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## **ETHICAL JOURNALISM AND HUMAN RIGHTS\***

### **Issue discussion paper**

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## FOREWORD

The media play an enormously important role in the protection of human rights. They expose human rights violations and offer an arena for different voices to be heard in public discourse. Not without reason, media have been called the Fourth Estate – an essential addition to the powers of the executive, the legislature and the judiciary.

However, the power of the media can also be misused to the extent that the very functioning of democracy is threatened. Some media outlets have been turned into propaganda megaphones for those in power. Others have been used to incite xenophobic hatred and violence against minorities and other vulnerable groups of people.

It also happens that media unnecessarily and unfairly abuse the privacy and integrity of ordinary people through sheer carelessness and sensationalism and thereby cause considerable damage to them - for no good purpose at all.

As the phone hacking scandal in the United Kingdom showed, competitive pressures may encourage a culture of illegal and unethical activity in the newsroom. This serves no one, least of all shareholders and readers. This is why the media community should be encouraged to develop a system of effective self-regulation based on an agreed code of ethics.

It is obvious that freedom of expression – though an absolutely basic human right – is not without limits. The European Convention on Human Rights makes clear that restrictions may be necessary in the interest of, for instance, national security and public safety. However, the exceptions from the basic rule on everyone's right to freedom of expression must be prescribed by law, serve a legitimate interest and be necessary in a democracy.

The precise definition of such exceptions has been an issue in a number of applications to the European Court of Human Rights. Its rulings have clarified that limits to freedom of expression should only be accepted in narrowly defined, exceptional circumstances.

This is a logical interpretation of Article 10 of the Convention in line with the intention of its drafters. One reason for this approach is that censorship, restrictive laws and other measures to control media tend to have a chilling effect on the media community but also a negative impact on society as a whole, including for the whole spectrum of human rights.

The idea of media *self-regulation* springs out of the desire to encourage media structures themselves to develop ethics which would protect individuals or group interests from unacceptable abuse in the media – and thereby also demonstrate that state interventions are not necessary.

This Issue discussion paper explains that self-regulation could be seen as a solemn promise by quality-conscious journalists and media to correct their mistakes and to make themselves accountable to the public. It argues also that for this promise to be fulfilled, there needs to be self-restraint by government and the state in the control of media and the work of journalists.

The term *ethical journalism* is highly relevant in this context. Though reporters and editors are not megaphones for particular interests – not even of the causes of human rights defence – they can contribute to a better society through genuine professionalism.

Ethical journalism is defined in this paper as the manner in which reporters, editors and others provide commentary on the events that shape people's lives. It is rooted in moral values and has evolved hand in hand with human rights protection in Europe. In essence, ethical journalists serve the public's right to know. They are professional also in the sense that they seek the truth and resist the pressure to convey distortions, be they from media owners, business interests or political forces. These are the ethics which should be promoted.

The Issue discussion Paper has been written by Aidan White who has a rich background as a journalist and General Secretary of the International Federation of Journalists. The analyses and views in the paper are his own and based on his unique personal experience. In addition I would like to spell out the positions of my own Office in this important area:

- there should in all member states of the Council of Europe be constitutional support for freedom of expression. Limits to this freedom should be narrowly defined and reflected in law;
- there is a need to encourage a deeper discussion on how to promote ethical journalism, including in relation to Internet-based information;
- the media community should be encouraged to develop a system of effective self-regulation based on an agreed code of ethics and a mechanism to receive and respond to complaints, for instance through an ombudsman or media council;
- in order to assist efforts by the media to satisfy the public's right to know, governmental and local authorities should respond to queries from journalists. Laws on access to information from public bodies should be enacted, with narrowly defined exceptions for reasons of security, public welfare and individual integrity.

*Thomas Hammarberg*

## **SUMMARY**

Ethical journalism concerns the way in which reporters, editors and others provide commentary on the events that shape people's lives. It is rooted in moral values and has evolved hand in hand with human rights protection in Europe over 150 years. Today journalism and human rights intersect at a moment of remarkable and historical change as a result of globalisation and the explosion of digital media.

The aim of this chapter is to set out a framework for fresh discussion of the ethical challenges that create tension between human rights and journalism.

The first section highlights the close relationship between the ethics of journalism and human rights standards. It points out that journalists, at least as much as governments, have a vested interest in the defence and promotion of high standards of human rights.

Section two examines the spectacular advances made in digital media and new forms of communication, such as "networked journalism". At the same time the notion of journalism as a public good is under pressure and in many European countries the independence of existing public media is not secure. This is a challenging context which requires reflection and action from journalists and states, guided by human rights principles.

Section three focuses on a number of major legal restraints on journalism, and examines current state practice and the development of relevant human rights law, notably through the European Convention on Human Rights (ECHR) and the European Court of Human Rights' case law.

The fourth section deals with the practical means through which ethical journalism may materialise: codes of conduct for journalists and self-regulation. Codes reflect the aspirations of journalists to be responsible and accountable. However, they need to be complemented by detailed guidelines and training that should be developed by media professionals with the support of states. Also, self-regulation of the media is presented as a valuable means of resolving conflicts, protecting the independence of journalism, promoting ethical standards and reducing the risk of legal sanctions against journalists.

The final substantive section refers to a number of important initiatives that aim to promote actively ethical standards of journalism and the protection of human rights on international, European or national levels, and may serve as examples for further good practice.

## Introduction

In the mid-19th century, when Jean-Henri Dunant was crystallising his vision of humanity in times of war (embodied in the Red Cross and the Geneva Conventions), leading European editors were articulating ethical principles for their newspapers. A hundred years later, in the same year that the ECHR was adopted, the International Federation of Journalists agreed on the first international code of principles for the conduct of ethical journalism.

Today journalism and human rights once again intersect at a moment of remarkable and historical change as a result of globalisation and the explosion of digital media. It is, therefore, a good moment to develop a new narrative about the importance of ethical information and how European society is informed. In doing so we may also open the door to wider analysis of the ethical environment in which we live both as public and private citizens.

This chapter examines the tensions between the competing visions of human rights and ethical journalism. It does so through a critical prism, but it is not the intention to focus on differences between how rights are balanced, either in the newsroom or in the courtroom. Instead the aim is to embrace the positive relationship between these rights.

The objectives are two-fold, to:

- identify the practical steps needed to strengthen the conditions for the exercise of ethical journalism;
- raise awareness of the importance of ethical journalism and human rights protection and how, together, they can contribute to a better society.

Reporters and editors are not the mouthpiece of government, corporate power or even human rights defenders. At their best, journalists who aspire to tell stories based upon truth-telling, accuracy and fairness; who seek to minimise harm; and who make themselves accountable, define the essential elements of what we might call journalism as a public good.

Good journalism raises awareness of what is acceptable and unacceptable, and can remind us of moral responsibilities. It can reinforce our attachment to acceptable standards of behaviour and, in this sense, it is an ally of everyone striving for democracy and human rights protection.

## I. Human rights standards relevant for journalism

Human rights are enshrined in the treaties between states, particularly the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966) and the ECHR (1950), which guarantee the rights of all persons within the jurisdiction of the contracting parties. These rights are enshrined in law and in practice, as with the exercise of journalism, they are closely linked to the moral climate in which we live.

Journalists themselves have a vested interest in the defence and promotion of high standards of human rights, particularly the right to free expression under Article 19 of the UDHR and the ICCPR and Article 10 of the ECHR. The right to free expression also forms part of the Charter of Fundamental Rights of the European Union, in Article 11.

The case law related to free expression has been developed by the Strasbourg Court which has, over the years, provided important support in the fight for press freedom, particularly in relation to violations of Article 10 of the ECHR which provides the right to freedom of expression subject to certain restrictions that are “in accordance with law” and “necessary in a democratic society”. This right includes the freedom to hold opinions, and to receive and impart information and ideas.

But this is a qualified right and may be overridden by decisions taken in the interest of national security, prevention of disorder or crime, or protection of an individual's reputation.

It is these potential limitations that worry journalists, who object to laws that provide unacceptably broad definitions of what constitutes “security” or “disorder” or “reputation”, which can limit free speech, increase self-censorship and reduce legitimate scrutiny of public affairs.

Of course, human rights are sometimes conflicting. The need to balance competing rights provides potential traps for lawmakers and journalists alike. Article 10 of the ECHR, for instance, has to be balanced with Article 8, which sets out what has become the definition of the right to privacy in stating that “Everyone has the right to respect for his private and family life, his home and his correspondence.”

When freedom of speech comes into conflict with other rights, such as the individual right to privacy, there is no easy way to make judgments, either in the courtroom or the newsroom, without giving one priority over the other.

In order to be able to make judgments that are morally and legally defensible, journalists must be competent, well trained, informed and, above all, able to operate freely in conditions which encourage them to act ethically. However, none of this is easily achieved in the pressurised and turbulent world in which the media work.

## **II. The new media landscape and the changes for Journalism**

Today journalism is in the midst of crisis. The traditional media, particularly newspapers, suffer not just from the effects of the global economic crisis but also the impact of structural and market changes which have reduced the profitability of media enterprises. In response to these changing fortunes, severe cuts have been imposed in editorial departments that have weakened the quality of journalism. Indeed, many media employers have sacrificed reporting standards in pursuit of commercial objectives, overriding ethical values with journalism that is populist, sensational and biased.<sup>1</sup>

In journalism the pain of this change is palpable. Many thousands of jobs have been eliminated, investment in training and investigative journalism has been cut, and there is precious little time, if any, for research, checking and original investigation.

In these conditions minorities are rendered invisible, their voices unheard; racist and xenophobic messages of unscrupulous politicians are increasingly in play; privacy is breached; there is scant analysis of issues like migration, religious and cultural differences; and little attempt to relieve the anxieties of societies troubled by economic and social dislocation.

The democratic consequences of this are clear: scrutiny of power, particularly at local and regional level, is much reduced and human rights protection is weakened.

In the midst of an information revolution we enjoy far greater opportunities for free expression and knowledge sharing; however, there are still concerns about the use and abuse of information.

New forms of communication and online services provide fresh challenges. So-called “citizen journalism” and the growth of “networked journalism” legitimise the use of amateurs in a weakened media industry and also pose new questions about the reliability and integrity of the information they provide.

Increasingly, there is pressure on states to intervene to support the media and responsible journalism, either by providing public money and subsidies to support failing independent media and the continuation of public interest journalism or to reinforce rules about media ownership in favour of transparency and pluralism.

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<sup>1</sup> See: OECD (2010), *News in the Internet age: New trends in news publishing*, OECD Publishing, Paris and IFJ (2010), “Journalism: In touch with the future”, Brussels.



Within journalism there are also new debates about reinforcing quality and objectivity within public service media and not least about guaranteeing editorial independence. In some countries such media, particularly broadcasting, are seen as instruments of propaganda. Confidence in public media is very low. This was acknowledged at the ministerial meeting of the Council of Europe on media held in Iceland in May 2009 which called for more editorial freedom and increased investment in new technologies.<sup>2</sup>

While journalists worry about their future and policymakers wrestle with questions of policy, the febrile atmosphere in which the media now work, defined by a 24-hour multi-platform news market, reinforces uncertainty about its role in supplying information.

But even though the Internet has opened up access to a superabundance of information, people still turn to trusted media brands and serious journalism for what they need most – fact-based information, analysis and context presented in digestible and bite-sized chunks. The WikiLeaks disclosures at the end of 2010, when distinguished journalists with five of the world's leading newspapers<sup>3</sup> were asked to filter thousands of detailed documents leaked from diplomatic sources in the United States of America, proved beyond doubt the continuing and vital role of editorial professionals in an open information environment.

Ethical journalism is needed even more at a time when people are increasingly overwhelmed by a glut of information, much of it impenetrable and most of which they cannot trust. People struggle to identify what is truthful and trustworthy. They are exposed to torrents of information that can be trivial, unreliable and irresponsible. There are fears over privacy and the loss of anonymity. Many fear the consequences for democracy of intrusive technologies in the hands of powerful political and corporate forces whose interests are not to embrace the positive potential of free expression, but to restrict dissent.

For journalists, governments and the public at large the task is to balance and protect rights while embracing the positive values of change, but how is that to be done when the tendency is towards fractured, anonymous communications?

In the search for an answer it is useful to recall that the right to freedom of expression, as set out in Article 10 of the ECHR, covers a multitude of forms of expression. Journalists see their role in the context of press freedom, a form of expression that supports the discovery of truth. It is embedded in discussion in which different opinions are not only expressed, but are tested in open debate.

Freedom of expression in the widest sense does not support the discovery of truth. It gives everyone a right, within narrowly defined legal limits, to say what they want, how they want and when they want. They have the right to be decent or indecent, honest or dishonest, fair or biased. It is the right to be, in the words of philosopher Onora O'Neill, "self-regarding".<sup>4</sup>

Professionalism in journalism is conversely "other regarding". It is framed by the ethics of journalistic mission – truth-telling, independence and responsibility to others. Ethical journalism is about constrained expression, not free expression. It is about professionals who impose self-restraint based upon respect for others and attachment to ethical principles.

But to do this with any conviction journalists must be able to work free from pressure and intimidation. For this reason journalists, as much as governments, have a vested interest in the defence and promotion of high standards of human rights.

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<sup>2</sup> 1st Council of Europe Conference of Ministers Responsible for Media and New Communications Services. "A new notion of media?" (28 to 29 May 2009, Reykjavik, Iceland). See: [http://www.coe.int/t/dghl/standardsetting/media/doc/ConfMin\\_Address\\_Estonia\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/doc/ConfMin_Address_Estonia_en.pdf).

<sup>3</sup> *The New York Times*, *The Guardian*, *El País*, *Le Monde* and *Der Spiegel* –

<sup>4</sup> See: O'Neill O. "A right to offend?", *The Guardian*, 13 February 2006 <http://www.guardian.co.uk/media/2006/feb/13/mondaymediasection7>

In many European countries the independence of media is not secure and journalists are routinely put under pressure. In some, journalists are victims of violence and impunity; in others they suffer forms of judicial intimidation.

Over the past 20 years, for instance, more than 2,000 journalists have been targeted and murdered worldwide. Some of Europe's most distinguished writers and journalists have been killed, many of them victims of political enemies when alive and victims of governmental indifference in death, with evidence of widespread impunity.<sup>5</sup>

Journalists are also hampered by limits on their freedom imposed by undue political or corporate influence or by the application of law. This stifling atmosphere not only leads to self-censorship, it can intimidate and silence the sources upon which journalism depends.

This worrying climate has been reflected in recent discussions over media regulation, notably in the controversy over changes to media law in Hungary during 2010 when the government established a politically driven national media council to monitor and regulate journalism. This prompted an unprecedented intervention by the European Commission and led to calls from the European Parliament for media policies to be linked to enhanced co-operation to protect human rights between organisations such as the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE) and the European Union (EU).<sup>6</sup> The Council of Europe Commissioner of Human Rights questioned whether the legal changes were consistent with the ECHR.<sup>7</sup>

### **III. Free Expression under threat: legal restraints on journalism**

#### **3.1 Access to information and people's right to know**

In order to combat corruption and to monitor public affairs journalists need access to useful and reliable information. Despite a global flourishing of freedom of information over the past decade as dozens of countries have enacted laws guaranteeing people's right to know, the battle for open government has only been partly won.

Around 70 nations, covering more than half the world's population, have freedom of information laws. In Europe, the tradition of openness is a long one, stretching back to 1766 when Sweden established the right of citizens to ask for and receive any document from their rulers. But some countries in Europe do not uphold this tradition.

A 2006 survey by the Open Society Justice Initiative found some of Europe's new democracies in Armenia, Bulgaria and Romania significantly outperforming some older democracies in this area. The survey found particularly poor legislation in Austria, Spain and Italy.<sup>8</sup>

Some European countries have yet to act convincingly to rectify this and among those that have, new battles have to be fought to keep them on track. Often political and official institutions construct bureaucratic obstacles to transparency including heavy fees or a reduction in the

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<sup>5</sup> See: [www.newssafety.org](http://www.newssafety.org) and [www.ifj.org](http://www.ifj.org) for the reports of killings of journalists in Europe in 2010. The International News Safety Institute and its supporters, including the International Federation of Journalists and groups like Reporters Without Borders, regularly monitor and record the victims of violence in media and the failure of state authorities to bring the killers and those who ordered the killings to justice.

<sup>6</sup> See: Resolution of the European Parliament 10 March 2011 on media law in Hungary, [www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0094+0+DOC+XML+V0//EN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0094+0+DOC+XML+V0//EN).

<sup>7</sup> See: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1751289&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>.

<sup>8</sup> See: David Banisar (2006), "Freedom of information around the world 2006. A global survey of access to government information laws." [www.privacyinternational.org/foi/foisurvey2006.pdf](http://www.privacyinternational.org/foi/foisurvey2006.pdf).

number of staff available to deal with requests, leading to lengthy delays in providing requested information.<sup>9</sup>

At the same time, concerns about security and terrorism have led to a narrowing of available information with far more exceptions to what may be released. Such restrictions are spreading through international institutions such as the EU.

In 2008 the Council of Europe adopted the world's first treaty on access to information, the European Convention on Access to Official Documents, but this only applies to a narrow range of public bodies and, to the dismay of journalists, does not impose limits on the time taken to respond to requests.<sup>10</sup>

### **3.2 Defamation**

Equally troubling is governments' use of powerful defamation laws to punish legitimate journalism. These laws are often used to protect public figures from criticism even though human rights law requires people in public life to tolerate more scrutiny than ordinary people.

In Europe there is also the spectacle of celebrities and corporate leaders leaving their own countries to seek jurisdictions where their libel claims are more likely to succeed – so-called libel tourism. In March 2011 a grotesque example of this practice arose when a Ukrainian oligarch took his dispute with a Ukrainian newspaper about matters in the Ukraine to the British High Court.<sup>11</sup> He thought he could get a favourable verdict and generous compensation in a jurisdiction that provided media and journalists with less protection. Happily, the judge threw the case out but this sort of action shows how weak legislative protection of journalists, such as that in the United Kingdom, can have the effect of silencing legitimate journalism and investigative reporting in countries like the Ukraine.

The threat of prosecution has a deterrent effect on watchdog journalism, not just in the Ukraine, but across Europe. In 43 of the 56 participating states of the OSCE, journalists can go to prison for defamation.<sup>12</sup> Most western European countries retain criminal defamation on their statute books, even if the laws are rarely applied. In some countries previously under communist rule (Armenia, Bosnia and Herzegovina, Estonia, Georgia and Ukraine) such laws have been abolished, possibly because these countries have experience of how they were used to stifle dissent in their recent history.<sup>13</sup>

According to figures from the Dutch government, between January 2002 and June 2004 more than 100 people were incarcerated in the Netherlands for defamation, libel and insult. In 2005 five of the six freedom of expression cases decided by the Strasbourg Court involving western European states concerned defamation laws and the Court found a violation of free expression in four of the five. Journalists have also been sentenced for defamation in Belgium, Denmark, Malta, Finland, Italy, Norway and Switzerland. Since January 2005 at least 22 people in Europe and central Asia have been imprisoned for defamation.<sup>14</sup>

The OSCE Representative on Freedom of the Media has recommended that offences against "honour and dignity" be decriminalised and instead dealt with in civil law courts. The mere existence of criminal defamation laws could intimidate journalists and cause unfortunate self-censorship.

<sup>9</sup> BBC World Service, "The Right to Know", 16 August 2008.

<sup>10</sup> See: <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>.

<sup>11</sup> See: <http://humanrightshouse.org/Articles/16005.html>

<sup>12</sup> The 13 participating states in the OSCE region who, as per 11 July 2011, had fully decriminalised defamation are Armenia, Bosnia and Herzegovina, Cyprus, Estonia, Georgia, Kyrgyzstan, Moldova, Romania, Ireland, United Kingdom, Ukraine, Montenegro and the USA.

<sup>13</sup> See: Regular Report to the Permanent Council of the OSCE by Dunja Mijatović, 16 December 2010.

<sup>14</sup> See: <http://www.article19.org/pages/en/defamation.html>.

The Parliamentary Assembly of the Council of Europe has stated that “prison sentences for defamation should be abolished without further delay”.<sup>15</sup> This decision was taken on the basis of a report which also suggested that public figures could not ask for more protection from defamation laws than ordinary citizens.<sup>16</sup>

The margin for criticism of politicians must in fact be broader, the Strasbourg Court has established. It has stated that politicians have to accept that their words and actions are open to a higher degree of scrutiny from both journalists and the public at large.<sup>17</sup>

Decriminalising defamation would not protect the media from civil law charges. This raises the problem of the very high damages being accorded in some cases. If the damages are not in proportion to the actual injury, and if they are awarded against individual journalists, this again might have a “chilling effect”.

Related to defamation, but not of the person, is the problem of insult laws and religion. For many journalists, blasphemy laws are particularly difficult to navigate, especially when they provide special protection for the core beliefs of a particular religion, but do not extend the same immunity to other beliefs, including ideas based upon a secular view of the world.

Blasphemy laws exist in most European countries (they have been repealed in Sweden and Spain) but application of the law is rare, and convictions are rarer still. In many countries where there was, or still is, a strong link between religion and the state, the law only protects one religion.

Threats to unwary journalists remain. In Ireland, for instance, an amendment to the country’s Defamation Bill in 2009 provides for the offence of blasphemy if a person publishes material which is “grossly abusive or insulting to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion.”

### **3.3 Right to privacy**

Perhaps one of the most challenging tasks for journalists and human rights lawyers is to balance the competing rights of privacy and freedom of expression. Privacy and media freedom facilitate the enjoyment of other rights such as free expression, the right to act according to conscience and freedom of association.

Article 8 of the ECHR determines that every human being has a right to respect for private and family life and it has been called upon in many thousands of court cases, defending unfairly sacked employees, adulterers and victims of sexual harassment. However, in some countries, often where democratic traditions are weak, invasions of privacy routinely intersect with violations of other fundamental rights and freedoms including media freedom.<sup>18</sup>

Although journalists understand well the need for privacy, they draw the line at confidentiality when it is used to limit accountability or to draw a curtain around hypocrisy and misconduct in public affairs.

It is of concern to the media when too rigorous application of privacy rules make it close to impossible for them to publish anything touching on the fundamental aspects of a person’s private

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<sup>15</sup> “Towards decriminalisation of defamation”, Resolution 1577 (2007)  
<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/eres1577.htm>

<sup>16</sup> “Towards decriminalisation of defamation”, Report by Committee on Legal Affairs and Human Rights, Doc. 11305, published on 25 June 2007, Rapporteur: Mr Jaume Bartumeu Cassany, Andorra, Socialist Group. <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc07/EDOC11305.htm>

<sup>17</sup> Lingens v. Austria, Appl no. 9815/82, judgment of 8 July 1986, para 42.

<sup>18</sup> A key global organisation campaigning for privacy is Privacy International. See: [www.privacyinternational.org](http://www.privacyinternational.org).

life such as their family life, sexual behaviour and orientation, or medical conditions, even where they believe that publication is in the public interest.

However, media concerns count for little when irresponsible journalists take liberties with the people they serve. The outrage in the United Kingdom that engulfed the global media network News Corporation over illegal phone hacking by its journalists, leading to the closure of one of Europe's best-selling newspapers, *News of the World*, provides a perfect illustration of how quickly reckless and intrusive journalism can damage public confidence.

The scandal was a devastating blow to Rupert Murdoch, the owner of News Corporation, who for decades has exercised powerful influence on political life in Britain. His ambitions to expand his company's ownership of the television market foundered dramatically in July 2011 amidst evidence that his newspapers had illegally hacked telephones, including that of a murdered teenager, and on other occasions bribed police for information. British parliamentarians, who have long lived in fear of his power, called on Murdoch and his son to appear before a parliamentary committee investigating the scandal. Advertisers withdrew their support. Share prices tumbled. The country's Press Complaints Commission (PCC) was humiliated and had to admit it had been deceived by the company.

For the first time in a generation the British press found itself at the heart of a crisis that centred on the unethical and illegal actions of journalists. Reporters, encouraged by circulation-hungry managers, had been hacking into private communications in the search for exclusive stories on the personal lives of the rich and famous. It was not only at *News of the World*. According to *The New York Times* other British tabloids were also using the "dark arts" of hacking and "blagging" (deception and wilful misrepresentation) to get their stories.<sup>19</sup>

The reports of such behaviour were not new. In 2006 two men, including a *News of the World* reporter, were jailed for hacking into the telephones of members of the British royal family, but while the public may have turned a blind eye to journalists stalking the publicity-seeking celebrities of show business or sport, the mood changed suddenly when it was revealed by *The Guardian* that in 2002 the *News of the World* had hacked the telephone of 13-year-old murder victim Milly Dowler, giving her family false hope that their daughter was still alive. It emerged that other murder victims and family members of ordinary people killed by terrorist bombings may also have had their telephones hacked. The company's claims and solemn testimony to parliament and press regulators that the original phone hacking had been the work of "one rogue reporter" were exposed as fanciful. The predatory culture of intrusion that was uncovered caused widespread revulsion and led to an unprecedented backlash against irresponsible media management and unethical journalism, sparking a new and profound debate about regulation of the press.

Although phone hacking and a corrupt relationship between the Murdoch media and senior police officers which had helped cover up the story for years was only exposed thanks to some courageous journalism, particularly on the part of *The Guardian*, parliamentarians united in their demands for reform. The government announced a public inquiry into media conduct and for the first time in half a century the possibility of legal regulation of the press was thrust on to the policy agenda.

There are dangers in this. Public outrage is legitimate when the ethics of journalism are abandoned in pursuit of money and political influence, and when the press exercises power without responsibility, but it is no basis for curtailing media freedom.

Certainly, there is something to be said for curtailing the power of media oligarchies – of which News Corporation is a prime example – but that needs to be done in the name of pluralism, freedom and respect for privacy.

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<sup>19</sup> Becker B. and Somaiya R. "In Court, Suggestions of Hacking Beyond The News of the World", *The New York Times*, 20 July 2011  
[http://www.nytimes.com/2011/07/21/world/europe/21london.html?\\_r=1&partner=rss&emc=rss](http://www.nytimes.com/2011/07/21/world/europe/21london.html?_r=1&partner=rss&emc=rss)

The Murdoch case, disgraceful though it is, should not be used as an excuse to impose heavy media regulation which would inhibit the capacity of investigative journalism. In most European countries good journalism plays a critical role in scrutiny of people in power. But good journalism is not the same as journalism that makes government or politicians happy. Indeed, it is the opposite.

In the United Kingdom, editors and journalists have been forced to recognise that public anger will not be easily quelled by assurances that ethical journalism can be trusted to balance respect for privacy with the media's need for legitimate investigation, scrutiny and disclosure. Journalists need to demonstrate more attachment to privacy rights. In all cases where privacy is in danger of violation, a journalist must consider the nature of someone's place in society, their reputation and their position in public life.

They must also be committed to transparency and fairness in their methods and they need to engage in new thinking about new forms of regulation that will restore public confidence and at the same time avoid the threat of political interference.

Such an approach could encourage states to exempt the media for acts of journalism which might otherwise be controversial, but which are carried out in the course of reporting where the organisation has committed to observe privacy standards. The key commitment must be, in the words of the code of conduct of the National Union of Journalists in the United Kingdom, to do nothing to intrude into anybody's private life, grief or distress unless justified by overriding consideration of the public interest.

### **3.4 Protection of sources in the context of state security**

Although almost 100 countries, in one way or another, have recognised in law the right of journalists to protect people who provide them with information, there remains increasing pressure on reporters to reveal the names of whistle-blowers and confidential sources.

Governments in the United Kingdom, Germany, Italy, the Netherlands and Denmark, for instance, have been among those condemned for a range of offences, including tapping the telephones of journalists, planting spies in newsrooms, and prosecuting editors and reporters to gather information about journalists, their work and their sources.

Many of these incidents in recent years have arisen in the overheated atmosphere of counter-terrorism, under the cloak of security, raising fears that there is a weakening of civil liberties underway, particularly those of journalists.

Since the groundbreaking verdict of 1996 in the *Goodwin* case<sup>20</sup> when the Strasbourg Court ruled that under Article 10, protection of sources was a right guaranteed in European human rights law, the Court has repeatedly reaffirmed the importance of this right. In a memorable phrase (in paragraph 39), the Court said that an order to disclose a source had a "potentially chilling effect" on the exercise of press freedom and continued:

Without such protection sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected.

The Court's recognition of this right is critical at a time when journalists are under pressure from police and the authorities to hand over computer files, photographs, film or notebooks, containing information about what they have witnessed or details of contacts.

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<sup>20</sup> *Goodwin v. the United Kingdom*, Appl. No. 17488/90, judgment of 27 March 1996.

When courts and public authorities ask journalists to hand over material or information that may reveal a source of information, most reporters will instinctively demur but occasions arise when journalists come to a different ethical conclusion and their conscience compels them to cooperate with the authorities, as some did by giving evidence at the International Criminal Tribunal for the former Yugoslavia in The Hague.

Generally, the courts do not give reporters an absolute right to protect their sources and in recent years there have been numerous cases, some in the name of counter-terrorism, where the authorities have applied pressure, both open and covert, to obtain the names of those who gave confidential material to journalists.

Many journalists recognise the need in certain circumstances for exceptions to the principle of protection of sources, but they argue these should be applied in strictly controlled circumstances. In Belgium, for instance, the law provides that only a judge can decide to ask a journalist to disclose a source and then only when it is clear that:

- there is a serious threat to the physical integrity of the source;
- the information sought is crucial to prevent any harm to the physical integrity of people;
- the information required cannot be obtained by any other means.

Additionally, because freedom of expression is a human right, the courts may insist on a working definition of who is a journalist, if they are to have an exemption in law. If so, any definition of journalist must be as broad as possible. Journalists may be primary beneficiaries of legal protection of journalistic sources, but this protection should be extended to any person taking part in the journalistic process (including bloggers) where they show attachment to ethical principles.

### **3.5 *Hate speech***

The horrors of genocide and ethnic cleansing in Africa and the Balkans during the 1990s reveal just how ruthless politicians and unscrupulous academics, aided and abetted by willing journalists, can wage successful campaigns of hatred and violence based upon twisted theories of superiority.

However, sensationalist news reporting is not restricted to war and social conflict. Unprofessional and biased journalism in covering migration, religious freedom and inter-cultural relations in Europe can also do damage. At a time when economic and social uncertainty fuels anxiety in communities in many parts of Europe, some journalists are susceptible to manipulation by media-savvy political extremists who wish to foment racism and xenophobia.

The ethical dilemmas for journalists in this difficult climate bring into sharp relief the role of the media in confronting extremism and protecting vulnerable communities from bigotry and intolerance. But the tricky editorial judgments that journalists have to make are not helped when the battle against discrimination leads to the prohibition of speech or journalism just because it offends the sensitivities of one group or another. We have to guard against the use of the law to stifle criticism of people or beliefs.

Hate speech laws are a legitimate antidote to racism, incitement to hostility, discrimination or violence but in some countries these laws go beyond protection from objective harm and prohibit any statements which are perceived as offensive. Well-intentioned though they are, laws such as those which forbid denial of historical truths or the wearing of offensive insignia may not be the most effective ways to combat racism and discrimination.

It can be argued that free expression and the application of ethical journalism can be part of a state's strategy for challenging prejudice, isolating extremists and promoting tolerance. Many journalists would say, for instance, that those who deny the Holocaust should be exposed to public ridicule rather than being imprisoned, as the history of this era is too well documented for it to be seriously questioned. Another problem with "denial laws" is their potential to proliferate. In

October 2006, a draft law prohibiting denial of the 1915 Armenian genocide was adopted by the French National Assembly.

Although the Strasbourg Court famously concluded that free speech extends also to statements which “offend, shock or disturb”,<sup>21</sup> some countries maintain laws that invite conflict between judges and journalists. In France, for instance, the *Loi sur la liberté de la presse* prohibits “attacks against honour” due to ethnicity, nationality, race or religion. This concern is well intentioned but such a provision can be misused to stifle criticism of a religious conviction or practice, even if that criticism is not motivated by hatred and is the expression of a sincerely held belief.

Meanwhile, Turkey prosecuted the writer Orhan Pamuk for “public denigration of Turkishness” on the basis of Article 301 of the Criminal Code after he referred to the killing of one million Armenians and 30,000 Kurds. The trial was halted in 2006 on technical grounds. Turkish journalist and writer Hrant Dink was convicted in 2005 for his statements in an article which concerned, *inter alia*, the issue of the Armenian genocide. He received threats from nationalists, who viewed him as a traitor, and he was murdered in January 2007. In September 2008 another Turkish writer, Temel Demirer, was charged under the same law after speaking out about Dink’s murder.

This process is both ludicrous and dangerous. It raises the prospect of different states pursuing their own version of history by demanding that writers, journalists and all citizens keep to a script that is approved by the government. It opens the way to subjugating freedom of expression to nationalist agendas all over the world.

The Strasbourg Court has been careful to define a line between genuine incitement to violence and press freedom but in times of tension and public anxiety this is not certain. The Court ruled in October 2008, for instance, on a case against a French political cartoonist who was convicted in 2002 over a cartoon portraying the 11 September 2001 terrorist attack on the World Trade Center in New York. The caption parodied an advertising slogan: “We have all dreamed of it... Hamas did it.[sic]”<sup>22</sup>

The drawing was published two days after the attack and, unsurprisingly, triggered a storm of protest. In its next issue, the magazine published reactions, including a contrite message from the cartoonist himself, who said his intention was not to add to the hurt of the victims, but only to communicate his own anti-Americanism.

By any standards the cartoon was insensitive, even gratuitously offensive, but as most journalists acknowledge, that is what cartooning is about. Nevertheless, the cartoonist and his publisher were found guilty of condoning terrorism under France’s Press Act of 1881 and fined.

When the case was taken to Strasbourg, the Court rejected the appeal, finding that the cartoonist glorified the violent destruction of the United States of America, and diminished the dignity of the victims. They said his conviction by the French court was “necessary in a democratic society.”

Journalists fear that judgments such as this may open the door to more prosecutions and convictions over media content that is regarded as offensive, rather than posing a serious and genuine threat to people and society.

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<sup>21</sup> *Handyside v. the United Kingdom*, Appl. No. 5493/72, judgment of 7 December 1976.

<sup>22</sup> See: Dirk Voorhoof, <http://merlin.obs.coe.int/iris/2009/2/article1.en.html>, on the judgment by the European Court of Human Rights (Fifth Section), case of *Leroy v. France*, Appl. No. 36109/03, 2 October 2008.



## IV. Ethical journalism – the arguments

The persistent voice of journalism across Europe clamours for a media policy which supports ethical conduct and responsible use of information, but not for legal constraints.

However, to give their arguments more weight, media professionals must do more to put their own house in order. They need to isolate and expose those who betray the principles and standards of ethical journalism and they need to re-establish journalism as a force for dialogue, debate and democratic pluralism. To do that with conviction, journalists need to regulate their work in a credible manner.

Ethical reporting does not require a legal framework – although journalists who practise it do need the law to guarantee their rights to work freely – but to build credibility and public confidence journalism must adhere to codes of conduct and norms of ethical behaviour.

### 4.1 *Codes of conduct*

Most codes of conduct for journalists are aspirational and a statement of commitment from journalists to be responsible and accountable. In this way they provide protection for media owners and journalists from criticism and legal action.

There are more than 400 codes of one form or another in existence, most of which reflect a consistent set of common values and principles of journalism. Generally, these address accuracy and respect for the truth; impartiality and editorial independence; fair comment; respect for others; and correction of errors.<sup>23</sup>

Codes are the guarantor of value-based journalism and allegiance to a code is a benchmark for quality. They are also an important way of defining who is and who is not a journalist. Today that distinction is important not least because of the many new players in the world of information and the confusion over what rights they have in comparison to traditional journalists.

However, a code is only a starting point. Detailed guidelines and training are also needed to illustrate how ethical journalism works in practice. In this way good journalists are able, for example, to avoid hate speech, sexual stereotyping, or discrimination in reporting on minorities, and they have standards to follow when identifying and resolving conflicts of interest.

But even with sound codes and models of good practice to follow there can be no consistent body of ethical or quality journalism unless the principles of media freedom are defined in law, protected by the state and upheld in practice. Creating an ethical rights environment for journalism is, therefore, a duty of government as well as a responsibility of media practitioners.

### 4.2 *Self-regulation*

Self-regulation is a solemn promise by quality-conscious journalists and media to correct their mistakes and to make themselves accountable. But for this promise to be fulfilled there must be two conditions: journalists and media have to behave ethically, and governments should not interfere in the media or use legal means to monitor and control the work of journalists.

For their part, across Europe, journalists' groups are mobilising around the notion of journalism as a public good, with programmes and campaigns recently launched in Germany, the United Kingdom, France, Russia, Italy and beyond. There is also fresh discussion about how to promote

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<sup>23</sup> The most extensive collection of available codes of conduct has been assembled by Media Accountability Systems and can be found at [www.rjionline.org/mas/codes-of-ethics.php](http://www.rjionline.org/mas/codes-of-ethics.php). A list of 50 codes in 30 European countries has been assembled by Ethicnet at <http://ethicnet.uta.fi/>. There is also a list developed in conjunction with the IFJ by The MediaWise Trust, [www.mediawise.org.uk](http://www.mediawise.org.uk).

the responsible use of information, including the need for new guidelines and codes for bloggers and others.

Much of the debate, for instance in the United Kingdom in the wake of the phone hacking scandal, is on how to strengthen existing forms of media self-regulation to make them more relevant and credible.

In 2011, the weakness of the UK's PCC was exposed when it admitted that senior executives at Rupert Murdoch's *News of the World* had lied about the phone hacking affair. Though *The Guardian* had claimed that illegal phone hacking was widespread, the PCC twice investigated and dismissed these claims, accepting at face value *News of the World's* assertion that "one rogue journalist" was responsible. The PCC even rebuked *The Guardian* when it reported fresh evidence of phone hacking, leading *The Guardian's* editor to resign from his position on the PCC.

In 2009 the European Federation of Journalists carried out its own investigation into the affair and issued a report which criticised the PCC for falling short of the standards expected of a self-regulating body. A committee of the British Parliament also criticised the PCC, saying its investigation into phone hacking was "simplistic, surprising, a further failure of self-regulation."<sup>24</sup>

In early 2011, yet more revelations led to the arrest of journalists and executives at *News of the World*. Within weeks the paper had closed, its owner issued a public apology, a government inquiry was launched and the Chair of the PCC, Baroness Buscombe, resigned.

Although there is little appetite for state regulation of the media across the British press and the political class, a debate has been launched which will almost certainly lead to a robust new structure for monitoring the press. The principle of self-regulation may survive, but there are compelling arguments for change and to give any new authority extra powers to investigate the press and enforce its judgments.

This review comes at a time when it is increasingly clear across Europe that many structures for monitoring and judging media content are hardly fit for purpose in the multimedia age. The days when press and television media content can be sensibly divided into separate and viable jurisdictions, one relying on the goodwill of press owners, the other, part of a state administration underpinned by law, may be coming to a close.

Today information often appears in a single stream of content available simultaneously on different platforms – video, audio, online and printed text. News and information flows from a converged multimedia environment, but much of it is regulated by laws and structures from a bygone age.

Reworking notions of media accountability invites a new vision of media regulation, one which goes beyond bureaucratic frameworks for policing journalism, and which encourages self-regulation as a positive force for setting high standards and defending them. This may be achieved by adapting existing press councils or state media commissions, but less complex forms of peer review will continue, such as the use of readers' editors or ombudsmen, or through professional journals and the systematic monitoring and reporting on media by non-governmental organisations and human rights bodies.

New systems may benefit from legal guarantees, but unless they are cast in the mould of self-rule and provide an independent voice for civil society, they will constantly face the danger of undue political or corporate influence.

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<sup>24</sup> "Press standards, privacy and libel", Report by Culture, Media and Sport Committee, Prepared 24 February 2010. See: <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcmums/362/36203.htm>

One key question is that of funding. Who pays for media accountability? In some countries, such as Germany and Sweden, taxpayers do pay some of the costs, but the media also pay their share. Any budgetary support from the state for self-regulation must be provided according to principles which ensure transparency and accountability, and which provide safeguards against governmental or political interference.

Media accountability, in whatever form it comes, must balance the rights of the individual and the community and the rights of journalists and the press. But it must not be self-serving. It is vital that press councils act on behalf of the public and the profession and are not, as with the PCC in the United Kingdom, perceived to be there to shield media owners from criticism or ethical scrutiny. Effective self-regulation must include rules for transparency on political affiliation and ownership of media.

Journalism itself is a necessary part of the means by which power is held to account, but on its own, even with the best architecture for self-regulation, it is not enough. The fabric of accountability also requires an independent judiciary and trustworthy lawmakers as well as statutory watchdogs, auditors, ombudsmen and privacy authorities, all able to play a role in making society transparent and sensitive to rights.

Many press councils and media commissions are set up by the media themselves. But to build public confidence they must provide a set of credible rules under which people featured in the news media can complain if something is inaccurate, intrusive or unfair. In short, a media accountability system needs to:

- mediate complaints from the public in a transparent service, free of charge, and provide remedies for unethical conduct by journalists;
- help build trust between journalists and the public to ensure that the media can resist political and economic pressure;
- protect journalistic independence and media freedom in society;
- ensure the right of the public to be informed;
- support social and professional conditions that will enable journalists to serve their public better;
- foster better understanding within society at all levels about the role played by independent journalism in democratic life;
- support journalists in their work and encourage professional solidarity.

This is not a manifesto for policing. It is about mediation, advocacy and education and seeking opportunities for fresh dialogue within society about the media and the need to support ethical journalism.

## **V. Building support for rights and ethics**

Building the professional base of European journalism is a constant, permanent process. There are a number of current initiatives and activities that give a practical dimension to a new debate about ethical behaviour in journalism and the role of media in rights protection.

### **Ethical Journalism Initiative (EJI)**

Launched by the International Federation of Journalists in 2005, this extensive programme of support for training in ethical journalism and debate about the future of journalism has been launched across the Middle East and Asia. In 2010, country-specific programmes were established in Azerbaijan and Russia.<sup>25</sup>

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<sup>25</sup> See: [www.ethicaljournalisminitiative.org](http://www.ethicaljournalisminitiative.org).

In 2011, a European EJI programme for Lithuania, Slovakia and Greece was launched in co-operation with ARTICLE 19 and the Media Diversity Institute. Studies are being prepared on ethical reporting of defamation of religion, migration and diversity. An EJI study and report on self-regulation and media accountability will be published in 2011, covering all major European countries.

### **European standards of media ethics**

In 2011, following a two-year project, the United Nations Educational, Scientific and Cultural Organization published a book examining media self-regulation in south-eastern Europe and Turkey. Involved were the OSCE, the Alliance of Independent Press Councils of Europe and the South East European Network for Professionalization of Media.<sup>26</sup>

### **Charter of Rome**

Italian publishers and journalists issued an industry Code of Conduct in 2008 to promote ethical reporting of refugee and immigration issues. This initiative followed protests by the United Nations High Commission for Refugees over racist media coverage of a multiple murder. The code sets out ethical guidelines and is part of a programme that includes awareness raising, training and the creation of an independent observatory monitoring media coverage of discrimination.<sup>27</sup>

### **Media4Diversity**

A 30-country study on media and diversity in EU member states and Iceland, Norway and Liechtenstein was published in 2009. It provided specific examples of good professional practice and aimed at improving quality of journalism in reporting on issues of discrimination.<sup>28</sup>

### **Camden Principles**

Human rights groups and media supporters are seeking endorsement for the Camden Principles on Freedom of Expression and Equality, adopted in 2009. The Camden Principles represent a progressive interpretation of international law and standards and were compiled by a high-level group of policymakers, academics and experts in humanitarian rights law, journalism and public affairs.<sup>29</sup>

## **VI. Conclusions**

In redefining ethical journalism as a public good, we introduce a new narrative about the importance of ethical information and how European society is informed. In this sense the revival of the notion of mission in journalism is to be encouraged. But successful revival will not happen automatically. In order to rekindle a sense of mission and commitment to core principles of journalism it is necessary to improve the conditions – social, professional and legal – in which journalists work.

Many journalists already work in precarious conditions and they often find themselves further constrained by laws which weaken protection of sources or restrict scrutiny of public figures and government.

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<sup>26</sup> UNESCO (2011), *Professional journalism and self-regulation: New media, old dilemmas in South East Europe and Turkey*, UNESCO, Paris.

<sup>27</sup> The Code of Conduct is a protocol to the Charter of Duties of Journalists (La Carta dei doveri del giornalista).

<sup>28</sup> European Commission (2009), *Media4Diversity: Taking the pulse of diversity in the media*, Office for Official Publications of the European Communities, Luxembourg. Prepared by IFJ, Internews Europe and the Media Diversity Institute.

<sup>29</sup> Published April 2009 by ARTICLE 19.

Particularly in times of concern over security and terrorism, there is a need to protect the rights of people to be properly informed against the imposition of rules that may be intended to protect communities, but can be used to reinforce secrecy and undermine civil liberties.

Journalists and the media seek a liberating environment, buttressed by media policy that nourishes transparency, encourages professional training, ethical conduct and self-regulation, and promotes innovation and fresh thinking about the future of the media.

Although the Internet and social networks bring the audience into play as never before and encourage more information activism, this is not a substitute for ethical journalism which respects the rights of others. Democracy and pluralism require information professionals with skills and competence and whose work is shaped by a framework of values.

The information challenge, therefore, is not just about journalism or the people who work in the media. It concerns new dialogues within journalism and involving media practitioners, civil society and policymakers to promote new forms of discourse and humanitarian values in all sections of society.

In this work governments have a key role to play. Reform and renewal of the public information space require fresh thinking on media policy. Many governments will be cautious, certainly after the experience of Hungary in 2010 and its controversial reform of media law, but some general principles for media policy can be suggested. Governments should:

- provide constitutional support for freedom of expression with narrowly defined limits reflected in law;
- review legislation affecting the media and journalism and repeal outdated and unused statutes that have the potential to intimidate, silence or otherwise stifle legitimate expression in the public interest;
- enact viable and useful rules on access to information from public bodies with limited and narrowly defined exceptions;
- decriminalise defamation and avoid punitive fines in civil cases;
- review funding and technical assistance programmes for media to support pluralism and diversity and structures for self-regulation but do so without compromising editorial independence; and
- strengthen and update systems of media accountability and reinforce principles of self-regulation in an integrated and open media environment.

In all of this the aim is to create a modern vision of journalism, one that suits the age. Such a vision would revive the notion of mission in journalism, and appeal to idealism and dedication to principles that nourish democracy and respect for human rights, not just in the media but across the whole of society.