. One method employed to achieve this is increasing the difficulty in obtaining funding. State advertising, a significant source of revenue for press products, or the majority of state-owned companies not placing their ads in press products that do not carry content favourable to the ruling party. An illustrative example of funding challenges is the anecdotal evidence suggesting that certain private commercial advertisers hesitate to place ads in such press products due to potential political repercussions. In response to this situation, four independent press outlets, with the assistance of the Hungarian Helsinki Committee, have initiated legal proceedings citing market distortion and unequal advertising distribution. According to their perspective, the uneven allocation of advertising creates absurd situations where issues of certain printed newspapers are offered for retail sale at a lower price than the cost of public advertising per issue.¹² This disrupts the market and places newspapers not benefiting from advertising at an irrecoverable competitive disadvantage compared to those that do receive such funding.

Another tool that restricts the independent press is the hindrance and inability to access information, a phenomenon investigated in three HCLU studies. In this context, state bodies, institutions, and public authorities - to varying degrees depending on the press product - withhold information from the concerned journalists, forcing them to rely on secondary sources and official, largely unconfirmed information. This is made extremely difficult by the pressure and intimidation placed on sources. Restrictions on access to information can manifest in various forms. Examples include ignoring questions, excluding journalists from press conferences, physically restraining journalists, and providing meaningless answers. The discrediting of individual journalists or press products

⁸ https://hvg.hu/gazdasag/20151119_Az_MTI_nem_volt_hajlando_lehozni_az_Orban
<https://www.szabadeuropa.hu/a/muosz-mti-per-kozmedia-duna/32048231.html>
<https://media1.hu/2023/06/07/megtagadta-az-mti-a-statusztorvenyrol-es-a-tanarhianyrol-szolo-momentumos-kozlemlenyek-kiadasat/>

⁹ <https://tasz.hu/cikkek/kiterjedt-es-sulyos-igy-akadalyozzak-a-fuggetlen-sajtot-magyarorszagon>
<https://tasz.hu/cikkek/gyorskutatas-igy-akadalyozza-az-allam-a-koronavirus-jarvanyrol-tudositoujsagirokat/>
<https://tasz.hu/cikkek/annak-ellenere-hogy-semmire-sem-valaszol-mindig-perelni-akar>

¹⁰ <https://www.direkt36.hu/az-index-ostomanak-szinfalak-mogotti-tortenete/>
<https://telex.hu/komplex/2023/11/13/index-ner-propaganda-media-vaszily-miklos-fidesz-fe-kete-szaloky-zoltan-meszaros-lorinc>

¹¹ https://hvg.hu/gazdasag/20161212_Nepszabadsag_Vege_mediaworks

¹² <https://kreativ.hu/cikk/negy-hetilap-all-bele-a-kormanyba>

through government communications or pro-government press outlets, aiming to undermine the credibility of the news source, is also common. Restrictions on access to information by the independent press had a particularly severe impact during the COVID-19 epidemic when those independent of the government could have provided counterpoints to the lack of information and transparency. While this was partially achieved, the job was not facilitated by unchanged (or, in some cases, worsening) state practices.

Indeed, the independent press faces legal proceedings; however, statistics indicate¹³ that these are overwhelmingly decided in their favour by the courts. As a result, they are rarely compelled to publish corrective statements. This fact suggests their adherence to professional ethical and legal obligations, contrasting with the behaviour of the propaganda press.

However, a new trend threatens freedom of the press, freedom of speech, and access to information – the misuse of the European Union’s General Data Protection Regulation (GDPR). In recent years, certain economic or public actors have taken legal actions against the independent press, citing the GDPR and relying on an impartial interpretation of the right to the protection of personal data. This is done particularly to conceal from the public the circumstances and details of their enrichment. Law enforcement authorities have not been open to considering press freedom in such proceedings.

This new trend is gaining momentum in a society where public confidence in the press is already weak and steadily eroding. Additionally, since assuming power, the government has eliminated all obstacles to converting public funds into private assets and has established specific channels. A class deriving its wealth from public funds is growing more prosperous. At the same time, there is insufficient funding for critical matters that impact the entire country’s future, such as health or education. Our tax money increasingly contributes to enhancing the lives of a privileged class. This process can only be brought to light through the efforts of the independent press, and perhaps this is why those in political and economic power are exerting every effort to silence journalists.

II. GDPR’s impact on the press - what we researched and why

In December 2019, the first case was initiated in Hungary concerning a wealthy family seeking to prevent the publication of an article depicting their wealth. At the time, Forbes magazine wanted to show where the Barabás family ranked among the 100 richest Hungarians and what their wealth was in a portrait format. Family members protested to Forbes magazine, citing concerns about the treatment of their personal data. The case has remained unresolved since then, and the Barabás family and others have initiated legal proceedings against various press outlets.

¹³ Katalin Erdélyi (2022): *Pro-Fidesz Media: Nearly 400 Lawsuits Lost in 5 Years, Origo Accounts for 103* <https://atlatszo.hu/kozugy/2022/02/23/kozel-400-pert-vesztett-5-ev-alatt-a-fidesz-barat-media-ebbol-103-at-az-origo-bukott/>

The cases against Forbes magazine marked the emergence of a new category of lawsuits in Hungary, specifically designed to impede the functioning of the press. This revolves around the mechanical application of data protection rules, wherein the press's constitutional role and social function are disregarded. While it may initially appear absurd to contest the media in such cases, we have frequently observed the openness of the National Authority for Data Protection and Freedom of Information (NAIH) and the courts to such arguments. However, there still needs to be more information about the prevalence, users, and the extent to which these lawsuits hinder the daily work of the press.

Timeline

June 30, 2018: GDPR becomes applicable in Hungary

December 15, 2019: We handle the case of Forbes against the GDPR-based protest of the Barabás family

2020: NAIH decision states that data processing in the context of business journalism is not based on public interest.

2022-23: Court decisions in the Forbes and Magyar Narancs cases result in an additional administrative burden on the press

2022-23: New GDPR-based cases emerge against other national press organizations

July 25, 2023: We lodged a complaint before the European Court of Human Rights regarding the Forbes case.

Our research delves into how independent national and local newspapers operating in Hungary perceive the situation. We investigate whether they observe the beneficiaries of the current political system attempting to leverage GDPR rules to render their wealth, businesses, and public life activities invisible. To accomplish this, we surveyed 34 press outlets in June 2023. In our correspondence, we provided a brief overview of the recent litigation practices that have arisen to impede press access, rooted in the misuse of data protection. We also asked them to indicate whether they have encountered similar cases.

Thirteen of the thirty-four press organizations responded, indicating they had insights to share. We interviewed them online or in person during the summer and autumn to assess the press's perception of the phenomenon. The questions covered GDPR-specific aspects: the trends they observed, whether there is an identifiable group of individuals utilizing these legal instruments, whether they have faced official or judicial proceedings, and to what extent these cases have impacted daily operations. Additionally, in an open-ended section, we inquired about other non-GDPR tools that hinder or prevent the press from operating transparently regarding corruption. However, before summarizing the interview experiences, it is essential to present the legal problem in detail.

III. A new legal tool for censorship - the legal background to GDPR cases

Making it difficult and impossible for the press to operate is familiar. Throughout history,

various instruments have been employed, ranging from explicit state censorship to regulatory solutions that create a ‘chilling effect’ (such as criminal sanctions for defamation and libel). However, in recent years, under the guise of data protection, a new legal instrument has emerged in Hungary resulting in the impossibility for the press to operate effectively. The crux of this new litigation approach is the application of data protection rules irrespective of the constitutional function of the press and its specific activities, thereby imposing a burden on the media that complicates and, in some cases, renders their operations impossible. These lawsuits often do not directly concern the content published in the press but rather focus on the press’s obligation to document, consider, and inform regarding the handled information.

The foundation for these lawsuits is the General Data Protection Regulation (GDPR), which became applicable in July 2018 and introduced more stringent data protection rules at the EU level in various aspects than before. The GDPR is primarily crafted to prevent the misuse of data processed by state and market operators, and its rules are formulated with this objective in mind. The Regulation acknowledges specific activities warranting different regulations, with journalistic activities mentioned prominently. In this context, the GDPR mandates Member States to reconcile the right to data protection with freedom of expression and freedom of the press through specific legislation [Article 85(1)]. The GDPR explicitly empowers Member States to establish derogations for the operation of the media, allowing for less stringent requirements on press products [Article 85(2) see text in box]. The challenge lies in Hungary’s failure to fulfil this obligation¹⁴, necessitating a balance between competing constitutional considerations under the general rules of the GDPR. This requires competent bodies, such as the NAIH and the courts, to consider the constitutional function and specific functioning of the press when applying the Regulation and determining obligations under the GDPR. It is not an impossible task, as the general rules of the GDPR afford sufficient flexibility. With correct application, the operation of the press remains feasible.

Examples of GDPR and Press Freedom Harmonization in Europe

Under Article 85 of the GDPR, several European countries have enacted specific legislation to align aspects of data protection with press freedom. For instance, in Polish

¹⁴ The legislator opted not to establish a uniform regulation defining exception rules. Instead, it referenced multiple statutory provisions (such as the Act on the right to informational self-determination and on the freedom of information., the Civil Code, the Act on Freedom of the Press and the Fundamental rules of Media Content., the Criminal Code) and decisions from the constitutional court, aiming to maintain a delicate equilibrium between press freedom and data protection. Nevertheless, the cases analyzed in this section reveal a pressing need for clearer guidelines, given that law enforcement actors (such as the NAIH and courts) have largely struggled to achieve this equilibrium. For the specific legal provisions and decisions from the constitutional court that were referenced, please refer to: https://commission.europa.eu/system/files/2018-10/hu_notification_art_51.4_84.2_85.3_88.3_90.2_publish.pdf

law, specific GDPR rules, like Article 14 on prior information or Article 21 on subsequent objections, do not apply to data processing in journalism¹⁵ Consequently, journalism is to some extent exempted from the scope of data protection regulation. However, this kind of exemption is not straightforward, as illustrated by the practice of the Austrian Constitutional Court, which also considers theoretical aspects. In a 2022 decision, the Constitutional Court invalidated a law guaranteeing data protection for the media.¹⁶

The crux of the issue in domestic GDPR cases lies in accurately defining the legal basis for data processing. The GDPR outlines various legal grounds for data processing, such as the data subject's consent. However, concerning the press, two additional legal bases come into play: the public interest [Article 6(1)(e)] and the legitimate interest of the data controller, provided it overrides the data subjects' right to data protection [Article 6(1)(f)]. These two legal bases impose significantly different administrative burdens on the press. While the legal basis for the public interest is self-evident, establishing a legal basis based on the data controller's legitimate interest (i.e., the press) requires a separate assessment. This means the press must conduct a special balancing test for each data subject and, particularly, for each personal data subject. Additionally, they must document the balancing test and proactively¹⁷ inform the data subjects about it. Such obligations may impose constraints on journalists, rendering their work challenging, especially in cases of investigative journalism that entail processing extensive and inevitably data-rich material, as exemplified in the Schadl-Völner case (see text box below).

An example of the impossibility of a balancing test: The Schadl-Völner Case

The Schadl-Völner corruption case, which emerged in 2022 regarding the appointment of bailiffs, was extensively covered by [444](#). The article drew upon over 1,700 pages of investigative material on the criminal case submitted to the editorial office. Subsequently, the NAIH initiated an investigation based on a public interest disclosure. However, since the legal basis for data processing in press operations is the legitimate interest of the data controller rather than the public interest, as per the authority's practice, a separate balancing test must be conducted for each data subject. Yet, as highlighted by the press body in its response, it would require several working days only to identify and organise the data subjects in such a vast amount of material.

¹⁵ See: Act of 10 May 2018 on the Protection of Personal Data; Act of 21 February 2019 Amending Sectoral Laws to Ensure Application of GDPR.

¹⁶ <https://www.fwp.at/en/news/blog/constitutional-court-repeals-media-privilege-as-unconstitutional>

¹⁷ A distinction should be made between proactive and reactive information obligations. Under the proactive information obligation, the press is required to furnish information to the data subject in advance, at the initiation of the processing, including details regarding the balancing test. Conversely, the reactive information obligation only comes into play if the data subject has explicitly objected to the processing of their data

Additionally, conducting a balancing test for each data subject, documenting it, and informing them would be a monumental task. Furthermore, the NAIH overlooked that a considerable number of the data subjects involved in this article are public officials whose activities are subject to the public interest legal basis.

This case is a pertinent example of how the stringent protection of criminal data, while justified, needs to be interpreted considering the intricacies of press activities. Moreover, the NAIH failed to acknowledge that the journalist had already performed an individual balancing test, which is evident from the exclusion of certain data from the article. While some level of balancing test is undoubtedly inherent in ethical journalistic practice, imposing a broad obligation to document and disclose is unrealistic and disproportionate.

There is no consistent legal precedent regarding the specific legal basis for journalistic activities. The NAIH's stance is that the legal basis permanently resides in the interest of the data controller, i.e., Article 6(1)(f). However, this perspective does not fully consider the public interest inherent in press activities and contradicts court rulings. Given the diverse nature of press activities, courts must decide on a case-by-case basis whether a particular communication serves the public interest rather than applying a blanket approach.¹⁸ Unfortunately, the judicial approach in this regard is often restrictive, as evidenced by rulings in cases such as Forbes, where the compilation and publication of 'rich lists' were deemed not to serve a public interest function (see text box).

What Constitutes an Activity in the Public Interest: Forbes v NAIH in the Barabás Case

Every year, Forbes magazine compiles a list of the 50 wealthiest Hungarian individuals and families, including personal information such as their names, certain assets, and past activities. Members of the Barabás family, known for their involvement in producing the energy drink HELL, which had previously received significant state subsidies, initiated civil and administrative proceedings against Forbes. They claimed that the magazine failed to conduct a prior balancing test properly and did not inform the individuals concerned of the test results.

Regarding the legal basis, the Curia of Hungary ruled that, on the one hand, it cannot be universally asserted that press activities always serve the public interest and thus fall under Article 6(1)(e). On the other hand, the court determined that compiling a list of the wealthiest Hungarians, even if public funds are involved, does not constitute an activity in the public interest. Therefore, the legal basis relied solely on the data controller's

¹⁸ See Kfv.V.37.365/2022/10. [144].

legitimate interest, placing the newspaper under an extensive and proactive obligation to conduct a balancing test, document it, and inform the individuals concerned. In our opinion, the Curia's interpretation of the law is unconstitutionally restrictive. On the one hand, it is a fundamental public concern for every political community to know who the wealthiest individuals are, how they amassed their wealth, and how it is evolving. On the other hand, even public resources were involved in the case.

GDPR-based litigation presents several distinctive features compared to other methods to constrain press activities. Primarily, these lawsuits are part of private censorship, as they are typically instigated by private individuals rather than public entities or officials. On the other hand, in such litigation, individuals commonly argue not against the press's handling of their data per se but rather that the press entity failed to fulfil its obligations regarding implementing a balancing test, documentation, notification, or other aspects related to data management.

This was exemplified in the *Forbes v Barabás* case, where the NAIH did not contest the legality of data processing but instead highlighted the newspaper's failure to adhere to relevant administrative obligations. Consequently, decisions and court rulings that reprimand the press indirectly impede its functioning, without explicitly deeming the publication or data processing itself unlawful. Nonetheless, these actions still infringe upon the freedom of the press and freedom of expression.

Regrettably, the Constitutional Court erroneously asserted that the additional burdens imposed on the press due to misinterpretations of data protection regulations do not curtail the freedom of the press. As a result, it did not acknowledge our constitutional complaints regarding Forbes' list of the wealthiest Hungarians.¹⁹ In response, we have lodged appeals with the European Court of Human Rights (ECHR) (see text box below).

Our SLAPP lawsuits based on GDPR before the ECHR

As domestic forums for redress have proven ineffective, we are pursuing several cases before the Strasbourg Court. Since the ECHR has yet to rule on similar cases, these could be the first decisions to establish human rights standards regarding the GDPR and the operation of the press. While there is no direct precedent, the ECHR has an extensive body of case law concerning the tension between privacy and freedom of expression. Both fundamental rights are protected under the European Convention on Human Rights (see Articles 8 and 10), and the Court has addressed the compatibility of press operations with the privacy of individuals in numerous cases.

For instance, in our application regarding the *Barabás* case, we outlined relevant aspects of the inquiry based on ECHR case law. These included demonstrating that data

¹⁹ See: Constitutional Court ruling 3245/2023 (2.VI.); Constitutional Court ruling Order 3189/2023 (12. IV.). Upon observing the misinterpretation of the Constitution in the first order, we submitted a supplementary petition before the issuance of the second order, further emphasizing the concerns regarding fundamental rights. However, our arguments were disregarded by the Court.

processing was necessary for press functioning, related to the public interest, involved known individuals and utilised publicly available data. Considering these factors, the administrative burdens associated with data processing resulting from domestic court judgments constitute a disproportionate restriction. Thus, the domestic courts have failed to strike the appropriate balance.

Third, GDPR-based litigation is also characterised by the simultaneous targeting of the press on multiple fronts. On one hand, an NAIH official proceeding may challenge the lawfulness of data processing. On the other hand, a civil action may be initiated for violating the personal rights of the data subject regarding their personal data, as specified in the Civil Code. Consequently, the press must engage in a multi-front battle, even concerning a specific individual mentioned in a particular publication. This undoubtedly consumes significant resources, further jeopardising the press's functioning. Furthermore, during a civil action, the plaintiff may seek an injunction to prohibit the disclosure of personal data until the case reaches a final verdict. It's important to note that this injunction request may sometimes hinder press operations. As the ECHR has stated, news is a 'perishable commodity',²⁰ meaning that a successful injunction application could delay the timely publication of a release, even if the plaintiff ultimately loses the primary proceedings.

One permissive interpretation is that GDPR is relatively new, and courts may tend to rule based solely on technical legal logic, disregarding broader constitutional considerations. This interpretation could be reinforced by the fact that in such cases, the infringement of press freedom is not directly linked to the publication itself but rather to the data processing and the associated burdens. Additionally, these cases represent a novel legal challenge, with concepts such as 'public figure,' which have evolved over decades, only partially developed in practice in data protection cases.

On the other hand, a pessimistic reading suggests that GDPR-based litigation, precisely because of its novelty and the apparent indirectness of harm, represents a new and sophisticated tool that courts may use to hinder press operations under the guise of protecting data privacy.

IV. Interview Experiences

The interview survey revealed that approximately one-third of the thirty-four press products surveyed had already encountered some form of GDPR's potential to restrict press freedom. Press organisations with a broader national reach and a distinctly professional approach have typically faced requests from individuals to delete or remove their personal data. Conversely, smaller, locally based newsrooms have not typically encountered such requests. If they have, they have not been in the form of formal GDPR-based requests

²⁰ Observer and Guardian v. the United Kingdom, 13585/88, 26 November 1991, § 60

but rather other requests involving personal data. These requests are sometimes drafted by a lawyer and sometimes by the applicants themselves. In the case of professional, national press, formal requests (also) referring to GDPR are mainly received from lawyers or law firms representing wealthy individuals involved in politics and/or business.

Rising GDPR cases

As mentioned, GDPR has been applicable in Hungary since May 2018. Many press entities encountered the issue relatively quickly. Typically, they received their first requests between 2019 and 2021, in which individuals (or sometimes companies) claimed the confidentiality of their data against the press. One lawyer interviewed noted this trend reversal, stating that **'now, people are becoming more widely aware that this procedure exists. It is now becoming common knowledge, especially in cases involving the press, that this is a highly effective measure against the press.'** There was a consensus that GDPR-based claims, while not yet the majority, are **'on the rise'** and represent a growing portion of all legal-related requests. An editorial staff member of a national press entity remarked that **'people have been trained,'** indicating that the possibility of GDPR-based litigation, along with the general increase in data protection awareness has entered the public consciousness.

The Initiators - Different Perceptions

The respondents' perceptions regarding who typically initiates GDPR-type procedures varied. A national press entity staff member divided the initiators into two groups: ordinary individuals who have become more aware, possibly considering the financial implications of damage fees, and influential figures often associated with the System of National Cooperation (NER). However, another source from a national media outlet stated that most inquiries originate from ordinary people.

Nevertheless, most interviewees identified the initiators as **'second-line NER businessmen,'** celebrities close to NER but not top politicians. Some respondents also suggested that initiators are **'not typically affiliated with NER or are at least not easily identifiable'.** However, there was agreement that these initiators were individuals capable of affording professional legal expertise and were determined to silence the press. According to a lawyer working on a permanent contract for a press entity, some of these procedures are considered SLAPP—a coordinated attack on the press, primarily aimed at silencing rather than defending rights.

Eligible Requests, Non-SLAPP Cases

However, respondents also note that there are reasonable requests, often not in the form required by the GDPR, but still based on data protection concerns. One of the editors-in-chief who spoke to us said that in such cases, for example, they face a dilemma about whether

to keep articles about criminal cases from years ago in the archives with their names. **'In these cases, we weigh the public interest against personal data. Sometimes we don't delete, sometimes we anonymise, and sometimes we remove the name after consideration. There are many such cases, but they are not SLAPP cases.** Similar 'right to be forgotten' procedures are common in national media and press products. In the press outside Budapest, these problems have not yet arisen on a GDPR basis, although similar professional, ethical (and legal) dilemmas regarding personal data sporadically occur.

From Threats to NAIH Proceedings

Several interviewees noted that threats alone could deter them from pursuing certain cases, especially within smaller press entities lacking resources to engage legal representation. In a specific instance, after multiple exchanges of correspondence, a detailed legal argument presented by HCLU dissuaded an individual from further action. A well-prepared response from the press, supported by thorough argumentation, could thus deter applicants from resorting to authority.

In addition to threats, many requests directed at the press are escalated to the National Authority for Data Protection and Freedom of Information (NAIH). Some press organisations have raised concerns about the NAIH's examination of legitimate interests (Article 6(1)(f) GDPR) rather than solely public interest (Article 6(1)(e) GDPR) in cases involving the press. This poses challenges because processing based on legitimate interests requires a documented balancing test and notification of the data subject, adding a significant workload. A lawyer representing a national press organisation mentioned, **'We also advocate for public interest before the NAIH, despite its consideration of data processing based on legitimate interests. Therefore, we prepare balancing tests for these proceedings.'**

Several interviewees indicated pending NAIH proceedings. Some referenced the ongoing 2019 Borkai case, initiated by lawyer Zoltán Rákosfalvy, the individual affected by the scandal. Rákosfalvy sought information on a legal basis rather than deletion, prompting his recourse to the NAIH when the provided information was rejected. A press organisation lawyer said the balancing test and other documents were submitted to the NAIH two years ago. This suggests uncertainty in assessing data handling in cases of significant public interest. Additionally, it was noted that the NAIH often undertakes legal work 'free of charge,' which would have previously required paid legal representation, such as in personality rights cases.

Interviewees did not report any (civil) proceedings related explicitly to processing personal data, although HCLU is known to have initiated such proceedings.

Tied Resources

GDPR-related procedures and protests do not consume significant resources for most press products. Some have remarked that it ties up negligible capacity compared to

typical press litigation. However, lawyers representing more prominent media outlets have expressed contrasting views:

- **'GDPR procedures are quite burdensome for us. GDPR rules are increasingly being interwoven into press briefings, which poses a trend and a problem.'**
- **'It's an uneven playing field: if the data subject is unfamiliar with it, they may conflate GDPR rules, making it difficult to conduct a balancing test. The NAIH is formalistic, expecting a specific balancing test for every issue, which is labour-intensive.'** About the latter statement, one lawyer also noted that asking the applicant back to clarify the harm to interests would give them an idea, so they would prefer to conduct the general balancing of interests, which is a lot of work.
- **'A disclosure and a balancing test should precede every article if they were to adopt the NAIH practice, but they don't. However, they consult a lawyer before publishing several articles to determine GDPR acceptability. This required substantial work in the [...] case articles but has decreased. It's somewhat frustrating, but I don't find it particularly burdensome.'**
- **'It requires significant lawyer capacity and has been a headache for journalists, but it's manageable. Quantifying the workload is difficult because the GDPR approach is already integrated into our work, presenting an additional challenge. It's impossible to gauge the time required, as it necessitates a whole new mindset.'**
- **'You must grasp data controller quality broadly. Another issue is that Hungary has not addressed the press's specific GDPR situation. Unfortunately, courts often align with the NAIH's stance, not recognising the press as a special controller but treating it uniformly.'**

A particular challenge for lawyers is the unclear relationship between the Civil Code and GDPR in judicial practice. A GDPR breach does not always imply violating personality rights, adding to the unpredictability. [...] Moreover, this complexity is compounded by the need to examine the Act on Freedom of the Press and the Fundamental rules of Media Content.

The practice of the NAIH is not particularly press-friendly; only in cases where the link with public policy is solid does it refrain from finding an infringement. Quite a lot of risk analysis has to be done and advice given to the editorial team making the decision.'

The responses also indicated that disputes often arise between lawyers and editorial offices regarding the next steps after conducting risk assessments. These discussions are reported as a separate work item. It should be emphasised, however, that these notable findings are primarily observed within the largest, professionally managed national press entities.

At the same time, there is a noticeable integration of GDPR considerations into the mindset of editorial departments. A staff member at a national press organisation noted that, although they are not allocating additional resources, they are consciously or unconsciously begin to think in a **'GDPR-centric'** manner. He highlighted that this shift is particularly evident in treating images, where they have become exceedingly cautious.

Examples

Interviewees provided several examples to illustrate the trends described here. One of these examples is highlighted to illustrate a prominent case where the NAIH's decision, which we consider to be correct, showcases that its jurisprudence does not entirely restrict press freedom.

Legal Case 1:

The notary of Budakalász initiated proceedings against Telex. The online newspaper reported that a job applicant in Budakalász was rejected because of his sexual orientation. The internal conversation about the rejection was recorded and sent to Telex. The notary objected to the article on GDPR grounds, but Telex did not comply, and the case was referred to the NAIH. The NAIH found that the data generated during the notary's work, i.e., in exercising public authority, had nothing to do with the notary's private life and was, therefore, not personal data. In this decision, the NAIH has drawn the line where personal data protection can no longer be at the expense of the freedom of the press and the clarification of public affairs (NAIH Decision No 2926/10-2021).

Concerning SLAPP trials, it should be stressed that a single wrongful conviction can trigger an avalanche. Those who wish to censor the press can easily use these judgments, and the individual case can develop into a general trend. In such cases, official or judicial action may no longer be necessary. An example of this is the Forbes list case, which has started to have an impact beyond the specific press entity (see text box).

Legal Case 2. - Censorship without Litigation

Every year, Marketing & Media magazine publishes a list of the 50 most influential media players. Given the media's significant role in a constitutional democracy, such a list contains valuable information for society. However, the 2023 list did not include Gyula Balásy, a pro-government entrepreneur whose companies have been involved in numerous government poster campaigns. Balásy, ranked 5th on the 2022 list, was removed from the list citing privacy arguments based on decisions made by Forbes, as reported by Médial. The editor-in-chief of Marketing&Media confirmed the information and stated that they did not want to face a situation similar to Forbes.²¹

²¹ <https://media1.hu/2023/06/09/ok-vegezttek-iden-a-legbefolyasosabb-hazai-mediavezetok-top50-es-listajanak-elen/>

About the GDPR Phenomenon in General

Regarding the GDPR phenomenon in general, one interviewee succinctly summarised its impact: **'[...] it is a fact that the data protection rules introduced in 2018 have made it much easier for complainants to take action, while at the same time making the situation for audiovisual media services much more difficult.'**

Moreover, an interviewee from a national press entity highlighted the conflict between the GDPR and journalistic principles. Citing a specific case, he emphasised, **'We initiate a dialogue on an article, following journalistic ethics and standards, which is then met with a response from a data protection perspective stating that the question contains personal data, later classified by the NAIH as a formulation of data protection concerns. So, from a position of acting within our profession, we ask a question and suddenly find ourselves in a defensive position.'**

Classic Tools and Other Non-GDPR Difficulties

Finally, in addition to the challenges related to GDPR compliance, several individuals have reported on what could be described as traditional tactics used by individuals involved in public affairs to impede the investigative and fact-finding efforts of the press or to create a chilling effect on journalism.

In some instances, even after decriminalising libel and defamation, criminal proceedings are initiated (e.g., private defamation in cases such as drone videos depicting properties from above). While interviewees did not report any criminal proceedings that had concluded unfavourably for them, they did mention that the mere initiation of such proceedings had a paralysing effect on editorial staff and journalists.

An issue that arose during the two interviews was the inquiries made by lawyers and legal practitioners concerning the potential legal ramifications of disclosing personal data in a specific case. One interviewee recounted receiving a letter asserting that should the press entity write and publish the article, resulting in the company losing business opportunities, they would be subject to a lawsuit seeking compensation for lost profits. The lawyer representing the editorial office expressed severe concern that if the company in question persuaded a representative of another company to make a statement aligning with their concept in court proceedings, they could potentially lose such a case. These threats typically involve the inclusion of highly exaggerated damages, the sheer magnitude of which is sufficient to have a chilling effect.

Personality rights lawsuits often follow lawsuits against the press that fail for the press entity. Fortunately, respondents unanimously reported that few press lawsuits are brought against them, and they typically emerge victorious. However, one lawyer interviewee also noted that the judgments of the Metropolitan Regional Court no longer consistently reflect professional opinion, raising the possibility of losing a case there. The lawyer expressed concern, stating, **'There is a council at the Court that consistently rules against them, often with reasoning deemed inadmissible. Among the members of this council is Varga Zs. András' wife. This is a significant concern.'**

Several individuals mentioned that the transparency of company ownership structures has deteriorated recently, making it increasingly difficult to ascertain who owns and holds interests in various companies. This lack of transparency poses significant challenges for economic and political-economic journalism. During an interview, it was also suggested that the emergence of private equity funds further complicates efforts to track certain assets.

Many interviewees also highlighted difficulties regarding data of public interest. They noted that public authorities seldom release requested information willingly, often necessitating legal action to compel disclosure. Even when court orders mandate data release, enforcement can be challenging.

Additionally, interviews revealed concerns about the intertwining of state and economy, particularly regarding private companies associated with the National Economic Council (NER), such as 4iG, BDPST, Optimus, etc. These companies may argue that the state's release of requested data would violate their trade secrets. One lawyer recounted an instance where this occurred in relation to a public interest data release, resulting in the loss of a public data case.

The director of a small local paper outside Budapest also highlighted the challenge they face in writing articles without inadvertently offending individuals they encounter in regional social settings, such as pubs in the evenings. While this is an extra-legal concern, it underscores the inherent difficulty in exposing local issues compared to national ones due to sociological considerations.

Beyond the scope of our research, as expressed in several interviews, socio-political-cultural factors present significant obstacles to journalism. **'There is no dialogue, no questioning. Legal procedures are seldom employed to hinder the press, as it is not deemed politically relevant. Everything is done openly, yet it fails to challenge the regime's stability.'**