



The Centre  
for Media Studies  
at SSE Riga

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BALTIJAS PĒTĪNĒISKĀS ŽURNĀLISTIKAS CENTRS

# Of the Rights and Responsibilities of the Journalist

A Compact Legal Familiarization Guide for  
Estonian Journalists



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## **Of the Rights and Responsibilities of the Journalist**

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*(Original title: "Ajakirjaniku õigustest ja kohustustest. Eestis kehtivat meediaõigust tutvustav lühikäsiraamat ajakirjanikele")*

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Translation into Russian and Russian-language proofreading: SIA "Skrivanek Baltic"

Translation into English: Jüri Estam

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## Disclaimer

This publication and this website, for those who came here through the Web, contain general information about norms pertaining to the media, based on Estonian and European law that's currently in force. The information contained within is of an informative and nonbinding nature. The authors and the publisher – The Centre for Media Studies of the Stockholm School of Economics (Riga) – are not responsible for consequences and possible damages that might result from relying on the information contained in this handbook. When it comes to specific legal questions, we recommend you ask for advice from a lawyer or a specialist in the appropriate field before taking any steps. Should it be necessary, consult with your colleagues, your department head, your editor-in-chief, or the attorney for your organization.

## To Begin With

This work is an introduction to the landscape of the laws, regulations and best practices pertaining to the media – all of which also happen to be in constant change – in which a journalist needs to maintain her or his bearings in Estonia specifically, and in Europe more generally, being useful to know. It provides an overview of the norms that have to do with the functioning of the media, and offers pointers on where to find additional legal information that you might need.

It is our objective to make this handbook something akin to a toolbox, from which people looking for answers to questions having to do with media-related regulations can get their bearings and find helpful solutions.

Whom does it serve to have knowledge of the Estonian, European and international legal landscapes? First, it's in the interests of the journalist to be competent and self-confident, as he or she executes his or her work assignments. Attaining and mastering basic literacy in applicable law is in the interests of everyone who works in a media organization, particularly if you're in a position of responsibility. Duty editors are often expected to make snap decisions, which requires situational awareness. Research has shown that even the most experienced of editors may make mistakes. Media have an essential role to play as watchdogs on behalf of the public, and they also constitute, among other things, a very large forum. Freedom of expression includes the right to have your own opinion and the freedom to disseminate as well as to receive information and ideas without the interference of the powers that be.

Journalists are above all in the service of the public, affording access to a plurality of opinions. If the citizen has the right to take part of establishing norms within one's own society and also to live by those norms, then it's the media in particular that helps to a substantial degree to contribute to the discussion about all such issues, while ultimately still leaving the taking of decisions to its audience.

In their book “How Democracies Die”, which was published at the beginning of 2018, Professors Steven Levitsky and Daniel Ziblatt state that democracies that have withered in countries that have gone downhill after World War II have not experienced this as a consequence of coups or in hails of gunfire, but rather – as a rule – because the norms of society have eroded and finally cease to function. Norms are those often unwritten rules and customs that keep societies cohesive.<sup>1</sup>

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<sup>1</sup> ‘How Democracies Die, What History Tells Us About Our Future’. Steve Levitsky and Daniel Ziblatt, 2018. Publishers: Crown, N.Y., N.Y and Viking, London.

Laws, on the other hand, are the formal rules that constitute the basis upon which societies function. Journalists have an important role to play in defense of democracy and in the continued existence of a society that is to function as well as it possibly can. In its role of holding those in power responsible, journalism as a profession stands in defense of freedom and liberties. Thus: it pays for a self-respecting journalist to know the laws, and in particular the laws that regulate the media and have the most immediate influence on it.

Society has expectations as concerns justice and fairness. Journalists need to take the existence of societal informal norms and expectations of fairness into consideration, which is a topic this guidebook won't get into in any depth. Norms of propriety nonetheless constitute an important aspect of all of this. In this context, we need to concern ourselves particularly with the norms of ethics that have been adopted by journalists and the media themselves.

Journalists then definitely have rights and definitely also have obligations. Part of these have already been put into place for them through legislation or by conditions established by employers for journalists working on contract. Journalists nonetheless retain quite a bit of autonomy and independence. This pertains in particular to freelance journalists and authors, and even more for those who operate in the indie media outside of the mainstream.

The presentation of checked and verified facts constitutes the most important task of the media, but that's not all. Mahatma Gandhi for example, who was both a lawyer and a journalist, eventually came to be the conscience of his people. It is expected that the media take ethical stances, to include ones that pertain to politics and politicians. In addition to rights and obligations, what then is the duty of journalists? The Estonian definitional dictionary says that duty is "the internal need to fulfill obligations". While it makes up a constituent part of democracy, journalism also serves in the defense of democracy.

The job of the journalist is not to merely repeat the words of politicians like a parrot might, or to behave more cautiously than is actually needed. Thus: don't turn the camera off when there's no need to do so! In such situations, knowing the norms and being situationally aware increases your feeling of confidence.

Where do these responsibilities and rights begin and end? Where does the red line run? How can you determine its location, if you haven't gotten to know it and probe it?

The footing of persons who aren't up to date on the layout of the law and about their rights isn't as secure as that of parties who are current on regulations. As a consequence, the capability of people in the first group to defend the freedom of expression is also weaker.

The journalist has the duty to stand for the rights of his or her readers, listeners or viewers, particularly because the arrival of the digital era has changed the opportunities provided by today's information highways into more of a two-way thoroughfare than ever before. We live in a fascinating but also turbulent period in history, in which the cybersphere provides us with new

possibilities, but also brings with it substantial dangers, some of which could even threaten the continued existence of democracy.

Laws and norms – and this includes European law – are in constant change. Keep abreast of these changes! Keep daring to be a courageous journalist, but also be aware of the risks that you might be taking!

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## I Legal commandments of journalists

**1.** The right to information, freedom of expression and criticism are the cornerstones of a free society. The right of the journalist to be in places of important events, to **receive information** and disseminate it is based on those rights.

**2.** A journalist is responsible for the truthfulness (facts) and impartiality of the information, and **always offers the person/party concerned the right of reply.**

**3.** A journalist **protects** the right to a **fair** comment and **criticism.**

**4.** A journalist must **protect their sources** of information. Their disclosure can only be demanded by the court.

**5.** A journalist refuses a task that is related to the violation of the law or contradicts his or her views.

**6.** A journalist can revoke his or her byline if the content of material is **distorted during the editing process.**

**7.** A journalist **does not allow conflict of interest** in his or her activities.

**9.** A journalist scales the public's right to know vs. the individual's right to privacy. A journalist is particularly careful when the situation involves minors.

**8.** A journalist issues correction if facts he has published turn out to be wrong.

**10.** A journalist respects copyrights.

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## 1. Know the Norms and Rely on the Fundamentals of the Laws and of Justice

In Estonia, the fundamental legal bedrocks of journalism are article 11 of the Charter of Basic Rights of the European Union (EU) and the Constitution of the Republic of Estonia (RE).<sup>2</sup> Paragraph 45 of the latter codifies among other things: “Everyone has the right to freely disseminate ideas, opinions, convictions and other information in speech, print, pictorial representation or by other means. This right may be circumscribed by law to defend public order, public morality, and the rights and freedoms, health, honour and good name of others... There is no  censorship.”<sup>3</sup> No less important is Article 10 of the European Convention on Human Rights: “Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...”

Estonia has no single consolidated act of law that regulates journalism. Without wishing to suggest that such a law might be necessary, the norms that regulate journalism are as a consequence scattered broadly instead, among a number of individual acts. It’s useful for the journalist to be familiar with the norms that regulate her or his activities, but also to know where she or he can find these regulations, since they affect the media sector on a variety of levels. The media-related activities of journalists and media enterprises are regulated by a number of norms of the laws that govern specific subject matter, along with the freedoms, rights and duties of journalists, also including the assurances that have been made to them. These include first and foremost:

- The Media Services Act (MeeTS)
- The Information Society Services Act (InfoTS)
- The Estonian Public Broadcasting Act (ERHS)
- The Public Information Act (AvTS)
- The Code of Civil Procedure (TsMS)
- The Law of Obligations Act (VÕS)
- The Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act (MSVS)
- The Electronic Communications Act (ESS)
- The Code of Criminal Procedure (KrMS)
- The Personal Data Protection Act (IKS)

<sup>2</sup> In order to better understand how one should interpret the sections of the Constitution that relate to the freedom of expression, refer to the commented edition of the Constitution in comment § 45.

<sup>3</sup> Constitution of the Republic of Estonia.

- The Data Protection Directive of the European Union with Direct Effect, and more indirectly the Copyright Act (AutÕS)

In addition to the domestic legislation in effect in the Republic of Estonia, the legal instruments of the European Union are also binding here (such as regulations and directives, etc.), along with a number of important legal acts of the Council of Europe, such as the European Convention on Human Rights, for example.

It isn't always possible to extrapolate a solution appropriate for the situation that a journalist finds him or herself in when searching one law or legal act or another. The wording of these is sometimes abstract and difficult to interpret. One source that can provide additional meaning and guidance to the regulations that concern the activities of journalists are the positions on how to apply the law, as taken by our highest administrator of justice in the court system – the Supreme Court of Estonia, as well as the judgments of the European Court on Human Rights and the European Court of Justice.<sup>4</sup>

Self-regulation by the media also functions successfully in Estonia. Our larger media publishers (but also the courts) apply the national Code of Ethics for the Media. The Estonian Newspaper Association has also adopted a variety of agreements that apply to best practices in several areas. Estonia's most extensive self-regulatory journalistic code has been adopted by the Estonian Public Broadcast Organization (ERR), as reflected in the Best Practices of the ERR. This is a document that all journalists might be well advised to get to know. The Estonian Press Council is the organ that handles such conflicts as arise outside the courts, offering the possibility of resolving disputes that third parties present against the media. The Estonian Press Council also discusses complaints that are lodged concerning the journalistic activities of media publishers. If they see fit, these bodies possess the right to impose (on those who have engaged in violations) the obligation of apologizing to those who have suffered harm as a consequence of the acts of the infringer.<sup>5</sup> Even so: before apologizing, it might be prudent to consult first with legal counsel.

Estonian media organizations can also have their own internal norms, rules, preferences, orders and prohibitions. This may well differ from organization to organization.

## 2. Who's Liable?

**Slander and defamation** – The Estonian Dictionary of Meanings has the following synonyms for slander: “to compromise, to defame, or to circulate untruths or fictions that shame a person”. According to the Constitution's 17th paragraph, it is impermissible to cast a shadow on someone's honor and good name. Some years ago, it was a criminal offense in Estonia to slander someone

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<sup>4</sup> One of the most definitive decisions of the Supreme Court had to do with the dispute between AS Delfi and V. Leedo on the matter of Internet commentaries. The dispute continued in the European Court of Human Rights.

<sup>5</sup> Decision of the Supreme Court R. Lepikson vs. Eesti Ekspress and SL Õhtuleht, no. 3-2-1-17-05.

and to spread slander, but these days, defense of honor and reputation takes place on the basis of the Law of Obligations.<sup>6</sup>

According to the Law of Obligations, the harming of reputation can take place through the publication of a value judgment (VÖS § 1046 lg 1) to include an inappropriate value judgment, as well as through the unlawful publication of a consideration that isn't in accordance with reality (that is to say a factual allegation VÖS § 1047 lg 2).<sup>7</sup> A factual allegation (although the phrases "circumstance" and "data" and other terms may also be used) is something that can in principle be verified. Its veracity or falseness can be demonstrated through court proceedings.

A value judgment is expressed in the form of a judgment made about a person, which – due to its content or form – has a derogatory meaning in a specific cultural environment. It's possible to rationalize a value judgment, but it isn't possible to prove the veracity or the "value" of its content.<sup>8</sup> As a result of this, journalists then basically encounter two categories of slander – either untruthful assertions (or faulty "facts"), or inappropriate value judgments. Determining the difference between the two isn't always easy. In the sentence: "Luther was a typical extortionist, like all hoodlums", the factual allegation is that "Luther was an extortionist", while the value judgment is contained in the expression "hoodlum". It is up to the court to decide whether use of the expression "hoodlum" impugns the honor of the plaintiff. The way that the law works is that the defendants have to prove that their claims about how the plaintiff has conducted himself as a (supposed) extortionist conform to reality as it truly is. In other words, what and from whom, and in what form did the plaintiff actually extort? In the event the defendants aren't up to the task of proving that the allegation corresponds to what actually happened, the court then obligates the defendant (in this case AS Media), to then publish a notice in the same publication to the effect that the words that were challenged didn't in fact conform to reality as it actually is.<sup>9</sup>

In a somewhat similar fashion, it isn't permitted to publish facts only partially (meaning only segments of facts, or to omit important information) or misleadingly. That is to say: by distorting the facts, or presenting them outside of context, and so on. Refer also to the Code of Ethics for the Media under point 4.2, which states that in the case of material that contains a conflicted issue, a journalist is obligated to give fair hearing to all parties involved. In other words: the opposing party also deserves having a chance to speak. In the event this isn't adhered to, you have a case of an account either being published in an incomplete or in a misleading fashion. Should serious accusations be leveled against someone, she or he should be presented if at all possible with the opportunity to make a statement either in the same issue of the publication, or within the frame of the same broadcast that's going out on the air.

In the case of parliamentary debate, value judgments that harm honor and one's good name fall under the protection of parliamentary immunity. The rule is: the higher the (political) position of a public figure, the lower the level of the protection afforded to his or her reputation.<sup>10</sup> In addition

6 See the Law of Obligations § 1043-1055.

7 Supreme Court decision no. 3-2-1-161-05.

8 Supreme Court decision Y.M.Luther vs. Ülo Pärnits and AS Media, no. 3-2-1-99-97.

9 *Ibid.*

10 The Commented Edition of the Constitution of the ER, p 249.

to what the law says, the Code of Media Ethics also contains essential regulations relevant to this topic. The journalist is responsible for her or his words and the content she or he creates. It is the journalistic organization that bears the responsibility for not publishing imprecise, distorted or misleading information. The news desk or editorial department checks, particularly as concerns critical material, the veracity of information and the credibility of sources. In cases in which someone else authors material that is being published or transmitted, then a member of the organization's staff, the news desk or the editorial board must also check the truthfulness of the facts presented. The media aren't permitted through their actions to cause unjustified damage to anyone, without first having determined that the public really has the need to know this particular information. In the event that quotes, photo, or video material are used in a context that differs from the original, one needs to take particular care. Material that is edited and could therefore be misleading – as well as distorted sound or pictures – should both be provided with a notice to that effect.

The legal responsibility of a journalist and/or a media publication, to include responsibility for the possible payment of monetary compensation, comes into being at the moment material is published. Publication in the eyes of the law means bringing data to the awareness of third parties. Once more: the publisher is the party who makes third parties aware of this data. In the event data is published, the publisher can also be the person who forwarded the data in question to the media organization. Although the former is not the publisher – for example – of the newspaper article that may be in question, he or she can nonetheless still in fact be the publisher in some other form. The law does not explicitly say that the publisher must necessarily solely be a media enterprise. A party who presents data to a media publisher can also be held responsible for the unlawful publication of false data (or for the publication of an inappropriate value judgment).<sup>11</sup> As a consequence, a media publisher (that is to say the responsible publisher) can be held liable for content that is published in the media (to include liability in the monetary sense), but so can – additionally – the party who was directly responsible for bringing the content to the attention of others, to include the journalist involved.

As a general rule, the publisher of data has to ensure (and to verify data with sufficient diligence) that the data published corresponds to reality. Make sure you're aware that responsibility doesn't rest upon the person about whom the data was published, nor upon the person who has turned to the court in regard to material pertaining to her or him that is claimed to be inaccurate.

In the case of value judgments, a journalist can do nothing more than to try to justify his or her standpoints. The Supreme Court has found: the impugning of someone's honor, including in the case of inappropriate value judgments, is presumptively against the law (VÖS § 1046 point 1). Proceeding on this premise, a person – assuming that he or she has turned to the court with an action for the protection of his or her rights as concerns the publication of a value judgment that may have injured his or her reputation – doesn't have to bear the responsibility of disputing (disproving) the factual allegations claimed to support the value judgments that were made. Therefore: the burden of responsibility of proving the factual allegations (in other words the duty to verify the set of circumstances that material was published about) lies with the defendant (who

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11 Supreme Court decision no. 3-2-1-95-05, p 25.

would generally speaking be the publisher, the journalist, the media publication, the source or whomever).<sup>12</sup>

In the event of the publication of wrongful data (facts), the harmed party, being the person about whom the wrongful information was published, has the right to demand from the media organization – in other words the publisher – directly, or by using the offices of the court, either a retraction of the offending information, or the publication of a correction at the expense of the publisher along with the right to publish a rebuttal on the basis of paragraph 5 of the Code.<sup>13</sup>

In the event that value judgments damaging the reputation of a person have been published, that person cannot demand the publication of a correction of the statements sullyng him or her, since such information does not contain determinable facts. In the event of the publication of an inappropriate value judgment, what might be possible is the awarding of a morally (but not a monetarily) measurable set of damages in cash. In addition to the aforementioned, the Supreme Court has found that a court may consider moral damages (measured in monetary terms) to also have been made good through the issuing of an apology by the party who caused the damage (such as the journalist or the media publication or whomever this might apply to in the respective situation).<sup>14</sup>

According to point 5.2 of the Code of Ethics for the Media, there is a right to rectify factual mistakes and quotes that have been published through the use of a correction. More space or time cannot be expected to be provided for the publication of a rebuttal than was originally allowed for the criticism. The correction must be published without delay and in a fashion that is noticeable, without judgments being added by the editorial or news desk. In the event that errant information was published, a correction also has to be published.

Freedom of expression is not utterly absolute. Norms and best practices that apply to this issue forbid and condemn discrimination and intolerance based on the ethnic belonging of a person, or based on the person's age or gender. Freedom of expression does not extend to the "right" of publishing state secrets, nor is one entitled to endanger the security of the state, to violate the right of the person to privacy, or to infringe on the rights of minors who have fallen victim to criminal behavior.

### 3. The Journalist Encounters the Courts

Journalists can face criminal liability primarily in two fashions – either as they try to protect sources, or within the context of investigative journalism. Investigative journalism is a specialized media branch that enables a journalist to delve deeper into a specific topic than might ordinarily

<sup>12</sup> Supreme Court directive in Edgar Savisaar vs. Tuuli Koch and AS Postimees, no. 3-2-1-37-15, p 11.

<sup>13</sup> See for example the correction issued by Õhtuleht concerning Andrus Ansip.

<sup>14</sup> Decision by the Supreme Court in the Robert Lepikson vs. Eesti Ekspress and SL Õhtuleht case, no. 3-2-1-17-05, p 29.

be the case, in order to look into serious crime, corruption and other impermissible and shameful circumstances.

Journalists aren't allowed to commit crimes or to simulate crimes, except in particularly exceptional cases, and then usually in the course of carrying out investigative journalism, and even then only after scrupulously taking into account all of the factors involved, and also determining that considerable public interest would be served by proceeding. There are in Estonia some cases in which investigative journalism or attempts at investigative journalism have also been referred to as "journalistic experiments".

**a) Protection of sources.**<sup>15</sup> – Reporter's privilege, meaning the confidentiality of sources, is one of the most basic guarantees extended to persons who gather and edit content for journalistic purposes.<sup>16</sup> In addition to the Code of Ethics for the Media, the 15th article of the Media Services Act also regulates the protection of sources. According to that law, the journalist is not permitted to publish content that might enable the identification of an information source without the permission of that party. The objective of the institution of source protection is to ensure that the journalist has the right during court proceedings to abstain from making statements, in order to not reveal the identity of the source. The intent of reporter's privilege is to provide backing for certain principles characteristic of journalism, such as freedom to investigate, along with journalistic independence, and to provide protection for the practice of investigative journalism. Without such protections, a source might refrain from assisting the media, which is of course duty-bound to fulfill its obligation as regards informing the public of issues that pertain to the public interest.<sup>17</sup>

If a journalist relies on an anonymous source, this brings with it a heightened responsibility of diligence, and places the publisher substantially at risk, should supposedly facts-based information originating from the anonymous source actually turn out to be false.

There is an exception to the general principle of source protection named in article 15, section 3 of the Media Services Act, meaning the journalist is not obligated to respect the duty of shielding the information source from the publication of information that might lead to his or her identification, this in the event that the source has knowingly provided the journalist with **false information**.

The right to rely on the institution of source protection is also extended to other persons who are active in the media sector, and who become aware of the source during the course of gathering information, or of editing or disseminating it, even if such a person might otherwise not fit the classical definition of a journalist.

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<sup>15</sup> Concerning protection of sources, see Council of Europe recommendation no. 7 (2000). Recommendation No. R (2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information.

<sup>16</sup> See the Code of Media Ethics (Appendix 1) points 3.3-3.5 and ERR Best Practices p. 7.

<sup>17</sup> Goodwin vs. United Kingdom.

When utilizing the rights provided by the mechanism of source protection, the following aspects need to scrupulously be adhered to:

1. no reasonable alternatives to going with this information exist, or they have been exhausted;
2. the legitimate purpose of going public abundantly outweighs the public interest that might be served by not publishing the information. In this regard, it ought to be remembered that:
  - a. the condition of a substantial need to publish has been fulfilled;
  - b. the circumstances of the issue are of an adequately important and serious nature;
  - c. the need to make the information public has been found to correspond to an overarching social need.

As concerns the source, the following should be protected:

- the name of the source and his or her address, telephone and fax number, as well as their email address, the name of their employer and their personal data, but also the voice of the source, as well pictorial depictions of the person;
- factual aspects having to do with the gathering of the information in question, such as the time and place of meetings with the source, the communicative devices used, or other particulars that were agreed upon;
- also other information provided to the journalist that went unpublished, such as other facts, information, audio or pictorial depictions that might be of use in determining the identity of the source, and which the journalist has not yet published;
- personal data concerning the journalists and their employers that are related to their professional work, meaning personal data that were produced as a result of journalistic work that can be found in address lists, in registers of phone calls made, in registries that record computer-based communication, in records of travel arrangements, or in records of financial accounts.

In civil courts, journalists and persons who work professionally with data that enables the identification of sources have the absolute right to abstain from giving testimony about a pertinent aspect that makes it possible to identify the person or source that provided information.

One must hasten to add that the protection of sources is not an absolute right. In criminal cases, the journalist is obligated to reveal his source in the event that the gathering of evidence is otherwise impossible or made significantly difficult, and if the criminal charge that is being weighed carries with it as a minimum the sentence of a period of confinement of up to eight years, if an overriding public interest in the hearing testimony exists, and the journalist has been compelled at the request of the Prosecutor General's office to make a statement, having been sanctioned to do so either by a criminal investigation or another court. It is also important to note that the right to source protection – but also the exception to that right as previously mentioned – also applies to persons who encounter such data in the course of their work, as might enable the identification of the source.

Another significant observation: should the journalist during the course of a court proceeding rely on the right to protect a source (and refrain from making statements), and the journalist also puts information into evidence, that she or he purportedly obtained from her or his “source”, then this person cannot be made criminally liable for not being willing to make statements, but at the same time from the perspective of the court, such information then remains merely rhetorical and cannot be verified.<sup>18</sup>

**b) The use of Methods of Investigative Journalism, “Underground” Journalistic Tricks of the Trade, and of “Journalistic Experiments”** is justified, being an option of last resort, when public interest is very substantial and other means of acquiring information have been exhausted. In accordance with point 3.1 of the Code of Media Ethics, the journalist – as he or she is gathering material for the purpose of publication/transmission – must inform his or her conversation partner that he or she is a journalist, and state which publication or station they represent. It is also recommended to state why the information is being gathered. Some of the methods used in investigative journalism knowingly violate this principle. In the event that there is a powerful need to employ investigative journalism, but such an attempt may bring a journalist into a face to face situation with law enforcement organizations in the future (such as the Police, the Internal Security Service, the Office of the Prosecutor General, etc.), it would be advisable to contact the Prosecutor’s Office or another pertinent state organization before taking action, this in order to avoid potentially serious and undesirable consequences. The Prosecutors Office does not as a rule willingly sanction such endeavors, so the journalistic enterprise needs to be aware of the risk that it is taking. There is no room here for unprofessional or slipshod execution.

**c) Journalists Reporting on Court Cases** – Court sessions are, as a rule, open to the public. Every person has the right to observe an open session and also to take written notes. Sessions of court may be photographed, filmed, or recorded with audio equipment, but it is allowed to make a radio, television or other transmission from the courtroom only if the court has previously given permission for this. The law says that the criminal courts are not permitted to ban the publication of the contents of court proceedings, as long as the session has been declared to be open.<sup>19</sup> The open nature of the session does not however provide the media with the right to mirror the proceedings completely arbitrarily, nor to evade liability for the things it has published. The publication of information during the time that sessions are in progress is permitted, just as long as the presumption of innocence is not violated (more about this later), in the event that the crime in question is serious enough, and as long as the proceedings are objectively reflected, and the fairness of the trial process is not somehow jeopardized.

However: the court has the right, in accordance with the law, to declare its sessions or parts thereof to be closed, in the interests of protecting classified information or trade secrets, or if this may be otherwise indicated, due to the need to defend the interests of minors, of the claimant, or if it is in the interests of administering justice. Journalists are not permitted as a rule to be present at closed court sessions, nor is it permitted to publish the proceedings of closed court sessions.<sup>20</sup> In civil

<sup>18</sup> Supreme Court decision regarding Mihhail Kõlvart vs. Postimees, no. 3-21-24-15, p.15.

<sup>19</sup> See also the Supreme Court decision pertaining to the case of journalist Juhan Haravee of Õhtuleht 24.10.2016.

<sup>20</sup> See The Code of Criminal Procedure § 11-13, The Code of Civil Procedure § 37-42, The Code of Administrative Court Procedure § 77 sect. 1.

court practice, the court enjoys the additional right – this then as concerns the publication of information – to employ a directive obligating persons present in the courtroom (to include journalists) to keep things they have observed during the proceedings secret, even if the session as such has not been declared to be a closed one.<sup>21</sup> If the journalist publishes information about court proceedings that were declared to be closed (thereby doing so in contravention of the instructions of the court) or in light of the other conditions referred to previously, the court may have the journalist removed from the courtroom and also fine her or him.

Rulings of the court are published in the electronic State Gazette (Riigi Teataja). Rulings of the highest court – the Supreme Court – are published on the website of the Supreme Court. The media have the right to publish the content of court rulings that have been made public, but one must nonetheless follow the regulations that govern the protection of personal data (see the section concerning personal data protection). When information is published about felonies, one must follow the rules of journalistic ethics, according to which the journalist must consider, when publishing material that has to do with violations of law and with court proceedings and accidents, whether the identification of persons involved is absolutely necessary, and what kinds of suffering the involved persons and those close to them might experience as a result. As a general rule, victims and under aged criminals are not identified to the public.<sup>22</sup>

It is permitted to familiarize one's self with dossiers containing information about the court proceedings, having obtained the court's permission, which entails contacting the court and explaining one's interest in the case.<sup>23</sup> For more information on this in cases involving personal data and violations of the law, refer to our section about the publication of personal data.

**d) Presumption of Innocence** – According to Section 22 of the Constitution, no person may be regarded as being guilty of a crime prior to the entering into force of a court verdict determining the person's guilt. Also refer to the European Convention on Human Rights, article 6, subheading 2. This legal principle is one of the most important ones of all, pursuant to the principles of penal law. In other words then: the presumption of innocence, or put a different way, the presumption of not being held to be guilty.

“The generic concept of the presumption of innocence contains several individual rights and principles:

- the right to the presumption of innocence;
- placing the burden of proving guilt on the state;
- the right to maintain silence;
- *in dubio pro reo*, meaning that when in doubt, interpretations must be made in favor of the accused”.<sup>24</sup>

21 See The Code of Administrative Court Procedure § 41 point 3.

22 The Code of Estonian Media Ethics, point 4.8.

23 Contact information for the Courts of Estonia.

24 Rait Maruste, “Konstitutsionalism ning põhiõiguste ja -vabaduste kaitse.” Lk. 383.

According to the rules of Media Ethics, it's impermissible for the institution of the media to treat a person as a criminal before a court verdict to that effect has been rendered.<sup>25</sup> The principle of the presumption of innocence has also been extended to all sorts of proceedings to include administrative and disciplinary ones, which – in terms of the effects and consequences of the proceedings – could be regarded as punitive in nature.<sup>26</sup> The European Court of Human Rights has observed that the objective of the presumption of innocence that's part of procedural justice is designed on the one hand to ensure defensive rights, while at the same time it is also the intention to help protect the honor and dignity of the defendant. The court consequently emphatically reiterated how important the choice of words is, when statements concerning offenses are made public prior to the making of a determination regarding a suspect's guilt or before possible guilt been disproved. Even once a determination has been made, it's important to comment on its actual meaning, and not to “cherry pick” quotes from it.<sup>27</sup> Until a guilty verdict has come into force in respect to a person, it is right and appropriate to use expressions like “suspicion”, “suspect” and “accusation”, and to refrain from passing a final judgment about someone's guilt or innocence in the media, since doing so would only be permissible once the court has passed a guilty verdict (or not).

The media may not declare anyone guilty until the court case is over, and much less arrange a “public hanging” of anyone in the moral sense, metaphorically speaking. Emphasis must be placed on the fact that there needs to actually be a guilty verdict that has also actually come into force. It's not enough that a court has passed judgment and that this information has reached the awareness of the general public. It remains possible, at least in theory, that a higher standing court could subsequently vacate the guilty verdict passed on a person. Thusly we still **can't** speak of a person having been pronounced guilty **until a court's absolutely final judgment to that effect has come into force**.

## 4. The Rules of Information Acquisition, of Access to Official Information, and of Publication

**a) Privacy and Persons in the Public Sphere** – Section 26 of the Constitution sets forth everyone's right to the inviolability of her or his family and private life, which is also closely linked to everyone's right to self-fulfillment, which is referred to in the Constitution's section 19.<sup>28</sup> When freedom of expression is used, to include journalistic freedom of expression, one must, as the Constitution stipulates, honor and be aware of the rights and liberties of other persons, and comply with the law.<sup>29</sup> Private life includes, among other things, the right of the individual to informational self-determination, and the right to personal self-expression and one's image.

25 The Code of Estonian Media Ethics, point 4.4.

26 Elis Allas, Sütütuse presumpsioon ja meedia, magistriröö, lk 11.

27 27 Ibid, paragraph 29.

28 See also the comments pertaining to § 26 of the Constitution.

29 Supreme Court decision regarding Julia Pörötševa vs. AS Inforing, no. 3-2-1-138-02, p. 9.

The defense of private life covers such matters as the identification of a person and other aspects of being a person.<sup>30</sup> In the event of an intervention into a person's private sphere, what matters is whether the person who is in the focus of the interest of the media can be considered a public figure or not, meaning someone who is subject to greater public attention, or isn't. According to point 1.6 of the Code of Media Ethics, the media treat individuals who enjoy political and economic power and who possess information of significance to the public as persons in the public sphere, in which case increased attention and criticism towards their behavior is more justified than would otherwise be the case.

The media also regard such persons who put themselves or their creative work on public display as being public figures. Public figures – take politicians for example – cannot have the same expectations in regard to privacy and having their images published as can persons who lead private lives. Public figures can differ, depending on the nature and extent of their activities. Consequently, the degree of justified interest in their private lives can also vary. A heightened amount of public interest towards a politician or an upper echelon public official entrusted with the execution of state power is justified, along with interest in his or her political and/or professional activities.

If, on the other hand, a person engages in creative activity along with its exposition, increased interest in that person's creations and creative activities are also justified as a rule. This does not however extend to their private lives. Even the fact that such a person has previously indicated the desire to interact with the media and has shared personal information about their lives does not alter this right. In a situation in which an artist or other creative person is not engaging in some function of public life, and as long as they do not participate in public debates, she or he can be said to be active only in the private sphere. Activities for the dissemination of such information are motivated by commercial interests, which doesn't justify intervention into someone's private life.

In the opinion of the Supreme Court, public interest is not synonymous with the curiosity of the journalist or other persons, or with private interest.<sup>31</sup> No one can be categorized as a public figure on the basis of the fact that they are the spouse or significant other of a public figure, the child of a public figure, or are otherwise close to a public figure.<sup>32</sup> In the case of persons who aren't public figures, restrictions are put upon publication of content about them in the media, as set forth in the Personal Data Protection Act (for more on this, we refer you to the section below concerning personal data protection).

**b) The Right to be Forgotten** – The right to be forgotten is an area of concern handled by article 17 of the European Data Protection Regulation, which is primarily concerned with regulating the behavior of search engines such as Google, and other processors of personal data. Many media organizations – and web publishers in particular have also assented, on an ever-increasing basis – to requests to have materials containing damaging information removed from servers and also from digital view more generally.

30 Supreme Court decision regarding Tiina Tammer vs. Peeter Raidla, no. 3-2-1-153-16, p. 34.

31 Supreme Court decision regarding no. 3-2-1-18-13, p. 15.

32 Supreme Court decision regarding Vilja Savisaar (Laanaru) vs Enno Tammer, no 3-1-1-80-97.

**c) Freedom of Information in the Context of Public Information and Access to it** – The concept of information disseminated for public use originates in the Constitution, as expressed in the first sentence of section 44: “Everyone is entitled to free access to information disseminated for public use.” Managers responsible for administering public information, in addition to governmental organizations, including societies, foundations and physical persons, who – on the basis of a legal act or on the basis of a contract – thereby fulfill public obligations. This area of responsibility is regulated by the Public Information Act, and also by the Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act, and to a lesser degree by the Archives Act.

The journalist can utilize the opportunity to ask for information intended for general public use by making a request based on the Public Information Act. That law doesn't provide for access to archived materials, the use of which is regulated by the Archives Act, while also taking into consideration the restrictions provided for in the Personal Data Protection Act, and the State Secrets and Classified Information Of Foreign States Act, as well as other restrictions applicable under law. It's important for a journalist to know how applying for information on the basis of The Public Information Act works, and whom to apply to, in the event that the administrator of the information<sup>33</sup> refuses to release the information that's been applied for by the journalist.

The request for information must be complied with without delay, and certainly within five working days and no more. Other conditions that need to be fulfilled so that you can be provided access to information are to be found in the Public Information Act. Should the administrator of the information not provide access to it, you have the right to get in touch with the Estonian Data Protection Inspectorate.

Not every application can be regarded as a request for information in the formal sense of the law. One uses a request for information in order to be provided with information that is already in the possession of the given institution (for example a document or an excerpt of one).

When, on the other hand, one asks for an assessment by an institution or for advice, or one directs attention to deficiencies, or asks for a procedure to be carried out, then this is not a request for information, but rather a memorandum (an informational note) or a statement. In such cases, the time permitted for providing a response will be based on The Response to Memoranda and Requests for Explanations and Submission of Collective Addresses Act, or possibly on the basis of other laws.

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<sup>33</sup> According to AvTS § 5,(1) The following are holders of information: - state and local government agencies; - legal persons in public law; - legal persons in private law and natural persons under the conditions provided for in subsection (2) of this section. The obligations of holders of information extend to legal persons in private law and natural persons if the persons perform public duties pursuant to law, administrative legislation or contracts, including the provision of educational, health care, social or other public services, with regard to information concerning the performance of their duties. The following are deemed to be equal to holders of information: 1) undertakings which have a dominant position in the market or special or exclusive rights or which are natural monopolies – with regard to information concerning the conditions and prices of the supply of goods and services and changes thereto; 2) sole proprietors, non-profit associations, foundations and companies – with regard to information concerning the use of funds allocated from the state or a local government budget for the performance of public duties or as support.

**d) Private and Public Spaces** – A person who is present in private premises, a residence or who is at work is shielded by law. One is not – generally speaking – permitted to force one’s way in. In such locations, a person can avail themselves of the right to privacy. According to paragraph 54 of the Law Enforcement Act, a public space “is a territory, building, room or a part thereof given to an unspecified number of persons for use or used by an unspecified number of persons, and also a public transport vehicle.” All persons have the right to dwell in a public space (on the street, in a park etc.), and it is generally permissible to photograph and film persons, as long as one adheres to the regulations concerning the protection of personal data (for more, refer to the section on personal data protection). In semi-public locations (for example schools, hospitals, police stations, cinemas, hotels and the like), some restrictions may apply. In order to take photos, conduct interviews and to film, one should apply for permission, to include getting a release from the owner. Special restrictions apply at government locations.

**e) Copyright and Plagiarism** – Content published in the media is, as a general principle, copyright protected.<sup>34</sup> Journalists and media publications are, as are all other persons, obligated to comply with copyright rules when publishing articles and other materials, and to avoid violating the copyright rights of the authors of works. In the event of a violation, the owner of the rights may demand compensation for the damage done, as well as cessation of continued illegal use. The issue of whether a journalist (or someone else) was aware of the work being protected by copyright, or of the fact that a work had been made illegally available on the Internet has no bearing on the issue. (News items are not protected under copyright law.)

Should more than 70 years have passed since the death of the owner of the work, the copyright covering it will be considered to have lapsed, and it will enter into the public domain. It is permitted to quote from a copyright-protected published work without the permission of the owner for journalistic reporting purposes as events occur, as concerns a work that has incidentally been seen or heard, if this is done up to a justifiable point, and if this occurs in a form and to the extent that corresponds to the need of having this reflected in a current affairs context. Use may also be permitted under the provisions of a standard license such as those offered by Creative Commons.

When making a summary of the work and when quoting from it without permission and compensation, follow the simple rule: refer to its creator as well as the work itself, and to the source in which it was published. It is not permissible to alter the idea of the work as a whole. The right to use the work without the permission of the author in a caricature, parody or a pastiche is allowed.

According to the definition of the Explanatory Dictionary of the Estonian Language, plagiarism is “the publication of a work created by another – or a part thereof – under your own name, but also the presentation of (scientific) standpoints made by others without making reference to the sources, the theft of created work; a plagiarized form of content or a work.” The problem of plagiarism can be avoided – among other things – through the use of proper attribution.

<sup>34</sup> See the Copyright Act.

**f) Copyright and Webpages** – When you share a link in the Internet, you need to respect copyright. The person who creates the hyperlink has to ascertain whether the works protected by copyright that are present on the website that you're linking to are there legally or not.

**g) Minors and the Media** – The Child Protection Act categorizes all persons under the age of 18 to be minors.<sup>35</sup> As you work as a journalist and disseminate information and entertainment, you need to be cognizant that these days, children also constitute part of the audience. Children have become new media consumers in a way that differs from earlier times, quite often without parents, teachers or media workers having the ability to control these processes or to be of help to children.

According to the Media Code of Ethics, minors must as a general rule be interviewed or photographed in the presence of a parent or a guardian responsible for the child, or at the very least with the permission of such a person. Certain exceptions to the rule can be permitted, such as when an interview is being done for the purpose of protecting the minor's rights, or on such occasions when the child is already being subjected to public attention. The journalist is not permitted to abuse the trust of persons unaccustomed to dealing with the media.<sup>36</sup>

Before beginning the formal gathering of information, the possible consequences of statements that might be made need to be explained.

Content concerning parental disputes about the custody and care of minors would not generally be intended for public dissemination.

When publishing material about violations of the law, court cases and accidents, the journalist must weigh whether identification of the parties concerned is absolutely necessary, and also think about the suffering this might inflict on those parties. Victims and minors who have committed criminal acts are as a rule not identified to the public. Considerably more rigorous rules (with their origins in the Convention About the Rights of the Child, the Child Protection Act and the Code of Ethics) apply to the publication of material about specific children in the media than would be the case concerning adults in a similar situation. The Supreme Court has noted that the private life of a minor is subject to a particularly high level of protection.<sup>37</sup> In accordance with the Child Protection Act, in the course of guaranteeing the rights and welfare of a minor, one must always operate on the premise that the interests of the child take top precedence in all undertakings that pertain to the child (§ 5 p. 3).

Ordinarily the parent of the minor is the legal representative of the child. That is to say he or she grants the necessary permissions in the name of the child and signs agreements, etc. Situations may however arise, in which the journalist has to communicate about issues with legal bearing with the appointed guardian of the minor instead. In certain cases, it may be required to obtain the permission of both of the parents of the minor.<sup>38</sup>

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35 The Child Protection Act.

36 See guidance provided in the publication "Media and the Child" by the Estonian Union for Child Welfare.

37 Supreme Court decision no. 3-2-1-18-13, p 17.

38 *Ibid.*

**h) The Protection of Personal Data** – The bulk of the results of the work carried out by journalistic organizations is comprised of various data, of which personal data then pertains to the particular person that the journalist is interested in. The topics of personal data protection and privacy are intertwined. The Personal Data Protection Act and the Data Protection Directive of the European Union make provision for the conditions of how the personal data of persons (not judicial persons) are to be processed, also in respect to use and publication, along with pertinent restrictions.<sup>39</sup> Regulations affecting the protection of personal data are constantly being renewed, and because of this we recommend either monitoring the regulations that have been updated on an ongoing basis on the homepage of the Data Protection Inspectorate, or consulting with a specialist. The primary terminology and principles that are important from the perspective of the protection of personal data can be found listed in sections 4-8 of the Personal Data Protection Act.

The operative phrase in this section of our guidebook is then **personal data**, which the Personal Data Protection Act defines as whatever data that may apply to a physical person who has been identified or is to be identified, regardless of the way or form in which this data exists (IKS § 4 point 1). The primary feature of personal data hinges on it being possible to make positive identification of the person based on that data. In addition to identifying the name of the person along with her or his telephone number (and email address), and also along with information about the employment conditions about the party being regarded as personal data, the courts have identified additional aspects of private life – such as the way that a person spends her or his free time, or their relationships with third parties – as descriptive information that can be considered to be personal data.<sup>40</sup>

Specifically in the context of the topic of the protection of personal data, media is taken to mean the professional media (daily and weekly newspapers, television and radio channels, etc.) as well as blogs, networked forums and social contact webs. Both categories can contain articles as well as entertainment-oriented content that can be regarded as having a journalistic purpose. Unlike in the case of materials designed to be entertaining, content with a journalistic objective is permitted to include personal data, even without permission that has been granted by the person that it applies to. Section 11 subsection 2 of the Personal Data Protection Act stipulates that personal data can be made public by the media without the permission the person involved as long as all of the following conditions are simultaneously met: 1) the personal data is made public for journalistic purposes, 2) there is overriding public interest that justifies the publication of this identity, 3) this is done in accordance with the principles of journalistic ethics, and 4) the publication of the data will not excessively harm the rights of this person.<sup>41</sup>

Section 11 Subsection 3 of the Personal Data Protection Act stipulates a person has the right at any moment to demand that the publisher of personal data terminate said publication, except in cases in which the publication has taken place in a legally permitted fashion or for journalistic purposes, and if the continued posting and publication doesn't impose on the rights of the person excessively. Court practices have also made it apparent that the administrator of a portal is

<sup>39</sup> [The General Data Protection Regulation; The Personal Data Protection Act.](#)

<sup>40</sup> Supreme Court decision pertaining to Tiina Tammer vs. Peeter Raidla, no. 3-2-1-153-16, p. 22.

<sup>41</sup> Refer to our subsection: "Public Figures and Privacy".

responsible for content created by users (an example of which would be the commentaries posted on online news sites).

**i) Concealed (hidden) audio and video or film recording** – it is permitted to record telephone conversations as long as you are one of the parties on the line, but not the calls of third parties. Usually it would be considered normal to inform the other person that you're making a recording.

Concealed filming is justified in the event that overriding public interest exists for doing this, and when the acquisition of information by other means is impossible or would cause unreasonable difficulties.<sup>42</sup>

The Data Protection Inspectorate has issued a number of optional guidelines to help people abide by personal data protection regulations. The basic set of guidelines published by the Data Protection Inspectorate that provides journalists with extensive and substantial answers to questions about the processing of personal data for journalistic purposes is the "Guideline for the use of Cameras", which contains instructions about the making of video, audio and photo recordings.<sup>43</sup>

**j) Drones** – the making of photos or filming that involves the use of aircraft constitutes the processing of personal data in cases when a person who has been caught on a photo or video is identifiable. If a person isn't distinctly identifiable, it isn't a case involving personal data. In situations in which a journalist is uncertain about what's permitted more generally in regard to drones, we suggest turning to the Civil Aviation Administration with your questions.

**k) Private Conversations and "Off the Record" Conversations** – Some public relations practitioners tell their clients there is no such thing as an off the record conversation, and that it pays to remain cautious when meeting with journalists. Everything or much of what you say to a journalist could end up in the media, depending of course on the journalist. The journalist needs to take into account that when he or she doesn't respect "off the record" agreements and after revealing the contents of private conversations, the other party might no longer take your phone calls.

**l) Classified Information** – "State secret" means "...information provided for solely in the (State Secrets And Classified Information Of Foreign States Act) or legislation issued hereunder which requires protection from disclosure in the interests of the national security or foreign relations of the Republic of Estonia, with the exception of classified information of foreign states." Classified information of foreign states on the other hand means "information originating from a foreign state, the European Union, NATO or an organization or institution... that has been classified as secret by its originator and information created for the purposes of performance of an international agreement by the Republic of Estonia that is to be classified, as provided by the international agreement".

The State Secrets And Classified Information Of Foreign States Act regulates this realm of activity. The quotes above have been excerpted from that legislation.

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<sup>42</sup> Supreme Court decision AS Delfi vs. V.Leedo, no. 3-2-1-43-09.

<sup>43</sup> Data Protection Inspectorate - "Guideline for the use of Cameras".

## 5. Of The Need for “the Good old Newsroom” to Adapt and Accommodate Itself to the IT Era

Life in a typical newsroom was simpler and more comfortable as recently as about 20 years ago or a little more. With the exception of news items in leads generated locally by one’s own trusted colleagues, a substantial part of news content originated with news agencies. Professional journalists continue as a rule to work at news agencies, and you can count on the material that they generate to always or essentially always to be not just truthful, but also reliable. They’ve already done the fact checking before transmitting their materials for use. Back in the old days, the authors of opinion features were reliable individuals known to the media organization, and you could be reasonably sure they wouldn’t let you down. And then all of a sudden, without forewarning, “future shock” arrived.

In comparison to be the “idyllic” media period of the earlier time, we now exist, surrounded by the much more cacophonous Internet era, amidst great informational riches, but part of these bring problems and some are downright defective. Cyber law expert Andrew Murray (Author of the book ‘Information Technology Law’) states that the IT era: “...represents a new and revolutionary model to market and deliver products and services”. These of course include informational services. Some people are still willing to pay for quality information, but all kinds of information – including a lot of defective information – is now circulating for free, which can create serious problems for the legitimate media, unless caution is exercised.

Careless handling of defective, problematic and even provocative information can cause you a variety of troubles in this changed situation, some of which may infringe on the law, while others can involve ethical issues, and certain cases can “merely” get a journalist and her or his organization into hot water.

Compared to the good old times described earlier, the journalist needs to be more on the defensive concerning the credibility of the information being disseminated by his or her organization, and also be protective of the right to freedom of expression as such, and even of the media of his or her society as a whole. The contemporary journalist acts as a filter and human firewall in respect to all kinds of “who knows where this came from” broken and occasionally malicious information, and sometimes even in respect to the disinformation circulating “out there”. Disinformation is “information that is wrong or misleading” (source of definition: The Descriptive Dictionary of the Estonian Language), and is being disseminated in a manner designed to be intentionally misleading.

## **6. Of Jurisdiction. Of Legal Issues that Spill Over the Jurisdictions of Nation States in the International Digital Context**

A significant part of the information that reaches us these days crosses state borders. The laws and sanctions of the Republic Of Estonia often have little influence on this flow of information. Yet Estonia's own media, specific as it is to this society, nonetheless remains an important component part of Estonia's own small culture. This duality, involving a national media that does have to comply with Estonian legislation on the one hand, and a global flow of all kinds of information (as we've seen) on the other, creates confusion, along with some opportunities, as well as many problems and challenges, some of which are legal challenges.

As Yaman Akdeniz has said, "The Internet is a complex, anarchic, and multi-national environment where old concepts of regulation, reliant as they are upon tangibility in time and space, may not be easily applicable or enforceable." (Yaman Akdeniz, "Governance of Pornography and Child Pornography on the Global Internet: A Multi-Layered Approach, in *Law and the Internet: Regulating Cyberspace*", pages 223 and 225, Lilian Edwards & Charlotte Waelde eds., 1997).

It might indeed be necessary to consider the digital realm as a separate "territory" of sorts, in its own pervasive and even intrusive global space and substantially separate existence. Unless of course one lives in a country where the use of the Internet and the social media are restricted and/or censored, in many cases restricting the influx of information from abroad. Estonia is essentially speaking not among countries with such practices.

The case of Kaur Kender, which created such controversy in Estonia, is evidently the best-known example that we have of this. At the time his work UNTITLED 12 was published, Kender was physically in the United States, while the webpage server involved was situated in Great Britain, as a consequence of which Kender essentially achieved victory in the Estonian court as concerns accusations that he had created content alleged to be child pornography.

## **7. How to Recognize Untrue or Distorted Information and Protect your Organization and your Public from these Things**

The Estonian Code of Media Ethics is one roadmap in the uncertain situations you encounter ever more frequently these days. Journalists under pressure may experience the feeling as though they don't have enough time to verify the truthfulness of incoming leads. To repeat what the Code of Ethics states: "The editorial team checks, above all in the case of critical material, the truthfulness of the information and the reliability of the sources. The editorial team will verify significant facts

also in such cases as when the author of the material to be published or transmitted is not a member of the editorial department.” The key phrase here is verification, which entails checking the provenance of a document etc., and also means confirming the truthfulness of an assertion or assertions.

Not everything that accumulates in the computer of a newsroom or that of an editor is dangerous or problematic by any means, nor need it contain such content that it might cause legal problems for the editor or his or her organization. Still, it would behoove you to constantly keep your guard up and to be capable of recognizing problems as they present themselves. At least part of the information that flows in is defective – occasionally fully intentionally and with bad designs, bringing legal or other kinds of problems down upon us. We do live in a period of information warfare, which has also been called hybrid warfare. Freedom House – an organization that monitors media freedom – wrote in its report “Freedom on the Net 2017”: While Estonian authorities are aware of Russian information campaigns designed to manipulate public opinion in the region, there have not been any incidents of banning content from Russia.”

Do you require more information? Wartime cyber justice is treated in a thorough work named the ‘Tallinn Manual’. The Cyber Defense League (Küberkaitseliit/KKL) is a daughter unit of the Defense League that was established in 2010 for the purpose of defending Estonian cyberspace.

Should there be doubts about the trustworthiness of information received by your editorial team, we recommend referring to the guidebook authored by Tom Trewinnard and published by the Centre for Media Studies of the Stockholm School of Economics in Riga, known as the ‘News Verification Guide in Estonian’. It’s also available in the Russian language as the ‘News Verification Guide in Russian’.

## 8. Incitement to Animosity

The 10th article of The European Convention on Human Rights declares that information and ideas must move freely. Freedom of opinion is the human right to express your thoughts and to disseminate your way of thinking and your beliefs.

The concepts of “hate speech”, “animosity speech” and “incitement of animosity” have no one certain determined definition, which makes finding and keeping your bearings in this area difficult.

The Institute of the Estonian Language finds that the phrase frequently encountered in Estonian: “*vihakõne*” – is an unsuccessful attempt to convey the English language phrase “hate speech”. (“incitement to animosity” in the literal translation from the Estonian coming more naturally in the Estonian language).

European courts have made a number of determinations concerning hate speech, and looking into these can be informative. Take the time for example to have a look at the information sheet put out by the [European Court of Human Rights](#).

The Estonian Constitution (§ 45) states: “Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means... There is no censorship.” § 45 also puts restrictions on these rights. A ban on the incitement of animosity can be found in § 12 of the Constitution: “Incitement to ethnic, racial, religious or political hatred, violence or discrimination is prohibited and punishable by law. Incitement to hatred and violence between social classes or to discrimination against a social class is also prohibited and punishable by law.”

Penalties can be imposed in this context if a person’s life, health or property has been endangered.

The London-based Ethical Journalism Network (EJN for short) notes among other things: “Having ideas and opinions is not a crime, nor for that matter is their publication, but you need to consider that some utterances could be in contravention of the law, and may lead to the intensification of hating”. It is worth asking yourself: “Could (the expression of a certain statement) incite violence towards others?”... “Consider the surrounding social economic and political environment, since opinions need not always be fact-based.” The European Ethical Journalism Network recommends: “Journalists and editors must pause and consciously take the time to judge the potential impact of offensive, inflammatory content.”

## **9. Of Community Networks and Social Platforms (Facebook, Instagram, Pinterest, Spotify, Twitter, YouTube, etc.)**

A reminder: in the business of journalism, the publication (that is to say the responsible publisher) can be held monetarily liable, as well as the party who brought content to the attention of others, to include the journalist involved.

Nowadays many publishers themselves are the creators of content on blogs and social platforms. User-created informational content, blogs and social networks on the other hand, create new opportunities for journalism, but may also constitute dangers as well.

Former BBC World Service social media editor David Cuen warns about information and potential news leads that you’ve come across in the Internet and the social sphere, saying “If it looks too good to be true, it probably is.” The BBC’s own College of Journalism (which can easily be found on the Internet) provides numerous good and specific bits of advice that pertain to contacts that have been made through the social media (for example concerning potential interview candidates). The BBC also has several “how to do this” types of texts and videos posted that could be useful to journalists. All you have to do is bang in the concept of “user generated content” or “UGC” into your search engine.

## 10. Varia

**a) Trade Secrets** – We’re not going to make a thorough excursion into this topic in this handbook, since the theme is a fairly complex one. One should be cautious about publishing material that looks as though it might contain trade secrets, particularly if the source of the possible trade secret leaves a shady impression. One possible definition of a trade secret can be found under paragraph 63, Section 1 of the Competition Act: “Information concerning the business activities of an undertaking, the communication of which to other persons is likely to harm the interests of such undertaking, above all, technical and financial information relating to know-how, information concerning the methodology of validation of expenditure, production secrets and processes, sources of supply, volumes of purchase and sales, market shares, clients and distributors, marketing plans, expenditure and price structures and sales strategy are deemed to be business secrets. Information subject to disclosure or disclosed to the public, decisions and precepts made by the Competition Authority and documents prepared by the Director General of the Competition Authority or any other official of the Competition Authority from which business secrets have been excluded are not deemed to be business secrets.”

**b) Refugees, Migrants and Migration** – The topic of refugees and migrants is a double-edged sword. Often features about migrants, refugees and the movement of people focus on statistics, since statistics are important for European audiences. Statistics can’t be ignored. Yet at the same time, we’re dealing with people and individuals. Human rights principles make us aware that the individual should be respected. Every person has his or her own story. Therefore one should – as the Ethical Journalism Network suggests in its five-point set of guidelines:

1. be precise, impartial and broad-based when doing reporting, and rely on facts;
2. know the law and use legally precise terminology when speaking or writing of migrants, refugees and asylum-seekers;
3. show humanity, but keep your emotions in check, and avoid easily labeling people as victims;
4. present many-sided perspectives;
5. refrain from the possible incitement of animosity, avoiding phrases like “hordes of refugees”.

### c) Of War, and of Working in War and Conflict Situations

**Concerning Times of War** – The responsibilities and activities of the media differ to some extent during war, compared to peacetime. In Sweden and Lithuania, handbooks have recently been issued for civilians with advice about how an ordinary person could or should behave in the event that the territory of her or his state is attacked. Informed persons in Estonia say that the question of how a journalist should act in time of war is substantially unregulated.

In time of war, the media can be expected to have many more direct contacts with the Ministry of Defense and other structures charged with keeping order.

Every newsroom could and ought to make preparations for war, even if such preparations will never be put to use. A preparatory plan ought to be kept handy, and rehearsals could be held on the basis of it periodically.

Where can we learn more about this topic? There are many conflict zones in our world – you just need to take an interest in finding out how working conditions change for journalists when war encroaches on their country. Literature on the subject could be procured. For example – ‘Reporting War: Journalism in Wartime’, by Stuart Allen and Barbie Zelizer, Routledge, 2004.

Censorship, disinformation, “kompromat” and propaganda are rife in times of war. Since deception is so prevalent in war, you need to maintain an even more critical mentality than otherwise. Precise use of language becomes more important than is the case ordinarily. The issues of maintaining objectivity versus being patriotic might enter the picture. Take into consideration that the social media (YouTube and the like) could turn out to be more useful than ever before. Yet you have to be more alert than usual when it comes to checking on the authenticity of sources of information.

Power outages may occur, and we maybe deprived of other services we’re used to during peacetime. Estonia might be cut off from the rest of the world in the sense of communication and even physically, so give some thought to alternative means of communication. One would need to improvise. The outside world might turn to journalists more frequently to try to find out what is going on in Estonia and possibly the other Baltic states.

It’s likely that under conditions of war, some rules and directives would be changed, if not the laws. Lists of activities that endanger security might be expanded. We would become more conscious of themes such as defending the interests of Estonia, and also of the ways in which those interests could be harmed, and of possible countermeasures.

**d) Working in War and Conflict zones** – Don’t forget the old reminder: “the truth is the first victim in time of war.” The International Federation of Journalists lists some important things to keep in mind in the third article of its Declaration of Principles on the Conduct of Journalists: “The journalist shall report only in accordance with facts of which he/she knows the origin. The journalist shall not suppress essential information or falsify documents.”

It is easy to become emotionally involved while in conflict zones. Don’t permit yourself to become mesmerized by the events of war. Remain neutral and express yourself clearly. You should always point it out when one of the fighting parties in an armed conflict obligates a journalist or a correspondent to move around embedded with a military unit.

**e) Terror Attacks** – Terror attacks are very often reported on live, accompanied by great danger to make journalistic mistakes, particularly in cases when coverage goes on for hours. The temptation may arise in mass violence situations to jump to premature conclusions and to speculate. This is an impulse that should be resisted. One should maintain a respectful attitude towards victims, and their stories should not be showcased beyond the need to report on the event objectively.

The Reuters agency is one of the media organizations that avoid using the phrase “terrorism”, recommending that one be more specific than this instead. One can use more specific terms, like “bomber”, “detonation of an explosive device”, “hijacker” or “hijacking”, “attacker” or “attacks”, “armed person”, or “armed persons”, etc. The subjects of news should be objectively described, placing emphasis on their actions, identities and backgrounds. The use of neutral terminology permits persons, organizations and governments to reach their own assessments, relying on facts.

**f) As Concerns Catastrophes** – much depends on whether a catastrophe (which is a somewhat subjective notion that shouldn’t be used lightly) has taken place at a distant location, or directly in our country, or somewhere in our area. One journalist should be assigned to stay at the telephone in the newsroom. If journalists or camera crews are on their way to the affected location, you should gather as much information as possible and forward it to colleagues working in the field. Communicating “too much” is better than forgetting to mention some important topic.

Every media organization should have a contact list of its employees close at hand, in order to inform people in leadership positions as well as the rest of the staff. This can be arranged so that every worker is assigned the task of contacting another colleague.

Making notes with paper and pencil maybe become necessary if the power goes out or if technology fails for other reasons. In a crisis situation, the media becomes even more of a public servant than it usually is.

In conditions of crisis, the media is a vitally important means of communication, informing the public of what is going on where, relaying information about who it is that some event or situation may affect, describing changes and answering the question “why”. The media as a communicative mechanism helps to save lives and functions as an intermediary. The media assist in giving advance warnings and warnings more generally, helping to lessen the extent of damage. Finally, the media also functions as a community forum that residents need to maintain cohesion, in order to share worries as well as solutions, and simply to provide support to one another during complicated times.

Every media organization could make use of a disaster readiness plan. Also: it might not be a bad idea to rehearse such a plan, once you’ve created one.

The media are exceptionally powerful. False information can cause big problems during a crisis situation and even cause fatalities. Avoiding rumors and checking facts becomes even much more important under crisis conditions than during the rest of the time.

