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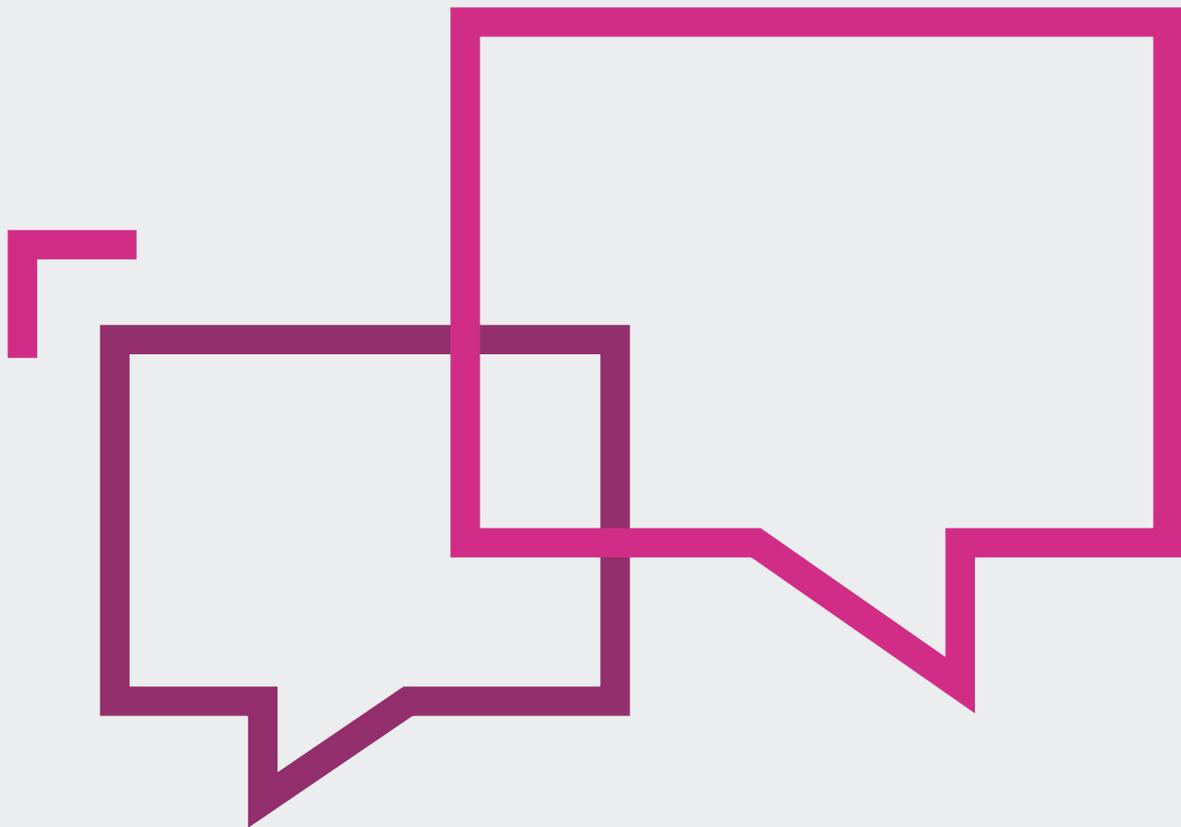


LITHUANIAN
JOURNALISM
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Legal Guide for Journalists

Authors: Liudvika Meškauskaitė, Dainius Sinkevičius

Editor: Džina Donauskaitė



Vilnius, 2018



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Vilnius, 2018

Introduction

Freedom of expression is a fundamental value of a democratic society. Not only does it provide an opportunity for self-expression, it also obliges us to assess and assume responsibility for using it.

Freedom of expression and the respect of the freedom of expression of others by including society in open discussions, is the basis of the day-to-day work of journalists and the media. Journalists are acting as the guardians of freedom of speech when collecting and disseminating important information, initiating public discussions of social significance and ensuring a diversity of opinions, thus demanding responsibility from the authorities.

Contrary to what it may seem at first glance, freedom of expression does not mean that one has the right to express themselves by saying anything they want in any way – freedom of speech ends where other human rights and freedoms are violated, and the public interest in knowing the information is overexaggerated. Therefore, professional use of freedom of expression requires not only a clear statement from a journalist, whose duty is to inform the society in a comprehensive and ethical manner about matters relevant to it – objective perception is also necessary, as well as a particular knowledge of the law and expertise of regulations, given the fact that as a value, the freedom of expression is based on legislation.

The fundamental act ensuring the right to self-expression for all citizens is the Constitution of the Republic of Lithuania. According to the Constitution of the Republic of Lithuania, censorship is prohibited – freedom of the media is established as a threshold for democracy. The main law regulating the media and the work of journalists is the Law on the Provision of Information to the Public (LPIP). It establishes the rights and obligations of journalists, the regulation of the media and the self-regulation system.

As well as ensuring these rights, the law establishes conditions necessary for a journalist's work: quick access to information, protection of information sources, and the right to refuse work if the journalist experiences political or business pressure. A journalist has specific responsibilities: to separate facts from opinions, whilst disseminating information, giving the person who is being criticized the right to respond, crosschecking the information, ensuring a diversity of opinions, and maintaining independence and impartiality.

Disputes arising from the conflict of freedom and other human rights are mainly resolved using the forms of civil law as a guideline. Media organisations, journalists or editors may be subject to administrative or even criminal liability. The latter is generally considered to be the last resort and international organisations protecting journalist rights criticise the criminalisation of journalists for breaching public awareness principles in democratic societies.

The legislation may be altered in favour or against the freedom of expression. Hence, professionals need to know the legal norms of the freedom of expression, not only to be able to carry out their work well but also in order to defend their professional territory from restrictions to the freedom of expression and intrusions into the public sphere.

We hope that this guide will not only introduce you to the existing regulation of the media and journalists but will also trigger a willingness to discuss the policy in Lithuania for the provision of information to the public.

Legal Obligations of Journalists

1. Freedom of expression and the right to information are fundamental values of a democratic society. The objective of the media and of journalists in a democratic society is to gather, organise and disseminate information about events of importance to society.

3. A journalist must immediately amend or deny information that does not correspond to reality, in the same way as it was published.

4. A journalist has the right and ethical duty not to disclose his or her sources of information. Such a disclosure may be requested only by the court under the conditions foreseen by the law.

7. A journalist must avoid conflicts of interest in their work.

8. A journalist must adhere to the ethical principles of journalism, which can be expressed in the general principle of humanity: treat others as you would like to be treated.

10. A journalist must respect copyright law.

2. In carrying out their objective, journalists must adhere to the basic principles of freedom of expression – to provide fair, verified and impartial information, to ensure that the person who is being criticised has the right to be heard before the public information is published and his right to respond after the publication of this information.

5. A journalist has the right to refuse an assignment if its execution violates the law or their personal views.

6. A journalist may revoke their copyrights if the journalist's work has been distorted during the editing process.

9. A journalist must combine the right of the society to information with basic human rights, in particular, the right to the presumption of innocence and the right to privacy. A journalist must be particularly careful when the information concerns minors or other vulnerable persons as well as when handling data relating to a person's health.

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1. Journalists' Right to Obtain Information

- ▶ The work of a journalist is directly related to one of the fundamental rights of citizens of a democratic society – the right to hold convictions and to express them, or the realisation of freedom of information.
- ▶ A journalist is a special legal entity as they have exceptional rights that no other persons have. Information that journalists have exceptional rights to:

State and municipal institutions

- ▶ All citizens have the right to receive information from state and municipal institutions but journalists have the right to demand the information to be provided more expeditiously, i.e., no later than within one working day, and for information requiring the collection of additional data – no later than within one week.¹ Institutions that refuse to provide information must give the reasons for refusal in written form within one \ business day.

Other legal persons

- ▶ Other institutions and enterprises, as well as political parties, organisations, trade unions, associations and other organisations provide information on their activities in accordance with the procedure established by their articles of association (regulations).
- ▶ If a journalist is not provided with the information or is prevented from performing their professional duties without a legal basis, civil servants may be held liable for administrative charges and may be fined from 20 to 140 euros. If the information is not provided – a fine between 50 and 300 euros may be given.¹

During court hearings

- ▶ During court hearings, journalists can monitor the process and record it in writing but are not permitted to use a voice recorder or other recording equipment.

Filming, photography, and audio recordings

- ▶ Journalists are given the opportunity to record the announcement of court verdicts by using technical equipment.²
- ▶ Only the judge announcing the verdict is permitted to be filmed, photographed or recorded, not the other persons involved in the proceeding, their representatives, speeches of those persons, their table, procedural or other documents or belongings.
- ▶ Journalists must submit a written request to the court if they wish to film, record or photograph the announcement of the court verdict. Journalists must be informed about whether authorisation is granted one business day prior to the announcement of the verdict.

¹ The Code of Administrative Offences (hereinafter referred to as *CAO*), Article 547.

² Description of the procedure for the use of technical equipment at the time of the announcement of a court verdict, approved by the Judicial Council on the 25th of May 2018, Resolution No. 13P-46- (71.2).

EXAMPLE. *The television would like to film the court pronouncing a verdict in a political corruption case. Media representatives must request a permit in written form from the court. If the permit is received - the operator can only film the judge announcing the verdict. Other persons involved in the case can be filmed prior to or after the court hearing.*

Getting to Know the Case Files and Court Decisions

- ▶ The fact that the case is publicly held, does not mean that journalists can ignore the rights of the participants when disseminating information: the right to presumption of innocence, inviolability of the privacy of a person, the right to image etc.
- ▶ A journalist has an obligation to evaluate the information received during legal proceedings and determine if it is suitable for publicity.

EXAMPLE. *Until the case has been scrutinised, journalists cannot declare that the person charged with a homicide is a murderer, even if they confess to a crime they have committed – this right is granted only when the person is proven guilty by the court. Until a person has been convicted, they are a suspect (during a pre-trial investigation) or an accused person (when the pre-trial investigation is completed and an indictment is made).*

- ▶ All material of civil and enforcement cases examined are public, except for closed court hearings. Persons who are not present in those cases can make copies or extracts of them. This can be done by enforcing the verdict closing the trial or if the case is dealt with by the cassation procedure, after examining it in the cassation procedure or after the expiry of the term for appeal of the cassation procedure. The contents of the enforcement file are available when the verdict is announced.
- ▶ Non-public cases may be open under certain circumstances, such as cases involving minors who are charged with criminal offences.
- ▶ At the request of the parties participating in the case or on its own initiative, the court may determine that the material of the case or part of it is non-public. This is usually decided when it comes to protecting the privacy of a person, their private life and property, the confidentiality of information relating to their health or if there is a reason to believe that a state, service, professional, commercial or other secret protected by law will be disclosed.

EXAMPLE. *The court has examined a resonant case regarding abuse committed against a young girl, the perpetrator has already been convicted and the verdict is valid. The court may refuse access to the entire case file, as it applies not only to the data of individuals but is also related to sexual integrity.*

- ▶ A court ruling rejecting a journalist's application for access to a case may be appealed to the appellate court by filing a separate appeal.
- ▶ Even if access to the case file is granted, not all information may be made public, nor may all information be disclosed even after hearing it at a public hearing.

EXAMPLE. *A journalist who attended the hearing announced that the defendant had not appeared at the hearing because they were admitted to a psychiatric hospital. After reading the article, a woman has appealed to the court and has sustained non-pecuniary damage from the newspaper – information related to health data cannot be publicly disclosed.*

Journalist Accreditation

- ▶ The organiser of public information has the right to accredit their journalists to state institutions, political parties, political and public organisations, as well as other institutions.
- ▶ An accredited journalist can freely enter an accrediting body, observe meetings, consultations and other events, receive transcripts, protocols and other documents.
- ▶ The procedure for accrediting a journalist must be established by mutual agreement between the accrediting body and the organiser (disseminator) of public information.³

2. The Confidentiality of the Source of Information

- ▶ The confidentiality of the source of information⁴ is a significant principle of a democratic state that helps journalists to obtain relevant information about corruption, abuse of power and other disadvantages to the public.
- ▶ The guarantee of the legal protection of a source of information allow the media to guarantee the anonymity of a vulnerable source of information. From a legal point of view, the protection of the source of information is a journalist's right, from the point of view of the ethics of journalism – it is usually a duty.
- ▶ The journalist, the organiser of public information, the disseminator, and the organiser or participant of the public information (shareholder), have the right not to disclose the source of the information.

EXAMPLE. *The Editorial Office is contacted by a person who has been injured by a police officer and has information about corruption in law enforcement, who agrees to make it public only if their anonymity is guaranteed. Having assessed the public interest, the Editorial Office (a journalist) can maintain the confidentiality of the source and not reveal their informant.*

- ▶ The Constitutional Court has clarified that the protection of the source of information cannot be taken for granted.⁵ In special cases, the court may oblige the media or journalists to disclose the source of information and under certain conditions, authorise searches and seizures.
- ▶ The actions of a search or seizure cannot be carried out solely for the purpose of disclosing the source of information – the journalist's right not to disclose their sources of information includes the protection of journalists from various forms of coercive measures: seizure, search, secret listening, tracking, etc.
- ▶ Coercive action can only be taken if such a measure is applied as a necessary restriction in a democratic society, in order to achieve the statutory goals of protecting other statutory benefits and if there are no alternative measures or such measures have already been exhausted and coercive measures are proportionate to the aim pursued.

³ LPIP, Article 12

⁴ LPIP, Article 8

⁵ The Constitutional Court ruling of October the 23rd 2002 "On the Compliance of Article 8 of the Republic of Lithuania Law on the Provision of Information to the Public and Paragraph 3 of Article 14 with the Constitution of the Republic of Lithuania".

EXAMPLE. *The news agency has published information regarding State Security Department alerts to Lithuanian state leaders warning that Russia is preparing provocative data. As a result of the disclosure of state secrets, the Public Prosecutor's Office initiated a pre-trial investigation and conducted searches at the journalists' workplaces and homes, however, the court declared that the journalist's obligation to disclose the source of information defined in the Law on Criminal Procedure and the secret tracking of a person, according to their statutory status in society, are considered to be extreme and exceptional measures that can only be applied when all other sources of information have been exhausted.⁶*

- ▶ The obligation to disclose the source of information and to apply coercive measures prescribed by law may be imposed by the court when the following two necessary conditions occur:
 - 1) the disclosure of information sources is necessary due to vital or other particularly important public interests as well as the objective to ensure that the constitutional rights and freedoms of individuals are protected and that justice is exercised;
 - 2) the disclosure of information sources by other means is not possible or they have already been exhausted.
- ▶ In order to reveal the source of information, searches and seizures can be carried out at the workplaces, homes, in the premises and in the vehicles of the public information organisers, disseminators, their participants and journalists.
- ▶ Searches and seizures are carried out in accordance with the process established by the Code of Criminal Procedure,⁷ in the presence of a representative appointed by the meeting of representatives of the journalist and publisher's organisation or by a guest proposed by the owner or user of the building or vehicle.

EXAMPLE. *Officials arrive at a journalist's home or workplace to perform a search. The search can not be performed unless it is monitored by the journalist's employer or their authorised representative, this can be a representative of the Journalists Union or another person proposed by the journalist.*

- ▶ The media may disclose their source of information to courts when dealing with libel cases. If the source of information is not disclosed, the court may conclude that this source does not exist and that the knowledge disseminated to the public has been concocted.
- ▶ When investigating civil cases of material and non-pecuniary damages, the dissemination of data that does not correspond to reality and degrades a person's honour and dignity has to be proven by the representatives of the media. Sometimes this cannot be done without disclosing the source of information.
- ▶ The media that refuses to announce the source of its information, in other words disclosing the person who provided the data, must compensate the aggrieved person with payment for the material and non-pecuniary damages. In all other cases, the person who disseminated the data must compensate such damages.

⁶ Due to these events, the Law on the Provision of Information to the Public, Article 8, regulating the protection of the source of information was altered on the 10th of July 2014 – it was supplemented by provisions enhancing the protection of journalists' sources of information.

⁷ The Code of Criminal Procedure (hereinafter referred to as the CCP), Article 1501. "Conditions of searches and seizures that aim to reveal the identity of a source of information that are being carried out in the premises and in the vehicles of the public information organisers, disseminators, their participants and journalists".

- ▶ The confidentiality of the source of information obliges editors to ensure freedom of correspondence – no one has the right to open, access or announce the content of letters and messages received in the Editorial Office or listen to the telephone conversations, except for their direct contact. In other words, data entrusted to the Editorial Office by citizens to not be disseminated, should be kept a secret rather than disseminated in their publications.

3. Copyrights and Editorial Freedom

Journalists' Rights to Their Works

- ▶ Even if a journalist has professional relations with the public information organiser, the journalist is guaranteed a certain autonomy by law, which means that their employer, the public information organiser, has to agree with the journalist in written form about the terms of use of the author's work.⁸
- ▶ Conditions may be foreseen in a collective agreement, signed between the media and their employees or the organisation representing journalists (for example, a trade union). If there is no such agreement or a journalist does not participate in such an agreement, then:
 - ▶ Material rights of the work of a journalist are transferred to their employer for five years.
 - ▶ The media must adequately pay the journalist for the author's work used.
 - ▶ The authors' personal non-pecuniary rights are as follows:
 - 1) the right to demand recognition of the copyrights of the author, clearly indicating the author's name;
 - 2) the right to demand that the use of the work in any manner indicates (or does not indicate) the name of the author, or indicates the author's pseudonym;
 - 3) the right to object to any distortion or other alteration of a work or its name, as well as any attempt on a work that may violate the author's honour or reputation (right to the inviolability of a work)
- ▶ These rights are not be transferred to other persons, regardless of the nature of the employment relationship or other circumstances and solely belong to the author, in the field of public information – to a journalist.

Use of Other Copyrighted Works in the Media

- ▶ Public information organisers, information disseminators and journalists have to use works of literature, science, art and others, in accordance with the Law on Copyright and Related Rights, and other laws and regulations.
- ▶ The usual informational announcements about events are not considered to be the objects of copyrights,⁹ therefore, they can be used without the author's permission or other copyrights of their work and without royalty but, if possible, the source and the author's name should be indicated and reproduced in the media.

⁸LPIP, Article 23, Part 2

⁹The Law on Copyright and Related Rights (hereinafter referred to as LCRR), Article 5, Paragraph 5.

- ▶ Articles on relevant topics of economy, politics or religion that have already been publicly released, can be publicly disseminated without the author's permission and royalty, if the authors of these articles or other persons subject to the copyrights of these articles have not prohibited it.¹⁰ When publishing, if possible, the source and the author's name must be specified. Works of a similar kind that are being broadcasted can also be advertised publicly.
- ▶ A quote is a brief excerpt from a different piece of work. It is used to ground the statements of the author, to make them more comprehensible or to refer to the views or thoughts of a different author. Quotations are permitted to be published without the permission of the copyright owner or of other copyright subjects and without royalty, only when the author and the source is specified. This applies to both quotations used in their original language and quotations translated into a different language. Quotations must be honest and not exceed the scale required for the purpose of quoting.¹¹

EXAMPLE. *There was a dispute between the media about quoting articles in the other forms of media. The court has declared that publications published on Internet news portals can be considered works of copyright, not just ordinary event reports therefore, their use is subject to the same requirements as the reproduction of any other work, for example, only a small part of the first part of the text can be quoted and references to the copyrights of the work have to be given.*¹²

Freedom of Editing

- ▶ The freedom of editing of a journalist includes the prohibition of influencing the journalist by forcing them to present biased information. No one can dictate what and how a journalist should write.
- ▶ A journalist has the right to refuse to perform the task of the organiser of public information, the owner or the appointed responsible person, if it forces the journalist to violate laws, ethical standards or their internal beliefs.

EXAMPLE. *A journalist is given a task by the editor to prepare a report on a picket in the city centre. The journalist prepares the report, gives the material to the editor who, includes statements in their article, that do not correspond to reality or humiliate the honour and dignity of another person. The journalist may refuse to write their full name under the report, prepared by them.*

- ▶ The organiser of public information must¹³ approve internal rules and / or a code of ethics. At least one of these documents prepared by the public information organiser must set out the protection of the journalist from the possible restriction of their rights.

¹⁰ LCRR, Article 24, Part 1, paragraph 1

¹¹ LCRR, Article 21

¹² The Supreme Court of Lithuania, civil case no. E3K-3-513-916/2016.

¹³ LCRR, Article 23

4. Responsibilities of Journalists

The Obligation to Disseminate Correct, Accurate and Unbiased Information

- ▶ The Law on Public Information obliges the media and journalists to carefully scrutinise information. In addition, the media and journalists are expected to follow the principles of humanism, equality, obedience, respect for human beings, respect for freedom of expression, creativity, religion and conscience, diversity of opinions and adherence to professional ethical standards.
- ▶ The public information organisers and disseminators of regulatory and self-regulatory institutions (Journalist Ethics Inspector, Lithuanian Radio and Television Commission and the Commission of Public Information Ethics) are monitoring if journalists are following their responsibilities.
- ▶ Most of the responsibilities of journalists are not only of legal origin but also moral and ethical. Currently Lithuanian law does not stipulate the exclusive liability of journalists – in other words, a journalist is equally responsible for any violations of the law in the field of public information as every other citizen of Lithuania.

EXAMPLE. *A renowned blogger has written an offensive and humiliating comment on Facebook, as a result of which they have been convicted. The court ruled that the words written by the author of the comment obviously contradict the usual rules of conduct, the general human moral requirements and severely violate the dignity of the other person. However, since 2015, the offence has been decriminalised in Lithuania, so the blogger, in the same case, would have been treated in the same way as every citizen of Lithuania, applying the same law - meaning that according to the Code of Administrative Violations of Law Article 507, if a state officer is offended, a fine from 50 to 300 euros is applied, or as foreseen in civil procedure.*

- ▶ In the case of civil disputes over publicly disseminated facts that do not comply with reality, the presumption of non-compliance with the facts is applied – in other words, journalists have to prove that the information disseminated complies with reality.¹⁴
- ▶ In implementing the principle of opinion diversity, it is necessary to provide as many independent opinions as possible in the media.
- ▶ One of the most difficult principles to achieve in Lithuanian journalism is the principle of the independence of journalists. Very often, public information organisers and disseminators base their policy on subjective opinion, prejudice, or their own ambition or interests, which directly or indirectly prevents journalists from being impartial.

Responsibility to hear a person who is being criticized

- ▶ Every person has the right to publicly criticize the activities of the state, municipal institutions and bodies as well as officials and is prohibited from being persecuted for such criticism.¹⁵
- ▶ The criticized person must always be guaranteed the right to speak and explain the publicly available information about them or their activities.¹⁶

¹⁴ Civil Code, Article 2.24, Part 1

¹⁵ LPIP, Article 9

¹⁶ LPIP, Article 15

EXAMPLE. *Information about a former politician being in conflict with their neighbours due to a fence that has been built has been published in a newspaper; however, the opinion of the politician on this situation has not been asked. The Ethics Commission for Public Information has assessed that the journalist has violated the Code of Conduct because the person being criticized must always be given the right to reply, and if this is not the case or the person refuses to exercise the right of reply, it is necessary to inform the public about such in the published publication. The decision was confirmed by the Supreme Administrative Court of Lithuania, noting that the journalist and the organiser of public information have a responsibility to give the person being criticized access to the right of reply, and that the journalists who prepared the article did not even contact the person being criticized and did not give them the right to explain the information in the publication regarding the conflicts with the neighbours.*

Responsibility to deny information that does not correspond to reality

- ▶ If facts that do not comply to the reality were disseminated through the media (in the press, on television, on the radio, etc.), the person about whom the data was disseminated has the right to deny the information in written form, and to demand the media that disseminated this information to announce the denial. The media that publish the denial benevolently is usually exempted from compensating the damage.
- ▶ The person writing the denial that does not correspond to reality may chose the content of the denial.¹⁷
- ▶ The denial must be announced within two weeks without any charges. The denial must be of the same scope and must be announced in the same format as the information that does not comply with the reality that had been announced in the media¹⁸
- ▶ When the court declares that the media have undermined the business reputation of a legal entity or have humiliated the honour and dignity of a person by disseminating inaccurate, inadequate or biased information, the media must refute such information in the same way as the original information was disseminated.

EXAMPLE. *On the first page of the national daily newspaper, real facts have been made of unrealistic allegations regarding bank employee interviews that are allegedly ongoing with third parties who may have participated in a financial market of the participant's racketeering scheme. Even detailed records of alleged conversations were presented, although during the process of investigation, it turned out that the journalists did not have the records of these conversations. When the court declared that the statements made do not correspond to reality and that the daily newspaper is confusing its readers, violating honour and dignity, the Editor's Office of the newspaper then published the denial on the same page of the newspaper where the original article was published, i.e. on the first page of the newspaper, in the introductory article.*

¹⁷ The requirement to deny, as well as the terms and conditions of civil liability are set forth in Article 44 of the LPIP and Article 2.24 part 2 of the Civil Code.

¹⁸ LPIP, Article 44 and the Civil Code, Article 2.24 part 2.

Commitment to Ethics in Journalism¹⁹

- ▶ The basic premise of ethics in journalism is that the right to receive and disseminate information must be respected as one of the most fundamental human rights but when practised, it must at the same time ensure other human rights and freedoms.
- ▶ The organisers and disseminators of public information should not consider information neither their own property nor a material good.
- ▶ Freedom of information is incompatible with the purchase of public information for money or other remuneration and the information user must be clearly informed of the fact of the commercial advertisement being published.²⁰
- ▶ Journalists must publish accurate, fair news and opinions, they are forbidden to disseminate opinions that would violate the law and ethics.
- ▶ News and opinions must be clearly distinguished.
- ▶ Journalists must ensure that opinions are expressed fairly and ethically, without deliberately distorting facts or data.
- ▶ Respecting the diversity of opinions, journalists, organisers and disseminators of public information must provide at least two different opinions from unrelated parties if the information is controversial, unclear or related to issues that are conflicting.
- ▶ Information must be collected and published only in ethical and legal ways.
- ▶ The ethics of journalism also enshrines the editorial freedom of a journalist, i.e. the fact that journalists, organisers and disseminators of public information do not have to coordinate the final version of their work with the person who provided the information. On the other hand, this ethical norm is formulated as a discretion, so the journalist can decide, at their own discretion, whether the final text should be coordinated with the interviewee.
- ▶ If the source of information requires their name to be kept a secret, journalists, organisers and disseminators of public information have no right to disclose it, and in this case, assume the legal and moral responsibility for the reliability of the published information.
- ▶ If it appears that the media has provided inaccurate or false information, it is necessary to clarify the inaccurate or false facts immediately, without commenting on them, in the exact same place in the media, and after having corrected the errors on the Internet, one must indicate that the content of the work has been amended or supplemented.
- ▶ Journalists, organisers and disseminators of public information should give priority to the protection of the person's private life when informing about a private person, and to the public interest when informing about a public person.
- ▶ Ethics in journalism establishes the right to reply, which means that a person who is critically accused should always be given the opportunity to clarify, refine or refute the information. If there is no such option or the person refuses to use this opportunity, it is necessary to announce such in the same piece of work.

¹⁹In Lithuania, the standards of ethics in journalism are defined by the national legal act – Code of Ethics for Public Information and International Legal Act – Resolution of the Parliamentary Assembly of the European Parliament, no. 1003 (1993) on Ethics in Journalism (see appendix). This resolution sets out the principles of the ethics of journalism that have to be followed by journalists across Europe.

²⁰ LPIP Article 2, Part 41

- ▶ The Code of Ethics for Public Information also prohibits the publication of personal data that allows the identification of a suspect who has committed a criminal offence.
- ▶ If it is in the public interest that the surname of a suspect, who has committed a criminal offence, must be announced and subsequently his crime is not proven, then the journalists, organisers and disseminators of public information must immediately inform the public of the innocence of that person.

EXAMPLE. *Journalists publish the fact that officials have arrested the suspect for a resonant crime, indicating the name and surname of the suspect. Subsequently, the court acquits the suspect in the absence of a criminal offence or does not prove that they have been involved in committing the crime. The media must declare that the verdict of innocence has been declared and, if possible, update the article in the archive (if published on an Internet portal) indicating that the allegations have not been validated.*

5. Civil Law

- ▶ Cases of litigation in the field of public information are usually dealt with by civil law. Usually, disputes arise from freedom of expression and other rights of an individual (the right of respect for human honour and dignity (business reputation), the right to image, the right to privacy, etc.) and are dealt with on the basis of balancing the principle of these rights in extrajudicial or judicial means.
- ▶ The Constitution and the Civil Code stipulate that freedom of information may be restricted when resolving a conflict between freedom of expression and other fundamental human rights. Legal restrictions on freedom of information must be distinguished from censorship.
- ▶ The constitutional term *censorship* refers to the procedure whereby all planned publications and other public information products are to be submitted to a public institution that checks their content and authorises (or does not authorise) them to be published. The Constitution, Article 44 establishes a ban of censorship.
- ▶ The Constitution, Article 25 indicates three groups of restrictions to the right to freedom of expression:
 - 1) necessary for the protection of a person's health, honour and dignity, private life, morality;
 - 2) necessary for the protection of the constitutional order;
 - 3) freedom of expression and dissemination of information is incompatible with criminal acts, incitement to racial, religious or social hatred, violence and discrimination, libel and disinformation.
- ▶ The ability to restrict freedom of expression only occurs under three conditions (called the "three-tier test"): 1) if such limitation is legal, i.e. foreseen by law; 2) if the restriction provided by such law is intended to protect one or several of the values provided for in paragraph 2 of this article; 3) if such a restriction is indispensable in a democratic society.²¹

²¹The three-tier test comes from the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 10, part 2 and is developed by the jurisprudence of the European Court of Human Rights.

Inviolability of private life²²

- Information about the private life of a person can be published without their consent in the three following cases: 1) when the information helps to reveal violations of law or crimes; 2) when the information is presented in a public hearing; 3) when the information discloses a public person's private life circumstances or personal qualities that are of social significance. However, these rules can not be applied literally, ignoring the general norms of the right to privacy.

EXAMPLE. *Information disclosed in a public hearing about alimony and other circumstances of the family life of a high official, published in a reprimand in a newspaper, has been acknowledged as an infringement of a person's right to privacy, and the applicant has been awarded non-pecuniary damage for this violation of rights.*

- Infringements of the private life's inviolability are acknowledged in civil cases if the following five sets of legal facts are identified: 1) the fact that the information has been disseminated; 2) information is disseminated specifically about the plaintiff; 3) information about the private life of a person is disseminated; 4) information is disseminated without the consent of the person; 5) information is disseminated in the absence of a legitimate public interest.

The Problem of the Right to Privacy of a Public Person

- Lithuanian law does not define the concept of a public person particularly clearly. Public persons include not only state politicians but also those involved in social or political activities, as well as those whose permanent activities are of a public interest.²³ However, the intensity of a person's social activity, the nature of the duties of a public person or that person's public status is not defined in law. According to the aforementioned provisions of the law, it is possible to reveal the private life of almost every person involved in social or political activities.
- Although the duty of the media is to address issues of public interest and to inform about public persons, including their private life, a public person is also entitled to privacy.
- Finding a balance between the need to inform the public and not stepping beyond the limits of privacy can be complicated: The Supreme Court of Lithuania has stated that courts should take into account the situation of a person's social and political life, the influence of individuals on society and the practice of the European Court of Human Rights when determining the limits of the protection of the private life of a public person.²⁴ Therefore, when the Editor's Office is deciding on the disclosure regarding the publicity of a public person's private life, two important circumstances given below are taken into consideration:

firstly, the topic of the debate;

In the event that the intrusion into a person's private life is related to a public discussion on an issue of importance to the society, restrictions on freedom of expression will be minimal.

²² CC, Article 2.23

²³ LPIP, Art. 2, Item 77

²⁴ SCL13-01-2015 criminal case No. 2K-57/2015, SCL Judicial Expulsion Collegium, 02.01.2008, Civil Cases, S.Š. and V. Š. v. JSC "L. r.", file no. 3K-7-2 / 2008, ECHR, judgment of 04.04.2007 in Lombardo and Others v. Malta, petition No. 7333/06 etc.

EXAMPLE. *When the adoption of a law that is important to society is being discussed in the press, the public interest in breaching the inviolability of one or another member of parliament's private life is justifiable, in the hope that the disclosed circumstances will explain the aspirations and motives behind the adoption of the law.*

secondly, it is the status of the person who intervenes in the other person's privacy and that of the person whose privacy is being infringed upon.

If the media are determined as a tabloid media, having an interest in only satisfying the public's curiosity and not a reasonable desire to know, then the media may be recognised as having violated the immunity of a private life, even if they speak of a public figure.

EXAMPLE. *A member of the parliament has appealed to the court, referring to the information announced on a TV programme about the recognition of non-marital political children as violating the person's right to privacy. The court, having analysed the hearing of the case, found that in the entertainment programme, the information about possible non-marital children has been presented in a humorous form, thus giving the impression that this information is not sufficiently reliable, and the way of dissemination of information indicates that the information has not been intended to cause public discussion or to analyse issues related to possible public and private conflicts of interest but to provide unusual savoury information about the private life of a person. Having assessed the content of the information and the context in which it has been presented, the court concluded that the provision of information about the non-marital children available to the public person could be considered legitimate and justified in the public interest to know about the personal qualities of the politician being elected, however, in the analysed case the information has not been provided for the promotion of public debate to detect possible infringements, to satisfy and pick out the merits of the plaintiff because the context of the information about the potential non-marital children is manifestly selfish and humiliating.*

- ▲ Civil law provides that information on the private life of a person may be disseminated in the light of the person's current position or their position in the society, if it is in accordance with the legitimate and reasonable *public interest* to know such information.²⁵

 - 1) A legitimate public interest is understood as the right of the public to receive the information about the private life of a public person in cases where it is necessary to protect the rights and freedoms of others from negative consequences.
 - 2) The justification arises from the evaluation of the disseminated information and is determined by the criterion of reasonableness. According to this criterion, courts acknowledge curiosity as an inadequate basis for publicising even the private life of a public person. Publication of private facts can be considered reasonable if there is a clear intention to inform the public about the issues relevant to it and to establish an urgent social need to know such information.
- ▲ In the event of a dispute when the media disseminates information about the private life of an actively participating politician or a well-known person in the society without their consent, the media must prove, in court, not only that the person is a public person (1) but also the fact that the disseminated information may influence (be of a great importance to) the public (2). In this case, the interest of the public must be assessed not as notional but real.²⁶

²⁵ SCL 13-09-2000 ruling in civil case S. K. v. JSC N. A., file no. 3K-807/2000, SCL, 2012.15.11 The Civil Cases case R. C. and A. C. v. JSC Tele-3 and JSC TV PRO Media, file No. 3K-3-481 / 2012.

²⁶ SCL 13-09-2000 ruling in civil case S. K. v. UAB N. A., file No. 3K-807/2000.

EXAMPLE. *The applicant appealed to the court and stated that in a publication printed in the daily newspaper, entitled “Juos vadina gėjais”, a large font was used to write his full name and a large-format photo was included. The applicant argued that the article contained information on his private life and requested to be awarded the non-material (moral) damage caused by the defendant. The court upheld the claim and awarded the non-pecuniary damage for the information about the applicant’s private life and the publication of the photo without his permission, since information about the applicant’s sexual orientation and personal photos falls into the concept of a private life. The defendant in turn argued that the plaintiff was a public figure as he was known in society, in films and performances, as an actor and a host of television programmes, who had directed mass events, and therefore, the public had the right to know about his private life, however, the panel of judges stated: “For persons who are involved in public and political activities to be recognised as public persons, it is necessary to present facts that their participation affects the political and social life”. The disseminator of information, who has disclosed the information about such person’s private life without their consent must prove not only that this person is a public person (1) but also the fact that the information disseminated may affect the public (2). The panel concluded that the information about the applicant’s private life that was disseminated was not justified by the public’s interest, since the defendant has not proven that not disclosing the information about the applicant’s sexual orientation would have jeopardised the rights and freedoms of others.*

- ▶ The limits of a public person’s critique are wider than those of a private person.²⁷
- ▶ The limits of a person’s critique become proportionately wider, the more influential the person is and the higher their position is in society.
- ▶ For an opinion expressed on a public person, liability can only be exercised if the right to express the opinion has been abused. The purposes, the way the opinion has been expressed and other circumstances of the person, who has disseminated the opinion are taken into consideration when determining the fact of abuse.
- ▶ When data that does not correspond to reality and that diminishes the honour and dignity of the public person is disseminated, civil liability is applied i.e. compensation of the material and non-pecuniary damage and other means of protecting the rights of a person (recognition of the dissemination of facts that do not correspond to reality and data that diminishes the honour and dignity of an individual, the obligation to deny such data, etc.).

EXAMPLE. *The claimant appealed to the court with a claim for the defence of their right to private life and non-pecuniary damage. She pointed out that the newspaper had published several articles including her photo and statements about her private life as well as the name and surname of her son, who is a minor, the fact that the court adjudged alimony to the boy’s father and the knowledge of how the identity of the child had been determined. The court upheld the plaintiff’s claim and found that, although the applicant was a public figure (a senior official), “the statements made in the application for which she claims to be a violation of her right to private life relate to the issue of family relations and maintenance of a child, which undoubtedly falls into the category of private life”. The court found that the daily newspaper violated the applicant’s right to inviolability of private life, and awarded her non-pecuniary damage as well as compensation to cover the court costs. This decision was appealed by the public information disseminator in an appeal and cassation procedure, however the Supreme Court of Lithuania left it unchanged.*

²⁷ ECHR judgment of 08/07/1986 ruling of *Lingens v. Austria* case, petition No. 9815/82.

The Right to Image²⁸

- ▶ Journalists must obtain consent from a person in order to photograph or film them as well as to reproduce, display, print, sell or otherwise distribute video material in which the person is captured (all or part of the picture / video footage).
- ▶ It is prohibited to publish images or footage of persons who are minors, without their parents consent.
- ▶ The image of a deceased person can only be used with the consent of their relatives - their spouse, children or parents.

EXAMPLE. *The daily newspaper has published an article about the patronage fight for children. Their parents died of drug abuse. The article included an image of the deceased couple. The image was presented to the media by the parents of the deceased woman. The applicants requested the media to admit that by publishing this image they had violated the right to the private life of their deceased son and his family. After examining the case, the Supreme Court of Lithuania found that an image of a deceased person taken during their lifetime could be shown or otherwise disseminated only with the consent of their spouse, parents or children, unless the person gave such consent while still alive. If two people are portrayed in a picture, both of their consent is required to publish the picture, when the people in the picture are deceased – both of their relatives have to give their consent. In addition, the Extended Chamber of Judges has ruled that the circumstances of the case do not give reason to conclude that the publication of the image which has caused a dispute is justified by a legitimate and grounded public interest. The photo referred to was simply an illustration of the article and the priority should be given to the right to privacy, including the right to image, and not the freedom to disseminate information or the public's right to know.*

- ▶ However, the right to image is not absolute. Dozens of pictures or other images are being published in the media daily, thus it is understandable that obtaining the consent for their use is not always possible.
- ▶ There are three cases²⁹ when the consent of the person to reproduce, sell, display, print their image, or take photographs of that image is not required:
 - 1) if the actions of a person relate to the person's social activity or their official position;
 - 2) if the actions of a person are performed at the request of law enforcement authorities;
 - 3) when taking photographs in public places.
- ▶ With regard to the right to image, an understanding of the concepts of private territory and public space is important. The Supreme Court of Lithuania has developed a concept of *a secluded place* according to which, a person who is in certain public places (spaces) due to the particular purposes of those places (spaces) can likewise expect privacy, even though those spaces are accessible to other persons and do not belong to the particular person in the photo or video footage.³⁰

²⁸ Civil Code, Art. 2.22.

²⁹ Civil Code, Art. 2.22, part 2

³⁰ SCL 13-02-2009 ruling in civil case D. M. and L. M. v. JSC "E. ž.", case No. 3K-3-26/2009.

EXAMPLE. *The court ruled that a formally unofficial nudist beach should be regarded as a place with a recognised status of being a secluded, non-public location. In this case, the court concluded that: “the defendant, by photographing the plaintiffs at an informally open nudist beach without wearing swimwear and publishing the pictures of the dispute in their daily newspaper without the persons’ consent, inter alia, in the commercial interest and for the purpose of satisfying the curiosity of the reader, using information that is not ethical and does not correspond to the reality of the applicants’ private life and ways of making it public, violated the applicants’ right to image and at the same time, the right to inviolability of private life.”*

Secret Recording and Use of Drones

- ▶ Secret surveillance of persons using various tracking equipment, including drones, is prohibited in Lithuania. These actions can be carried out only with the permission of the court. The Supreme Court of Lithuania has investigated a case in which it was established that the secret observation of a known person by journalists is a violation of law.³¹
- ▶ Journalists who want to use drones have to obtain a separate permit if the drone is to fly over densely populated areas or closer than 50 meters to unauthorised people, objects, airports or other strategic objects. In addition, this permit is required for all flights over 120 meters in uncontrolled airspace.³²
- ▶ When capturing private individuals using drones it is necessary to get their permission to publish the pictures.
- ▶ There will be no violation of the law if drones are used to record information during a public event.

Honour and dignity (business reputation) violations³³

- ▶ Violations of the honour and dignity of a person are established if the following four sets of legal facts are proven:
 - 1) the fact that the data has been disseminated;
 - 2) the fact that the data disseminated are about the plaintiff
 - 3) the fact that the disseminated data humiliate the honour and dignity of the plaintiff;
 - 4) the fact that the disseminated data does not correspond to reality.
- ▶ In the event of a dispute regarding the correctness of the information disseminated to the public, the guilt of the media is presumed, i.e. the media are considered as having disseminated data that humiliates the honour and dignity (professional reputation) of a person and that does not correspond to reality.
- ▶ During the court hearing, media professionals have to prove that they have performed their journalistic duties professionally, honestly, and in accordance with the principles of the ethics of journalism and public information.

³¹ SCL 14-08-2008 ruling in civil case Ž. Ž v. JSC “E. ž.” and JSC “L. r.”, case No. 3K-3-393/2008.

³² Order of the Director of the Civil Aviation Administration “Regarding Approval of Rules for the Use of Non-Pilot Aircraft”.

³³ Civil Code, Art. 2.24

- ▶ In civil cases regarding the defence of honour and dignity, the key issue is to separate the news from opinion. When an opinion is expressed without a factual basis or with the purpose of humiliating or undermining a legal entity, journalists are considered to be abusing their freedom of expression, and the victim may claim civil liability for such abuse.

EXAMPLE. *The newspaper published a publication that referred to a specific law enforcement agency which they described as: “a criminal organisation that deals with organised crime”. The Office of the Inspector of Journalist Ethics announced that the Editor’s Office had not provided any objective data that would prove the correctness and validity of the published information and the incrimination of the law enforcement agency and the protection of the agency’s organised criminal activity cannot be considered objective criticism therefore, it was found that the published message violated and exceeded the right to disseminate information, and the actions of the newspaper have been regarded as an abuse of freedom of expression.*

Civil liability (compensation of material and non-pecuniary damage)

- ▶ There are three cases in which the media are obliged to compensate both material and non-pecuniary damage caused by disseminating data that does not correspond to reality or the person’s honour and dignity (business reputation):
 - 1) when the data is published knowing that it is false, i.e., when the media knew or should have known that the data does not correspond to reality;
 - 2) when such information was disseminated by the service staff of the media;
 - 3) when the media have disseminated the data anonymously and refuse to indicate the person who provided it – the source of information. In all other cases, the person who has disseminated the data shall compensate the damage.³⁴
- ▶ The issue of compensation is dealt with similarly to when the facts of a person’s private life are made public without a legitimate and well-grounded public interest.
- ▶ The amount of damages is estimated in each individual case of the disclosure of facts that do not correspond to reality, or that diminish the honour and dignity of a person, and are determined by the court in which the case is being analysed. However, before making any judgments, courts recommend a peaceful settlement of any disputes.

Exemption from Civil Liability

- ▶ If the court determines that the journalist or the media have disseminated information that does not correspond to reality but the Editor’s Office is able to prove that in order to meet the public’s need to know the journalist or the media have been acting honestly (have been cross-checking the news and have been relying on as many independent sources as possible), the journalist or the media are generally exempt from civil liability.³⁵ The legislator has foreseen this possibility by taking into consideration the specifics of the work of the media – their aim to publish publicly relevant information as soon as possible, when a delay is disastrous for the relevance of the information and public interests.

³⁴ LPIP, Article 54, Part 2

³⁵ Civil Code, Art. 2.24, part 6

- ▶ A person who has disseminated data that does not correspond to reality is exempted from civil liability if there are these three necessary conditions:
 - 1) such data is published about a public person and their activities;
 - 2) the person who has disclosed this data proves that they were acting honestly;
 - 3) the person who published such information sought to familiarise the public with the public person and their activities.³⁶
- ▶ Exemption from civil liability is possible when the case of a person's honour and dignity or the legal defence of a legal person is being analysed, only when it is required to award material or non-pecuniary damage.³⁷
- ▶ When a dispute arises from the inviolability of the right to privacy or the right to image, the law does not foresee any exemptions from civil liability.
- ▶ When investigating such a dispute, the court has the opportunity to relieve the person who has disseminated the information from civil liability (material and non-pecuniary damage) however, this does not mean that the person who disseminates data that does not correspond to reality is exempted from such denial or that a public person about whom such facts have been disseminated cannot claim possible correction of the errors or require elimination of false assertions from the Internet, etc.

EXAMPLE. *A report presented on the television contains information based on the testimony of a journalist's source about the violence and sexual harassment of a public person. The case found that the fact that the journalist's source appealed to the state authorities for public violence and sexual harassment is not sufficient enough to state that the source is honest in speaking of their experiences of violence and harassment. As there is no other substantiated evidence in this case at the present, it has been established that the host of the TV programme abused their right to publicly disseminate information and has gone beyond the limits of the criticism of the plaintiff as a public figure.*

6. Protection of Personal Data

- ▶ The European Data Protection Regulation (hereinafter referred to as the Regulation), which entered into force in the European Union as well as in Lithuania on the 25th of May 2018, obliges the Member States of the European Union to combine the right to protection of personal data with the right to freedom of expression and information, including the processing of data for journalistic purposes.
- ▶ The Journalist Ethics Inspector monitors whether the Regulation is being followed in the field of public information.
- ▶ During the first months of the implementation of the Regulation, Lithuanian journalists began to encounter various restrictions on the right to information.

³⁶ Civil Code, Art. 2.24, part 6

³⁷ Civil Code, Art. 2.24, part 6

EXAMPLE. *Since 2018, the Chief Official Ethics Commission has decided not to publish the archival data of declarations of private interests, which has negatively affected the efforts to strengthen the public sector's transparency and prevention of corruption as well as the limits of freedom of speech and the public's right to be informed. However, the European Parliament and Council Directive 95/46/EB Article 29, Working Party has announced that the interest of society is not identical to the public interest therefore, the volumes of publicly available personal data may differ from the ones presented to the competent authorities. According to the procedure established by the Chief Archivist, the more obsolete data of private interest declarations may be stored for three years after it has been changed, furthermore, upon expiration of the person's civil service, they have the right to request the termination of the publicly announced declaration. The State Personal Data Inspectorate believes that according to the current legal regulation of public and private interests, the disclosure of personal data to the public has a serious threat to the privacy of a person, therefore, in all cases, there has to be an assessment made to find out whether this measure is proportionate to the objectives pursued, taking into account the impact not only on the person whose data is published but also other persons, as well as the fact that once personal data is publicly disclosed, the possibility of controlling its continued use is lost, thus the consequences of such publication may be unpredictable.*

Right to Be Forgotten

- ▶ The “right to be forgotten” in the Regulation provides the possibility of removing public personal data from the public sphere in the absence of the public interest in publishing such data and if the person requests for this data to be removed.
- ▶ Most of the “right to be forgotten” provisions are not applicable where the processing of data is necessary in order to exercise the right to freedom of expression and information.

EXAMPLE I. *In 2014 The Court of Justice of the European Union examined a case on the right to be forgotten and decided that the US company Google should edit certain search results and remove some of the data from their search results after receiving a person's request. According to the order of the CJEU, if a person's request to remove the information is received, inadequate, irrelevant and inaccurate information about that person has to be removed from the search results. In each case, the Editor's Office should individually assess whether the data subject has the right “to be forgotten” and whether this information is not in the public interest and also if the public has a legitimate and well-grounded interest in knowing such information.*

EXAMPLE II. *The European Court of Human Rights also takes the view that the right of a person to respect of their private life includes the right of a person to the violations they have committed being forgotten after a certain period of time. For example, in 2012, in the case of M. M. v. The United Kingdom, the court concluded that the disclosure of information about the applicant's allegations of legal misconduct that took place 12 years ago, were to be regarded as a breach of the right to respect for their private life. Thus, the conviction or a warning associated with a person's distant past becomes a part of their private life and the person's desire not to publish such information must be respected by exercising “the right to be forgotten”.*

- ▶ The right to be forgotten does not apply if a person has been convicted of a crime.³⁸

EXAMPLE. *10 years ago, a news portal published information about a publicly investigated criminal case. The sentenced prisoner turned to the Editor's Office asking for the removal of this information, since a search of his name in the search engines is showing old articles. The news portal did not satisfy the request, and suggested contacting companies managing the search engines such as Google, Yahoo and others, regarding the request to remove the information.*

7. Commercial Law

Protection of Commercial Secrets

- ▶ It is prohibited for the state and municipal institutions or other institutions, as well as other establishments, enterprises and organisations, to provide the media and other persons with the following information:
 - 1) state secrets;
 - 2) service secrets;
 - 3) professional secrets;
 - 4) commercial secrets;
 - 5) bank secrets;
 - 6) private information.³⁹
- ▶ A commercial secret consists of the following information that meets the following compulsory criteria:
 - 1) it is not universally known or freely available to third parties;
 - 2) has a commercial (production) value;
 - 3) is protected;
 - 4) keeping it secret is not prohibited by the law.⁴⁰
- ▶ In determining whether the information is a commercial secret, it is legally significant if the owner of the information has made reasonable efforts to protect it. Such efforts may include physical (e.g., information stored in a safe, locker, protected area, etc.), technical (for example, various codes, passwords, video surveillance, etc.) and legal measures (e.g., the company manager approves the list of commercial secrets and by signing it obliges the employees of the company to secure such information; the board of the company establishes appropriate rules of commercial (production) secrets) or other measures of protection.⁴¹

³⁸ CJEU 06-11-2003 ruling of Lindqvist case No. C-101/01, EU:C:2003:596, § 25 etc.

³⁹ LPIP Article 18, Part 1

⁴⁰ Civil Code, Art. 1.116, part 1

⁴¹ SCL 26-06-2012 ruling of Civil Procedure *G. V. v. JSC "J". W. T. ., case no. 3K-3-350 / 2012; Civil Liability Order 04-07-2012 UAB "D". v. UAB "Ch"., case no. 3K-3-326 / 2012 etc.*

- ▶ The information that is considered to be confidential by the owner but is obvious or easily accessible, (e.g., publicly disclosed financial statements of the company, public information about shareholders, new projects, business partners, etc.) the information is considered non-confidential and is not subject to legal consequences for its disclosure, exposure to the public or other use.⁴²

8. Administrative Right

If Journalists are Prevented from Working

- ▶ The Code of Administrative Offences provides for liability for interrupting a journalist from performing their professional duties and for refusing to provide information.
- ▶ Disciplinary or administrative liability in such a case may be applied to employees of the state and municipal institutions when
 - 1) acts or omissions interfere with a journalists' professional duties;
 - 2) a person unlawfully refuses to provide public information to the representatives of the media.
- ▶ Only the heads of the state and municipal institutions and establishments, as well as other budget institutions are responsible for these offences.⁴³
- ▶ Employees of private companies are not liable for the obstruction of attaining the information.
- ▶ An unlawful refusal to provide information entails a fine of between 20 and 140 euros for the heads the of state and municipal institutions and establishments and from 50 to 300 euros for a repeated administrative offence.⁴⁴

Administrative Liability of the Media

- ▶ In the administrative law, certain offences are liable for administrative responsibility (warnings, penalties) not excluding media organisations, media directors or other appointed responsible persons.
- ▶ For the infringement of the public information classification and / or dissemination of regulations that have a negative effect on the development of minors, a fine between 300 and 850 euros can be imposed by the Office of the Journalist Ethics Inspector and from 900 to 2000 euros for a repeated offence.⁴⁵ For the same infringement on the radio or in television programmes, their directors or other responsible persons may receive a warning or a fine from 550 to 1500 euros and in the event of a repeat offence, a fine from 1500 to 4300 euros. Fines for radio and television programme managers are appointed by the decision of the Lithuanian Radio and Television Commission.

⁴² Civil Code, Art. 1.116, part 2

⁴³ ACO, Art. 537

⁴⁴ ACO, Art. 547

⁴⁵ ACO, Art. 79

- ▶ If the media neglects the instructions of the Communications Regulatory Authority and does not remove or delete access to the visual information that contains bullying or the information which has been prohibited from being disseminated by the Protection of Minors against the Detrimental Effect of Public Information Law, a fine from 200 to 640 euros may be imposed, and for a repeat offence, a fine from 670 to 1450 euros.⁴⁶
- ▶ The Competition Council and the State Consumer Rights Protection Authority may impose a fine from 300 to 560 euros to the media for non-compliance with advertising requirements and prohibitions.⁴⁷
- ▶ The Lithuanian Radio and Television Commission may impose a fine from 150 to 200 euros to television and radio programmes and television and cinema films that are not translated to the state language, and a fine from 300 to 350 euros for a repeated offence.⁴⁸
- ▶ The humiliation of the honour and dignity of an individual who is a state politician, a public official, a public servant or a public administrator,⁴⁹ expressed in a written form, oral, gestures, offensive, insulting, provocative or other behaviour, imposes a fine of 50 to 300 euros.
- ▶ If the offence occurred in the online media commentary space, the author of the comment is held responsible. The penalties in such cases shall be determined by the court, and the administrative offence report shall be drawn up by the head of the institution, whose officer was humiliated or by a person authorised by them.
- ▶ A fine from 90 to 140 euros will be awarded for the humiliation of honour and dignity of a statutory civil servant, military police officer or reconnaissance officer.⁵⁰
- ▶ For unjustified classification of information, i.e. the disclosure or loss of information which does not cause damage to the interests of the state or the service, attribution of the information to the information constituting the state or the secret of the service entails a warning or a fine between 30 and 60 euros.⁵¹
- ▶ For the distribution and demonstration of Nazi or communist symbols, if this is done for non-public information or educational purposes, a fine of 150 – 300 euros can be imposed.⁵²

9. Data and Protection of Minors

- ▶ When publishing information about minors, the consent of their parents (guardians) should be obtained, however, this does not mean that filming and photographing minors and publishing information about them in the media is prohibited. This can be done, for example, in public events, in public places, or similar.
- ▶ However, if, after publishing photos, people who are in the pictures express a claim regarding the use of the image, it is necessary to remove these pictures.

⁴⁶ ACO, Art. 79

⁴⁷ ATN, 144 str.

⁴⁸ ACO, Art. 502

⁴⁹ ATN, 507 str.

⁵⁰ ACO, Art. 508

⁵¹ ACO, Art. 554

⁵² ACO, Art. 524

- ▶ The media must ensure the protection of minors from the public information which negatively affects their physical, mental and moral development.
- ▶ Three groups of harmful information for minors, which are prohibited or restricted by law, can be identified: 1) information which has erotic and pornographic content; 2) violent information; 3) information in which minors can be identified.⁵³
- ▶ The role of supervising the protection of minors from information harmful to them is carried out by the Journalist Ethics Inspector.

Prohibition of Erotic Information and Pornography

- ▶ Pornography is prohibited in Lithuania and criminal liability is imposed for its distribution.⁵⁴
- ▶ Erotic information is information that promotes sexual desire, showing a true or committed sexual act, other sexual satisfaction or sex accessories. Erotic information is not prohibited in Lithuania but is restricted.

Violent Information

- ▶ A detailed description of the behaviour of humans, killing of animals, torture or other behaviour against any other living beings, causing pain, discomfort or other kind of damage (physical, psychological, material), as well as vandalism and / or positive evaluation, positive view on / encouragement of violence, cruelty or enjoyment of it. Such information cannot be published.

Information that Allows Identifying Minors

- ▶ It is prohibited to disseminate information related to personal data in the media that can negatively affect the development of minors:
 - 1) when in connection with a criminal offence or other violation of law, the identity data of a suspect, accused person, convicted person or a victim who is a minor and who is not hiding from the law enforcement authorities or the court is published and allows their identity to be determined;
 - 2) when disclosing personal data of a person who has injured themselves, committed suicide or attempted suicide, that allows to them to be identified;
 - 3) if the data provided about a minor humiliates their dignity and / or violates their interests;
 - 4) when abusing the trust and inexperience of minors, assessments are presented in the context of negative social phenomena;
 - 5) when in the context of negative social phenomena, photographs or footage of minors are provided and it allows their identity to be determined.

⁵³ Law on the Protection of Minors Against Negative Impact of Public Information (hereinafter referred to as LP-MANIP).

⁵⁴ CK, Art. 309

EXAMPLE. *A newspaper published a publication about a deceased person and a picture of the deceased's body (head) was published, as well as information on a family conflict, when the deceased person's friend was publicly accused of the sexual abuse of her under-age daughter. The Journalist Ethics Inspector imposed a fine on the director of the newspaper stating that the published photograph has a negative impact on the category of information for minors when a dead body, dying or severely injured person's body is displayed on a large scale, unless such a display is necessary for identification. It was also determined that the data provided about the minor has humiliated her dignity and / or violated her interests. This decision was upheld by the court.*

- ▶ By keeping minors from harmful information, the media are obliged to publish such information only in places where minors may not enter, and / or at a time when minors can not access it. The news portals classify such articles as N-18: before accessing them, the reader is asked if they are 18 years old.
- ▶ A special labelling and timing of television shows and programmes is applied (TV shows that are marked by the index S are broadcasted from 11pm to 6am, whereas TV programmes are marked by the index N-14 and are broadcasted from 9pm to 6am, when the information disseminated in them has a negative effect on minors under the age of 14, and the index N-7 is used where the information disseminated in them affects minors under the age of 7).
- ▶ For example, a web site containing erotic elements should use technical security systems that prevent minors from accessing such websites, etc.
- ▶ Administrative and criminal liability is applied if the labelling and / or dissemination of information that can negatively affect the development of minors is violated.

The measures for the media that have administrative influence on the protection of minors from violations of the negative impact of public information are rarely used, however, examples from previous court cases can already be given.

EXAMPLE. *A TV programme featured a report about a person convicted of juvenile delinquency, however, information disclosing the identity of the minor was also provided, including the girl's age, a road sign disclosing the name of the village where she lived, the exact place of residence was even mentioned a few times, and she, her mother and the house where she lived were all shown. The court found that there was enough information given on the TV programme that would allow the identification of the minor and their personal identity. Taking into account the established facts, the court found that the TV programme had publicly disclosed negative information that could affect the development of minors and imposed an administrative fine.*

10. Criminal Law

- ▶ Criminal liability as the ultimate and exclusive (*ultima ratio*) measure applies to extremely violent abuses of freedom of expression when the rights and freedoms of other persons, society or part of society are violated.

Criminal Liability Applied to the Media

- 1) If the information disseminated does not correspond to reality and can disdain, humiliate or undermine trust in a person, it is considered as slander, a person can be punished by a fine, arrest or imprisonment for up to one year.
 - If a person is wrongly accused of committing a very serious crime via the media, a person can be punished for slander by a fine, arrest or imprisonment for up to 2 years.
 - Responsibility for slander is taken only when the complaint of a victim, their representative or the prosecutor's request is presented.⁵⁵
 - Responsibility for slander is the sole responsibility of a natural person, which means that a journalist, an editor or other person is personally responsible for the disclosure of information but not a legal entity, i.e. the company that manages the media.
- 2) *For the Disdain of the Deceased's Memory*
 - Anyone who has publicly disseminated false idiosyncrasies about the deceased that may lead to humiliation or violate the respect for their remembrance are punished by public works or a fine, by restriction of liberty or by arrest.⁵⁶
 - A person is only responsible for such actions if there is a complaint of the victim or a statement of their legal representative or a prosecutor's claim.
 - Such criminal misconduct can only be done in the form of direct intent, i.e. the perpetrator must realise that he or she disseminated information that does not correspond to reality, that publicly announced false idiosyncrasies are not supported by any objective data or sources and the person who disseminated the information that may lead to contempt or distrust of the deceased's memory must be known precisely.
 - Only a natural person can be the subject of such crime i.e. a journalist, a chief editor or other responsible person. A legal entity – an enterprise or an institution – is not liable for criminal prosecution for such a crime.
- 3) If Incitement of Discord is Prompted⁵⁷
 - Anyone who has publicly mocked, despised, prompted hatred or incited discrimination against a group of people or a person belonging to a group, regarding their age, gender, sexual orientation, disability, race, nationality, language, origin, social status, beliefs or views shall be punished by a fine or up to 2 years imprisonment.
 - If incitement of discord is prompted, not only the natural person is held responsible, but also the legal entity. This means that a criminal case may be raised not only against a journalist or other public information disseminator but also against the company or other legal entity that manages the media, for example, a private limited liability company that publishes the newspaper or manages the internet portal or television channel, radio station and so on.

⁵⁵ CK, Art. 154

⁵⁶ CK, Art. 313

⁵⁷ CK, Art. 170

4) *Due to other criminal activities:*

- Disclosure of state secrets;⁵⁸
 - Unlawful collection of information about the private life of a person;⁵⁹
 - Unlawful disclosure or use of information about the private life of a person;⁶⁰
 - Public approval for international crimes, crimes of the USSR or Nazi Germany against the Republic of Lithuania or its people, their denial or gross humiliation, etc. of these crimes.⁶¹
- ▶ Until the 25th of June 2015 a criminal liability was in force for an individual's insult and an insult to a person performing state or public administration functions. Currently, a more lenient type of liability is foreseen for such an act – administrative liability, and the offence is decriminalised, i.e. the criminal liability for personal injury is abolished.
 - ▶ Although, the Constitution stipulates that disinformation is classified as a criminal offence, until now the Criminal Code does not provide for responsibility for the dissemination of misinformation.

Presumption of Innocence

- ▶ When reporting on pre-trial investigations and court proceedings, public information disseminators often ignore this principle, however, both the law and the standards of the ethics of journalism require it to be respected.

EXAMPLE. *When a pre-trial investigation on bribery started, a journalist described the suspect as a bribe taker and not as a suspect in taking a bribe because his fault had not yet been proven by the court.*

- ▶ Lithuania has lost a number of cases in the European Court of Human Rights for breaching the presumption of innocence by publishing certain press statements.⁶²

Publication of Pre-trial Investigation Data

- ▶ The use of the pre-trial investigation data for other purposes, including informing the public, contradicts the presumption of innocence and the constitutional principle that justice is only administered by the court.
- ▶ The data of the pre-trial investigation may be published with the prosecutor's permission and only the persons, who have signed a document to not disclose the data, are held responsible.
- ▶ The data collected during the pre-trial investigation is forbidden to be published publicly because it is not verified and may not be validated later.

⁵⁸ CK, Art. 125

⁵⁹ CK, Art. 167

⁶⁰ CK, Art. 168

⁶¹ CK, Art. 170(2)

⁶² ECHR 26-03-2002 ruling of the case *Butkevičius v. Lithuania*, petition No. 48297/99 etc.

EXAMPLE. *The data of the pre-trial investigation is considered to be any information about the committed crime, therefore, it is prohibited to publish this data, however, in practice, if there is a public interest, at least a part of the data is published by journalists. A practice of punishing journalists for this does not exist – officials are not entitled to do it; however, the Ethics Commission for Public Information can admit the dissemination of pre-trial investigation data as an unethical act.*

- ▶ The full limitation of information on pre-trial investigations should be limited to exceptional cases. In all cases, when the issue of the pre-trial investigation data is being investigated, the decision-maker must coordinate the principles of secrecy (publicity) and freedom of expression of the pre-trial investigation data in accordance with the principle of proportionality.
- ▶ The practice of courts states that a person, having committed criminal or other offences against the law, has no complete privacy and cannot expect it – they themselves refuse to exercise their right to private life to the extent determined by the crime they are committing. If only the initials of the criminal offenders were published, preventive goals would not be attained in publicising such offences.

11. Other Problems

Social Networks

- ▶ Although not mentioned in any legal act, social networks should be considered a specific type of electronic mass media, the particularity of which is that by joining such networks, the person themselves defines the scope of publicity of the information provided. The concept of limited publicity is thus used in this case.
- ▶ When publishing information from social media on other forms of the media, it is necessary to obtain the consent of the person who disseminates this information.
- ▶ The marketing of social networking leaders (influencers) has become especially popular in recent years, with the principle of operation being relatively simple: social networking leaders with many followers share positive information about certain brands and services, providing links to customer pages and uploading various photos or videos with the advertised product or service, thus introducing their admirers to the brand or service and receiving an agreed amount of royalty. In recent years, hidden advertising has also become quite popular in our country.

EXAMPLE. *A post by a stylist, advertised on the Facebook social network, promoting a particular loan company, attracted not only the interest of the Bank of Lithuania but also the Internet users: does this form of advertising comply with the Advertising Act?*

- ▶ However, so far, a social network leader receiving a fine for hidden advertising has not been heard of, even though one can find a lot of suspicious material on social networks. Such a way of presenting the information should be seen as concealed advertising, regardless of the form in which it would be remunerated: by payment or by issuing free products as a form of payment.

- ▶ In such cases, the State Consumer Rights Protection Authority should apply administrative responsibility for the violation of the principle of the recognition of advertising.⁶³

Prevention of Propaganda

- ▶ It is prohibited to publish information that promotes war propaganda, incitement to war or hatred on the media.
- ▶ A person, believing that such sensitive information which should not be published has been published, has the right to apply to the authority responsible for controlling sensitive information – the General Prosecutor’s Office, with a reasoned request for an investigation, a decision to be made and the imposition of objectively necessary sanctions.

Conflict and War Zones

- ▶ During potential emergency or emergency situations, after the announcement of mobilisation is made, in the event of a war or a state of emergency and in other cases stipulated by law, the mass media must announce the notices of state and municipal institutions and establishments promptly and free of charge or enable the state and municipal institutions and establishments to publish emergency notices on the live broadcast, free of charge.
- ▶ In the event of a war or a state of emergency, the Parliament may, by law, establish restrictions on the activities of public information producers and / or disseminators and / or other obligations necessary for the protection of citizens’ and society’s interests.

Terrorism and Catastrophes

- ▶ Resolution of the Parliamentary Assembly of the Council of Europe No.1003 (1993) on the ethics of journalism, requires the media to protect democratic values in certain conflict situations and tensions in society (for example, in the areas of terrorism, discrimination against minorities, xenophobia, disasters, war, etc.).

⁶³ ACO, Art. 145

APPENDIX

Resolution of the European Parliamentary Assembly No. 1003(1993) on the Ethics of Journalism, adopted on the 1st of July 1993 at the 42nd Assembly meeting

The Assembly affirms the following ethical principles for journalism and believes that they should be applied by the profession throughout Europe.

News and Opinions

1. In addition to the legal rights and obligations set forth in the relevant legal norms, the media have an ethical responsibility towards citizens and society which must be underlined at the present time, when information and communication play a very important role in the formation of citizens' personal attitudes and the development of society and democratic life.
2. The journalist's profession comprises rights and obligations, freedoms and responsibilities.
3. The basic principle of any ethical consideration of journalism is that a clear distinction must be drawn between news and opinions, making it impossible to confuse them. News is information about facts and data, while opinions convey thoughts, ideas, beliefs or value judgments on the part of media companies, publishers or journalists.
4. News broadcasting should be based on truthfulness, ensured by the appropriate means of verification and proof, and impartiality in presentation, description and narration. Rumours must not be confused with news. News headlines and summaries must reflect as closely as possible the substance of the facts and data presented.
5. Expression of opinions may entail thoughts or comments on general ideas or remarks on news relating to actual events. Although opinions are necessarily subjective and therefore cannot and should not be made subject to the criterion of truthfulness, we must ensure that opinions are expressed honestly and ethically.
6. Opinions taking the form of comments on events or actions relating to individuals or institutions should not attempt to deny or conceal the reality of the facts or data.

The Right to Information as a Fundamental Human Right. Publishers, Proprietors and Journalists

7. The media's work is one of "mediation", providing an information service, and the rights which they own in connection with freedom of information depends on its addressees, that is the citizens.
8. Information is a fundamental right which has been highlighted by the case-law of the European Commission and Court of Human Rights relating to Article 10 of the European Convention on Human Rights and recognised under Article 9 of the European Convention on Transfrontier Television, as well as in all democratic constitutions. The owner of the right is the citizen, who also has the related right to demand that the information supplied by journalists be conveyed truthfully, in the case of news, and honestly, in the case of opinions, without outside interference by either the public authorities or the private sector.
9. The public authorities must not consider that they own information. The representativeness of such authorities provides the legal basis for efforts to guarantee and extend pluralism in the media and to ensure that the necessary conditions are created for exercising

freedom of expression and the right to information and precluding censorship. Moreover, the Committee of Ministers is aware of this fact, as demonstrated by its Declaration on the Freedom of Expression and Information adopted on 29 April 1982.

10. When dealing with journalism it must be borne in mind that it relies on the media, which are part of a corporate structure within which a distinction must be made between publishers, proprietors and journalists. To that end, in addition to safeguarding the freedom of the media, freedom within the media must also be protected and internal pressures guarded against.
11. News organisations must consider themselves as special socio-economic agencies whose entrepreneurial objectives have to be limited by the conditions for providing access to a fundamental right.
12. News organisations must show transparency in matters of media ownership and management, enabling citizens to ascertain clearly the identity of proprietors and the extent of their economic interest in the media.
13. Inside the news organisation, publishers and journalists must co-exist, bearing in mind that the legitimate respect for publishers' and owners' ideological orientations is limited by the absolute requirements on truthful news reporting and ethical opinions. This is essential if we are to respect the citizens' fundamental right to information.
14. These requirements are such that we must reinforce the safeguards of the journalist's freedom of expression, for they must in the last instance operate as the ultimate sources of information. In this connection we must legally expand and clarify the nature of the conscience clause and professional secrecy vis-à-vis confidential sources, harmonising national provisions on this matter so that they can be implemented in the wider context of democratic Europe.
15. Neither publishers and proprietors nor journalists should consider that they own the news. News organisations must treat information not as a commodity but as a fundamental right of the citizen. To that end, the media should exploit neither the quality nor the substance of the news or opinions for purposes of boosting readership or audience figures in order to increase advertising revenue.
16. If we are to ensure that information is treated ethically, its target audience must be considered as individuals and not as a mass.

The Function of Journalism and its Ethical Activity

17. Information and communication as conveyed by journalism through the media, with powerful support from the new technologies, has decisive importance for the development of the individual and society. It is indispensable for democratic life, since if democracy is to develop fully it must guarantee citizens participation in public affairs. Suffice it to say that such participation would be impossible if the citizens were not in receipt of the information on public affairs which they need and which must be provided by the media.
18. The importance of information, especially radio and television news, for culture and education was highlighted in Assembly Recommendation 1067. Its effects on public opinion are obvious.
19. It would be wrong to infer from the importance of this role that the media actually represent public opinion or that they should replace the specific functions of the public authorities or institutions of an educational or cultural character such as schools.

20. This would amount to transforming the media and journalism into authorities or counter-authorities (“mediocrity”), even though they would not be representative of the citizens or subject to the same democratic controls as the public authorities, and would not possess the specialist knowledge of the corresponding cultural or educational institutions.
21. Therefore journalism should not alter truthful, impartial information or honest opinions, or exploit them for media purposes, in an attempt to create or shape public opinion, since its legitimacy rests on effective respect for the citizen’s fundamental right to information as part of respect for democratic values. To that end, legitimate investigative journalism is limited by the veracity and honesty of information and opinions and is incompatible with journalistic campaigns conducted on the basis of previously adopted positions and special interests.
22. In journalism, information and opinions must respect the presumption of innocence, in particular in cases which are still sub judice, and must refrain from making judgments.
23. The right of individuals to privacy must be respected. Persons holding office in public life are entitled to protection for their privacy except in those cases where their private life may have an effect on their public life. The fact that a person holds a public post does not deprive him of the right to respect for his privacy.
24. The attempt to strike a balance between the right to respect for private life, enshrined in Article 8 of the European Convention on Human Rights, and the freedom of expression set forth in Article 10, is well documented in the recent case-law of the European Commission and Court of Human Rights.
25. In the journalist’s profession the end does not justify the means; therefore information must be obtained by legal and ethical means.
26. At the request of the persons concerned, the news media must correct, automatically and speedily, and with all relevant information provided, any news item or opinion conveyed by them which is false or erroneous. National legislation should provide for appropriate sanctions and, where applicable, compensation.
27. In order to harmonise the application and exercise of this right in the member states of the Council of Europe, we must implement Resolution (74) 66 on the right of reply - Position of the individual in relation to the press, adopted by the Committee of Ministers on 2 July 1974, and also the relevant provisions of the European Convention on Transfrontier Television.
28. In order to ensure high-quality work and independence on the part of journalists, they must be guaranteed decent pay and proper working conditions and facilities.
29. In the relations which the journalist must maintain in the course of his duties with the public authorities or the various economic sectors, care should be taken to avoid any kind of connivance liable to affect the independence and impartiality of journalism.
30. In journalism, controversial or sensational items must not be confused with subjects on which it is important to provide information. The journalist must not exploit his duties for the principal purpose of acquiring prestige or personal influence.
31. In view of the complexity of the process of providing information, which is increasingly based on the use of new technologies, speed and conciseness, journalists must be required to have appropriate professional training.

Rules Governing Editorial Staff

32. Within the newspaper business, publishers, proprietors and journalists must live side by side. To that end, rules must be drawn up for editorial staff in order to regulate professional relations between the journalists and the publishers and proprietors within the media, separately from the normal requirements of labour relations. Such rules might provide for the setting up of editorial boards.

Situations of Conflict and Cases of Special Protection

33. In society, situations of tension and conflict sometimes arise under the pressure of factors such as terrorism, discrimination against minorities, xenophobia or war. In such circumstances the media have a moral obligation to defend democratic values: respect for human dignity, solving problems by peaceful, tolerant means, and consequently to oppose violence and the language of hatred and confrontation and to reject all discrimination based on culture, sex or religion.
34. No-one should remain neutral vis-à-vis the defence of democratic values. To that end the media must play a major role in preventing tension and must encourage mutual understanding, tolerance and trust between the various communities in regions where conflict prevails, as the Secretary General of the Council of Europe has set out to do with her confidence-building measures in the former Yugoslavia.
35. Having regard to the very specific influence of the media, notably television, on the attitudes of children and young people, care must be taken not to broadcast programmes, messages or images glorifying violence, exploiting sex and consumerism or using deliberately unsuitable language.

Ethics and Self-regulation in Journalism

36. Having regard to the requisite conditions and basic principles enumerated above, the media must undertake to submit to firm ethical principles guaranteeing freedom of expression and the fundamental right of citizens to receive truthful information and honest opinions.
37. In order to supervise the implementation of these principles, self-regulatory bodies or mechanisms must be set up comprising publishers, journalists, media users' associations, experts from the academic world and judges; they will be responsible for issuing resolutions on respect for ethical precepts in journalism, with prior commitment on the part of the media to publish the relevant resolutions. This will help the citizen, who has the right to information, to pass either positive or negative judgment on the journalist's work and credibility.
38. The self-regulatory bodies or mechanisms, the media users' associations and the relevant university departments could publish each year the research done posteriori on the truthfulness of the information broadcast by the media, comparing the news with the actual facts. This would serve as a barometer of credibility which citizens could use as a guide to the ethical standard achieved by each medium or each section of the media, or even each individual journalist. The relevant corrective mechanisms might simultaneously help improve the manner in which the profession of media journalism is pursued.