



Background information report

Media policies and regulatory practices in a selected set of European countries, the EU and the Council of Europe: The case of Estonia

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Project profile

MEDIADEM is a European research project which seeks to understand and explain the factors that promote or conversely prevent the development of policies supporting free and independent media. The project combines a country-based study in Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Italy, Romania, Slovakia, Spain, Turkey and the UK with a comparative analysis across media sectors and various types of media services. It will investigate the configuration of media policies in the aforementioned countries and will examine the opportunities and challenges generated by new media services for media freedom and independence. Moreover, external pressures on the design and implementation of state media policies, stemming from the European Union and the Council of Europe, will be thoroughly discussed and analysed.

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The case of Estonia

Urmas Loit and Halliki Harro-Loit

1. Introduction

Estonia, a small country on the Baltic Sea, has spent the past 20 years transitioning from a colonial territory within the USSR into an independent democracy; it became a Member State of the European Union in 2004. Five national and seven regional daily newspapers serve the population, which is 1.36 million. A plethora of weekly papers and magazines, six larger domestic television channels and nearly 30 radio stations are available within the 45,000 sq kms of Estonia.

The national structure of the country is comprised of two relatively detached communities: ethnic Estonians (927,000) and a Russian-speaking community (appr. 400,000), which predominantly consists of settlers from the Soviet era of various ethnical background. These two communities can be characterised by their distinctly separate media consumption patterns. Traditionally, ethnical Estonians have been avid readers, listeners and viewers. Russian-speakers tend to prefer television and watch Russia's channels. Thus the Russian language newspaper market, competing both with Russia's media and Estonian news products, is shrinking despite of a slight increase in scanty readership.

This country report examines the media policies in Estonia since regaining of the country's independence in 1991. The Estonian media market is small and fragmented by media consumers' native language. The number of Estonian-speakers is limited to about a million. Estonia has witnessed rapid development towards information society and a very liberal media policy. Therefore the analysis of Estonian media policy provides a case study concerning the problems, possibilities and paradoxes occurring in case of limited resources, a well-developed environment of information and communication technologies (hereafter: ICT) and a liberal regulatory approach to the media market.

The next section of this study examines the structure of the media market. The analysis highlights the specific situation concerning competition between traditional media channels, oligopoly and content diversity. Today competition is remarkable between the two national mixed type quality dailies: *Postimees* (owned by the Norway's Schibsted) and *Eesti Päevaleht* (a trade mark in the portfolio of the Estonia's Ekspress Group) are the newspapers with very small product differentiation. Tabloid *Õhtuleht* enjoys a sole position on the daily tabloid market, being a joint venture of two competing newspaper publishers.

Newspapers also keep producing news online. *Delfi* is the only converged online news-producing portal, which is owned by the Ekspress Group, and which maintains a wide audience in both language groups and provides visitors a popular venue for commenting on news items. Also television channels compete for audience, while the digital turn has revoked fragmentation. Radio maintains stability in listenership. Baltic News Service (BNS) is the only news agency in Estonia, and it is operating across the Baltics.

Estonian ICT development started in the late 1990s. In 1998 the Principles of Estonian Information Policy were adopted by the Estonian government. Now about 60% of the population uses Internet at least once a week.

The issue of media literacy and digital literacy are actively debated in Estonia. The Internet usage is especially high among young people, reaching 99.9 % of 11-18 year old pupils. It is partly due to the activity of the Estonian government that brought computers and internet connection to Estonian schools since 1997 (The Tiger Leap project). National curriculum includes several topics that could support media education and communicative skills but hereby the teacher education is lagging behind.

While the resources at such a small media market are limited and original news production occurs to be an expensive process, the future of professional journalism is one focal question in media policy concerning the accessibility of impartial and trustful information. On the one hand Estonia still maintains journalism curriculum at the university. On the other hand the professional community of journalists (slightly over 1,000) is loosely organised, rather loyal to their employer than to professional ideals.

The third part of this report examines the media regulatory framework and the implementation of laws, administrative acts as well as co- and self-regulatory measures. Since the beginning of the transition period (after the Soviet rule) in the beginning of the 1990s Estonian media policy has been very liberal and market-oriented: media organisations have enjoyed full freedom of expression. Hence it is difficult in Estonia to re-establish one's rights and reputation in the court when damaged by the media. Estonian courts try to avoid judging moral damages, intimating that to measure a moral damage in financial terms is rather complicated. Only substantial penalties for the moral damages would force the media owners to pay more attention to accurate and fair performance. Only since 2009 courts have started to argue more about the liability of professional content providers in case an individual has suffered severely. In addition to the courts the role of the Ministry of Culture and Parliament is discussed.

The legal protection of the rights of individuals is usually spread among different laws. Mostly these are defamation laws and the protection of privacy. In Estonia by the end of the 1990s the laws that affect individual rights, especially the right for the protection of one's honour, were in process of renewal. The protection of honour and privacy is now regulated by the recent Law of Obligations Act (passed in October 2001, entered into force on 1 January 2002). Regulation of public and private information is well elaborated in Estonia. The Public Information Act (first passed in 2000) provides access to the administrative documents, while the Personal Data Protection Act (first passed in 1996) encompasses citizens' informational self-determination.

This part of the article also offers analysis on actors who influence the media policy. Implementing a liberal media policy means that the ownership is predominantly controlled by the market (owners) and that the role of the state is restricted to minimally supervising compliance with the formal conditions of the broadcasting licence and general legislative rules for the programming output, even though the cross ownership has also been inconsistently ruled out by the corresponding law.

The aim of the fourth part is to provide a critical analysis of the Estonian media policy in the context of European media and communication policy and how it feeds the democratic processes. The economic pressure springing from the interests of media ventures could be counterbalanced by the ideology of professional

independence, but in Estonia the professional culture seems to be too weak to resist such pressure in case media organisation has its very strong content-independence (wall) policy.

The authors have analysed various statistical data retrievable from interactive databases on the Internet processed upon specific criteria and non-public databases available for pay, and have creatively processed other data publicly available.

2. The media landscape in Estonia

The media landscape in Estonia is characterised by large variety of media outlets and channels, despite the littleness of the potential audience and its segmentation supremely according to the spoken language. However, the variety has been larger in the mid 1990s when the foreign capital had yet not flown in and there was more enthusiasm among the media creators based on the recent liberation from the Soviet regime and possibilities deriving from exercising the freedom of expression.

The new innovative media emerges rapidly, too, as Estonia has been in the forefront with its e-solutions (e-banking, e-parking, e-government, e-prescriptions, etc). In the wake waters also the social media develops, although creating a different paradigm compared to the mainstream media system.

2.1 The media market

Print media

The press has fully moved away from state control and is now an independently run sector. Newspaper privatisation took place at the beginning of the 1990s on a case-by-case basis, with the government agreeing that it should no longer be involved in newspaper publishing.

The newspaper sector, like the rest of media, is characterised by heavy concentration of ownership. However, the market has stabilised since major mergers in 1998. Two major publishing groups dominate the national market: Postimees Group (part of Eesti Meedia) and Ekspress Group. In 1998, two Scandinavian media companies, Sweden's Marieberg and Norway's Schibsted, made important acquisitions in Estonia that further strengthened media concentration. Marieberg sold its possessions back to Estonian owners in 2001 – Ekspress Group – which now is a public stock company with the majority share in the hands of a local businessman. Schibsted is involved in all types of media (print, television, radio), while Ekspress Group has been focusing on print (second biggest quality daily *Eesti Päevaleht*, weeklies *Eesti Ekspress* and *Maaleht*) and Internet (the largest internet news portal *Delfi*).

Mainstream newspapers in business in 2009 were as follows: five national dailies (four in Estonian, one in Russian), eight weeklies (five in Estonian, three in Russian) and 23 independent regional papers (18 in Estonian, five in Russian). In addition, several municipalities publish their messengers (news sheets) on weekly or monthly bases; many of them craft these according to journalistic convention. The overall estimated number of newspaper titles in Estonia is 151, including newspaper-

like publications and advertising papers.¹ Circulations figures for all papers have substantially decreased. The combined daily circulation of all the member papers of the Estonian Newspaper Association in 1992 was 831,400. In 2005 it was 543,600 whilst in 2009 491,300. The circulation of the two largest national daily newspapers remains under 60,000 of each (*Postimees*, *Õhtuleht*). The circulation of the largest weeklies (*Maaleht*, *Eesti Ekspress*) is approximately 30,000 to 40,000. The circulation of regional (daily) papers is between 3,000 and 14,000. The circulations of Russian-language weeklies (dailies have ceased to appear, except for *Postimees* in Russian with circulation of 9,800) reach 15,000.

Table 2.1: Major newspapers by ownership, circulation and readership

| | Newspaper | Ownership | Circulation* (Aug 2010) | Readership (Q1, 2010) |
|--|---|---|------------------------------------|----------------------------------|
| <i>Dailies</i> <i>Mixed type quality papers</i> | Postimees | Eesti Meedia (Schibsted) | 56,100 | 200,000 |
| | Eesti Päevaleht | Ekspress Group | 29,800 | 106,000 |
| | Äripäev (business) | Bonnier | 12,200 | 42,000 |
| | Postimees (in Russian) | Eesti Meedia (Schibsted) | 9,800 | 59,000 |
| <i>Tabloid</i> | Õhtuleht | Eesti Meedia (Schibsted) 50% Ekspress Group 50% | 55,100 | 178,000 |
| Weeklies | Eesti Ekspress | Ekspress Group | 32,000 | 93,000 |
| | Maaleht (rural) | Ekspress Group | 42,600 | 125,000 |
| | Den za dnyom (in Russian) | Eesti Meedia (Schibsted) | 13,000 | 44,000 |
| | MK-Estonia (in Russian) | LAT individual (Baltic Media Alliance) | 10,000 | 49,000 |
| | Moskovskiy Komsomolec | | | |
| | Delovye vedomosti (business, RU) | Bonnier | 4,100 | 17,000 |

Circulations of March 2010 were slightly higher than those of August 2010.

Data about circulations by Estonian Newspaper Association. Data about readership by TNS EMOR. Data about ownership by Central Commercial Register and from public sources.

¹ National Library of Estonia, Statistics 2009.

Table 2.1: Major newspapers by ownership, circulation and readership (continues)

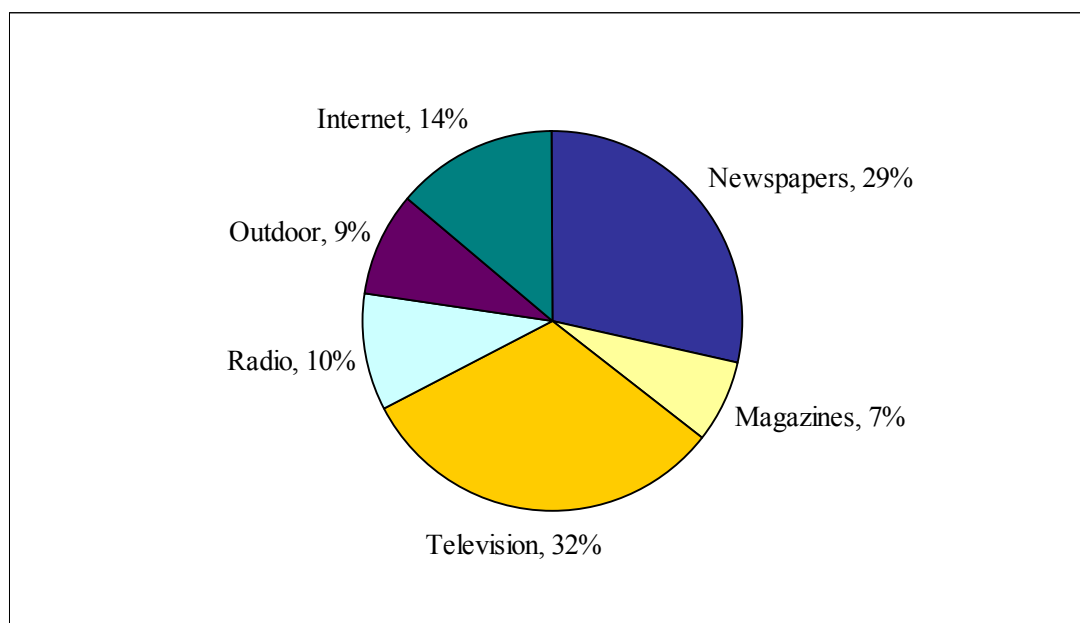
| | Newspaper | Ownership | Circulation* (Aug 2010) | Readership (Q1, 2010) |
|--|--|---|------------------------------------|----------------------------------|
| Regional and local papers | Pärnu Postimees | Eesti Meedia (Schibsted) 66% Pressinvest (EST individuals) | 13,700 | 32,000 |
| | Sakala | Eesti Meedia (Schibsted) 66% Pressinvest (EST individuals) | 9,400 | 30,000 |
| | Meie Maa | SWE individual 99.97% EST individuals 0.03% | 7,300 | 15,000 |
| | Põhjarannik / Severnoye Poberezhye | Luterma Ltd. (EST) 19.4% Journalists 80.6% | 7,300 | EST 16,000 RUS 13,000 |
| | Virumaa Teataja | Eesti Meedia (Schibsted) 66% Pressinvest (EST individuals) | 7,300 | 25,000 |
| | Võrumaa Teataja | Individuals (EST) | 4,500 | 20,000 |
| | Saarte Hääl (former Oma Saar) | An individual (EST) | 4,500 | 12,000 |
| | Lääne Elu | Individuals (EST) | 4,100 | 10,000 |
| | Valgamaalane | Eesti Meedia (Schibsted) 66% Pressinvest (EST individuals) | 3,000 | 12,000 |
| | Nädaline | Individuals (EST) 65% A venture (EST) 35% | 3,100 | 9,000 |
| Free papers (weekly) | Viru Prospekt (in Russian) | Individuals (EST residents) | 5,300 | NA |
| | Tallinna Linnaleht | Eesti Meedia (Schibsted) 50% Ekspress Group 50% | 27,500 | 52,000 |
| | Tallinna Linnaleht (in Russian) | Eesti Meedia (Schibsted) 50% Ekspress Group 50% | 22,500 | 54,000 |
| | Tartu Ekspress | EST ventures | 20,000 | NA |

Circulations of March 2010 were slightly higher than those of August 2010.

Data about circulations by Estonian Newspaper Association. Data about readership by TNS EMOR. Data about ownership by Central Commercial Register and from public sources.

The newspaper sector has gradually lost its majority share in total advertising expenditure to television. In 2004 the newspapers' advertising share was 44.5% compared to televisions' 25.6%. By the first quarter of 2010 the proportions were equally 31% out of the total expenditure. In the second quarter of 2010 proportions turned into 32:29 percent in favour of the television industry. Still the overall print sector share exceeds the television share by four percentage points.

Figure 2.1: Advertising expenditure breakdown, Q2 2010



Data of TNS EMOR.

The print media continues to enjoy a 0% value added tax for subscriptions although single copy sales are taxed with the regular rate of 20% (up to July 2009, the rate was 18%).

Family, home and lifestyle magazines lead the magazine market; they are the most commercially oriented magazines. Publications for youth and children, comics, travel, vocation and sports are considered by the research carried out by the University of Tartu (2005) to be partially commercially oriented. The rest (including the popular science, professional, trade and hobby magazines) are considered socially oriented magazines and their circulations are low. The number of magazine titles in Estonia is 328.² According to a more stringent classification by the researchers of the University of Tartu this number might be up to 150.³

The number of popular magazines decreased considerably in 1998 when several magazines of the same type merged during a merger of two competing publishers. Also, in 2008 and 2009 a number of magazines have been either shut

² National Library of Estonia, Statistics 2009.

³ As this group considers only about one in seven periodical publications to be magazines. See P. Vihalemm (ed.), *Meediasüsteem ja meediakasutus Eestis 1965-2004* [Media system and media usage in Estonia in 1965-2004] (2004).

down or merged because of the slack economic period, and a new-coming publisher (Kalev Meedia, later renamed Luterma) seized to exist.

Radio

The Estonian audience can listen to four (plus one local in Tallinn) public and 25 private radio programmes, provided by one public service broadcaster (*Rahvusringhääling*, ERR) as well as 15 private broadcasters. Among the biggest commercial radio broadcasters are the Sky Media Group and the Trio Radio Group. Both operate six programmes, most of them distributed nationally. The two broadcasters combine to comprise about two thirds of the total radio advertising market. The third biggest player, part of the international MTG group, The Mediainvest Holding Ltd., operates two music radio programmes.

Programmes of the public radio air across nation-wide coverage areas delineated by law while private stations are limited to semi-national coverage areas provided by “regional” licences.

Along with the public service broadcaster, Radio *Kuku* is the only commercial nationwide talk-radio programme (part of Trio Radio Group). Also the two Christian radio stations – *Pereraadio* and *Raadio7* – provide talk programmes. The locally oriented radios (eight in total) do have some talk features in their formats. All radio stations broadcast terrestrially; most of them have a parallel stream running on the Internet. Digital radio has not been implemented and probably shall not be in the near future, as it provides comparatively few cost-effective advantages (especially in regard to sound quality) compared to analogue transmission.

Television

The public service broadcaster ERR runs two channels. *Eesti Televisioon* (ETV) airs general-audience programming in Estonian. ETV2, initially launched as a digital channel in August 2008, introduced specialised programming the next season after the digital switchover. It provides programmes for children, documentaries and reruns of archived audiovisual works. Although it predominantly broadcasts in Estonian, it also includes a daily newscast and some feature programmes in Russian as well as Estonian programmes with Russian subtitles.

Estonian viewers can watch several private national TV channels, the number of which has somewhat increased during the digital transition, which intensely started in 2008. Kanal 2 and TV3, which continued to broadcast also in analogue mode until the final switchover, still dominate on the television market along with ERR’s ETV1. Still digitally launched fragmentation is also taking place and the newcomers channels (TV 6, Kanal 11 and others) are increasing their daily shares.

Scandinavian operators dominate the private television sector. Norway’s Schibsted owns Kanal 2 (which also runs Kanal 11) and Sweden’s MTG Group owns TV3 (which also runs TV 6, lately turned into a pay-TV). Other channels distribute via cable networks (Alo TV, Telekanal Seitse, TV 14, TVN, Orsent and some other, locally distributed channels in cable) and have marginal daily shares.

Table 2.2: Daily share (%) of television channels, June 2009 and June 2010

| Channel | June 2009 | June 2010 |
|----------------|------------------|------------------|
| ETV | 13.5 | 15.8 |
| Kanal 2 | 19.4 | 15.6 |
| TV 3 | 14.4 | 11.5 |
| Kanal 11 | 1.9 | 2.6 |
| TV 6 | 1.7 | 2.4 |
| ETV2 | 1.2 | 2.6 |
| Seitse | 0.2 | 0.3 |
| PBK* | 12.1 | 10.5 |
| RTR Planeta* | 3.5 | 3.9 |
| 3+* | 3.0 | 3.0 |
| Ren TV* | 2.4 | 2.5 |
| Other | 23.3 | 27.0 |
| Video | 2.4 | 2.2 |

PBK – Pervyi Baltiskiy Kanal, the Baltic version of Russia’s Pervyi Kanal.

* - Russian language programmes mostly originated from Russia.

Processed data of TNS EMOR.

Estonians prefer domestic programmes while Russian speakers like those broadcasted from Russia. Channels from the Russian Federation (as well as other pan-European satellite channels) can be watched on cable networks. Most urban areas have been covered by cable television networks, which are being remodelled into digital networks within broadband data communication service packages.

The public service broadcaster is fully financed by allocations from the state budget, while the private broadcasters rely on advertising revenues and other business earnings. Since 2002, as a rule, the public television does not have advertising as part of programming and a source of income. The same applies for the public radio as of 2005. By the authority of the Broadcasting Council the public broadcaster may include those adverts in its programming which go together with the broadcasting rights of some major events (sports, song festivals, etc). Private broadcasters claim that ERR overuses this opportunity, allowing the sports federations act as advertising agencies for ERR.⁴ ERR has rejected the accusations, stating that ERR aired only 320 minutes of advertising in 2009 (on both channels), which is less than 0.1% of the annual advertising volume of private TV channels.⁵ Up to the end of the analogue era the large private television organisations (Kanal 2, TV 3) paid for their licences annually to the state budget. When introducing the digital mode the payment was waived and that earned criticism on behalf of newspaper publishers.

⁴ See U. Oru, “Avalik-õiguslikud kõrvalhüpped” [Public escapade], Postimees, 5/01/2010, available at: <http://www.postimees.ee/?id=207804> (last visited on 6/10/2010).

⁵ See A. Jõesaar, “Avalik-õiguslik meediamajandus” [Public media economy], Sirp, 19/02/2010, available at: http://www.sirp.ee/index.php?option=com_content&view=article&id=10226:avalik-õiguslik-meediamajandus&catid=8:meedia&Itemid=11&issue=3287 (last visited 6.10/2010).

The digital switchover in television took place as of 1 July 2010, almost two years earlier than initially planned by the government's Concept of Digital Television, adopted in 2004.⁶ The switch-off of the analogue transmission mode involved the shutdown of the only local terrestrial television station – Alo TV – as there is no local television as such in the digital era (Alo TV is now distributed by some cable networks). From that point the television players will only be either “regional” or “national” and need to be customers of the broadcasting transmission center Levira, which exclusively runs all transmission facilities over the country. The enlarged technical options (increase in available channels for transmission) have still not produced many new programmes, as the human and financial resources for television broadcasting are limited. Pay-TV's are now also terrestrially distributed.

Standing in autumn, 2010, digital television appears in the form of satellite broadcasting (Viasat), terrestrial broadcasting and also cable. The latter to a large extent is still in analogue mode, but under development to fully digital encoding. The biggest telecommunication operator, Elion, distributes the digital TV signal in the form of IPTV. The additional digital services along with streamed programming have not been yet introduced in the Estonian television market, except for some services by Elion in IPTV (e.g. pay-reruns of certain programmes). Some initial steps have been made to provide a limited selection of TV clips for mobile phones.

Media online

The rate of computerisation and Internet penetration in Estonia is comparatively high. 68% of all households have an Internet connection. 97% of offices are computerised and 99% of those have Internet connections. Around 74% of the total population of age 16-74 uses the Internet.⁷

The Internet usage is especially high among young people, reaching 99.9% of 11-18 year old pupils. This is partly due to the decision of the Estonian government to introduce computers and Internet connection to Estonian schools in 1997 (The Tiger Leap project). National curriculum includes several topics which could support media education and communicative skills. However, at this point the teachers' education is lagging behind.⁸

Web portals started as advanced search engines and www-catalogues in the late 1990s which by the turn of the century developed into several types of portals, including the news portals. The biggest, thriving and influential news portal is *Delfi.ee*, currently owned by the Express Group. This portal produces along with references to other media sources some original content (including video and podcast) with the emphasis on headlines and the opportunity to comment on the news. Comment sections have invoked several debates and court cases about the liability of the media owner for the comments left by the visitors. *Delfi.ee* runs also a portal in the Russian language. The company has subsidiaries also in Latvia, Lithuania, Russia, and Ukraine.

⁶ See U. Loit., “Estonia” in Open Society Institute (ed.), *Television across Europe: regulation, policy and independence, Volume 1* (2005) 612, at pp. 612-613.

⁷ Data by Statistics Estonia 2010.

⁸ See H. Harro-Loit and K. Ugur, “Media education as part of higher education curricula”, 47 *Informacijos mokslai/ Information Sciences* (2008) 78.

Most Estonian-language newspapers have online versions since the middle of 1990s. The bigger newspapers presently employ separate staff for their paper and online editions. Also, the contents of the two versions are, to great extent, separated. Online versions of the newspapers can mostly be accessed for free; the attempts to charge the readers a full subscription fee have as yet failed. In 2009, *Postimees*, *Eesti Päevaleht* and some other newspapers declared that they would limit the availability of the stories from the paper version online with the intention to charge for using the archive and the paper-version online. By fall, 2010 *Postimees* and *Eesti Ekspress* have launched that kind of system, however charging symbolic amounts per some articles (€ 0.06) or per day (€ 0.32).

The public service broadcaster, ERR, runs an online news portal that often serves as an agency source for radio stations, as does the Baltic News Service and dailies' online versions. The public service broadcaster, as well as Kanal 2 and TV 3, makes available its television programmes on demand.

Table 2.3: Top visited news portals, week 38/2010

| News Portal | Visitors per week | Specification |
|-------------------------------|--------------------------|----------------------------------|
| Delfi | 701204 | |
| Postimees Online | 647685 | |
| Õhtuleht | 319236 | tabloid daily online |
| E24 | 241589 | Postimees's economic news |
| Äripäev | 88718 | Business daily online |
| kompravda.eu/nordeurope.kp.ru | 6583 | Komsomolskaya Pravda (RU) |
| dzd.ee | 48355 | Estonian Russian language weekly |
| uudised.err.ee | 35932 | PSB news portal |

Data of tnsmetrix by TNS EMOR

Many media organisations encourage people's media within their outlets and channels, using the best pieces in their everyday news flow. For instance Delfi has launched a special section "Rahva Hää" (People's voice) in which the portal visitors can upload photos and news items. Also both larger private televisions have enabled the viewers to upload their videos on websites. Several media outlets have accounts on Facebook and Twitter, as well as RSS feeds and clips uploaded on YouTube.

Most terrestrial radio programmes can be listened to online. The public service broadcaster, Radio *Kuku* (a talk station run by the Trio Radio Group) and some other radio stations make their talk programmes available also as on-demand archives.

Although the share of Internet advertising has been constantly rising in the total advertising expenditure (3% in 2004; 14 percent in quarter 2, 2010), experts and industry professionals often conclude the cash flow still remains insufficient for cost benefit.

Social media online

The new innovative, interactive media services have instituted themselves among Estonian Internet-users, being preferentially used by younger age groups. Private websites, blogs, facebook, twitter, news groups on commercial net providers and other utilities are commonly known and progressively employed.

The research about user patterns is making its initial steps, thus comprehensive, wide based statistics can be hardly found on social media online operating leverage. The estimated number of active blogs is (standing in spring 2010) about 6,500.⁹ This is less than a year earlier (8,000). The number on entries weekly reaches 7,300 (a year earlier – 10,000). The peak-time of blogging in Estonia was spring 2009. An average blogger in Estonia is a 20 years old woman. The proportion of men and women among bloggers is 28 to 72%.

According to Eurostat, 21% of people contribute content produced by themselves to the Internet (December 2009). 260,000 people (20.3% of the population) have been registered as Facebook users.¹⁰ During the ash cloud crisis the Ministry of Foreign Affairs, the national air company and travel agency Estravel communicated with their customers via Facebook. Resolving the acute issues over the Internet enabled to lower the workload of customer services' phone lines.

Still the research done by the University of Tartu indicates that young age groups are quite passive in producing their own content to the Internet. They would rather upload photos and pictures (88% of users) and videos (62%), rather than school-related homework (less than half of users) or poems/stories (a quarter of users).¹¹

The blogging versus journalism discussion has also instituted itself in Estonia and debates are ongoing. However, the empiric observations of “civic” journalism (often provided by former journalists) allow to note that objective content and opinion are often blurred. Sometimes the entries tend to purposely insult or offend in a provocative manner. The good practices of journalism usually do not extend to blog entries.

Another way to put blogs to use is politicians disseminating their “private” thoughts about public issues, with an intention for the mainstream media to pick these quotes up and replicate in mass media. In these blogs the politicians are often not bounded with the diplomatic phrasing they employ in their everyday jobs.

News agencies

There is one news agency operating in Estonia: the Baltic News Service (BNS), which is a regional news agency covering Estonia, Latvia and Lithuania. BNS is the possession of the Finnish company Alma Media. The domestic Estonian News

⁹ Data in this passage about the blogosphere by T. Toots (CEO, Freqmedia OÜ) “Sotsiaalmeedia statistikast” [About statistics of social media], available at: <http://www.slideshare.net> (last visited on 23/10/2010).

¹⁰ Data by facebakers.com, September 2010.

¹¹ P. Runnel, P. Pruulmann-Vengerfeldt and K. Reinsalu, “The Estonian tiger leap from post Communism to the information society: From policy to practice”, 40 *Journal of Baltic Studies* (2009) 29.

Agency (*Eesti Teadete Agentuur*, ETA) was privatised in 2000 and went bankrupt three years later.

Other media outlets

Almost every municipality (both urban and rural) publishes a messenger-type outlet, which often takes the shape of a traditional newspaper. These newspapers are usually issued as independent editions, although the mainstream media (the Newspaper Association) declares them to be non-newspapers. Occasionally these outlets are accused of political bias; municipalities inconsistently violate editorial independence, especially on the eve of elections. Municipalities often accuse the independent media of paying insufficient attention to local issues and deliberately leaving certain issues uncovered. Regardless, municipal papers in some areas have proved to be important sources of local information. In some cases they are distributed on a subscription basis.

Media ownership and concentration

The media has been comparatively highly concentrated. In a small country like Estonia the concentration is somewhat inevitable, as some experts put it: due to shortage of resources, to attain quality, to achieve cost effectiveness.¹² Two larger media companies, Ekspress Group and Eesti Meedia, exhibit large concentration both horizontal and vertical, especially the latter, whose possessions cover cross media. Eesti Meedia has shares in several newspapers (50-100%), 100% shares in nationwide television and 32% of the shares of one of the two largest radio ventures (Trio LSL). Ekspress Group owns a variety of different newspapers and the biggest news portal Delfi. In addition, the major competing publishers have joint ventures (50:50 shares) for magazines, a tabloid daily (*Õhtuleht*) and a weekly free paper (*Linnaleht*), along with the postal delivery company Express Post.

2.2 Journalists' background and education

The journalist job is considered to be an unlicensed profession, which does not need any kind of registration, qualification, or affiliation to a professional guild. It means that anyone may act as a journalist – be a reporter, a columnist, an editor. In many cases journalistic job is being done on a free-lance basis, possibly even not on a regular basis.

The majority of journalistic jobs in Estonia are mainly concentrated into three companies: Eesti Meedia, Ekspress Group and ERR. The overall number of journalistic jobs in 2009 was about 1,200.¹³ The Estonian Journalists' Union has about 800 members (including retired and former journalists, students, and freelancers). The limited number of jobs is a factor that increases the importance of the loyalty of journalists to the employer in their careers. The number of women slightly exceeds the number of men in journalist jobs (52:48%), while at the end of the 1980s the standing was reverse (44:56%).

¹² See Loit, "Estonia", pp 605-606.

¹³ The research project "Changing journalism cultures: A comparative perspective" (University of Tartu, 2008-2011) identified 1193 journalistic jobs in all the media in 2009. Freelancers are not included. Data referred to in this section have been collected and processed within the above mentioned project.

The early 1990s were characterised by a generation shift: the inflow of young, often inexperienced journalists to the job due to restructuring the journalistic system (abandoning older generations of journalists, accruing of new jobs, etc). By 2009 the composition of journalistic jobs by age have shaped back to the model on 1988, still holding a shortfall of senior journalists – which inter alia affects the editorial boards’ ability to perceive historic contexts by having personally experienced recent past.

Table 2.4: Breakdown of journalistic jobs by age groups (%)

| Age group | 1988 | 1995 | 2009 |
|------------------|-------------|-------------|-------------|
| under 20 years | NA | NA | 0.4 |
| 20-29 | 12 | 40 | 28 |
| 30-39 | 31 | 28 | 28 |
| 40-49 | 27 | 15 | 25 |
| 50-59 | 25 | 14 | 13 |
| 60+ | 5 | 3 | 5 |

Data by the University of Tartu.¹⁴

As to the duration of job career, the mid 1990s were characterised by disposing of long-term experienced journalists – often through restructuring the industry – replacing them of very young generations of journalists. When in 1988 the share of journalists working more than 16 years in the job was 43%, it decreased to 22% by 1995. In 2009 the share was 32% – yet not reaching that of two decades earlier.

The share of people working as journalists having journalistic education or at least related training had increased by 2009 (53%), compared to the shares of 1988 and 1995 (both years 29%). This can be explained by widening opportunities for journalism and media studies (various curricula in several higher educational institutions). Also the number of graduates has increased in the recent decade.

¹⁴ See P. Tali, *Eesti ajakirjanike töö iseloomu muutumine (1988-2009)* [*Changing work practices of Estonian journalists (1988-2009)*], Bachelor’s Thesis, manuscript, University of Tartu (2010).

Table 2.5: Number of staff and graduates of the institute of journalism and communication of the University of Tartu working at media organisations in Estonia (standing at November 2009)

| Outlet | Management and journalists | Journalism graduates from University of Tartu | Percentage (%) out of total |
|----------------------------|-----------------------------------|--|------------------------------------|
| ERR | 274 | 51 | 18.6 |
| Postimees | 67 | 26 | 38.8 |
| Eesti Päevaleht | 71 | 25 | 35.2 |
| Õhtuleht | 43 | 10 | 23.3 |
| Äripäev | 34 | 6 | 17.6 |
| Eesti Ekspress | 32 | 11 | 34.4 |
| Maaleht | 29 | 11 | 37.9 |
| Regional and local papers* | 114 | 26 | 22.8 |
| Magazines** | 74 | 19 | 25.7 |
| TOTAL*** | 738 | 185 | 25.1 |

Data by the University of Tartu, institute of journalism and communication.

Statistics bases on information displayed on media organisations' homepages.

* Surveyed regional and local papers: *Pärnu Postimees, Sakala, Meie Maa, Oma Saar, Põhjarannik; Virumaa Teataja, Võrumaa Teataja, Lääne Elu.*

** Surveyed magazines: *Eesti Naine, Anne, Kodukiri, Pere ja Kodu, Kodu & Aed; Elukiri, Cosmopolitan, Kroonika, Haridus, Akadeemia, Looming, Horisont, Arvutimaailm, Director.*

*** Independent production companies, niche magazines, diminutive local papers, some cultural outlets, and outlets of particular organisations not included.

Although only 25% of all professionals in journalism have graduated from the oldest institution in the country providing degrees in journalism – University of Tartu – the general public and even the professional community still holds it responsible for low degree of professionalism in journalism and poor skills of novices.

On the other hand the media organisations demurely spend on professional training. The Estonian Media Centre (founded as a media college by the newspaper association and the association of broadcasters in 1995) failed, as the large media organisations were reluctant to sustainably finance these mid-career training courses (not to produce workforce for the competitors).

2.3 Media literacy and media status in society

Media consumption is an integral facet of everyday life in Estonia. Regular newspaper readers make up 74.3% of the population (Estonians: 76.3%, Russian-speakers: 70.2%); 58.9% (Estonians: 71.8%, Russian-speakers: 32.2%) read magazines regularly. Consumption of print media in general is decreasing. The average inhabitant of Estonia listens to radio for four hours and one minute daily, and watches TV for another four hours and nine minutes per day. 66.6% of the population

has used the Internet during the past six months.¹⁵ Internet usage seems on a permanent upswing while rates of TV consumption are stable and radio listening has decreased.

Broadcasting is a notably more trusted medium than newspapers, although it does not produce much original content. According to Eurobarometer (fall 2009), 70% of all population trust or generally trust television content, compared to 43% for print media. Public service broadcasting is trusted by about a quarter more than private broadcasting (75% versus 58%).¹⁶ The trust rating for Internet was 42% in 2009, compared to over 50% in 2003.

Estonia, in the context of media literacy, holds the best position among the Baltic countries¹⁷, since the national curriculum includes elements of media education. The cross-curricular theme “media education” was introduced to the National Curriculum in 2002 and curricula of mother language also include media education with focus on different types of written texts.¹⁸ In sum on the curriculum level the media educators have been active for about a decade.¹⁹ In 2010 the Estonian Association of Media Educators was revived. Although a whole generation has grown up within the internetised environment, the research indicates that young Estonian media users tend to be passive consumers rather than active content creators and commentators.²⁰

3. Media policy in Estonia

Media policy in Estonia is characterised by absence of any policy paper and by resolving issues on a case-by-case basis without any apparent long-term vision followed. The Ministry of Culture, the authority for working on media issues, has claimed that the policy is reflected in imposed laws.²¹ However, undermanned units merely allow sporadic supervision and cautious enforcement of media related laws makes the legislation “sleeping”. As the freedom of press is perceived as an absolute one, no official hurries to fall under resentment of the media community.

3.1 Actors of media regulation and policy

Media issues are under the governance of the Ministry of Culture. This body acts as a regulator for broadcasters: it issues licences and supervises the implementation of the Broadcasting Act [*Ringhäälinguseadus*]. It also handles copyright issues and supervises compliance with the Act to Regulate Dissemination of Works Which Contain Pornography or Promote Violence or Cruelty [*Pornograafilise sisuga ja vägi-valda või julmust propageerivate teoste leviku reguleerimise seadus*]. For the latter

¹⁵ Data by TNS EMOR (2008).

¹⁶ Data by Turu-uuringute AS (2009).

¹⁷ H. Harro-Loit, “From media policy to integrated communications policy” in B. Klimkiewics, (ed.), *Media freedom and pluralism. Media policy challenges in the enlarged Europe* (2010) 45.

¹⁸ H. Harro-Loit, et al., “Läbivad teemad õppekavas” [Cross-curricula themes], *Haridus*, 11-12/2007, at pp. 18-24.

¹⁹ K. Ugur, and H. Harro-Loit, “Media literacy in the Estonian national curriculum”, in S. Kotilainen and S.-B. Arnolds-Granlund (eds), *Media literacy education. Nordic perspective* (2010) 133.

²⁰ P. Runnel, P. Pruulmann-Vengerfeldt and K. Reinsalu, “The Estonian tiger leap from post Communism to the information society: From policy to practice”.

²¹ English translations of Estonian legal acts can be retrieved at: <http://www.legaltext.ee/indexen.htm> (last visited on 23/10/2010).

task, the Ministry has instituted a commission to evaluate the cases under discussion. For supervision purposes the Media Division has been instituted within the Ministry. The Division employs two officials. As the latter also work on copyright and other policy-making related issues, the supervision is sporadic and usually not qualitative. The rest of the media landscape even less gets the sights of the Ministry. Yet in matters considering broadcasting the Ministry has declared that its broadcasting policy appears without a formulated policy paper.

Advertising issues are under the scrutiny of the Consumer Protection Board, which has assembled an advisory body for construing the provisions of the Advertising Act [*Reklaamiseadus*].

The technical aspects of broadcasting and other electronic media lay under superintendence of the Technical Surveillance Authority – a regulator within the governance area of the Ministry of Economic Affairs and Communications.

The Public Broadcasting Council, a body appointed by parliament, supervises public service broadcasting. In total, there are nine members in this council, five of them politicians and four from related professions.

The Estonian Data Protection Inspectorate is the supervisor for implementation of the Public Information Act and Personal Data Protection Act.

All supervisory units tend to be undermanned to fulfill their tasks sufficiently. Their attention to media related issues is usually initiated by complaints by the public.

The main non-governmental media organisations are the Newspaper Association (defining itself as a multitask organisation for newspaper publishers, editors and journalists), and the Association of Broadcasters (representing the interests of commercial broadcasters, both television and radio). The Estonian Journalists' Union plays the role of a trade union as well as that of a professional guild. Media educators have formed the Association of Media Educators. Independent producers in the audiovisual sector have a representation body as do advertising agencies. While associations of publishers and broadcasters assemble most of the players of these sectors, the most active journalists have no affiliation with a journalists' union.

Media self-regulation rests upon the press council, founded in 1991. In 2002 it went through a cataclysm which led to the creation of a new press council affiliated to the newspaper association. As the original press council also continued to operate, two press councils exist. As explained more in detail in Section 3.2.2, the contradiction lays in principles of implementing self-regulatory mechanisms, while the newspaper association reduced the issue to “mismanagement by the then chairperson”.

3.2 The media regulatory framework

3.2.1 Freedom of expression and information

The Constitution grants freedom of expression. Two comprehensive constitutional articles provide grounds for the free dissemination of ideas, opinions, beliefs and other information by word, print, picture or other means²² and for freely obtaining

²² Constitution [*Põhiseadus*], Article 45.

information disseminated for public use.²³ Although legally provided with reservations, these rights are interpreted as “first priority” rights and this is the way they are implemented by the media. Any kind of in-depth criticism or editorial processing is often considered “censorship”, although these activities contain no state intervention or sanctions. Censorship is banned by the Constitution.

The Constitution does not distinguish between press freedom and the general freedom of expression (like for instance in Germany). At the same time the media organisations have²⁴ employed the freedom of speech for most part as the specific defence right for the press, even if not “irreplaceably contributing to the political debate” (as the European Court of Human Rights has reasoned the protection of press freedom). The key problem is that special privileges for media may be in strong tension with the general free speech guarantees. The Strasbourg Court has at times come close to giving higher protection to media speech than to the expression of individuals. These cases are mostly connected to political speech and politicians. Hence, it is important to keep in mind that the Strasbourg Court affords an especially high level of protection to “political speech”. Another important point is that the Court often talks about information that “the public has a right to receive”. Hence, the Strasbourg Court is concerned with audience based, rather than speaker based values.²⁵ In debates concerning freedom of expression held in Estonia this complicated differentiation concerning the Strasbourg case law is not usually taken into consideration.

From a legislative point of view, Estonia offers a liberal environment for the media. No specific “media law” exists, except for the Broadcasting Act. The print media issues are covered by general laws, sometimes leaving unregulated areas (e.g. the person responsible for the publication and liabilities of the responsible editors). The only law that ever refers to “journalistic data processing” is the Personal Data Protection Act. No licence, permit or registration is required to set up a newspaper.

Estonia signed the European Convention on Human Rights in 1993 and ratified it in 1996. It is thus bound to respect Article 10 of the Convention. According to Freedom House, in 2010 Estonia ranks at the 19th position in the table of global media freedom, sharing the position with Germany. Estonia lies between Portugal (rank 18) and the USA (rank 24).²⁶ Estonia lags behind its Nordic neighbours (Finland, Iceland, Sweden, Norway, Denmark), but has the best position midst its Baltic neighbours -Lithuania (rank 32) and Latvia (rank 55), and among other Central and Eastern European countries.

3.2.2 Structural regulation

Statutory rules regulate the broadcasting and advertising sectors while the written press relies mostly on self-regulation.

The Broadcasting Act, passed in 1994, regulates radio and television. The law was brought in line with EU directives at the millennium shift and is currently under

²³ Constitution, Article 44.

²⁴ Until the Supreme Court case RK 3-2-1-43-09 of 10 June 2009, *Vjatšeslav Leedo vs Delfi*.

²⁵ H. Fenwick and G. Phillipson, *Media freedom under the Human Rights Act*, (2006), at p. 25, 61, 68.

²⁶ Freedom House, Freedom of the press 2010, Table of global press freedom rankings, available at: <http://freedomhouse.org/images/File/fop/2010/FOTP2010Global&RegionalTables.pdf> (last visited on 2/10/2010).

revision in the light of the recent EU *Audiovisual Media Services Directive*. Standing at fall, 2010, the draft law is under discussion by the government, after what is going to be submitted to the parliament for adoption. As of 2005 the Act on Electronic Communication entered into force. In combination with the Broadcasting Act, this law delineates competencies for the Ministry of Culture, which issues the broadcasting licences (for content), and for the Estonian Technical Surveillance Authority (known prior to 2008 as the Communication Board), which allocates frequencies and issues technical licences.

The Broadcasting Act sets up the licensing conditions for terrestrial radio and TV broadcasting. The licences are issued on contest base and reissued after at least every five years on the same conditions. The cable televisions need also to take a licence but there is no contest while issuing these. Internet television and radio does not need any licence under the current law. For the issuance of content licences the Ministry of Culture has instituted a commission to discuss the applications, the resolution of which has a character of a recommendation for the minister who makes the final call.

The Ministry has the right to refuse to issue a licence in case “a person operating as a television and radio broadcaster or the responsible publisher of a daily or a weekly newspaper would become simultaneously a person operating as a television and radio broadcaster and the responsible publisher of a daily or a weekly newspaper in the territory planned for the broadcasting activity or a part of the territory of Estonia”. This restriction shall not extend to the television guide published by a broadcaster itself.²⁷ However, this restraint has never been implemented, although the formal conditions of Schibsted’s possessions in Estonia (enjoying shares in several newspapers of 50-100%, 100% shares of nation-wide television and 32% of the shares in one of the two largest radio ventures) would require enforcement of the clause under discussion. Moreover, the Broadcasting Act provides only the grounds for refusing to issue a broadcasting licence, not for revoking a licence. Monopoly or cartel conditions are not listed as one of the reasons for which a licence may be revoked, nor is there any general statement prohibiting concentration in the market.²⁸

The probable cause for not implementing this provision lays in its declaratory nature. There are no sufficient legal definitions (e.g. “responsible publisher”) in the regulation. Furthermore, the possessions of Schibsted have been registered under different legal entities: Kanal 2 is registered as a property of Schibsted, while *Postimees* as the property of Eesti Meedia. This may allow the argument that Schibsted’s holdings do not even exhibit concentration according to the law.²⁹

Thus there is also no mono-media ownership regulation, presumably due to the liberalist viewpoints of the legislator. On the other hand, cross-media ownership is disallowed, but only in a declaration. The draft Media Services Act³⁰ limits the restraint, under which the licence issuance may be rejected, to “substantially producing of potential endamage to competition on some media markets”, which again does not provide explicit legal definitions.

As of 2007 the regulation about the public service broadcaster ERR has been separated into an individual act, enacting also the merge of the hitherto separate

²⁷ Broadcasting Act, article 40, section 4, subsection 8.

²⁸ Loit, U., “Estonia”, at p. 605.

²⁹ Ibid.

³⁰ Standing at 13/08/2010, in the stage of inter-ministerial coordination on the draft.

public radio and public television. The law specified the objective and functions of public broadcasting and reinforced the liabilities of responsible officials (members of the board and the broadcasting council).

According to amendments made in 2001, there is no advertising in public service broadcasting; as of July, 2002 it was excluded from public television. In 2005 ads were removed from public service radio. This leaves the allocations from the state budget to be the sole main source (except for own earnings from providing some services) for financing ERR.

The Competition Act [*Konkurentsiseadus*] holds a general scope of regulation and addresses no media-related specific issues. The Competition Authority has seldom processed media-related cases: there have been only four complaints during the last five years and four authorisations of concentration of media ventures since 2005.³¹

The written press has no specific laws affecting its operations and thus relies mostly on self-regulation. However, the latter tends to perform rather in favour of media organisations than the general public, meaning that self-regulatory mechanisms rather justify media behaviour than protect public interest. As a result of dissensions on principles of self-regulation,³² two press councils have existed since 2002. The majority of mainstream media organisations (including online media and TV broadcasters) only recognise the press council that is affiliated to the Estonian Newspaper Association. The original press council (the Estonian Press Council, established in 1991) works jointly with the Journalists' Union, still finding cooperation with some media outlets and channels.

The main instrument of media accountability is the Code of Ethics for the Estonian Press,³³ which was adopted on the basis of wide consensus represented by the media associations in 1997. It has never been amended since and has been adapted for the online media pursuant to applicability, i.e. as much as the provisions can be applied to online media issues.

3.2.3 Content regulation

General content requirements and quota rules

Content requirements have been set for broadcasting, while printed press and new media operate on their own. The public broadcasting has more prescriptions on content than private broadcaster and, as to the EU regulations, private televisions have more obligations than private radios. The rules have been enforced by the Broadcasting Act, which is being drafted into the Media Services Act

³¹ Data gained from the Estonian Competition Authority's website, <http://www.konkurentsiamet.ee> (last visited on 2/10/2010).

³² The newspaper association has found that the lay organisations, institutionally participating in the work of the original press council should not interfere in the self-regulatory processes which should be left solely for publishers' consideration. Estonian media hardly withstands any criticism, including academic one, towards them. Therefore, the new council avoids these potential conflicts: does not proceed complaints on general quality on media, complaints submitted for someone else, etc. For more details see E. Lauk., "How will It all unfold? Media systems and journalism cultures in post – communist countries" in K. Jakubowicz and M. Sükösd (eds), *Finding the right place on the map. Central and Eastern European media change in a global perspective* (2008) 193.

³³ See Estonian Press Council, "The code of ethics for the Estonian press", available at: http://www.asn.org.ee/english/code_of_ethics.html (last visited on 2/10/2010).

[*Meediateenuste seadus*]. The draft of the latter has yet not been released for the general public. According to the explanations by the Ministry of Culture,³⁴ the new law simplifies the licensing procedures and sets rules for non-linear services. The blogs and other internet-based media remain out of the scope of the draft law.

The Broadcasting Act³⁵ prescribes all broadcasters (radio and television) to provide newscasts for at least 5% of the daily transmission time. The minimum weekly transmission time is 84 hours for radio, 56 hours for television and 21 hours for cable television. In some cases this has been extended under the conditions of the broadcasting licence. Television operators along with the requirements imposed by the European directives (European audiovisual works for at least 51% of the total transmission time; works by independent producers for at least 10% of the total transmission time) must carry at least 10% of own production,³⁶ of which half must be broadcasted during the prime broadcasting time (between 19 and 23 hours).

All broadcasters need, in the case of a threat to public security or the constitutional order, promptly transmit the official announcements of the State institutions in all their programme services at their own expense. Broadcasters also must, without delay and free of charge, transmit in all their programme services information which is necessary for the protection of the life, health and security of persons or for the prevention of damage to property or of danger, or for the prevention or reduction of environmental damage.³⁷

The task list for the public broadcaster is much more comprehensive, assigned by the law. The functions *inter alia* include the following activities:

- Producing at least two television programme services and four twenty-four-hour radio programme services;
- Making available, to a reasonable extent, the programme services and the programmes' archive through electronic networks;
- Recording events and works of significant importance to the Estonian national culture or history, and guaranteeing the preservation of the recordings;
- Distributing the programmes and media services introducing Estonian culture and society all over the world;
- Intermediating the best works of the world culture;
- Transmitting programmes which, within the limits of the possibilities of National Broadcasting, meet the information needs of all sections of the population, including minorities;
- Guaranteeing the operational transmission of adequate information in situations which pose a danger to the population or the state;

³⁴ See V. Rosental., "Meediateenuste seadus hakkab asendama ringhäälinguseadust" [The Media Services Act shall replace the Broadcasting Act], *Äripäev*, 18/03/2010.

³⁵ Programming requirements contained in article 4¹.

³⁶ Under the Broadcasting Act "own production" means programmes and programme services relating to contemporary Estonia or Estonian cultural heritage, produced by a broadcaster itself or in co-operation with producers from the member states of the European Union or commissioned from an independent European producer (article 4¹, section 3).

³⁷ Broadcasting Act, article 10.

- Reflecting, to the maximum possible extent, the events which take place in Estonia in its newscasts and other programmes.³⁸

In addition to that the programme services of the public broadcaster must be diverse and balanced, promote social cohesion, include independent and appropriate news, and maintain political balance, especially during the election campaigns.³⁹

The obligation for political balance has been imposed also on private broadcasters in the way that all political parties and political movements should be granted transmission time to present their positions on equal terms, which may be set by the broadcaster.⁴⁰

Codes of conduct

The Code of Ethics for the Estonian Press (hereafter: the Code) has been accepted by all the Estonian media organisations and both Press Councils base their adjudications on this Code.

The general ideology of the Code is biased towards a teleological approach: the wording of the Code directs the media organisation or journalist towards moral reasoning that takes into consideration the result of one's decision or action. The recurrent dilemma of values is consideration of individual suffering against the importance of the information for public interest. The Code allows journalists to use ethically questionable means for getting information in cases "where the public has a right to know information that cannot be obtained in an honest way".⁴¹ For this particular article the Code has also been often criticised both by the professional community and the outsiders.

Another particularity of the Estonian Code is to lay the responsibility for the quality of journalism both on journalists and the media organisation. It particularly emphasises the responsibility of news organisations for publishing truthful and accurate information.⁴²

The Code has never been amended since its adoption in 1997. One of the reasons is the lasting opposition between the two Press Councils, and between the original press council and the newspaper association (essentially about the right to provide methodical criticism towards media). Another reason may be that journalists have not adopted the Code as the primary guide of their everyday work. This, in turn, seems to be closely related to the education of journalists. Two pilot-studies on journalists' professional values in 2009/2010⁴³ indicate that journalists without professional education tend not to value professional ethics. They are not acquainted with the Code and only have vague ideas about the basic norms of professional ethics as the interviews revealed. As mentioned above, this code is adapted also to cases concerning new media, as there is no specific code for net ethics.

³⁸ Estonian National Broadcasting Act [*Eesti Rahvusringhäälingu seadus*], article 5.

³⁹ Estonian National Broadcasting Act, article 6.

⁴⁰ Broadcasting Act, article 6¹.

⁴¹ Code, art. 3.7.

⁴² Code, art. 1.4.

⁴³ E.g. T. Ahonen, *Ajakirjanike võimalikud eetilised dilemmad ja väärtuste konfliktid Estonian Airi kajastamise näitel* [*Potential ethical dilemmas of journalists: a case study of reporting Estonian air business problems*], (2010); M. Kangur, *Eesti ajakirjanike hoiakud eetiliste konfliktide puhul* [*Attitudes of Estonian journalists in case of ethical conflicts*] (2009).

An independent code has been adopted by the business daily *Äripäev* in 1993 and amended twice. *Äripäev*'s code defines the rules for business journalists in cases of personal business interests that the general code does not provide and sets the inner rules of the company.

Advertising rules

The advertising rules are mainly set by the Advertising Act [*Reklaamiseadus*]. In addition, some specialised laws (e.g. the Medicinal Products Act [*Ravimiseadus*]) provide some special requirements for advertising in the particular sector. There is a total ban for advertising of tobacco, health services, infant formulae, gambling, services offered for satisfaction of sexual desire and some items illegal also by their nature. In addition, advocates and sworn translators, notaries and bailiffs, and patent agents cannot advertise. Advertising of plant protection products, alcohol, medicinal products, and financial services has certain restrictions – either by channel, by locating the advert, or by time. No advertising is allowed on public television and public radio, pursuant to the Estonian National Broadcasting Act.

As the Advertising Act was introduced as an imposing of good practices by legal means in 1997, Estonia is almost the only country in Europe in which the self-regulation in the advertising sector has not emerged. On the other hand the Advertising Act is the example of a sleeping law, as it is poorly and inconsistently enforced.

Rules regarding media publishing

The Law of Obligations Act [*Võlaõigusseadus*] covers defamation. Estonian jurisprudence does not itemize *libel*. In Estonia defamation appears only in the form of a civil suit – it is not a penal offence since 2002.

The defamation of a person, inter alia by passing undue judgement, by the unjustified use of the name or image of the person, or by breaching the inviolability of the private life or another personality right of the person is, as a rule, unlawful.⁴⁴ The burden of proof rests with the person disclosing the information, i.e. with the media. In the case of disclosing incorrect information, the damaged party may demand refuting the information or publishing a correction at the offender's expense, even if the disclosure of the information was lawful.⁴⁵ However, this regulation does not favour people bringing their cases to the court, as also the burden of proof for moral damage rests with the complainant. Standing at fall, 2010 the Ministry of Justice has proposed amendments to the Law of Obligations Act to introduce “punitive damages” which the media organisations, especially the Newspaper Association completely resist, claiming it affects the freedom of speech.

Privacy protection is carried through the Personal Data Protection Act (*Isikuandmete kaitse seadus*; hereafter: PSPA) and the Law of Obligations Act. The first is the only law explicitly specifying media conduct. The PSPA provides the conditions and procedure for processing of personal data and liability for the violation of the requirements. Among sensitive personal data are the following: data revealing

⁴⁴ Law of Obligations Act, article 1046.

⁴⁵ Law of Obligations Act, article 1047.

political opinions or religious or philosophical beliefs; ethnic or racial origin; data on the state of health or disability; information on sex life; information concerning commission of an offence or falling victim to an offence before a public court hearing, etc.

Personal data may be processed and disclosed in the media for journalistic purposes without the consent of the data subject, if there is predominant public interest therefore and this is in accordance with the principles of journalism ethics. Disclosure of information must not cause excessive damage to the rights of a data subject.⁴⁶

In 2007 also the Public Information Act [*Avaliku teabe seadus*] was renewed (entered into force on 1 January 2008) and supplemented by the formerly single Databases Act. As a rule, the data processed in the database shall be publicly accessible, unless the access to which on the ground of law is restricted. Concurrently, the databases shall not publicly contain personal data, unless the imperative of disclosing of those derives from the law.⁴⁷

Copyright is under protection of the Copyright Act [*Autoriõiguse seadus*], which came into force in 1992. The effectiveness of collecting the royalties depends largely on the performance of collecting societies. For instance the Estonian Authors' Society has established a solid system collecting royalties even before the law took effect – the system of which is often critically assessed by the broadcasters for high fees. On the other hand the Estonian Association of the Phonogram Producers was established only in 1998 and is still going to law against private broadcasters to establish the degree of fair and reasonable royalties.

The State Secrets and Classified Information of Foreign States Act [*Riigisaladuse ja salastatud välisteabe seadus*] settles the grounds for the protection of state secrets and the classified information of foreign states (considering Estonia being the full member of the EU and the NATO), and liability incurring from violating the act. The distinctive feature of this law is that the restrictions of dissemination apply to any person having “accidentally” or otherwise got the grasp of any information classified under that act. It means that even in case of information unlawfully leaked to the mass media the media outlets have no right to replicate it and liability applies to anyone publicising the classified information.

Rules regarding information gathering processes

Article 44 of the Constitution provides a comparatively wide framework for access of the general public to the public information. The Public Information Act, passed only in 2000, sets rules for complying with requests for information. Also, it prescribes disclosing public information in the Internet.

The journalists' sources have been legally protected only in case of broadcasting (under the Broadcasting Act). In other respects (printed press), it has been the matter for self-regulation. Although no cataclysms have yet occurred the Ministry of Justice has initiated a law to extend the regulation in the Broadcasting Act also to journalists in all other media channels. Besides the current law obligates the

⁴⁶ Personal Data Protection Act [*Isikuandmete kaitse seadus*], article 11, section 2.

⁴⁷ E. Tikk, and A. Nõmper, *Informatsioon ja õigus [Information and law]* (2007), at p. 160.

journalists to reveal their sources on the request of the court of law – even in civil cases. The draft law limits this only to a narrow list of serious criminal frauds. However, the Newspaper Association finds the suggested list of frauds too wide and hazardous for future sources' security, and opposes also this legal initiative.

Rules regarding social media publishing and search engines

No special rules regarding social media publishing exist in Estonia. Neither are there any rules about search-engines. The latter has yet not become topical either.

4. Media policy and democratic politics: an assessment

Newspaper subscription and reading traditions go back to the nineteenth century due to the high rate of literacy among Estonians (over 90% in the 1890s). During the nineteenth century, the press played the considerable role of educator and national and cultural integrator. These traditions were maintained during the Soviet period with the press fulfilling a dual role: on the one hand it was the Communist Party propaganda channel, on the other hand, within the framework of the same official and censored press a hidden oppositional agenda was developed.⁴⁸ Therefore, the press played a particularly significant role in the independence movement in 1989/1991.

The roots of the almost absolute press freedom lay in the totalitarian past when the mass media was strongly canonised and controlled out of the editorial boards (censorship on many levels: including hidden, pre- and post-censorship). The reasonable abandonment of external interventions has overgrown into rejecting any public regulation, including protecting the rights of persons affected by the media conduct. This also explains for example the severe reluctance of the newspaper association against the drafted law amendments to legally institute the protection of journalists' sources and introduce punitive damages for reducing endamagement.

Advantageously, the professional training in the University of Tartu started as early as in 1954, initially as part of philology curriculum. In 1978 a separate department of journalism was founded. When in the rest of the USSR the journalism training was predominantly attached to the communist party instituted higher education for ideology training, in Estonia it was bounded to scholarship of national culture. Paradoxically, the journalism education at the university⁴⁹ provides advantages also under the current situation in which the values of the professional media system have been strongly subjected to market principles. A research university by combining the resources of research and teaching is capable of continuing the critical-analytical education on journalism.⁵⁰

The media had experienced drastic structural changes by the end of the 1990s, when the market began to stabilise and foreign investments arrived. There were certain expectations that foreign owners' experience and know-how would be a good

⁴⁸ S. Hoyer, E. Lauk, and P. Vihalemm, *Towards a civic society. The Baltic media's long road to freedom. Perspectives on history, ethnicity and journalism* (1993).

⁴⁹ Currently the journalism related courses are held also in other universities than the University of Tartu. For instance the curriculum of The Baltic Film and Media School, affiliated to the Tallinn University includes portions of television and media studies.

⁵⁰ H. Harro-Loit, "Cost effectiveness of journalism education in a small nation-state", 2 *Journalism Research, Science Journal (Communication and Information)* (2009) 138.

basis for the further development of journalistic professionalism and democratic media cultures;⁵¹ but this was not the case. As Peter Gross claims, “there is no indication that the Eastern European media outlets that came under Western European ownership have in any way measurably improved their journalism”.⁵² For the local managers of the media outlets and media elite, a serious conflict of interests arises: under the pressure of ensuring profit for the investors they should also be concerned about the quality of national journalism. As a consequence, commercial ideology increasingly prevails over public service ideology and aggressive commercial policies are being pursued at the expense of journalistic standards. Journalism has largely lost its traditional cultural and integrating roles. On the other hand, investigative journalism is gradually developing that was completely unthinkable under the Soviet regime.⁵³

Expanding online news provides challenge for the professional journalism. Non-limited space possibilities mean that online journalists have to produce several news items per day, therefore, often using various kinds of publicly available information such as PR news, promotional writing, translations from other online information sources, etc. rather than investing in the development of original journalism online. The colonisation of online news discourse by PR offerings is part of a wider social practice but in the context of expanding online publishing possibilities it is important to estimate how much original-professional journalistic input is provided by media organisations.⁵⁴

Concerning the question about preserving professional journalism one should keep in mind that the media organisations, which operate in small media markets (like Estonia), are generally vulnerable to the intervention of promotional materials, as they are eager to collect all the advertising money available. There are different attitudes among the news organisations towards what should be considered promotional material and whether it should be avoided, tolerated or even looked at. The counterbalance to economic pressure should be the ideology of professional independence, but in Estonia the professional culture seems to be too weak to resist such pressure in case the media organisation has its strong content-independence policy. E.g. national dailies do use various means in filtering promotional material away from their journalists such as in-house regulations, the physical separation of advertising and editorial departments on different floors or the use of specific layout software programs, though the editors have admitted that cooperation has sometimes happened in their organisations. Furthermore, a very small job-market makes the ideology of professional independence vulnerable. Journalists, instead of being loyal in the first instance to their professional ideals, have to be in first instance loyal to the ideology of their employer.⁵⁵

⁵¹ A. Balčytienė and E. Lauk, “Media transformations: the post-transition lessons in Lithuania and Estonia”, 33 *Informacijos Mokslai/Information Sciences* (2005) 96.

⁵² P. Gross, “Between Reality and Dream: Eastern European media transition, transformation, consolidation, and Integration” 18/1 *East European Politics and Societies* (2004) 125.

⁵³ E. Lauk, “Reflections on changing patterns of journalism in the new EU countries” 10/ 1 *Journalism Studies* (2009) 69, at p. 78.

⁵⁴ A. Balčytienė and H. Harro-Loit, “Between reality and illusion: re-examining the diversity of media and online journalism professionalization in the Baltic States”, 40/4 *Journal of Baltic Studies* (2009) 517.

⁵⁵ See H. Harro-Loit and K. Saks, “The diminishing border between advertising and journalism in Estonia”, 7/ 2 *Journalism Studies* (2006) 312, at pp. 312-322.

Although the current trend is to integrate media and information or communications policy, in the case of Estonia one can see paradoxes with the aim of strengthening the public sphere. The Estonian communications policy (liberalisation of the telecommunication market, decreasing prices, government initiatives e.g. Tiger Leap project for schools, development of e-banking and other e- services, etc.) has guaranteed rapid increase in the Internet usage since the end of the 1990s. Hence realisation of communication rights of citizens (e.g. access to full and fair information that affect their lives; the right to express one's views; etc.) seems to be rather well achieved. In practical terms this means, that citizens need to have competences of information processing that helps them to satisfy their needs and desires. Hence, "access to communication" is linked to the question of media literacy.

Factors that determine the content of media are mutually constituted by the size of the media market, its structure, professional journalistic discourse, accountability instruments, the regulatory and policy framework and technologies. Here the Estonian policy trend to evaluate "market neutrality" neglects the commercial pressure that affects the quality of information. Research has shown that the principle of liberal market policy has led to commercial broadcasters having certain advantages while the Public Service Broadcasting has had problems with the legal frame, leadership and financing. Still, the public service broadcaster is seen as a credible source of information and a channel of quality.⁵⁶

5. Conclusion

Socio-politically Estonia is a small but very liberal media market in the discretion of media-economic levers. Concentration is not avoidable, as the market fragmentation between numerous small and poor media organisations would also not assure professional quality of journalism inevitable for a democratic society. However, the democratic society needs endurance of professional and reliable journalism, which rather interprets than conveys the news. Especially under circumstances in which the electronic information flow causes extensive heterogeneity in media use. Therefore the role of professional journalism would create a common agenda, national identity and a trustworthy arena for the public debate. As Jane Singer says speaking about journalism during the Internet era - instead of being only gate-keepers professional journalists must become sense-makers; instead of being agenda-setters they must become interpreters of whatever is both credible and valuable.⁵⁷

This outlines the media-political paradox of a small media market: on the one hand it is inevitable to maintain a liberal media policy, which would support both economic operations and press freedom. The state interference may impoverish the market, dependant on political forces. On the other hand, the prevalence of commercial values provides apparent diversity (plenitude of news, pluralism of views), but unavoidably cheapens the content. Hence, the question of diversity and quality of journalistic content remains a vulnerable issue.⁵⁸

⁵⁶ M. Lõhmus, M. H. Tiikmaa, A. Jõesaar, "Duality of Estonian public service media", 3 /1 (4) Central European Journal of Communication (2010) 95.

⁵⁷ J. B. Singer, "The socially responsible existentialist: A normative emphasis for journalists in a new media environment", 7 Journalism Studies (2006) 2.

⁵⁸ A. Balčytienė and H. Harro-Loit, "Preserving journalism 2010", in B. Dobek-Ostrowska, M. Głowacki, K. Jakubowicz and M. Sükösd et al. (eds), *Comparative media systems. European and global perspectives* (2010) 193.

Another media quality related problem lays in the ability of individuals to protect themselves against misleading information disseminated by media which is committed to commercial value and speed. In other words, media-politically it would be predilectable to maintain a system under which the media organisations find economically motivating to check the accuracy of information prior to publication. Currently the media organisations rarely fear facing law suits by individuals.

During the two decades of regained independence the competence of law courts has increased in the field of public information and journalism-related breaches of human rights. In this regard the court case *Vjatšeslav Leedo vs. Delfi* (2009) sustained a subversive character. The adjudication of the Supreme Court on 17 pages for the first time publicly debated over liability of a media organisation in readers' generated comments to online news items. Inter alia partly the argumentation was based on economic models of particular media organisations: as the readers generated comments these were regarded to be a part of the business model. As the Supreme Court stated: the media organisation gets more profit when news get more comments. Hence, news organisations are liable for the comments.

As to the media-political discourse, until the millennium shift the analysis mainly focused on broadcasting policy. It was that way not only in Estonia but generally in academic publications about media in Central and Eastern Europe. Comprehensive analysis about court cases, shaping the public communication policies, is almost absent both in Estonia and the rest of Europe (except for Anglo-American countries). Lawyers have paid attention to communication law only recently: the textbook for students of journalism and communication about media regulation was published in 1996,⁵⁹ while the corresponding textbook for lawyers appeared only in 2007.⁶⁰

⁵⁹ H. Harro, *Ajakirjandusvabadusest kommunikatsioonivabaduse poole [From freedom of press towards freedom of communication]* (1996).

⁶⁰ Tikk and Nõmper, *Informatsioon ja õigus*.

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