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**2<sup>nd</sup> EUROPEAN CONFERENCE OF JUDGES**

**“JUSTICE AND THE MEDIA”**

**National report**

**prepared by  
the delegation of Estonia**

## **1. Implementation of Recommendation Rec (2003) 13 on the provision of information through the media in relation to criminal proceedings**

The principles of this recommendation overlap with some articles of the procedural laws, but also with the code of ethics for the journalists and the strategies for public administration. Although precise analysis about the conformity between the recommendation and Estonian laws has not been made, it is clearly not in contradiction with Estonian laws and practice.

An Estonian official, Mr Peeter Sookruus, Head of Media and Copyright Department, Ministry of Culture, has taken part in the elaboration of this recommendation in the working-group called Steering Group on the Mass Media (CDMM).

## **2. Implementation of Recommendation Rec (2002) 2 on access to official documents**

By the time the Committee of Ministers of the Council of Europe adopted this recommendation, the Public Information Act (hereinafter: PIA) had already been in force for a year in Estonia. The experts' working group, which had elaborated the recommendation (Steering Committee for Human Rights or CDDH) continued to examine the enforcement of the principles of the recommendation. A very detailed questionnaire on national practices in terms of access to official documents was sent to the states. The Estonian expert in the CDDH was Ms Mai Hion, the Head of the Human Rights division of the Legal Department of the Ministry of Foreign Affairs.

In Estonia there are number of legislative acts on access to official documents. Article 44 of the Constitution stipulates that everyone has the right to freely obtain information disseminated for public use. All state agencies, local governments, and their officials have a duty to provide information about their activities, pursuant to procedure provided by law, to an Estonian citizen at his or her request, except information the disclosure of which is prohibited by law, and information intended exclusively for internal use. An Estonian citizen has the right to access information about himself held in state agencies and local governments and in state and local government archives, pursuant to procedure provided by law. This right may be restricted pursuant to law to protect the rights and freedoms of others or the confidentiality of a child's filiation, and in the interests of combating a criminal offence, apprehending a criminal offender, or ascertaining the truth in a criminal procedure.

The possible limitations to access to official documents in Estonia coincide in principle with those appearing in Recommendation Rec (2002)2 in principle IV, except that there is no limitation concerning the right to access official documents in relation with the economic, monetary and exchange rate policies of the state, which are public and accessible to everybody in the web pages of Ministry of Finance and Ministry of Economic Affairs. "Harm test" does not exist in Estonia. The grounds of classifying some information and limiting access to certain kinds of information are clearly set out in the law. Also a list of information that should be made public is stipulated in article 28 of the Public Information Act.

The Data Protection Inspectorate has concluded, that overall there are no substantial problems related to compliance with the PIA. The non-compliance with requests for information may occur in ca 15% of cases. The Data Protection Inspectorate established that there have been 5

breaches of the PIA where refusal to comply with a request for information was without legal ground.

### **3. National legislation on access to information, access by journalists to court hearings and judicial files, and the legal basis for responsibility on the part of the journalist**

#### **Access to Court Proceedings and Court Files**

Right to information is a substantially controversial one. The Constitution of the Republic of Estonia<sup>1</sup> protects simultaneously the right to the inviolability of private and family life (art 26), as well as the right to freely obtain information disseminated for public use (art 44). The protection of personal data and the disclosure of information are values limiting each other and one has to weigh the importance of these rights against each other.

In Estonia public access to the court information is regulated by the procedural laws as well as by Personal Data Protection Act and Public Information Act.

The court hearings in **civil and administrative** matters are public. A court may declare that a session or a part of it be held *in camera* in order to maintain a state or business secret, protect the private or family life of a person, maintain the confidentiality of messages or in the interests of a minor or the administration of justice (Code of Civil Procedure [CCivP] art 8, Code of Administrative Court Procedure [CACP] art 19).

The participants of the proceedings have a right to examine the court files and make copies of them (CCivP art 67). Other persons with legitimate interest have a right to examine the court records after the court's decision has entered into force. Access is denied when the matter was heard in a session held *in camera* (CCivP art 8 subsection 8). In the Supreme Court of Estonia the interested persons who are not participants in the proceedings are allowed to access the court files on the basis of written permission of the Chief Justice of the court or the Chairman of a chamber, who are entitled to either grant access or deny it.

In **criminal** cases, since 1 July 2004 a new Code of Criminal Procedure [CCrP] has entered into force and now the *accused person* has a right to examine his or her court file only through the medium of his or her defence counsel. In general, the accused person does not have a right to examine the materials of his or her criminal case before the end of pre-trial proceedings. After the completion of the pre-trial proceedings, a copy of the criminal file shall be given to the defendant (CCrP art 224). The accused person has a right to examine the report of procedural acts in pre-trial proceedings and the minutes of court sessions and to submit petitions or make comments for their amendment (CCrP art 34, 35).

The *victim or the civil defendant* can examine the criminal file after the completion of the pre-trial proceedings upon request (CCrP art 224).

Information concerning pre-trial proceedings shall be disclosed to the *public* only with the permission of and to the extent specified by the Prosecutor. The disclosure may not damage the interests of the Republic of Estonia, prejudice a criminal proceeding or induce crime, violate a business secret, jeopardise the inviolability of private and family life, discredit a person or

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<sup>1</sup>Available in English:

[http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0000&pg=1&tyyp=SITE\\_X&query=p%F5hiseadus&ptyyp=I&keel=en](http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0000&pg=1&tyyp=SITE_X&query=p%F5hiseadus&ptyyp=I&keel=en)

damage the interests of a minor (CCrP art 214).

**Access to court sessions; Television cameras in courtrooms and editing the press material**

Every person has the opportunity to observe and record court sessions, unless the court has declared that the court session or a part of it be held *in camera*, which can be done in order to protect a state or business secret, the private and family life of a person, in the interests of a minor, justice, a party to the court proceedings or a witness.

The Code of Criminal Procedure regulates public access to court sessions. The persons present at the court session may take written notes and make audio-recordings if this does not interfere with the court session. Other means for recording a court session may be used only with the permission of the court. If a court session is held *in camera*, the court may decide that written notes only may be taken (CCrP art-s 11-13).

The court (the chairman of the court hearing) can decide if cameras are allowed in the courtroom or not, but courts have no right to interrupt the editing of filmed material.

According to law there are restrictions on recording of court sessions:

Code of Criminal Procedure article 13:

(1) From the opening of a court session until the pronouncement of the court decision, the persons present in the courtroom may:

1) take written notes;

2) make audio-recordings if this does not interfere with the court session.

(2) Other means for recording a court session may be used only with the permission of the court.

(3) If a court session is held *in camera*, the court may decide that written notes only may be taken.

**Spokespersons in courts**

Some courts have spokespersons, but they are not judges. Press secretaries are spokespersons of courts. But judges may give interviews to journalists and they may write articles (for example critical articles about the functioning of the court system, etc). According to the Code of Ethics of Estonian Judges there are certain rules for judges: "a Judge does not exhibit himself/herself or his/her family in lifestyle magazines."<sup>2</sup>

**4. The relevant national case law on freedom of expression and protection of private life and human dignity**

The basis for all these issues is to be found in the Constitution of Estonia. Article 17 of the Constitution provides that no one's honour or good name shall be defamed. Article 26 establishes the inviolability of private and family life. At the same time, the constitution protects freedom of expression and provides that there is no censorship (article 45). The same article however provides that freedom of expression may be restricted by law to protect the honour and good name of others.

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<sup>2</sup> The Code of Ethics of the Estonian Judges. Accessed 29.01.2005. <http://www.just.ee/index.php3?cath=8486>, § 32.

Estonia, as a party to the European Convention on Human Rights, recognizes all the requirements set forth by the convention and the principles developed by the case law of the ECHR. Furthermore, they form an integral part of Estonian legal system and are used directly in the court decisions as binding sources of law<sup>3</sup>, the Supreme Court has also used and analysed recommendations of the Committee of Ministers of the Council of Europe.<sup>4</sup>

Today, in Estonia, criminal law protection of honour and good name does not exist anymore<sup>5</sup>, thus there is only civil law protection available. Prior to 1 September 2002, defamation and slander were considered as criminal offences. From that period, the case of Enno Tammer<sup>6</sup> illustrates the issues raised. Mr. Tammer, a journalist, was prosecuted for insulting Ms Laanaru, a public figure, in his article published in one of the biggest newspapers in Estonia. Mr Tammer was found guilty in all the three stages of proceedings in Estonia and he finally brought a case before the ECHR. The question raised was whether the value-judgments used in the article were offensive. The ECHR found that the use of the impugned terms in relation to Ms Laanaru's private life was not justified by considerations of public concern nor did they have a bearing of general importance. In particular, it had not been substantiated that her private life was among the issues that affected the public in April 1996. Mr Tammer's remarks could therefore hardly be regarded as serving the public interest. The court found that the penalty imposed by the Estonian courts (fine of 220 kroons, the equivalent of ten times the "daily income" rate) was also justified. Today, these issues are solved through civil cases where the moral damage can be claimed and compensated for. Article 1046 of Law of Obligations Act<sup>7</sup> deals with unlawfulness of damaging personal rights, whereby defamation of a person, *inter alia* by passing undue judgement, by the unjustified use of the name or image of the person, or by breaching the inviolability of the private life or another personality right of the person is unlawful unless otherwise provided by law. Upon the establishment of unlawfulness, the type of violation, the reason and motive for the violation and the gravity of the violation relative to the aim pursued thereby shall be taken into consideration. The violation of a personality right is not unlawful if the violation is justified considering other legal rights protected by law and the rights of third parties or public interests. In such a case, unlawfulness shall be established based on the comparative assessment of

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<sup>3</sup>See e.g. Case no 3-4-1-1-04 of the Constitutional Review Chamber (in english: <http://www.nc.ee/english/const/2004/3-4-1-1-2004.htm>)

<sup>4</sup>For example, in cases 3-3-1-10-03 and 3-3-1-11-03 the Court analysed Recommendation no 15 (2000) of 13<sup>th</sup> September 2000.

<sup>5</sup>In the old Criminal Code, defamation and insult were considered as criminal offences: § 129. Defamation: (1) Dissemination, knowingly, of false or embarrassing unfounded information about another person is punishable by a fine; (2) Defamation in print or by other means accessible by several persons, or in a petition or anonymous letter submitted to a state, non-profit or other organisation, is punishable by a fine or detention.

§ 130. Insult: Degradation of the honour or dignity of another person in an improper manner is punishable by a fine or detention.

The Criminal Code was repealed when the Penal Code entered into force on 1<sup>st</sup> of September 2002. Available in English

[http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30068K5&keel=en&pg=1&ptyyp=1&tyyp=SITE\\_X&query=karistusseadustik](http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30068K5&keel=en&pg=1&ptyyp=1&tyyp=SITE_X&query=karistusseadustik)

<sup>6</sup>The case was finally heard by the European Court of Human Rights. Application no 41205/98, final judgment on 4<sup>th</sup> of April 2001.

<sup>7</sup>Entered into force on 1.07.2002, available in English on the internet: [http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30085K2&pg=1&tyyp=SITE\\_X&query=v%F5la%F5igusseadus&ptyyp=1&keel=en](http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30085K2&pg=1&tyyp=SITE_X&query=v%F5la%F5igusseadus&ptyyp=1&keel=en)

different legal rights and interests protected by law.

In its case law, the Civil Chamber of the Supreme Court always considers whether the person is a public figure or not. For example, in the case 3-2-1-123-97 concerning Mr Kreitzberg, a politician, the court has noted that Mr Kreitzberg was a public figure and thus the public had a deeper interest in his activities and in the case of politician, information can be considered as insulting only when the information is based on false facts.

In the case of ordinary persons, the court has differentiated between publishing false facts and using insulting value-judgments (3-2-1-63-02). In the latter case, the court analyses whether the activities of a person have given reason to such value-judgments.

It has to be noted that most cases of libel and slander are solved before having recourse to a court.

There exist two independent non-governmental bodies: the Estonian Press Council (*Avaliku sõna nõukogu*)<sup>8</sup>, and the Press Council of Estonian Newspaper Association (*Pressinõukogu*)<sup>9</sup>, both of which discuss cases of journalists' misconduct. Both institutions give opinions of whether journalists have violated the code of ethics. They do not award damages.

### **Compensation for the victims of the violation of a person's reputation**

Compensation for moral and material damage is regulated in article 25 of the Constitution, whereby everyone has the right to compensation for moral and material damage caused by the unlawful action of any person. This provision is directly applicable. There is no more concrete regulation on affording moral damages.

The Supreme Court has given the following guidelines for assessing non-pecuniary damage: the amount of non-pecuniary damage afforded shows the court's valuation, whereby the court has taken into account the general principles of law, the level of general well-being of society and court practice.<sup>10</sup>

### **Rectification of inaccurate information**

There is no criminal liability for giving inaccurate information. Thus, the issue is only regulated in the Constitution and the Law of Obligations Act. According to article 1047 of the Law of Obligations, which regulates the disclosure of incorrect information, the violation of personality rights or interference with the economic or professional activities of a person by way of disclosure of incorrect information or by the incomplete or misleading disclosure of factual information concerning the person or the activities of the person is unlawful unless the person who discloses such information proves that, upon the disclosure thereof, the person was not aware and was not required to be aware that such information was incorrect or incomplete. The disclosure of defamatory facts concerning a person or facts that may adversely affect the economic situation of a person is deemed to be unlawful unless the person who discloses such facts proves that the facts are true. However, the disclosure of information or facts is not deemed to be unlawful if the person who discloses the information or facts or the person to whom such facts are disclosed has a legitimate interest in the disclosure and if the person who discloses the

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<sup>8</sup> Available in English on the internet: <http://www.asn.org.ee/english/index.html>

<sup>9</sup> Available in English on the internet: <http://www.eall.ee/pressinoukogu/index-eng.html>

<sup>10</sup> See judgments in cases no 3-2-1-105-01; 3-2-1-11-04 and 3-2-1-152-03.

information has checked the information or facts with a thoroughness which corresponds to the gravity of the potential violation. In the case of the disclosure of incorrect information, the victim may demand that the person who disclosed such information refute the information or publish a correction at the person's expense regardless of whether the disclosure of the information was unlawful or not.

It is a common practice to ask for rectification of inaccurate information besides claims of moral damage. Rectification is also a legal measure that can be recommended by *Avaliku sõna nõukogu* and *Pressinõukogu* during the hearing of a dispute.

## **5. Good practices implemented at national level with a view to improving relations between justice and the media**

### **Courts and media channels (internet, information services)**

- Internet is one important communication channel (media channel) for Estonian courts. In Estonia all court judgments and court rulings terminating the proceedings are published on the Internet when they have entered into force. For journalists it is important to get information very fast – Internet makes it possible and makes the information accessible in every part of the country.

Every court has an **Internet web page** displaying as well as court judgments information about the times of court hearings (court hearings diary), rules of the office of the court, and other public information.

- In some courts there are **press secretaries**, who deal with the external communication of the court. An important role of press secretaries is to write press releases and to give information to journalists and to cooperate with them. (For example all press releases of The Supreme Court of Estonia are published in the Baltic News Service.) It is good practice that in courts there are special officials, who deal with journalists' informational needs.
- (In some weekly and daily newspapers there are columns, where lawyers answer the readers' questions and where lawyers, sometimes judges also, write about different judicial topics in general.)

### **Justice and media**

In Estonia there is **The Code of Ethics of Estonian Press**.

The Code of Ethics gives instructions to journalists on how to behave in conflict situations:

- 1) When covering crimes, court cases and accidents, the journalist shall consider whether the identification of the parties involved is necessary and what suffering it may cause to them. Victims and juvenile offenders shall not be identified as a general rule;
- 2) Materials violating the privacy of an individual can only be disseminated if public interest outweighs privacy.