



Case study report

Does media policy promote media freedom and independence?

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 investigates the configuration of media policies in the aforementioned countries and examines 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, are thoroughly discussed and analysed.

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Executive summary

The second report on Estonian media policy focuses mainly on media policy formulation and implementation by the various actors: politicians, media leaders, journalists and experts. Media policy in Estonia has been supporting the value of freedom of speech since the beginning of the 1990s. Centrally coordinated media policy does not exist in Estonia. Broadcasting alone is specifically regulated but a regular monitoring system does not exist. Print and online media are subjected to general laws that regulate access to information, advertising, privacy, defamation etc. The Estonian media industry enjoys either the lightest possible regulation or no regulation at all.

The major problem concerning the freedom of speech is to balance the commercial interests against the public's need to get trustful, non-biased and professionally processed information. Hence, the role and regulation of public broadcasting is important. In Estonia, public broadcasting is financed from the state budget and does not air advertisements.

The European Convention of Human Rights impacts mostly in legal cases concerning defamation and privacy. In this report, the analysis of the argumentation by the Estonian Supreme Court shows that truth, public interest and privacy values have been balanced in most of the cases during the last ten years.

The self-regulatory system of the mass media includes two bodies, one of which is composed of the various public organizations and the Estonian Journalists' Union and the second that represents the publishers (the Estonian Newspaper Association).

The small size of the national media market favours an oligopoly of professional media channels, affects the journalists' job market and inevitably limits the number of groups and individuals who should negotiate media policy. Due to the smallness of the country, the local media and local communication need special support.

The report focuses on the factors that affect journalistic autonomy (internal and external pressure; access to the job market and journalists perception of journalistic autonomy). The extent of the freedom of expression that the Estonian media enjoys does not mean that individual journalists enjoy the same level of autonomy. Hence, in the small job market the protection of journalistic autonomy and support for journalistic quality is one of the major aims of media policy. The central question concerning the implementation of liberal media policy remains: what would motivate the actors to invest in quality?

The globalisation of media enterprises and the crisis of the business model of professional news journalism contribute to the imbalance between the (non-transparent) commercial values and the interests of a democratic society.

1. Introduction

This case study report is the second report on Estonia of the EU-funded MEDIADEM project. While the first report on the Estonian media policy composed in 2010, provides an overview of the current media regulatory and governance mechanisms in Estonia, this report focuses on how different actors and policy mechanisms promote or constrain the development of free and independent media and how the media is motivated to perform as agent of information and the public debate that facilitate the functioning of democracy.

One of the main conclusions of the first report was that while the national strategy of media politics in Estonia has been liberal since the 1990s and the freedom of speech, and especially the freedom of the press have been highly protected, overall media policy is heterogeneous. In some policy areas there are a lot of regulations and the implementation of these regulations is active, while in some areas few laws or norms are not implemented at all. In the present case study report we shall elaborate the activity-passivity scale of policy implementation¹ and provide some explanations concerning that discrepancy.

The general aim of the present case study report is to analyse the policy formulation and implementation from the viewpoint of conflicting and prioritised values which emerge from different regulatory practices (e.g. court cases, self-regulation, etc.) and market mechanisms. Also the factors conducive to, and adverse to, content diversity are discussed. In this respect the issues concerning the journalistic profession in Estonia are discussed. Finally the specific role and meaning of media literacy in the media political context is analysed.

In the context of the present report, a specific aspect concerning the media policy formulation and implementation should be kept in mind: the small size of the national media market.

The size of the national media market (more precisely, the size of the market for Estonian news media) is an important feature that affects media policy formulation. First, the smallness of the market favours an oligopoly of professional media channels: media convergence and developing cross-media ownership affect the journalists' job market and thus the level of professional journalism and professional ethics, along with media content and output format. On the one hand, a relatively small number of media outlets may serve from the aspect of citizens' solidarity as an advantage for developing a democratic communication space. Too much heterogeneity at the level of media content and outlets easily leads to unwanted social fragmentation of the public. Also, fewer media outlets can collocate resources and provide content quality that would not be possible in case of numerous weak outlets competing with each other. On the other hand, commercialisation and the need for cheaper production might make this advantage dysfunctional. Hence, an oligopoly can easily turn into monopoly and the balance is vulnerable and fragile.

Secondly, as Chris Hanretty (2011: 166) notes, there is a surprisingly large literature on the effects of a country's size on the characteristics of the general media policy. Some authors (starting from Plato and Aristotle) claim that citizens are less effective in larger states whilst other authors argue that small republics are at a greater

¹ The scale has been presented in the earlier work under this project, characterising the passivity-activity evinced by the various media features, types and agents. The scale also delineates the degree of the entries being legally handled. See Loit and Harro-Loit (2012).

risk of being captured by a single faction that could suddenly rise to prominence. This idea could be applied to the media policy. Since Estonia is one of the smallest states in Europe, an advanced development in media freedom (e.g. high protection of free speech, good access to information, high level of media literacy etc.) does not mean that this would be entirely protected against the influence of small groups or individuals who make certain decisions on media policy.

Namely, the smallness of the media system inevitably limits the number of groups and people who should negotiate media policy. As each society needs a certain number of people to fill a relatively rigid number of posts, small societies have relatively few people to fill that number of posts; these people are likely to encounter one another in numerous contexts (Hanretty, 2011: 170). In the context of the present case study this should be taken into consideration: the number of people who have either or both expertise on media policy and have been active in this field is small.

Finally, in the case of small markets there is no temptation for large profits and therefore the threat that economically motivated actors to avoid using 'whatever method' to rule the market is comparatively lower than in the case of big media markets.

The second important feature concerning Estonian media policy, elaborated in the first report that should be recalled here, is the fairly simple legal framework which influences the media performance in Estonia. The laws mostly affecting the Estonian media are the following: The Law of Obligations Act entered into force in 2002 and discontinued the criminalisation of libel. The Personal Data Protection Act exists to protect personal data. In the case of unlawful dissemination of personal data the individuals can turn to the Data Protection Inspectorate – a body conducting extra-judicial proceedings – to hasten re-establishing their rights. The Broadcasting Act was passed in 1994 and was amended 33 times before being replaced by the new Media Services Act (2011).

In this report the section *Actors and values of media policy* provides an overview on the performance of actors who participate in media policy formation and implementation; it examines the values and priorities recognised in their activity. In our earlier contribution within this project (Loit and Harro-Loit, 2011), we claimed that different actors are more or less active-passive in influencing media policy. We discussed a schema outlining three factors: actors/stakeholders; regulation (legal acts, norms and codes) and the number of cases which reflects how the laws are being implemented. In this report we will predominantly focus on the values that are being mostly reflected by the representatives of the different stakeholders/actors and the interests of which stakeholders/actors have been most protected. The schema also depicts areas in which the state media policy is the most passive: i.e. there are no laws, laws are not enforced or monitored or even mechanisms for legal interpretation are missing. Vast passivity towards particular value conflicts reveals whose interests tend to be more protected.

The judiciary plays a very important role although there are relatively few lawsuits against the media: for this case study approximately 40 lawsuits were counted since 2000. Still, the Supreme Court in particular has been increasingly active in creating the elaborated discourse on freedom of expression and its conflicting rights. The Ministry of Culture and the relevant Minister shape the implementation of media policy and reflect liberal normative values in their media policy making. The Public Broadcasting and the Council of Public Broadcasting representing the non-

commercial sector play an important role in the context, in which the business model of the commercial media is in crisis. The self-regulatory system of the mass media includes two bodies: *Avaliku Sõna Nõukogu*, founded in 1991 (hereafter: ASN), and the press council of the Newspaper Association (*Pressinõukogu*, founded in 2002; hereafter: ENA press council). These organisations get approximately 7.5 complaints per 100,000 inhabitants. This indicates the sensitivity of the lay population towards the media. Publishers, broadcasters and journalists are the interested groups represented by various organisations.

The section on *The structure of the media market* examines the configuration of the media market. Bearing in mind the specific advantages and risks of a natural oligopoly this section discusses the problems concerning local media.

Concerning media content and diversity we present a special case study on how a local radio, which is obliged to provide local, news does not comply with the licence requirement. As there is no regular monitoring system, the station has not been motivated to follow the positive obligation to produce local news content. This case illustrates the problems of a very liberal approach: the lack of a system that could support the production of local news to comprehensively inform people without any party political bias.

The section *Composition and diversification of media content* also focuses on the application of EU court practices by the national Supreme Court and how the Estonian Supreme Court has been interpreting the legal dilemmas concerning the media during the last decade.

The section on *The journalistic profession* deals with job market conditions, job security and the competence requirements journalists feel they should have; the education and nature of the journalist profession. In the context of newsrooms' pressure mechanisms, externally and internally, we also ask how journalists perceive their professional autonomy. The general aim of this section is to find out what is and what could be the role of the professional community in implementing media policy that could serve the democracy. The presumption of this sector is that although millions of people provide news and information each day, there is still a need for professional, unbiased, framed and verified information.

Finally, the section *Media literacy and transparency requirements* examines the attention afforded to media literacy as a goal of media education in national curricula and the problems concerning the loosely connected education policy and media policy.

The report has been based on a number of interviews with journalists, politicians, media leaders and experts. Several case studies and analysis as well as media policy research papers published in academy as well as articles published in the Estonian media are included as basic material.

2. Values and actors of media policy

The basic value dilemmas concerning freedom of speech are listed in Article 10 section 2 of the ECHR:

‘...The exercise of these freedoms, /.../, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.’ [All emphases in quotations are the authors’]

One can express these categories also as the value of *security*, the value of *privacy*, the value of *human dignity* and the value of *fair trial*. The mutual hierarchies of these values are the core question of a national media policy, especially expressed in the national jurisprudence concerning cases against media organisations and journalists.

Other values directing the national media policy are: *diversity* that refers to the heterogeneity of contents, outlets and ownership; *journalistic autonomy* that is considered to be the basic protection of free speech; *public access to the information/the public needs to be informed*.

Various stakeholders in society in various situations represent different interests. The public interest (welfare of the general public) could be in conflict with the commercial interests of media organisations but also the private interests of individuals or social groups. Fengler and Russ-Mohl point out an important question concerning the kind of *incentives* journalists react to and the kind of *rewards* they seek to attain. We can distinguish between material incentives (money, fringe benefits) and non-material incentives (reputation, influence, social rewards etc.) (Fengler and Russ-Mohl, 2008: 674).

2.1 Who, what institutions or organisations, are governing media policy?

The key actors outside Estonia who influence the Estonian media policy are certainly the EU and the European Court of Human Rights (ECtHR).

The analysis of the rhetoric of Strasbourg case law shows that there is some hierarchy of expression. Political speech receives more protection than artistic speech or commercial speech. As political speech tends to be concerned with the media, the Strasbourg Court has repeatedly stressed the rights and responsibilities of free press/media. But the type of speech is not the sole factor affecting the margin of appreciation (Fenwick and Phillipson, 2006: p 61) The Court often talks about information that ‘the public has a right to receive’. Fenwick and Phillipson ask: ‘If this is the case – that the values of the Strasbourg court are *audience*-based, rather than *speaker*-based – it would follow naturally that the Court would principally be concerned with *media* freedom, *not* individual freedom of expression.’ (ibid: p. 68). The fact that the Court tends to regard interference with media freedom as a more serious matter than restrictions on individual expression suggests that the Strasbourg Court is concerned primarily with pragmatic, consequentialist-based protection of the media’s role in a democracy, rather than a deontological, principled protection of the individual for free speech (ibid: 69-70).

In addition, the Strasbourg Court distinguishes between public criticism of a private citizen and of a prominent politician. The former inevitably and knowingly lays himself open to scrutiny by journalists and the public at large, and therefore the limits of permissible criticism are wider with regard to the government than in relation to a private citizen, or, even a politician (ibid: 1056, 1058). The Court has, nevertheless, found that some measures might be necessary to protect the government from defamatory, false or malicious accusations.

At the same time, in case the fair trial values (and presumption of innocence) are in conflict with Article 10 ECHR, the public person (politician) could deserve equal protection as a private person (*Worm v. Austria*).

As previously mentioned, Article 10 ECHR allows the restriction of the freedom of expression for the protection of the reputation or rights of others and for preventing the disclosure of information received in confidence. Hence, the value the national courts also need to protect is the privacy-related values: personal dignity which is related to shame and embarrassment but also personal autonomy. The legal protection of individual reputation is closely linked to value judgements and assertions of facts. If the libellous remarks are based on thorough research and are factually correct, the serious criticism could be justified (ibid: 1061-1063).

Generally, Fenwick and Phillipson (2006: 20-33) propose four models in order to describe how the free speech interests of the audience, media and individual speakers could be treated:

- The equivalence model – the media (corporations) are treated equally to the powerless speaker.

- The special privileges model - the media obtains special rights like source protection or access to information; the media is given separate and distinct recognition. The Strasbourg Court has at times come close to this model, by giving higher protection to media speech and special privileges to journalists, most notably that of source protection).

- The ‘differentiated privileges’ model - special privileges to the media are accepted only where directly justified by general free speech rationales.

- A ‘variable geometry’ of media model - the best possible expressive environment for the *audience*; the specific regulation of the media is allowed with the aim of perfecting or enhancing speech from an audience perspective; such regulation may include duties upon the media that might be termed ‘anti-privileges’, e.g. ‘right to reply’ provisions.

Here it is important to note that in the 1990s, Estonian court decisions reflected that Estonia mostly belonged to the ‘equivalence model’. Since the 2000s, the Supreme Court decisions (the Supreme Court has in several cases overruled the lower courts decisions) as well as the bringing into force of the ‘protection of sources and moral damages’ legislation in 2011 reflect a shift towards the ‘variable geometry’ model: the audience perspective is becoming increasingly noticeable.

In the European Court of Human Rights only one case from Estonia has been received consideration – *Tammer v. Estonia* (2001). The interviewer called the wife of a prominent politician an ‘unnatural mother’ (literally: ‘female raven’, in Estonian: *rongaema*) and a ‘marriage devastator’ (currently the lady is a Member of the European Parliament). In this case, the ECtHR decided that there was no breach of

Article 10 ECHR and the national sentence remained valid. One of the major reasons was that a criticism against an individual could be expressed without insult. However, the journalist got only a symbolic punishment.

The Estonian Supreme Court has been explicitly referring to the ECtHR decisions in two remarkable cases: in 1997, and later in 2008.

The chair of the Supreme Court explained: ‘The impact of the ECtHR verdicts can only be assumed as the number of direct references to the ECtHR practices within the adjudications of the Supreme Court is small to make generalisations. As to the indirect impact, the practices and trends of the ECtHR reach the Estonian judges via several channels. First, the Ministry of Foreign Affairs manages translation and publication of the ECtHR verdicts about Estonia. Judges read these texts and reapply the embodied principles. Secondly, the Ministry provides Estonian-language overviews of the key practices employed by the ECtHR. This also reaches the Estonian judges. Thirdly, the ECtHR practices have been included in the training of judges. It is obligatory for Estonian judges to regularly attend training. Also, lawyers discuss the ECtHR verdicts in professional periodicals and other outlets.’

At the same time the chair of the Supreme Court Märt Rask emphasised that the law courts need to maintain a neutral position:

‘The Court should not have any ambition to shape media practices or journalists’ professional ethics otherwise than by consistently adjudicating specific cases. Assuming the functions of a media regulator would definitely affect the Court’s objectivity. The role of the law court is rather to remain passive: to assure balance between the freedom of speech and the individuals’ personal rights, when needed.

In practice the courts possess an inevitable role in imposing responsibilities onto the media. The separate cases in an aggregated whole definitely shape the attitudes applied by the media and also frame the preparedness of the general public to commence a lawsuit to uphold one’s reputation.’²

It is important to notice that the chair of the Supreme Court underlines the role of the law courts in assuring the media organisations’ responsibilities. The following analysis (under section 4.2) reveals that performance of this role has increased during the last decade, especially by the adjudications of the Supreme Court.

The key actors in media policy formulation and implementation concerning the freedom of speech in addition to the judiciary are: the Parliament; the Ministry of Culture; Estonian National Broadcasting (public service broadcasting, PSB) and its Council; media organisations and organisations that represent media or journalists (Journalists’ Union; Association of the Estonian Newspapers; Union of Estonian Broadcasting); two self-regulatory bodies; to some extent also the Inspection of Data Protection, media educators in formal and higher education system (the Association of Estonian Media Educators’) and media researchers (Baltic Association of Media Studies).

² Interview with Märt Rask, the chair of the Supreme Court, by Urmas Loit (in written format), Tartu, 5 October 2011.

Interest groups enjoy diverse impact, which often emerges when publicly debating media-political issues. Recent acrimonious discussions were held about the legislative initiative about journalistic source protection and about increasing the potential material liabilities sustained by media organisations. The Minister of Culture, Rein Lang, admitted that this debate revealed the press as the most influential and organised interest group:

‘The stakeholders became overt when discussing whether there would be responsibilities carried into effect or not. On one hand, the state evincing that the individuals’ rights are not sufficiently protected and on the other hand *in corpore* the publishers; and not the broadcasters, by the way. /---/ But the publishers suddenly detected a problem within the potentiality of conjectural liabilities. Thus the publishers’ lobby or common interests can be observed – those of the two larger ones. /---/ To some reason they call the lobby a “newspaper association”.’³

The above-mentioned list of key actors primarily defines the institutional actors. Still the implementation of media policy, especially in a small country depends also on the perceptions of the media/political aims of key individual actors.

The critical question is to what extent and how these different actors influence the media policy and the effects of these influences on the development of a media policy that supports media freedom and independence – from the perspective of audience and society. The analysis of qualitative interviews with persons representing the key institutions reflects that the knowledge (and scholarship) on media-political discourse (vocabulary, knowledge of different mechanisms that influence media policy, ability to analyse the public discussions on media etc.) varies from person to person. Individual actors not only represent different interests but have also delved into the same issues to a different extent. At the same time individual actors, while speaking or criticising media policy use the phrase ‘state of Estonia’ or ‘Estonia’ and only occasionally refer to certain institutions, organisations, groups or individuals. Nor do the actors speak about the need for negotiations between interested parties concerning the media policy.

The chair of the board for the Estonian National Broadcasting (the public service broadcaster, ERR) Margus Allikmaa said that Estonia lacks a holistic approach in regard to media policy, and left open the question if there should have been any.

‘I think the state of Estonia currently lacks an integral vision. Today there is no institution – be it the ministry or any other body – to tell us what the policy is. In fact – this is the situation. Another matter would be, if we need this after all. In one particular field we might need somewhat clearer – not even regulation, but implementation of the existing regulations. This would be some kind of independent media regulating agency, like in the most of European countries. This clearly is absent from Estonia now.’⁴

³ Interview with Rein Lang, the Minister of Culture, by Urmas Loit, Tallinn, 4 October 2011.

⁴ Interview with Margus Allikmaa, the head of the management board of the Estonian National Broadcasting, by Urmas Loit, Tallinn, 27 September 2011.

For politicians the issues related to media policy appear to be distant and inessential – only one out of eight members of the parliament (*Riigikogu*) who were asked to answer the questionnaire for this study actually responded.⁵ The rest of the interviewees (politicians and experts) emphasised that the public service broadcasting served for the major (and often even the only) attribute for the state media policy and that Estonia follows the liberal values.

The only MP (Igor Gräzin) who consented to be interviewed for the current study claimed that nowadays access to public communication is open to everyone:

‘Having regard to the fact that – let’s say – 80% of information and opinion flows via social media it does not absolutely matter whether a person can express oneself in [mainstream dailies] *Postimees* or *Eesti Päevaleht* or not.’⁶

This somewhat exaggerated claim (the volume – 80% – is hardly comprehensible) does however reflect ‘access to information’ as a media-political goal valued by him. He also emphasises ‘quality control’ as another media-political goal which could be achieved only through performance of the public service broadcasting:

‘The Estonian media policy lies only in the Estonian National Broadcasting and that’s it. Regarding anything else – there is total freedom. And the state does not intervene in it whatsoever. /---/ The problem with the Estonian media is that there is no internal censorship. In other words, when one newspaper tells lies, other papers do not react to it. /---/ Thus the only option for the state is to introduce, but even this only for a bit, the Estonian National Broadcasting keeping the professional standards higher, which would serve for the role model. And working with the public service broadcaster would be prestigious.’⁷

Igor Gräzin outlines his perception about the media’s self-regulation, what he labels as ‘internal censorship’. This is an important and interesting point. First, implicitly one can interpret that for him the major actor of media policy would be the state. The major aim of media policy is to safeguard journalistic standards. He does not hint at the accountability system, but rather to the ideal of market competition that would also guarantee the product quality. He suggests that the intrinsic quality control mechanism of the industry does not work. For media researchers it has been known for long that in Estonia the news organisations (especially the leading ones) try to avoid mutual criticism.

The values of self-regulatory bodies are different as there are two different organisations. ASN has defined itself as a think-tank providing media criticism, as well as a self-regulatory body for the membership of the journalists’ union. As the ASN involves several corporate members representing the public (the union of

⁵ One of the MPs considered the scope of the study too vast, others simply did not reply to the researchers’ proposal. Among the chosen MPs, four were members of the Estonian National Broadcasting Council (appointed by the Parliament) and the other four were members of the Cultural Commission: the head, the deputy head, and two former Ministers of Culture.

⁶ Interview with Igor Gräzin, the MP and the member of the National Broadcasting Council, by Urmas Loit, Tallinn, 24 September 2011.

⁷ Ibid.

consumer protection, the lawyers' association and the association of media educators), it advocates public interest and proficiency towards good conduct issues.

The ENA press council has been launched by the newspaper publishers' organisation and manned predominantly by chief editors, whereas the lay members constitute a minority and have been chosen and invited by the ENA. In the ASN, all members have been delegated by member organisations. Thus, the ENA press council clearly promotes employers' positions.

Divergence of values manifests when comparing the adjudications in the same case by both bodies. When the ASN sticks to certain values, the publications should comply with (accuracy, balance – especially in case of covering a conflict –, presumption of innocence and human dignity), the ENA press council primarily underlines the status of the protagonist (e.g. politicians' obligation to accept criticism) and the media's right to cover topics of public interest (Harro-Loit, 2008; Kübar, 2006). The difference lies in priorities: the ASN predominantly defends the public right to receive sound information, while the ENA press council predominantly urges press freedom.

The technological evolution (Internet resources) has set forth two new major value conflicts. Firstly, would the individual's right to decide upon the information publicised about him also mean that he has the right to demand to erase certain publicly accessible information about him on the Internet? Secondly, would the initial circulator of incorrect information be obliged to correct the information in case it is widespread over the Internet? Both issues have already been covered by court precedents and the issue has been also interpreted by the Data Protection Inspectorate. From the aspects of value clarification, the development of the Internet has emerged dilemmas related to personal information distribution and its 'recycling' based on publicly accessible environments, and discussions about ensuring the individual's informational self-determination versus the need for society's transparency.

3. The structure of the media market

Estonia does not regulate the press market with specifically targeted legislation. General laws concerning ownership, competition, advertising, taxation etc. apply to the print media. The media has no privileges concerning VAT or other taxes. No special regulation exists for launching new periodical publications on-line or off-line. Foreign ownership is not restricted; neither is cross-media ownership. The Estonian media business enjoys the lightest possible regulation or no regulation at all. The media business is not seen as something different from any other business. The Estonian media market has been open to foreign investors since 1990s.

Public Broadcasting (PSB) (two TV channels and 4 radio channels) is financed from the state budget; no licence fee has been applied for the general public. Since 2002 the share of the allocation for the PSB in the state budget has been steadily decreasing (Jõesaar, 2011: 87). Still as the PSB's viewing time has remained roughly at the same level during the last six years, one can assume that indeed the quality programming has helped the PSB to hold its position (Jõesaar, 2011: 50). There is almost no public debate about PSB financing today, just the question about the total of allocations each year – even this has diminished under the economic recession.

The state also allocates subsidies to cultural periodicals (cultural weeklies and few magazines). In addition some ministries occasionally purchase certain programmes or additional pages in commercial media channels. According to the good conduct rules the reference to the buyer should be mentioned but this rule is often not followed.

The Estonian media system is small according to the population, geographical size and GDP. In addition, it does not have a big neighbour where the same language is spoken. By contrast, the Estonian 'minority' – the Russian-speaking population – has converged towards the media market of Russia.

There is no specific ownership regulation in Estonia and this issue has not been discussed in public. The only regulation on media concentration appears in the Media Services Act which declares that a licence may not be granted in case the applicant is 'by means of the governing effect over management connected to the undertaking that has been granted the activity licence for provision of television and radio service and this may substantially damage the competition in the media services market, particularly through creation or reinforcement of the dominant position in the market'.⁸ This provision is not clear and appears to be declarative and thus not really intended to be employed. The rule in principle has stood in the Broadcasting Act since 1994. Moreover, the pattern of its application has remained the same despite changing the legislative act in whole – the anti-concentration provision can be enforced when applying for new licences, and does not provide any grounds for cancellation of valid licences. As concentration has been somewhat inevitable in a small market like Estonia, this situation has not provided much ground for contesting the conjuncture.

Currently, two large media corporations dominate the Estonian media market – Eesti Meedia (Estonian Media, owned by the Norwegian Schibsted ASA) and Ekspress Grupp (a quoted company with an Estonian core investor). The influence of Schibsted started to grow quickly in the Estonian market since 1998 when Schibsted ASA became a 34% owner in Postimees.

⁸ Media Services Act, Art 32, clause 3.

The broadcasting sector consists of the Public Service Broadcaster (PSB – the Estonian National Broadcasting, with two nationwide TV channels and four nationwide radio channels), two national commercial TV channels and a few local ones (in cable) and nearly 30 commercial radio channels of various types from small regional ones to national networks.

The period of 2001-2007 in the broadcasting sector is characterised by rapid growth of the advertising market which along with new frequency resources enabled to open up new TV channels. Under the shifted circumstances the state reduced the hitherto protectionism on the television market and issued a licence for digital broadcasting to *Kalev Sport* which is now bankrupt (Jõesaar, 2010). The final switch-over to digital took place as of 1 July 2010.

The large private television channels have been profitable since the public broadcaster was deprived (ultimately in 2002) of the right to sell and air advertising. Already in 1998 three commercial television stations and PSB reached a private agreement according to which public television was not to sell airtime, whereas the private channels agreed to pay monthly compensation for that right to the PSB. Consequently, the formation of advertising prices passed over to private broadcasters. So far the PSB as the market leader dictated the prices, which according to the private broadcasters was considered a distortion of the market as the PSB also received allocations from the state budget. This private agreement worked for 1.5 year, until TV 1 failed to pay its share on a regular basis. Meanwhile production costs for PSB increased. At the end of the 1990s, PSB television ended up in a severe management and financial crisis. The concept of an advertisement-free public service was then introduced by an amendment to the Broadcasting Act in 2001 (entered into force as of 1 July 2002). This has probably been the one and only case of wider consensus on a media political issue. The state, the public and private broadcasters agreed upon the key media-political elements to launch the plan.

The new regulation also introduced a model under which the number of commercial television broadcasting licences was limited to two and an annual fee for the licence, initially for 10 million EEK (0.6 million EUR). This mechanism however guaranteed PSB programming to become independent from advertising pressures. The TV advertising market was then shaped by the two ‘chosen’ foreign owned TV broadcasters, while their output obligations were mainly limited to those prescribed by the Television Without Frontiers Directive (Jõesaar, 2011: 93).

Yet, the fees for licences were later increased for the commercial channels, reportedly almost to the endurance limits of the commercial broadcasters, while the PSB was not provided any long-term stability in financing. Thus the state left the market players by themselves to solve the implementation problems, whilst in general the largest advertising market cataclysm (which with price dumping of advertising sales in 1999-2000 also abnormally affected the radio market) was resolved.

The limitation of the market was to stabilise the advertising market and provide the licensees with financial resources to pay the fee. On the other hand the fee from the commercial broadcasters did not fully cover the allocations the state was committing for the PSB.

Due to the digital ‘enlargement’, and the market limitation and the fee for licences were correspondingly revoked, as outdated features impeding the

broadcasters' technological progress. The newspaper publishers (especially Hans H. Luik of the Ekspress Group) accused the state in making a 3.2 million Euro donation to each of the commercial televisions while no real digital features have been implemented during the change to digital transmission. On the other hand Urmas Oru, the Director General of Kanal 2 declared that no digital commitments had been made for revoking the fee. Also, the coequal fees would have prevented smaller and niche channels from emerging.

To the present, the television market has been divided predominantly by the two larger players Norway's Schibsted and Sweden's Modern Times Group which run the only private free-to-air channels. All the other private digital channels (including the channels by the two big companies: Kanal 11, Kanal 12 and TV 6) are conditionally accessed, except for Tallinna TV. The latter is run by the municipal powers of the capital city Tallinn and hosts a public discussion about whether a nationwide television channel would be a purposeful investment for the municipality.

For the Russian language audience, the *Pervyi Baltiiski Kanal* also competes for advertising money. While this channel has the programming predominantly sourced from Russia, it possesses a UK broadcasting licence and is run from Latvia. Thus no obligations under the Estonian jurisdiction apply to them whatsoever.

In 2009, all market players experienced cutbacks although the private broadcasters were allowed to revoke the fees for their licences. The newspaper publishers repeatedly referred to this act as a 'gift' or 'subsidy'. The Ministry of Culture reasoned this allowance with the need to motivate the broadcasters going digital and increasing the total number of television channels. In total, the earnings of the two largest TV-channels remained slightly above the level of 2005, while the allocations for the PSB were cut twice in 2009 which fixed the subsidy 8% below the level of 2008 (Jõesaar, 2010).

As the cost of broadcasting services is not proportional to the population size, a small country with a relatively lower GDP level - like Estonia - would need to make a bigger effort to fund public service broadcasting compared to big nations. The under-financing of the public broadcasting remains a current issue. Nevertheless, the PSB is keeping its leading role as the most reliable news source. At the same time people daily spent more time - 1h45m watching commercial television (Jõesaar, 2011:89).

In 2012, the national cultural weekly *Sirp* will get more allocations from the state budget. In 2011, the subsidy to the publisher (a state founded foundation) was 919,707 Euros. In 2012 it will grow according to the draft state budget almost by 50% - amounting to 1,365,307 Euros.⁹ These numbers are brought as an illustration about the budget dimensions of a state-subsidised weekly. The Foundation also publishes the cultural outlets *Akadeemia*, *Diplomaatia*, *Keel ja Kirjandus*, *Kunst.ee*, *Looming*, *Loomingu Raamatukogu*, *Muusika*, *Sirp*, *Teater.Muusika.Kino*, *Täheke*, *Vikerkaar* and *Õpetajate Leht*. The cultural outlets form a mainstay of Estonian national culture under the protection of the Constitution. Thus these outlets do not need to struggle for market share to survive.

The press market is of an oligopolistic character - two companies publish the two competing national dailies (*Postimees* by Eesti Meedia (Schibsted) and *Eesti*

⁹ Source: 'Riik hakkab rahastama Sirpi täies mahus riigieelarvest' [The state shall in full finance *Sirp* from the state budget], DELFI.ee, 28 September 2011.

Päevaleht by Ekspress Grupp). In addition they have a fifty-fifty share of the only national tabloid and the largest magazines' publishing company (with 23 magazines). Ekspress Grupp also owns the major Internet news portal *Delfi*. Eesti Meedia also publishes five largest regional dailies while Ekspress Grupp publishes two major national weeklies. There is also a Bonnier-owned business daily *Äripäev* that does not compete with the other dailies for the general public, but is more targeted at the business sector.

The biggest circulations in 2011 (October) were: the national daily *Postimees* – 58,500; the daily tabloid *Õhtuleht* 52,600; and the daily *Eesti Päevaleht* 27,200.

The total advertising expenditure of the Estonian media in 2010 was, compared to 2009 still waning, (TNS EMOR, 2011); indeed a breakdown by sectors (Table 1) shows that newspapers have gradually lost their positions in the advertising market to television and the Internet. The latter two, along with outdoor advertising, experienced smaller drops in advertising revenue in 2010, the Internet 7% and television 1.4%, whereas print media suffered dramatic drops, magazines 14% and newspapers 20%. The second half of 2010 did provide some growth for the advertising market.

Table 1. Advertising expenditure in Estonia (million Euros) and the sectorial breakdown (percent).

	2000	2005	2009	2010
Newspapers	45.6%	44%	33%	29%
Magazines	13.6%	12%	7%	6%
Television	23%	27%	29%	32%
Radio	11.3%	8%	10%	10%
Outdoor Advertising	4.6%	6%	8%	9%
Internet	1.9%	3%	13%	14%
TOTAL (million Euro)	43.1	73.2	70.9	66

Source: TNS EMOR.

The Estonian regional media consists of 11 regional newspapers (most of which belong to the Schibsted chain) and some local radios (licensed as 'regional' under the new Media Services Act). Besides these, there are several municipal newspaper-like outlets which are issued and financed by the local authorities. One Southern Estonian newspaper (in a local dialect – *Uma Leht*) is financed by Cultural Capital.

Concerning the municipal gazettes, there is an evident conflict of both interests and functions. While, the municipal powers need their gazettes to disseminate official information and indeed the administrations often handle the outlets as administrative units, the editors and the municipal council members tend to prefer a journalistic approach. The ENA considers these gazettes not to be newspapers. The ASN has issued a couple of position papers regarding the municipal gazettes, recommending to maintain the journalistic practices if the gazette is being

issued under journalistic convention. The publishers (municipalities) were recommended to serve public interests and protect editorial independence. The problem lies in the local population's need to get truthful and unbiased information which is often unfulfilled on the municipal level. At the same time it is obvious that these local outlets cannot perform the function of a watchdog.

Altogether, the issue of media economy like ownership and media market regulation has never been a topic for public debate in Estonia. The market mechanisms do not favour politically neutral distribution of information at local (municipal) level and the media-political mechanisms are absent. The PSB does not directly compete with commercial stations, thus the advertising pressure onto programming is absent. Removal of advertising from the PSB programming was a political agreement between the stakeholders which has persisted.

Internet neutrality has been set as a core principle by the Electronic Communications Act. No questioning of this keystone has ever emerged, presumably for several reasons: free Internet access is considered as a human right, the Internet service providers themselves do not produce content, and the overall market is very small.

The biggest threat to freedom of information could be that in business terms the oligopoly fails in the dailies market and a monopoly emerges. What needs to be done afterwards, nobody has publicly debated.

4. Composition and diversification of media content

Content-related regulation and its implementation are central components of media policy-making and linked to the consequences for media freedom and independence. The norms that regulate the balance between journalistic freedom with other rights determine whether the media operates in the service of public interest or rather in the service of economic interests and instrumental considerations. In media policy the diversity and variety in the media can be sometimes seen as a desirable objective that helps to promote democracy. It is important to note that media diversity refers to the heterogeneity on the level of contents, publications/programmes, ownership and information sources. In the present sub-chapter we consider content diversity as one of the key factors concerning the media freedom and the need to balance this freedom in public interest. Donk and Trappel (2011: 36-40) argue for several indicators that could measure the level of diversity potential in a certain media system: media ownership and concentration at the national level; media ownership and concentration at the regional (local) level; diversity of formats; minority/alternative media; affordable public and private news media; a content monitoring instrument in the form of a code of ethics at the national level; the level of self-regulation (performance); participation; rules and practices on internal pluralism.

Direct content requirements, based on law, only concern the public broadcaster. Various aspects of media content – how to deal with personal data, issues of protection of privacy, defamation, access to information – are covered by general laws and are therefore visible primarily via the analysis of Estonian court cases concerning the media organisations and journalists.

As regards the role of law courts Peeter Sookruus, the media expert employed by the Ministry of Culture for ten years, said:

‘There is few practice in this field as the people do not take the issues to court. They acquiesce despite being defamed. And there aren’t much success stories supporting going to the law court. /---/ Even if a person – for instance a politician – just menaces to sue the media, he faces severe sallies. /---/ An individual needs to possess vigorous spirit and large purse to launch a lawsuit against a media corporation. The powers are uneven here – anyway, this provides a cause for rumination.’¹⁰

Later in this chapter we analytically highlight the values supported by the few court adjudications to guide the contents. Hereby, it is substantial to heed that the mutual role of the general public and the law courts to affect the media’s contents is small (except for the consumer behaviour). People’s indulgence as a tendency has been legitimised.

Rein Lang, the Minister of Culture pointedly summarised the political tradition as regards the regulation of media contents:

‘Good question – if we needed a government office for monitoring. Alongside with the Estonian Security Police, of course! The delicacy here is that whenever the state launches any analytical study – several questions spring up: who is doing it, what’s the aim, what’s the goal. Would it lead to some kind of

¹⁰ Interview with Peeter Sookruus, the head of the department of media and copyright of the Ministry of Culture, by Urmas Loit, Tallinn, 4 October 2011.

regulation or would it just be illuminating? A delicate issue anyway. I think that the government should not go in for this much.’¹¹

The ironic remark by the Minister about the security police implies the Estonian political tradition to rather perceive monitoring as an inspection than analysis. The politically induced fear that the monitoring might end up with a new regulation tends to fully kill the potential question if the probable regulation could benefit society. The latter is expressed by the Minister’s hint to the ‘delicacy’ of the monitoring issue. It is hard to detect whether the hesitation derives from the historic past or the liberal media policy having been implemented for the last two decades.

The Estonian policy discourse predominantly relies on self-regulation and tends to avoid massive content prescriptions. *Inter alia*, this applies to advertising. The officer of the Ministry of Culture explained the case concerning implementing the audiovisual media advertising rules under the Audiovisual Media Services Directive (AVMSD). As to the political discourse, it is essential to notice the officer underlining the negotiating and cooperation aspects.

‘A good example of self-regulation and co-regulation – recently the Association of Broadcasters approved a code of conduct about food advertising targeted to the minors, especially as regards food containing a redundant portion of sugar and fats. The core of the regulation derives from the AVMSD, but it has been left with the member states to choose the ways of applying it. We proposed the association to work out the code. Also the law provides the industry associations precedence to adopt self-regulatory rules within a year as of the law entering into force. /---/ We had several fruitful meetings with the industry representatives and basically within nine months the service providers did it by themselves.’¹²

Any direct or indirect activity of the government regarding the media can and will be used to underline its unwanted interfering character, as seen from the statement of the current head of the management of the PSB and the former Minister of Culture:

‘When the state allocates the resource – be it financing, frequencies or frequency bands, by that also the media content can actively be affected. As long as it is being done by the Ministry of Culture, the state imminently and politically intervenes in the material media policy.’¹³

¹¹ Interview with Rein Lang, the Minister of Culture, by Urmas Loit, Tallinn, 4 October 2011.

¹² Interview with Peeter Sookruus, the head of the department of media and copyright of the Ministry of Culture, by Urmas Loit, Tallinn, 4 October 2011.

¹³ Interview with Margus Allikmaa, the head of the management board of the Estonian National Broadcasting, by Urmas Loit, Tallinn, 27 September 2011.

4.1 Promotion of diversity of views

Content monitoring instruments

The content has been regulated only in broadcasting as the radio and TV stations should get a licence in order to operate. No other media sector content is being monitored. Also the monitoring of broadcasting (audiovisual media services under the new law, including radio) has been random *in re* the content remits, except for advertising quotas followed by the large free-to-air televisions. The advertising quota monitoring has been subcontracted monthly from TNS EMOR. In the latter cases the detected over-quota has led to fines several times.

However, not only the lack of financial and human resources, but also the absence of media-political volition by the Government have caused that, for almost 20 years, there has been no regular monitoring of the output of radio programmes (on any level, but especially of those located out of Tallinn) or smaller television programmes (e.g. in cable). This has led to negligence towards content obligations or, at least, absence of any supervising data about broadcasters' compliance with content prescriptions on all levels of broadcasting.

To set grounds for discussing the monitoring issue, the Estonian research team monitored a regional radio programme and its compliance with the content obligations set by the law, by the licence and by the broadcaster's proffer when competing for the licence.¹⁴ The Russian language radio station – *Russkoe Radio* – applied for a licence to broadcast locally nearby the second biggest city of Estonia, Tartu. However, the station held a nationwide licence, covering the main Russian-populated areas in the northern Estonia (including the North-Eastern urban territories). The programme output was correspondingly targeted to wider audiences and the initial intention of the broadcaster was not to provide local programming in Tartu either, but just to widen the coverage area.¹⁵ The three-days-long monitoring revealed that *Russkoe Radio* was re-broadcasting its parent programme released at the Tallinn studios, and did not even have any slots for local items. There were no local news or issues discussed during the programme, although the broadcaster had claimed to the Ministry of Culture that local items are present in the programme.¹⁶ Actually they were some relevant pieces: Tartu occurred twice in the news bulletins possessing nationwide news value; besides daily repeat broadcasts¹⁷ there was a mini-rubrique about Tartu – like a tourist guide with no relevance to the local audience. In addition, it was established that during the weekend the radio did not meet the daily quota for carrying news.

Unexpectedly, the Ministry subcontracted a two-week monitoring about *Russkoe Radio* in Tartu immediately after the first monitoring, revealing that the local content had even become more reduced – there were news bulletins for Tallinn and

¹⁴ The monitoring was carried through on 12-14 May 2011; the licence was issued in January 2010.

¹⁵ Initially, *Russkoe Radio* applied for merging the frequency to its national licence. As the tender conditions principally preferred a local broadcaster in case it made a bid for the licence, *Russkoe Radio* was officially provided an opportunity to reformat its application into a local one. Although the then Minister of Culture justified this with the principle of allowing the applicant to 'submit supplementary data to its original application' (see the Ministry's outgoing letter No 9.1/671 of 6 May 2010), this was a complete inconstancy with the administrative practices for licensing since 1999.

¹⁶ The local community radio enthusiasts sent a note to the Ministry about *Russkoe Radio*'s non-compliance with the licence provisions. The Minister affirmed the existence of the local content, based on the broadcasters' reply to a written inquiry (ibid). No actual independent monitoring was done.

¹⁷ Whereby, one of the two pieces was aired during the night.

north-east Estonia on every morning show but news items about Tartu were scarce even in the hourly news bulletins.¹⁸ Although, the station identifies itself with national coverage, Tartu only appeared as one of many news items. This contradicts the sense of a local (regional) licence and tends to prove that the broadcaster never intended to produce any local programming. Despite the Ministry ordering the programme to be adjusted to comply with the licence conditions by October 2011, there is to date no evidence (monitoring) that a suitable adjustment has occurred. It is noteworthy about media policy implementation that the scrutiny about the obedience to licence conditions appeared only after a year of validation of the licence, while even then the broadcaster rather blamed the supervising authority in acting subjectively in the favour of competitors.¹⁹

The comment by the current Minister of Culture Rein Lang allows one to conclude that the Government would rather abolish licensing and the restrictive programming conditions to it than allocate more resources for surveillance. To the clarifying question ‘what about the programming obligations set by the law?’, the Minister replied that this regulation should also be minimised.

Rein Lang, the Minister of Culture: ‘This resource [frequencies], for instance, in cable television is absolutely limitless, as well as in case of digital terrestrial television. Thus, we might give up licensing and not to imagine that by inviting the broadcasters to our commission we somehow could rule out the informational meddling by some unfriendly countries. In no way! /---/

In case there is no licensing, there would be no need for surveillance. The monitoring in this case would be performed within the reception by the audience. As to radio, this situation is a bit different as the number of applicants exceeds the number of frequency options and resource needs to be fairly distributed.

But we cannot allow – by preferring some “free and independent” producers – that the licences become objects for bargaining. But one way or another the Ministers of culture have historically butted in: preferring either one or another corporation, or the third – to as if balance the competition. This is insane! But how to fix the system – today I cannot even say.²⁰

4.2 Values protected by the Estonian courts: the analysis of Estonian jurisprudence

It is therefore important to distinguish the circumstances the freedom of expression is given priority over privacy-related values or fair trial values. Identity related issues (blasphemy, hatred speech) have not been a media-related court case in Estonia.

Consequently, in the following analysis of Estonian court cases concerning the media, we will analyse what have been the major value conflicts reflected in court decisions and how the Estonian National Court has balanced these value conflicts. Basically the Estonian National Court has been interpreting the following values: media freedom; freedom of expression; privacy-related rights (human dignity as a

¹⁸ 20 occasions during two weeks, none of them targeted locally.

¹⁹ See Mets, R. ‘Ministeerium nõuab raadiolt Tartu programmi’ [The Ministry enforces the radio to produce local Tartu programming], *Tartu Postimees*, 17 August 2011.

²⁰ Interview with Rein Lang, the Minister of Culture, by Urmas Loit, 4 October 2011.

universal value); public interest, the defamatory nature of factual statements and value judgements.

It has been argued that one threat to the freedom of speech that is implied by the courts could be ‘damages’. The court practice defining moral damages in Estonia has created a convention of token damages remuneration.

First, the law suits brought against the media organisations in 2001-2011 are not numerous and number about 30 cases.

In the context of the present report, the most important are those cases that have reached the Supreme Court. There are six cases concerning the reputation of an individual and more precisely the disclosure of incorrect information and defamatory facts. Discussions about non-patrimonial (moral) damage supplement these cases: *Sami Markus Lotila v. Eesti Ekspress* (2001); *Voldemar Veber v. Eesti Ekspress* (2001); *Roza Romanko v. Põhjarannik* (2004; 3-2-1-11-04); *S.S. v. L.O.* (2006, related to a local cable TV at Maardu, 3-2-1-161-05); *Villu Reiljan v. Postimees* (2007; 3-2-1-53-07); *Georg Gross v. Eesti Ekspress* to publish a correction (2008; 3-2-1-145-07); *Vjatšeslav Leedo v. Delfi* (2009; 3-2-1-43-09). The latter among the listed cases is the only one related to online media.

Some cases predominantly deal with ‘truth’ and accuracy. In civil cases (Robert Lepikson v. *Eesti Ekspress* and *SL Õhtuleht* to refute incorrect data; 3-2-1-17-05) the Supreme Court established that the publication by the defendants grounded on an article in *Eesti Päevaleht* did not substantiate the truthfulness of the contested data. For enforcing a refute or a correction (under Article 1047, section 4 of the Law of Obligations Act) only the untruthfulness of the published data needs to be established.

In civil case 3-2-1-73-07 (*N.D. v. G.D.* to remunerate moral damage) the Supreme Court established that for imposing the burden of refuting incorrect data the data need not to be defaming.

In civil case 3-2-1-83-10 (*Jüri Gontšarov v. Jüri Vilms Foundation*²¹ to remunerate moral damages 50,000 EEK (3195 EUR)) the Supreme Court ruled that any data should be verified prior to publication in consistency with potential damage. In principle the Supreme Court established that the misinterpretation of information about an alleged crime provided in the public interest to the media outlet by the police and the prosecutor and its publication may bring about liability.

One case concerned unallowed filming by a news team and direct interference of privacy (*Villu Tammer v. TV3*, 2007; 3-2-1-152-09).

In civil case *Rein Kallaste v. Eesti Päevaleht* (3-2-1-83-10) the aim was to refute incorrect data. The National Court ruled that the plaintiff’s claim to oblige the defendant to submit a request to the Internet search systems Google, AltaVista and Yahoo to terminate the ongoing publication of defamatory incorrect data can be regarded as met according to Article 1055 section 1 of the Law of Obligations Act by the defendant if the defendant has submitted a signed (either in handwriting or digitally) notification to these systems to remove the incorrect data. The case also is related to wrongful usage of a person’s name and of an erroneously incriminating list of offences. It also includes dispute about the impact of geometric dissemination of information in the Internet and the related complicity of refuting wrongful information.

²¹ A publisher directly related to the Centrist Party (*Keskerakond*).

The verdict under which the largest moral compensation was ordered also concerns violation of private life. A newspaper published the name of a rape victim and the newspaper was ordered to pay damages of 200,000 EEK (23,782 EUR) in 2002.

In one case, proceedings have been instituted against an information source which dispersed fraud about another company in a newspaper article (Merck Sharp & Dohme Inc. (Estonian branch) v. Pfiser H.C.P. Corporation (Estonian branch) concerning the correction of published data (3-2-1-95-05).

As to media policy, an interesting case was the Supreme Court's injunction about an erased article about Sirje Kingsepp in the Internet archive of *Eesti Päevaleht* (published in 2004 – 'A Feminist, not a Communist') – access to which was banned by the Data Protection Inspectorate. The verdict by the Circuit Court and its approval by the Supreme Court enabled re-granting public access to the article.

In summary, 16 cases provide argumentation that provides interpretations concerning the values like press freedom, freedom of speech, human dignity, truth, privacy and status of persons in Estonia. Altogether, 12 Supreme Court cases have been directly related to the issues listed in Article 10, sec 2 (of the ECHR) and media policy implementation.

In addition, altogether there have been 27 court rulings (in the first and second degree courts) which have been analysed in brief. According to the publicly available data, it is possible to say that up to 30 cases concerning media organisations and journalists have been solved since the beginning of the millennium. It is important to note that quite often the Supreme Court has reached very different interpretations of the law concerning the media-related cases in comparison to what has been decided by the first and second degree courts. The tendency is that the first and second degree courts usually protect press freedom without balancing it carefully against the rights of individuals.

4.2.1 Media freedom and *truth* as protected values

'Obligating the article publisher to publish a correction would be an infringement of press freedom deriving from the joint action of Articles 44 and 45 of the Constitution which needs to be reasoned and proportional. The Supreme Court has earlier detected that the principle of freedom of speech, including the journalistic freedom of speech, established in the Article 45 of the Constitution and Article 10, Section 1 of the European Convention of Human Rights serves as the essential safeguard for democratic social order and consequently the material social value.' (case 3-1-1-80-97, *Laanaru v. Tammer*, 1997).

Hence, the Estonian Supreme Court stated already in the 1990s that press freedom was among the most valuable social values.

When we look at the appeals by the media outlets as defendants, it has been repeatedly claimed that the obligation to publish corrections imposed by the Law of Obligations Act appears to be an infringement of press freedom and needs to be proportional.

Partly the jurisprudence of the Estonian Supreme Court since the 2000s has moved towards the 'fourth' ('variable geometry') model. Fenwick and Phillipson stress that the fourth model '/---/... upholds media freedom just as strongly as the

others [freedoms] when it is genuinely directed at the public interest, in terms of both truth-promotion and democracy. /---/ Acceptance of the “fourth” model tends to allow for the imposition of specific regulation of the media with the aim of perfecting or enhancing speech from audience perspective. Such regulation may include duties upon the media that might be termed “anti-privileges”, that is, particular burdens that would not be acceptable if imposed upon individuals. Obvious examples are “right to reply” provisions, in which newspapers are obliged to carry apologies and corrections if they are found to have published defamatory and/or privacy-invading material...’ (Fenwick and Phillipson, 2006: 27).

On the one hand Article 1047 of the Law of Obligations Act obligates the media (as any other information discloser) to publish corrections which in the case *Gross v. Eesti Ekspress* (2008) the Supreme Court underlined as follows:

‘In general, the courts are right in their conclusion that the public has legitimate interest to know about the methods applied by the police for the regulation of traffic to ensure a safer traffic environment. However, the affirmation of the existence of public interest in the use of the plaintiff’s image in particular in the media coverage of a police operation has neither been demonstrated by the defendant nor substantiated by the courts. /---/ The panel is of the opinion that public interest could have been affirmed in particular in such a case if the plaintiff had committed serious offence and reporting on that offence would have been in the public interest in order to contribute to the detection and prevention of such offences in the future. /---/ Moreover, the panel points out that the use of an image of an individual without his or her permission is generally also lawful in cases where the individual knowingly exposes him/herself in a situation where the making of his or her image publicly visible can be reasonably foreseen, e.g. in case of participating in various social events that are of particular interest to the so-called yellow press. The panel also points out that the usage of an individual’s image can be permissible also in cases where the image is distorted by means of technical tools to the extent that the person cannot be identified. According to the panel, in such a case it must not be possible to identify the person from the context either. The ECHR has drawn attention to the option of distortion of a person’s image to the unrecognisable for example in the case *Peck vs. the United Kingdom*.’

The factual claim and the value judgement have been a recurring topic for the National Court for argumentation. Hereby the influence of the European Court is less noticeable. First, the debate concerning the fact and value/comment goes back to the early 1990s, before the European Court case law became relevant to the Estonian jurisprudence. The following quotation gives an overview of the references concerning the development of argumentation concerning the defining fact and value-statements throughout the change of Estonian laws.

The special panel of the Supreme Court in civil case 3-2-1-99-97 clarified the term ‘data’ under the General Part of the Civil Code Act, Article 23, which means ‘factual claim’. A factual claim can be verified and its trueness or wrongfulness can be substantiated. The value judgement about a person can obtain a negative meaning in a particular cultural context. The value judgement can be motivated but its truthfulness cannot be substantiated. Consequently, in case of defamation by a value

judgement, no refute can be claimed as this information does not contain data. The similar ruling was produced under the Law of Obligations Act in the case 3-2-1-11-04 which added that claim for a refute needs to be explicit.

The debate upon the fact and evaluations culminated when the Supreme Court decided upon the case of Villu Reiljan, the former Minister of Environment. Then one of the judges (Jaak Luik) expressed a dissenting opinion. He claimed that the circuit court and the Civil Panel of the Supreme Court had clearly discarded the argument that Villu Reiljan did not hold the office of a Minister at the time the alleged offences were committed. Within this research it is important to notice that the judge brings up the question if a politician can be criticised without any restraint. Also, in this case, the ruling shows that as the public figure needs to evince higher tolerance towards criticism – which is the rhetoric of the ECtHR – their public status would also support not being awarded any fiscal damages. According to the ruling, the honour and good name of a public person can be repaired by refuting or a correction.

Thus, unlike several cases of the Court in Strasbourg (e.g. *Pedersen and Baagsgaard v. Denmark*, 2004) the Estonian Supreme Court does not evaluate the degree of carefulness the media has paid to the material, but continuously rather focuses on legally defining the ‘value judgement’ and the ‘factual claim’. The Supreme Court does not employ the ECtHR’s argumentation about the political debate and public interest. This reveals that the jurisprudence regarding defamation by disclosure of incorrect data appears to be fragmentary.

4.2.2 The issue of accountability of the professional media and other sources and the public interest

In recent years the media’s growing interactivity has provided grounds for debate and to construe the question related to the accountability of the professional media and various types of sources. On the one hand these cases have again been linked to the dissemination of untruthful information, but on the other hand also with human dignity as a value and the individual’s right of self-determination (*Villu Tammert v. TV3*). The most thorough addressing of the responsibility issue was invoked in the case *V.Leedo v. Delfi* in which the question was whether the media organisation providing the space would take responsibility for the insulting visitors’ comments or would the commenters be solely accountable for what they write. In this case it was also debated if the press freedom would be protected under the clause of public interest even if the media organisations’ business interests (which contain publishing visitors’ comments and achieving a high rate of clicks based on the number of comments) are viable.

It is important that in some cases the Supreme Court has overruled the basic values’ argumentation by the first and second-degree courts. In the case of Villu Tammert the TV-news team covered a police operation. The plaintiff was stopped and made an admonition without any legal infliction. The plaintiff clearly asked not to be filmed for the TV news. However, the newscast used that footage. The county court ruled that as the news item only lasted for some 20 seconds, it could not damage the person to any extent which could justify banning the usage in the news cast. Also the circuit court found the same way. Both courts emphasised the public interest towards coverage of police operations.

The Supreme Court however referred to the need to balance the ‘public interest’ against the interest of a private person and their informational self-determination. The Court stipulated that the image of a person can be used without their consent only in case of them being an actor of an important current event and the public interest overbalances the personal interest.

The latter is among the few cases of the ECtHR which the Supreme Court of Estonia has referred to and based its argumentation on. The Supreme Court also argued about the need to consider the moral damages in case the media organisation intentionally breaches privacy protection: ‘Relying on the fact that in this case the plaintiff has explicitly disallowed the use of his image but the defendant has intentionally done so anyway, the panel has come to the conclusion that such intentional infringement should be qualified as a circumstance that justifies compensation for damage under Article 134(2) of the Law of Obligations Act. Therefore, an apology is not sufficient judicial remedy in this case. The circuit court’ position that primary remedy should be refutation of the published material by the same broadcaster—from which the plaintiff has allegedly refused—appears to be incorrect. It is not possible to refute an unjustified usage of a person’s image.’

Hereby it is crucial that the Supreme Court refers to the routines of court practices of Estonia. Refuting and apologies as the primary reparation measures appear to be that trivial that the Supreme Court needed to underline that nonfactual infringements cannot be refuted.

4.2.3 The Leedo case as the most important value implementation since 2000

The article by Delfi on 26 January 2006 ‘*SLK lõhkus plaanitava jäätrassi*’ (The Saaremaa Shipping Company crashed the planned ice road) was open also for commenting. The article had 185 comments of which 20 breached the plaintiff’s (the owner of the shipping company) personal rights, and degraded their dignity. The defendant removed the insulting comments on 9 March the same year. Some comments included direct and serious threats towards the plaintiff.

The abovementioned Leedo *versus* Delfi case constituted the media organisation’s responsibility also in case of disclosing claims by anonymous sources – i.e. by providing anonymity the media takes the responsibility of the comments added on itself.

The adjudication of the Supreme Court on seventeen pages, for the first time publicly debated the liability of a media organisation for readers’ generated comments to online news items. *Inter alia*, the argumentation was partly based on the economic models of the particular media organisation as the reader-generated comments were considered to be part of the business model. As the Supreme Court stated: the more the news items get comments, the more the media organisation earns a profit. Hence, news organisations shall be liable for comments.

The media policy constituting outcome of the Leedo case, a result of proceedings at all three court levels, was to establish whether the comment sections of online publications should be considered as forming part of the journalistic work or not, and whether the media organisation should be considered to be solely an information service provider (as a container) or a content provider to whom liabilities can be applied.

4.3 Moral damage

The courts in Estonia have judged moral damages sparingly. One of the largest compensations sentenced paid by a media organisation was 200,000 EEK (12,782 EUR) – but this was due to the fact that an individual’s delicate information was revealed. The businessman Leedo was awarded 5000 EEK (320 EUR). Also an unidentified 50,000 EEK (3,200 EUR) compensation award exists.

The chair of the Supreme Court Märt Rask said:

‘The punitive damages have yet not become a common practice. The legal system of Estonia does not support the mentality according to which the sufferer from a non-patrimonial damage would need to become enriched and the tortfeasor equally to impoverish to re-establish justice. The compensational aspects of the damages still stay on the uppermost position.’²²

That practice has been affirmed also by the Estonian media organisations: ‘During the last 10 years the newspaper *Äripäev* has not paid a significant sum as a moral damage’;²³ ‘*Postimees* has never paid moral damages’.²⁴ The media companies prefer to reach extra-judicial agreements.

The so-called ‘Source protection act’²⁵ also introduced new principles of moral damage compensations, based on the punitive damages concept. The new regulation entered into force as of 2011 and was heavily criticised by the media as perceived as a threat to the press freedom. The head of Harju County Court, judge Helve Särgava commented on the new law in an interview to *Eesti Päevaleht* as follows:

‘I think the emotions have heated up here. A universal principle seems to be forgotten – No one will tear at a right man’s coat. I guess big controversy has grown from the issues that now we can preventively demand compensation and in particular cases the media’s anonymous source needs to be revealed.’ (Särgava cited in Roonemaa, 2010)

Särgava underlined the importance to rely on the judge, but also said that, as far as there was no practice, we could not predict the law amendment’s impact:

‘Based on facts, conscience, and the discretionary authority, the judge designates reasonable and fair deposit compensation. Definitely, this is a complex discretion, as by then it is yet not clear what shall be established in this case. The compensation shall be deposited from the funds of the media organisation. As I understand, this amount of money stays out of the turnover until the case finds its solution. More detailed description of the system can be provided after some particular case has been completed and the adjudication has taken effect’ (ibid).

²² Interview with Märt Rask, the chair of the Supreme Court, by Urmas Loit (in written format), Tartu, 5 October 2011.

²³ Interview with Meelis Mandel, the chief editor of *Äripäev*, by Marge Männistu, Tallinn, 28 May 2011.

²⁴ Interview with Tiia Luht, the lawyer of *Postimees*, by Marge Männistu, Tallinn, 12 May 2011.

²⁵ Officially: Act to Amend Broadcasting Act, Code of Criminal Procedure, Code of Civil Procedure and Law of Obligations Act, entered into force as of 31 December 2010.

The Chair of the Supreme Court Märt Rask said:

‘The quantum for the non-patrimonial damage needs to correspond to the welfare level of the society and other indicators of the legal system. Thus it would be improbable the damage compensations to zoom without corresponding upswing of the general welfare.

As the new wording of the law has simplified processing of damages, we can foresee growth in these types of lawsuits. The reasoned positive outcome of it would be growing care by media organisations in data disclosures.

Altogether one can say that the court practice has moved towards more sophisticated argumentation concerning the need to balance the rights of individuals and the public need for information. The moral damages certainly do not have any chilling effect on news organisations, still the need for better consideration of the circumstances that protect individuals against media seems to be more put on the agenda compared to the beginning of the 2000s.’²⁶

²⁶ Interview with Märt Rask, the chair of the Supreme Court, by Urmas Loit (in written format), Tartu, 5 October 2011.

5. The journalistic profession

Professional journalistic autonomy is one of the basic guarantees for the freedom of expression. Although the professional autonomy is also a long-debated issue in journalism studies and media ethics, both concepts (autonomy and transparency) are not easy to be achieved in professional journalism practice. While the journalistic institution itself seeks to exercise autonomy from outside or governmental control, individual journalists actually give up personal autonomy to a significant degree (Merrill, 1992; Christians Rotzoll, Fackler 1991: 33-57; Shoemaker and Reese, 1991: 115-144; Sanders, 2003: 27; Singer, 2007). John Merrill, the leading advocate of an existentialist approach (in relation to journalism), cynically declares: '... journalists in the lower echelons are going about their duties not as professionals who deal with their clients directly and independently, but as functionaries who fashion their work in accordance to supervision and direction by their editors, publishers and news directors' (Merrill, 1989: 36). Singer (2006) creates the concept of 'socially responsible existentialist' (i.e. combination of existentialist freedom with a commitment to trust and responsibility) and argues that there is no need only for the renewed and dialectical approach to the practice of journalist but also the core definition of the journalist (Singer, 2006: 3). 'As the nature of media environment changes, the definition and self-conceptualisation of the journalist must shift from the professional process of making information available to the professional norm guiding determinations about which information has true societal values' (ibid: 25).

Hanitzch points out that the professional autonomy is high where journalism's symbolic capital dominates over commercial forces. 'I argue that it is the journalists' professional worldviews that essentially fuel the struggle within the journalistic field,' he says (Hanitzch, 2011: 478).

The following analysis focuses on the following question: what are the pressure mechanisms and factors of professional culture that support or restrain the *professional autonomy* of Estonian journalists? In order to explore the different policy factors that influence the journalistic profession we created a three-dimensional model.

First scale: internal and external pressures

- External pressures: these are political and/or economic pressures concerning the adverts and access to information. In Estonia journalists do not feel any political pressure. Hence, today the main problem would be the different types of economic pressure.

The increasing flow of PR-information written in news format and ready for use in unlimited online news sites diminishes the border between autonomous journalistic discourse and 'outsourced information' (e.g. only a minority of workforce is assigned to the production of original news stories in online newsrooms). Access to information and barriers could be the third type of external pressure.

- Internal pressures: procedures of content production could be more or less democratic and transparent. Journalists could be more or less responsible for the final publication. Pressure could come from owners, executive leaders or chief editors.

Second scale: the job market

- Entrance barriers to the job market.
- Transparency of job descriptions and competence requirements; transparency of job interviews.
- Job security; activity of professional trade unions.

Third scale: awareness of professionalism; co- and self-regulation; accountability instruments

- Effectiveness of accountability instruments (press council, codes of ethics, professional education) in enforcing existing norms and rules regarding journalistic norms and standards.
- The influence of the new media environment to journalistic autonomy and transparency (weblogs and microblogs in social media).
- Journalists' perception on the 'autonomy' concept and their awareness about the role of a journalist.

First scale: internal and external pressures

In Estonia, the professional community of journalists amounts to about 1100-1200 individuals. There are very few freelancers and some journalists work as registered self-employed entrepreneurs. Mainly journalists are employed by the media organisations. The majority of journalistic jobs in Estonia are mainly concentrated into three companies: Eesti Meedia, Ekspress Grupp and Estonian National Broadcasting. The overall number of journalistic jobs in 2011 in the press sector is about 1100 - it is the calculation that was done by counting the journalistic staff of the media outlets and broadcasters. The Estonian Newspaper Association reports about 700 journalists active in member organisations. The Estonian Journalists' Union has about 800 members (including retired 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 daily newspapers are major employees. About a quarter of the active journalists have graduated from the journalism programme at the University of Tartu.

Concerning the important notion, that professional autonomy is high where journalism's symbolic capital dominates over commercial forces, it is important to note that most of the interviewees of the present case study stressed that quality values are under attack in Estonian media organisations. The main reason that was pointed out is the commercial pressure. In the following quote a journalist says what she 'was told'. This wording refers to the internal pressures towards efficiency on account of quality and ethics:

'... "You should forget the quality", as I was told. I was told that 80 percent of what I am doing is *fine-tuning* and this is inept, as 80 percent of the readers would not notice this /.../. On contrary to what I acknowledge. /.../ I need to forget most of what I was taught at the university. Ok, to forget something is normal, something should be unlearned, but /.../ I should even unlearn my own ideas about quality, sometimes about ethics. /---/ In order to withstand

competition you should be especially productive and it is especially good if you have leaking sources... Your writing quality is also important but last in the line...'²⁷

Concerning the internal pressure, it is important to emphasise that different media channels are in different positions (Harro-Loit and Saks, 2006). Especially the magazines, in order to survive, have developed strategies that may be seen to have erased the border separating advertisement and the editorial content. As magazines are very different as regards the public interest, it is important to note that there are certain topics that have public importance as they educate the audience in certain fields: health magazines, some consumer and life-style magazines; children and family magazines etc. For this case study we conducted an interview with the former chief editor (in post for ten years, until 2009) of a health journal. Health issues are of high public concern all over the world. Health magazines are also important information dissemination channels in Estonia. The editor said that she could feel direct pressure from both the foreign owners and the executive editor:

'First we dealt with the cover ... the whole "jollity" went about the cover which never appeared to be satisfying, but we [the editorial office] could work undisturbed on the content and the circulation went up for almost five times, /--/ as the owners did not understand the language. /---/ But then we gave up with the cover. /---/ There needed to be a young woman on the cover picture /.../ not older than 35, or at least not looking older than 35. /---/ However, soon the discussion also reached the content – and the readership was too old. We were said that we were writing too much about diseases – how to determine, prevent or treat – but the buyer needed also to be a young person. The marketing gurus told us that the target audience needed to be young and wealthy. Old people do not have money, they said. /---/ The owner also told to dismiss old authors. /---/ OK, we, the content makers did not give up our position either – as the real life proved that middle aged people and a bit over it liked our work and the circulation endured. /---/

Then a young author wrote an in-depth warmhearted portrait story about a soup kitchen executive, /---/ how the destitute people praise her, and the pictures of the attendees. We choose some pertinent, delightful photos not to shock anyone. And for that we were heavily rebuked for several months – how could we publish such photos. Further on, the executive manager, whose primary task was to economically run the office, reviewed all illustrations and had to approve all the choices. Gradually all the real-life photos ceased to appear – no real medical workers, no respectable sources, no one. Even not the professor emeritus who received the state award for lifetime achievement – for breeding the bioactive germs ME3. Consequently, all photos were chosen from stocks – the image photos. /---/ In short, it went crazy. We were continuously drummed that a magazine needs to sell dreams to the people.'²⁸

²⁷ Interview with a journalist in a weekly magazine (female, working occasionally since 1999, higher education in journalism as a surplus speciality), by Jaanika Niinepuu, Tallinn, 9 September 2011.

²⁸ Interview with a former chief editor of a health and life magazine, by Urmas Loit, Tallinn, 25 September 2011.

In addition to a value conflict – the editor did not accept ‘selling-the-dreams’ ideology – this case reflects a notable problem in Estonia: discrimination by age. In the context of the current study, the fact that journalists did not have possibilities or motivation to rebel against this youth-praising ideology is notable. The intervention was imposed step-by step. Another important aspect would be that such stories appear to be published only in academic research papers, BA or MA thesis on journalism. There is hardly a possibility for an acting editor-in-chief to release a narrative on such practices or that kind of topic would serve as an issue for a public debate.

Commercial pressure on content is also immediate for the newspapers’ ‘soft news’ or B-sections. One of the interviewees who had been working at the B-section of a national daily recalled:

‘We have heavy pressure by advertising. Unbelievable! We are even told to send the topics to the advertiser – then it will decide, whether to by a large ad or a small... And you need to prepare the topics some two weeks ahead for the sales person who will forward these to the clients. There have been several conflicts about it – who did you write this way or why some story was not there. Sometimes it has been completely crazy.’²⁹

However, journalists who had been working for (hard) news said that they had not felt any commercial pressure.

The major external pressure the interviewees mentioned was access to information. More precisely almost all interviewees were complaining about the PR sector. Several journalists said that as the law prescribes a deadline for information delivery (within five working days) to the public, the bureaucracy often releases the information at the last legitimate minute knowing that the journalist would need that information swiftly. The journalists suspect that during the term of reply to the request the holder of information manages to rectify the issues and paperwork under investigation.

Here the information processing routines and habits should be analysed critically. The Public Information Act (hereinafter: PIA)³⁰ forms the basis for information management in general, although more specific areas are covered in other laws. PIA sets the main principles for publishing and withholding information, the obligations of institutions, the requirements to the document registry, which information has to be provided based on requests within five work-days and which has to be published on web-sites,³¹ the basis for restricting information etc. In general, it can be said that the restriction of information is rather limited and the regulation in

²⁹ Interview with a journalist in the B-section of a daily newspaper (female, currently on child care leave, working experience since 2006, higher education in journalism), by Jaanika Niinepuu, Tallinn, 8 October 2011.

³⁰ The main legal acts regulating the public information management include Public Information Act, State Secrets and Classified Foreign Information Act, Personal Data Protection Act, Official Statistics Act, State Gazette Act, Population Registry Act, Archives Act, as well as several acts on different registries (e.g. environment, businesses, land etc.).

³¹ For example the list includes document registry, (draft) budgets and annual reports, statistics on crime and economics, contact data, job descriptions and salaries of public officials, different reports, data on vacant positions, public procurement, commissioned surveys and analyses, environmental information, data on danger for people’s lives, health and property etc. (Public Information Act, Art 28).

general can be regarded as promoting transparency (Saarniit 2011/12). Access to relevant information is mostly available and in most cases there are no major obstacles in getting the information. The web-sites of the Estonian central government agencies tend to be thorough and include most of the information that is required. However, there are differences between institutions, and especially between administrative levels, with the local government being less transparent (Peep, 2010); the web-sites are not always user-friendly, i.e. finding information (especially for an ordinary citizen) may take a long time (Saarniit, 2011/12).

Hence, it is important to point out that journalists in Estonia have rather a tendency to be too dependent on the communication managers of certain organisations and do not make enough use of all the legal possibilities actually provided by the Estonian laws.

Concerning the investigative journalism the whistle-blower policy for public servants is regulated by the Anti Corruption Act (ACA), article 23, that requires officials to report on corrupt activities known to them to the director of the institution, defence police, police or prosecutor's office. Although, the ACA states that anonymity will be guaranteed unless the information is motivated by personal gain or if the testimony is needed to prove the crime, this regulation cannot be regarded as a sufficient whistle-blower protection. In addition, an anonymous option has been guaranteed via a telephone hotline that is monitored by the Defence Police that forwards the tips to relevant institutions if necessary (Saarniit, 2011/12). The protection of information sources was legally adapted in 2011.

At the same time, whistle blowing in such a small society as Estonia is very problematic anyway as the interactive part of news (anonymous comments) provide the possibility to give hints on the source or the information maintains such specific character that the source can be established contextually.

Second scale: The journalists' job market

The Journalists' Union has been weak since the re-establishment of the Republic of Estonia and only the PSB journalists have got a collective job agreement.

One interviewee (the former chief editor, also a member of the Journalists' Union) explained the reasons why the Union is not able to protect the journalists' integrity and secure the job conditions:

'... If to look at the individuals' level – who are the members of the Journalists' Union? Mainly retired or withdrawn journalists. In several concerns the employees by default are expected not to join the journalists' union, sometimes the membership has even officially been banned. Some may reject this rule and be a member anyway but I cannot see much motivation for that... Any journalist would like to eat.'³²

Rumours about restrictions concerning the membership of the Journalists' Union have been in the air since the independence of the state was re-established. In

³² Interview with a former chief editor of a health and life magazine, by Urmas Loit, Tallinn, 25 September 2011.

2004 Marianne Mikko, a former journalist and then member of the European Parliament wrote in the cultural weekly *Sirp*:

‘In Estonia only 10-15% of journalists belong to the trade union. /.../ Regrettably membership of the Journalists’ Union is not considered positive for the leaders of media organisations. By contrast, during the personal salary negotiations journalists pledge not to have ties with the Journalists’ Union. The Estonian Newspaper Association representing the employees, would do anything in order to also look like a professional guild. Many Estonian journalists are afraid to join the trade journalists’ trade union’ (Mikko, 2004).

As the Journalists’ Union is weak in Estonia, the journalists’ job security is not secured by the trade union, nor are there any collective employment agreements: except for the PSB. But in 2009, even the PSB consecutively dismissed two elected representatives of the union (Mari Dittmann and later Maris Johannes). Maris Johannes’ dismissal caused a revolt and public appeals by cultural circles and academy members and she was proposed to carry on with 20% of her original work load.

Entrance to the journalistic job market is not regulated, but the majority of the interviewees noted that the job market is so small that the best variant is to ‘be invited’. The majority of interviewees started as ‘summer reporters’, were practitioners at media organisations and later on were offered a full job. Only half of the interviewees had a job interview experience. None of them got feedback concerning their competences or features that helped them to get hired or - on by contrast - why they were discarded. They could not recall any criteria set for the job they applied to. One of the interviewees admitted that she was fired without being provided with any critique. Initially her sacking was linked to a reduction in costs but later another person was hired for the same job.

All interviewees said that possibilities to find another job as a journalist appear to be higher in Tallinn as most of the news organisations are situated there. One of the interviewees provided an explanation how the scale of competencies could impact the job security:

‘If you are a mono-functional worker, for example typing something in the online, your stand has low perspective in case the costs are cut or anything else happens. The probability to get an invitation from another media organisation is low. In case you are a multitasking person, or you have a prominent name or you know many in various outlets, you possess a better perspective.’³³

The perceptions on ‘journalistic autonomy’ are different. Some journalists said that they could not understand this term or they had never thought about it. Some journalists described different threats to their autonomy although they did not label them. The most elaborated description emphasised the differences between the internal and the external pressure:

³³ Interview with a chief editor in an online-portal (male, working since 1992, higher education in journalism), by Jaanika Niinepuu, Tallinn, 8 October 2011.

‘This primarily means freedom to write independently of external people and sources. /---/ In some cases – and I don’t speak about the current political issues, but soft topics – we can discuss about setting the focus with the sources as well. But I needn’t do it. Yet, internal affairs make a different matter. You need to subordinate to your boss. The independence is somewhat trammelled – you need to write in the way your boss likes, not as you would like to address the topic. I choose one focus, but my boss suggests another focus ...’³⁴

There is quite a lot of confusion about in-house rules and the individual autonomy of journalists.

Concerning the in-house pressure mechanisms, the interviewees mentioned, errors that are inserted into the texts in the editing process. Although a journalist produces a ‘bylined’ article, the text editors change the text and insert errors and the journalists would not always have a possibility to control the process until the end. Some interviewees mentioned that the ‘author’s rights’ depend also on organisational culture and the self-determination of a certain journalist.

Most of the interviewees could not easily express themselves while speaking about the professional autonomy. They admitted to the interviewer that they had not been thinking about these issues before and only while being interviewed had they apprehended some new viewpoints to professionalism. This reflects a poor journalistic culture concerning the discussions among the professional community about the journalistic profession.

Another recurrent aspect concerning the professionalism of the Estonian journalists’ community is the distinction between leaders of the media organisations and journalists (reporters, editors, middle managers). As will be discussed later, concerning the issue of media literacy and transparency, most of the chief editors see the media organisation as any other business organisation, whilst the journalists’ perception of a news organisation contains more transparency and openness for the general public about the everyday practices and editorial policies.

The difference concerning journalistic autonomy is reflected also in two different unions (associations) and two different press councils. Journalists’ Union is the member of the original press council (ASN) while the Newspaper Association established another Press Council. The editors-in-chief have instructed journalists to provide answers to ASN. In 2008, the editor of Kanal 2, Antti Oolo, requested ASN did not disseminate the adjudications to their editorial office: ‘... The Estonian media channels have decided long ago to unanimously ignore ASN. /---/ I recall when working at *Eesti Päevaleht* all staff members received a corresponding e-mail. Also the chief editor individually instructed us all ...’³⁵

In recent years this attitude has softened gradually but still in the case of most complaints to either press council, the answer from the media organisation is usually

³⁴ Interview with a journalist in a weekly magazine (female, working since 2005, higher education not in journalism), by Jaanika Niinepuu, Tallinn, 15 October 2011.

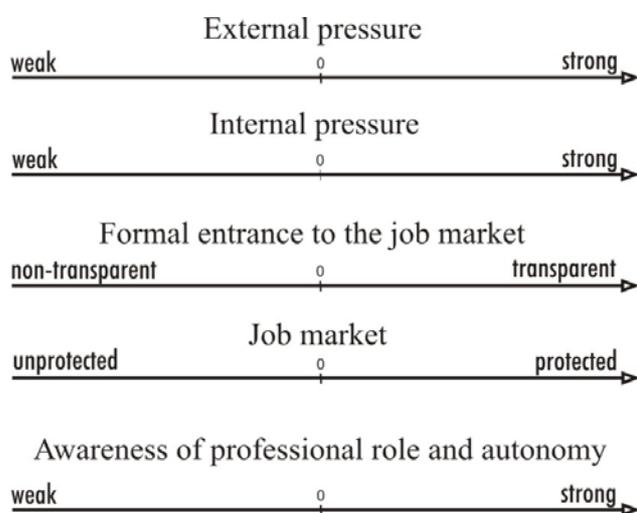
³⁵ See <http://www.asn.org.ee/foorum/viewtopic.php?t=439>, in Estonian (date accessed 25 November 2011).

composed by the chief editor.³⁶ According to the interviews conducted, the journalists regard this to be an appropriate practice which provides them with the necessary editorial protection. None of the interviewees perceived ‘replying to the complaint’ as an option to be personally accountable. Thereby, during the qualitative interviews journalists considered self-regulation the best regulatory system for journalism.

Journalistic profession and the pressure-model

While putting the journalistic professionalism on the three scales one can construct the following evaluation schema.

Figure 1. Evaluation schema for journalistic professionalism.



The schema of Figure 1 presents the aspects, in which the journalism profession protects the freedom of expression and the major barriers in particular countries for professional autonomy.

Estonian journalists have described several in-house pressure mechanisms but few external barriers. Entrance to the professional job market is rather non-transparent but journalists have accustomed to this aspect. The professional (trade) union mainly does not protect the job security. Journalists rather seemed to be confused about the ‘autonomy’ issue – it has occurred as a subject mainly for academia, but not for practitioners. It is important to note that among the professional community there exist different groups of journalists who do not share similar understandings on the journalists’ professional autonomy issue.

³⁶ However, ASN asks for an explanation from both - the chief editor and the journalists. This procedure was introduced after the chief editors’ demarche against ASN and its then chairman in early 2002.

6. Media literacy and transparency requirements

The promotion of media literacy as a goal of media education is an increasingly important issue that is being given priority by the European institutions. The Audiovisual Media Service Directive, still, speaks about the 'media consumer' not about the 'media literate citizen'. As the consumer and citizens are anyway getting more ability to choose the content and on the other hand huge international corporations get more control over the content, the media literacy issue for democracy is increasingly important.

The implementation of media literacy is a multidimensional process that includes the development of media education in the formal education system (national curriculum included) as well as teacher education and various projects that support adult-education. Transparency could be defined as a disclosure transparency which means that news producers are open about how news is being produced. It is an 'active' type of openness. Disclosure transparency presupposes a common faith between the producers and consumers of news but does not facilitate explicit participation by news consumers (Karlsson, 2010: 537). A long-debated focus of disclosure transparency has been the relationship between journalists and news sources (Kovach and Rosenstiel, 2001; Rupa, 2006; Phillips, 2010). Hence, this would include links to sources and original documents, openness on how information has been obtained, and correction of mistakes. Participatory transparency aims at getting the audience involved in the news production process in various ways (Karlsson, 2010: 538). Both these concepts include 'talking with readers' activity that enables citizens to make informed choices about the media services they choose. Therefore it would be important to ask: what would motivate the Estonian journalists to make a greater effort to explain the editorial decision-making process? On the other hand the readers/users should be able to be ready for this dialogue. Hence, the question of media literacy implementation is important.

The communication policy that guarantees access to the Internet has been especially efficient in Estonia. The rapid increase of Internet usage since the end of the 1990s is linked with several factors, such as government initiatives, the liberalisation of the telecommunications market (foreign investments, increasing competition and decreasing prices), and the development of e-banking. All government institutions were pooled into one e-government services portal³⁷ in 1998, and in 2004 the e-citizen project was implemented. Under the initiative of government and NGO initiatives the Internet was made accessible for segments that are of little interest to commercial vendors – the focus has been on schools and rural areas. *Tiigrihüpe* (Tiger's Leap), Estonia's IT programme has provided computers and software for schools and helped to connect all the schools nationwide to the Internet (Kerem, 2003: 7). Since 2001, competition in the Estonian telecommunications market has increased causing Internet access prices for consumers to drop. The low cost enabled a 'critical number' of Estonian citizens to get Internet access, especially at home and Internet banking had already started in 1996. Frequent Internet users in Estonia enjoy various advantages; Internet communication (especially among young people) is multifunctional: it is used for services, interpersonal communication and information searches.

³⁷ <http://www.riik.ee> (date accessed 21 December 2011).

Another important policy tool in promoting media literacy is its inclusion within the terms of the Audiovisual Media Services Directive (AVMSD). As Estonia transposed the new provisions into national law in 2010: ‘...development of media literacy in all sections of society should be promoted and monitored’ (Commission of the European Communities, 2007: paragraph 37). In practice there is no media literacy monitoring. Media *education* has been decreased in the national curriculum of formal education: in the national curriculum 2002, media education was introduced not only as a cross-curricular approach but also as an optional course (Ugur and Harro-Loit, 2010: 138). Since 2010, media-education is only a cross-curricular theme and one 35 hours long course within the Estonian language as a subject. The concept of the cross-curricular theme (‘performance in information environment’) corresponds to the general ‘media literacy’ definition with regards to the different roles an individual can have within the communications process. Hence, media education as a cross-curricular theme provides many excellent opportunities in case the teachers have been sufficiently educated to be competent. Very little documented material exists on either how these competences should be taught in the classroom (methodologically) or what kind of resources would be needed (ibid: 143). As the media is not a subject at school, teachers’ education does not include media education as a compulsory part. If a student is interested, they could take it as an elective subject but usually students’ curricular is already filled up with obligatory courses.

An additional problem is created by inaccessibility to the general public of the information about ‘backstage’ activities of the media industry, or the performance of the media in Estonia. On the one hand, in order to comprehend the performance of the media market, one should acquire basic knowledge and vocabulary on issues of ownership, contemporary media economy and legislation – but this discourse is not widely common in Estonia. On the other hand, news people hold diverse views on transparency or the professional media performance issues.

Based on the interviews made with the chief editors we can conclude that the perception on the concept of ‘transparency’ varies by the range of the coverage area of the newspapers the editors represent (regional *versus* national). Among the chief editors a common view of media organisations like any other business prevails, while the journalists revealed more ample readiness to explain their work. In addition, the editors sometimes stressed that, preferably, the output should speak for itself.

‘Absolutely, they [the print media outlets] aren’t [transparent enough in Estonia]. There isn’t any conspiracy behind this – that we must not display the state-of-affairs to the public, as if there were some business secrets or maybe the competitor would learn what we do. The newswriters do not think that way. /---/ For many it feels like excessive vanity: they tend to think that media should write about important issues, not about itself. /---/ Media organisation does not differ from other business’ organisations – any editorial staff has disputes and disagreements, but I do not think that all of it should be unfolded in front of the audience. It would rather affect the media’s health than promote freedom of speech. I would like to draw a line between public discussions and the in-house working processes. It should be that way in case of any editorial office.’³⁸

‘The editorial office’s work cannot be that much transparent that anyone might come to the office and observe. It even shouldn’t be transparent, but it should

³⁸ Interview with a chief editor of a weekly newspaper, by Juhan Lang, Tallinn, 1 April 2011.

be understandable for the reader – how do the news emerge and how do the journalists work, but in this field the explanations to the public tend to be endless.’³⁹

By contrast, the editor-in-chief of the regional newspaper says that the newspaper offices are too close. A former editor of a regional newspaper points out the alienation from audience, and also the difference between the regional and local press:

‘The Estonian media is very closed for the readers. It starts from the fact that readers cannot come to the newsrooms. I saw it in *Eesti Päevaleht* [the Estonian daily newspaper] how it used to be. /---/ Some years ago people came to the newsroom and even if there was a secretary in her desk, but people could still come through to the newsroom. That was considered to be bad, because people came to complain and journalists didn’t want to talk to them, they disturbed. This is very wrong that people can’t come to the newsroom any more. Regional newspapers are somewhat an exception in that matter, people can come there more often, and dozens of people come in a week. /---/ of course it is annoying for the reporter, but I don’t understand why the reporter’s life should be so easy. /---/ Maybe these days when there is shortage of workforce in newsrooms the work may be somewhat more intense, but meeting the readers is also a way to increase transparency.’⁴⁰

He also points out the problem of alienation between professional journalists and audience:

‘The readers do not know much about how the life of a reporter works and what goes on behind the scene /---/ the public tends to see the journalist as a very hostile person, that is scary /---/ that shows that we are unfamiliar to our readers, our work is very opaque to them.’⁴¹

His colleague (editor-of-chief of the same paper since 2010) pointed out the need to educate the reader:

‘Our reader often doesn’t make sense out of our stories, as he misses the text’s context which appears to be clear for the writer – and the reader can deduce points that the journalist has never even thought of. /---/ There is some kind of media education at schools but three quarters of the population haven’t heard anything about [news criteria, genres, etc].’⁴²

These interviews show again that on the one hand journalists and the leaders of media organisations have different views on the accountability of professional

³⁹ Interview with the chief editor a local supplement to the national daily, by Juhan Lang, Tartu, 7 April 2011.

⁴⁰ Interview with a former editor of a regional newspaper (non-incorporated), by Juhan Lang, Haapsalu, 13 April 2011.

⁴¹ Ibid.

⁴² Ibid.

news media. On the other hand there is a difference between the news people who work for the regional media. The differences reflected by the quotations from interviews demonstrate that professional culture concerning disclosure is heterogeneous.

As Estonia does not have websites or publications that currently publish critical overviews on media issues (including the ownership, editorial, and the personnel policies of media organisations etc.) the major information about the Estonian media conduct could be found from academic research papers (students' research included). The only journalism education programme has been launched at the University of Tartu, and Bachelor and Masters' theses have been made publicly accessible.

7. Conclusion

The general strengths of the Estonian media policy formulation and implementation include recognising freedom of speech as one of the most important values in democracy, and good legal regulation concerning the access to information. Like the Nordic countries (e.g. Finland, Sweden, Norway) freedom of expression and high-speed Internet connections throughout the country secure the population a plurality of choices. However, despite these strengths, there are several key problems that weaken the 'information order' which enables citizens to make decisions and act in a democratic society. Media policy has been influenced by the small state and society issues and the weak political wish to control the application of laws and rules that regulate (broadcasting) content. The integrity of the local media, with low economic resources, is the least protected niche market. The individual autonomy of journalists is not well protected as the Union of Journalists is weak and the profession's awareness concerning its role and integrity is erratic.

As the Estonian media policy is officially formulated as a liberal one, any actors are able to exert substantive influence on media policy implementation. Some actors are rather more active than others and some regulations are more often implemented than others. Digitalisation and the development of social media have affected the business model of Estonian professional journalism but due to the oligopolistic situation (a few strong companies) daily news organisations are still able to perform economically.

The analysis conducted for the present study revealed that the absence of continuous content monitoring as an instrument might be the reason why the broadcasting stations do not really care about the licence content requirements.

The Estonian legal system and courts strongly protect the freedom of speech on behalf of the audience. Although the jurisprudence of the ECtHR is infrequently cited by the Estonian Supreme Court there is a strong similarity in the basic values. Freedom of speech has been the most protected value, but recently the privacy and human dignity issues have been more soundly interpreted as well. The first case concerning online libel (*Leedo v. Delfi*) was covered by an elaborated law court adjudication. The progress of the court argumentation (comparing the first and second stage decisions to the final one) is remarkable. Generally the Estonian Supreme Court has vastly improved the argumentation culture as regards the balancing of contradicting values in the media during the last decade.

The two self-regulatory bodies (the ASN and the ENA Press Council) make the discussion on media ethics more active, as well as more diverse. Especially when their adjudications provide a different argumentation. The dual-body system also reflects the problem that the composition of the self-regulatory organ also induces the argumentation: whether the organ should be critical towards the media or produces self-justification. Self-justification as one of the problems concerning the media's self-regulation was also well reflected in the interviews with the journalists, in which the majority of interviewees said that 'the organisation and its leader should protect journalists against the complaints'. As the lack of dialogue and strong self-justification with regard to press complaints was apparent in the analysis done by Eva Kübar (2006) one can conclude that as a policy tool, the self-regulatory system in Estonia has retained a dialogue between the media and general public only due to the two self-regulatory bodies.

As Estonia is a small society any crisis of the journalism business model would affect the entire commercial media sector, hence the importance and the role of public service media should increase. Once advertising was removed from public television and radio (PSB), the public and private sectors do not compete for earnings in the advertising market, and the change (of no commercial pressure) was immediately apparent in programming. This balancing strategy has been most suitable for small states (Svendsen, 2011: 138-140) but the PSB still needs a more stable financing model. Surprisingly, neither is the journalistic culture specifically well protected in PSB.

Political decision-makers would rather regulate media content less and consequently the need for monitoring would decrease. The serious problem is that none of the politicians perceived the risk for professional journalism in the situation where the old business model is in crisis. In the interviews, we could not identify any future visions of political tools that could balance the commercial interest with the public's need for professional, trustful and non-biased information.

Estonia is so small that the local media and local communication would need special support. As the monitoring of local radio shows, even when the licence requirements demand local news production, nothing happens if these requirements are not fulfilled.

One important conclusion to be reckoned with in media policy analysis is that journalists (reporters, editors) and the top management in national dailies have different views on actor and process transparency in media organisations as well as on the profession's integrity. Regional newspaper journalists hold different positions concerning the role and transparency of journalism and the relations to the audience members. This is so, whilst the media entrepreneurs are cutting down the production costs and even the journalists would like to invest more into the quality of their reportage. In Estonia journalists could be the major group that could balance the situation where the commercial values overrule the professional values.

As we mentioned before, on the one hand the Union of Journalists is weak but on the other hand the interviews show that the younger generation of journalists, in particular, are unaware of their professional role and values. There is a lack of professional discussions in the newsrooms and the analysis of journalism is mainly rather in academia. There are several possibilities and forums for this (e.g. regular meetings of the Academic Society of Journalism), but these discussions usually assemble those who already have either or both a stronger identity in journalism as a result of a longer career and have studied at the University of Tartu (alumnae of the Institute of Journalism and Communication). Also the older generation of journalists have a strong personal value system (Kasenõmm, 2011). Hence, the problem of keeping a strong and autonomous journalistic community is partly linked to that element of the professional community that 'comes and goes'. The Institute of Journalism has tried to do research on personnel dynamics in media organisations but media organisations either do not have the proper data or do not allow any external access.

Therefore it is not only the political autonomy that should be protected but also the journalistic profession, actor and production transparency and debate over journalistic information processing quality. The central question concerning the implementation of liberal media policy remains: what would motivate the actors to invest into quality. Participatory or citizen journalism is making its first steps in

Estonia and the new interactive possibilities have not yet provided the means for the media's primary mission: for being a watchdog and for setting the agenda. At the same time media policy implementation with regard to media literacy is dependent on the educational policy in general: converged media; the hybridisation of different genres and formats; the saturation of information source. The ability to access, understand and create communication in a variety of contexts would require a critical mass of media literate population. Hereby the smallness of a country could serve as an advantage. As the media literacy has been included as a cross-curricular topic in the national curricula, the key question for now would be – with what level of quality the universities instruct the future teachers of formal education and to what extent the Ministry of Culture and the Ministry of Education could co-operate in sustaining media education for adults.

In summary, the smallness of the domestic market spotlights the principal threat to journalism professionalism and democracy: the cheapness of journalistic content. The imminent costs of domestic news production remain high despite the size of the audience. Consequently, the economic pressure on quality; the diminishing line between journalistic and PR information; the relatively low job security rate – all these factors jointly constitute a risk to the journalistic profession and professional content production practices which serve as an essential safeguard for democracy. In the Internet era the protection of media freedom and freedom of expression is still important but it is important to distinguish these two freedoms and to ask critically whose interests and what values this freedom is serving? The Estonian media political debate prefers to avoid asking this question.

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9. List of interviews

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Interview with Igor Gräzin, the MP and the member of the National Broadcasting Council, by Urmas Loit, Tallinn, 24 September 2011

Interview with Rein Lang, the Minister of Culture, by Urmas Loit, Tallinn, 4 October 2011

Interview with Märt Rask, the chair of the Supreme Court, by Urmas Loit (in written format), Tartu, 5 October 2011

Interview with Peeter Sookruus, the head of the department of media and copyright of the Ministry of Culture, by Urmas Loit, Tallinn, 4 October 2011

Interview with Meelis Mandel, the chief editor of Äripäev, by Marge Männistu, Tallinn, 28 April 2011

Interview with Tiia Luht, the lawyer of Postimees, by Marge Männistu, Tallinn, 12 April 2011

Interview with a journalist in a weekly magazine (female, working occasionally since 1999, higher education in journalism as a surplus speciality), by Jaanika Niinepuu, Tallinn, 9 October 2011

Interview with a journalist in a weekly magazine (female, working since 2005, higher education not in journalism), by Jaanika Niinepuu, Tallinn, 9 October 2011

Interview with a former chief editor of a health and life magazine, by Urmas Loit, Tallinn, 25 September 2011

Interview with a chief editor in an online-portal (male, working since 1992, higher education in journalism), by Jaanika Niinepuu, Tallinn, 8 October 2011

Interview with a journalist in a weekly magazine (female, working since 2005, higher education not in journalism), by Jaanika Niinepuu, Tallinn, 15 October 2011

Interview with a journalist in a B-section of a daily newspaper (female, currently on the child care leave, working experience since 2006, higher education in journalism), by Jaanika Niinepuu, Tallinn, 8 October 2011

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