



# Media reporting: facts, nothing but facts?

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**Media reporting: facts, nothing but facts?**

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# Media reporting: facts, nothing but facts?

**Anette Alén-Savikko, Ernesto Apa, Marco Bassini, Francisco Javier Cabrera Blázquez, Ingrid Cunningham, Christina Etteldorf, Agnès Granchet, Beata Klimkiewicz, Ronan Ó Fathaigh, Juraj Polák, Tony Prosser, Andrei Richter and Nathalie Rodriguez**





# Foreword

*“Archaeology is the search for facts, not truth. If it's truth you're looking for, Dr. Tyree's philosophy class is right down the hall.”* This quote from Steven Spielberg's film “Indiana Jones and the Last Crusade” could well summarise a philosophical controversy that remains unsolved today: the objectivity of truth. Indeed, truth is an abstract concept difficult to define and certainly tainted with subjectivity. On the other hand, facts are objective, concrete, and can be described accurately. My truth may not be your truth, but we cannot argue about which day is today.

A free press is fundamental for the exercise of freedom of information. Writing almost a hundred years ago about the role of a newspaper, Manchester Guardian editor CP Scott stated that *“[N]either in what it gives, nor in what it does not give, nor in the mode of presentation must the unclouded face of truth suffer wrong. Comment is free, but facts are sacred.”* Certainly, the moment freedom of comment defiles the sacrosanctity of facts, it becomes simply misinformation, or “fake news”, if one chooses to use this catchy term.

But simply presenting facts does not suffice. Paraphrasing a sentence that we often hear in police movies, information should be based not simply on facts, but on all relevant facts, and on nothing but facts. Just as a witness giving evidence in a court case must provide all relevant information to the case without introducing, let's say, “alternative facts” that confuse the matter at hand, so too must we expect the mass media to show us the full, unaltered, unabridged picture in news and current affairs programmes. However, owners and editors of media outlets may, in a concrete case, feel the urge to choose and present a story in a way that promotes a certain political agenda or suits certain interests. Facts can be misrepresented, twisted or simply ignored for all sorts of reasons. But one thing is clear: the moment information does not provide the full, unaltered, unabridged picture, it becomes mere propaganda.

Truth, fact, expression, information. Whatever we may call it, this basic human need for separating the wheat from the chaff remains a fascinating topic.

That is why we have decided to produce this *IRIS Special*, which provides an overview of how the principles of accuracy, objectivity and fairness in news and current affairs reporting are regulated at European and national level, as well as how they are applied by European media organisations. Also building on a comprehensive paper produced by the European Platform of Regulatory Authorities (EPRA),<sup>1</sup> it contains individual chapters dedicated to several European countries drafted by national experts. I would like to thank (in alphabetical order): Anette Alén-Savikko, Ernesto Apa, Marco Bassini, Francisco Javier Cabrera Blázquez, Ingrid Cunningham, Christina Etteldorf, Agnès Granchet, Beata Klimkiewicz, Juraj Polák, Tony Prosser, Andrei Richter, and Nathalie Rodriguez.

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<sup>1</sup> <https://www.epra.org/attachments/vienna-plenary-1-news-in-digital-age-the-role-of-regulators-epra-background-document>.

Special recognition goes to Ronan Ó Fathaigh from our partner organisation IViR, who not only wrote the introduction, the chapters on European standards and policy, and the conclusion, but who also coordinated the research for the whole publication.

Strasbourg, July 2018

Maja Cappello

IRIS Coordinator

Head of the Department for Legal Information

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## Executive Summary

The purpose of this IRIS *Special* is to examine the principles of accuracy, objectivity and fairness in news and current affairs reporting by European media organisations. The issue is explored from a number of perspectives, including from that of media organisations themselves, the Council of Europe, member states, and judicial and regulatory bodies. Thus, the IRIS *Special* will attempt to set out the current regulatory framework in the Council of Europe, which is aimed at ensuring accuracy, objectivity and fairness in news and current affairs reporting.

The preliminary questions that must be asked when examining this issue are (a) why is it important to examine the principles of accuracy, objectivity and fairness, (b) why focus on news and current affairs, and (c) why focus on media organisations.

These questions are addressed in **Part 1** of this IRIS *Special*, where Chapter 1 is devoted to setting out some of the issues that are explored in the country chapters, and the legal and policy issues which are examined throughout the publication. Next, Chapter 2 examines Council of Europe law relating to accuracy, objectivity and fairness in the reporting of news and current affairs by media organisations – in particular the Convention for the Protection of Human Rights and Fundamental Freedoms. Chapter 3 then provides an overview of the current European standards and policies on accuracy, objectivity and fairness in news and current affairs, including in respect of Council of Europe bodies such as the Committee of Ministers and the Parliamentary Assembly, as well as other international bodies and media and journalist organisations.

Following these opening chapters, **Part 2** contains eleven country reports (Chapters 4-14) from a selection of Council of Europe member states. The purpose of these country reports is to explore a number of questions.

Firstly, how do the main public and commercial broadcasters view the issue of accuracy, objectivity and fairness in news and current affairs – and in particular, what mechanisms do they have in place to ensure accuracy, objectivity and fairness?

Secondly, how do the main newspaper organisations view the issue of accuracy, objectivity and fairness in news and current affairs reporting – and in particular, what mechanisms do they have in place to ensure accuracy, objectivity and fairness?

Thirdly, how do the main online media publications view the issue of accuracy, objectivity and fairness in news and current affairs – and in particular, what mechanisms do they have in place to ensure accuracy, objectivity and fairness?

Lastly, each country report will describe the regulatory framework, including legislation, case law, regulatory codes, and regulatory enforcement that impact upon the



issue of accuracy, objectivity and fairness in news and current affairs reporting by these media organisations.

The selection of member states is not exhaustive, and does not seek to be representative of the 47 member states of the Council of Europe. Rather, the selection attempts to strike a fair balance between larger and smaller member states, and in respect of geographic location. Thus, the larger member states included are Germany (DE), Spain (ES), France (FR), the United Kingdom (GB), Italy (IT), Poland (PL), and the Russian Federation (RU). In addition, Finland (FI), Ireland (IE), the Netherlands (NL), and Slovakia (SK) are also included.

While there is divergence in the approaches adopted in the countries examined, there are substantial and well-developed regulatory and self-regulatory frameworks applicable to broadcast, print, and indeed online news media, to ensure accuracy, objectivity and fairness. Indeed, it also came to the fore how media organisations themselves also place great importance on these principles, and how they implement ethics codes and complaint mechanisms which are linked to building trust among their viewers, readers and subscribers.

Lastly, **Part 3** contains two chapters, with Chapter 15 providing an overview and objective discussion of the findings from the country reports, and the final Chapter 16 concluding with the findings of the IRIS Special as a whole.



# 1. Introduction

Ronan Ó Fathaigh, Institute for Information Law (IViR), University of Amsterdam

## 1.1. Accuracy, objectivity and fairness in news and current affairs coverage

The preliminary questions that must be asked when examining the principles of accuracy, objectivity and fairness in news and current affairs reporting by European media organisation are (a) why is it important to examine the principles of accuracy, objectivity and fairness, (b) why focus on news and current affairs, and (c) why focus on media organisations.

The reason for focusing on accuracy, objectivity and fairness is that media organisations themselves, including some of the largest journalist organisations and media organisations, seem to attach great importance to these principles. For example, one of the largest journalist organisations in the world, the International Federation of Journalists (which has over 600,000 members worldwide), considers that the “first duty” of a journalist is respect for truth; while a journalist shall report only in accordance with facts of which he/she knows the origin.<sup>2</sup> Similarly, the European Broadcasting Union, with 73 broadcasting organisations members in 56 countries, includes accuracy, impartiality, and fairness among its four Editorial Principles.<sup>3</sup> In particular, “Correct facts and figures are provided with accurate background information;” and “... in our reporting we are fair and honest, and conscious and respectful of differing viewpoints and opinions.”<sup>4</sup> Individual media organisations take a similar view: for example, the first “absolute” for Reuters journalists is to “always hold accuracy sacrosanct,”<sup>5</sup> and Reuters journalists must “always strive for balance and freedom from bias.”<sup>6</sup> Similarly, ProSiebenSat.1 Group, one of the largest media groups in Europe, requires that all its journalists and editors “must follow” the Principles on the Conduct of Journalists of the International Federation of

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<sup>2</sup> International Federation of Journalists, IFJ Declaration of Principles on the Conduct of Journalists, Adopted by 1954 World Congress of the International Federation of Journalists - Amended by the 1986 World Congress, <http://www.ifj.org/about-ifj/ifj-code-of-principles/>.

<sup>3</sup> European Broadcasting Union, Editorial Principles, [https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Editorial%20Principles\\_EN.pdf](https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Editorial%20Principles_EN.pdf).

<sup>4</sup> European Broadcasting Union, Editorial Principles, op. cit..

<sup>5</sup> Reuters, Handbook of Journalism, The 10 Absolutes of Reuters Journalism, April 2008, [http://handbook.reuters.com/index.php?title=Standards\\_and\\_Values](http://handbook.reuters.com/index.php?title=Standards_and_Values).

<sup>6</sup> Reuters, Handbook of Journalism, op. cit.



Journalists in their reporting.<sup>7</sup> In this regard, this IRIS *Special* will examine how media organisations throughout the member states of the Council of Europe view these principles, and seek to adhere to them.

Secondly, the focus of this publication is on news and current affairs coverage that concerns issues of public interest. This concept has been elaborated upon by the European Court of Human Rights, which treats news reporting and current affairs coverage as subject to the highest protection under the right to freedom of expression where it concerns “matters of public interest”<sup>8</sup> and “matters of legitimate public concern.”<sup>9</sup> A further reason for examining news and current affairs is that for some media regulators, the majority of decisions relate to fairness, objectivity and impartiality in news and current affairs content,<sup>10</sup> while according to the European Broadcasting Union, news and current affairs comprised the largest proportion of public service media’s television output in 2017.<sup>11</sup> Given the importance of news and current affairs reporting, this IRIS *Special* will also examine how the Council of Europe, member states and judicial and regulatory bodies approach the issue of accuracy, objectivity and fairness in news and current affairs.

Thirdly, this IRIS *Special* mainly concerns media organisations. While there is considerable research and debate currently taking place concerning online platforms and disinformation online,<sup>12</sup> it still seems to be the case that in many Council of Europe member states, broadcasters and newspapers (including their online versions) are a main source of news and current affairs coverage. For example, in one of the largest markets in the Council of Europe area – Germany – the Reuters Institute Digital News Report 2017 suggests that social media as a source of news actually declined in 2017, with “only 7%” of German respondents saying that social media was their “main source of news”. Germans continue “to get their news from traditional media, with television still preferred.”<sup>13</sup> Similarly, in France, social media as a source of news also declined during 2017,<sup>14</sup> while the top-three sources of news online are newspaper websites – namely *20Minutes.fr*, *LeMonde.fr*, and *LeFigaro.fr*. Furthermore, public broadcasters have a large presence on social media, such as *BBC News*, with 22.1 million followers on Twitter; so too do commercial broadcasters such as TF1, with 5.1 million followers on Twitter and 3.8 million followers on Facebook. Newspapers such as the *Daily Mail* have 14.7 million

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<sup>7</sup> ProSiebenSat.1 Group, Code of Conduct, 2017, [http://www.prosiebensat1.com/uploads/2017/01/25/Code%20of%20Compliance\\_2017\\_en.pdf](http://www.prosiebensat1.com/uploads/2017/01/25/Code%20of%20Compliance_2017_en.pdf).

<sup>8</sup> *Kurski v. Poland*, App. no. 26115/10, 5 July 2016, par. 52, <http://hudoc.echr.coe.int/eng/?i=001-164462>.

<sup>9</sup> *Kurski v. Poland*, op. cit. par. 53,.

<sup>10</sup> Broadcasting Authority of Ireland (BAI), Annual Report 2016, p. 44, <http://www.bai.ie/en/download/132450/>.

<sup>11</sup> European Broadcasting Union, Legal Focus: PSM Remit Principles for the Digital Media Age, 19 December 2017, p. 13, <https://www.ebu.ch/publications/psm-remit-principles-for-the-digital-media-age>.

<sup>12</sup> See, for example, Wardle C. and Derakhshan H., Information Disorder: Toward an interdisciplinary framework for research and policymaking, Council of Europe report DGI(2017)09, 27 September 2017, <https://rm.coe.int/information-disorder-report-november-2017/1680764666>; and European Commission, A multi-dimensional approach to disinformation, Report of the independent High level Group on fake news and online disinformation, March 2018, [http://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=50271](http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=50271).

<sup>13</sup> Newman N. with Fletcher R., Kalogeropoulos A., Levy D. A. L. and Kleis Nielsen R., Reuters Institute Digital News Report 2017, p. 69, [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web\\_0.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web_0.pdf).

<sup>14</sup> Reuters Institute Digital News Report 2017, op. cit. p. 11.





followers on Facebook. Accordingly, this IRIS *Special* seeks to add to the current discussion by examining how media organisations themselves approach the issues of accuracy, objectivity and fairness in news and current affairs reporting, given their continued importance as a main source of news.

Having set out the main questions underpinning this IRIS *Special*, it is proposed to briefly set out some of the issues that aim to be explored in the country reports, and the legal and policy issues which will be examined.

## 1.2. Broadcast media and news and current affairs coverage

The first issue is how the main public and commercial broadcasters view the issue of accuracy, objectivity and fairness in news and current affairs, and in particular what mechanisms they have in place to ensure accuracy, objectivity and fairness. It seems that some broadcasters link the guarantee of accuracy, objectivity and fairness with the aim of gaining the trust of viewers. For example, the BBC states that “trust is the foundation of the BBC; we are independent, impartial and honest” and committed to “achieving the highest standards of due accuracy and impartiality”.<sup>15</sup> Similarly, Ireland’s national radio and television broadcaster, RTÉ, states that “trust is the cornerstone of RTÉ: we seek to be honest, reliable, authoritative, impartial and independent of vested interests.”<sup>16</sup> Broadening this to the European Broadcasting Union, a similar sentiment exists – namely, that “trust underpins our existence” with impartiality, fairness and accuracy being among its Editorial Principles.<sup>17</sup> Of course, it must be recognised that Council of Europe member states impose on commercial and public broadcasters legislative rules governing accuracy, objectivity and fairness, and there have been recent developments regarding these issues in Iceland,<sup>18</sup> Ireland,<sup>19</sup> the Czech Republic,<sup>20</sup> Italy,<sup>21</sup> Romania,<sup>22</sup> Moldova,<sup>23</sup> Austria,<sup>24</sup> and Luxembourg.<sup>25</sup> Nonetheless, it seems that broadcasters link accuracy,

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<sup>15</sup> BBC Code of Conduct, 2017,

<sup>16</sup> RTÉ Journalism Guidelines, Editorial Principles, Revised September 2014, p. 4, <https://static.rasset.ie/documents/about/rte-journalism-guidelines-2014.pdf>.

<sup>17</sup> European Broadcasting Union, Public Service Values: Editorial Principles and Guidelines, 22 August 2014, <https://www.ebu.ch/contents/publications/public-service-values-editorial.html>.

<sup>18</sup> Magnúsdóttir H. L., “Decision on broadcaster’s coverage of political parties during election” IRIS 2017-10/27, <http://merlin.obs.coe.int/iris/2017/10/article23.en.html>.

<sup>19</sup> Ó Fathaigh R., “Decision on fairness and impartially rules for television documentaries” IRIS 2017-6/22, <http://merlin.obs.coe.int/iris/2017/6/article22.en.html>.

<sup>20</sup> Fučík J., “Broadcasting regulator issued notice of violation of law for Czech TV” IRIS 2017-3/8, <http://merlin.obs.coe.int/iris/2017/3/article8.en.html>.

<sup>21</sup> Di Giorgi F. and Baccaro L., “The Guidelines of Italian regulatory Authority (AGCOM) about “hate speech”, IRIS 2017-1/24, <http://merlin.obs.coe.int/iris/2017/1/article24.en.html>.

<sup>22</sup> Cojocariu E., “Audiovisual rules for the 2016 parliamentary elections”, IRIS 2016-10/25, <http://merlin.obs.coe.int/iris/2016/10/article25.en.html>.

<sup>23</sup> Richter A., “Sanctions against Russian broadcasts”, IRIS 2015-5/24, <http://merlin.obs.coe.int/iris/2015/5/article24.en.html>.

<sup>24</sup> Matzneller P., “BKS Clears ORF of Breaching Objectivity Requirement in Gambling Addiction Report”, IRIS 2012-6/7, <http://merlin.obs.coe.int/iris/2012/6/article7.en.html>.



objectivity and fairness with viewer trust, and it will be examined in the country reports whether this principle holds true for print and online media.

The second issue is how broadcasters make themselves accountable to viewers to ensure accuracy, objectivity and fairness. Notably, this principle of accountability is also included in broadcaster editorial codes, and one of the main instruments of accountability is the use of mechanisms for “correcting mistakes”.<sup>26</sup> In this regard, broadcasters have implemented complaints procedures (such as RTÉ’s Complaints Process<sup>27</sup>), and have also put in place right-to-correction or right-of-reply procedures (such as TV3’s “Right of Reply”).<sup>28</sup> As such, Chapter 2 and Chapter 3 (as well as the country reports themselves) will explore the mechanisms in place to correct inaccuracies, allow corrections and rectifications, and afford a broader right of reply.

The next issue is the regulatory framework, which includes current legislation, case law, codes, and regulatory enforcement and which aims to ensure accuracy, objectivity and fairness in news and current affairs reporting. Notably, for certain broadcast media regulators, such as the Broadcast Authority of Ireland (BAI), in 2016, as “in common with previous years,” the majority of complaints related to “fairness, objectivity and impartiality in news and current affairs content.”<sup>29</sup> Accordingly, the role of media regulators will also be explored in the country reports, and the role of accuracy, objectivity and fairness rules within regulatory complaints mechanisms.

### 1.3. Print media and news and current affairs coverage

As with broadcast media, the *IRIS Special* also seeks to examine how newspaper organisations view the issue of accuracy, objectivity and fairness in news and current affairs reporting, and in particular what mechanisms they have in place to ensure accuracy, objectivity and fairness. For example, newspapers also seem to link these issues to the aim of building trust with readers – the *Guardian’s* Editorial Code, for example, states that its “most important currency is trust,”<sup>30</sup> while one of the Editorial Principles of *The Irish Times* is that “news shall be as accurate and as comprehensive as is practicable and be presented fairly; comment and opinion shall be informed and responsible, and shall be identifiable from fact.”<sup>31</sup>

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<sup>25</sup> Cole M. D. & Weinand J., “ALIA imposes a warning on RTL to report accurately and truthfully”, *IRIS* 2017-3/25, <http://merlin.obs.coe.int/iris/2017/3/article25.en.html>.

<sup>26</sup> European Broadcasting Union, *Empowering Society: A Declaration on the Core Values of Public Service Media*, [https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Empowering-Society\\_EN.pdf](https://www.ebu.ch/files/live/sites/ebu/files/Publications/EBU-Empowering-Society_EN.pdf).

<sup>27</sup> RTÉ, RTÉ’s Complaints Process, <http://www.rte.ie/about/en/information-and-feedback/complaints/2012/0222/291660-complaints-procedure/>.

<sup>28</sup> TV3, Right of Reply, [http://www.tv3.ie/right\\_of\\_reply.php](http://www.tv3.ie/right_of_reply.php).

<sup>29</sup> Broadcasting Authority of Ireland (BAI), *Annual Report 2016*, p. 44, <http://www.bai.ie/en/download/132450/>.

<sup>30</sup> The *Guardian’s* Editorial Code, <https://www.theguardian.com/info/2015/aug/05/the-guardians-editorial-code>.

<sup>31</sup> The *Irish Times*, Principles of The *Irish Times*, <https://www.irishtimes.com/about-us/the-irish-times-trust#irishtimes>.



The second issue is how newspapers seek to make themselves accountable to readers by means such as complaints and right-of-reply procedures. For example, newspapers such as the *Financial Times* have an editorial Complaints Commissioner,<sup>32</sup> while the *Guardian* has a readers' editor.<sup>33</sup> Indeed, in January 2018, the Editorial Complaints Commissioner of the *Financial Times* published its 10-page adjudication on a complaint regarding the accuracy of an online *Financial Times* article.<sup>34</sup> Accordingly, the question of whether such accountability mechanisms are widespread will also be explored.

Building upon this question of individual newspaper accountability, the next issue to be explored is the regulatory framework that exists in the form of self-regulatory mechanisms, and legal regulation to ensure accuracy, objectivity and fairness in news and current affairs coverage. For example, in the UK, the Independent Press Standards Organisation regulates over 1,500 print publications,<sup>35</sup> processing over 14,000 complaints in 2016 alone.<sup>36</sup> Notably, for some regulatory bodies, the majority of complaints concern accuracy.<sup>37</sup>

## 1.4. Online media and news and current affairs coverage

Lastly, how do online media publications view the issue of accuracy, objectivity and fairness in news and current affairs – in particular, what mechanisms do they have in place to ensure accuracy, objectivity and fairness? For example, the online-only news publication *TheJournal.ie*, which is a main source of online news in Ireland,<sup>38</sup> is a member of the Press Council of Ireland,<sup>39</sup> and also has a Correction and Report Content procedure.<sup>40</sup> Furthermore, online-only news publications (for example, *The*

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<sup>32</sup> The Financial Times, FT Editorial Code, <https://aboutus.ft.com/en-gb/ft-editorial-code/>.

<sup>33</sup> The Guardian, How to make a complaint about Guardian or Observer content, <https://www.theguardian.com/info/2014/nov/20/review-panel>.

<sup>34</sup> Financial Times Limited, Adjudication by Greg Callus Editorial Complaints Commissioner, 22 January 2018, Peter Cheung, No breach, Clause 1.1, <https://aboutus.ft.com/en-gb/ft-editorial-code/>.

<sup>35</sup> Independent Press Standards Organisation, <https://www.ipso.co.uk/>.

<sup>36</sup> Independent Press Standards Organisation, Annual Report 2016, p. 9, [https://www.ipso.co.uk/media/1468/ar\\_2016\\_aug17.pdf](https://www.ipso.co.uk/media/1468/ar_2016_aug17.pdf).

<sup>37</sup> Press Council of Ireland, Annual Report 2016, p. 9, [http://www.presscouncil.ie/\\_fileupload/Press%20Council%20Annual%20Report%202016.pdf](http://www.presscouncil.ie/_fileupload/Press%20Council%20Annual%20Report%202016.pdf).

<sup>38</sup> Newman N. et al., Reuters Institute Digital News Report 2017, p. 76, [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web\\_0.pdf?utm\\_source=digitalnewsreport.org&utm\\_medium=referral](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web_0.pdf?utm_source=digitalnewsreport.org&utm_medium=referral).

<sup>39</sup> Press Council of Ireland, Online Only News Publications, <http://www.presscouncil.ie/member-publications/web-based-publications>.

<sup>40</sup> TheJournal.ie, Report Content, <http://www.thejournal.ie/report-content/>.



*Independent.co.uk*) have a code of editorial conduct,<sup>41</sup> while other ( such as *BuzzFeed News*) also have a standards and ethics guide for their journalists.<sup>42</sup>

The second issue is how online media publications seek to make themselves accountable to readers, such as by means of complaints and right-of-reply procedures. For example, press councils also regulate online publications – the UK’s Independent Press Standards Organisation (IPSO), for instance, oversees more than 1,100 online publications.<sup>43</sup> UK online publications are also subject to the Editors’ Code of Practice. Furthermore, online-only news publications prompted 15 complaints to the Press Council of Ireland,<sup>44</sup> whereas 154 publications by newspapers’ print and online versions lead to complaints,<sup>45</sup> and 51.2% of which concerned truth and accuracy. Moreover, in 2016, the UK’s IPSO received 1,104 complaints concerning the online-only *Mail Online*, with 381 rejected, 52 resolved, five not upheld and eight upheld.<sup>46</sup> Accordingly, the country reports will explore the extent to which regulatory mechanisms are applicable to online news publications. The final issue to be examined is the regulatory framework contained within current legislation and case law, which aims to ensure accuracy, objectivity and fairness in news and current affairs reporting by online media. The country reports will also seek to capture this framework, and highlight some of the case law governing this issue,<sup>47</sup> and see how these issues are being dealt with at national level.

## 1.5. Conclusion

These brief introductory remarks serve to highlight some of the issues that will be explored in the subsequent chapters. They should also serve as a helpful backdrop, as the following chapters delve more deeply into the legal and policy aspects, before moving on to the specific regulatory frameworks that various member states have been implementing.

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<sup>41</sup> The Independent, Code of Editorial Conduct, <http://www.independent.co.uk/service/code-of-conduct-a6184241.html>.

<sup>42</sup> BuzzFeed News, Standards and Ethics Guide, [https://www.buzzfeed.com/shani/the-buzzfeed-editorial-standards-and-ethics-guide?utm\\_term=.lp4wW1kbr#.covnB2Jwx](https://www.buzzfeed.com/shani/the-buzzfeed-editorial-standards-and-ethics-guide?utm_term=.lp4wW1kbr#.covnB2Jwx).

<sup>43</sup> Independent Press Standards Organisation, <https://www.ipso.co.uk/>.

<sup>44</sup> Press Council of Ireland, Annual Report 2016, p. 7, [http://www.presscouncil.ie/\\_fileupload/Press%20Council%20Annual%20Report%202016.pdf](http://www.presscouncil.ie/_fileupload/Press%20Council%20Annual%20Report%202016.pdf).

<sup>45</sup> Ibid.

<sup>46</sup> Independent Press Standards Organisation, Annual Report 2016, p. 18, [https://www.ipso.co.uk/media/1468/ar\\_2016\\_aug17.pdf](https://www.ipso.co.uk/media/1468/ar_2016_aug17.pdf)

<sup>47</sup> Ó Fathaigh R., “High Court rejects application to remove court report from media website”, IRIS 2016-4/18, <http://merlin.obs.coe.int/iris/2016/4/article18.en.html>.



## 2. European law on accuracy and fairness in news and current affairs reporting

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### 2.1. Introduction

This chapter provides an overview of the Council of Europe law relating to accuracy, objectivity and fairness in news and current affairs reporting by media organisations. In particular, it will focus on the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),<sup>48</sup> and the case law of the European Court of Human Rights (ECtHR). The chapter will first discuss broadcast media coverage of news and current affairs, including recent judgments of the Court concerning sanctions imposed on broadcasters over the accuracy of factual allegations contained in news bulletins,<sup>49</sup> and the accuracy and fairness of current affairs documentaries.<sup>50</sup> The chapter then discusses print media coverage of news and current affairs, and in particular recent European Court judgments considering fairness in news reporting,<sup>51</sup> domestic legislation imposing obligations on the media to publish rectifications and replies,<sup>52</sup> and domestic legislation designed to ensure the accuracy of published interviews.<sup>53</sup> The chapter then concludes by examining online media's news and current affairs reporting, including online media's obligation to verify the accuracy of official reports<sup>54</sup> and the issue of objectivity and fairness when reporting allegations against public figures.<sup>55</sup>

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<sup>48</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols No. 11 and No. 14, E.T.S. No. 5, 4 November 1950.

<sup>49</sup> Judgment of the ECtHR of 4 July 2017, *Halldórsson v. Iceland* (Application no. 44322/13), <http://hudoc.echr.coe.int/eng?i=001-174996>.

<sup>50</sup> Judgment of the ECtHR of 5 December 2017, *Frisk and Jensen v. Denmark* (Application no. 19657/12), <http://hudoc.echr.coe.int/eng?i=001-179218>.

<sup>51</sup> Judgment of the ECtHR of 10 November 2015, *Couderc and Hachette Filipacchi Associés v. France [GC]* (Application no. 40454/07), <http://hudoc.echr.coe.int/eng?i=001-158861>.

<sup>52</sup> Judgment of the ECtHR of 3 April 2012, *Kaperzyński v. Poland*, Application no. 43206/07, <http://hudoc.echr.coe.int/eng?i=001-110171>.

<sup>53</sup> Judgment of the ECtHR of 5 July 2011, *Wizerkaniuk v. Poland* (Application no. 18990/05), <http://hudoc.echr.coe.int/eng?i=001-105557>.

<sup>54</sup> Judgment of the ECtHR of 19 October 2017, *Fuchsmann v. Germany*, (Application no. 71233/13), <http://hudoc.echr.coe.int/eng?i=001-177697>.

<sup>55</sup> Judgment of the ECtHR of 16 March 2017, *Ólafsson v. Iceland*, (Application no. 58493/13),



## 2.2. Broadcast media coverage of news and current affairs

Most Council of Europe member states impose rules on broadcasters relating to accuracy, objectivity and fairness in news and current affairs coverage, and the European Court of Human Rights (ECHR) has developed considerable case law on these issues. However, before delving into the specific issues, it should be noted at the outset that the European Court has held that under Article 10 of the ECHR, which guarantees the right to freedom of expression, member states have a positive obligation to “ensure” that the public “has access through television and radio to impartial and accurate information and a range of opinion and comment”.<sup>56</sup> Thus, when a member state imposes rules on the broadcast media, it is not only the broadcast media’s right to freedom of expression but also the member state’s duty to ensure media pluralism that is at issue.<sup>57</sup>

### 2.2.1. News programmes

The first question that may be asked is how does the ECtHR approach the issue of accuracy, objectivity and fairness in news programmes, in particular where a broadcast is sanctioned due to a lack of accuracy, objectivity and fairness? In this regard, it seems very helpful to begin with a recent judgment by the Court, delivered in 2017, where a newsroom reporter was fined for not “acting in good faith as pertains to the accuracy” of a news bulletin.<sup>58</sup> The case was *Halldórsson v. Iceland*,<sup>59</sup> and the applicant was a newsroom journalist of the Icelandic public service broadcaster, the Iceland National Broadcasting Service (“the RUV”). On one of the RUV’s evening news bulletins in May 2010 on the Icelandic financial crash, a news item was broadcast on a large loan transaction (amounting to the equivalent to EUR 19 million) between an Icelandic company and a shelf company in Panama that had been written off in its entirety. During the news items, the applicant mentioned three prominent businessmen involved (A., B. and C.) and stated that the Icelandic authorities “believe that they have found the money trail, as they have documents indicating that [B.], [A.] and [C.] organised the Panama deal in advance. That is – they sent the money to Panama, and later the money found its way back, through several detours, into the pockets of the threesome”.<sup>60</sup>

One of the businessman, A., successfully brought defamation proceedings against the applicant; that judgment was ultimately upheld by the Iceland Supreme Court. The Supreme Court held that the news item clearly “implied” that A. had committed a criminal act, and the applicant had not presented any documents supporting the legitimacy of the statements, and “could not have been acting in good faith as pertains to the accuracy of

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<http://hudoc.echr.coe.int/eng?i=001-171974>.

<sup>56</sup> Judgment of the ECtHR of 17 September 2009, *Manole and Others v. Moldova*, (Application no. 13936/02), par. 100, <http://hudoc.echr.coe.int/eng?i=001-94075>.

<sup>57</sup> *Manole and Others v. Moldova*, op. cit. par. 107.

<sup>58</sup> *Halldórsson v. Iceland*, op. cit., para. 20.

<sup>59</sup> *Halldórsson v. Iceland*, op. cit.

<sup>60</sup> *Halldórsson v. Iceland*, op. cit., para. 11.



the remarks in the news piece”.<sup>61</sup> The applicant was ordered to pay the equivalent of EUR 2,600 in damages, and EUR 8,800 in costs to A.

The applicant subsequently made an application to the ECtHR, claiming that there had been a violation of his right to freedom of expression under Article 10 of the ECHR. The main question for the Court was whether there had been a fair balance between the applicant journalist’s freedom of expression and the businessman’s right to the protection of his reputation under Article 8 of the ECHR. Importantly, the Court reiterated the five criteria which are relevant for balancing these rights: (a) the contribution to a debate of general interest; (b) how well-known the person concerned is and what the subject of the report is; (c) his or her prior conduct, as well as the methods used to obtain the information and its veracity; (d) the content, form and consequences of the publication; and (e) and the severity of the sanction imposed.<sup>62</sup>

For present purposes, the most important element of the Court’s judgment was that relating to the method of obtaining the information and its veracity. The Court stated that it “sees no reason to call into question the Supreme Court’s conclusions” that the applicant journalist “[had] not presented any documents supporting the legitimacy of the statements, for which he has to bear the burden”; had “failed in his duty” under Article 2 of the National Broadcast Service’s Rules on News and Related Programming to seek information from both or all parties and attempt to show their points of view as equally as possible; and could not have been acting in good faith as pertains to the accuracy of the remarks in the news item.<sup>63</sup> The ECtHR added that the safeguard afforded by Article 10 of the ECHR to journalists in relation to reporting on issues of general interest is subject to the provision that they act in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism.<sup>64</sup> Furthermore, the European Court found that there were no special grounds in the present case to exempt the media from their ordinary obligation to verify factual statements that are defamatory of private individuals.<sup>65</sup>

Indeed, the ECtHR dealt with the applicant’s argument that he had the right to protect his sources and to keep his sources and the documentation behind the news items confidential. However, the European Court held that a mere reference to the protection of sources cannot exempt a journalist from the obligation to prove the veracity of or have sufficient factual basis for serious accusations of a factual nature, an obligation that can be met without necessarily having to reveal the sources in question.<sup>66</sup> The ECtHR therefore concluded that there had been no violation of Article 10 of the ECHR.

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<sup>61</sup> *Halldórsson v. Iceland*, op. cit., para. 20.

<sup>62</sup> *Halldórsson v. Iceland*, op. cit., para. 40.

<sup>63</sup> *Halldórsson v. Iceland*, op. cit., para. 49.

<sup>64</sup> *Halldórsson v. Iceland*, op. cit., para. 50.

<sup>65</sup> *Halldórsson v. Iceland*, op. cit., para. 50.

<sup>66</sup> *Halldórsson v. Iceland*, op. cit., para. 51.



## 2.2.2. Current affairs programmes

The ECtHR also recently considered accuracy and fairness in current affairs programmes in a judgment concerning the fining of a public broadcaster for a documentary “resting on a factually incorrect basis.”<sup>67</sup> The case was *Frisk and Jensen v. Denmark*,<sup>68</sup> where the applicants were journalists with the Danish public broadcaster Danmarks Radio (DR) who had produced a current affairs documentary entitled “When the doctor knows best.” The documentary had concerned the treatment of cancer at Copenhagen University Hospital by a named consultant. Following the broadcast, the hospital and the consultant successfully sued the two applicants for defamation, with the domestic courts finding that the documentary had given the impression that malpractice had occurred, and that the consultant had “deliberately used medication” which was not approved, and “[resulting] in patients dying or having their lives shortened.”<sup>69</sup> The European Court subsequently reviewed the defamation judgment and, as in the case of *Halldórsson*, concluded that there had been no violation of Article 10 of the ECHR.

The main question for the Court was whether the accusations made in the programme had “rested on a factually incorrect basis”.<sup>70</sup> The ECtHR reiterated the principle that the safeguard afforded by Article 10 of the ECHR to journalists in relation to reporting on issues of general interest is subject to the provision that they are acting in good faith and on an accurate factual basis and provide “reliable and precise” information, in accordance with the ethics of journalism. The Court examined the domestic courts’ reasoning and concluded that it had “no reason to call into question those conclusions”.<sup>71</sup> Indeed, the ECtHR added that the potential impact of the medium of expression concerned is an important factor in the consideration of the proportionality of an interference and that the audiovisual media have a more immediate and powerful effect than the print media.<sup>72</sup> Notably, the European Court added that the programme had been billed as a “documentary”, which could have added to viewers’ expectations that they would be presented with the truth.<sup>73</sup> Thus, the ECtHR concluded that there had been relevant and sufficient reasons for interfering with the applicants’ freedom of expression, even if documentary had concerned issues of legitimate public interest.<sup>74</sup>

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<sup>67</sup> Judgment of the ECtHR of 5 December 2017, *Frisk and Jensen v. Denmark* (Application no. 19657/12), para. 72, <http://hudoc.echr.coe.int/eng?i=001-179218>.

<sup>68</sup> *Frisk and Jensen v. Denmark*, op. cit..

<sup>69</sup> *Frisk and Jensen v. Denmark*, op. cit., para. para. 19.

<sup>70</sup> *Frisk and Jensen v. Denmark*, op. cit., para. para. 72.

<sup>71</sup> *Frisk and Jensen v. Denmark*, op. cit., para. para. 72.

<sup>72</sup> *Frisk and Jensen v. Denmark*, op. cit., para. para. 65.

<sup>73</sup> *Frisk and Jensen v. Denmark*, op. cit., para. para. 65.

<sup>74</sup> *Frisk and Jensen v. Denmark*, op. cit., para. 59.





## 2.3. Print media coverage of news and current affairs

As with the case of the broadcast media, the ECtHR has built up a considerable amount of case law concerning the issue of accuracy in news and current affairs reporting by print media. Its approach encapsulates the principle applied in *Halldórsson* – namely, that the safeguard afforded by Article 10 of the ECHR to journalists in relation to reporting on issues of general interest is subject to the provision that they are acting in good faith and on an accurate factual basis and provide “reliable and precise” information, in accordance with the ethics of journalism. However, three further issues are set out below regarding fairness in news reporting<sup>75</sup> and regarding situations where domestic legislation stipulates the right to rectify inaccuracies<sup>76</sup> and seeks to guarantee accuracy in reporting news interviews.<sup>77</sup>

### 2.3.1. Fairness in news reporting

A notable judgment on the ECtHR’s approach to the principle of fairness in news reporting (and on what constitutes news and current affairs reporting) was delivered by the 17-judge Grand Chamber of the Court in *Couderc and Hachette Filipacchi Associés v. France*.<sup>78</sup> In *Couderc*, a weekly magazine had been fined EUR 50,000 over a news article and photographs which had been headlined “Albert of Monaco: Alexandre, the secret child”. The article was based on an interview with a woman who claimed that her son’s father was the current Prince of Monaco. The French courts had found that the article had violated the prince’s private life, as it “did not concern any debate of general interest” and could not in any way be justified by the “requirements of current affairs reporting”.<sup>79</sup> However, the European Court unanimously disagreed with the French courts, and held that the news report did concern a matter of public interest – namely the “interest of the public with regard to the rules of succession in force in the [Monaco] Principality”.<sup>80</sup> Notably, the ECtHR found that the judgment against the magazine had violated Article 10 of the ECHR, and placed particular emphasis on the principle that the “fairness of the means used to obtain information and reproduce it for the public” and the “respect shown for the person who is the subject of the news report” are “essential criteria to be taken into account”.<sup>81</sup> In this regard, the Court held that the tone of the interview appeared to have been measured and non-sensationalist, and that readers could easily distinguish

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<sup>75</sup> *Couderc and Hachette Filipacchi Associés v. France* [GC], op. cit..

<sup>76</sup> *Kaperzyński v. Poland*, op. cit..

<sup>77</sup> Judgment of the ECtHR of 5 July 2011, *Wizerkaniuk v. Poland* (Application no. 18990/05), <http://hudoc.echr.coe.int/eng?i=001-105557>.

<sup>78</sup> *Couderc and Hachette Filipacchi Associés v. France* [GC], op. cit..

<sup>79</sup> *Couderc and Hachette Filipacchi Associés v. France* [GC], op. cit., para. 27.

<sup>80</sup> *Couderc and Hachette Filipacchi Associés v. France* [GC], op. cit., para. 111.

<sup>81</sup> *Couderc and Hachette Filipacchi Associés v. France* [GC], op. cit., para. 132.



between what was factual material and what concerned the interviewee's perception of the events, her opinions or her personal feelings.<sup>82</sup>

### 2.3.2. Rectifications and replies

A further important issue is where domestic legislation provides a right of rectification or reply in relation to inaccuracies. The ECtHR considered whether such provisions are consistent with the media's right to freedom of expression in *Kaperzyński v. Poland*.<sup>83</sup> Notably, the Court held as a matter of principle that a legal obligation to publish a rectification or a reply may be seen as a normal element of the legal framework governing the exercise of the freedom of expression by the print media.<sup>84</sup> Thus, such an obligation "cannot, as such, be regarded as excessive or unreasonable."<sup>85</sup> Indeed, the European Court added that the right of reply, as an important element of freedom of expression, falls within the scope of Article 10 of the ECHR. This flows from the need not only to be able to contest untruthful information, but also to ensure a plurality of opinions.<sup>86</sup>

### 2.3.3. Prior authorisation for publishing interviews

Finally, the ECtHR has also considered a notable provision in domestic legislation that imposed an obligation on journalists to submit the text of an interview to the interviewee before publication for prior authorisation. The purpose of the law was to "avoid the potential adverse effect of inaccurate reporting".<sup>87</sup> The case was *Wizerkaniuk v. Poland*,<sup>88</sup> where the European Court reviewed the conviction of two journalists under Poland's Press Act for publishing an interview with a member of parliament in spite of the latter's refusal to authorise its publication. The ECtHR stated that "an obligation to verify, before publication, whether a text based on statements made in the context of an interview and quoted verbatim is accurate can be said to amount, for the printed media, to a normal obligation of professional diligence" and that the "objective was to avoid the potential adverse effect of inaccurate reporting on the reputation of persons whose statements were reported by the press."<sup>89</sup> However, the European Court ultimately held that the convictions had violated Article 10 of the ECHR and that the provisions applied in the present case give interviewees *carte blanche* to prevent a journalist from publishing any interview they regard as embarrassing or unflattering, regardless of how truthful or

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<sup>82</sup> *Couderc and Hachette Filipacchi Associés v. France [GC]*, op. cit., para 141.

<sup>83</sup> *Kaperzyński v. Poland*, op. cit..

<sup>84</sup> *Kaperzyński v. Poland*, para .66.

<sup>85</sup> *Kaperzyński v. Poland*, para .66.

<sup>86</sup> *Kaperzyński v. Poland*, para .66.

<sup>87</sup> *Wizerkaniuk v. Poland*, op. cit., para. 66.

<sup>88</sup> *Wizerkaniuk v. Poland*, op. cit.

<sup>89</sup> *Wizerkaniuk v. Poland*, op. cit., para. 66.



accurate it is.<sup>90</sup> Indeed, the European Court concluded that “as applied in the present case, the provisions cannot be said to be compatible with the tenets of a democratic society and with the significance that freedom of expression assumes in the context of such a society.”<sup>91</sup>

## 2.4. Online media coverage of news and current affairs

The ECtHR has also considered accuracy, objectivity and fairness in news and current affairs reporting by online-only news publications, and online versions of traditional media organisations.

### 2.4.1. Obligation to verify factual statements

The first notable judgment, which was recently delivered in October 2017, concerned the online version of a *New York Times* article accessible in Germany.<sup>92</sup> The case was *Fuchsmann v. Germany*,<sup>93</sup> and concerned a well-known international businessman’s application to the ECtHR claiming that the German courts’ refusal to issue an injunction over an online article which “did not have a factual basis” had violated his right to private life under Article 8 of the ECHR.<sup>94</sup> The article had reported that according to an FBI report, the applicant had “ties to Russian organized crime” and was a “gold smuggler and embezzler, whose company in Germany was part of an international organized crime network.” The main question for the European Court was whether there had been a sufficient factual basis for the reporting. Notably, the Court held that there had been no violation of Article 8 of the ECHR, and applied the principle that the press “should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the contents of official reports ... without having to undertake independent research.”<sup>95</sup> Moreover, the ECtHR had regard to the objectivity and fairness of the reporting, finding that the article was free from polemic statements and insinuations, and made it sufficiently clear that only insights from reports by the FBI and other law-enforcement authorities were being reported.<sup>96</sup>

The second relevant judgment is *Ólafsson v. Iceland*,<sup>97</sup> which was also delivered in 2017 and concerned an online-only news publication. The case arose in 2010, when the Icelandic online news website *Pressan* published an article reporting allegations made against a political candidate by two sisters, who alleged that the candidate had “sexually

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<sup>90</sup> *Wizerkaniuk v. Poland*, op. cit., para. 81.

<sup>91</sup> *Wizerkaniuk v. Poland*, op. cit., para. 84.

<sup>92</sup> *Fuchsmann v. Germany*, op. cit.

<sup>93</sup> *Fuchsmann v. Germany*, op. cit.

<sup>94</sup> *Fuchsmann v. Germany*, op. cit., para. 27.

<sup>95</sup> *Fuchsmann v. Germany*, op. cit., para. 27.

<sup>96</sup> *Fuchsmann v. Germany*, op. cit., para. 50.

<sup>97</sup> *Ólafsson v. Iceland*, op. cit..



abused them when they were children”.<sup>98</sup> The article was based on an interview with one of the women, and a letter she had published on her own website setting out the allegations. Following publication of the article, the website’s editor was held liable for “insinuations that [the candidate] was guilty of having abused children”<sup>99</sup> and was ordered to pay damages and costs.

However, the ECtHR reviewed the judgment and held that there had been a violation of Article 10 of the ECHR. The main question had been whether the applicant “acted in good faith and made sure that the articles were written in compliance with ordinary journalistic obligations to verify factual allegations”.<sup>100</sup> Notably, the European Court held that the journalist had tried to establish the sisters’ credibility and the truth of the allegations by interviewing several relevant persons, and in other articles published by *Pressan* on the same topic at the same time, the sisters’ interviews and allegations had been presented with certain counter-balancing elements. Thus, the ECtHR concluded that the applicant had acted in good faith and had made sure that the article was written in compliance with ordinary journalistic obligations to verify a factual allegation.<sup>101</sup>

## 2.5. Conclusion

This chapter has presented some of the overriding principles which the ECtHR applies when considering accuracy, objectivity and fairness in news and current affairs by media organisations. The main conclusion from the case law seems to be that adherence to the ethics of journalism can provide media with additional protection under Article 10 of the ECHR; however, a lapse in “responsible journalism” may indeed result in the European Court finding sanctions imposed on the media to be consistent with Article 10.

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<sup>98</sup> *Ólafsson v. Iceland*, op. cit., para. 6.

<sup>99</sup> *Ólafsson v. Iceland*, op. cit., para. 20.

<sup>100</sup> *Ólafsson v. Iceland*, op. cit., para. 53.

<sup>101</sup> *Ólafsson v. Iceland*, op. cit., para. 57.



## 3. European standards and policy

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### 3.1. Introduction

This chapter provides an overview of the current European common standards on accuracy, objectivity and fairness in news and current affairs coverage by media organisations. The overview begins with relevant standard-setting instruments from Council of Europe bodies, including the Committee of Ministers and the Parliamentary Assembly, and then moves on to instruments adopted by media and regulatory organisations.

### 3.2. Council of Europe

In 2016, the Council of Europe published a helpful 352-page Report, bringing together all the recommendations and declarations of the Committee of Ministers of the Council of Europe in the field of media and information society.<sup>102</sup> Similarly, a 190-page Report comprising all the Recommendations and Resolutions adopted by the Parliamentary Assembly of the Council of Europe (PACE) in the field of media and information society was also recently published.<sup>103</sup> There have been over 80 Recommendations and Resolutions adopted relating to the media since 1970, and the issues of accuracy, objectivity and fairness in news and current affairs coverage by media organisations have been addressed in many of these instruments. Thus, it is only proposed to highlight some of those instruments adopted by the Committee of Ministers and PACE that are most relevant to these issues.

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<sup>102</sup> Directorate General of Human Rights and the Rule of Law, Recommendations and Declarations of the Committee of Ministers of the Council of Europe in the field of media and information society (Strasbourg: Council of Europe, 2016), <https://rm.coe.int/1680645b44>.

<sup>103</sup> Directorate General of Human Rights and the Rule of Law, Recommendations and resolutions adopted by the Parliamentary Assembly of the Council of Europe in the field of media and information society (Strasbourg: Council of Europe, 2016), <https://rm.coe.int/16806461f9>.



### 3.2.1. Media and journalistic ethics

An appropriate starting point is PACE's 1993 Resolution and Recommendation on the ethics of journalism.<sup>104</sup> This was followed up in 2015 with a further Resolution and Recommendation on media responsibility and ethics.<sup>105</sup>

The 1993 Resolution contains a number of ethical principles for journalism which PACE believed should be applied by the journalism profession in Europe, and a number of those principles are relevant for present purposes. Firstly, regarding the notion of news, the Resolution stated that the basic principle of any ethical consideration of journalism is that a clear distinction must be drawn between news and opinions.<sup>106</sup> Secondly, regarding the notion of accuracy, the Resolution stated that news should be based on truthfulness, which should be ensured by appropriate means of verification and proof, as well as impartiality in presentation, description and narration.<sup>107</sup> Furthermore, the Resolution provides that at the request of the persons concerned, the news media must correct, automatically and speedily, and with all relevant information provided, any news item or opinion conveyed by them which is false or erroneous.<sup>108</sup> Finally, the 1993 Resolution includes the stipulation that the media must undertake to submit to firm ethical principles guaranteeing freedom of expression. Furthermore, in order to supervise the implementation of these principles, self-regulatory bodies or mechanisms must be set up comprising publishers, journalists, media users' associations, experts from the academic world, and judges; they will be responsible for issuing resolutions on respect for ethical precepts in journalism, with a prior commitment on the part of the media to publish the relevant resolutions. Accordingly, they publish each year the research undertaken *a posteriori* on the truthfulness of the information broadcast by the media, comparing the broadcast news with the actual facts.

Notably, in the Reply of the Committee of Ministers to the PACE Recommendation, the Committee of Ministers stated that it was "particularly opposed to the idea of a 'European Media Ombudsman' within the Council of Europe with the specific task of verifying the accuracy of information.<sup>109</sup> [...] This would lead to the creation of a sort of European information authority, with the task of policing the accuracy and impartiality of information. This would run directly counter to the Council of Europe's role as a guardian of press freedoms."<sup>110</sup>

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<sup>104</sup> PACE, Resolution 1003 (1993) Ethics of journalism, 1 July 1993, <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=16414&lang=en>.

<sup>105</sup> PACE, Resolution 2066 (2015) Media responsibility and ethics in a changing media environment, 24 June 2015, <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=21960&lang=en>.

<sup>106</sup> PACE, Resolution 1003 (1993) Ethics of journalism, 1 July 1993, par. 3.

<sup>107</sup> PACE, Resolution 1003 (1993) Ethics of journalism, 1 July 1993, par. 4.

<sup>108</sup> PACE, Resolution 1003 (1993) Ethics of journalism, 1 July 1993, par. 26.

<sup>109</sup> Committee of Ministers of the Council of Europe, Reply to Recommendation 1215 (1993) on the ethics of journalism, 21 March 1994, para. 9, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=8055&lang=EN>.

<sup>110</sup> Ibid.



In 2015, PACE returned to the issue of journalistic ethics, adopting a Resolution and Recommendation on media responsibility and ethics in a changing media environment.<sup>111</sup> Firstly, in relation to accuracy in the media, PACE reminded member states that statements or allegations in the media, even if they prove to be inaccurate, should not be punishable, provided that they were made without knowledge of their inaccuracy or without any conscious intention to cause harm and that their truthfulness had been checked with proper diligence.<sup>112</sup> Secondly, PACE welcomed the Declaration of Principles on the Conduct of Journalists adopted by the International Federation of Journalists, as well as codes of ethics adopted by journalists and the media at the national level in all member states. Such codes constitute a voluntary expression of professional diligence on the part of quality-conscious journalists and media outlets to correct their mistakes and to make themselves accountable to the public.<sup>113</sup>

In its Reply, the Committee of Ministers stated that it did not consider it necessary at that stage to produce guidelines for governments in order to support media self-regulation nationally.<sup>114</sup> The Committee of Ministers did support the Assembly's call on member states to ensure that individuals have an effective right to reply and considers that this could be enhanced by the use of information and communication technologies.

Lastly, in PACE's 2017 Resolution on online media and journalism, a number of relevant issues were mentioned.<sup>115</sup> Firstly, in relation to accuracy, PACE recommended to member states that they recognise in their laws a right of reply or equivalent remedy allowing for the rapid correction of incorrect information in online and offline media.<sup>116</sup> Similarly, PACE also calls on members of the European Federation of Journalists and the Association of European Journalists to ensure that users of online media are informed of the possibilities to complain to online journalists (or to their respective media outlets or their professional associations).<sup>117</sup> Lastly, in relation to the European Internet Services Providers Association, PACE recommended that it call on its members to empower their users to report false information to service providers and thus to make it known publicly, and to voluntarily correct false content or to publish a reply (in accordance with the right

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<sup>111</sup> Parliamentary Assembly of the Council of Europe, Resolution 2066 (2015) Media responsibility and ethics in a changing media environment, 24 June 2015, <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=21960&lang=EN>.

<sup>112</sup> Ibid., para. 6.

<sup>113</sup> Ibid., para. 2.

<sup>114</sup> Committee of Ministers of the Council OF Europe, Reply to Recommendation 2075 (2015) Media responsibility and ethics in a changing media environment

<sup>115</sup> Parliamentary Assembly of the Council of Europe, Resolution 2143 (2017) Online media and journalism: challenges and accountability, 25 January 2017, <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmOvbncveG1sL1hSZWYvWDJlLURXLWV4dHIuYXNwP2ZpbGVpZD0yMz01NSZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZX0vWHNsdC9OZGYvWFJlZi1XRc1BVC1YTUwYUERGlnhzbA==&xsltparams=ZmlsZWlkPTIzNDU1>.

<sup>116</sup> Parliamentary Assembly of the Council of Europe, Resolution 2143 (2017) Online media and journalism: challenges and accountability, 25 January 2017, <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmOvbncveG1sL1hSZWYvWDJlLURXLWV4dHIuYXNwP2ZpbGVpZD0yMz01NSZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZX0vWHNsdC9OZGYvWFJlZi1XRc1BVC1YTUwYUERGlnhzbA==&xsltparams=ZmlsZWlkPTIzNDU1>.

<sup>117</sup> Ibid., par. 12.12.2.



of reply), or to remove such false content.<sup>118</sup> Moreover, PACE welcomed the fact that prominent online media have established a policy whereby users can identify factual errors or false posts by third parties on their websites, such as on Facebook News Feed or through Google's webpage removal request tool. The credibility and reliability of online media require that they remove or correct false information.

### 3.2.2. Public service media

As the European Court of Human Rights (ECtHR) has held, where public service media is dominant, "it is indispensable for the proper functioning of democracy that it transmits impartial, independent and balanced news".<sup>119</sup> In this regard, the Court has cited a number of instruments from the Committee of Ministers, which the Court held to be "standards relating to public service broadcasting which have been agreed by the Contracting States through the Committee of Ministers of the Council of Europe", and provide "guidance as to the approach which should be taken to interpreting Article 10 in this field".<sup>120</sup> Indeed, the Court has applied a number of Recommendations in its case law.<sup>121</sup>

Firstly, Resolution No. 1 on the future of public service broadcasting was adopted at the 4th European Ministerial Conference on Mass Media Policy; it provides that participating states should agree that public service broadcasters must have a number of principal missions, including that of broadcasting impartial and independent news, information and comment.<sup>122</sup> Furthermore, in 2007, the Committee of Ministers adopted a Recommendation on the remit of public service media in the information society.<sup>123</sup> The Recommendation includes Guiding Principles concerning the remit of public service media in the information society. Notably, the Recommendation provides that member states should ensure that public service media constitute a space of credibility and reliability among a profusion of digital media, fulfilling their role as an impartial and independent source of information, opinion and comment, and of a wide range of programming and services, satisfying high ethical and quality standards.<sup>124</sup>

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<sup>118</sup> Ibid., par. 12.3.3

<sup>119</sup> *Manole and Others v. Moldova*, no. 13936/02, 17 September 2009, para. 101, <http://hudoc.echr.coe.int/eng?i=001-94075>.

<sup>120</sup> Ibid., para. 102.

<sup>121</sup> See, e.g., *Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC]*, no. 38433/09, 7 June 2012, para. 134, <http://hudoc.echr.coe.int/eng?i=001-111399>.

<sup>122</sup> Resolution No. 1 on the future of public service broadcasting adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, December 1994),

<sup>123</sup> Recommendation CM/Rec(2007)3 of the Committee of Ministers to member states on the remit of public service media in the information society, 31 January 2007, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805d6bc5](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d6bc5).

<sup>124</sup> Ibid., para. 12.





### 3.2.3. Right of Reply

As was noted in Chapter 2, the ECtHR has recognised the importance of the right of reply as an instrument through which injured parties are “able to contest[ing] untruthful information.”<sup>125</sup> Similarly, the Committee of Ministers has also recognised the importance of the right of reply as an importance means of protection against the “publication of information containing inaccurate facts”.<sup>126</sup> In this regard, the Committee of Ministers has also adopted a Resolution and Recommendation on the right of reply.

Firstly, in its Resolution (74) 26 on the right of reply,<sup>127</sup> the Committee of Ministers linked the right of reply with the issue of accuracy in the media, stating that it is desirable to provide individuals with adequate means of protection against the publication of information containing inaccurate facts about them, and to give them a remedy against the publication of such information. The Resolution recommended to Council of Europe member states that individuals should have an effective possibility to ensure the correction, without undue delay, of incorrect facts relating to them which they have a justified interest in having corrected (such corrections being given, as far as possible, the same prominence as the original publication).<sup>128</sup> The Resolution also set out minimum rules regarding individuals’ right of reply in the press, the radio and the television and to other periodical media. The definition of the right of reply was that any natural and legal person – as well as other bodies (irrespective of nationality or residence) mentioned in a newspaper, a periodical, a radio or television broadcast, or in any other medium of a periodical nature – regarding whom or which facts have been made accessible to the public which the individual in question claims to be inaccurate, may exercise the right of reply in order to correct the facts concerning that person or body.<sup>129</sup> Notably, the Resolution also recommended that any dispute as to the application of the above rules shall be brought before a tribunal, which shall have the power to order the immediate publication of the reply.<sup>130</sup>

In 2004, the Committee of Ministers, returning to this issue, adopted a Recommendation on the right of reply in the new media environment.<sup>131</sup> Firstly, the Recommendation reaffirmed that the right of reply should protect any legal or natural person from any information presenting inaccurate facts concerning that person and affecting his or her rights. Notably, the Recommendation considered that the right of

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<sup>125</sup> *Kaperzyński v. Poland*, no. 43206/07, 3 April 2012, para. 66, <http://hudoc.echr.coe.int/eng?i=001-110171>.

<sup>126</sup> Committee of Ministers of the Council of Europe, Resolution (74) 26 on the right of reply – position of the individual in relation to the press, 2 July 1974, Preamble, <https://rm.coe.int/16805048e1>.

<sup>127</sup> Committee of Ministers of the Council of Europe, Resolution (74) 26 on the right of reply -- position of the individual in relation to the press, 2 July 1974, <https://rm.coe.int/16805048e1>.

<sup>128</sup> Committee of Ministers of the Council of Europe, Resolution (74) 26 on the right of reply – position of the individual in relation to the press, 2 July 1974, para. 1.

<sup>129</sup> Committee of Ministers of the Council of Europe, Resolution (74) 26 on the right of reply – position of the individual in relation to the press, 2 July 1974, para. 1.

<sup>130</sup> Committee of Ministers of the Council of Europe, Resolution (74) 26 on the right of reply – position of the individual in relation to the press, 2 July 1974, para. 7.

<sup>131</sup> Committee of Ministers of the Council of Europe, Recommendation Rec (2004) 16 to member states on the right of reply in the new media environment, 15 December 2004, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805db3b6](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805db3b6).



reply is a particularly appropriate remedy in the online environment due to the possibility of the instant correction of contested information and the technical ease with which replies from concerned persons can be attached to it.<sup>132</sup> The Recommendation recommended that member states should examine and, if necessary, introduce into their domestic law or practice a right of reply or any other equivalent remedy allowing the rapid correction of inaccurate information in online or offline media.

### 3.2.4. Defamation

The PACE also adopted a 2007 Resolution on decriminalisation of defamation,<sup>133</sup> which has been cited by the ECtHR.<sup>134</sup> The PACE also ties accuracy in the media with defamation laws, noting in its 2007 Resolution towards decriminalisation of defamation, that statements or allegations which are made in the public interest, even if they prove to be inaccurate, should not be punishable, provided that they were made without knowledge of their inaccuracy and without any intention to cause harm, and provided that their truthfulness was checked with proper diligence.<sup>135</sup> Thus, PACE insists that there be procedural safeguards enabling anyone charged with defamation to substantiate their statements in order to absolve themselves of possible criminal responsibility. Notably, PACE called on member states to ensure that under their legislation persons pursued for defamation have appropriate means of defending themselves – in particular, means based on establishing the truth of their assertions and on the general interest.<sup>136</sup> Furthermore, PACE reminded states in 2015 that statements or allegations in the media, even if they prove to be inaccurate, should not be punishable, provided that they were made without knowledge of their inaccuracy or without conscious intention to cause harm and that their truthfulness was checked with proper diligence.<sup>137</sup>

## 3.3. Media organisations

As noted above, PACE's 2015 Resolution welcomed the Declaration of Principles on the Conduct of Journalists by the International Federation of Journalists, and stated that such codes "are a voluntary expression of professional diligence by quality-conscious journalists and media outlets to correct their mistakes and to make themselves

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<sup>132</sup> Committee of Ministers of the Council of Europe, Recommendation Rec (2004) 16 to member states on the right of reply in the new media environment, 15 December 2004, Preamble.

<sup>133</sup> Parliamentary Assembly of the Council of Europe, Resolution 1577 (2007) Towards decriminalisation of defamation.

<sup>134</sup> See, for example, *Saaristo and others v. Finland*, no. 184/06, 12 October 2010, <http://hudoc.echr.coe.int/eng?i=001-101017>.

<sup>135</sup> Parliamentary Assembly of the Council of Europe, Resolution 1577 (2007) Towards decriminalisation of defamation, 4 October 2007, <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=17588>.

<sup>136</sup> *Ibid.*, par. 17.7.

<sup>137</sup> Parliamentary Assembly of the Council of Europe, Resolution 2066 (2015) Media responsibility and ethics in a changing media environment, 24 June 2016, par. 4.



accountable to the public.”<sup>138</sup> Thus, it is also important to have to regard to this Declaration, and to other instruments adopted by similar media organisations. Firstly, it should be noted that the International Federation of Journalists has 600,000 members in over 140 countries worldwide and that the Declaration includes as its first principle that respect for truth and for the right of the public to truth is the first duty of the journalist.<sup>139</sup> In pursuance of this duty, journalists shall at all times defend the principles of freedom in the honest collection and publication of news, and of the right of fair comment and criticism. Journalists shall report only in accordance with facts of which he/she knows the origin. Lastly, journalists shall do their utmost to rectify any published information which is found to be harmfully inaccurate.

A second notable media organisation is the Ethical Journalism Network (EJN), which was founded in 2013 and is an international network of media professionals created to advance education in and around the principles of ethical journalism.<sup>140</sup> It is currently headed by the former readers’ editor at *The Guardian*, and its board of trustees includes the head of News and Current Affairs at UK’s *Channel 4*.<sup>141</sup> Its supporters include the European Broadcasting Union (EBU), European Federation of Journalists, Alliance of Independent Press Councils of Europe, Organisation of News Ombudsmen (ONO), and Association of Commercial Television in Europe.<sup>142</sup> Its first 5 Principles of Ethical Journalism are (1) truth and accuracy, (2) independence, (3) fairness and impartiality, (4) humanity, and (5) accountability.<sup>143</sup> In this regard, the EJN has stated that journalists cannot always guarantee “truth”, but that getting the facts right is the cardinal principle of journalism. Furthermore, it insists that journalists should always strive for accuracy, give all the relevant facts that they have and ensure that they have been checked. Furthermore, in relation to fairness and impartiality, the EJN believes that while there is no obligation to present every side in every piece, stories should be balanced and add context. Moreover, while objectivity is not always possible – and may not always even be desirable (in the face for example of brutality or inhumanity) – the EJN holds that impartial reporting builds trust and confidence. Lastly, on accountability, it states that a “sure sign of professionalism and responsible journalism is the ability to hold ourselves accountable. When we commit errors we must correct them and our expressions of regret must be sincere, not cynical.”<sup>144</sup> Moreover, the EJN has created the Accountable Journalism

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<sup>138</sup> Parliamentary Assembly of the Council of Europe, Resolution 2066 (2015) Media responsibility and ethics in a changing media environment, 24 June 2015, para. 2, <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-FN.asp?FileID=21960&lang=EN>.

<sup>139</sup> International Federation of Journalists, Declaration of Principles on the Conduct of Journalists, Adopted by 1954 World Congress of the International Federation of Journalists – IFJ. Amended by the 1986 World Congress, <http://www.ifj.org/about-ifj/ifj-code-of-principles/>.

<sup>140</sup> Ethical Journalism Network, Aims, Objectives and Activities, <http://ethicaljournalismnetwork.org/who-we-are/aims-objectives-activities>.

<sup>141</sup> Ethical Journalism Network, Our people, <http://ethicaljournalismnetwork.org/who-we-are/our-people>.

<sup>142</sup> Ethical Journalism Network, Ethical Journalism Network Supporters, <http://ethicaljournalismnetwork.org/supporters>.

<sup>143</sup> Ethical Journalism Network, The 5 Principles of Ethical Journalism, <http://ethicaljournalismnetwork.org/who-we-are/5-principles-of-journalism>.

<sup>144</sup> Ibid.



Site, where it compiles international codes of media ethics from around the world, and which is the largest resource of its kind, with over 400 codes.<sup>145</sup>

On the other hand, the European Federation of Journalists (EFJ) is the largest organisation of journalists in Europe, representing over 320,000 journalists in 70 journalists' organisations across 44 countries. The EFJ follows the IFJ Declaration of Principles on the Conduct of Journalists, which have become the guiding principles for journalists and their unions in respect of enforcing ethics and quality in journalism. Furthermore, the EBU's Editorial Principles require that its members be impartial and independent, their reporting fair and honest, and their stories checked and double checked. Correct facts and figures should be provided with accurate background information. The EBU's Editorial Principles also state that "trust underpins our existence."<sup>146</sup>

Lastly, the Alliance of Independent Press Councils of Europe, which was established in 1999, is an important organisation, comprising a network of independent Press and Media Councils in Europe to enhance cooperation and the exchange of information. It has also adopted a number of principles including that: the regulation of editorial content in the media should be independent of government; the regulation of media content, whether national or regional in its coverage, should be based on nations' differing cultures; the writing of codes of journalistic ethics and their administration is the business of journalists and publishers, who shall take into account public feeling; and it is not possible to operate a universal code of ethics, and that the imposition of supra national Codes and regulatory organisations (either at the European or global level) should be opposed.

### 3.4. Conclusion

This brief overview demonstrates the centrality of accuracy, objectivity and fairness in European standards and polices concerning media organisations, whether broadcast, print or online. Notably, some of these standards have been relied upon by the ECtHR in its interpretation of Article 10 of the ECHR, and reflects the importance of standard setting, including by media organisations themselves, which are reflected in the recommendations of the Council of Europe bodies.

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<sup>145</sup> Ethical Journalism Network, Codes of Ethics, <https://accountablejournalism.org/ethics-codes>.

<sup>146</sup> European Broadcasting Union, Public Service Values: Editorial Principles and Guidelines, 22 August 2014, <https://www.ebu.ch/contents/publications/public-service-values-editorial.html>.



## 4. DE - Germany

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### 4.1. Introduction

Against the background of hate speech, fake news, filter bubbles and algorithms, the media-policy discussion underway in Germany mainly revolves around how the political process of shaping public opinion, as a mainstay of a properly functioning democracy, can be protected from these dangers. Many different solutions have been proposed and range from strict(er) platform regulation and the additional regulation of information intermediaries to the use of modern software. While regulatory developments are also emerging over and above the federal Social Network Enforcement Act (Netzwerkdurchsetzungsgesetz) already passed by the Bundestag (and not without its critics in terms of constitutional and European law), Germans are still traditional in their use of media to obtain news: according to a recent study,<sup>147</sup> television is still the most important source of news for both older and younger age groups. Compared to previous years<sup>148</sup> and to other states analysed, on average, Germans use the Internet less as a means of obtaining information. This coincides with public confidence in the media: according to another study,<sup>149</sup> information provided by the public service broadcasters is trusted the most. Commercial media are some way behind, while the majority of those questioned considered social media and tabloid newspapers susceptible or very susceptible to fake news.<sup>150</sup> Here, objectivity, independence, accuracy and transparency are just a few of the concepts that are to be found in self-regulatory guidelines and legal provisions in Germany and describe how the dissemination of information by the media should look in an optimum case. Although all media in Germany can, in principle, claim to enjoy the same degree of media freedom, the level of due diligence required of them – as a counterbalance to freedom of the media – varies and is regulated with varying degrees

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<sup>147</sup> Sascha Hölzig and Uwe Hasebrink in: Reuters Institute Digital News Report 2017, [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web\\_0.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web_0.pdf).

<sup>148</sup> Cf. Sascha and Uwe Hasebrink, “Reuters Institute Digital News Survey 2016 – Ergebnisse für Deutschland”, <https://www.hans-bredow-institut.de/uploads/media/Publikationen/cms/media/3ea6d4fed04865d10ad27b3f98c326d3a0ae6c29.pdf>.

<sup>149</sup> YouGov questioned 2 000 selected individuals aged 18+ in Germany on the subject of fake news, cf. <https://yougov.de/news/2017/08/10/die-mehrheit-der-wahler-erachtet-fake-news-als-gef/>.

<sup>150</sup> For a detailed analysis of the situation in Germany and of fake news as a whole, see Ukrow/Etteldorf, EMR/SCRIPT vol. 5: “Fake News” als Rechtsproblem, <http://emr-sb.de/publikationen/emr-schriften/das-emr-script/>.



of strictness. This is shown by the following comparison of the broadcasting, press and online media sectors.

## 4.2. Broadcasting

In the field of broadcasting, there are many regulatory and self-regulatory provisions on the qualitative requirements to be met by journalistic research and the dissemination of information. These provisions are influenced by Germany's dual broadcasting system, which draws regulatory distinctions between public service and commercial broadcasting.

### 4.2.1. Accuracy, objectivity and fairness in public service broadcasting

In the areas of radio, print media and TV, the news programmes broadcast by the regional stations belonging to the ARD network ("Tagesschau") and by Zweites Deutsches Fernsehen ("ZDF heute") are the most important sources of news for Germans.<sup>151</sup> The legal basis for the programmes and online services of ARD and ZDF is regulated by the Inter-State Broadcasting Treaty (Rundfunkstaatsvertrag – RStV).<sup>152</sup> As far as the regional broadcasters are concerned, however, *Land* legislation or the Inter-State Treaty<sup>153</sup> mostly contains identical or similar rules.

General rules on reporting and information programmes are first of all contained in Article 10(1) RStV. These programmes "must conform to accepted journalistic standards, including when virtual components are employed. They must be independent and objective. Prior to transmission, the accuracy and origin of news must be verified with the due diligence required by the circumstances. Comments must be clearly separated from reports and be identified as such, giving the author's name".<sup>154</sup> Other provisions elaborate on these general rules for specific areas. For example, Article 10(2) RStV states that reports on opinion polls must expressly state whether they are representative. In

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<sup>151</sup> Reuters Institute Digital News Report 2017, *ibid.*, p. 69.

<sup>152</sup> Inter-State Agreement on Broadcasting and Telemedia in the version of 1 September 2017, English version: [https://www.die-medienanstalten.de/fileadmin/user\\_upload/Rechtsgrundlagen/Gesetze\\_Staatsvertraege/Rundfunkstaatsvertrag\\_RStV\\_20\\_english\\_version.pdf](https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/Rundfunkstaatsvertrag_RStV_20_english_version.pdf).

<sup>153</sup> An overview of the broadcasting acts of Bavaria (Bayerisches Rundfunkgesetz – BayRG) and Hesse (Hessisches Rundfunkgesetz (HRG), the Inter-State Treaty on Mitteldeutscher Rundfunk (Staatsvertrag über den Mitteldeutschen Rundfunk – MDR-StV), the Inter-State Treaty on Norddeutscher Rundfunk (NDR-StV), the Saarländischer Rundfunk Act (SMG), the Inter-State Treaty on Südwestrundfunk (SWR-StV) and the Westdeutscher Rundfunk Act (WDRG), as well as the Radio Bremen Act (RBG) and the Inter-State Treaty on Radio Berlin-Brandenburg (RBB-StV) is available at <http://www.ard.de/home/die-ard/fakten/abc-der-ard/Rundfunkgesetze/554696/index.html>.

<sup>154</sup> For further details, see Harstein/Ring/Kreile/Dörr/Stettner/Cole/Wagner, *Rundfunkstaatsvertrag*, on section 10, marginal nos. 3 ff.



order to maintain the programme's objectivity and impartiality, advertising must not influence the (editorial) content of the rest of the programme. In particular, it must be easily recognisable as such and distinguishable from any editorial content (Article 7(2) and (3) RStV). Article 8(2) states that the content and scheduling of a sponsored programme must not be influenced by the sponsor in such a way as to adversely affect the broadcaster's editorial responsibility and independence. Furthermore, according to Article 11(2), in the fulfilment of their remit, broadcasters must take due account of the principles of objectivity and impartiality regarding reporting, diversity of opinion and balanced programming. Several instruments ensure that broadcasters comply with these requirements concerning research and the provision of information.

First of all, according to Article 11e(2) RStV,<sup>155</sup> every station of the ARD network, ZDF and Deutschlandradio (DLR) are all obliged to publish a report every two years on the fulfilment of their remit and on the quality of their existing programming. This report is discussed by the Television Council (Fernsehrat) or the Radio Council (Hörfunkrat), the pluralistic bodies set up by each institution to ensure the "internal monitoring" of compliance with programme-related principles. The most recent ARD report for 2015/2016 emphasised, in particular, the problems encountered by the media, namely a growing debate on their legitimacy and frequent accusations of lying ("Lügenpresse" – "lying press").<sup>156</sup>

"External monitoring", on the other hand, is carried out by viewers and listeners, who have the right to file a formal complaint to broadcasters about a programme<sup>157</sup> at any time if they consider that the programme-related principles have been breached. Complaints are processed and answered by the director (Intendant), as the broadcaster's representative with overall responsibility. If the complainant is not satisfied with the reply, he or she can have the complaint dealt with by the Television, Radio or Broadcasting Council, followed by a recommendation for a decision.<sup>158</sup> It is not possible to identify a general area on which complaints about programmes tend to focus. They range from criticism of one-sided reporting and the failure to separate advertising from programme content to breaches of equality principles.<sup>159</sup>

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<sup>155</sup> And Article 5(3) NDR-StV, section 23(4) SMG, Article 3(6) RBB-StV and section 4a(2) WDRG).

<sup>156</sup> ARD report 2015/16 and ARD guidelines 2017/18 for the Das Erste channel, [http://www.ard.de/download/682560/ARD\\_Bericht\\_2015\\_16\\_und\\_Leitlinien\\_2017\\_18\\_fuer\\_Das\\_Erste.pdf](http://www.ard.de/download/682560/ARD_Bericht_2015_16_und_Leitlinien_2017_18_fuer_Das_Erste.pdf).

<sup>157</sup> Section 19 of the Bavarian Broadcasting Act (BayRG), Article 10 of the Inter-State Agreement on the Berlin-Brandenburg Broadcasting Authority (RBB-StV), section 26 of the Radio Bremen Act (RBG), Article 16 of the Inter-State Agreement on Mitteldeutscher Rundfunk (MDR-StV), Article 13 of the Inter-State Agreement on the North German Broadcasting Authority (NDR-StV), section 8(2) of the Saarland Media Act (SMG), Article 11 of the Inter-State Agreement on the Southwest Broadcasting Authority (SWR-StV), section 10 of the West German Broadcasting Act (WDRG), Article 15 of the Inter-State Agreement on the ZDF (ZDF-Staatsvertrag) (in the version of 01.10.2016, <https://www.zdf.de/zdfunternehmen/zdf-rechtsgrundlagen-und-vorschriften-100.html>).

<sup>158</sup> For further information, see for example <https://www.zdf.de/zdfunternehmen/zdf-fernsehrat-foermliche-programmbeschwerde-100.html>.

<sup>159</sup> Cf. for example the Complaints Report by the Director of ZDF for the period December 2017-March 2018 from the plenary meeting of the Television Council, <https://www.zdf.de/zdfunternehmen/zdf-fernsehrat-sitzungen-beschluesse-100.html>.



While complaints about programmes centre on compliance with legal provisions to protect the public, viewers and listeners can use the right of reply to which they may be entitled<sup>160</sup> in order to claim that they have been personally affected by a report. However, this option can only be taken to complain about a breach of the journalist's obligation to tell the truth and not about breaches of other programme-related principles. The courts, however, repeatedly stress the need for a careful balance to be struck between the general personality right (Article 2(1) in conjunction with Article 1(1) of the Basic Law (Grundgesetz)<sup>161</sup> and freedom of broadcasting (Article 5(1), 2nd sentence of the Basic Law), because the right of reply could possibly run counter to freedom of broadcasting when that freedom does not actually infringe the principles of truthful and comprehensive reporting.<sup>162</sup>

Supplementary to the legal provisions and, in some cases, elaborating on them, the public service broadcasters have also drawn up guidelines for the execution of their remit. These guidelines are largely identical to one another in terms of content.<sup>163</sup> The ZDF guidelines<sup>164</sup>, for example, state that reporting must be based on the desire to ensure truthfulness and objectivity (I(4)); that information programmes must, by presenting essential facts, serve the purpose of forming one's own opinions and must not employ suggestive methods to exert influence (I(5)); and that the station has a duty to ensure non-partisanship (III(5)) and journalistic fairness (III(6)). Furthermore, the biennial reports required by law are often used to establish specific guidelines for the subsequent period, which makes it possible to respond to particular quality demands arising from current events.

## 4.2.2. Accuracy, objectivity and fairness in commercial broadcasting

In the case of commercial broadcasting, the picture is similar to that of public service broadcasting. At the regulatory level, the individual *Land* media acts<sup>165</sup> contain a number

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<sup>160</sup> Section 17 BayRG, Article 9 RBB-StV, section 27 RBG, Article 15 MDR-StV, Article 12 NDR-StV, section 10 SMG, Article 10 SWR-StV, section 9 WDRG, Article 9 ZDF-StV.

<sup>161</sup> Basic Law for the Federal Republic of Germany (Grundgesetz für die Bundesrepublik Deutschland) of 23 May 1949, last amended by section 1 of the Act of 13 July 2017 (BGBl. I p. 2347), <https://www.bundestag.de/grundgesetz>.

<sup>162</sup> See for example the Federal Constitutional Court decision of 8 February 1983, Case. 1 BvL 20/81, <https://www.telemedicus.info/urteile/Rundfunkrecht/Gegendarstellungsrecht/172-BVerfG-Az-1-BvL-2081-Gegendarstellung.html>.

<sup>163</sup> Overview of the guidelines for the regional broadcasters: [http://www.ard.de/home/die-ard/fakten/Programmleitlinien\\_und\\_grundsaeetze\\_in\\_der\\_Ard/4126852/index.html](http://www.ard.de/home/die-ard/fakten/Programmleitlinien_und_grundsaeetze_in_der_Ard/4126852/index.html).

<sup>164</sup> Guidelines for ZDF programmes and telemedia services of 11 July 1963 in the version of 11 December 2009, <https://www.zdf.de/zdfunternehmen/zdf-rechtsgrundlagen-und-vorschriften-100.html>.

<sup>165</sup> The media acts of the individual *Länder* (Bavaria: BayMG; Baden-Württemberg: LMG BW; Berlin and Brandenburg: MStV BB; Bremen: BremLMG; Hamburg and Schleswig-Holstein: MStV HSH; Hesse: HPRG; Mecklenburg-West Pomerania: RundfunkG M-V; Lower Saxony: NMedienG, North Rhine-Westphalia: LMG NRW;





of provisions on the accuracy, impartiality, non-partisanship and fairness of reporting, especially the rule that programmes must comply with general journalistic principles.<sup>166</sup> The aforementioned requirements concerning opinion polls that apply to public service broadcasters and the requirement to ensure the editorial independence of advertising and sponsorship apply here too.<sup>167</sup> The responsibility for monitoring compliance with these rules lies with the relevant *Land* media authority (Landesmedienanstalt), which does not have to be the authority of the *Land* in which the company has its headquarters. In the case of commercial nationwide broadcasters, the decision is taken by the Commission on Licensing and Supervision (Kommission für Zulassung und Aufsicht), the joint body of all *Land* media authorities. In the case of *Land*-wide, regional and local commercial broadcasters, the decision is taken by the relevant body of the competent *Land* media authority. The *Land* media acts also provide for a right of reply and for the possibility of complaining about a programme.<sup>168</sup> Decisions on complaints about programmes are ultimately taken by the *Land* media authority, in some cases after a preliminary procedure has been completed at the premises of the broadcaster itself. Breaches are established and appropriate penalties decided by a decision-making body made up of socially relevant groups. Where breaches of general programme principles, especially journalistic due diligence, are concerned, responsibility for handling complaints procedures in the case of nationwide broadcasters lies, for example, with the Commission on Licensing and Supervision.<sup>169</sup> Penalties are then implemented by the executive board of the *Land* media authority.

As far as broadcasters' own guidelines for ensuring compliance with journalistic principles are concerned, at least the TV broadcasters with the broadest national coverage<sup>170</sup> – the RTL Group and ProSiebenSat.1 S.E. – have independently submitted themselves to the relevant provisions and declared them binding on their stations. For example, the RTL guidelines<sup>171</sup> support honesty, fairness, non-partisanship and the careful review of sources. The ProSiebenSat.1 S.E.<sup>172</sup> guidelines contain similar provisions with regard to ensuring journalistic independence and compliance with the fundamental rules of journalism. The preamble itself emphasises that independence is the indispensable basis of journalistic reporting. Respect for truth and the public right to it is the editors' "primary duty".

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Rhineland-Palatinate: LMG Rh.-Pf.; Saarland: SMG; Saxony: SächsPRG; Saxony-Anhalt: MedienG LSA; Thuringia: ThürLMG), <https://www.die-medienanstalten.de/service/rechtsgrundlagen/>.

<sup>166</sup> Section 5 BayMG, section 3 LMG BW, Article 46 MStV BB, section 14 BremLMG; Article 4 MStV HSH; section 13 HPRG; section 23 RundfunkG M-V; section 14 NMedienG; section 31 LMG NRW; section 16 LMG Rh.-Pf.; section 15 SMG; section 12 SächsPRG; section 3 MedienG LSA; section 3 ThürLMG).

<sup>167</sup> For example, section 5(4) and sections 8 and 9 BayMG or sections 13(3) and 32 HPRG.

<sup>168</sup> For example, sections 9 and 30(3) LMG BW or Articles 52 and 57 MStV BB.

<sup>169</sup> For further information, see <https://www.die-medienanstalten.de/ueber-uns/organisation/kommission-fuer-zulassung-und-aufsicht-zak/>.

<sup>170</sup> For details of market shares, see the surveys conducted by AGF Videoforschung, <https://www.agf.de/daten/tvdaten/marktanteile/?name=marktanteile>.

<sup>171</sup> Newsroom Guidelines of the RTL Group, available (in English) at [http://www.rtlgroup.com/files/pdf2/rtlgroup\\_newsroom\\_guidelines.pdf](http://www.rtlgroup.com/files/pdf2/rtlgroup_newsroom_guidelines.pdf).

<sup>172</sup> Guidelines of the ProSiebenSat.1 Group, [https://www.prosiebensat1.de/uploads/2016/12/07/Verhaltenskodex\\_P7S12016.pdf](https://www.prosiebensat1.de/uploads/2016/12/07/Verhaltenskodex_P7S12016.pdf) (German), [http://www.prosiebensat1.com/uploads/2017/01/25/Code%20of%20Compliance\\_2017\\_en.pdf](http://www.prosiebensat1.com/uploads/2017/01/25/Code%20of%20Compliance_2017_en.pdf) (English).



## 4.3. Print media

### 4.3.1. Regulatory framework

It follows from the Constitution that the press has a duty to report truthfully when it makes use of its constitutionally guaranteed right to inform the public and be involved in the formation of public opinion.<sup>173</sup> Legal provisions on the “traditional” printed press are contained in the press and media legislation of the *Länder*.<sup>174</sup> Apart from Hesse, they all contain a provision requiring the press to check the content, origin and factual accuracy of news with the highest standard of due diligence required by the circumstances before disseminating it.<sup>175</sup> The obligation to tell the truth imposed by press legislation thus requires checks to be made to protect readers from false information. However, the precise extent of that requirement is mainly determined by forceful decisions of the courts. For example, the due diligence requirements are stricter the more a remark adversely affects personality rights,<sup>176</sup> which means they are particularly strict in such cases as reporting on a suspicion. While reports from specific so-called key sources, such as public authorities or recognised press agencies, can be allowed to pass without being checked, with others there is an obligation to carry out research.<sup>177</sup> However, *Land* legislation does not directly require that a sanction be imposed for a breach of due diligence obligations under press legislation, nor can the individual infer from that legislation a right to truthful reporting. Rather, the due diligence requirement normally only becomes relevant in the case of actions under the civil law for injunctive relief and damages. If the press breaches the duty of care imposed on it, it can no longer respond to these claims by citing justification because of the need to safeguard legitimate interests and is consequently liable. Although the truth of reporting is fundamentally important, especially when striking a balance with other rights, it is subordinate to the duty of due diligence, which means that untrue reporting can also be lawful in a civil-law context. In addition to rights under the civil law, *Land* legislation also grants individuals affected a

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<sup>173</sup> For example, the Federal Constitutional Court judgment of 25 January 1962, Case 1 BvR 9/57, <https://www.telemedicus.info/urteile/Presserecht/178-BVerfG-Az-1-BvR-957-SchmidtSpiegel.html>.

<sup>174</sup> *Land* legislation (Baden-Württemberg: LPresseG BW; Bavaria: BayPrG; Berlin: BPresseG; Brandenburg: BbgPG; Bremen: PGB; Hamburg: HPG; Hesse: HPresseG; Mecklenburg-West Pomerania: LPrG M-V; Lower Saxony: NdsPrG; North Rhine-Westphalia: LPG NRW; Rhineland-Palatinate: LMG Rh.-Pf.; Saarland: SMG; Saxony: SächsPresseG; Saxony-Anhalt: LPresseG ST; Schleswig-Holstein: LPresseG SH, Thuringia: TPG). Overview available at <http://www.dmv-verband.de/wissenspool/rechtliches/landespressegesetze.html>.

<sup>175</sup> Section 6 LPresseG BW; section 3 BayPrG; section 3 BPresseG; section 6 BbgPG; section 6 PGB; section 6 HPG; HPresseG; section 5 LPrG M-V; section 6 NdsPrG; section 6 LPG NRW; section 7 LMG Rh.-Pf.; section 6 SMG; section 5 SächsPresseG; section 5 LPresseG ST; section 5 LPresseG SH, section 5 TPG.

<sup>176</sup> Federal Constitutional Court, decision of 25 June 2009, Case 1 BvR 134/03, [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2009/06/rk20090625\\_1bvr013403.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2009/06/rk20090625_1bvr013403.html).

<sup>177</sup> See in this regard the recent Federal Court of Justice judgment of 16 February 2016, Case VI ZR 367/15, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=74175&pos=0&anz=1>.



right of reply, which is also given shape and continually developed by the courts in the context of press legislation.<sup>178</sup>

The relevant press and media laws contain no explicit provisions on the independence or non-partisanship of reporting. *Land* legislation merely determines that the press itself is “free”, but this turns out to be more a right than a duty. The possible harmful impact of a publisher’s tendency to express opinions, which (can) influence reporting, is taken into account *inter alia* by the requirement for publishers to disclose details of ownership and shareholdings,<sup>179</sup> thus ensuring transparency for the reader. Moreover, paid-for publications must be identified as such by the press,<sup>180</sup> which is similar to the broadcasting requirement to separate advertising from programmes.

### 4.3.2. Principles and guidelines on accuracy and fairness

Alongside the existing legal provisions, press self-regulation is particularly important in Germany. Here, the Press Code<sup>181</sup> establishes general requirements to be met by journalists. Although not directly legally binding, they are referred to by the courts when they assess compliance with the press’s own duty to exercise due diligence in cases involving applications for an injunction, actions seeking a right of reply or actions for damages. The Code states that “(r)espect for the truth, preservation of human dignity and accurate informing of the public are the overriding principles of the Press” (Section 1). It also contains other specific rules, such as the strict separation of journalistic work from other functions (Guideline 6.1.); the separation of editorial text and advertisements (Guideline 7.1.); the ban on surreptitious advertising (Guideline 7.2.); the obligation for a publication to take action itself to rectify a false news item (Section 3); and detailed guidelines concerning the requirement to exercise due diligence (Section 2). Everyone has the right to submit a complaint about an infringement to the German Press Council, which, after completing a complaints procedure, can issue a simple advice notice, express disapproval or issue a (public) reprimand, which is its strongest sanction.<sup>182</sup> In 2017, there were 1 788 complaints, of which 21 attracted a reprimand. The main subjects of complaint were breaches of the requirement to keep advertising separate and infringements of personality rights.<sup>183</sup> In addition, 58 disapproval notices and 153 advice notices were issued.

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<sup>178</sup> The Federal Constitutional Court recently ruled that no right of reply exists in the case of questions left open (decision of 7 February 2018, Case 1 BvR 442/15, <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2018/bvg18-013.html>).

<sup>179</sup> For example, section 9 of the Brandenburg Press Act (BbgPG) or section 8 of the Saxon Press Act (SächsPresseG).

<sup>180</sup> For example, section 10 of the Federal Press Act (BPresseG) or section 13 SMG.

<sup>181</sup> Press Code of the German Press Council,

[https://www.presserat.de/fileadmin/user\\_upload/Downloads\\_Dateien/Pressekodex13english\\_web.pdf](https://www.presserat.de/fileadmin/user_upload/Downloads_Dateien/Pressekodex13english_web.pdf).

<sup>182</sup> See the overview published by the Press Council, <http://www.presserat.de/pressekodex/uebersicht-der-uegen/>.

<sup>183</sup> See the statistics published by the Press Council, <http://www.presserat.de/beschwerde/statistiken/>.



Furthermore, a number of major publishers have also developed their own guidelines which elaborate on the legal obligations and those arising from the Code. For example, in order to ensure journalistic independence, the journalists at Axel Springer Verlag must avoid attempts by advertising clients to exert influence on content, must not enter into any inadmissible agreements and must ensure that all research costs are always paid by the editorial office. Any exceptions must be approved by the chief editor and identified as such in the report.<sup>184</sup>

## 4.4. Online media

### 4.4.1. Regulatory framework

As far as the regulation of online media is concerned, it is first necessary to distinguish between broadcasting and telemedia. The transmission via the Internet of a linear programme as part of a programming schedule (especially live streaming) counts as broadcasting and must comply with the above-mentioned rules. For other online communication and information services (telemedia), sections 54 ff. of the Inter-State Broadcasting Treaty (RStV) set out requirements as to content. Generally speaking, the provisions of the Constitution, the rules of general legislation and the statutory provisions for the protection of personal honour apply to these services (section 54(1) RStV), as does the requirement to separate advertising from other content (section 58(1) RStV).<sup>185</sup> However, the only provision on the journalistic quality of content concerns journalistic-editorial telemedia, which must meet recognised journalistic principles and, in particular, exercise due diligence to check the content, origin and truth of news before it is disseminated (section 54(2) RStV). Furthermore, service providers – like broadcasters – must indicate the representativeness of opinion polls (section 54(3) RStV) and publish counter-statements (section 56 RStV). The regulatory framework for online media thus largely depends on whether they are to be counted as journalistic-editorial services, a feature of which is the selection and compilation of information according to its presumed social relevance. Moreover, they must pursue journalistic aims, that is to say, contribute to communication and to shaping public opinion.<sup>186</sup> In particular, these services include the offerings of broadcasters and press publishers. However, as there is currently no legal definition, any further classification is based on an extensive body of case law

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<sup>184</sup> Guidelines on journalistic independence at the publishers Axel Springer Verlag, [http://www.axelspringer.de/artikel/Leitlinien-der-journalistischen-Unabhaengigkeit-bei-Axel-Springer\\_40856.html](http://www.axelspringer.de/artikel/Leitlinien-der-journalistischen-Unabhaengigkeit-bei-Axel-Springer_40856.html).

<sup>185</sup> See Harstein/Ring/Kreile/Dörr/Stettner/Cole/Wagner, *Rundfunkstaatsvertrag*, on sections 54 and 58.

<sup>186</sup> Baden-Württemberg Administrative Court (VGH Baden-Württemberg), decision of 25 March 2014, Case 1 S 169/14, marginal no. 27, [http://lrbw.juris.de/cgi-bin/laender\\_rechtsprechung/document.py?Gericht=bw&nr=17986](http://lrbw.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=bw&nr=17986).



and is the subject of much discussion.<sup>187</sup> Private blogs<sup>188</sup> and rating portals<sup>189</sup> and, under certain circumstances, public relations services<sup>190</sup> and individual Facebook pages or YouTube channels<sup>191</sup> can meet these conditions.

The supervision of compliance with the aforementioned provisions of the Inter-State Broadcasting Treaty is normally carried out by the *Land* media authority in whose territory the telemedium has its headquarters. It has recently been noted that the *Land* media authorities are increasingly focusing their attention on social media (especially YouTube channels), especially with regard to the implementation of the rules on advertising<sup>192</sup> or even the need to apply for a broadcasting licence<sup>193</sup>. This has acted as a warning signal and is, in practice, actually having a positive impact on the conduct of other influencers as far as transparency is concerned.

#### 4.4.2. Principles and guidelines on accuracy and fairness

As the guidelines mentioned in 4.2. and 4.3. make general demands on journalistic work in the media company concerned, they must also be complied with as far as the relevant online content is concerned. The provisions of the Press Code, and therefore the complaints procedure before the Press Council too, also apply to journalistic-editorial telemedia<sup>194</sup> such as the offerings of SPIEGEL Online and T-Online News, which the Reuters study has identified as being among the most popular online news sources.<sup>195</sup> In 2017, the majority of complaints (63%) made to the Press Council concerned online articles (in 2016 the figure was as high as 67%).<sup>196</sup> Currently, several complaints are pending about an article in the online magazine “Rheinnekarblog” which, in March 2018,

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<sup>187</sup> For further details, see Harstein/Ring/Kreile/Dörr/Stettner/Cole/Wagner, *Rundfunkstaatsvertrag*, on section 54, marginal no. 18.

<sup>188</sup> Berlin Higher Regional Court (Kammergericht), decision of 4 October 2016, Case 27 O 513/16, <http://www.online-und-recht.de/urteile/Gegendarstellungsanspruch-gegen-Webseiten-Blog-Kammergericht-Berlin-20161128/>.

<sup>189</sup> Federal Court of Justice, judgment of the 6th Civil Chamber (Zivilsenat) of 23 June 2009, Case VI ZR 196/08, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=48601&pos=0&anz=1>.

<sup>190</sup> Bremen Higher Regional Court (Oberlandesgericht), judgment of 13 January 2011, Case 2 U 115/10, <https://www.olg.bremen.de/entscheidungen/detail.php?gsid=bremen88.c.2355.de&asl=bremen88.c.2335.de>.

<sup>191</sup> For details, see Jörg Ukrow, “Neue Formen politischer Kommunikation als Gegenstand einer positiven Ordnung 4.0”, <http://www.medien-impulse.de/wp-content/uploads/2017/01/chat-bots-170110.pdf>.

<sup>192</sup> The Hamburg/Schleswig-Holstein Media Authority (Medienanstalt HSH) has imposed a number of fines on YouTubers. Cf <https://www.ma-hsh.de/infotehk/pressemitteilung/ma-hsh-verhaengt-bussgeld-gegen-youtuber-apored-verfahren-wegen-werbeverstoessen-gegen-youtuber-leon-machere-und-lifestyle-blogg.html>.

<sup>193</sup> The YouTuber “Gronkh” applied for a licence for his channel at the insistence of the North Rhine-Westphalia Media Authority (Landesmedienanstalt NRW) <https://www.kek-online.de/service/pressemitteilungen/meldung/news/ergebnisse-233-sitzung-der-kek/>.

<sup>194</sup> German Press Council press release of 4 December 2008, <http://www.presserat.de/presserat/news/pressemitteilungen/datum/2008/>.

<sup>195</sup> Reuters Institute Digital News Survey 2017, *ibid*.

<sup>196</sup> Press Council statistics, <http://www.presserat.de/beschwerde/statistiken/>.



reported on a fictitious attack in Mannheim involving 136 deaths, describing it as a “bloodbath of apocalyptic proportions”. According to the publisher, the aim of the report was to draw attention both to possible threat situations and to fake news. However, the hoax report, which was only discovered to be mere fiction in an article behind a paywall, has resulted in the publisher being accused in complaint proceedings of breaching the truthfulness requirement in section 1 of the Press Code.<sup>197</sup>

## 4.5. Summary and conclusions

Broadcasting, which traditionally, in terms of scope, impact and suggestive power, is considered in Germany to be hugely influential,<sup>198</sup> and which is, in practice, used most frequently to obtain information, is highly regulated. In this connection, the objectivity, fairness and truthfulness of reporting are guaranteed by a wide range of legal instruments supplemented by the self-regulation of those responsible. The press, on the other hand, is subject to less detailed legal provisions, although this is compensated for by the rules of the Press Code, which is of great importance for the press, both internally and externally, including in terms of ethical considerations. This also applies to the online services of the traditional media operators. The journalistic-editorial telemedia of other providers must at least observe the recognised journalistic principles. However, far removed from journalistic-editorial production, there is neither regulation nor self- or co-regulation as far as journalistic standards are concerned. For example, online media such as search engines or other platforms that only display content with no editorial processing, or private individuals who occasionally produce items in social networks, can exert influence on public opinion with their content without being bound by the rules which apply to broadcasting or the press. However, this graduated system of regulation seems to be precisely reflected in the Germans’ actual use of media and in their trust in the media, as described in the introduction.

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<sup>197</sup> See the Meedia.de report on this, <http://meedia.de/2018/03/26/nach-erfundener-terroranschlags-meldung-presserat-liegen-vier-beschwerden-gegen-rheinneckarblog-vor/>.

<sup>198</sup> Federal Constitutional Court, decision of the First Chamber of 30 November 1993, Case 1 BvL 30/88, marginal no. 425, [http://www.bverfg.de/SharedDocs/Entscheidungen/DE/1993/11/ls19931130\\_1bv1003088.html](http://www.bverfg.de/SharedDocs/Entscheidungen/DE/1993/11/ls19931130_1bv1003088.html).



## 5. ES – Spain

Francisco Javier Cabrera Blázquez, European Audiovisual Observatory<sup>199</sup>

### 5.1. Introduction

According to *DigitalNewsReport.es* 2017,<sup>200</sup> traditional journalistic media remain the most relied on by the Spanish digital audience, despite the rise of social networks. Over half (51%) of Internet users trust the news in general, compared to the 24% that does not. Scepticism is greatest among young people, those who are uninterested in current affairs, and those who prefer to go to social networks for information. The digital audience believes that news media help more than social networks to distinguish facts from hoaxes. Nevertheless, 10% of Internet users regularly actively avoid receiving news. There is a growing perception that the media are not free from political (57%) and economic (55%) influence.

According to the report, television is still the most watched and preferred channel for information, but social networks continue to grow as the main source of news, to the detriment of the media. Social networks and mobile alerts are the fastest growing access routes to news. Despite this, traditional journalistic brands are the most used by most Spanish Internet users. They enjoy a more loyal public, and are perceived as the most useful when it comes to providing rigorous information that helps to understand complex issues, and providing solid points of view or entertainment. Over one week, 60% of users consult seven or more information brands.

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<sup>199</sup> The author would like to thank Sonia Monjas González (Comisión Nacional de los Mercados y de la Competencia – CNMC) for her invaluable help in the drafting of this article.

<sup>200</sup> <http://www.digitalnewsreport.es/>. This report on users of digital news in Spain is based on Reuters Institute Digital News Report 2017, <http://www.digitalnewsreport.org/>.



## 5.2. Broadcast media

### 5.2.1. Regulatory framework

#### 5.2.1.1. General legislation

The Spanish Constitution<sup>201</sup> recognises and protects the right to freedom of speech and information; however, this is limited by other rights recognised by the Constitution, by the legal provisions implementing it, and especially by the right to honour, to privacy, to personal reputation and to the protection of youth and childhood (Article 20(4)).

The Spanish Criminal Code (CC)<sup>202</sup> contains provisions on slander and defamation in general (Articles 205-216 CC), including specific provisions on slander and defamation against the King of Spain or members of the Royal Family (Articles 490-491 CC). The amended version of Article 578 CC prohibits “glorifying terrorism” and “humiliating the victims of terrorism”.

Further legislation applying to all media includes the Organic Act 1/1982,<sup>203</sup> which provides civil remedies for the protection of the right to honour, personal and family privacy and self-image, and the Organic Law 2/1984,<sup>204</sup> which regulates the right of rectification.

#### 5.2.1.2. Sector-specific legislation

Concerning audiovisual media, Article 4 of the *Ley General de la Comunicación Audiovisual* (General Audiovisual Act – LGA),<sup>205</sup> specifies that information has to be provided in accordance with the duty to diligently verify information and to respect political, social and cultural pluralism. All persons have the right to be informed of events of general interest and to receive information and opinions in a clearly differentiated manner.

Regarding the right to participate in the control of audiovisual content, Article 9 LGA states that any natural or legal person may request the competent audiovisual authority – either the Spanish regulator, the *Comisión Nacional de los Mercados y de la Competencia* (CNMC) or the relevant regional regulator – to check that the audiovisual

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<sup>201</sup> An English version of the Spanish Constitution is available at: <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>.

<sup>202</sup> Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, [http://noticias.juridicas.com/base\\_datos/Penal/lo10-1995.html](http://noticias.juridicas.com/base_datos/Penal/lo10-1995.html).

<sup>203</sup> Ley Orgánica 1/1982, de 5 de mayo, sobre protección civil del derecho al honor, a la intimidad personal y familiar y a la propia imagen, [http://noticias.juridicas.com/base\\_datos/Admin/lo1-1982.html](http://noticias.juridicas.com/base_datos/Admin/lo1-1982.html).

<sup>204</sup> Ley Orgánica 2/1984, de 26 de marzo, reguladora del derecho de rectificación, [http://noticias.juridicas.com/base\\_datos/Admin/lo2-1984.html](http://noticias.juridicas.com/base_datos/Admin/lo2-1984.html).

<sup>205</sup> Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual, [http://noticias.juridicas.com/base\\_datos/Admin/l7-2010.html](http://noticias.juridicas.com/base_datos/Admin/l7-2010.html).





content complies with current legislation or self-regulation codes. In the case of apparently illegal content being broadcast, the competent audiovisual authority shall hear the provider of the service concerned and, where appropriate, the person who requested the intervention of the authority. The relevant audiovisual authority may reach agreement with the service provider for the audiovisual content to be modified or, where appropriate, it may stop the broadcasting of the illegal content. In the case of a contravention of a self-regulation code signed by the provider, the authority shall require the provider to bring the content immediately into line with the provisions of the code or to stop its being broadcast.<sup>206</sup>

Under Article 9(1) of the LGA, the authority may also issue recommendations aimed at ensuring better compliance with the regulations in force. So far, the CNMC<sup>207</sup> has not developed specific guidelines aimed at protecting journalistic guarantees. However, it supervises the compliance of the Corporación Radiotelevisión Española (CRTVE,<sup>208</sup> – the Spanish public-service media company at the national level) with its public service obligations. These include the obligation to guarantee the plurality, truthfulness, objectivity and impartiality of the information that it broadcasts. In exercising this supervisory function, the CNMC has the capacity to issue recommendations concerning the fulfillment of the CRTVE's public service obligations.<sup>209</sup>

## 5.2.2. Broadcaster policies

### 5.2.2.1. Public service broadcaster

The CRTVE<sup>210</sup> (also known as “RTVE”<sup>211</sup>) operates 7 television channels, which had a total audience share of 16.7% in 2016, including the third-ranking television channel in terms of audience, La 1.<sup>212</sup> It also operates six radio channels; the website *RTVE.es*, the RTVE Institute and its own in-house orchestra and choir.

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<sup>206</sup> The provisions contained in Article 9 LGA are without prejudice to the contents of the regulations on sanctioning procedures issued by the Autonomous Communities.

<sup>207</sup> <https://www.cnmc.es>.

<sup>208</sup> <http://www.rtve.es/>.

<sup>209</sup> The monitoring report for 2015 and 2016 was published in April 2018 and includes some recommendations. See Informe sobre el cumplimiento de las obligaciones de servicio público por la Corporación Radio y Televisión Española y su financiación. Años 2015 y 2016, <https://www.cnmc.es/node/367687>.

<sup>210</sup> <http://www.rtve.es/>.

<sup>211</sup> There exist a number of public-service broadcasters at regional level (see <http://www.forta.es/> for more information), but for space's sake this report will only consider the editorial policies of RTVE.

<sup>212</sup> Country Profile: Spain, The Yearbook of the European Audiovisual Observatory, Edition 2017/2018, <http://yearbook.obs.coe.int/>.



#### 5.2.2.1.1. Editorial guidelines

Article 23 of the CRTVE's Framework Mandate<sup>213</sup> requires the public-service broadcaster to give priority to information, which should be a fundamental part of its offer and a space for public debate that stimulates reflection, acquisition of knowledge, critical thinking and citizen participation. Information and opinion should be clearly differentiated. The CRTVE must be particularly rigorous in its treatment of terrorism, conflict situations and all types of violence in its news programmes, paying special respect and attention to the sensitivity of victims.

The *Estatuto de Información de la Corporación RTVE* (the CRTVE's Information Statute)<sup>214</sup> sets out the rights and duties of CRTVE journalists in obtaining, processing and disseminating information, with the aim of ensuring their independence, as well as the objectivity and veracity of the information they provide. Likewise, it designates the news councils as participatory bodies that aim to guarantee the internal oversight and protection of the Corporation's audiovisual information professionals.

Furthermore, the CRTVE has a Manual of Style<sup>215</sup> for its news programmes. Its rules are applied to television, radio and web output, and aims to guarantee maximum informative rigour, independence, plurality and attention to the interests of society. It considers it essential to give adequate treatment to particularly sensitive social issues, such as gender violence, immigration, disasters or news involving minors.

#### 5.2.2.1.2. Right of reply and rectification

According to the CRTVE's Manual of Style, information which has been proven to be false or erroneous shall be rectified promptly and in a manner that is appropriate to the circumstances, without, if necessary, avoiding the apology and without waiting for the persons or institutions concerned to request it. The correction shall be made at least in the same way and with the same prominence as that in which the incorrect or inaccurate information would have benefitted from. Errors that are detected will be acknowledged and corrected, clearly indicating both the omission or error and its correction. Where appropriate, the reasons for the error may be explained to the public.

Moreover, if errors or inaccuracies arise that harm the interests of persons or institutions and those persons or institutions claim a right of reply, CRTVE's professionals are obliged to respect and abide by the terms of the Organic Law 2/84. CRTVE will also offer a right of reply before the broadcast or publication of any information when they consider that it contains information or testimony that could harm third parties or their interests. In the same way, when someone makes accusations against third parties, RTVE

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<sup>213</sup> Mandato-marco a la Corporación RTVE previsto en el artículo 4 de la Ley 17/2006, de 5 de junio, de la Radio y la Televisión de Titularidad Estatal, aprobado por los Plenos del Congreso de los Diputados y del Senado, [http://noticias.juridicas.com/base\\_datos/Admin/cm131207-cg.html](http://noticias.juridicas.com/base_datos/Admin/cm131207-cg.html).

<sup>214</sup> Estatuto de Información de la Corporación RTVE, [http://www.rtve.es/contenidos/corporacion/Estatuto\\_de\\_la\\_informacion.pdf](http://www.rtve.es/contenidos/corporacion/Estatuto_de_la_informacion.pdf).

<sup>215</sup> Manual de estilo de RTVE, <http://manualdeestilo.rtve.es>.



will ask the author of those accusations for supporting evidence. If this is not possible, RTVE will investigate the veracity of the accusations through its own means.

#### 5.2.2.1.3. Complaint procedures

The *Defensor del espectador, oyente y usuario de medios interactivos* (the CRTVE Ombudsman) safeguards the right of citizens to truthful, independent and pluralist information and decent entertainment. It promotes the transparency and self-regulation of the Corporation's media and facilitates direct relations between members of the public and its journalists in order to improve programming. After gathering information about a complaint, it issues an evaluation which shall be published on the CRTVE's website and on its own television programme, *RTVE responde* ("RTVE Responds"); the evaluation shall also be delivered personally to the party who lodged the complaint.<sup>216</sup>

### 5.2.2.2. Private broadcasters

#### 5.2.2.2.1. Atresmedia

Atresmedia<sup>217</sup> is a media group in Spain operating, *inter alia*, 7 television channels (including Antena 3, the 2nd ranking television channel in terms of audience, and La Sexta) which had a total audience share of 24.6% in 2016.<sup>218</sup>

According to Antena 3's Code of Ethics,<sup>219</sup> its news services operate under the basic premise of offering their audiences reliable, quality information committed to the principles of social responsibility that should pertain to the practice of media journalism. No behaviour on the part of (or information imparted by) Antena 3's journalists may go against the principles enshrined in the Constitution or contravene any legal or regulatory provision. Respect for the dignity of persons must be ensured in respect of all information disseminated. Only the defence of the public interest justifies conducting inquiries into people's private lives without their consent. In particular, the rights of persons whose circumstances or nature place them in a position of weakness or possible discrimination shall be safeguarded. As in the case of all other programmes broadcast on Antena 3, its news programmes will clearly and explicitly separate information from advertising, and purely journalistic content from commercial content. Moreover, informational content shall be unequivocally differentiated from that which implies a critical interpretation or comment in respect of any contemporaneous field. The legal principle of the presumption

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<sup>216</sup> CRTVE – Estatuto del Defensor del espectador, oyente y usuario de medios interactivos, [http://www.rtve.es/contenidos/documentos/Estatuto\\_defensora.pdf](http://www.rtve.es/contenidos/documentos/Estatuto_defensora.pdf).

<sup>217</sup> <http://www.atresmediacorporacion.com>.

<sup>218</sup> Country Profile: Spain, The Yearbook of the European Audiovisual Observatory, Edition 2017/2018, <http://yearbook.obs.coe.int/>.

<sup>219</sup> Código Deontológico de los Servicios Informativos de Antena 3, <http://www.atresmediacorporacion.com/documents/2012/06/13/4C98559C-9E62-4ECF-9591-99CEB7349907/00005.pdf>.



of innocence shall be scrupulously observed in respect of all information concerning ongoing investigations or legal proceedings.

The Code of Ethics of *La Sexta Noticias* (La Sexta's main news programme)<sup>220</sup> states its eagerness to “advance with the times” and its aim to give voice to national and international organisations and groups that fight for the disadvantaged and against inequality and injustice. NGOs and new social movements are a basic pillar of *La Sexta Noticias*' reporting. All information broadcast by *La Sexta Noticias* must be balanced and reflect all points of view. Everyone shall be assumed to be innocent in any material disseminated until proven guilty by a court of law. In all legal proceedings, the status of the accused (defendants, accused, etc.) will be indicated. *La Sexta Noticias* respects people's private lives. It is mandatory to cite other media if those media obtain exclusive information that *La Sexta Noticias* wishes to address.

#### 5.2.2.2.2. Mediaset España

Mediaset España,<sup>221</sup> controlled by Italy-based Mediaset S.p.A., operates 7 television channels that commanded a total audience share of 29.9% in 2016,<sup>222</sup> including Telecinco and Cuatro.

Mediaset España's Code of Ethics<sup>223</sup> is applicable to all its television channels. As regards the information that they disseminate, Mediaset España journalists must observe strict compliance with the principles of truthfulness, objectivity and independence. No information deviating from these principles shall be communicated if it has not first been diligently investigated, or if it has been obtained using illegal methods. As far as possible, the dissemination of expressions or images that may offend the sensibilities of the viewer shall be avoided, especially at times when the presence of minors in front of the television set may be expected. In the event that the broadcasting of such expressions and images is essential in order to adequately illustrate a news item, prior oral notice of its existence shall be given. The right of an individual to personal and family privacy, and for his honour and image to be respected, shall be respected at all times., in accordance with current legislation and applicable case law. Mediaset España is fully committed to rectifying all information that strays from the principle of truthfulness.

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<sup>220</sup> Código Deontológico de La Sexta Noticias, [http://www.atresmediacorporacion.com/responsabilidad-corporativa/codigos-conducta/codigo-deontologico-lasexta-noticias\\_20140219589331380cf22c043d0ed69d.html](http://www.atresmediacorporacion.com/responsabilidad-corporativa/codigos-conducta/codigo-deontologico-lasexta-noticias_20140219589331380cf22c043d0ed69d.html).

<sup>221</sup> <https://www.mediaset.es/>.

<sup>222</sup> Country Profile: Spain, The Yearbook of the European Audiovisual Observatory, Edition 2017/2018, <http://yearbook.obs.coe.int/>.

<sup>223</sup> Código Ético de Mediaset España, [https://album.mediaset.es/file/10002/2017/09/22/thearchive\\_cd34.pdf](https://album.mediaset.es/file/10002/2017/09/22/thearchive_cd34.pdf).



## 5.3. Print media

### 5.3.1. Regulatory framework

The regulation of journalistic activities in Spain is based on the constitutionally-protected freedom of expression. Other than the general legislation described above, there is no press law in the proper sense of the term. There exists, however, a self-regulatory system established by the *Federación de Asociaciones de Periodistas de España* (FAPE).<sup>224</sup> Its *Comisión de Arbitraje, Quejas y Deontología del Periodismo* (Commission for Arbitration, Complaints and Ethics in Journalism)<sup>225</sup> is constituted as an internal ethical self-regulatory body for the journalistic profession. This Commission aims to ensure compliance with FAPE's *Código Deontológico* (Code of Ethics),<sup>226</sup> although it has no real power to impose sanctions. Its scope of action extends to any written or audiovisual medium, regardless of whether or not it is adhered to.<sup>227</sup> However, even though it is a body created and backed by the largest professional journalism organisation in Spain, the Commission still lacks full support and recognition by all Spanish media.<sup>228</sup>

According to FAPE's Code of Ethics, the journalist's first ethical commitment is to respect the truth. Accordingly, journalists shall always uphold the principle of freedom to investigate and disseminate information and freedom of comment and criticism. Without prejudice to the right of citizens to be informed, journalists shall respect the right of individuals to their own privacy and image. Journalists must uphold the principle that everyone is innocent until proven guilty and avoid as far as possible any harmful consequences arising from the performance of their reporting duties. Such criteria are especially pertinent in respect of matters brought to the attention of the Courts of Justice.

Journalists will do their utmost to respect the rights of the weakest and most discriminated against. For this reason, they must be particularly sensitive in the case of information or opinions of potentially discriminatory content or which could incite violence or degrading human practices.

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<sup>224</sup> The *Federación de Asociaciones de Periodistas de España* (FAPE) is the first professional organisation for journalists in Spain, with 49 federated and 19 linked associations representing around 19,000 members, <http://fape.es>.

<sup>225</sup> The *Comisión de Arbitraje, Quejas y Deontología del Periodismo* is part of the Alliance of Independent Press Councils of Europe, <http://www.comisiondequejas.com/>.

<sup>226</sup> *Código Deontológico de la Federación de Asociaciones de Periodistas de España*, <http://fape.es/home/codigo-deontologico/>.

<sup>227</sup> For a detailed analysis of decisions taken by the *Comisión de Arbitraje, Quejas y Deontología del Periodismo* see Serrano Moreno J., "La autorregulación deontológica de los medios a través del Consejo de Prensa – Análisis de las 100 primeras Resoluciones de la Comisión de Arbitraje, Quejas y Deontología de la FAPE (2005-2014)", [http://dspace.ceu.es/bitstream/10637/7923/1/La%20autorregulaci%C3%B3n%20deontol%C3%B3gica%20de%20los%20medios%20a%20trav%C3%A9s%20del%20Consejo%20de%20Prensa\\_Tesis\\_Serrano%20Moreno%20Juan.pdf](http://dspace.ceu.es/bitstream/10637/7923/1/La%20autorregulaci%C3%B3n%20deontol%C3%B3gica%20de%20los%20medios%20a%20trav%C3%A9s%20del%20Consejo%20de%20Prensa_Tesis_Serrano%20Moreno%20Juan.pdf).

<sup>228</sup> Currently the media groups Planet-Atres Media, Vocento, Mediaset and RTVE are not members of the Commission.



FAPE's Code of Ethics lists a number of operational principles. The commitment to the search for the truth will always require journalists to report only on facts of which they are aware, without falsifying documents or omitting essential information, and not to publish false, misleading or distorted information material. Consequently, journalists must substantiate information that they disseminate, including by comparing sources and giving the persons concerned the opportunity to give their own version of the facts. In the case of publication of false, misleading or distorted material, journalists must correct the error in question as soon as possible, using the same typographical and/or audiovisual form of presentation as that used for its original dissemination. They shall also circulate an apology through their respective media organ where appropriate. Likewise, and without the need for the affected parties to take legal action, they must provide natural or legal persons with adequate opportunity to reply to inaccuracies in a manner similar to that indicated above. In carrying out their professional duties, journalists must use dignified methods to obtain information; this excludes the use of illegal procedures. Journalists shall recognise and respect the right of natural and legal persons not to provide information or to answer questions, without prejudice to their professional duty to comply with citizens' right to information. With the same exceptions as those pertaining to professional secrecy, the journalist will respect the nature of "off-the-record" information when it has been made clear that such information was provided on that basis, or when it can be deduced that this was the informant's intention. Journalists will always make a clear and unequivocal distinction between facts and opinions, and interpretations or conjectures, although they are not obliged to be neutral in the exercise of their professional activities. In order not to mislead or confuse users, journalists are obliged to make a formal and rigorous distinction between information and advertising. It is considered unethical for journalists to carry out their activities while simultaneously engaging in advertising, or engaging in institutional or private activities of social communication when in doing so they breach the principles and ethical principles of journalism.

### 5.3.2. Newspaper policies

All Spanish journals have a manual of style which sets out ethical rules for their journalists. However, these manuals are in many cases difficult to find on their webpages or are simply not available to the public.<sup>229</sup>

With regard to complaints or right-of-reply procedures, transparency is equally absent. Probably the most transparent example is the daily *El País*. Its Reader's Ombudsman<sup>230</sup> guarantees readers' rights, attends to their questions, complaints and suggestions regarding the contents of the newspaper, and ensures that the treatment of information is in accordance with the ethical and professional rules of journalism. It can intervene at the request of any reader or on its own initiative.

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<sup>229</sup> The exception to this is EL PAIS, see [http://blogs.elpais.com/defensor-del-lector/doc/principios\\_eticos.pdf](http://blogs.elpais.com/defensor-del-lector/doc/principios_eticos.pdf).

<sup>230</sup> <http://blogs.elpais.com/defensor-del-lector/>.



## 5.4. Online media

### 5.4.1. Regulatory framework

Online media are regulated by Act 34/2002 on Information Society Services and Electronic Commerce.<sup>231</sup> Apart from this concrete piece of legislation and the general legislation mentioned above, there is no sector-specific regulation concerning freedom of expression and information online.

### 5.4.2. Online media policies

The main Spanish broadcasters and journals also have Internet-based versions of their broadcast/print output, to which the same ethic rules and self-regulating codes apply.

As regards “digital native” sites, these continue to thrive in Spain, and reach a bigger mainstream audience than in most other countries. The most successful are *El Confidencial*, *Eldiario.es*, and *Público.es*.<sup>232</sup> As in the case of their printed counterparts, transparency is absent with regards to ethical rules or procedures concerning complaints or the right of reply. *Eldiario.es* has a blog in which every fortnight its editor answers questions from readers and partners about the functioning of its news service,<sup>233</sup> whereas *El Confidencial* and *Público* simply offer contact pages.<sup>234</sup>

## 5.5. Conclusion

Spain is a relatively young democracy which keeps fresh the memory of the not-so-distant times when a dictatorial regime curtailed the freedom of the press. For these reasons, media outlets and journalists have acquired a “resistance” to any form of regulation that might impair their activities.<sup>235</sup> This can be observed, for example, in the refusal of some important media to join self-regulatory bodies and, in general, an “allergy” to rectifying factual mistakes.<sup>236</sup> However, the absence of clear regulation in the journalistic sector also has the consequence that it is left to the courts (both national and European) to

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<sup>231</sup> Ley 34/2002, de 11 de julio, de servicios de la sociedad de la información y de comercio electrónico, [http://noticias.juridicas.com/base\\_datos/Admin/l34-2002.html](http://noticias.juridicas.com/base_datos/Admin/l34-2002.html).

<sup>232</sup> See Reuters Institute Digital News Report 2017, <http://www.digitalnewsreport.org/>.

<sup>233</sup> [https://www.eldiario.es/responde/Alguna-pregunta-eldiarioes-responde\\_6\\_586251400.html](https://www.eldiario.es/responde/Alguna-pregunta-eldiarioes-responde_6_586251400.html).

<sup>234</sup> <https://www.elconfidencial.com/somos/> and <http://www.publico.es/pages/contacto.html>.

<sup>235</sup> See, for example, González Urbaneja F., “Autorregulación sin convicción”, Cuadernos de Periodistas, 7 September 2017, <http://www.cuadernosdeperiodistas.com/autorregulacion-sin-conviccion-espana/>.

<sup>236</sup> See, for example, Pérez Oliva M., “La rectificación, un derecho que no se ejerce”, Cuadernos de Periodistas, 29 November 2016, <http://www.cuadernosdeperiodistas.com/la-rectificacion-derecho-no-se-ejerce/>.



determine on a case-by-case basis (i) the limits on journalistic activity, and (ii) the scope of personality rights.<sup>237</sup>

Otherwise, legislation stipulating limitations on the freedom of expression has been the object of much criticism in recent times. The Spanish Criminal Code's provisions on slander and defamation go against the recommendations of international bodies such as the Council of Europe, which warns of the potential "chilling effect" of overprotective defamation laws on freedom of expression and public debate.<sup>238</sup> As a recent example of this, the European Court of Human Rights held in March 2018 that, in the case of two Spanish nationals who had set fire to a photograph of the royal couple at a public demonstration, the prison sentence imposed on the applicants had been neither proportionate to the "legitimate aim pursued" (the protection of the reputation or rights of others) nor necessary in a democratic society.<sup>239</sup> Despite this judgment, the Spanish Parliament rejected a legislative proposal to decriminalise the slandering and defamation of the Crown.<sup>240</sup> Another criticised provision of the Criminal Code is the prohibition on "glorifying terrorism" and "humiliating the victims of terrorism". According to Amnesty International, this has resulted in "increasing self-censorship and a broader chilling effect on freedom of expression in Spain."<sup>241</sup>

Lastly, the issue of "fake news" has been taken more seriously in Spain owing to allegations that Russian-based media spread disinformation during the recent political crisis in Catalonia.<sup>242</sup> Accordingly, the Congress of Deputies (the lower house of the Spanish parliament) set up a (rather controversial) working group within the parliament's Defence Committee with the aim of studying the characteristics, development, consequences and ways of combating "disinformation campaigns".<sup>243</sup> Moreover, the Government has provisionally tasked the National Cybersecurity Council with detecting and countering disinformation campaigns (which for the first time have been included as

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<sup>237</sup> López Acuña C.R., "La evolución de la libertad de expresión y el derecho a la información en la España constitucional. Relevancia de la jurisprudencia en la profesión periodística" (tesis doctoral), Universidad Complutense de Madrid, 2017, <http://eprints.ucm.es/42082/1/T38627.pdf>.

<sup>238</sup> See <https://www.coe.int/en/web/freedom-expression/defamation>.

<sup>239</sup> Judgment of the European Court of Human Rights, case of Stern Taulats and Roura Capellera v. Spain (application no. 51168/15), 13 March 2018, <http://hudoc.echr.coe.int/eng?i=001-181719>.

<sup>240</sup> Mayor Ortega L., "El Congreso avala los delitos de injurias a la Corona pese a la condena de Estrasburgo", La Vanguardia, <http://www.lavanguardia.com/politica/20180313/441503947300/congreso-desoye-tedh-mantiene-delitos-injurias-corona-ultraje-espana.html>.

<sup>241</sup> Amnesty International, "Tweet ... if you dare – how counter-terrorism laws restrict freedom of expression in Spain", <https://www.amnesty.org/download/Documents/EUR4179242018ENGLISH.PDF>.

<sup>242</sup> See e.g. Palmer E., "Spain Catalonia: Did Russian 'fake news' stir things up?", BBC News 18 November 2017, <http://www.bbc.com/news/world-europe-41981539>, Rankin J., "Catalan independence: EU experts detect rise in pro-Kremlin false claims", The Guardian, 13 November 2017, <https://www.theguardian.com/world/2017/nov/13/catalan-independence-eu-experts-detect-rise-in-pro-kremlin-false-claims>, and "Russian public media spread Catalan pro-independence propaganda", El País, 2 January 2018, [https://elpais.com/elpais/2018/01/02/inenglish/1514877717\\_186245.html](https://elpais.com/elpais/2018/01/02/inenglish/1514877717_186245.html).

<sup>243</sup> "El Congreso crea el grupo de trabajo para analizar las 'fake news', del que se descuelga Podemos", La Vanguardia, 24 April 2018, <http://www.lavanguardia.com/vida/20180424/442950068552/el-congreso-crea-el-grupo-de-trabajo-para-analizar-las-fake-news-del-que-se-descuelga-podemos.html>.





a threat in the National Security Strategy adopted in December 2017,<sup>244</sup> while assessing the advisability of creating a dedicated body to combat them.

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<sup>244</sup> Real Decreto 1008/2017, de 1 de diciembre, por el que se aprueba la Estrategia de Seguridad Nacional 2017, <https://www.boe.es/boe/dias/2017/12/21/pdfs/BOE-A-2017-15181.pdf>.





## 6. FI – Finland

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### 6.1. Introduction

Trust in the news media is at a record high in Finland, especially when it comes to the traditional legacy media. Moreover, Finnish journalists work in a professional culture which is based on the values of objectivity and independence.<sup>245</sup> At the same time, a popular fake or alternative news site, called *MV-lehti*, has been gaining attention and is currently under scrutiny.<sup>246</sup> A recent report on the state of Finnish media and communications policy notes that Finns have traditionally spent a fairly large amount of time on media consumption. Referring to survey data, it also points out that over 40% of that time is currently used for the Internet, while electronic media in general receives over six times the amount of time dedicated to print media.<sup>247</sup> Indeed, 88% of Finns (between the ages of 16 to 89) use the Internet on a daily basis, with mobile use being the most popular gateway thereto.<sup>248</sup> Social media is the main source of news only for 8% of Finns, with strong polarisation according to age groups (the percentage is 29% of those under 25). Moreover, Finns are not eager to pay for their online news.<sup>249</sup>

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<sup>245</sup> See, e.g., N. Newman et al., Reuters Institute Digital News Report 2017, pp. 8, 66-67, [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web\\_0.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web_0.pdf).

<sup>246</sup> See, for example, “Police to investigate anti-immigrant MV-Lehti website”, Yle News, 28 January 2016, [https://yle.fi/uutiset/osasto/news/police\\_to\\_investigate\\_anti-immigrant\\_mv-lehti\\_website/8632899](https://yle.fi/uutiset/osasto/news/police_to_investigate_anti-immigrant_mv-lehti_website/8632899); see also Newman et al. 2017, pp. 66-67.

<sup>247</sup> M. Ala-Fossi et al., Media- ja viestintäpolitiikan nykytila ja sen mittaaminen (Publications of the Ministry of Transport and Communications 4/2018), p. 214, <http://julkaisut.valtioneuvosto.fi/handle/10024/160714>; see also TNS Atlas Intermedia, Suomalaisen mediapäivä 2016, <https://www.tns-gallup.fi/uutiset/suomalaisen-mediapaiva-2016>.

<sup>248</sup> Ala-Fossi et al., 2018, p. 215; see also Statistics Finland, Väestön tieto- ja viestintätekniikan käyttö, <http://www.stat.fi/til/sutivi/>.

<sup>249</sup> Ala-Fossi et al., 2018, p. 216 ; Newman et al., 2017, pp. 66-67.



## 6.2. Broadcast media

### 6.2.1. Current regulatory framework

The Act on the Exercise of Freedom of Expression in Mass Media (460/2003) (*laki sananvapauden käyttämisestä joukkoviestinnässä*, Freedom of Expression Act - FEA)<sup>250</sup> includes provisions on reply and correction. The provisions cover all regular publishing and programme activity. However, self-regulation (see below) functions to the extent that the law has not been applied in such matters. Under the FEA, a private individual with a justified reason to consider offensive a message contained in a programme broadcast on a regular basis has the right to have their reply published in the same programme.<sup>251</sup> The right to a correction enables private individuals, corporations, foundations, and public authorities to have false information concerning them contained in a programme corrected in the same programme, with the exception of errors of minor significance.<sup>252</sup> Programme refers to “a coherent set of network messages that are primarily expressed as sound or moving picture, while the provision of such to the public constitutes broadcasting”.<sup>253</sup>

For its part, the Criminal Code of Finland (39/1889; CC) (*rikoslaki*)<sup>254</sup> includes provisions on defamation,<sup>255</sup> the dissemination of information violating personal privacy,<sup>256</sup> and incitement to racial hatred,<sup>257</sup> among others. Defamation covers the spreading of false information or insinuation about a person and disparaging a person in another manner; however, criticism of a person’s activities in politics, business, public position, science, art or in some comparable public activity is allowed. Indeed, legislative amendments concerning defamation and the dissemination of private information entered into force in 2014. These legislative amendments were designed to promote free speech and coherence with the decisions of the European Court of Human Rights (ECtHR).<sup>258</sup>

Section 13 FEA includes provisions on editorial misconduct. They apply where the editor in charge of a programme intentionally or negligently shirks their responsibility to

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<sup>250</sup> Laki sananvapauden käyttämisestä joukkoviestinnässä 460/2003 (Unofficial English translation by the Ministry of Justice, <https://www.finlex.fi/fi/laki/kaannokset/2003/en20030460.pdf>).

<sup>251</sup> FEA, § 8.

<sup>252</sup> FEA, § 9. See A. Alén-Savikko & P. Korpisaari, *Media Law in Finland. The International Encyclopaedia of Laws: Media Law* (Wolters Kluwer 2016), pp. 81-82.

<sup>253</sup> FEA, § 2.

<sup>254</sup> Rikoslaki 19.12.1889/39 (Unofficial English translation by the Ministry of Justice, [https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039\\_20150766.pdf](https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039_20150766.pdf)).

<sup>255</sup> Criminal code, §§ 9-10, Ch. 24.

<sup>256</sup> Criminal Code, §§ 8-8a, Ch. 24.

<sup>257</sup> Criminal Code, §§ 10-10a, Ch. 11.

<sup>258</sup> Government bill on amending the Criminal Code, § 7 Ch 10 of the Coercive Measures Act and § 9 Ch. 5 of the Police Act (HE 19/2013 vp); Sananvapausrikokset, vainoaminen ja viestintärauhan rikkominen. Reports and statements of the Ministry of Justice 24/2012; Alén-Savikko & Korpisaari, 2016, pp. 62-72.



manage and supervise editorial work, and where this may contribute to an offence stemming from the content of the programme.<sup>259</sup>

The Council for Mass Media (*Julkisen sanan neuvosto* – CMM) was established by publishers and journalists in 1968. As an independent self-regulatory body in the field of media, the CMM interprets good professional practice codified in the Guidelines for Journalists.<sup>260</sup> The self-regulatory regime, including the Guidelines, apply to media companies who have committed to them – nearly all the Finnish media. Complaints may be lodged by anyone who suspects a breach of journalistic ethics, and it is also possible for the CMM to discuss matters of major importance on its own initiative.<sup>261</sup> With regard to fairness, accuracy and objectivity, the CMM issues opinions on factual errors, as well as on the treatment of interviewees, among other things. Moreover, the CMM issues statements on professional ethics. In the event of breaches, the CMM issues notices which are to be published by the media concerned. The Guidelines for Journalists contain many provisions that are relevant from the perspective of accuracy and fairness; they emphasise, *inter alia*, journalists' professional status and independence, as well as their unrelinquishable power to make editorial decisions. Moreover, pressure and persuasion must be resisted, while the misuse of a journalist's position is forbidden. As a specific issue, sections 20–25 of the Guidelines include provisions on the right to reply and correction, whereby essentially incorrect information must be speedily corrected. Moreover, the right of reply must be granted from the outset to a person, organisation, or a company whose activities are presented in an extremely negative light.<sup>262</sup> However, if it is impossible to hear the parties at the same time the opportunity to be heard or comment afterwards must be granted to the party presented in a negative light.<sup>263</sup> Even if a reply cannot be published in its original form or in amended form, the core content should be published objectively.<sup>264</sup>

According to the 2016 annual report of the CMM, the trust in which journalism is held is being exploited for the dissemination of disinformation, while journalists are increasingly being subjected to hate speech and threats. Indeed, in the current media landscape, the Council has acquired a new position as the defender of the fact-based media.<sup>265</sup> In 2018, a campaign for responsible journalism was launched by media within the scope of the CMM. A visual icon was developed which can be used exclusively by media subject to self-regulation to label their content. The icon may be used in broadcasting, print media and online. The purpose is to enable the public to separate responsible journalism (which is accurate and fair) from content and forms of

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<sup>259</sup> Alén-Savikko & Korpisaari, 2016, pp. 74-75.

<sup>260</sup> See Council for Mass Media, Guidelines for Journalists, [http://www.jsn.fi/en/guidelines\\_for\\_journalists/](http://www.jsn.fi/en/guidelines_for_journalists/). See also Alén-Savikko & Korpisaari, 2016, pp. 95-96.

<sup>261</sup> See the Basic Agreement of the CMM, [http://www.jsn.fi/en/Council\\_for\\_Mass\\_Media/basic-agreement/](http://www.jsn.fi/en/Council_for_Mass_Media/basic-agreement/). See also the committed media via links at E. Grundström, Mitkä mediat kuuluvat JSN:n sääntelyn piiriin, <http://www.jsn.fi/blog/mitka-mediat-kuuluvat-jsn-n-saantelyn-piiriin/>.

<sup>262</sup> Council for Mass Media, Guidelines for Journalists, section 21.

<sup>263</sup> Council for Mass Media, Guidelines for Journalists, section 22.

<sup>264</sup> Council for Mass Media, Guidelines for Journalists, section 22. See also Alén-Savikko & Korpisaari, 2016, pp. 83-85.

<sup>265</sup> JSN 2016, 2.



communication that are based on different values and principles than journalism, including from disinformation, fake news, and advertising.<sup>266</sup>

**Figure 1. Icon for responsible journalism<sup>267</sup>**



Since the turn of the millennium, the Supreme Court of Finland has rendered many judgments on defamation, mostly overturning rulings of lower courts and dismissing charges. The court has also ruled extensively on the dissemination of private information.<sup>268</sup> In the field of self-regulation, according to the 2016 annual report of the CMM, the number of complaints was a record high in 2016, while breaches were found in 38 cases (37.3%).<sup>269</sup> With regard to 2017 decisions, accuracy and factual error was discussed – for example, regarding *MOT*, a programme broadcast by Yle (the national public service broadcaster – Yleisradio).<sup>270</sup> A claim was made in the programme without substantiating its accuracy. Later in the reply of the responsible editor, only one anonymous source was cited by way of substantiation. The claim was presented as fact in the programme, even though it simply constituted an opinion. Pursuant to the CMM, the error should have been corrected. Moreover, the CMM has issued an opinion concerning the conduct of Finnish Prime Minister Juha Sipilä.<sup>271</sup> The CMM regarded as ill-judged regular allegations made in public by the Prime Minister that Yle had breached the Guidelines for Journalists. The CMM referred to its mandate to interpret the Guidelines, noting that ill-founded references to the Guidelines may erode the credibility of journalism and the foundations of democracy. It was, however, impossible for the Council to examine whether or not the Prime Minister had aimed to exert influence over Yle. According to the CMM, his conduct could nonetheless have had the effect of limiting free

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<sup>266</sup> See [www.vastuullistajournalismia.fi](http://www.vastuullistajournalismia.fi). The campaign promoting the icon was fixed-term (12.-25.3.2018) but the icon could be adopted for permanent use. See <http://www.jsn.fi/uutiset/vastuullisen-journalismin-kampanja-kaynnistyi/>.

<sup>267</sup> See [https://vastuullistajournalismia.fi/wp-content/uploads/2018/03/jsn\\_merkki\\_nelio.png](https://vastuullistajournalismia.fi/wp-content/uploads/2018/03/jsn_merkki_nelio.png).

<sup>268</sup> Alén-Savikko & Korpisaari, 2016, pp. 36, 62-72.

<sup>269</sup> JSN 2016, 8-9.

<sup>270</sup> LANGETTAVA 6704/YLE/17, <https://www.jsn.fi/paatokset/6704-yle-17/>.

<sup>271</sup> LAUSUMA 6450/L/17, <https://www.jsn.fi/paatokset/6450-l-17/>.



speech. The Council also noted that safeguarding accuracy and combatting disinformation are challenges which require a contribution from those in power.<sup>272</sup>

## 6.2.2. Broadcaster policies on accuracy and fairness

Major broadcasters in Finland include the national public service broadcaster Yleisradio and commercial broadcasters MTV Oy (MTV 3) and Sanoma Media Finland Oy (Nelonen). Yle has its own guiding principles, including general ethical guidelines (for everyone in the organisation, as well as freelancers and partners),<sup>273</sup> while it also has ethical guidelines for programme activity and content,<sup>274</sup> and principles for social media.<sup>275</sup> The general guidelines include values such as trustworthiness and independence. Programme activity and content are guided by various principles in respect of accuracy and fairness. These include fact-based, pluralistic, and diverse journalism, as well as independence of programme activity and content production (e.g. from pressure, bribes, and political, commercial, or other types of outside interests). Indeed, the guidelines were updated owing to the so-called “Sipilagate” affair regarding relations between Yle and the Finnish Prime Minister (see above).<sup>276</sup> Moreover, in its guidelines the Yle sets out its intolerance for privacy violations, hate speech and discrimination, while emphasising the importance of accuracy of information, the prompt correction of errors, and fairly conducted interviews.

Media organisations that are committed to self-regulation under the CMM are bound by the Guidelines for Journalists. These include Yle, as well as commercial media such as MTV and Sanoma Media Finland (including Nelonen) and Alma Media.<sup>277</sup> For example, *MV-lehti* is not committed to the guidelines.

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<sup>272</sup> The journalistic decision-making process of Yle was also audited following the events. See the report O. Mäenpää, Yleisradion journalistinen päätöksentekoprosessi. Arviointiraportti (15.5.2017), <http://data.yle.fi/dokumentit/Uutiset/Arviointiraportti.pdf>.

<sup>273</sup> Yleisradio, Ylen toimintaperiaatteet (21.1.2016), <https://yle.fi/aihe/artikkeli/2016/01/21/ylen-toimintaperiaatteet>. See esp. the ethical guidelines Ylen eettinen ohje (approved by the Board of Directors 17.12.2015).

<sup>274</sup> Ylen ohjelmatoiminnan ja sisältöjen eettiset ohjeet (OTS-ohjeet) (approved by the Board of Directors 17.11.2017; published 20.11.2017; updated 19.2.2018), <https://yle.fi/aihe/artikkeli/2017/11/20/ylen-ohjelmatoiminnan-ja-sisaltojen-eettiset-ohjeet>.

<sup>275</sup> Sosiaalisen median toimintalinjaukset (approved by the editors-in-chief/published 2015; updated 13.10.2016), <https://yle.fi/aihe/artikkeli/2015/01/11/sosiaalisen-median-toimintalinjaukset>.

<sup>276</sup> See eg Finnish PM Sipilä caught up in press freedom row, BBC news (30.11.2016), <http://www.bbc.com/news/world-europe-38155965>. See also the 2016 annual report of the Council for Mass Media Julkisen sanan neuvosto 2016 vuosikertomus (later JSN 2016), 3, [http://www.jsn.fi/ContentFiles/6/Sisaltosivut/jsn\\_vuosikirja2016.pdf](http://www.jsn.fi/ContentFiles/6/Sisaltosivut/jsn_vuosikirja2016.pdf). The report notes that 15 complaints around the issue were filed and decided by the Council. Moreover, the Sipilagate was noted in the context of the World Press Freedom Index; see RSF, One scandal after another, <https://rsf.org/en/finland>.

<sup>277</sup> See <http://www.jsn.fi/jsn/jsn/>.



Fact-checking has increased, in particular with regard to politics.<sup>278</sup> As part of an effort to promote fact-based public discussion by means of journalism, fact-checking during the 2018 presidential elections in Finland was surveyed and a report was published by Faktabaari, a Finnish fact-checking service.<sup>279</sup> The survey covers responses from fact-checking journalists and an analysis of the fact-checking conducted by the media. Indeed, the major media companies, Yle, Sanoma (Helsingin Sanomat), and Alma Media,<sup>280</sup> all conducted fact-checking within the context of the 2018 presidential elections.

## 6.3. Print media

### 6.3.1. Current regulatory framework

Under the FEA, a private individual with a justified reason for considering offensive a message contained in a periodical has the right to have their reply published in the same publication.<sup>281</sup> The right to correction enables private individuals, corporations, foundations, and public authorities to have false information concerning them contained in a periodical corrected in the same publication, with the exception of errors of minor significance (§ 9 FEA).<sup>282</sup> A “periodical” is “a publication intended to be issued regularly, at least four times per year”; the concept of “publication” encompasses print media, and the provision thereof to the public constitutes the act of “publishing”.<sup>283</sup> For its part, the Criminal Code of Finland (39/1889) (CC)<sup>284</sup> includes, *inter alia*, provisions on defamation,<sup>285</sup> the dissemination of information violating personal privacy,<sup>286</sup> and incitement to racial hatred<sup>287</sup> (see above). Section 13 FEA includes provisions on editorial misconduct. These apply where the editor in charge of a periodical intentionally or negligently shirks their responsibility to manage and supervise editorial work (see above).<sup>288</sup>

The CMM interprets the good professional practice codified in the Guidelines for Journalists. With regard to fairness, accuracy and objectivity, the CMM issues opinions on

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<sup>278</sup> A-E. Hyvönen & K. S. Hämäri, Faktantarkistus Suomessa: Oppeja vuoden 2018 presidentinvaaleista, 2018, 4, <https://faktabaari.fi/assets/FiFakta2018.pdf>.

<sup>279</sup> See Hyvönen & Hämäri 2018; according to its website “Faktabaari is a Finnish factchecking service bringing accuracy to the public election debates. Faktabaari is a non-partisan journalistic service using social media for collecting and distributing factual information with crowds.” (<https://faktabaari.fi/in-english/>).

<sup>280</sup> See eg Alma Media’s project <https://www.almamedia.fi/vastuullisuus/case/faktana-kiitos>.

<sup>281</sup> FEA, § 8.

<sup>282</sup> FEA, § 9.

<sup>283</sup> FEA, § 2.

<sup>284</sup> Unofficial English translation by the Ministry of Justice, [https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039\\_20150766.pdf](https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039_20150766.pdf).

<sup>285</sup> Criminal Code of Finland, §§ 9-10 Ch. 24.

<sup>286</sup> Criminal Code of Finland, §§ 8-8a, Ch. 24.

<sup>287</sup> Criminal Code of Finland, §§ 10-10a, Ch. 11.

<sup>288</sup> Alén-Savikko & Korpisaari, 2016, pp. 74-75.





factual errors, as well as on the treatment of interviewees, among others. In 2017, for example, the *Helsingin Sanomat* newspaper was found to have breached the Guidelines after it published (in print and online) a story claiming that no new antibiotics were being developed, but had corrected the error only seven and a half weeks after a request for a correction had been lodged.<sup>289</sup>

### 6.3.2. Newspaper policies on accuracy and fairness

In terms of circulation, the biggest daily newspaper in Finland is *Helsingin Sanomat* (Sanoma Media Finland), and the second-biggest daily newspaper is *Aamulehti* (Alma Media).<sup>290</sup> Both are committed to the Guidelines for Journalists, while they may follow their own ethical and other guidelines as well. For example, Alma Media has a website dedicated to observing responsibility in its activities in terms of economic and ecological impact, as well as the societal impact of its content.<sup>291</sup> The company is thereby committed to responsible journalism, promotion of free speech, pluralism, and democracy, as well as to combatting hate speech and “fake media”.<sup>292</sup>

## 6.4. Online media

### 6.4.1. Current regulatory framework

Under the FEA, a private individual, having a justified reason to consider offensive a message contained in a network publication, has the right to have their reply published in the same publication.<sup>293</sup> The right to correction enables private individuals, corporations, foundations, and public authorities to have false information concerning them, contained in a network publication corrected in the same publication, with the exception of errors of minor significance.<sup>294</sup> A network publication refers to “a set of network messages, arranged into a coherent whole comparable to a periodical from material produced or processed by the publisher, and intended to be issued regularly”.<sup>295</sup> For its part, the Criminal Code of Finland (39/1889)(CC)<sup>296</sup> includes provisions on defamation,<sup>297</sup> the

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<sup>289</sup> LANGETTAVA 6723/SL/17, <https://www.jsn.fi/paatokset/6723-sl-17/>.

<sup>290</sup> Newman et al. 2017, 66-67; see also Media Audit Finland.

<sup>291</sup> See <https://www.almamedia.fi/vastuullisuus/vastuullisuus-almassa>.

<sup>292</sup> See <https://www.almamedia.fi/vastuullisuus/yhteiskuntavastuu>.

<sup>293</sup> FEA, § 8.

<sup>294</sup> FEA, § 9.

<sup>295</sup> FEA, § 2.

<sup>296</sup> Unofficial English translation by the Ministry of Justice, [https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039\\_20150766.pdf](https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039_20150766.pdf).

<sup>297</sup> Criminal Code of Finland, §§ 9-10 Ch. 24.



dissemination of information violating personal privacy,<sup>298</sup> and incitement to racial hatred),<sup>299</sup> among others (see above). Section 13 FEA includes provisions on editorial misconduct which apply where the responsible editor of a network publication neglects their responsibility to manage and supervise editorial work (see above).<sup>300</sup>

Where the criteria for a network publication under § 2 FEA are not met (no prior monitoring of content, or only to the extent required for the removal of offensive content, etc.), the liability of website administrators for online content is limited. The author bears responsibility for the content, while offences stemming from content might be committed by others alongside the author, depending on the description of the crime in question. No rules exist to allocate liability similar to editorial misconduct (e.g. in case of an anonymous author).<sup>301</sup> Provisions on the liability regime for Internet service providers are included in the Act on Electronic Communications Services (917/2014) (*laki sähköisen viestinnän palveluista*).<sup>302</sup> The provisions concern various types of activity, including conduit, caching and hosting.<sup>303</sup> Specific provisions in the Act on Electronic Communications Services covering hate speech provide that hosting service providers may escape liability if they act promptly in disabling access to material manifestly contrary to the criminal law provisions on incitement to racial hatred.<sup>304</sup>

Most recently, the Supreme Court has returned to the Court of Appeal two cases concerning defamation within the context of blogs and Internet sites.<sup>305</sup> For its part, the CMM interprets good professional practice codified in the Guidelines for Journalists. In 2011, an annex to the Guidelines for Journalists was adopted whereby editorial offices must monitor their online media so as to prevent the publication of degrading content, such as that including incitement to violence or hatred (section 1). Awareness of degrading content triggers the duty to delete it without delay (section 2).<sup>306</sup> There are many CMM decisions concerning online media, in particular in respect of the need for accuracy. The following examples of breaches from 2016-2017 illustrate recent CMM

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<sup>298</sup> Criminal Code of Finland, §§ 8-8a, Ch. 24.

<sup>299</sup> Criminal Code of Finland, §§ 10-10a, Ch. 11.

<sup>300</sup> Alén-Savikko & Korpisaari, 2016, pp. 74-75.

<sup>301</sup> Alén-Savikko & Korpisaari, 2016, pp. 76-77.

<sup>302</sup> Previously titled Information Society Code (*tietoyhteiskuntakaari*); new title from 1 June 2018. Unofficial translation by the Ministry of Transport and Communications, <https://www.finlex.fi/fi/laki/kaannokset/2014/en20140917.pdf>.

<sup>303</sup> Act on Electronic Communications Services, § 182-184.

<sup>304</sup> Act on Electronic Communications Services, § 184(1): "When an information society service consists of the storage of information provided by a recipient (content provider) of the service upon his request, the service provider is not liable for the content of the information stored or transmitted at the request of a recipient of the service if it acts expeditiously to disable access to the information stored upon: 1) obtaining knowledge of a court order concerning it or if it concerns violation of copyright or neighbouring right upon obtaining the notification referred to in section 191; 2) otherwise obtaining actual knowledge of the fact that the stored information is clearly contrary to section 10 or 10(a) of Chapter 11 or section 18 or 18(a) of Chapter 17 of the Criminal Code." See also Alén-Savikko & Korpisaari, 2016, pp. 76-77.

<sup>305</sup> See KKO:2015:70, <http://korkeinoikeus.fi/fi/index/ennakkopaatokset/precedent/1443784076494.html> and KKO:2014:89, <http://korkeinoikeus.fi/fi/index/ennakkopaatokset/precedent/1417682784297.html>.

<sup>306</sup> See Annex to Guidelines: Material generated by the public on a media website (operative from 1 October 2011; accepted on 5 September 2011), [https://www.jsn.fi/en/guidelines\\_for\\_journalists/](https://www.jsn.fi/en/guidelines_for_journalists/); see also Alén-Savikko & Korpisaari, 2016, p. 73.



decisions. (i) The editorial office of the investigative programme *MOT* broadcast by Yle had published on its website a story concerning lobbying. A list was published containing dozens of names of persons frequently visiting Parliament. Yle had not verified the identity of the persons as diligently as possible, and the list contained errors, of which the public was not informed in sufficient detail.<sup>307</sup> (ii) A story on Yle's website, based on social media discussion, included an erroneous interpretation of the complainant's writing, which had been published anonymously on the Facebook page of an MP. Yle had not corrected the error despite a request for it to do so.<sup>308</sup> (iii) MTV had published a story on its website about a certain substance which it referred to as "medicine". However, the substance in question was not a medicine and the error should have been corrected.<sup>309</sup> (iv) MTV had also reported on a court case in a manner that had shed an extremely negative light on the complainant. The person in question had not been given the opportunity to express their view, and nor had the error been corrected after a request for a correction had been lodged.<sup>310</sup> (v) *Suomen Kuvalehti* had reported on its website on the suspected influence exerted by the Finnish Prime Minister on Yle in a manner that had presented the editor-in-chief in question in a negative light and without giving them the opportunity to express their own view.<sup>311</sup> (vi) *Kauppalehti* had published a story on its website on court cases concerning taxation. There had been no mention of the fact that the interviewee, an attorney, had represented a party in a case discussed in the story.<sup>312</sup> (vii) The *Ilta-Sanomat* newspaper had published a comment on its website that had contained erroneous allegations relating to income tax in general and costs of living in the capital region (e.g. apartment prices in Vantaa and Espoo equalling to those in Manhattan, New York). The errors had not been corrected, despite a request for a correction having been lodged.<sup>313</sup>

## 6.4.2. Online media policies on accuracy and fairness

There are two evening tabloids which reach half of the Finnish population online on a weekly basis: *Ilta-Sanomat* online (Sanoma Media Finland) (58%) and *Ilta-alehti* online (Alma Media) (57%).<sup>314</sup> Both are committed to the Guidelines for Journalists, while they follow their own ethical and other guidelines as well (see above for Alma Media). In addition, there are other types of online news services followed by Finns, such as Yle Areena. For its part, Yle has its own social media guidance whereby presence and interaction in social media is imperative. The applicable laws, values and ethics are noted, while editorial decision-making and responsibility similar to all other activity are emphasised. Yle social

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<sup>307</sup> LANGETTAVA 6700/YLE/17, <http://www.jsn.fi/paatokset/6700-yle-17/>.

<sup>308</sup> LANGETTAVA 6593/YLE/17 (vote 8-2), <http://www.jsn.fi/paatokset/6593-yle-17/>.

<sup>309</sup> LANGETTAVA 6665/MTV/17, <http://www.jsn.fi/paatokset/6665-mtv-17/>.

<sup>310</sup> LANGETTAVA 6599/MTV/17, <http://www.jsn.fi/paatokset/6599-mtv-17/>.

<sup>311</sup> LANGETTAVA 6414/AL/16 JA 6418/AL/16, <http://www.jsn.fi/sisalto/6414-al-16-ja-6418-al-16/?search=suomen+s>.

<sup>312</sup> LANGETTAVA 6734/SL/17, <http://www.jsn.fi/paatokset/6734-sl-17/>.

<sup>313</sup> LANGETTAVA 6710/SL/17 (vote 9-4), <http://www.jsn.fi/paatokset/6710-sl-17/?year=2018>.

<sup>314</sup> Newman et al., 2017, pp. 66-67.



media accounts require written planning as well as authorisation, and those working at Yle must pay attention to the principle of credibility, among others.<sup>315</sup>

## 6.5. Conclusion

The Finnish media landscape has not been immune to challenges regarding accuracy and fairness, whether concerning the spread of disinformation and “fake news” or outside pressure on editorial work. For its part, the national public service broadcaster, Yle, has faced challenges in terms of independence from political pressure, taking into account its funding scheme. However, the Finnish media is also combatting the developments, including by fact-checking and introduction of a visual icon for responsible media.

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<sup>315</sup> Sosiaalisen median toimintalinjaukset (approved by the editors-in-chief/published 2015; updated 13.10.2016), <https://yle.fi/aihe/artikkeli/2015/01/11/sosiaalisen-median-toimintalinjaukset>.



## 7. FR - France

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### 7.1. Introduction

Television is still the primary source of information on current affairs for French people. According to the annual barometer on “French confidence in the media” produced by Kantar Sofres for the *La Croix* daily newspaper in January 2018<sup>316</sup>, 48% of those questioned used television in 2017 as their primary means of accessing information on current national or international issues, 26% preferred the Internet (up by 1% compared with 2016), 17% preferred the radio (down 3%) and 8% preferred the print media (up 2%).

Television news broadcast by the general-interest channels (TF1, France 2, France 3 and M6) and rolling news channels (BFMTV<sup>317</sup>, LCI, CNews and Franceinfo) are the two most widely used means – 34% and 18% respectively of those polled – to learn more about topical issues. On the Internet, press websites and mobile apps remain the principal sources of information for 28% of those surveyed and for 38% of regular Internet users. The social networks, 1% down over 2016, are still preferred by 18% of those questioned and by 23% of regular Internet users.

French mistrust of the information disseminated online, judged reliable by only 25% of those questioned, increased further in 2017. By contrast, the credibility of the traditional media rose significantly, with 56% of those questioned expressing confidence in the radio stations, 52% in the print media and 48% in the television stations.

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<sup>316</sup> <https://fr.kantar.com/médias/digital/2018/barometre-2018-de-la-confiance-des-francais-dans-les-media/>.

<sup>317</sup> <http://www.bfmtv.com/emission/bfmtv-62percent-de-l-audience-des-chaines-info-1411129.html>.



## 7.2. Broadcast media

### 7.2.1. Current regulatory framework

The honesty of information and programmes is an obligation imposed on all audiovisual media by the Freedom of Communication Act of 30 September 1986<sup>318</sup>. It is mentioned among the “ethical obligations” in the charters of the public corporations (France Télévisions<sup>319</sup>, Radio France<sup>320</sup> and France Médias Monde<sup>321</sup>) and in the agreements signed by the private channels<sup>322</sup> with the Conseil supérieur de l’audiovisuel (CSA), which is the audiovisual regulator. According to section 3-1 of the 1986 Act, the CSA guarantees “*the honesty, independence and pluralism of information and the programmes that contribute to it*”. In the event of private or public publishers failing to meet their obligation of honesty and accuracy in the presentation and treatment of information, the CSA can issue them with a formal warning<sup>323</sup>. If the breach is repeated, a penalty may be imposed<sup>324</sup>. In the case of radio and television stations that broadcast political and general information programmes, compliance with the honesty of information requirement must be assured by the Committee on Honesty, Independence and Pluralism of Information, made up of independent personalities. However, few public audiovisual media (France Télévisions<sup>325</sup>, Radio France<sup>326</sup>, France Médias Monde<sup>327</sup> and Public Sénat<sup>328</sup>) or private media (Canal +<sup>329</sup>, Europe 1<sup>330</sup>, M6<sup>331</sup> and RT France) have set up such committees and have sometimes been issued with a warning by the CSA<sup>332</sup>.

The dissemination by audiovisual media of false information liable to be prejudicial to the honour or reputation of a natural or legal person is subject to the right of reply under section 6 of the Act of 29 July 1982<sup>333</sup> and the Decree of 6 April 1987<sup>334</sup>. The

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<sup>318</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930>.

<sup>319</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020788471>.

<sup>320</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000522874&dateTexte>.

<sup>321</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000025199244&categorieLien=cid>.

<sup>322</sup> <http://www.csa.fr/Espace-juridique/Conventions-des-editeurs>.

<sup>323</sup> <http://www.csa.fr/Espace-juridique/Decisions-du-CSA/Diffusion-du-reportage-Celle-qui-accuse-dans-Envoye-special-mise-en-demeure-de-France-Televisions>.

<sup>324</sup> <http://www.csa.fr/Espace-juridique/Decisions-du-CSA/Deontologie-de-l-information-sanction-financiere-de-100-000-euros-pour-France-2>.

<sup>325</sup> <https://www.francetelevisions.fr/comite-ethique>.

<sup>326</sup> <http://www.radiofrance.fr/l-entreprise/comite-relatif-l-honnetete-l-independance-et-au-pluralisme-de-l-information-et-des>.

<sup>327</sup> [http://www.francemediasmonde.com/pdf/comite\\_relatif.pdf](http://www.francemediasmonde.com/pdf/comite_relatif.pdf).

<sup>328</sup> <https://www.publicsenat.fr/article/societe/le-comite-d-ethique-de-public-senat-75969>.

<sup>329</sup> [http://canalplusgroupe.com/uploads/pressRelease/press\\_release\\_4303.pdf](http://canalplusgroupe.com/uploads/pressRelease/press_release_4303.pdf).

<sup>330</sup> <http://presse.europe1.fr/europe-1-cree-son-comite-dethique/>.

<sup>331</sup> <http://www.groupem6.fr/groupe-m6-nomme-comite-dethique/>.

<sup>332</sup> <http://www.csa.fr/Espace-juridique/Decisions-du-CSA/Decision-n-2016-830-du-3-novembre-2016-mettant-en-demeure-la-Societe-d-exploitation-d-un-service-d-information-SESI>.

<sup>333</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000880222>.

<sup>334</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000882840>.



provisions of the Freedom of the Press Act of 29 July 1881<sup>335</sup> making the publication of false information or defamation a punishable offence apply to the audiovisual sector. Article 226-8 of the Penal Code<sup>336</sup>, which makes undeclared montages a criminal offence, covers manipulations of words or images.

The Guidelines on audiovisual coverage of terrorist acts (Précautions relatives à la couverture audiovisuelle d'actes terroristes)<sup>337</sup> adopted by the CSA in 2016 recommend that enhanced processes be established in editorial offices to monitor and internally validate the reliability of information before it is aired.

The 27 868 complaints made to the CSA in 2016<sup>338</sup> about compliance with rights and freedoms led to 39 responses by the CSA, of which about a third concerned failure to comply with the obligation to ensure accuracy in the presentation and treatment of information.

## 7.2.2. Broadcaster policies on accuracy and fairness

The honesty of information and programmes is a concern expressed in most programming charters of public and private audiovisual media. The France Télévisions Channels Charter<sup>339</sup> makes honesty “the fundamental information requirement of public television”. In its Ethics Charter (Charte de déontologie)<sup>340</sup>, the rolling news channel BFMTV “undertakes to guarantee pluralism and to broadcast accurate and factually correct information, which prohibits any one-sided presentation of the facts”. Several radio stations (Europe 1<sup>341</sup>, France Culture<sup>342</sup>, France Info<sup>343</sup>, RFI<sup>344</sup>) and television channels (ARTE<sup>345</sup>, France 24<sup>346</sup>, LCP<sup>347</sup>) broadcast fact-checking programmes. An Internet site has been set up for the “observers” of France 24<sup>348</sup>.

In the case of audiovisual media with their own ombudsman (France Télévisions<sup>349</sup>, Radio France<sup>350</sup>, France Médias Monde<sup>351</sup> and TF1<sup>352</sup>), this intermediary between the

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<sup>335</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722>.

<sup>336</sup> [https://www.legifrance.gouv.fr/affichCode.do?sessionId=8BD9927E796657D896460BDD95783E81.tplqfr28s\\_2?idSectionTA=LEGISCTA000006165310&cidTexte=LEGITEXT000006070719&dateTexte=20180516](https://www.legifrance.gouv.fr/affichCode.do?sessionId=8BD9927E796657D896460BDD95783E81.tplqfr28s_2?idSectionTA=LEGISCTA000006165310&cidTexte=LEGITEXT000006070719&dateTexte=20180516).

<sup>337</sup> <http://www.csa.fr/Espace-juridique/Codes-de-bonne-conduite-et-textes-de-precautions-relatives-a-la-couverture-audiovisuelle/Precautions-relatives-a-la-couverture-audiovisuelle-d-actes-terroristes>.

<sup>338</sup> <http://www.csa.fr/Etudes-et-publications/Les-rapports-annuels-du-CSA/Le-rapport-annuel-2016-du-CSA>.

<sup>339</sup> [https://www.francetelevisions.fr/charte\\_des\\_antennes](https://www.francetelevisions.fr/charte_des_antennes).

<sup>340</sup> <http://www.bfmtv.com/static/nxt-bfmtv/info/deontologie/pdf/Charte-Deontologie-BFMTV.pdf>.

<sup>341</sup> <http://www.europe1.fr/emissions/le-vrai-faux-de-l-info>.

<sup>342</sup> <https://www.franceculture.fr/medias/nouveaute-les-idees-claires-une-demarche-engagee>.

<sup>343</sup> <https://www.francetvinfo.fr/replay-radio/le-vrai-du-faux/>.

<sup>344</sup> <http://www.rfi.fr/emission/info/preuves-faits-fact-checking>.

<sup>345</sup> <https://sites.arte.tv/28minutes/fr/desintox-28minutes-0>.

<sup>346</sup> <http://www.france24.com/fr/emissions/observateurs/>.

<sup>347</sup> <http://www.lcp.fr/sujet/check-point>.

<sup>348</sup> <http://observers.france24.com/fr/>.

<sup>349</sup> <https://www.francetelevisions.fr/mediateurs>.

<sup>350</sup> <https://mediateur.radiofrance.fr>.

<sup>351</sup> [http://www.francemediasmonde.com/pdf/charte\\_deontologie\\_journalistes.pdf](http://www.francemediasmonde.com/pdf/charte_deontologie_journalistes.pdf).



medium and its audience examines complaints about content broadcast, especially criticism about mistakes of substance, location errors or the incorrect use of French in an information item.<sup>353</sup> The ombudsman can refer a matter to the Committee on Honesty, Independence and Pluralism of Information and Programmes, which the law requires to be set up by operators of national general-interest radio and television services that broadcast current affairs and general information programmes.<sup>354</sup>

The undertaking entered into by the audiovisual media to “respect the individual and their dignity” includes the obligation to guarantee the exercise of the right of reply under the conditions laid down by law.

## 7.3. Print media

### 7.3.1. Current regulatory framework

The Freedom of the Press Act of 29 July 1881<sup>355</sup> contains several provisions enabling action to be taken against the dissemination of false information in the print media. Section 27 makes the publication or reproduction of false news a criminal offence when this is done in bad faith and is liable to disturb the public peace. Section 12 grants the right of rectification to any “person exercising public authority concerning acts carried out by virtue of his/her office and claimed to have been inaccurately reported” in the print media. The right of reply is open more broadly, under section 13, to “any person named or referred to in a newspaper or periodical”. It could be exercised in the event of the publication of false information involving a natural or legal person. The offence of defamation, defined in section 29(1) of the Act as “any allegation or charge likely to be prejudicial to the honour or reputation of the person or entity at which it is levelled”, provides for the dissemination of inaccurate information detrimental to a person’s honour or esteem to be punished.

The Charter of Journalists’ Professional Ethics<sup>356</sup> adopted by the National Union of Journalists (Syndicat national des journalistes – SNJ) in 2011 considers “critical thinking, truthfulness, accuracy, integrity, fairness and impartiality” as the “pillars of journalistic work”. Sectoral codes of practice applicable to news agencies<sup>357</sup> or to the regional daily or weekly press<sup>358</sup> express similar demands. Reporters Without Borders is

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<sup>352</sup> <https://www.lci.fr/la-mediatrice-vous-repond/>.

<sup>353</sup> <https://blog.francetvinfo.fr/mediateur-info-france-2/wp-content/blogs.dir/357/files/2017/04/RAPPORT-DU-MEDIATEUR-2016-VERSION-DP-On-Line.pdf>.

<sup>354</sup> [https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=B355041A44B8B48D1862A47E6E4C6C31.tpIqfr38s\\_3?idArticle=LEGIARTI000033388283&cidTexte=LEGITEXT000006068930&dateTexte=20180425](https://www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=B355041A44B8B48D1862A47E6E4C6C31.tpIqfr38s_3?idArticle=LEGIARTI000033388283&cidTexte=LEGITEXT000006068930&dateTexte=20180425).

<sup>355</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722>.

<sup>356</sup> <http://www.snj.fr/sites/default/files/documents/Charte2011-SNJ.pdf>.

<sup>357</sup> <http://www.ffap.fr/ffap/Charte>.

<sup>358</sup> <http://www.acrimed.org/Regles-et-usages-de-la-presse-quotidienne-regionale>.





preparing a draft text of the international certification of media that disseminate reliable information.<sup>359</sup>

The annual report of the Observatory on Information Ethics (Observatoire de la déontologie de l'information)<sup>360</sup> mentions 488 cases of breaches of ethics identified in 2017, without detailing the number of those relating to the accuracy and truthfulness of information in the various media.

The dissemination of false information is rarely punished as an offence of publishing false news, which involves “the announcement of a recently occurred event made to a person who as yet has no knowledge of it”<sup>361</sup> and presupposes an actual or potential disturbance of the public peace. The courts have also ruled out the application of the general rules of civil liability.<sup>362</sup>

### 7.3.2. Newspaper policies on accuracy and fairness

The Le Monde group's charter of ethics and good practice<sup>363</sup> reiterates that the purpose of the group's press titles is to “provide, on any medium, quality, precise, verified and balanced information”. Like many other editorial charters<sup>364</sup>, this draws on the Charter of Munich<sup>365</sup>, which makes respect and truth the first professional duty of journalists.

Four French press titles (the national daily *Le Monde*<sup>366</sup> and three regional dailies) have an ombudsman tasked with replying to public criticism on the information disseminated. Within the Le Monde group, two ethics committees also ensure compliance with the charter of ethics. At the *Libération* newspaper, compliance with the charter<sup>367</sup> is ensured by a Committee on Editorial Independence.

The editorial charters that mention the right of reply generally refer to the conditions concerning eligibility for this right and its exercise governed by the 1881 Freedom of the Press Act. The addition of an editorial note on the published reply is sometimes prohibited.

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<sup>359</sup> <https://www.inaglobal.fr/presse/article/fake-news-rsf-veut-creer-un-label-pour-avantager-la-rigueur-10166>.

<sup>360</sup> <http://www.odi.media/wp-content/uploads/2018/03/ODI-Rapport-2018.pdf>.

<sup>361</sup> <https://www.legifrance.gouv.fr/affichJurijudi.do?oldAction=rechJurijudi&idTexte=JURITEXT000007070114&fastReqId=98301644&fastPos=1>.

<sup>362</sup> <https://www.legifrance.gouv.fr/affichJurijudi.do?oldAction=rechJurijudi&idTexte=JURITEXT000027303673&fastReqId=836474870&fastPos=1>.

<sup>363</sup> [http://www.lemonde.fr/actualite-medias/article/2010/11/03/la-charte-d-ethique-et-de-deontologie-du-groupe-le-monde\\_1434737\\_3236.html](http://www.lemonde.fr/actualite-medias/article/2010/11/03/la-charte-d-ethique-et-de-deontologie-du-groupe-le-monde_1434737_3236.html).

<sup>364</sup> <https://www.lesechos.fr/pratique/charte.htm>.

<sup>365</sup> <http://www.mediawise.org.uk/european-union/>.

<sup>366</sup> <http://mediateur.blog.lemonde.fr>.

<sup>367</sup> [http://www.liberation.fr/ecrans/2014/07/07/la-charte-ethique-de-liberation\\_1059029](http://www.liberation.fr/ecrans/2014/07/07/la-charte-ethique-de-liberation_1059029).



## 7.4. Online media

### 7.4.1. Current regulatory framework

Section 6-V of the Confidence in the Digital Economy Act (Loi pour la confiance dans l'économie numérique) of 21 June 2004<sup>368</sup> makes the definition of offences punishable under the Freedom of the Press Act of 29 July 1881 applicable to online public communication services and, in particular, its provisions making it a criminal offence to disseminate false news or defamatory remarks and enabling the publication of inaccurate information to be punished. The procedure for interim measures provided for in section 6-I-8 of the 2004 Act allows the judicial authority to prescribe all appropriate measures to prevent or halt damage caused by the content of an online public communication service. It could be used to halt the dissemination of false information on digital networks. Governed by section 6-IV of the Act of 21 June 2004 and by a decree of 24 October 2007<sup>369</sup>, the online right of reply is available to anyone affected by a public communication service, especially by the dissemination of false information. This right of reply can, however, be voided when users are able to draw up their observations directly on a news item criticising them or become inapplicable if the item is deleted or rectified.

At election time, several legal provisions applicable to news items disseminated “by any electronic means of communication to the public” enable the publication of false information online to be punished. Article 97 of the Electoral Code<sup>370</sup> makes it a criminal offence to spread false news with the effect of distorting the outcome of a ballot. Article L. 52-1<sup>371</sup> prohibits, for a period of six months preceding a vote, the use of commercial advertising for electioneering purposes. However, the private members’ bill of 21 March 2018 on countering false information<sup>372</sup> aims to tighten up the obligations of digital platforms in the run-up to an election in order to ensure transparency with regard to sponsored content. It envisages the creation of a new procedure for applying for interim measures to enable a court to halt, within a period of 48 hours, the planned mass dissemination of false information online likely to affect the honesty of the ballot. The bill provides for the CSA’s powers to be widened and for technical service providers to be required to install a system for reporting false information and for making details from public authorities available on the dissemination of that information.

The Electronic Publishing Charter (Charte d'édition électronique) of the Association of Publishers of Online Content and Services (Groupement des éditeurs de contenus et services en ligne)<sup>373</sup>, to which many media organisations belong<sup>374</sup>, requires

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<sup>368</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000801164>.

<sup>369</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000428279>.

<sup>370</sup> [https://www.legifrance.gouv.fr/affichCodeArticle.do?sessionId=480728AF838BC1669AE50102F06EC8CF.tplqfr26s\\_1?idArticle=LEGIARTI000006353232&cidTexte=LEGITEXT000006070239&dateTexte=20180502](https://www.legifrance.gouv.fr/affichCodeArticle.do?sessionId=480728AF838BC1669AE50102F06EC8CF.tplqfr26s_1?idArticle=LEGIARTI000006353232&cidTexte=LEGITEXT000006070239&dateTexte=20180502).

<sup>371</sup> [https://www.legifrance.gouv.fr/affichCodeArticle.do?sessionId=1A8COB78FD51E9FDDB3A6AB2A7758BD3.tp\\_lqfr26s\\_1?idArticle=LEGIARTI000023883001&cidTexte=LEGITEXT000006070239&dateTexte=20180516](https://www.legifrance.gouv.fr/affichCodeArticle.do?sessionId=1A8COB78FD51E9FDDB3A6AB2A7758BD3.tp_lqfr26s_1?idArticle=LEGIARTI000023883001&cidTexte=LEGITEXT000006070239&dateTexte=20180516).

<sup>372</sup> <http://www.assemblee-nationale.fr/15/propositions/pion0799.asp>.

<sup>373</sup> <http://www.geste.fr/chartes/la-charte-de-ledition-electronique>.



publishers of online information to endeavour to verify the validity of the information they publish and to comply with the rules of journalistic ethics. The Union of the Independent Online Information Press (Syndicat de la presse indépendante d'information en ligne)<sup>375</sup> aims to ensure compliance with codes of practice and to promote the independence of editorial offices and the integrity of information, in accordance with the Charter of Munich.

## 7.4.2. Online media policies on accuracy and fairness

Like the charters of ethics of some print media distributed online,<sup>376</sup> the editorial charters of pure players, such as Mediapart<sup>377</sup> and Rue89<sup>378</sup>, refer to the SNJ's Charters of 1918<sup>379</sup> or 2011 and to the Charter of Munich. Mediapart's mission is "to be at the service of the right to know and the freedom to say, in the interests of factual truth and the pluralism of opinions". Several traditional media organisations (including *Agence France-Presse*<sup>380</sup>, *Le Monde*<sup>381</sup> and *Libération*<sup>382</sup>) have established fact-checking tools and blogs or websites.

In the case of online media, Internet users have the ability to post comments governed by participation charters<sup>383</sup> or moderation charters<sup>384</sup> which define their rights and obligations.

The charters of ethics of online media guarantee the exercise of a right of reply to anyone criticised and the publication of the reply under conditions provided for by law.

## 7.5. Conclusion

The reliability of information is, according to the Barometer published by *La Croix* in January 2018<sup>385</sup>, the priority of 90% of French people. According to a survey carried out after the French Head of State had announced the forthcoming adoption of a law to combat false information, 79% of those questioned were in favour of this measure.<sup>386</sup>

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<sup>374</sup> <http://www.geste.fr/membres>.

<sup>375</sup> <https://www.spiil.org/statuts>.

<sup>376</sup> <http://static.latribune.fr/files/CharteTRIBUNE.pdf>.

<sup>377</sup> <https://www.mediapart.fr/charte-de-deontologie>.

<sup>378</sup> <http://docplayer.fr/18649972-Charte-de-la-societe-des-journalistes-de-rue89.html>.

<sup>379</sup> <http://www.snj.fr/article/charte-des-devoirs-professionnels-des-journalistes-français>.

<sup>380</sup> <https://factuel.afp.com>.

<sup>381</sup> <http://www.lemonde.fr/verification/>.

<sup>382</sup> <http://www.liberation.fr/desintox,99721>.

<sup>383</sup> <https://blogs.mediapart.fr/charte-de-participation>.

<sup>384</sup> <http://mentions-legales.lefigaro.fr/page/charte-de-moderation>.

<sup>385</sup> <https://fr.kantar.com/médias/digital/2018/barometre-2018-de-la-confiance-des-français-dans-les-media/>.

<sup>386</sup> <http://www.lefigaro.fr/medias/2018/01/11/20004-20180111ARTFIG00302-79-des-français-favorables-a-une-loi-sur-les-fake-news.php>.



However, such a law is not without its risks for freedom of expression. False information comes in many different forms; it is not easy to define and its assessment by a court, let alone by private Internet operators, will have to be treated with caution.

French law already contains numerous provisions that enable the dissemination of false information in the media to be punished, including in the run-up to elections. The media themselves are developing new ways of verifying information. More than 20 French media outlets have taken part in the CrossCheck collaborative journalism project<sup>387</sup> which was set up in February 2017 to verify questionable information on the French presidential election.

The ability to combat the proliferation of rumours and false information online doubtless depends less on the adoption of a new legal instrument, which would be both unnecessary and dangerous for freedom of expression, than on improving the application of existing legal provisions and strengthening media education.

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<sup>387</sup> <https://crosscheck.firstdraftnews.org/france-fr/>.



## 8. GB – United Kingdom

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### 8.1. Introduction

The legal framework in the UK depends very much on the type of medium in question. Ofcom, the communications regulator, regularly conducts surveys of news consumption, the most recent being in 2016.<sup>388</sup> This found that television is the most used source for news (used by 69% of adults), although online sources had risen from 41% to 48% in the previous year. Radio was used by 33% and the press by 29%, although there were substantial variations between age groups. The BBC was the dominant television source, with 73% of those using television for news using BBC1 and 29% other BBC channels, compared with 42% using ITV and 21% Sky News. The BBC also has a very substantial online news presence: 56% of online news users used the BBC website, compared to 27% for Facebook, the second most popular source. The most used newspaper website was that of the *Daily Mail*, with 10%. However, 47% of those who use social media for news reported that they mainly rely on social media posts for news, a big increase from 30% in 2015. The overall picture is thus that there is rapid development in the use of social media sources, although the BBC has succeeded in extending its television dominance to online news.

### 8.2. Broadcast media

#### 8.2.1. Regulatory framework

The regulatory framework for broadcasters is detailed and demanding. The major regulatory body is Ofcom; very importantly, since April 2017 it has had responsibility for regulating BBC content, as well as that of commercial broadcasters. This extends to news coverage.

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<sup>388</sup> Ofcom, *News Consumption in the UK 2016* (2017), [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0016/103570/news-consumption-uk-2016.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0016/103570/news-consumption-uk-2016.pdf).



For the BBC, the major legislative sources are its Royal Charter and Agreement.<sup>389</sup> The first of the five public purposes of the BBC set out in the Charter is “to provide impartial news and information to help people understand and engage with the world around them”; the Agreement also requires Ofcom to make arrangements with the BBC to ensure that news services are provided at an appropriate level. The Communications Act 2003 requires Ofcom to draw up a code binding on broadcasters which it licences, and the BBC; this forms the core of the regulatory provisions. The Act also requires public service broadcasters to include news services which are of high quality and deal with both national and international matters; this provision applies to ITV, Channel 4 and Channel 5.

The Ofcom Broadcasting Code has extensive provisions relating to news and current affairs programmes.<sup>390</sup> Section 5 is concerned with due impartiality and due accuracy, and this requirement is applied to news in any form. The term “due” is defined as “adequate or appropriate to the subject and nature of the programme” and not as requiring an equal division of time for every viewpoint. Serious mistakes in news should be acknowledged and corrected quickly, and no politician may be used as a newsreader, interviewer or reporter unless, exceptionally, it is editorially justified. Generally, impartiality is to be achieved over a series of programmes taken as a whole; presenters and reporters may present their own views, except in news programmes, but alternative viewpoints must also be represented. Special impartiality requirements apply to “matters of political or industrial controversy and matters relating to current public policy”. For these, all views and opinions of those providing the service must be excluded, and due impartiality must be preserved in each programme or in clearly linked and timely programmes. An appropriately wide range of significant views must be included and given due weight, and undue prominence should not be given to the views and opinions of particular persons or bodies. The Code also includes detailed special rules requiring impartiality at the times of elections and referendums – for example, requiring all candidates to be given the opportunity to participate in broadcast items relating to their particular area. The Code also has further rules relating to fairness in the treatment of particular individuals and organisations in programmes. Of course, other more general provisions of the Code (for example those relating to fairness and privacy) may also be applied to news and current affairs programmes.

A complaint about a breach of the Code can be made directly to Ofcom or, in the case of the BBC, after first raising it with the broadcaster. The number of complaints is substantial: in 2016/17 over 16,000 complaints were received, although it is not clear how many of those related to news and current affairs programmes.<sup>391</sup> A full investigation of whether there had been a breach of the Code was carried out in 162 cases; in 97 there

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<sup>389</sup> Department for Culture, Media and Sport, *Copy of the Royal Charter for the Continuance of the British Broadcasting Corporation*, Cm 9365 (2016), [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_govern/2016/charter.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/2016/charter.pdf); *An Agreement Between Her Majesty's Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation* Cm 9366 (2016), [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_govern/2016/agreement.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/2016/agreement.pdf).

<sup>390</sup> Ofcom, *Broadcasting Code*, <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>.

<sup>391</sup> Ofcom, *Annual Report 2016-17*, p. 28, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/104358/annual-report-2016-accessible.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/104358/annual-report-2016-accessible.pdf).



was found to have been such a breach, and in rare serious cases financial sanctions were imposed on the broadcaster. Investigations are reported in Ofcom's Broadcast Bulletin every two weeks.<sup>392</sup> For example, in the case of the 2017 UK general election, a broadcaster of news and current affairs programmes in the Urdu language was found to have committed a clear breach of the rule in the Broadcasting Code that discussion and analysis of election issues must finish as soon as the polls open. The broadcaster apologised and promised that its reporters would undertake further training on election reporting. Although there had been a clear breach, Ofcom did not impose a penalty.<sup>393</sup>

Broadcasters of course remain subject to the general law in addition to the regulatory requirements, including the law relating to defamation. However, they may be able to use the defence of absolute privilege, which protects from defamation actions statements in Parliament and some information given to the police. They may also use the defence of publication on a matter of public interest, where the 2013 Defamation Act protects such material so long as it had been genuinely believed that publication was in the public interest. Broadcasters may also be affected by the law on contempt of court designed to protect the integrity of legal proceedings, data protection legislation and the 1989 Official Secrets Act protecting official information.

## 8.2.2. Broadcaster policies

As broadcast media news provision is strictly regulated in the UK, broadcaster policies tend to reflect closely the regulatory provisions discussed above. For example, the BBC has editorial policy guidelines emphasising the need for accuracy and impartiality in all programming, including news.<sup>394</sup> It also has well-developed complaints procedures, and these have recently been reformed.<sup>395</sup> Complaints are to be made to the BBC first before going on to Ofcom as regulator, and may include breach of editorial guidelines in a particular item or a general complaint about the way the BBC does things. Sky News has also published editorial guidelines covering, for example, fairness, due impartiality and due accuracy.<sup>396</sup>

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<sup>392</sup> See <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>.

<sup>393</sup> Ofcom, *Broadcast and On Demand Bulletin 342*, 20 November 2017, p 14, [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/108055/Issue-342-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/108055/Issue-342-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf).

<sup>394</sup> BBC, *Editorial Guidelines*, <http://www.bbc.co.uk/editorialguidelines/guidelines>.

<sup>395</sup> BBC, *Complaints*, <http://www.bbc.co.uk/complaints/>. For the reforms see Prosser T., "BBC publishes new complaints guidelines", IRIS 2018-1/27, <http://merlin.obs.coe.int/iris/2018/1/article27.en.html>.

<sup>396</sup> Sky News, *Editorial Guidelines*, [https://news.sky.com/docs/sky\\_news\\_editorial\\_guidelines.pdf](https://news.sky.com/docs/sky_news_editorial_guidelines.pdf).



## 8.3. Print media

### 8.3.1. Regulatory framework

The Leveson Inquiry, set up after the UK press phone hacking scandal to examine the culture, practices and ethics of the press, recommended that, in place of the discredited Press Complaints Commission, a new self-regulatory body should be established and granted recognition under statutory powers by a new Press Recognition Panel to ensure its independence.<sup>397</sup> The major national newspapers refused to accept this system and instead established their own self-regulatory body, the Independent Press Standards Organisation (IPSO); it now covers 1,503 newspapers – 90% of the UK press by circulation. A second self-regulatory body, IMPRESS, was established and granted recognition by the Panel; however its membership is limited in practice to low circulation, mainly local, newspapers and magazines.

IPSO works mainly as a complaints handling body and applies the Editors' Code, which is drawn up and administered by its Editors' Code of Practice Committee, comprised of newspaper editors and three lay members.<sup>398</sup> The first clause of the Code states that the Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text. A significant inaccuracy must be corrected promptly with due prominence, and where appropriate an apology should be given. There is no requirement of due impartiality. A fair opportunity to reply to significant inaccuracies should be given when reasonably called for. Other provisions of the Code are relevant to news and current affairs programmes – for example, those relating to the reporting of crime, the use of clandestine devices and subterfuge, financial journalism and the use of confidential sources.

IPSO can require newspapers to publish corrections or its adjudications and, for serious breaches, can fine publishers up to GBP 1 million. In 2016 it received 14,455 complaints, although the statistics do not show how many of those concerned news and current affairs. The vast majority of the complaints were outside its remit, and many were settled by informal means. 47 complaints were upheld by IPSO.<sup>399</sup> One example concerned a breach of the accuracy clause in the Code when the *Sun* newspaper reported before the Brexit referendum that the Queen had made critical comments about the EU at two private functions. IPSO's Complaints Committee found that the headline used was misleading, and required the paper to publish the adjudication with a trailer to it on the front page.<sup>400</sup>

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<sup>397</sup> Leveson Inquiry, "An Inquiry into the Culture, Practices and Ethics of the Press" HC 780 (2012), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/270939/07\\_80\\_i.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/270939/07_80_i.pdf).

<sup>398</sup> IPSO, *Editors' Code of Practice*, revised 2018, <https://www.ipso.co.uk/editors-code-of-practice/>.

<sup>399</sup> IPSO, *Annual Report 2016*, <https://www.ipso.co.uk/news-press-releases/news/annual-report-2016/>.

<sup>400</sup> *Buckingham Palace v The Sun*, IPSO Annual Report 2016, p 14, [https://www.ipso.co.uk/media/1468/ar\\_2016\\_aug17.pdf](https://www.ipso.co.uk/media/1468/ar_2016_aug17.pdf).





The press is of course subject to the general law. Defamation actions against newspapers are common, although they can use defences mentioned above. In some circumstances it is possible to obtain a civil law injunction at short notice to prevent the press publishing confidential information, and damages for harm caused by publication. This is mainly used in the context of invasions of personal privacy, especially that of celebrities.<sup>401</sup> However, it has also been used by government in attempts to prevent the publication of state secrets – for example, those relating to the work of the security services.<sup>402</sup> This supplements the criminal liability which may be imposed by the 1989 Official Secrets Act; the Act is normally used after unauthorised leaks of information by civil servants, but section 5 of the Act also imposes liability on third parties such as journalists and editors if they know or have reasonable cause to believe that information has been disclosed to them in breach of the Act.

### 8.3.2. Newspaper policies

The UK newspaper industry has controversially but successfully resisted regulation by any form of public body and instead has insisted on keeping some form of self-regulation. After its failure to accept the report of the Leveson Inquiry in 2012, this process is in some disarray, with competing self-regulatory bodies. Given this background, it is extremely difficult to separate newspapers' own policies from the regulatory framework. Newspapers have also adopted different means of internal dispute resolution. The best-selling *Daily Mail* has a readers' editor, but little information is available about this editor's role and recourse will mainly be through the self-regulatory IPSO (below). By contrast, the up-market *Financial Times* and *Guardian* have not joined this self-regulatory body and both rely on their own editorial codes and complaints commissioners.<sup>403</sup> The *Financial Times* editorial code incorporates that of IPSO and also commits employees to "practices which reinforce the FT's reputation for accuracy, truthfulness, honesty and authority" and sets out ethical standards – for example, in relation to the disclosure of interests, the recording of telephone conversations, and the special rules relating to market-sensitive financial information.

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<sup>401</sup> See eg *Campbell v Mirror Group Newspapers* [2004] 2 AC 457.

<sup>402</sup> See eg *AG v Guardian Newspapers Ltd (No 2)* [1988] 3 All ER 545; *Observer and Guardian v UK* [1991] 14 EHRR 152.

<sup>403</sup> See *Financial Times*, "Update on Independent System for Editorial Complaints", <https://aboutus.ft.com/en-gb/ft-editorial-code/update-independent-system-editorial-complaints/>; *Guardian*, "Guardian Global Readers' Editor", <https://www.theguardian.com/info/2013/sep/23/guardian-readers-editor>.



## 8.4. Online media

### 8.4.1. Regulatory framework

The Ofcom Programme Code only applies to television and radio content of licensed broadcasters, including on-demand services (for which it contains special rules). Thus Ofcom does not regulate online material from the broadcasters it licenses, and nor does it consider complaints about such material. However, under the BBC Charter, Ofcom has an obligation to give an opinion on whether the BBC has observed its editorial guidelines in its online material, although it cannot resolve complaints and has no enforcement powers in this context. Ofcom and the BBC have published an agreement on the exercise of this power; it provides, for example, that a complaint about online services may be referred to Ofcom if it is not resolved by the BBC, and the regulator can then refer the complaint back for reconsideration.<sup>404</sup>

IPSO's Editors' Code of Practice is stated to apply fully to both printed and online versions of publications, and needs to be observed by all contributors, including non-journalists; it covers 1,165 online publications. This means that its provisions on, for instance, accuracy, will apply to online versions of newspapers. No separate statistics are available for complaints relating to online material, and indeed it would be difficult to give them as most complaints refer to material which is published both in the hard copy of the newspaper and online. However, in 2016 the publication which attracted the third highest number of complaints was the *Mail Online*, against which 1,104 complaints were made, with 381 rejected, 52 resolved, five not upheld and eight upheld.<sup>405</sup> A recent example of an upheld complaint related to a *Mail Online* report that a lorry had ploughed into pedestrians in London at a time of high tension relating to possible terrorist attacks. The report was based on inaccurate comments made on social media. IPSO's Complaints Committee found that the publisher had not taken appropriate care over the accuracy of the information, but that publication of a correction and an apology constituted sufficient remedial action.<sup>406</sup>

All online material is subject to the general law, including the law of defamation. There are, however, major practical problems in locating a publisher of online material against whom an action can be brought. The original author may be unidentifiable or based abroad, so action may be taken against the website operator or host as a secondary publisher. The 2013 Defamation Act provides protection for website operators where they are not themselves responsible for posting the material, unless they have failed to respond to a complaint seeking the identification of the poster or the taking down of the material in question. The law relating to breach of confidence and privacy is also

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<sup>404</sup> Ofcom and BBC, *Arrangement Relating to Online Material* (2017), [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0021/101892/bbc-online-arrangement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0021/101892/bbc-online-arrangement.pdf).

<sup>405</sup> IPSO, *Annual Report 2016*, p 18.

<sup>406</sup> IPSO, *20380-17 Various v Mail Online*, 1 February 2018, <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=20380-17>.



applicable to online material. As regards the criminal law, online material posted in England and Wales is covered by a number of offences related to hate speech. The 2003 Communications Act makes it an offence to send a message that is grossly offensive or indecent, obscene or menacing by means of a public electronic communications network, and this has often been used in relation to social media. Under the 1986 Public Order Act it is an offence to use threatening or abusive words or behaviour likely to cause harassment, alarm or distress, and the Act also prohibits threatening, abusive or insulting words or behaviour intended or likely to stir up racial hatred. The 2006 Racial and Religious Hatred Act and the 2008 Criminal Justice and Immigration Act extend this to cover the incitement of religious hatred or hatred on the basis of sexual orientation.

## 8.4.2. Online media policies

The range of policies and different approaches of providers of online news and current affairs is hugely varied and may be different depending on whether the provider is a broadcaster, a newspaper in a self-regulatory regime or a source of news which is outside those categories. The BBC Editorial Guidelines stress that they are applicable to all platforms, including online, mobile devices, interactive services or the printed word.<sup>407</sup> Thus, provisions in the guidelines relating to, for example, accuracy and impartiality, will apply in full to online material. Indeed, special provision is made in the guidelines (i) for the treatment of online news material, in order to keep it up to date (as the provision of out-of-date material would undermine the BBC's reputation for high editorial standards), and (ii) for archiving, in order to maintain a permanent public record of the material. User-generated content must be clearly identified as such. By contrast, the *Daily Mail* publishes a brief set of "house rules" asking contributors to avoid, for example, defamatory material or material that is racist, sexist or discriminatory.<sup>408</sup>

## 8.5. Conclusions

What is apparent from this brief survey is that there is a highly pluralistic landscape in the regulation of news and current affairs in the UK. The BBC and licensed broadcasters are heavily regulated, with a strong emphasis on the need for accuracy and impartiality; this is publicly policed by Ofcom. Newspapers are subject to self-regulation; its effectiveness has been criticised but it does provide a forum (other than that of using the general law) for complaints about news and current affairs reporting on grounds relating, for example, to accuracy. This is much less far-reaching than the regulation of broadcasting, and there is no requirement of impartiality. For online material, there is a form of self-regulation through editorial guidelines for the BBC; newspaper websites fall under the press self-regulatory regime. Other online material will be unregulated; suggestions of a lack of

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<sup>407</sup> BBC, *Editorial Guidelines*, <http://www.bbc.co.uk/editorialguidelines/guidelines>.

<sup>408</sup> Daily Mail, *Daily Mail House Rules*, <http://www.dailymail.co.uk/home/article-1388145/House-Rules.html>.



accuracy are to be corrected through “the marketplace of ideas” rather than regulation or self-regulation. There are restrictions imposed by the general law, although enforcement may be difficult; some are potentially far-reaching, for example in relation to hate speech.

This pluralism is healthy. It permits the coexistence of a wide range of different forms of news provision: trusted providers such as the BBC, where there are strong requirements of accuracy and impartiality; press publishers, where there is some remedy for inaccuracy through self-regulation but no requirement of impartiality, so that controversial views may be strongly stated; and online material, where users should be aware that there are effectively no restraints on the publication of inaccurate material or of biased views. What is important is maintaining a balance between these different types of source in order to maintain this plurality. So far, the BBC in particular has been outstandingly successful in providing a strong presence in online news and current affairs. It is only if the presence of such regulated voices continues that there can be both a true choice for users of different types of news and current affairs information, and the guarantees of accuracy and impartiality in broadcasting necessary for the proper working of democracy.



## 9. IE - Ireland

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### 9.1. Introduction

The 2017 Reuters Institute Digital News Report<sup>409</sup> survey indicated that Ireland's news consumers have higher levels of trust in news media than the international average.<sup>410</sup> The survey divided media consumption into "digitalism" and "traditionalism": "digitalists" are those who consume news via smartphones, tablets and computers, whereas "traditionalists" mainly use newspapers, radio and television. The findings revealed that in 2017, Irish digitalists fell by 4% to 23%, whereas traditionalists grew by 2% to 31% and mixed users (half and half) increased by 1% to 45%.<sup>411</sup> The survey found that the Irish placed a slightly lower value on social media as a news source than did their international peers.

A breakdown of the traditional news sources used indicated that Ireland roughly mirrors the international average, with the exception of the relative dominance of the public service broadcaster, RTÉ. Some 66% of respondents indicated they use RTÉ as a main source of news, compared to an international average of 49%.<sup>412</sup> This trend also carried through to the *RTÉ News* website.<sup>413</sup> Print media was the most cited source of traditional news at 70%. The report also indicated that the slow decline of television and newspaper consumption continued, particularly among news consumers aged between 35 and 45.<sup>414</sup>

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<sup>409</sup>The data relating to Ireland has been the subject of a more detailed and specific report commissioned by the Broadcasting Authority of Ireland on the Irish results of the survey. See Institute for Future Media and Journalism (FuJo), Reuters Institute Digital News Report 2017 (Ireland) <http://fujomedia.eu/wp-content/uploads/2017/06/Report-for-Web.pdf>.

<sup>410</sup>*Ibid.*, p. 43.

<sup>411</sup>*Ibid.*, p. 23.

<sup>412</sup>*Ibid.*, p. 48.

<sup>413</sup>*Ibid.* See also RTÉ, *The Media Landscape in Ireland, 2017*, p 23, which indicated that "[while] there continue to be large audiences for news on RTÉ radio and television, more than one million people stay up to date with RTÉ News on social media". <https://static.rasset.ie/documents/about/2017/10/the-media-landscape-in-ireland.pdf>.

<sup>414</sup>See also RTÉ, *The Media Landscape in Ireland, 2017*, p 3, which states that social media is now the most used source for news among adults in the 18-34 age group.



## 9.2. Broadcast media

### 9.2.1. Current regulatory framework

The broadcasting landscape in Ireland includes public service broadcasters, commercial broadcasters, and other broadcasters.<sup>415</sup> The two public service broadcasters are Radio Telefís Éireann (RTÉ Radio and RTÉ TV) and the national Irish language public service television broadcaster, TG4. The commercial broadcasters comprise a myriad of radio broadcasters<sup>416</sup> and two commercial television broadcasters – TV3 (together with its sister channels, 3e and be3) and Eir Sport.<sup>417</sup>

The Broadcasting Act 2009 details the legal requirements placed on broadcasters in respect of their coverage of news and current affairs. For example, section 39 of the 2009 Broadcasting Act applies to “every broadcaster” and provides that news must be objective and impartial, without any expression of the broadcaster’s own views.<sup>418</sup> The Act also requires that the treatment of current affairs programming, including matters which are either of public controversy or the subject of public debate, be fair to all the interests concerned and presented in an objective and impartial manner, without any expression of the broadcaster’s own views.<sup>419</sup>

The 2009 Broadcasting Act furthermore obliges the Broadcasting Authority of Ireland (BAI) to develop, prepare, and from time to time revise “broadcasting codes” governing standards and practices to be observed by broadcasters.<sup>420</sup> Section 42 requires that the aforementioned duties placed on broadcasters with regard to the reporting, presentation and treatment of news and current affairs programming under section 39 of the 2009 Act be also contained in such codes. In addition, section 42 requires that such Codes provide that broadcasters shall not, in allocating time for the transmission of party political broadcasts, give an unfair preference to any political party. In 2013, the BAI published its Code of Fairness, Objectivity and Impartiality in News and Current Affairs.<sup>421</sup> The BAI Guidelines in Respect of Coverage of Referenda<sup>422</sup> have also been developed and

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<sup>415</sup> For a complete list of radio and television stations in Ireland, see the BA’s, List of Radio and TV stations: <http://www.bai.ie/en/broadcasters/>.

<sup>416</sup> There are 36 commercial radio stations. There are 18 regional community radio broadcasters throughout Ireland.

<sup>417</sup> TV3 is operated within Ireland by the TV3 Group operated by Virgin Media Ireland and owned by Liberty Global. It was confirmed that TV3 will undergo a rebranding, along with its sister channels 3e and be3, in autumn 2018. It is expected that the channel name will be Virgin TV One. Eir Sports was formerly Setanta Sports.

<sup>418</sup> 2009 Broadcasting Act, s 39 (1) (a).

<sup>419</sup> 2009 Broadcasting Act s. 39 (1) (b).

<sup>420</sup> 2009 Broadcasting Act s.42 (1).

<sup>421</sup> The BAI had regard to a range of matters set out in section 42(3) of the Act. It also had regard to its own statutory objectives, set out in particular in section 25.

<sup>422</sup> BAI, 2018 Guidelines in Respect of Coverage of Referenda <http://www.bai.ie/en/download/132680/>.



provide direction and advice to broadcasters as to how fairness, objectivity and impartiality can be achieved in their coverage of forthcoming referendum campaigns.<sup>423</sup>

Part 4 of the 2009 Broadcasting Act provides a number of redress mechanisms with regard to complaints concerning broadcast material, including the obligation on broadcasters to prepare and implement a “code of practice for the handling of complaints.”<sup>424</sup> The Act also confers authority on the BAI to investigate and decide upon any complaints<sup>425</sup> in relation to breaches of broadcasters’ duties under section 39 of the Act<sup>426</sup> or where a broadcaster has breached any of the BAI’s codes or rules.<sup>427</sup> Section 49 of the Act also provides for the provision of a “right of reply scheme” whereby “any person whose honour or reputation has been impugned by an assertion of incorrect facts or information in a broadcast shall have a right of reply”.<sup>428</sup> The Act provides that that the right of reply scheme is to be prepared by the BAI.

The BAI’s 2016 Annual Report considered a total of 132 complaints, and “in common with previous years, the majority of these complaints, 105, were in relation to fairness, objectivity and impartiality in news and current affairs content.”<sup>429</sup> Of the total complaints received and processed, nine were dealt with by way of an “adequate” response from the broadcaster. The remaining complaints were processed in line with established procedure, with decisions being published on the BAI website.<sup>430</sup>

Furthermore, under Ireland’s 2009 Defamation Act, defamatory statements include inaccurate statements that tend to injure reputation;<sup>431</sup> the Act also contains provisions on offering corrections,<sup>432</sup> and the defences of fair and accurate court reports<sup>433</sup> and fair and reasonable publication on a matter of public interest.<sup>434</sup>

Lastly, there have been a number of court cases concerning both public service and commercial broadcasters. In May 2017, for instance, the Court of Appeal ordered that damages of EUR 140,000 awarded in the High Court against commercial broadcaster TV3 for defaming a lawyer in a news report be reduced to EUR 36,000.<sup>435</sup> This was the first time the Court of Appeal had considered the “offer to make amends” provision under the 2009 Defamation Act. In December 2017, public service broadcaster RTÉ paid undisclosed damages to a presidential election candidate for an unverified tweet made during a live

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<sup>423</sup>See 2018 Guidelines in Respect of Coverage of Referenda.

<sup>424</sup>Broadcasting Act 2009, s. 47.

<sup>425</sup>Section 48 (1).

<sup>426</sup>Ibid s.48 (1) a).

<sup>427</sup>Broadcasting Act 2009, s. 48 (1) (d).

<sup>428</sup> Broadcasting Act 2009 s 49 (2).

<sup>429</sup>Broadcasting Authority of Ireland, 2016 Annual Report, p. 44, <http://www.bai.ie/en/download/132450/>.

<sup>430</sup>Ibid p.45.

<sup>431</sup>Section 2 of the 2009 Defamation Act includes in its definition of a “statement” one that is broadcast on the radio or television.

<sup>432</sup> 2009 Defamation Act, section 22, <http://www.irishstatutebook.ie/eli/2009/act/31/enacted/en/print#sec22>.

<sup>433</sup> 2009 Defamation Act, section 17, <http://www.irishstatutebook.ie/eli/2009/act/31/enacted/en/print#sec17>.

<sup>434</sup> 2009 Defamation Act, section 26, <http://www.irishstatutebook.ie/eli/2009/act/31/enacted/en/print#sec26>.

<sup>435</sup>See, for example, I. Cunningham, “Court of Appeal orders reduction in damages for defamation of lawyer in TV news report,” IRIS 2017-7/21, <http://merlin.obs.coe.int/iris/2017/7/article21.en.html>.



election debate programme.<sup>436</sup> RTÉ issued an apology to the candidate in the High Court and acknowledged that it had failed to comply with its statutory duty under section 39 of the Broadcasting Act in the course of the *Presidential Election Debate* programme broadcast in 2011.

## 9.2.2. Broadcaster policies on accuracy and fairness

The first editorial value of the public service broadcaster, RTÉ, is “trust”,<sup>437</sup> after which are also listed “truth and accuracy”, “impartiality and fairness”, “editorial integrity” and “independence and serving the public interest”.<sup>438</sup> These values/principles are also echoed in RTÉ’s 2014 Journalism Guidelines.<sup>439</sup>

Similarly, the public service broadcaster TG4’s 2011 Public Service Statement sets out its statutory mandate, which comprises the standards or principles through which it fulfils its remit, including the provision of news and current affairs – primarily in the Irish language.<sup>440</sup> TG4’s 2013 Journalism Guidelines set out the broadcaster’s editorial values and principles, including a commitment to “operate in the public interest, providing news and current affairs that is fair and impartial, accurate and challenging and be honest and transparent in all of their activities.”<sup>441</sup>

As stated, all broadcasters in Ireland subscribed to a code of practice for complaints, which are compiled on the BAI website. The commercial channel TV3, for instance, has a code of practice on complaints handling,<sup>442</sup> a complaints form<sup>443</sup> and a right of reply.<sup>444</sup> The commercial sports channel EirSport also has a code of practice on complaints<sup>445</sup> and a link to a BAI Right of Reply Scheme.<sup>446</sup> Public service broadcasters RTÉ

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<sup>436</sup>See Ó Fathaigh R, “Public broadcaster pays damages over unverified tweet during election debate” IRIS 2018- 2:1/22,<https://merlin.obs.coe.int/iris/2018/2/article22.en.html>; See also Ó Fathaigh R “ High Court refuses to strike out presidential candidate’s claim over televised election debate” IRIS 2017-6:1/21 <https://merlin.obs.coe.int/iris/2017/6/article21.en.html>.

<sup>437</sup>RTÉ Journalism Guidelines Editorial principles, section 4, p 4.

<sup>438</sup>These editorial principles are also contained in RTÉ’s 2013 Programme Content Standards, p <https://static.rasset.ie/documents/about/content-standards-guidelines-2013.pdf>.

<sup>439</sup><https://www.rte.ie/about/en/policies-and-reports/policies-guidelines/2012/0220/290064-digital-television-radio-in-ireland/>.

<sup>440</sup> S. 118 (3) Broadcasting Act 2009 ;TG4, Public Service Statement 2011, p 3; See also TG4, Code of Programme Standards 2012, p.10.

<sup>441</sup>TG4, Journalism Guidelines 2013, section 2 p 4, <https://d1og0s8nlbd0hm.cloudfront.net/tg4-redesign-2015/wp-content/uploads/2015/08/TG4-Journalism-Guidelines.pdf>.

<sup>442</sup> TV3 Code of Practice on Complaints Handling, <https://www.tv3.ie/contact.php?page=Complaints%20Handling>.

<sup>443</sup> TV3, Complaints Form <https://www.tv3.ie/contact.php?page=TV3%20Complaints%20Form>.

<sup>444</sup> TV3 Right of Reply [https://www.tv3.ie/right\\_of\\_reply.php](https://www.tv3.ie/right_of_reply.php).

<sup>445</sup>Eir Sports Code of Practice <https://www.eirsport.ie/code-of-practice>.

<sup>446</sup>Eir Sports Right of Reply <https://www.eirsport.ie/right-of-reply>.





and TG4 also have similar codes on complaint handling and other forms of redress such as a right of reply.<sup>447</sup>

## 9.3. Print media

### 9.3.1. Current regulatory framework

The print media in Ireland comprises a combination of national newspapers (daily and weekly)<sup>448</sup> local newspapers,<sup>449</sup> magazines<sup>450</sup> and online-only news publications.<sup>451</sup> The Press Council of Ireland and the Office of the Press Ombudsman are responsible for considering complaints about newspapers (print and online), magazines and online-only news publications. Both the Office of the Press Ombudsman and the Press Council are independent of the Government and, in operation, independent of the media. Accordingly, this independent press regulation operates by relying on the voluntary commitment of member publications' editors and journalists to adhere to the journalistic principles contained in the Code of Practice.<sup>452</sup>

The Defamation Act 2009 formally recognises a “Press Council”<sup>453</sup> and sets out the “Minimum Requirements in Relation to Press Council”.<sup>454</sup> The principal objects of the Press Council are outlined in a schedule to the Act and include the protection of the public interest “by ensuring ethical, accurate and truthful reporting by the press” and maintaining “certain minimum ethical and professional standards among the press.”

The Press Council of Ireland's Code of Practice was written by journalists and it is the expression of best professional practice to which member publications have committed themselves.<sup>455</sup> The Code of Practice contains a preamble and ten principles, including the principles on “truth and accuracy”, “distinguishing fact and comment” and “fair procedures and honesty”. For example, Principle 1, which deals with truth and accuracy, asserts that in reporting news and information, newspapers and magazines shall strive at all times for truth and accuracy and that when a significant inaccuracy,

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<sup>447</sup> See RTÉ TG4, Corporate Governance, Codes and Statements <https://www.tg4.ie/en/corporate/corporate-governance/>.

<sup>448</sup> There are nine daily national newspapers and seven weekly national news publications in print and digital formats. These figures are based on an examination of the PCI members' publications. See Press Council of Ireland member publications, <http://www.presscouncil.ie/member-publications>.

<sup>449</sup> There are 55 local newspapers in print and digital format.

<sup>450</sup> There are 31 magazines in print and digital format.

<sup>451</sup> There are seven online-only news publications.

<sup>452</sup> See Press Council of Ireland, Code of Practice <http://www.presscouncil.ie/press-council-of-ireland-1/code-of-practice->

<sup>453</sup> 2009 Defamation Act, section 44.

<sup>454</sup> 2009 Defamation Act, schedule 2.

<sup>455</sup> Press Council of Ireland, Code of Practice, <http://www.presscouncil.ie/code-of-practice>.



misleading statement or distorted report or picture has been published, it shall be corrected promptly and with due prominence.

The Office of the Press Ombudsman receives complaints from members of the public and seeks to resolve them by conciliation or mediation. Where conciliation or mediation is not possible, the Press Ombudsman will make a decision on the complaint on the basis of the Code of Practice. The Office of the Press Ombudsman has set out a “complaints procedure”, which states that any person or organisation that can show that, in the opinion of the Press Ombudsman, they are personally affected by material published by a member publication or by the journalistic behaviour in question, they can lodge a complaint.<sup>456</sup>

In 2016, the Press Council of Ireland received a total of 261 complaints,<sup>457</sup> with 51.2% of complaints concerning Principle 1 of the Code of Practice dealing with truth and accuracy.<sup>458</sup> Of the nine complaints upheld in 2016, two were lodged on the grounds that Principle 1 had been breached. In both of those complaints, the editors recognised that there had been some inaccuracies or ambiguities in what had been reported.<sup>459</sup> However, the editors’ proposed wording of a clarification or correction did not go far enough for the complainants, a view shared by the Press Ombudsman in both cases when making his formal decisions.<sup>460</sup>

Under the Defamation Act 2009, as stated, defamatory statements are inaccurate statements that tend to injure reputation, while it also contains provisions on offering corrections, defences of fair and accurate court reports, and fair and reasonable publication on a matter of public interest. The Irish courts dealt with a number of cases concerning the press in 2017, and in June 2017 the European Court of Human Rights, in a landmark ruling on Irish defamation law, found that the scale of the Irish Supreme Court award of EUR 1.25 million against Independent Newspapers (Ireland) Limited had breached newspapers’ rights to freedom of expression.<sup>461</sup>

### 9.3.2. Newspaper policies on accuracy and fairness

While all of the Press Council’s member publications commit to adherence to the Press Council’s Code of Practice, some media organisations have issued their own principles regarding the reporting of news. For example, the national Irish daily paper *The Irish Times*, in its principles, states that “news shall be as accurate and as comprehensive as is

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<sup>456</sup> <http://www.presscouncil.ie/making-a-complaint>.

<sup>457</sup> Press Council of Ireland, Annual Report 2016, p. 6,

[http://www.presscouncil.ie/\\_fileupload/Press%20Council%20Annual%20Report%202016.pdf](http://www.presscouncil.ie/_fileupload/Press%20Council%20Annual%20Report%202016.pdf).

<sup>458</sup> Ibid., p. 9.

<sup>459</sup> Ibid., p. 10.

<sup>460</sup> Ibid.

<sup>461</sup> See Ó Fathaigh R, “Independent Newspapers v. Ireland: €1.25 million defamation award against newspaper violated Article 10”, Strasbourg Observers, 19 June 2017,

<https://strasbourgobservers.com/2017/06/19/independent-newspapers-v-ireland-e1-25-million-defamation-award-against-newspaper-violated-article-10/>.



practicable and be presented fairly; comment and opinion shall be informed and responsible, and shall be identifiable from fact.”<sup>462</sup> Furthermore, Independent News and Media (INM), a media company that own a substantial number of national and regional newspapers in the Republic of Ireland, has a code of conduct which cites under its “editorial responsibilities” that a “newspaper’s greatest assets are its integrity and credibility.”<sup>463</sup>

## 9.4. Online media

### 9.4.1. Current regulatory framework

The BAI regulates linear broadcasting in Ireland, and its Code on Fairness, Impartiality and Objectivity in News and Current Affairs stipulates that “broadcasters shall have in place appropriate policies and procedures for handling contributions via social media.”<sup>464</sup> The guidance notes to the Code state that “in utilising online sources for the production of news and current affairs broadcast content, whether in the compilation of a programme or in the broadcast of contributions, there is a particular onus on the broadcaster to ensure accuracy and to adhere to the principles outlined in the Code.”<sup>465</sup> Similarly, the BAI’s 2018 Guidelines on Referenda Coverage reminds broadcasters of the requirement to have in place appropriate policies and procedures for handling on-air contributions via social media, and that given the importance of referenda, additional steps should be implemented by broadcasters to ensure that on-air references to social media are accurate, fair, objective and impartial.<sup>466</sup>

While the BAI is responsible for the regulation of linear broadcasting, a self-regulatory system applies to the on-demand (non-linear) sector. The sector is subject to a voluntary code – the On-demand Audiovisual Services (ODAS) Code 2011.<sup>467</sup> Accordingly, on-demand services provided by the public service broadcasters RTÉ and TG4 (i.e. RTÉ Player, TG4 Player) and commercial broadcaster TV3’s (3Player) are subject to the ODAS Code. For instance, the Code provides that on-demand audiovisual media services of news and current affairs programmes shall not be sponsored.<sup>468</sup> The Code furthermore provides that in respect of on-demand services which are free to view and are unrestricted “[w]here content is purported to be news or current affairs the concepts of fair, objective

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<sup>462</sup> The Irish Times, Principles of The Irish Times, <https://www.irishtimes.com/about-us/the-irish-times-trust#irishtimes>.

<sup>463</sup> Independent News & Media plc, Code of Conduct p.7, [http://www.inmplc.com/~media/Files/I/INM/documents/2018/01\\_Code\\_of\\_Conduct\\_May.pdf](http://www.inmplc.com/~media/Files/I/INM/documents/2018/01_Code_of_Conduct_May.pdf).

<sup>464</sup> BAI Code of Fairness, Impartiality and Objectivity in News and Current Affairs, Rule 15, p. 11.

<sup>465</sup> BAI Code of Fairness, Objectivity & Impartiality in News and Current Affairs Guidance Notes Rule 15, p. 20.

<sup>466</sup> BAI Guidelines on Referenda Coverage 2018, Rule 8, p.9.

<sup>467</sup> ODAS, Code of Conduct for Media Service Providers 2011, <http://www.bai.ie/en/download/128548/>.

<sup>468</sup> ODAS Code 2011, Part 1 section 5 p. 7.



and impartiality should apply.”<sup>469</sup> The Code also provides a complaint mechanism for the public.<sup>470</sup>

As outlined, the Press Council of Ireland oversees the regulation of member publications (which number some online news publications that are subject to the Press Council’s Code of Practice). For example, the online-only news publication *TheJournal.ie*, which is the main source of online news in Ireland,<sup>471</sup> is a member of the Press Council of Ireland,<sup>472</sup> and also has a correction and report content procedure.<sup>473</sup> In 2016, 15 online-only news publications prompted complaints to the Press Council of Ireland,<sup>474</sup> while 154 publications (either newspapers’ print or online versions) sparked complaints;<sup>475</sup> 51.2% of complaints concerned truth and accuracy. The Press Council of Ireland has issued decisions concerning online-only news publications, such as *TheJournal.ie*,<sup>476</sup> and online articles from the *Independent.ie*,<sup>477</sup> and *TheIrishTimes.ie*.<sup>478</sup>

Ireland’s 2009 Defamation Act applies to online publications. In February 2016, the Irish High Court delivered a judgment dealing with the circumstances in which a court should order the media to cease further online publication of defamatory statements, and with the defence of absolute privilege for “fair and accurate” court reporting.<sup>479</sup>

## 9.4.2. Online media policies on accuracy and fairness

The Press Council of Ireland’s Code of Practice, as outlined, applies to member publications, which include numerous online news publications. An examination by this author of the Press Council’s members publications online reveals that while some member publications specifically state that their websites and their associated newspapers are fully participating members of the Press Council of Ireland and support the Office of the Press Ombudsman, many of the PCI member publications’ websites

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<sup>469</sup>ODAS Code 2011, Part 2 section 2.a (iv) p 9.

<sup>470</sup>ODAS Code 2011, Part 3 Compliance and Complaints , p 9 .

<sup>471</sup>N. Newman et al., Reuters Institute Digital News Report 2017, p. 76, [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web\\_0.pdf?utm\\_source=digitalnewsreport.org&utm\\_medium=referral](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web_0.pdf?utm_source=digitalnewsreport.org&utm_medium=referral).

<sup>472</sup> Press Council of Ireland, Online Only News Publications, <http://www.presscouncil.ie/member-publications/web-based-publications>.

<sup>473</sup> TheJournal.ie, Report Content, <http://www.thejournal.ie/report-content/>.

<sup>474</sup> Press Council of Ireland, Annual Report 2016, p. 7, <http://www.presscouncil.ie/fileupload/Press%20Council%20Annual%20Report%202016.pdf>.

<sup>475</sup> Ibid.

<sup>476</sup> Press Council of Ireland, *Mr Manav Lok and thejournal.ie*, 17 December 2014, <http://www.presscouncil.ie/mr-manav-lok-and-thejournalie>.

<sup>477</sup> Press Council of Ireland, Parents of a child and Independent.ie, 8 May 2015, <http://www.presscouncil.ie/parents-of-a-child-and-independentie>.

<sup>478</sup> Press Council of Ireland, A woman and The Irish Times - explanation behind the publication of an article, <http://www.presscouncil.ie/cases-appeals/resolved-through-conciliation>.

<sup>479</sup> R. Ó Fathaigh, “High Court rejects application to remove court report from media website”, IRIS 2016-4/18, <http://merlin.obs.coe.int/iris/2016/4/article18.en.html>.



contain no such references to that affiliation nor links to any redress measures for complaints.<sup>480</sup>

## 9.5. Conclusion

In terms of the regulation of news and current affairs in Ireland, it can be gleaned from the brief examination of the various mediums above that the broadcast media (radio and linear TV) are subject to more onerous regulation; this underscores the need for objectivity, impartiality, fairness and accuracy, which is comprehensively monitored and regulated by the BAI. The print media, in adopting a self-regulatory approach, provides an alternative method of redress other than that of recourse to the law in terms of complaints about news and current affairs reporting on grounds relating, for example, to “truth and accuracy.” More significant is the fact that decisions about complaints under the Press Council’s Code of Practice are made not by journalists themselves, but by the independent Press Ombudsman, and, on appeal, by the Press Council (on which journalists are represented, but on which they do not have the majority voice). This guarantee of independent judgment is a core principle of the PCI and Press Ombudsman system.

For online material, such as non-linear on-demand broadcast material that is free to air, lighter-touch regulation is applied in the form of self-regulation through the ODAS Code, which is overseen by the BAI and other relevant bodies such as the Advertising Standards Authority of Ireland (ASAI) in terms of sponsorship of news and current affairs content. The online print media falls under the Press Council of Ireland/Press Ombudsman self-regulatory regime, although this regime includes member publications only. There is no regulation in Ireland concerning the distribution of news and current affairs in social media; instead, some social media companies have adopted voluntary standards and initiatives in this regard.

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<sup>480</sup> For example, the examination found that approximately 16 regional newspapers websites contained neither reference to their affiliation with the PCI and PCO office nor any redress mechanisms dealing with complaints.





## 10. IT - Italy

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### 10.1. Introduction

The Department of Economics and Statistics of the Italian Communication Authority (*Autorità per le garanzie nelle comunicazioni* – AGCOM) released in February 2018 a report on the consumption of information.<sup>481</sup> The study reports that television is the medium with the greatest informative value (it is the main source of information for 48.2% of the population) for both access frequency and perceived importance and reliability; television is followed by the Internet (26.3%), newspapers (17.1%) and radio (8.4%). More and more people rely on the Internet to search for and access news, and over a quarter of the population deems it the most important method for acquiring information, although some concerns have emerged with respect to the reliability and accuracy of online information sources, which are perceived to be lower than those of traditional media. Online information is accessed mainly through algorithmic sources (e.g. social networks and search engines), while there is a more limited use of editorial sources. Algorithmic sources may themselves raise some reliability issues, since less than 24% of the respondents deems these sources to be actually trustworthy. With regard to the use of media for news, television is the most widely-accessed medium, while the Internet is ranked second, followed by radio and newspapers.

### 10.2. Broadcast media

#### 10.2.1. Current regulatory framework

The regulatory framework applicable to broadcasters as far as accuracy and fairness of information are concerned is quite fragmented. According to Article 3 of Legislative Decree no. 177/2005 (“the Code of Audiovisual Media Services” – *Testo unico dei servizi di*

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<sup>481</sup> Autorità per le garanzie nelle comunicazioni, Report on the consumption of information, February 2018, <https://www.agcom.it/documents/10179/9629936/Allegato+19-2-2018+1519046158936/41b0f2d2-e94c-4f51-9581-976f43c99477?version=1.0>.



*media audiovisivi e radiofonici* (TUSMAR)),<sup>482</sup> the Italian broadcasting system aims at ensuring, *inter alia*, the following principles at both the national and local level: (i) media freedom and media pluralism, (ii) freedom of speech, including the freedom to impart, receive and seek information, (iii) the objectivity, impartiality, completeness and fairness of information, and (iv) media diversity. It has been debated among scholars whether this provision sets forth principles applicable to all broadcasters, regardless of the public or private nature thereof,<sup>483</sup> or to the public service broadcaster only.<sup>484</sup> In particular, some commentators have argued that, since the text of TUSMAR (and, previously, of the relevant provisions of Law no. 223/1990) refers to the entire broadcasting system, the principles laid down thereunder apply to both public and private broadcasters. Other scholars, conversely, have argued that these principles have a merely programmatic nature and are not binding or enforceable with respect to private broadcasters. However, in 2006 AGCOM adopted a resolution (no. 22/06/CSP) setting forth some principles applicable to private broadcasters in the non-electoral period, with a view to protecting pluralism, objectivity, fairness and impartiality of information (i.e. the same principles addressed by Law no. 223/1990 and TUSMAR).<sup>485</sup> It is also worth noting that AGCOM has fined some private broadcasters for failure to comply with the said principles.<sup>486</sup>

The Constitutional Court has also drawn an important distinction between external and internal pluralism with respect to the role of public and private broadcasters. Internal pluralism requires public service broadcasters to ensure complete, objective, impartial and balanced information by conveying different opinions, trends and political, social and cultural beliefs.<sup>487</sup> External pluralism, on the other hand, is based on the exercise of the broadest degree of freedom by each broadcaster and requires conditions that ensure the best competition among market players.

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<sup>482</sup> Decreto Legislativo 31 luglio 2005, n. 177 ((Testo unico dei servizi di media audiovisivi e radiofonici)). (GU n.208 del 7-9-2005 - Suppl. Ordinario n. 150 ), <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177!vig=>.

<sup>483</sup> See, *inter alia*, N. Lipari, *Libertà di informare o diritto ad essere informati?*, in *Diritto delle radiodiffusioni e delle telecomunicazioni*, 1978, 1; Id., *L'informazione leale ed il diritto ad essere informati*, in *Diritto dell'informazione e dell'informatica*, 1991, 803; G. Alpa, *Gli utenti della tv: da oggetti a soggetti*, in *Diritto dell'informazione e dell'informatica*, 1996, 383 and P. Caretti, *Radiotelevisione* (ad vocem), in *Enciclopedia del diritto*, Milan, 1997.

<sup>484</sup> See, among others, A. Pace, *No alla RAI privata*, in *la Repubblica*, 1 June 1995, 10 and S. Fois., *Informazione: potere o libertà?*, in P. Barile – R. Zaccaria (eds), *Rapporto '93 sui problemi giuridici della radiotelevisione in Italia*, Turin, 1994, 401.

<sup>485</sup> Autorità per le Garanzie nelle Comunicazioni, Delibera n. 22/06/CSP, 1 febbraio 2006 (AGCOM, Resolution no. 22/06/CSP, 1 February 2006), <https://www.agcom.it/documents/10179/538549/Delibera+22-06-CSP/d4de759c-43eb-42cb-8f66-14f819a44a53?version=1.0&targetExtension=pdf>.

<sup>486</sup> See, for instance, Autorità per le Garanzie nelle Comunicazioni, Delibera n. 30/06/CSP, 6 febbraio 2006 (AGCOM, Resolution no. 30/06/CSP, 6 February 2006, [https://www.agcom.it/documentazione/documento?p\\_p\\_auth=fLw7zRht&p\\_p\\_id=101\\_INSTANCE\\_2fsZcpGr12AO&p\\_p\\_lifecycle=0&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&\\_101\\_INSTANCE\\_2fsZcpGr12AO\\_struts.action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_INSTANCE\\_2fsZcpGr12AO\\_assetEntryId=796730&\\_101\\_INSTANCE\\_2fsZcpGr12AO\\_type=document](https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_2fsZcpGr12AO&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_2fsZcpGr12AO_struts.action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_2fsZcpGr12AO_assetEntryId=796730&_101_INSTANCE_2fsZcpGr12AO_type=document)).

<sup>487</sup> Constitutional Court, judgment no. 826/1988.





Also, in the course of electoral periods the specific rules (including equal air time rules) laid down by Law no. 28/2000 (the *Par Condicio* Law)<sup>488</sup> apply to both public and private broadcasters, in order to regulate the media presence and the media coverage of candidates, politicians and parties.<sup>489</sup>

Having that said, apart from these general principles there is no specific piece of legislation regulating media accuracy and fairness. Accordingly, journalism constitutes the exercise of freedom of information, as protected by Article 21 of the Italian Constitution. However, this freedom may be subject to restrictions required for the protection of other legitimate aims, including individuals' reputation.

Defamation is punished under Article 595 of the Italian Criminal Code (*Codice penale*). Punishment may consist of imprisonment for up to one year or, alternatively, a fine of up to EUR 1,032. More serious penalties apply under special circumstances ("aggravated defamation"), including: (i) a person's reputation is harmed by the allegation of a specific fact; or (ii) the offence is committed by via the press or through any other means of publicity. In the latter case, the applicable term of imprisonment ranges from six months up to three years, and a fine of EUR 516 upwards can be imposed.

However, the exercise of the freedom of press allows for a defence of justification in respect of the offence of defamation.<sup>490</sup> According to the well-established relevant case law,<sup>491</sup> in order for the defence of justification to apply the conduct of the offender has to meet certain requirements, namely (i) the news must be socially useful and of public interest, (ii) the representation of the events must be correct and true – i.e. the journalist must make all reasonable efforts to ascertain the facts, and (iii) the facts must be presented correctly from a formal point of view.

It is worth noting that Article 13 of Law no. 47/1948 ("the Law on the Press") specifically provides for imprisonment of between one and six years and a fine of EUR 250,000, upwards in cases of defamation committed via the press and which consist of the allegation of a specific fact. This provision, which establishes even more severe punishment than that for aggravated defamation under Article 595 of the Criminal Code, as it is stipulated by the Law on the Press (for the purposes of which "press" refers to print media only), should be as such inapplicable to defamation committed via television or radio broadcasters. Notwithstanding the above, Article 30, paragraph 4 of Law no. 223/1990 provides that in the event of the broadcasting of defamatory statements consisting of the allegation of a specific fact the penalties established by Article 13 of the Law on the Press shall apply. However, the said penalties do not apply to the person who made defamatory statements, but rather to the person in charge of monitoring the

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<sup>488</sup> Disposizioni per la parità di accesso ai mezzi di informazione durante le campagne elettorali e referendarie e per la comunicazione politica, Legge 22 Febbraio 2000, n. 28, in Gazzetta Ufficiale 2000, 43 (Law of 22 February 2000, no. 28, Gazzetta Ufficiale 2000, 43), <http://www.camera.it/parlam/leggi/00028l.htm>.

<sup>489</sup> See further, Cappello M. (ed.), *Media coverage of elections: the legal framework in Europe*, IRIS Special 2017. European Audiovisual Observatory, Strasbourg, 2017, p. 75, <https://rm.coe.int/16807834b2>.

<sup>490</sup> Under Article 51 of the Italian Criminal Code, the existence of an offence is excluded in the event of either the exercise of a right or the fulfilment of a duty provided (for example) by law.

<sup>491</sup> See Italian Supreme Court, Criminal Division, judgment no. 5259/1984.



relevant broadcasts (a figure similar to the editor of a newspaper). This provision has been criticised by some commentators,<sup>492</sup> as it unreasonably prescribes a heavier punishment for a person other than the author of the defamatory statements in question.

From a civil law standpoint, liability for defamation can be based, as far as the author of the statements is concerned, on Article 2043 of the Civil Code (*Codice civile*). This provision regulates tort liability and reads as follows: “Every act committed either with intent or with negligence causing an unjustified injury to another person obliges the person who has committed the act to provide compensation for damage”. The assessment of the defamatory nature of the statements relies on the same criteria set forth by case law regarding the application of the defence of justification of the right to information in criminal cases.

Regarding broadcasters, courts have enforced Article 2049 of the Civil Code, which regulates the liability of employers for damage caused by illegal activities on the part of its employees. This provision shall apply, provided that the conduct of the employee that caused the damage in question falls within the scope of his/her employment relationship.<sup>493</sup>

The right of reply with respect to television or radio programmes is expressly provided by Article 32-*quinquies* of TUSMAR. This provision establishes that whoever claims that his/her honour or reputation has been harmed because of the broadcasting of false content is entitled to ask the relevant linear audiovisual media service provider (including the public service provider, as the case may be) or the persons in charge of monitoring programmes to broadcast a rectification (provided that that rectification does not constitute a criminal offence). The reply shall be broadcast within 48 hours of the receipt of the request, within the same time slot and enjoying the same prominence in the programme as that which the false content occupied. If the reply is not broadcast under these terms, the victim of the allegedly defamatory statements is entitled to lodge a request with AGCOM. Moreover, broadcasters may submit to AGCOM a request in relation to the reply in the event that they deem that the reply does not fulfil the requirements above. In such cases, AGCOM shall issue an opinion within five days. If AGCOM finds that the aforesaid requirements are met, the reply shall be broadcast within the following 24 hours.

## 10.2.2. Broadcaster policies on accuracy and fairness

There is no specific policy to note in respect of broadcasters’ attitude toward accuracy and fairness of news. However, some commitments in this respect can be found in the Code of Ethics of the RAI (the national public broadcasting company of Italy),<sup>494</sup> whereby the mission of the RAI is defined. In particular, the RAI’s Code of Ethics asserts that the driving

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<sup>492</sup> C. Malavenda – C. Melzi d’Eril – G.E. Vigevani, *Le regole dei giornalisti*, Bologna, 2012, p. 76.

<sup>493</sup> See, *inter alia*, Court of Rome, Civil Division, judgment no. 8985/2008 (involving the private broadcaster La7 for an episode of defamation occurred during the well-known talk show “Otto e Mezzo”).

<sup>494</sup> Available at [http://www.rai.it/dl/docs/1397743611847Code\\_of\\_Ethics\\_ENG.pdf](http://www.rai.it/dl/docs/1397743611847Code_of_Ethics_ENG.pdf).



goals of the public service broadcasting mission include: freedom, completeness, transparency, objectivity, impartiality, pluralism and fairness of information.

Notably, most of the guiding principles for media stakeholders are set forth in the Charter of Duties of Journalists,<sup>495</sup> which gathers together a number of self-regulatory codes and codes of conducts. In particular, the Charter does establish some general principles, including the duty of journalists to respect, cultivate and defend the right to information of all people, and to seek and circulate every piece of information that is considered to be in the public interest, in accordance with the standard of truthfulness and accuracy. Furthermore, the Charter lays down certain duties relating to particular categories of information – e.g. in respect of news relating to criminal trials, rectification, the protection of sources, advertising and polls, and sport events. It is also worth noting that journalists are bound, under the Italian Data Protection Code (Legislative Decree no. 196/2003), to respect the Code of Conduct on the processing of personal data for information purposes.<sup>496</sup>

## 10.3. Print media

### 10.3.1. Current regulatory framework

As pointed out above, media accuracy and fairness is regarded as a key value in the Italian legal order. It is not by chance that defamation is criminalised under Article 595 of the Criminal Code and that an aggravated punishment applies if the defamatory conduct is committed by means of the press (or other avenues of publicity).

In addition to the foregoing, some specific provisions are applicable to the press, (by which Article 595 means the print media). First of all, Article 21, paragraph 3 of the Constitution generally prohibits the seizure of newspapers, except: (i) in the event of offences where the seizure is expressly provided for by law; and (ii) an order has been issued by the relevant court.

That said, it is worth noting that Article 57 of the Criminal Code provides a strict liability standard, while criminalising the failure of the editor (*direttore responsabile*) or deputy editor of a newspaper to prevent an offence being committed through the publication of editorial material. The liability of the editor and deputy editor of the newspaper is provided without prejudice to the liability of the author for the relevant offence. Thus, in the case of the publication of defamatory statements in the print edition of a newspaper, the editor and deputy editor (if any) may face penalties – not only the author of the material in question. Punishment is set at the same penalty that is imposed

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<sup>495</sup> “*Testo unico dei doveri del giornalista*”. An English unofficial translation is available at [http://ethicnet.uta.fi/italy/charter\\_of\\_duties\\_of\\_journalists](http://ethicnet.uta.fi/italy/charter_of_duties_of_journalists).

<sup>496</sup> Data Protection Code - Legislative Decree no. 196/2003, [http://www.garanteprivacy.it/home\\_en/italian-legislation#2](http://www.garanteprivacy.it/home_en/italian-legislation#2).



on the offender, but may be reduced by up to a maximum of one third. This offence has been sharply criticised by commentators, as it defines one of the few remaining cases of strict liability under Italian criminal law without requiring specific *mens rea* (i.e. proof of whether the offence was committed with intent or through negligence) on the part of the offender.<sup>497</sup>

In addition to the above, the Law on the Press has been framed and approved with a specific view to print media. It is applicable to the result of the technical process of printing that is made accessible to the general public only. As noted above, the Law on the Press establishes a more severe punishment for defamation by the press (see Article 13). Moreover, Article 11 regulates civil liability, which extends beyond the actual offender to the publisher and the owner of the newspaper. Under Article 12 of the Law on the Press a victim of defamation is entitled to ask for compensation for damage plus, as an additional penalty, pecuniary reparation, with the amount determined on the basis of the seriousness of the offence.

Furthermore, Article 8 of the Law on the Press regulates the right of reply. The right to respond/right of reply finds its legal grounds in the prior publication of either images or statements/thoughts/acts attributed to a natural/legal person which, in the view of the applicant, are harmful to his/her dignity or are false. The right to respond is guaranteed, provided that the reply does not constitute an offence by reason of its content. Daily newspapers are required to publish the reply not later than two days after the date on which the request to respond was received. If the newspaper does not publish the reply, the applicant is entitled to ask the relevant court to order the newspaper to do so under an urgent special procedure regulated by Article 700 of the Italian Code of Civil Procedure. Failure to publish the reply may result in a fine ranging from EUR 1,500 to EUR 2,500 and constitutes a tort under civil law. The reply must be published at the top of the same page on which the article to which the reply refers appeared. Moreover, the reply must have the same visual characteristics as the article to which it refers.

### 10.3.2. Newspaper policies on accuracy and fairness

As pointed out in paragraph 1.2.1., the Charter of Duties of Journalists functions as a code of conduct for journalists, regardless of the specific medium. No specific complaint procedures are provided. However, an interesting tool has been introduced recently by the national newspaper *La Stampa*, which appointed a well-regarded journalist, Anna Masera, as “public editor”.<sup>498</sup> The public editor is considered as an “ombudsman”, who is competent to receive any comment or complaint from the public with respect to the content and news published on the print and digital editions of the newspaper. All replies to the comments and complaints lodged by readers are published on an *ad hoc* Facebook page,<sup>499</sup>

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<sup>497</sup> See, among others, D. Falcinelli, *Ipse dixit: si stampi*, in *Giurisprudenza italiana*, 2005, 2386.

<sup>498</sup> See, Maser A., “Cari lettori, da oggi sono la vostra Garante”, *La Stampa*, 12/01/2016, <http://www.lastampa.it/2016/01/12/cultura/cari-lettori-da-oggi-sono-la-vostra-garante-YhoAYEiUDxxmjXJPIncnEJ/pagina.html>.

<sup>499</sup> <https://www.facebook.com/lastampapublic>.



and every Tuesday in the print edition of the newspaper in a specific section. Similar initiatives have been adopted in the past by the national newspapers *La Repubblica* and *Il Messaggero*, before the rise of the digital media; however, they proved unsuccessful.<sup>500</sup>

## 10.4. Online media

### 10.4.1. Current regulatory framework

As stressed in the Introduction, the reliability of online algorithmic sources of information is still held in lower regard than traditional newspapers.<sup>501</sup> A similar problem affects online platforms and citizen journalism, particularly since the phenomenon of “fake news” has become widespread during both election and non-election periods.<sup>502</sup> It is not by chance that a new bill (known as “DDL Gambaro”<sup>503</sup>) was recently introduced to the Italian Parliament with a view to criminalising the publication and circulation via the Internet of fake news or exaggerated or biased information on the basis of manifestly ill-founded or false facts and circumstances.

One of the main challenges lies with the legal status of new platforms – most notably those which are lacking any kind of professional organisation – and social media. However, a key question is whether the provisions that apply to traditional media (and particularly to print media) should be extended to digital ones. Behind this debate is the debate on whether a website of a newspaper should meet the same formal and substantive requirements as those to which traditional media must adhere.

A point that it is worth mentioning concerns the application of the prohibition on the seizure of newspapers under by Article 21, paragraph 3 of the Constitution. This provision, which was framed in the aftermath of World War II, was aimed at print media. Accordingly, the text of this provision mentions “press”; no specific reference is made to online media. The case law of the Supreme Court has predominantly endorsed a formalistic construction of this provision by restricting the scope of this constitutional guarantee to print media. However, in January 2015, the Supreme Court delivered a landmark decision,<sup>504</sup> whereby the website hosting a newspaper was held to fall within

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<sup>500</sup> See Cherubini F.– Tedeschini-Lai M., *Gli ombudsmen e i giornali italiani*, in *European Journalism Observatory*, 26 February 2016, <https://it.ejo.ch/etica/ombudsmen-giornali-italia-public-editor>.

<sup>501</sup> See also, with regard to the Italian scenario, the report *Measuring the reach of “fake news” and online disinformation in Europe* (by R. Fletcher- A. Corna – L. Graves – R. Nielsen) released by the Reuters Institute of the University of Oxford, <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2018-02/Measuring%20the%20reach%20of%20fake%20news%20and%20online%20distribution%20in%20Europe%20CORRECT%20FLAG.pdf>.

<sup>502</sup> See further, Cappello M. (ed.), *Media coverage of elections: the legal framework in Europe*, IRIS Special 2017. European Audiovisual Observatory, Strasbourg, 2017, p. 75, <https://rm.coe.int/16807834b2>.

<sup>503</sup> Available in Italian at: <http://www.senato.it/leg/17/BGT/Schede/Ddliter/47680.htm>.

<sup>504</sup> Italian Supreme Court, Criminal Joint Divisions, judgment no. 31022/2015, <http://www.giurisprudenzapenale.com/wp-content/uploads/2015/08/cass-pen-sez-un-2015-31022.pdf>.



the scope of the notion of “press” and accordingly enjoyed the benefits (including the prohibition on seizure) provided by the relevant legal framework. However, this judgment assumed that newspapers’ websites are subject to the same legal regime as the traditional press on the basis of a view that sees newspapers’ websites as part of the broader notion of “press”. In doing so, it made applicable to digital media also those provisions which were framed with specific regard to the press (which traditionally meant material produced by the technical printing process), thus calling into question the prohibition on applying criminal law *in malam partem*.

It goes without saying that defamation through online media definitely falls within the scope of application of the aggravated offence provided under Article 595 of the Criminal Code. In the past, courts have found that the aggravated punishment provided by Article 13 of the Law on the Press should not apply to online media.

Another very hot issue lies with the enforcement of Article 57 of the Criminal Code with regard to editors and deputy editors of online media. It is well-established in the case law of the Italian Supreme Court that this offence is not applicable, as the editor/deputy editor would be neither capable nor expected to carry out a check of content comparable to that required for traditional print newspaper.<sup>505</sup> However, the most recent decision of the Supreme Court on the application of the prohibition on seizing a newspaper seems to have paved the way for the application to digital media of both the aggravated punishment provided by Article 13 of the Law on the Press and the offence established by Article 57 of the Criminal Code.

Finally, in relation to the right of reply, pursuant to Article 8 of the Law on the Press, a reply must be published at the top of the same page on which the article to which the reply refers appeared. Moreover, the reply must have the same visual characteristics as the article to which it refers. In light of the rationale behind this provision (giving the reply equal prominence to that of the original article), the above requirements may be met, for instance, by inserting a link to the reply or embedding the reply itself in the same webpage on which the article was posted. It should also be noted that, according to a decision issued by an Italian court, the right to respond provided by the Law on the Press is not applicable to the online version of newspapers.<sup>506</sup>

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<sup>505</sup> See Supreme Court, Criminal Division, judgments nos. 35511/2010, <http://www.federalismi.it/AppOpenFilePDF.cfm?artid=25772&dpath=document&dfile=27052014170940.pdf&content=Corte+di+Cassazione,+Sentenza+n.+35511/2010,+In+tema+di+applicabilit%C3%A0+dell%27art.+57+c.p.+al+direttore+del+giornale+telematico+-+stato+-+documentazione+-+> and 44126/2011 <http://federalismi.it/AppOpenFilePDF.cfm?artid=25775&dpath=document&dfile=27052014171322.pdf&content=Corte+di+Cassazione,+Sentenza+n.+44126/2011,+In+tema+di+applicabilit%C3%A0+dell%27art.+57+c.p.+al+direttore+del+giornale+telematico+-+stato+-+documentazione+-+>.

<sup>506</sup> Court of Udine, 15 September 2010, <https://associazioneindi.files.wordpress.com/2011/06/tribunale-udine-15-09-20101.pdf>.



## 10.4.2. Online media policies on accuracy and fairness

As mentioned above, the new post of public editor was introduced recently by the national newspaper *La Stampa*. This post was created to interact with readers in a more informal way in an age in which there is a greater demand for quick responses and feedback, since the Internet represents the main (although non-exclusive) channel through which readers can reach out to the public editor and through the latter respond to them.

In addition, *La Stampa* implemented a “netiquette”<sup>507</sup> – effectively, a code of conduct for users who wish to engage in comments and feedback on the website of the newspaper and on related social media channels. It is reasonable to believe that similar “netiquettes” will be implemented soon by other players in light of the spread of hate speech and fake news.

## 10.5. Conclusion

News accuracy and fairness and, generally speaking, media reliability is still a very hot topic in Italy. Generally, codes of conduct, policies and best practices have a limited role and application in Italy. Against this background, while the legal regime is quite old, it fits well with traditional media, particularly with print media. Some uncertainties have emerged with respect to the application of this regime to broadcasters, although the most pressing concerns have arisen in respect of digital media. In fact, there are no specific provisions aimed specifically at digital media and the use of the Internet for information (except for the national implementation of the E-Commerce Directive (Directive 2000/31/EC)).<sup>508</sup> The inherent fragmentation and the split of the applicable pieces of legislation across different acts has proved to be an obstacle for legal certainty, leading to different courts adopting different approaches. Moreover, the spread of “fake news” and disinformation has recently come to the attention of Italian lawmakers. However, the steps proposed in some bills only concern the role of social media platforms, while limited attention is being paid to the role of newspapers and media outlets.

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<sup>507</sup> <http://www.lastampa.it/servizi/social/galateo.jpg>

<sup>508</sup> E-Commerce Decree (Legislative Decree no. 70 of 2003) (Attuazione della direttiva 2000/31/CE relativa a taluni aspetti giuridici dei servizi della società dell'informazione nel mercato interno, con particolare riferimento al commercio elettronico), [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=326475](http://www.wipo.int/wipolex/en/text.jsp?file_id=326475).







# 11. NL – The Netherlands

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## 11.1. Introduction

In 2017, the Netherlands Institute for Social Research conducted research on the use of news media via traditional and new channels.<sup>509</sup> The outcome of this research was that most Dutch citizens still use traditional channels to obtain their news. The most popular medium is television, which is used by 39% of citizens as a primary news source; 27% of the citizens obtain their news by reading a printed newspaper and only 11% of the population visits news websites or apps to obtain news. The most popular news websites are *NU.nl*, *NOS*, *De Telegraaf*, *Algemeen Dagblad* and *RTL*. Only *NU.nl* is an online-only news organisation; the latter four are online versions of traditional news media.<sup>510</sup> Mostly young adults are users of news websites and apps, and do not generally subscribe to printed newspapers. Therefore, from these results it is clear that traditional media still are the most popular medium for obtaining news, but that among the new generation online websites and apps are gaining more popularity.

## 11.2. Broadcast media

### 11.2.1. Regulatory framework

Article 7 of the Dutch Constitution protects the freedom of speech, including that of media organisations.<sup>511</sup> Media organisations usually enjoy a high degree of freedom of

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<sup>509</sup> Wennekers & De Haan, *The Dutch and the news: Use of news media via old and new channels*, The Netherlands Institute for Social Research, The Hague, 2017, [https://www.scp.nl/english/Publications/Summaries\\_by\\_year/Summaries\\_2017/The\\_Dutch\\_and\\_the\\_news](https://www.scp.nl/english/Publications/Summaries_by_year/Summaries_2017/The_Dutch_and_the_news).

<sup>510</sup> N. Newman, *Reuters Institute Digital News Report 2017*, Reuters Institute for the Study of Journalism, Oxford, 2017, p. 81, [https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web\\_0.pdf](https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital%20News%20Report%202017%20web_0.pdf).

<sup>511</sup> Article 7, Dutch Constitution, <http://wetten.overheid.nl/BWBR0001840/2017-11-17>.



speech in the exercise of their duties. The Dutch Media Act (*Mediawet*)<sup>512</sup> and the Media Resolution (*Mediabesluit*)<sup>513</sup>, which provides more detailed information about the Media Act, are the general laws applicable to both commercial and public broadcasters. However, most provisions only apply to public broadcasting companies. The Media Act prescribes that public service broadcasting media must provide programmes that are free from commercial influences and are balanced, pluralist, varied and of high quality.<sup>514</sup>

Article 6:162 of the Dutch Civil Code<sup>515</sup> is the general provision in respect of tort liability. This article protects the honour and name of Dutch citizens against unlawful publications that damage their reputation or violate their privacy. Furthermore, the Dutch Penal Code contains several provisions on defamation law, and prescribes that intentionally offending a particular group of citizens<sup>516</sup>, incitement to hatred<sup>517</sup>, defamation<sup>518</sup> and slander<sup>519</sup> may be prosecuted by the Dutch public prosecutor.

Journalists are subject to the Guidelines of the Netherlands Press Council.<sup>520</sup> The Guidelines describe which requirements journalism must meet within the Netherlands and what can be expected of proper journalists and proper journalism. For example, journalists must avoid one-sided and biased reporting and carry out their work independently and avoid any conflicts of interests. They are free in their choice of what they publish, but they are expected to balance the interest in publishing against the interests that may be harmed by such publication.<sup>521</sup> The NPO (*Nederlandse Publieke Omroep* – the national Dutch organisation responsible for public broadcasting) and the most important commercial broadcasters, SBS and *RTL*, are participating organisations and are therefore subject to this self-regulating code.<sup>522</sup>

Furthermore, the Dutch Association for Chief Editors has adopted a Code for Journalists.<sup>523</sup> Most public and commercial broadcasters, such as NOS, RTL and SBS, are members of the Association for Chief Editors and are therefore required to comply with its Code.<sup>524</sup> The Code states that journalists enjoy freedom of expression in a democratic

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<sup>512</sup> Mediawet 2008 (Media Act 2008), <http://wetten.overheid.nl/BWBR0025028/2017-02-01>.

<sup>513</sup> Mediabesluit 2008 (Media Resolution 2008), <http://wetten.overheid.nl/BWBR0025036/2018-01-01>.

<sup>514</sup> Article 2.1(2), Media Act.

<sup>515</sup> Article 6:162 Dutch Civil Code, <http://wetten.overheid.nl/BWBR0005289/2017-09-01>.

<sup>516</sup> Article 137c Dutch Penal Code, <http://wetten.overheid.nl/BWBR0001854/2018-01-01>.

<sup>517</sup> Article 137d Dutch Penal Code, <http://wetten.overheid.nl/BWBR0001854/2018-01-01>.

<sup>518</sup> Article 261 Dutch Penal Code, <http://wetten.overheid.nl/BWBR0001854/2018-01-01>.

<sup>519</sup> Article 262 Dutch Penal Code, <http://wetten.overheid.nl/BWBR0001854/2018-01-01>.

<sup>520</sup> Raad voor de Journalistiek, Guidelines of the Netherlands Press Council 2015, <https://www.rvdj.nl/uploads/fckconnector/f60f0e13-cfde-43b7-9ea3-d3d49e012c78>.

<sup>521</sup> Raad voor de Journalistiek, Guidelines of the Netherlands Press Council 2015, paragraph A, <https://www.rvdj.nl/uploads/fckconnector/f60f0e13-cfde-43b7-9ea3-d3d49e012c78>.

<sup>522</sup> Raad voor de Journalistiek, Participanten, <https://www.rvdj.nl/over-de-raad/stichting-raad-voor-de-journalistiek/participanten>.

<sup>523</sup> Nederlands Genootschap van Hoofdredacteurs, Code voor de journalistiek, <https://www.nvj.nl/ethiek/ethiek/code-journalistiek-nederlands-genootschap-hoofdredacteurs-2008>.

<sup>524</sup> Nederlands Genootschap van Hoofdredacteurs, Ledenlijst Media, <http://genootschapvanhoofdredacteurs.nl/ledenlijst-media/>.



society, but they also have the responsibility to spread news in a truthful, independent, fair and open-minded manner. This Code is based on the International Declaration of Principles on the Conduct of Journalists, adopted by the International Federation of Journalists.<sup>525</sup>

In terms of the number of complaints, the NPO Ombudsman received in 2017 almost 500 complaints. The Ombudsman answers all complaints, except for anonymous and vexatious complaints. Most complaints were directed at NOS, the broadcaster responsible for more than 50% of Dutch public broadcasting output. Most complaints (45 in total) concerned the objectivity of the programmes, and 34 complaints stated that programmes consisted of inaccuracies.<sup>526</sup>

Lastly, there have been some recent judgements concerning programmes transmitted by public and commercial broadcasters concerning accuracy, objectivity and fairness in news and current affairs coverage. For example, in December 2017, a Dutch court of appeal ruled that the public broadcaster AVROTROS had acted unlawfully towards a person by giving a distorted picture of a high-profile neighbours' dispute during an episode of a television programme. According to the court, the image presented was not supported by facts, and formed a major violation of the respondent's right to respect for his private life, including his honour and good name. The broadcaster was ordered to remove the programme from its website.<sup>527</sup> In another case, a Dutch district court ruled that the broadcasting of an image of a murder suspect's face during a programme broadcast by a commercial television company had not contributed to the public debate on "*auftragsmord*" (murders committed in exchange for a payment) and had therefore been unlawful.<sup>528</sup>

## 11.2.2. Broadcaster policies

The NPO adopted in 2016 a Journalistic Code in respect of those of their programmes that are related to news and current affairs. The Code entered into force at the beginning of 2017.<sup>529</sup> Under the Code, all journalists working for Dutch public broadcasters must abide by the provisions set out in the Code. The editorial staff and those responsible for the final editing of public broadcasters' programmes are responsible for compliance with the

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<sup>525</sup> International Federation of Journalists, IFJ Declaration of Principles on the Conduct of Journalists, <http://www.ifj.org/about-ifj/ifj-code-of-principles/>.

<sup>526</sup> NPO Ombudsman, 2017, *Het jaar in ombudsland*, <https://ombudsman.npo.nl/download/nl/375>.

<sup>527</sup> Appellate Court of Arnhem-Leeuwarden, 19 December 2017, ECLI:NL:GHARL:2017:11182, <http://merlin.obs.coe.int/iris/2018/2/article25.en.html>. See Melanie Klus, "Court of Appeals judgement on the rectification and removal of news programme episode", IRIS 2018-2/15.

<sup>528</sup> District Court of Gelderland, 27 December 2017, ECLI:NL:RBGEL:2017:6890, <http://merlin.obs.coe.int/iris/2018/3/article27.en.html>. See Nathalie Rodriguez, "Broadcasting suspect's image in Dutch television programme unlawful", IRIS 2018-3/27.

<sup>529</sup> NPO, Journalistieke Code, 2016, [https://over.npo.nl/storage/configurations/overnpo/files/ombudman/journalistieke\\_code\\_npo\\_def-1484126558.pdf](https://over.npo.nl/storage/configurations/overnpo/files/ombudman/journalistieke_code_npo_def-1484126558.pdf).



Code. The Code requires journalists to produce reliable, accurate, independent, impartial, unbiased, balanced and pluralist programmes, in order that NPO may become a credible source of media and gain trust among society.

Anyone with a complaint about a specific television or radio programme can file a complaint at different institutions in the Netherlands. For example, the NPO Ombudsman, an independent and impartial organisation, examines and may issue decisions on all journalistic programming and production undertaken by Dutch public broadcasters that are part of the NPO. The Ombudsman's authority covers journalistic programming on radio, television and the Internet that falls within the genres of news, sports, current affairs, events and opinions. Individuals can submit a complaint to the Ombudsman concerning the content of a journalistic programme or publication. For instance, a complaint can concern incorrect news reporting. Moreover, complaints directed at commercial broadcasting companies can be lodged directly with these companies – usually through an online form.<sup>530</sup>

The Netherlands Press Council handles complaints concerning violations of good journalistic practice.<sup>531</sup> Under the Code that the Council has developed, proper journalism must be truthful and accurate, impartial and fair, verifiable and sound.<sup>532</sup> Complaints can be lodged against practices that do not meet these requirements. An individual or company that wishes to lodge a complaint with the Council must have been directly targeted by the publication in question.

## 11.3. Print media

### 11.3.1. Regulatory framework

All legislation that is applicable to broadcasting media is applicable to print media as well, except for the Media Act and the Media Resolution. The print media are also subject to the Guidelines of the Netherlands Press Council.<sup>533</sup> Most newspapers, such as *De Telegraaf*, *Algemeen Dagblad*, *De Volkskrant* and *NRC*, are members of the Dutch Association for Chief Editors,<sup>534</sup> which is a partner of the Netherlands Press Council.<sup>535</sup> As mentioned

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<sup>530</sup> See, for example: Talpa TV Publieksservice, <http://publieksservice.sbs.nl/customer/portal/emails/new>.

<sup>531</sup> Netherlands Press Council, Procedure to complain, <https://www.rvdj.nl/english/procedure-to-complain-2>.

<sup>532</sup> Raad voor de Journalistiek, Guidelines of the Netherlands Press Council, preface, <https://www.rvdj.nl/uploads/fckconnector/f60f0e13-cfde-43b7-9ea3-d3d49e012c78>.

<sup>533</sup> Raad voor de Journalistiek, Guidelines of the Netherlands Press Council 2015, <https://www.rvdj.nl/uploads/fckconnector/f60f0e13-cfde-43b7-9ea3-d3d49e012c78>.

<sup>534</sup> Nederlands Genootschap van Hoofdredacteuren, Ledenlijst Media, <http://genootschapvanhoofdredacteuren.nl/ledenlijst-media/>.

<sup>535</sup> Raad voor de Journalistiek, Participanten, <https://www.rvdj.nl/over-de-raad/stichting-raad-voor-de-journalistiek/participanten>.



above, the print media also has to act in conformity with the Code for Journalists adopted by the Dutch Association for Chief Editors<sup>536</sup> on the basis of the international Declaration of Principles on the Conduct of Journalists, adopted by the International Federation of Journalists.<sup>537</sup>

Moreover, recent Dutch case law has emerged concerning the lawfulness of publications in print media, in particular relating to accuracy, objectivity and fairness. For example, the District Court of Amsterdam has recently ruled on the lawfulness of a publication in the Dutch newspaper *De Telegraaf*, which concerned an accusation against a nominee for a prize who was accused of the rape of two women. The article included two anonymous statements from these women. The District Court decided that publication of the article was not unlawful, since *De Telegraaf* had sufficient evidence to support the accusation. Also, the nominee was considered a public figure and therefore was to accept more publicity than the average citizen.<sup>538</sup>

In another case initiated by a convicted paedophile, complaining that a newspaper article concerning him was unlawful, the Appeal Court of The Hague ruled that freedom of speech had to prevail over the right to privacy, since the article contributed to a public debate. The article was undeniably offensive, but could not be considered needlessly grieving (“*nodeloos grievend*”). Also, the claimant had tried to seek media attention himself before the publication of the article and was therefore to enjoy less protection of his privacy.<sup>539</sup>

### 11.3.2. Newspaper policies

Some Dutch newspapers have adopted their own editorial guidelines. For instance, the NRC, one of the most widely-read newspapers in the Netherlands, has developed its own Code of Conduct.<sup>540</sup> The NRC Code is applicable to all employees that perform journalistic duties. The journalists are expected to report truthfully and in a pragmatic and objective manner (“*feitelijk, zakelijk en objectief*”). They have to distinguish between facts and opinions and solely report about matters that serve the public interest. Also, *De Volkskrant*, another widely-read Dutch newspaper, has developed guidelines for its journalists which are laid down in a number of documents. Together they form the ‘*Volkskrant Code*’.<sup>541</sup>

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<sup>536</sup> Nederlands Genootschap van Hoofdredacteuren, Code voor de journalistiek, <https://www.nvj.nl/ethiek/ethiek/code-journalistiek-nederlands-genootschap-hoofdredacteuren-2008>.

<sup>537</sup> International Federation of Journalists, IFJ Declaration of Principles on the Conduct of Journalists, <http://www.ifj.org/about-ifj/ifj-code-of-principles/>.

<sup>538</sup> District Court of Amsterdam, 30 January 2018, ECLI:NL:RBAMS:2018:383, <http://deepink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2018:383>.

<sup>539</sup> Appellate Court of The Hague, 5 December 2017, ECLI:NL:GHDHA:2017:3375, <http://deepink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHDHA:2017:3375>.

<sup>540</sup> NRC, NRC Gedragscode, [https://www.nrc.nl/static/front/pdf/NRC%20Gedragscode%20HR%20\(006\).pdf](https://www.nrc.nl/static/front/pdf/NRC%20Gedragscode%20HR%20(006).pdf).

<sup>541</sup> *De Volkskrant*, *De Volkskrantcode*, <https://www.volkskrant.nl/media/de-volkskrantcode~a4569188>.



With regard to complaints concerning activities of print media, the Netherlands Press Council handles complaints concerning violations of good journalistic practice. Moreover, some newspapers have developed their own complaints procedures as well. For instance, the NRC has appointed its own Ombudsman who handles complaints about reports written by NRC journalists.<sup>542</sup> The Ombudsman assesses the journalistic practice by taking into account the journalistic Code adopted by the NRC itself and the general journalistic codes applicable to all Dutch journalists.

## 11.4. Online media

### 11.4.1. Regulatory framework

All legislation that is applicable to broadcasting media is applicable to online media as well. The Dutch Media Act and the Media Resolution, the general laws applicable to commercial and public broadcasters, may be applicable to online media if the media channel can be qualified as an audiovisual media service in the sense of the Audiovisual Media Services Directive.<sup>543</sup> For instance, a website such as Dumpert, who relies mainly on audiovisual content, may be subject to these laws.<sup>544</sup>

Online media may also be subject to the Guidelines of the Netherlands Press Council. The Guidelines expressly state to be technology neutral and to be applicable to everyone who engages in journalism.<sup>545</sup> The code for journalists adopted by the Dutch Association for Chief Editors is applicable to both journalists and non-journalists, offline and online. For instance, *NU.nl* is a member of the Dutch Association for Chief Editors<sup>546</sup>, which is a partner of the Netherlands Press Council.<sup>547</sup> Therefore, *NU.nl* is subject to the Guidelines. However, compliance with the code is not obligatory; there are no sanctions that punish non-compliance.

The District Court of Amsterdam ruled in November 2017 on the lawfulness of a publication on the website of *De Telegraaf*, a widely-read Dutch newspaper. In the article, the claimant was accused of attacking a lawyer and to have threatened him with death.

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<sup>542</sup> NRC, Statuten Ombudsman NRC, <https://www.nrc.nl/nieuws/2016/07/28/statuten-ombudsman-nrc-a1513705>.

<sup>543</sup> Article 1.2, Media Act.

<sup>544</sup> Wijziging van de Mediawet 2008 in verband met het toekomstbestendig maken van de publieke mediadienst, Memorie van Toelichting, <https://zoek.officielebekendmakingen.nl/dossier/34264/kst-34264-3?resultIndex=71&sorttype=1&sortorder=4>.

<sup>545</sup> Guidelines of the Netherlands Press Council 2015, <https://www.rvdj.nl/uploads/fckconnector/f60f0e13-cfde-43b7-9ea3-d3d49e012c78>.

<sup>546</sup> Nederlands Genootschap van Hoofredacteuren, Ledenlijst Media, <http://genootschapvanhoofredacteuren.nl/ledenlijst-media/>.

<sup>547</sup> Raad voor de Journalistiek, Participanten, <https://www.rvdj.nl/over-de-raad/stichting-raad-voor-de-journalistiek/participanten>.



The District Court did not consider the article unlawful, because there was sufficient evidence to support that the events had really occurred. Furthermore the District Court ruled on a few Twitter posts that were posted by journalists working for *De Telegraaf* regarding the events. These Twitter posts could be considered as personal, not based on facts and not friendly (“*niet vriendelijk*”). However, the publication of these comments falls within the limit of the freedom of speech that the journalist enjoys.<sup>548</sup>

## 11.4.2. Online media policies

Some online media providers have adopted editorial guidelines. For instance, De Correspondent, an online media website, has developed a Manifest, which contains ten principles that the website aims to comply with.<sup>549</sup> One of the principles is that journalist must be impartial, but also to be subjective (“*subjectief*”) in a way that stories must be told based on the most credible side of the stories. The website intends to not only report about the daily news from the surface, but also to report about deeper structures and developments that underline the news.<sup>550</sup>

Furthermore, some Dutch newspapers have adopted their own editorial guidelines which are applicable to their online news websites and apps as well.<sup>551</sup> Not all online media providers have adopted editorial guidelines. An important example is the NewsMedia Group, owner of the websites Upcoming, Geen Stijl and Dumpert, that mostly provides news for people within the age group of 18-35. GeenStijl describes its articles as “a combination of news, scandalous revelations and investigative journalism with light-hearted items and wacky nonsense”.<sup>552</sup> Even though not all news media websites have adopted their own policies, most websites do offer a complaints procedure. For instance the NewsMedia Group accepts complaints by means of an online form.<sup>553</sup> Also, *NU.nl*, a news website owned by Sanoma that reaches over 7 million people, strives to handle complaints that are sent by e-mail within ten working days.<sup>554</sup>

## 11.5. Conclusion

It can be said that all news media are subject to regulation in the Netherlands. General civil law and journalistic codes govern all types of media. Some media organisations have

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<sup>548</sup> District Court of Amsterdam, 1 November 2017, ECLI:NL:RBAMS:2017:7812, <http://deepink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2017:7812>.

<sup>549</sup> De Correspondent, Manifest, <https://decorrespondent.nl/manifest>.

<sup>550</sup> De Correspondent, Manifest, <https://decorrespondent.nl/manifest>.

<sup>551</sup> See for example: NRC Gedragscode, [https://www.nrc.nl/static/front/pdf/NRC%20Gedragscode%20HR%20\(006\).pdf](https://www.nrc.nl/static/front/pdf/NRC%20Gedragscode%20HR%20(006).pdf).

<sup>552</sup> Geen Stijl, <https://www.geenstijl.nl/>.

<sup>553</sup> Reaguurder, Contact, <https://reaguurder.nl/contact>.

<sup>554</sup> NU.nl, Klachten, <https://www.nu.nl/klachten.html>.



adopted their own codes of conduct to which their employees must adhere. If journalists have not complied with the codes, there are effective complaint mechanisms available. In particular, public broadcasters are subject to strong codes of conduct and are bound by a set of rules provided for by the Media Act. Still there are quite some newspapers and online media that have not developed their own policies and do not always comply with the general journalistic codes, because these codes do not give rise to liability.





## 12. PL - Poland

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### 12.1. Introduction

News and current affairs remains an important area of interest for Polish media users. The study *News Diversity in Poland from the User's Perspective*<sup>555</sup> shows that more than 70% of media users avail themselves of at least seven news sources, and about 40% of the users employ eleven sources and more. At the same time, television is the most frequently used platform for accessing the news. Among the ten most frequently used news sources of a first choice are six television channels, two news portals, one social network, and one radio channel. These observations seem to be supported by the analysis provided by the 2017 "Digital News Report on Poland", which shows that the four top sources among television, radio and print number three television brands – TVN's news channels, Polsat News, and the news channels of Polish Television (TVP) – and one radio station – RMF FM.<sup>556</sup> As regards online sources, the first two positions and fourth position are occupied by news portals – *onet.pl*, *wp.pl*, and *interia.pl*.<sup>557</sup> Print newspaper publishers have been struggling with declining circulation.<sup>558</sup> This presents a very hybrid picture of news provision and consumption in Poland and demonstrates, on the one hand, the importance of television as a traditional legacy news producer, and on the other hand the growing importance of online news providers such as news portals or press portals.

### 12.2. Broadcast media

The landscape of Polish broadcast media is composed of: public service media (PSM), including TVP, Polish Radio (PR) and its regional branches (all owned by the state); private commercial

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<sup>555</sup> Indicator (2015) *News diversity in Poland from the user's perspective (Różnorodność treści informacyjnych w Polsce z perspektywy użytkownika)*, <http://www.krrit.gov.pl/krrit/aktualnosci/news.2185.pluralizm-polskich-mediow-z-perspektywy-odbiorcow.html>.

<sup>556</sup> Reuters Institute for the Study of Journalism (2017) *Digital News Report on Poland*, <http://www.digitalnewsreport.org/survey/2017/poland-2017/>.

<sup>557</sup> Ibid.

<sup>558</sup> For example, the leading tabloid *Fakt* achieved a sold circulation of 514,449 copies in 2007, and 281,242 in 2016. For *Gazeta Wyborcza*, the leading daily newspaper, the loss was even more spectacular. In 2007, *GW* sold 443,310 copies, but in 2016 only 140,662 copies – less than 30 % of 2007's circulation.



media, including two principal television broadcasters, TVN Group (owned by US Discovery) and Polsat Group (owned by a Polish businessman, Zygmunt Solorz); and three principal radio broadcasters, RMF Group (owned by Germany's Bauer Media Group), Eurozet Group (owned by Czech Media Invest Group) and ZPR Group (Polish-owned, with a controlling stake held by Zbigniew Benbenek). In addition to these, "social broadcasters" operate in Poland; most of these occupy a rather marginal position in the broadcasting landscape, with the exception of the Catholic *Radio Maryja* and *TV Trwam*, which belong to the Lux Veritatis foundation. Each of these sectors (private, public, social) falls under specific regulatory content obligations (mainly set by the 1992 Broadcasting Act), but there are also common requirements to be followed by journalists (mainly set by the 1984 Press Law Act); in addition, there are self-regulatory guidelines developed by journalistic organisations.

### 12.2.1. Current regulatory framework

In terms of journalistic performance and the basic tasks of the press, all broadcasters fall under the 1984 Press Law Act, in the same way as do other news providers. Article 6(1) of the Act stipulates that "the press is obliged to provide a true representation of passing events."<sup>559</sup> In addition, Article 12(1)1 states that a journalist is obliged to "exercise due diligence and accuracy during the collection and use of press material, especially to check compliance with the truth, and to indicate the source."<sup>560</sup>

The PSM have to meet higher performance and content requirements under the 1992 Broadcasting Act (which also covers the operation of other broadcasters). Article 21(1) stipulates that public radio and television should provide "the entire society and its individual groups with diversified programme services ..., which shall be pluralistic, impartial, well balanced, independent and innovative, [and] marked by high quality and integrity of broadcast."<sup>561</sup> In addition, Article 21(2) stipulates that programme services and other services of public radio and television should "provide reliable information about the vast diversity of events and processes taking place in Poland and abroad."<sup>562</sup> The supplementary regulatory requirement is set by the Regulation of the National Broadcasting Council (KRRiT) of 24 April, 2003, which concerns procedures related to the presentation of standpoints with regard to crucial public issues by political parties, trade unions and employers' organisations on public radio and television.<sup>563</sup> Under paragraph 1(3) of the Regulation, the PSM shall have the duty to present standpoints with regard to

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<sup>559</sup> The 1984 Press Law Act (*Ustawa Prawo Prasowe*) adopted on 26 January, 1984, Official Journal 1984 No 5, item 24, as amended. <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19840050024>. English translation available at: [https://www.researchgate.net/publication/319872633\\_Translation\\_of\\_Polish\\_Press\\_Law\\_Act](https://www.researchgate.net/publication/319872633_Translation_of_Polish_Press_Law_Act).

<sup>560</sup> Ibid.

<sup>561</sup> The 1992 Broadcasting Act (*Ustawa o Radiofonii i Telewizji*) adopted on 29 December 1992, as amended, Official Journal 1993, No 7, item 34, <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19930070034>, unofficial translation: [http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/angielska/Documents/Regulations/broadcasting\\_act\\_2802\\_2013.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/Documents/Regulations/broadcasting_act_2802_2013.pdf).

<sup>562</sup> Ibid.

<sup>563</sup> Official Gazette "Dz.U." of 2003, No. 75, item 979, [http://www.krrit.gov.pl/Data/Files/\\_public/pliki/regulations/24april2003.pdf](http://www.krrit.gov.pl/Data/Files/_public/pliki/regulations/24april2003.pdf).



crucial public issues “in a reliable and pluralistic manner which enables the presentation of diversified approaches.”<sup>564</sup>

In principle, the KRRiT has the authority to supervise the operations of media service providers within the limits of the 1992 Broadcasting Act and, if necessary, impose appropriate sanctions. The forms of those sanctions include financial penalties and the revoking of the offender’s broadcasting licence.<sup>565</sup> Relatively rarely are financial penalties imposed on the grounds of a lack of objectivity, accuracy or fairness in programming. One such decision was issued in December 2017. The KRRiT imposed a quite extraordinary fine, amounting to 1.48 million Polish zlotys (aprox. EUR 343,430), on TVN24, one of the largest commercial television news stations in Poland. The KRRiT justified its decision by citing the fact that TVN24 had breached the content provisions of the 1992 Broadcasting Act while providing news coverage of protests in the Polish Parliament in December 2016. After extensive criticism from the journalist community and media providers (the sanction was largely perceived as having been politically motivated), the KRRiT ultimately decided to repeal the decision.<sup>566</sup> In 2017, the KRRiT received 2,110 complaints, 62% of which concerned programming and content issues. Of these, 28.8% concerned issues of objectivity and overall quality in current affairs programming, while 10% concerned news reporting.<sup>567</sup>

## 12.2.2. Broadcaster policies

Perhaps one of the most comprehensive self-regulatory sources of editorial guidelines developed in Poland is *The Media Ethics Charter*, adopted on 29 March 1995. The document reflects the wide agreement between journalistic organisations and the media industry.<sup>568</sup> The Charter covers the following principles, which editors are supposed to respect in their everyday journalistic duties: the principles of truth, objectivity, the separation of information and commentary, honesty, respect and tolerance, superiority of

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<sup>564</sup> Ibid.

<sup>565</sup> The 1992 Broadcasting Act (*Ustawa o Radiofonii i Telewizji*) adopted on 29 December 1992, as amended, Official Journal 1993, No 7, item 34, <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19930070034>, unofficial translation:

[http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/angielska/Documents/Regulations/broadcasting\\_act\\_2802\\_2013.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/Documents/Regulations/broadcasting_act_2802_2013.pdf).

<sup>566</sup> Wirtualnemedi.pl (2018) *TVN o uchyleniu kary KRRiT: oznacza to oddalenie zarzutów wobec relacji TVN24* (TVN on the repeal of the KRRiT fine: this signals the dismissal of charges concerning TVN24 news coverage) <http://www.wirtualnemedi.pl/artykul/krrit-uchylila-1-48-mln-zl-kary-dla-tvn-nadawca-to-oznacza-oddalenie-zarzutow-wobec-relacji-tvn24#>.

<sup>567</sup> KRRiT (2018) *Sprawozdanie KRRiT z działalności w 2017 roku* (The 2017 Annual Report), [http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/sprawozdania/spr-i-inf-2017/sprawozdanie\\_26\\_03.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/sprawozdania/spr-i-inf-2017/sprawozdanie_26_03.pdf); p. 42.

<sup>568</sup> The Media Charter of Ethics was adopted by The Polish Journalists’ Association (SDP), the Association of Journalists of the Republic of Poland (SDRP), the Catholic Journalists’ Association, the Syndicate of Polish Journalists, the Journalists’ Trade Union, the Press Publishers’ Union, Polish TV S.A., Polsat TV, the Association of Independent Film and TV Producers, the Public Radio Association in Poland, the Polish Private Broadcasting Association and the Trade Union of Radio and TV Journalists.



users' good name, and freedom and responsibility.<sup>569</sup> Two of these principles directly concern accuracy and objectivity. The principle of truth means that “journalists, editors, producers and broadcasters do their best [to ensure] that: the conveyed information reflects the truth; they report the facts within their proper context; and in the event that they disseminate false information, they immediately correct it.”<sup>570</sup> The principle of objectivity requires the journalist to “depict reality independently of his/her own views [and] reliably report different points of view.”<sup>571</sup> The implementation of the *Media Ethics Charter* is monitored by the oversight body, the Media Ethics Council, which is composed of broadly respected media professionals. In practice, the Council may issue an opinion or interpretation or implement further action in cases of violations of Charter standards.

Owing to the relatively diverse landscape of journalistic organisations in Poland, there are several self-regulatory measures stipulating principles of accuracy and objectivity, but only the *Media Ethics Charter* has been prepared in agreement with broadcasters and organisations representing the media industry, thus being incorporated in internal editorial policies. In addition, there are two other two self-regulatory instruments worthy of note. The Code of Journalistic Ethics (*Kodeks etyki dziennikarskiej*), adopted by The Polish Journalists' Association (SDP) in 2001, states in its preamble: “The task of a journalist is to transmit reliable and neutral information and diverse opinions and to enable participation in the public debate.” The Journalistic Code of Conduct (*Dziennikarski Kodeks Obyczajowy*), adopted by the Association of Journalists of the Republic of Poland (SDRP) in 1991, stipulates: “A fundamental task of a journalist is to search for the truth and to publish truthful information.” By contrast, the journalistic associations and the Media Ethics Council have only symbolic relevance. The effectiveness of sanctions (mainly statements noting infringement of particular provisions of the Codes) is limited. This stems from the fact that the journalistic environment in Poland is highly fragmented and membership of journalistic organisations is relatively small. Moreover, journalistic associations have different ideological agendas, which sometimes renders debate and agreement on common journalistic principles (such as objectivity, accuracy and fairness) very difficult.

In addition to general journalistic codes, the PSM have their own internal self-regulatory documents –the “Principles of journalistic ethics”. In the case of TVP, under Article I journalists should strive for maintaining impartiality and independence in reporting, and their task is to provide each citizen access to information and the formation of public debate. Journalists are also obliged to present diverse viewpoints and opinions, especially as regards socially controversial issues.<sup>572</sup> In the case of PR, under Article II.2 of its Principles of Professional Ethics, journalists are obliged to accurately cover a whole

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<sup>569</sup> Media Ethics Charter (1995), <http://www.mediawise.org.uk/poland-2/>.

<sup>570</sup> Ibid.

<sup>571</sup> Ibid.

<sup>572</sup> Telewizja Polska (2016) *Zasady etyki dziennikarskiej w Telewizji Polskiej S.A. – informacja, publicystyka, reportaż, dokument, edukacja* (Principles of Professional Ethics in the Polish Television), <http://s.tvp.pl/repository/attachment/0/e/e/0eea386c0fa98ad0c49f73f1a9f7c8e71445347977947.pdf>.



diversity of events in Poland and abroad.<sup>573</sup> These editorial guidelines do not prove to be particularly efficient. PSM governance changes that were introduced under the 2015 “Small Media Act”,<sup>574</sup> and in June 2016 by the National Media Council Act,<sup>575</sup> led to the creation of a direct link between the Government (and later the political nominees of the National Media Council) and PSM executives. While exerting political pressure and control over the PSM in Poland (and television in particular) has not been a new phenomenon, recent political bias (in particular that displayed by TVP news output) has reached an unprecedented scale.

## 12.3. Print media

The newspapers and news weeklies in Poland are owned by both domestic and foreign media groups. The largest press publishers include: the German-Swiss Ringier Axel Springer (RASP), which publishes, among other titles, the tabloid daily *Fakt*, quality daily *Dziennik-Gazeta Prawna* (as a minority shareholder); the local version of the news weekly *Newsweek*; the *onet.pl* news portal; the domestically owned Agora (which publishes the largest quality daily *Gazeta Wyborcza* and owns the news portal *gazeta.pl*); and Verlagsgruppe Passau (which owns a majority chain of regional newspapers). The print media sector is mainly regulated by the 1984 Press Law Act and self-regulatory guidelines adopted by journalistic organisations.

### 12.3.1. Current regulatory framework

As already observed in this Chapter, the 1984 Press Law Act imposes duties on journalists and editors to provide a true representation of passing events and to accuracy during the collection and usage of press material, especially in terms of checking compliance with the truth and when indicating sources.<sup>576</sup>

The right of reply is regulated by Chapter 5 of the 1984 Press Law Act. Article 31a(1) provides that a daily newspaper or magazine “shall publish, free of charge, the

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<sup>573</sup> Polskie Radio (2016) *Zasady etyki zawodowej w Polskim Radiu – Spółce Akcyjnej* (Principles of Professional Ethics in the Polish Radio), <http://www.polskieradio.pl/13/4138/Artykul/1618695.Zasady-etyki-zawodowej-w-Polskim-Radiu-%E2%80%93-Spolce-Akcyjnej>.

<sup>574</sup> The 2015 Act Changing the Broadcasting Act, so called “Small Media Act” (*Ustawa o zmianie ustawy o radiofonii i telewizji, tzw. “Mała Ustawa Medialna*) adopted on 30 December 2015, Official Journal 2016, item 25. <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20160000025>, unofficial translation: <http://www.krrit.gov.pl/en/for-broadcasters-and-operators/legal-regulations/>.

<sup>575</sup> The National Media Council is a body that has the power to appoint and dismiss members of governing bodies of public radio and television broadcasting organisations and the Polish Press Agency, see Act of 22 June 2016 on the National Media Council (*Ustawa o Radzie Mediów Narodowych*), Official Journal 29 June 2016, item 929, <http://dziennikustaw.gov.pl/du/2016/929/1>. The act is available in English at: [http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/angielska/ustawa-o-radzie-mediow-narodowych-eng.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/ustawa-o-radzie-mediow-narodowych-eng.pdf).

<sup>576</sup> The 1984 Press Law Act, Articles 6(1) and 12(1)1.



subject matter and factual correction of inaccurate or untrue press material.”<sup>577</sup> Editors-in-chief are obliged to publish corrections in the next issue, but no later than seven days after receiving the reply (in the case of daily newspapers), in the next issue or the one after that (in the case of magazines) or in the next audiovisual report (in the case of audiovisual media).<sup>578</sup> Understandably, editors-in-chief may refuse to publish a correction if it undermines facts established by a final judgment regarding the case of a disputed reply or correction; they may also do so when the reply “is non-objective and non-factual”, “has punishable content” or “contains vulgar or abusive language.”<sup>579</sup> If an editor-in-chief refuses to publish a reply in violation of the relevant provisions of the 1984 Press Law Act, the interested party may bring a court action for the publishing of the correction.<sup>580</sup>

Until 2017, the 1984 Press Law Act also recognised the institution of the Press Council under its Chapter 3. The Press Council was defined as a consultative body on matters of press, and the members of the Council were to be appointed by the Prime Minister. In fact, this provision for more than 30 years remained simply as a “surviving relic” of the communist past; the Council, in practice, functioned only on paper. In 2017, Chapter 3 was deleted from the Act.

Defamation, insult and the causing of offence are criminal acts in Poland punishable by imprisonment. Although most of punishments take the form of fines or community service, there have also been cases in which the courts have imposed a suspended sentence of deprivation of liberty. An unnecessarily restrictive and formalistic treatment of some defamation cases by the domestic courts has led repeatedly to applications being submitted to the European Court of Human Rights. A long-discussed issue has been the use of Article 212 of the Penal Code (1997)<sup>581</sup> in defamation cases. Critical opinions have been articulated by various groups, including journalists, NGOs, media and even the KRRiT. The repeal of Article 212 has been requested several times by various organisations representing journalists, media and civil society in 2011, then again in 2014, and most recently in September 2016, with a leading role being taken by the Commissioner for Human Rights. The last such request was refused in March 2017 by the Senate Committee for Human Rights, Rule of Law and Petitions.<sup>582</sup> The main argument cited by the supporters of Article 212 is the low effectiveness of civil procedures concerning defamation in Poland.

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<sup>577</sup> Ibid, Article 31a (1).

<sup>578</sup> Ibid, Article 32 (1).

<sup>579</sup> Ibid, Article 33.

<sup>580</sup> Ibid, Article 39(1).

<sup>581</sup> The 1997 Penal Code (*Kodeks Karny*) adopted on 6 June 1997, Official Journal, 1997, No 88, item 553, as amended. Official Polish version: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19970880553>, Unofficial English translation: [https://www.imolin.org/doc/amlid/Poland\\_Penal\\_Code1.pdf](https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf).

<sup>582</sup> Wirtualnemedial.pl (2017) *Nie będzie zmian w art. 212 Kodeksu karnego – Senatorzy odrzucili apel Rzecznika Praw Obywatelskich* (There will be no changes to Article 212 of the Criminal Code – the senators rejected an appeal by the Commissioner for Human Rights), <http://www.wirtualnemedial.pl/arttykul/art-212-kodeksu-karnego-senatorzy-odrzucili-apel-rzecznik-praw-obywatelskich>.



It is also worth noting that Articles 135, 224, 226 and 231a of the Penal Code (1997)<sup>583</sup> provide greater protection to the President, public officials and constitutional authority than to the general public. One case in which some of these provisions were cited recently was the publication of the book “Macierewicz and his Secrets” (*Macierewicz i jego tajemnice*) by Tomasz Piątek, an investigative journalist (the book came out at the end of June 2017). The journalist describes former Defence Minister Antoni Macierewicz’s alleged political and financial ties to persons close to Kremlin, the Russian intelligence services and Russian criminal organisations.<sup>584</sup> On 27 June 2017, the former minister lodged a notification with the Department of Military Affairs at the General Prosecutor’s office. The notification claimed that Piątek’s book violated three provisions of the Penal Code: Article 224.2, Article 226 and Article 231a. After the wave of criticism, in March 2018, the Warsaw District Prosecutor’s Office declined to investigate Piątek’s book case further, effectively ending the proceedings.<sup>585</sup>

### 12.3.2. Newspaper policies

Some press publishers and their editorial staffs have developed their own internal guidelines concerning editorial practices, including issues of accuracy, objectivity and fairness. These guidelines (including the procedures implemented internally in order to deal with problematic cases) are not publicly available. Most publishers and editorial teams assert that they comply with the guidelines set out in the *Media Ethics Charter*, eventually with *the Code of Journalistic Ethics* or *the Journalistic Code of Conduct*. Yet, as observed above, the effectiveness of the full implementation of the self-regulatory instruments, as well as sanctions, are limited.

### 12.4. Online media

Popular online news providers in Poland include four leading news portals: *onet.pl* (owned by RASP); *wp.pl* (belonging to Polish-owned Wirtualna Polska Group); *interia.pl* (owned by Bauer Media Group); *gazeta.pl* (belonging to Polish-owned Agora group); and online versions of the legacy media (the news channel TVN24, the quality daily *Gazeta Wyborcza online*, the tabloid *Fakt online*, the public service *TVP Info online* and the commercial radio service *RMF online*). In terms of regulation, the online media fall under the 1984 Press

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<sup>583</sup> The 1997 Penal Code.

<sup>584</sup> Press.pl (2017) Rekordowa sprzedaż książki Tomasza Piątka o Antonim Macierewiczu (The record sales of Tomasz Piątek’s book about Antoni Macierewicz), <http://www.press.pl/tresc/49448.rekordowa-sprzedaz-ksiazki-tomasza-piatka-o-antonim-macierewiczu>.

<sup>585</sup> Wirtualnemedi.pl (2018) Prokuratura odmówiła śledztwa ws. książki Tomasza Piątka o Antonim Macierewiczu (The Prosecutor’s Office has refused to proceed with an investigation of Tomasz Piątek’s book about Antoni Macierewicz), <http://www.wirtualnemedi.pl/arttykul/prokuratura-odmowila-sledztwa-ws-ksiazki-tomasza-piatka-o-antonim-macierewiczu>.



Law Act, unless they can also be recognised as on-demand media services providers under the 1992 Broadcasting Act.

### 12.4.1. Current regulatory framework

The 1984 Press Law Act largely regulates press publishing and journalism, including online news content providers and electronic versions of traditional legacy media. Article 7(2) also recognises as “the press” “any means of mass media existing and emerging in the course of technological advancement”.<sup>586</sup> In this sense, all provisions concerning the right of reply and corrections, as well as defamation (as discussed above), apply also to the online media. One of the very few stipulations that apply only to the online sector includes a shorter deadline for publishing corrections (in reply to inaccurate news) than that which applies to print titles. Article 32(1)1 states that the editor-in-chief is obliged to publish corrections “in the electronic form of the daily newspaper or the magazine in which the concerned press material was published – within three days of receiving the correction.”<sup>587</sup>

### 12.4.2. Online media policies

As in the case of print media, some online media staff have also developed their own internal editorial guidelines (including accuracy and objectivity principles), yet they are not publicly shared. Most online editorial teams comply with the guidelines set in the Media Ethics Charter, the Code of Journalistic Ethics, or the Journalistic Code of Conduct.

## 12.5. Conclusion

Given the continuing interest in news and current affairs among Polish media users, the issues of accuracy, objectivity and fairness will become more significant and distinguishable qualities of professional journalism in a rapidly transforming and hybrid media environment. In Poland, most of the guiding self-regulatory and regulatory principles concerning accuracy, objectivity and fairness were established in the 1990s, mainly in reaction to the journalistic and regulatory environments to the post-communist transformation of media and journalism structures.

Perhaps the most comprehensive source of editorial guidelines on objectivity, accuracy and fairness are the self-regulatory provisions found in the Media Ethics Charter; however, their effectiveness in practice is rather limited. On the other hand, the more effective provisions of the 1984 Press Law Act lack precise and explicit reference to

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<sup>586</sup> The 1984 Press Law Act, Article 7(2).

<sup>587</sup> The 1984 Press Law Act, Article 32(1)1.





“objectivity”, “fairness” and “accuracy”. The most elaborate rules in this respect are obligatory for the PSM under the 1992 Broadcasting Act and other regulations introduced by KRRiT. Even so, these have not prevented the PSM (and television in particular) from displaying political partiality.

In an ever-expanding media landscape, the values of objectivity, accuracy and fairness will become more important signifiers of quality journalism. In order to implement these news values more effectively in everyday journalistic practices in Poland, there is a need to work towards broader agreement between the journalistic community and the media industry to develop procedures and practices (such as dealing with complaints and imposing sanctions) that will complement self-regulatory principles and guidelines.





## 13. RU – Russian Federation

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### 13.1. Introduction

The Russian Mass Media Statute<sup>588</sup> mentions accuracy of information in several of its norms. In Article 38 (“The right to receive information”) the Mass Media Statute states that: “citizens are entitled to the timely receipt through the mass information media of accurate accounts of the activities of state bodies and organisations, public associations and their officials”. A journalist has a particular right to verify the authenticity of information that he or she has received (Art. 47), as well as a matching obligation to verify the authenticity of the information he/she supplies (reports) (Article 49).

The right to verify information reported to a journalist is ensured by the right to demand a response to a request for information, to visit governmental bodies and organisations, to meet officials, to access documents and materials, to make records, to visit places of natural disasters and calamities, and to have other rights that are specifically stipulated in Article 47.<sup>589</sup>

To ensure that the media accounts are presented accurately, Article 51 prescribes that journalists must not abuse their privileges and rights (as provided by the same statute) “with the purpose of the concealment or falsification of publicly important information [or] the spread of rumours under the guise of authentic reports ...” The Mass Media Statute also provides the right of refutation (Article 44) and the right of reply (Article. 46) as principal mechanisms with which to counteract inaccurate information in the media.<sup>590</sup>

Lastly, Russian journalists, editors and media outlets enjoy certain privileges that under particular circumstances protect them from the need to check the truthfulness of

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<sup>588</sup> Statute of the Russian Federation on the Mass Media (О средствах массовой информации), No. 2124-1 of 27 December 1991 (with amendments as of 8 December 2003), English version available at: [www.legislationline.org/documents/id/16867](http://www.legislationline.org/documents/id/16867).

<sup>589</sup> See further, Cappello M. (ed.), *Journalism and media privilege*, IRIS Special 2017-2. European Audiovisual Observatory, Strasbourg 2017, p. 91, <https://rm.coe.int/journalism-and-media-privilege-pdf/1680787381>.

<sup>590</sup> See further, Nikoltchev S. (ed.), *The Regulatory Framework for Audiovisual Media Services in Russia*, IRIS Special. European Audiovisual Observatory, Strasbourg 2010, p. 41-43 .



the information that they disseminate, and from related accusations of their violating the law. They are all listed in Article 57 of the Mass Media Statute.<sup>591</sup>

The Code of Professional Ethics of the Russian Journalist – the approval, acceptance and following of which is an absolute condition for membership of the Russian Union of Journalists – contains the following provisions:

*“The journalist disseminates and comments on only information of whose reliability he is convinced and the source of which is well-known to him. He will do his utmost to avoid damage to any party owing to its incompleteness or inaccuracy, the deliberate concealment of socially meaningful information or ... the dissemination of knowingly false information. ...*

*The journalist considers the malicious distortion of facts, slander, and receipt – under any conditions – of payment for the dissemination of false or for concealment of truthful information to be grave professional misdeeds ...*

*When convinced that he has published false or distorted material, the journalist is obliged to correct his mistake using the same print and/or audiovisual media which were utilised to publish that material. ...*

*The journalist is responsible through his name and reputation for the reliability of all his messages and for the fairness of all of those of his judgements that are disseminated with his signature, pseudonym or anonymously ... with his knowledge and approval.”<sup>592</sup>*

## 13.2. Broadcast media

### 13.2.1. Regulatory framework

Russia has no specific broadcasting law, this field of journalism being regulated by the general mass media law.<sup>593</sup> The Presidential Decree of 20 March 1993 On Guaranties of Informational Stability and Broadcasting Requirements was the first major measure of the “new Russia” that was aimed at the reform of the broadcasting system. In particular, it aimed “to ensure a responsible information policy in a democratic society” and endorsed minimum standards for broadcasters. Those standards included a requirement for broadcasters “to avoid protecting the interests of any political groups and to exclude political pressure, lobbying or control of informational programmes or segments

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<sup>591</sup> See Richter A., *Judicial practice on media freedom in Russia: the role of the Supreme Court*, IRIS Extra 2017-1. European Audiovisual Observatory, Strasbourg, 2017, <https://rm.coe.int/168078334c>.

<sup>592</sup> Code of Professional Ethics of the Russian Journalist (Кодекс профессиональной этики российского журналиста), <https://tinyurl.com/y8xrb62d>.

<sup>593</sup> See Richter A., *The Regulatory Framework for Audiovisual Media Services in Russia*, IRIS Special.; European Audiovisual Observatory, Strasbourg 2010, <https://rm.coe.int/1680783c1b>.



thereof”.<sup>594</sup> The Decree, still formally in force, has been ignored by all governmental bodies, as well as by the broadcasters.

The Federal Statute “On the Order Covering the Government Authorities’ Activities in the State Media” (Art. 11) introduced an obligation for state-run national television companies to provide comprehensive, objective and unbiased coverage of the activities of the national government, the national parliament and its deputies, and court decisions.<sup>595</sup> The Federal Statute is not backed by case-law and was largely abridged in 2009.

The election law requires that information carried by the mass media or disseminated by other methods shall be “objective and truthful” and shall not violate the equality of candidates (or political parties).<sup>596</sup> Media news programmes shall not discriminate against or give preference to any of them, in particular with regard to the time devoted to their election activities.

During the last national elections in March 2018, the Central Election Commission (*Центральная избирательная комиссия* – the CEC) of the Russian Federation (as had been the practice in previous elections) established a working group on information disputes and conducted its own monitoring to oversee media compliance with the legal requirement to provide objective and accurate coverage of the candidates. However, according to the most recent OSCE report on the elections, “the body did not provide for effective remedy. The working group highlighted the importance of objective coverage in its first session, however it declined all petitions finding them inadmissible and refused to interfere into the editorial policy of the respective media outlet.” For example, it rejected all complaints concerning biased or non-balanced coverage of the candidate Mr Grudinin in the broadcast media. It also rejected complaints regarding the extensive coverage of the incumbent President, though in one case the CEC separately recommended that Channel One postpone the airing of the documentary on Mr Putin.<sup>597</sup>

The self-regulatory Public Collegium on Media Complaints (*Общественная коллегия по жалобам на прессу* – the PCMC) has issued a number of decisions related to propaganda in broadcasting through the dissemination of false information. In fact, the PCMC – on the basis of a decision that it issued in 2014 decision on Rossiya-1 – provided the following three characteristics of propaganda-related disinformation:

- A targeted selection of facts that make for a tight “script”; the active use of misinformation, where useful and possible; the manipulation of facts, statistics, or

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<sup>594</sup> Presidential Decree of 20 March 1993 On Guaranties of the Informational Stability and Broadcasting Requirements (amended on 23 February 1996), <http://docs.cntd.ru/document/9003941>.

<sup>595</sup> Federal Statute On the Order of Covering the Government Authorities’ Activities in the State Media (О порядке освещения деятельности органов государственной власти в государственных средствах массовой информации) of 13 January 1995 N 7-FZ,

<sup>596</sup> Federal Statute “On basic guaranties of the electoral rights and the right to participate in a referendum of citizens of the Russian Federation” (Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации) of 12 June 2002, N 67-FZ, Art 45, para. 1. See also Cappello M. (ed.), *Media coverage of elections: the legal framework in Europe*, IRIS Special 2017-1, European Audiovisual Observatory, Strasbourg, 2017, pp. 99-106. <https://rm.coe.int/16807834b2>.

<sup>597</sup> Russia, Presidential Election, 18 March 2018: Statement of Preliminary Findings and Conclusions. Organization for Security and Co-operation in Europe, 19 March 2018, p. 11, <https://www.osce.org/odihr/elections/russia/375670>.



opinions (including expert opinions); a shift in emphasis where direct misinformation seems a “no-go”;

- An action taken according to the logic of “the end justifies the means”; the use of means and methods that are mainly incompatible with values such as honesty and truthfulness.
- The falsification of the appearances of reliability of information, including its sources.<sup>598</sup>

The three features of disinformation are noted in a number of the follow-up decisions of the PCMC on complaints. In one of them, the PCMC reviewed a complaint regarding a public affairs programme by the national broadcaster NTV, which had reported from Perm’s Museum of the Gulag. The media council found in the NTV reports elements of a “synthetic” genre: a mix of straightforward propaganda and so-called “mockumentary”, whereby “pseudo-documentality” had served as its basic element. Although the decision clearly stated a complete departure of the national broadcaster from Russian standards of professional journalism, it also touched upon a legal aspect of the programme. PCMC said: “the national airing of materials that openly contradict the fundamentals of civil society that are specified in the Constitution of the Russian Federation as national values shall not be considered an ‘interior matter’ of a federal television channel.”<sup>599</sup>

## 13.2.2. Broadcaster policies

There are no publicly available editorial guidelines or codes of ethics for any major broadcaster, either commercial one or state-run – including “must-carry” channels. The broadcasters have never accepted the Russian Union of Journalists’ Code of Professional Ethics as a professional standard.

Within this context the so-called Broadcasters’ Charter of April 1999 should be mentioned, as therein the top executives of Russia’s largest national and regional

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<sup>598</sup> On the complaint of the Commission on Journalists’ Ethics, Ukraine, regarding the programme *Vesti nedeli* of the TV channel Rossiya-1 and its anchor-man, Dmitry Kiselyov, triggered by the airing of a story on the “Ukrainian Assembly”: Decision of the Public Collegium on Media Complaints N 98. 13 February 2014. URL: <https://tinyurl.com/y9cupeoh>.

See more in: Propaganda and Freedom of the Media: Non-paper of the OSCE Office of the Representative on Freedom of the Media. Vienna: Organization for Security and Co-operation in Europe, 2015, pp.55-57. <http://www.osce.org/fom/203926>.

<sup>599</sup> “On the complaint of the staff workers of the NGO “Perm-36” triggered by the broadcasting by the NTV television channel of stories entitled “US sponsors Perm museum of ‘nationalist martyrs’ of Ukraine” (‘ChP’ show, 3 June 2014) and “Paid by US money, the ‘fifth column’ praises Banderivtsi: investigation by NTV”(“Profession: Reporter” show, 7 June 2014).” (О жалобе сотрудников АНО «Пермь-36» на публикацию телеканалом НТВ телесюжетов «Спонсоры из США открыли в Перми музей “националистов-мучеников” Украины» (программа «ЧП», 03 июня 2014 г.) и «“Пятая колонна” прославляет бандеровцев на деньги США: расследование НТВ («Профессия – репортёр», 07 июня 2014 г.)) Decision of the Public Collegium on Media Complaints, N 116. 22 January 2015. URL: <https://tinyurl.com/ya7qwkqa>.



television companies undertook to provide truthful information, as well as to uphold the rights and legitimate interests of individuals and organisations. They also defined behaviour that was incompatible with civilised journalism.<sup>600</sup> The practical effect of the Charter has been non-existent: it is a forgotten document in respect of the professional activity of the broadcasters, and is never referred to in the course of day-to-day activities or later statements or documents.

As to the standards of accuracy in the broadcasters' policy documents, the Charter of Public Television of Russia (OTR), the closest Russia has to a public media outlet, mentions truthfulness, alongside timeliness and "all-roundedness" as an element in its informing Russian audiences on events in the country and abroad.<sup>601</sup> The charter of NTV, the major national private broadcaster, mentions only the need for the timely reporting on events.<sup>602</sup> The charter of RTR, which runs most of the state national television and radio channels, mentions timeliness and "all-roundedness" but not truthfulness.<sup>603</sup> The charter of another important national broadcaster, the Defence Ministry's television and radio company, Zvezda, stipulates that the company may engage in organising gambling but fails to mention any professional standards in respect of broadcasting or journalism.<sup>604</sup>

None of the other major broadcasters – Channel 1, Rossiya-1, Rossiya-24, Rossiya-K, the 5<sup>th</sup> Channel, Match-TV, or TVC – have publicly accessible charters or editorial guidelines. The conditions of their licences also do not mention any editorial standards for broadcasting. There are no known cases of these broadcasters granting the right of reply or refutation (unless there is a relevant court decision).

The broadcasters habitually refuse to engage in available complaints procedures or self-regulation mechanisms. According to recent statistics, in the 12-year history of the current national self-regulation body, the PCMC, NTV did not respond to any of 13 complaints reviewed by the PCMC and Rossiya 1 did not respond to any of the 12 complaints reviewed by the PCMC, and Channel Five did not respond to any of five complaints. REN-TV responded to two out of seven, TVC responded to five out of five, and Channel 1 to one out of three.<sup>605</sup>

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<sup>600</sup> Broadcasters' Charter of April 1999 (Хартия телерадиовещателей. Принята 28 апреля 1999 г), <http://presscouncil.ru/teoriya-i-praktika/dokumenty/756-khartiya-teleradioveshchatelej>.

<sup>601</sup> 2015 Charter of Public Television of Russia, para. 20b), <https://otr-online.ru/files/o-telekompanii/ustav.pdf>.

<sup>602</sup> 2009 Charter of NTV, para 3.2.5, <http://www.ntv.ru/corp/kompania/docs/ustav150909.doc>.

<sup>603</sup> 2004 Charter of RTR, para 10.2, <http://fapmc.ru/slabovid/rospechat/lwr/unitar/item128/main/custom/00/0/file.pdf>.

<sup>604</sup> 2009 Charter of the Zvezda television and radio company, <https://tvzvezda.ru/storage/documents/2017/07/21/c2aa67d1603e46c1b6807f208e101e42.pdf>.

<sup>605</sup> Public Collegium on Media Complaints, <http://presscouncil.ru/praktika/chernaya-metka>.



## 13.3. Print media

### 13.3.1. Regulatory framework

The print media in Russia are largely regulated by the above-mentioned Mass Media Statute, including its provisions on the right of refutation and the right of reply.

The Mass Media Statute (Article 44) prescribes that a refutation published in a print publication shall be set out in the same type and featured under the heading “Refutation” – as a rule, in the same place where the refuted report or material was placed. The size of refutation may not exceed twice the size of the refuted section of the report or material in question. It is not permissible for the text of the refutation to be shorter than one standard page of typewritten text. The same rules apply to replies, as defined in the same law (Article 46).

The election law requires that information carried by the mass media or disseminated by other methods during the four-week-long media campaign shall be objective and accurate and shall not violate the equality of candidates (political parties), and that media news programmes and publications shall not discriminate against or give preference to any of them, in particular with regard to the amount of space allocated in the print media.<sup>606</sup>

In 2017, the European Court of Human Rights (ECtHR) for the first time considered a national electoral law that placed a number of obligations on the print media during election periods. The case was *Orlovskaya Iskra v. Russia*, which concerned the publisher of the *Orlovskaya Iskra* newspaper.<sup>607</sup> The ECtHR then emphasised that it had “not been convincingly established” that the “print media should be subjected to rigorous requirements of impartiality, neutrality and equality of treatment during an election period”.<sup>608</sup>

### 13.3.2. Newspaper policies

Editorial guidelines, professional codes or ethics, or complaints procedures are rarely found. There is a handful of regional codes of ethics, each paying tribute to reliability, accuracy and fairness (usually repeating the formulations of the above-mentioned Code of

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<sup>606</sup> Article 45, paragraph 1 of the Federal Statute “On basic guaranties of the electoral rights and the right to participate in a referendum of citizens of the Russian Federation” (Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации) of 12 June 2002, N 67-FZ, see also *Media coverage of elections: the legal framework in Europe*. Cappello Maja (ed.), IRIS Special 2017-1. European Audiovisual Observatory, Strasbourg, 2017, p. 99-106. <https://rm.coe.int/16807834b2>.

<sup>607</sup> See Cappello M. (ed.), *Media coverage of elections: the legal framework in Europe*, IRIS Special 2017-1, European Audiovisual Observatory, Strasbourg, 2017, pp. 14-15. <https://rm.coe.int/16807834b2>.

<sup>608</sup> *Orlovskaya Iskra v. Russia*, no. 42911/08, 21 February 2017, par. 129, <http://hudoc.echr.coe.int/eng?i=001-171525>.





Professional Ethics of the Russian Journalist).<sup>609</sup> The institution of a readers' editor or ombudsman is non-existent in the Russian media.

## 13.4. Online media

### 13.4.1. Regulatory framework

If an online media publication registers as a mass media outlet, then it is subject to the rights and responsibilities prescribed by the mass media law (see above). Additionally, in 2014 the Russian Federation adopted a law that declared a criminal offence the “public dissemination of knowingly false information about the activity of the USSR during the years of World War Two”. This crime, if committed via the mass media, shall be punished with a hefty fine or deprivation of liberty for up to five years.<sup>610</sup> The case law on this offence is scanty and often relates to the dissemination of information through social media, and typically results in fines for offenders.

During the draft stages of the above-mentioned piece of legislation, the OSCE Representative on Freedom of the Media expressed worries about the law by making a public statement, pointing out, in particular, that everyone “has the right to be informed about matters of concern, including on differing views on any historical debate, even if it is painful or provocative. In this the media is vital and its role should be respected”.<sup>611</sup>

In 2016, another law was amended to require owners of Internet search engines (“news aggregators”) with more than one million daily users to be accountable for the truthfulness of news content “essential for the public”, except when such content represents a verbatim reproduction of material already published by official governmental websites or by mass media outlets formally registered as such by the Russian authorities. Such materials, if distributed by the news aggregators in Russian, other languages of the peoples of the Russian Federation, or even in foreign languages (if the website is used to disseminate advertising targeting Russian customers), are subject to certain restrictions that are taken from the mass media law.

The statute prescribes a procedure to allow executive bodies – with or without a court decision – to monitor relevant online content, determine the “falsification of

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<sup>609</sup> For example, the 2001 Code of Professional Ethics of Journalists of Chuvashia (Кодекс профессиональной этики журналистов Чувашии), 2007 Professional-Ethical Code of Journalists of Belgorod Region (Профессионально-этический кодекс журналистов Белгородчины), 1994 Declaration of the Moscow Charter of Journalists (Декларация Московской хартии журналиста), 2002 Code of Creative Union of Journalists of Sverdlovsk Region (Кодекс Свердловского творческого союза журналистов).

<sup>610</sup> Federal Statute “On amendments to certain legal acts of the Russian Federation” (О внесении изменений в отдельные законодательные акты Российской Федерации), 5 May 2014, N 128-FZ. <https://tinyurl.com/ydyx6jvt>.

<sup>611</sup> OSCE media freedom representative calls recent legislative initiatives in Russia potentially harmful to freedom of expression and freedom of the media. 26 June 2013. <http://www.osce.org/fom/103121>.



content essential for the public [or] dissemination of untruthful news information essential to the public under the guise of truthful information”, and force news aggregators to stop disseminating such information. Violation of the statute carries high administrative penalties.<sup>612</sup>

The OSCE Representative on Freedom of the Media noted in her statement on the bill that the amendments were vaguely worded, which could only increase the already high number of interventions by state authorities in the activities of online service providers.<sup>613</sup>

### 13.4.2. Online media policies

There is no evidence of online media in Russia establishing policies on accuracy and fairness.

## 13.5. Conclusion

The Russian media’s performance on matters of accuracy, objectivity and fairness has sparked a number of complaints within the country and internationally, and the ambitious standards laid out by the 1993 Presidential Decree have become just an empty declaration. The general requirements of the Mass Media Statute in respect of the verification of the authenticity of the information that the media disseminate refer only to individual journalists and are not supported by case law.

Neither do the major media have editorial guidelines or effective codes of practice that allow them to refer to their obligations in this regard. The national Code of Professional Ethics of the Russian Journalist addresses the commitments of individuals, not media entities, and thus is largely ignored by the latter. This has led to their refraining from participating in a self-regulatory process.

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<sup>612</sup> Federal Statute “On amendments to the Federal Statute ‘On Information, Information Technologies and Protection of Information’ and to the Code of the Russian Federation on Administrative Offences” (О внесении изменений в Федеральный закон “Об информации, информационных технологиях и о защите информации” и Кодекс Российской Федерации об административных правонарушениях) of 23 June 2016, N 208-FZ. Published in the official daily Rossiyskaya gazeta on 28 June 2016 – N 139 <https://rg.ru/2016/06/28/zashita-dok.html>.

<sup>613</sup> Press release of the OSCE Representative on Freedom of the Media “Law regulating news aggregators in Russia might negatively affect freedom of information on Internet, OSCE Representative says,” 13 June 2016, <https://www.osce.org/fom/246471>.



## 14. SK - Slovakia

Juraj Polák, RTVS (PSB)

### 14.1. Introduction

As confirmed by the Reuters Institute Digital News Report 2017, (linear) TV retains its dominant position (79%) within the news and current affairs consumption in Slovakia.<sup>614</sup> The conservative nature of the typical Slovak news and current affairs consumer is also demonstrated by the fact that during the “main news hour” (7 p.m. to 8 p.m.), 75% of all viewers watch evening news on one of the three main TV channels in Slovakia (two commercial broadcasters and one PSB). While among the traditional media, radio maintains its rather stable position (42%) as a source of news and current affairs, the press displays the continuous European trend whereby the role of the press as a source of news and current affairs keeps diminishing. This goes hand in hand with the continuous increase in the number of users who consume news and current affairs on social media (58%) or within the online world in general (86%). Of the 36 countries that were involved in the Reuters report, Slovakia obtained the third worst score (27%) for overall trust in the news, clearly indicating that there is a widely-shared mistrust of traditional media in Slovakia, which naturally leads to an increase in the popularity of alternative media.

### 14.2. Broadcast media

#### 14.2.1. Current regulatory framework

The legislation dealing directly with the accuracy, objectivity and fairness of news and current affairs programmes is rather brief and general. Article 16 (3) a) and b) of Act No. 308/2000 Coll. on broadcasting and retransmission<sup>615</sup> (hereinafter “The Act on broadcasting”) states the following:

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<sup>614</sup> <http://www.digitalnewsreport.org/>.

<sup>615</sup> Act on Broadcasting and Retransmission and on the amendment of Act No. 195/2000 on Telecommunications, [http://www.culture.gov.sk/extdoc/3626/308\\_aj\\_342](http://www.culture.gov.sk/extdoc/3626/308_aj_342).



*“Broadcasters shall have the following duties:*

- a) to ensure the universality of information and plurality of opinion within a broadcast programme service,*
- b) to ensure the objectivity and impartiality of news programmes and political affairs programmes; opinions and evaluating commentaries must be separated from information of a news character.”*

Compliance with these articles is enforceable by the national regulator, the *Rada pre vysielanie a retransmisiu* (Council for Broadcasting and Retransmission of the Slovak Republic - CBR). The violation of these articles shall be penalised by a warning or the obligation to broadcast the announcement on the infringement of the law (it is not possible to impose a fine).

Article 21 of the Act on broadcasting also provides the right of correction, according to which, if a broadcast was made that included false or distorted information concerning a legal entity or a natural person that permits the precise identification of the legal entity or natural person, the legal entity or natural person, regardless of their nationality or place of permanent or long-term residence, shall have the right to require the broadcasting of a correction free of charge. The broadcaster shall be obliged to issue a public correction at the request of the person concerned.

This article lays down several formal requirements on the procedure relating to the right of correction and the conditions according to which the broadcaster is not obliged to broadcast the correction:

- the broadcasting of the proposed text would constitute a crime, a contravention or another administrative offence, or the broadcasting of the proposed text would be contrary to good morals,
- the broadcasting of the proposed statement would infringe the rights and legally protected interests of a third party,
- the broadcaster broadcasted a correction on their own initiative before the delivery of the request for the broadcasting of a correction, and the broadcasted correction fulfilled the terms of this act,
- the broadcaster can prove the truthfulness of the information for which a correction has been requested.

Although it is included in the Act on broadcasting, the CBR has no regulatory powers over this procedure and if a broadcaster does not broadcast the correction at all or does not fulfil the conditions under subsections (5) to (8), a court shall decide on the duty to broadcast the correction at the request of the complainant.

The definition of defamation as stipulated in the penal code<sup>616</sup> does not rule out journalists as such; therefore, under the Slovak legal system, news programmes are included if specific conditions are met (providing incorrect information which is, to a large

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<sup>616</sup> 300/2005 Z. z. Časová verzia predpisu účinná od 01.01.2018 do 30.06.2018, <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2005/300/20180101> - §373.



extent, capable of endangering a person's reputation among other things; damaging a person in his/her professional career or business undertakings; impairing his/her family relations; or of inflicting other serious harm). Negligence can lead to one committing the crime of defamation

Although, in the history of Slovakia, no journalist has yet been lawfully convicted of defamation, journalists and relevant NGOs insist that this procedure is frequently used to threaten journalists, especially as Slovakia has one of the highest possible sentences for such a crime in the European Union: in special cases, this can be punished by up to 8 years in prison. Furthermore, individuals or legal entities may also seek protection by bringing an individual civic law suit for protection of their personality rights or the goodwill of the legal entity.

Notably, there are no regulatory codes in effect. There is no self-regulatory code which deals exclusively with broadcasting; however, most of the relevant broadcasters fall within the general code of ethics of journalism. Moreover, there are no specific statistics on the number of complaints or sanctions based on the violation of Article 16 (3) a) and b) of the Act on broadcasting.

In relation to court judgments, the municipal court in Bratislava IV recently decided on a case concerning the procedure for the right of correction. The applicant filed a law suit against the PSB for failing to broadcast a correction that the applicant had demanded under Article 21 of the Act on broadcasting. The applicant claimed that the PSB had broadcast false and distorted information about the applicant, who is an NGO charity active in the collecting and selling of second-hand clothing. The applicant claimed that incorrect factual statements about him had been broadcast (for example, that the applicant had a centre in Vienna; the applicant operated clothes sorting machines in Slovakia and dozens of second-hand clothes shops; and that in 2014, its turnover exceeded EUR 7 million). The applicant claimed that none of the information was correct, since it applied to a different legal entity (of the same name, but with a different legal form – a limited company), therefore, it was all completely untrue.

In its defence, the PSB stressed that the very substance of the programme was to explain the whole charity scheme, which involves several organisations with personal and capital links, whereby two entities of the same name, but with different legal forms, operate in Slovakia. The PSB stated that the factual statements mentioned did not refer specifically to a single entity, but to the nationwide or Slovak organisation as such. The information stated in the programme was almost exclusively based on open sources and thus publicly available, and broadcasting such information was in the public interest due to the findings that the public benefits of such a “charity” (although perfectly legal) are rather questionable, exactly because of the complicated scheme reported in the programme.

The court agreed with the PSB's arguments and claimed that it was obvious that the applicant and other related entities, based on their action, did not themselves have the ambition to display a transparent ownership structure to the public, and therefore could not challenge the broadcaster when they were reported as being one organisation.



## 14.2.2. Broadcaster policies on accuracy and fairness

It is rather interesting and perhaps quite symptomatic of the Slovak media environment that two major commercial broadcasters do not have (published) editorial guidelines.

The only nationwide news television in Slovakia has on its website<sup>617</sup> only a brief statute which only contains general declarations about free and independent content, based on editorial freedom, with the aim of contributing to the development of a democratic society. The TV denies bias towards any ideology, political party or faith and declares that it provides objective, fair, verified and accurate information. However, all of these ideas remain only within the scope of general remarks without any further detailed elaboration or clarification.

In 2011, the PSB adopted a statute for the “programme employee” (the term used for a specific category of employees defined in the statute, including mainly anchors, moderators, reporters, editors, etc.). Among other things, the statute lays down several specific obligations aimed directly at news and current affairs programmes, for example:

- The obligation to strictly differentiate between a factual statement and a value judgment, where it is forbidden to substitute one for the other.
- Each factual statement needs to be verified by at least two credible and unrelated, independent sources, with the exception of the factual statements provided by the state/governmental authorities.
- The PSB must not publish information from an unknown source without prejudice to the usage of the protected source of information. The head of the news section’s prior consent is required for usage of the protected source.

In case of only minimal doubts about the accuracy of the information provided by the news agency, the employee is obliged to verify the information with an independent source. If the nature of the information prevents its verification in given time, but there is substantial public interest to publish this information, the PSB must inform viewers about the source of the information and the fact that the information has not yet been verified by an independent source. Finally, at the current time, no formal complaints procedures have been brought against Slovak TV broadcasters, nor are there any formal right of reply procedures involving Slovak TV broadcasters.

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<sup>617</sup> <https://www.ta3.com/tv/statut-ta3.html>.



## 14.3. Print media

### 14.3.1. Current regulatory framework

Act No. 167/2008 Coll. of the Press Act<sup>618</sup> does not lay down any legal obligations on the accuracy, objectivity and fairness of news and current affairs. However, the Press Act includes rather detailed legal regulation on the right of correction, the right of reply and the right of supplementary information. The rules on the right of correction for print are quite aligned with the rules for broadcasters, with one notable distinction: whereas in broadcasting the *false or distorted information* establishes the right of correction, within the print media, it is the *false statement of facts*.

Article 8 of the Press Act provides for the regulation on the right of reply:

*(1) If a periodical or agency news service contains a false, incomplete or distorting statement of fact that impinges on the honour, dignity or privacy of a natural person, or the name or good reputation of a legal entity, from which the person or entity can be precisely identified, the person or entity has the right to demand publication of a reply. The publishers of periodicals and press agencies must publish the reply free of charge; by the publishing of the reply expires the right of correction in relation to the same statement of fact.*

*(2) The right to demand publication of reply does not have public official who is, for the purposes of this act, a person stipulated in applicable regulations, (article 2 of constitutional act no. 357/2004 on the protection of public interest in performance of function of public officials as amended by constitutional act no. 545/2005) chairman of political party or movement and vice-chairman of political party or movement in case of a statement of fact relating to the performance of their function. The right to demand publication of reply does not have a legal entity if statement of fact is relating to the performance of function of public official, chairman of political party or movement and vice-chairman of political party or movement acting for this legal entity.*

This article also lays down several formal requirements on the procedure of the right of reply and the conditions according to which the publisher is not obliged to broadcast the correction.

Article 9 of the Press Act provides for the regulation of the right of supplementary information:

*(1) If a periodical or agency news service contains a statement of fact relating to proceedings before a public authority conducted against a person, from which the person's identity can be precisely identified, and a final decision has been reached in the proceedings, this person has the right to demand publication of supplementary*

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<sup>618</sup> Zákon č. 167/2008 Z. z. Zákon o periodickej tlači a agentúrnom spravodajstve a o zmene a doplnení niektorých zákonov (tlačový zákon) (v znení č. 221/2011 Z. z., 125/2016 Z. z.), <http://www.zakonypreludi.sk/zz/2008-167>.



*information on the final result of the proceedings. The publishers of periodicals and press agencies must publish supplementary information free of charge.*

The same rules and requirements apply for the right of supplementary information as in the case of the right of reply. In case of non-compliance with any of the above-mentioned rights, the court is competent to decide on the obligation to publish the correction, reply or provide supplementary information.

The Association for the Protection of Journalistic Ethics (APJE) in the Slovak Republic was founded in 2001 by representatives of the Slovak Syndicate of Journalists and the Slovak Press Publishers' Association. Aware of the challenges presented by online reporting and its increasing influence, the original founders of the APJE (publishers and journalists) have invited the top Internet association IAB<sup>619</sup> Slovakia to join their ranks to add a more digital dimension.

The Print-Digital Council<sup>620</sup> (previously Press Council) was constituted in April 2002 and consists of figures of public, cultural and social life that are not actively working as journalists or publishers and do not represent any political party. Since its formation, the Print-Digital Council has followed the Code of Journalistic Ethics which, among other things, states the following:

- A journalist is obliged to verify each piece of information he or she publishes. Information shall normally be verified by at least two credible and unrelated independent sources.
- A journalist, as a rule, always refers to the source of his or her information, with the exception of generally known information or information generally known in the sector the journalist specialises in. The source is not published in the case of it being a protected source.
- A journalist does not publish any information that journalists know to be false.
- A journalist never manipulates textual, visual or audiovisual information or photographs. Only technical editing with the aim of improving the quality or comprehensibility of the information is accepted. Collages, montages, reconstructions or illustrative shots are allowed only when distinctly marked.
- The titles of articles or programmes must not be misleading or false.

In December 2009, the Constitutional Court of the Slovak Republic stated that courts of first and second instance had violated the freedom of expression of a weekly newspaper publisher. The press media often refer to this decision as “ground-breaking” or as a decision that deserves its place in constitutional law textbooks. The Constitutional Court made some extremely valuable statements on the issue of assessing the “quality” or the objectiveness of the information presented by the media, for instance:

- that one cannot demand the same level of legal “exactness” of a law journal as one would of a general magazine,

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<sup>619</sup> IAB Slovakia – Association of the Internet Media, <https://www.iabslovakia.sk/us/>.

<sup>620</sup> Print-Digital Council of the Slovak Republic, <http://trsr.sk/english/>.





- that decisions which refuse to protect speculative, and to some extent incorrect statements under freedom of expression would have “chilling-effects” on the journalistic society,
- when interpreting value judgments made in the public interest which may have different meanings, one must choose the interpretation that favours freedom of expression, because any other approach could be easily abused.

In February 2009, the Supreme Court explicitly stated (5 Cdo 55/2008)<sup>621</sup> that not every publication of untrue (or more or less imprecise) information must automatically mean unjustified damage to a natural person’s honour, dignity or good reputation. Such interference occurs only if a casual nexus between the damage and the interference with the protected personal sphere of the natural person exists, and if the interference exceeds the tolerated level of intensity in such a way which cannot be tolerated in a democratic society.

Another most interesting case<sup>622</sup> addresses the issue of reporting on the (officially confirmed) suspicions of the police on rather serious matters, where the mayor of a city in Slovakia was supposed to have been killed by a contract killer. The person suspected of hiring a professional hitman to kill the mayor was a local businessman. A daily paper wrote an article on the police investigation into the attempted murder of the highly placed political representative where it also stated that, at a given time, the police suspected the local businessman, who was only partially identified by his place of business (he runs a café on a square; however it was not specified on which square) and his possible motive (the city cancelled his lease contract for the place). The lower courts disputed that the usage of the words “apparently”, “allegedly” or “might” did not release the publisher from the responsibility of such serious allegations, especially when these were not later confirmed. The lower courts also concluded that it was not a matter of public interest to report on such allegations if a formal indictment had not been raised.

The Constitutional Court stated that the allegations in the article had not been presented as factual statements and not even as value judgments, but only as information of a polemical nature. Furthermore, at the time of the article being published, if the subject did have the status of the main suspect, it is not possible to hold the publisher liable for presenting him as the main suspect. The arguments of the lower courts that the allegations in the article implied that this subject could have carried out this illegal activity is irrelevant since the subject at that given time actually was the main suspect, irrespective of whether the article would or would not have been published. Such allegations shall not be viewed as an interference with the presumption of innocence since the subject was not marked as a wrongdoer but only as a suspect. At that given time, this information could not be considered as false information since it was confirmed by the relevant official authorities carrying out the investigation.

The Court stressed that if a competent official institution in criminal investigations provides certain information to the media, the public has the right to receive it. It is then

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<sup>621</sup> <https://www.nsud.sk/data/att/10337.pdf>.

<sup>622</sup> <http://merit.slv.cz/IV.US107/2010f>.



the journalist's/publisher's task to present this information to the public. However, it is not the journalist's task to sort out which information the public shall or shall not receive since the public has the right to receive complete and accurate information. Journalists/publishers cannot bear any responsibility for the dissemination of information provided by official (state) authorities because it is their task and mission. It is the official institution's duty to consider what information should be disclosed, and to what extent it is suitable for disclosure to the media.

### 14.3.2. Newspaper policies on accuracy and fairness

Most of the relevant print media do not have specific editorial guidelines due to the fact that most of them joined the ethical code of journalists. There are some exceptions, for example, the daily "Sme", which still has its own ethical code in place for the editorial staff and for the publisher. However, none of these codices deal directly with the accuracy, objectivity and fairness of news and current affairs.

Finally, besides publishing the newsroom's general contact information, *inter alia* for the purposes of complaints, there are no formal complaints procedures.

As described in the foregoing section, the legislation on the right of reply and right of correction is rather complex for the print media (including formal criteria), and therefore print media usually only refer to, or rather mention the relevant legislation.

## 14.4. Online media

### 14.4.1. Current regulatory framework

Individuals or legal entities may seek protection through individual civic law suits for the protection of their personality rights or the goodwill of the legal entity, and the laws of defamation apply equally to online media. There is, however, no particular legal framework for online media.

Besides the Print-Digital Council, there is no self-regulatory body which deals with the accuracy, objectivity and fairness of news and current affairs in online media.

Finally, there is no specific case law nor any decisions relating to online media which deal specifically with the accuracy, objectivity and fairness of news and current affairs. However, the examples for print and broadcasters are also applicable to online media.



## 14.4.2. Online media policies on accuracy and fairness

Most of the relevant online media do not have specific editorial guidelines due to the fact that most of them joined the ethical code of journalists (see above). There are some exceptions, for example, the online version of the tabloid “Plus Jeden deň”, which still has its own ethical code in place<sup>623</sup>.

In this code, the online journalists are obliged to provide correct, accurate and undistorted information. The journalists must verify the information with at least two credible and unrelated independent sources. If some important information cannot be verified due to objective reasons, the public must be informed of these reasons. When publishing critical evaluations, room must be provided for the criticised party to express their point of view, give a statement or refuse to comment and this should be incorporated into the article in a reasonable manner. The publishing of information which might potentially lead to an unjustified infringement of personality rights or the goodwill of a legal entity must be discussed with the chief editor and based on the chief editor’s decision in consultation with their legal service.

Notably, besides publishing the dedicated email addresses for the purposes of comments/complaints (for instance, editors@dennikn.sk), there are no formal complaints procedures.

Finally, most of the relevant online media fall under the Print-Digital Council mentioned above. The rules of procedure of the Print-Digital Council<sup>624</sup> contain formal rules for filing a complaint against online articles. The applicant must identify himself/herself by his/her full name and address. The complainant must identify which paragraph of the ethical code has been infringed. Before filing the complaint, the applicant must contact the relevant online publisher within one month of the date of publication of the article with a request for action to be taken (correction, reply, apology or refrain from future actions). Only if the online publisher fails to act within 7 days upon receiving the request is the applicant eligible to file a complaint with the Print-Digital Council; however, this should be done not later than 3 months from the date of publication. The online publisher is given an opportunity to react to the complaint. The Print-Digital Council will, in its decision, always declare whether the ethical code has been infringed or not. If the ethical code has indeed been infringed, the Print-Digital Council may issue the online publisher with a warning, concern or reprimand.

## 14.5. Conclusion

The whole journalistic environment in Slovakia suffers from the lack of a self-regulatory authority among journalists themselves. Undoubtedly, this is to a large extent the result of the transformation of the country in 1989, when lots of experienced journalists were

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<sup>623</sup> News and Media Holding, Etický Kódex, <http://www.newsandmedia.sk/eticky-kodex/>.

<sup>624</sup> <http://trsr.sk/dokumenty/>.



“marked” by their work for the communist regime. Even after joining the European Union and NATO, journalists were constantly under attack, either for not objectively “worshipping” the new democratic right-wing pro-EU/NATO government (later, partially acknowledged by some of the journalists) or for constantly criticising the left-wing political parties.

All of these factors combined to produce an exceptionally low level of trust in journalists in general, limiting their ability to influence the majority of the public.

However, the very recent murder of the investigative journalist Jan Kuciak and his fiancée, although an extremely sad and unfortunate event, started citizens’ initiatives with unprecedented solidarity and support for journalists. Hopefully, this momentum will be wisely used by the journalists themselves. For example, the Print-Digital Council at present represents the formal and directly competent authority with solid powers, but its biggest flaw so far is (ironically) its lack of publicity.



## 15. Country report summary

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### 15.1. Introduction

Part 2 of this IRIS *Special* contained country reports from 11 member states of the Council of Europe,<sup>625</sup> and the purpose of this chapter is to provide a brief overview of some of the main findings from those country reports. The chapter is structured along similar lines to the introductory chapters in Part 1 and the country reports: firstly, a brief discussion of the framework applicable to broadcast media concerning accuracy, objectivity and fairness in news and current affairs coverage; secondly, a brief overview of the framework applicable to print media; and finally, the framework applicable to online media. As with any comparative overview of a number of jurisdictions, many of terms used in this chapter – such as “accuracy”, “truthfulness”, “objectivity”, “impartiality”, “fairness”, “defamatory”, “reply”, “correction”, “refutation” – have distinct legal meanings in each jurisdiction, and are only used in this chapter to give a general overview of some common regulatory principles.

### 15.2. Broadcast media

The first issue explored in the country reports was the domestic regulatory frameworks designed to ensure accuracy, objectivity and fairness in news and current affairs reporting by broadcast media organisations. As can be seen from the country reports, many member states – such as France,<sup>626</sup> Germany,<sup>627</sup> Ireland,<sup>628</sup> Italy,<sup>629</sup> the Netherlands,<sup>630</sup> Spain<sup>631</sup> and

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<sup>625</sup> Germany (DE), Spain (ES), Finland (FI), France (FR), the United Kingdom (GB), Ireland (IE), Italy (IT), the Netherlands (NL), Poland (PL), Russia Federation (RU), and Slovakia (SK).

<sup>626</sup> Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006068930>.

<sup>627</sup> For example, *Staatsvertrag für Rundfunk und Telemedien (Rundfunkstaatsvertrag – RStV / Interstate Treaty on Broadcasting and Telemedia (Interstate Broadcasting Treaty)*, 01.09.2017, [https://www.die-medienanstalten.de/fileadmin/user\\_upload/Rechtsgrundlagen/Gesetze\\_Staatsvertraege/Rundfunkstaatsvertrag\\_RStV.pdf](https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/Rundfunkstaatsvertrag_RStV.pdf). See above, Chapter 4 - DE, section 4.2.1.

<sup>628</sup> Broadcasting Act 2009, <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/html>. See above, Chapter 9 - IE, section 9.2.1.

<sup>629</sup> Article 3 of Legislative Decree no. 177/2005 (*Testo unico dei servizi di media audiovisivi e radiofonici*),



the United Kingdom<sup>632</sup> – have enacted specific legislation and codes which contain detailed provisions governing accuracy, objectivity and fairness in broadcasting. Other member states have such provisions in their general media legislation – for example, the Russian Federation’s Statute on the Mass Media, which provides that journalists must verify the authenticity of the information that they report<sup>633</sup> and not abuse their privileges and rights “with the purpose of the concealment or falsification of publicly important information [or] the spread of rumours under the guise of authentic reports”.<sup>634</sup> Furthermore, in Finland, accuracy and fairness provisions are contained in a self-regulatory code – the Guidelines for Journalists – that applies to nearly all Finnish media.<sup>635</sup> In most member states, complaints about a breach of these rules may be made to (i) media authorities, which have the power to issue decisions and impose sanctions (such as Poland’s National Broadcasting Council, or the United Kingdom’s Office of Communications), or (ii) self-regulatory bodies (such as the ombudsman of the Dutch public broadcasting organisation, NPO).<sup>636</sup> Similarly, in France, in the case of audiovisual media outlets that have their own ombudsman (France Télévisions,<sup>637</sup> Radio France,<sup>638</sup> France Médias Monde<sup>639</sup> and TF1<sup>640</sup>), this intermediary between the medium and its audience examines complaints about content broadcast – especially criticism about mistakes of substance, location errors or the incorrect use of French in an information item.<sup>641</sup>

In addition to the complaint mechanisms for breaches of accuracy, fairness and impartiality rules, many member states – including Germany,<sup>642</sup> Spain,<sup>643</sup> Finland,<sup>644</sup> France,<sup>645</sup> Russian Federation,<sup>646</sup> Ireland,<sup>647</sup> and Slovakia<sup>648</sup> – also have legislative rules

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<http://www.camera.it/parlam/leggi/deleghe/05177dl.htm>. See above, Chapter 10 - IT, section 10.2.1.

<sup>630</sup> *Mediawet* 2008 (Media Act 2008), <http://wetten.overheid.nl/BWBR0025028/2017-02-01>; and *Mediabetesluit* 2008 (Media Resolution 2008), <http://wetten.overheid.nl/BWBR0025036/2018-01-01>. See above, Chapter 11 - NL, section 11.2.1.

<sup>631</sup> Article 4 of the General Audiovisual Act (*Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual*),

[http://noticias.juridicas.com/base\\_datos/Admin/l7-2010.html](http://noticias.juridicas.com/base_datos/Admin/l7-2010.html).

<sup>632</sup> Ofcom, Broadcasting Code, <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>. See above, Chapter 8 - GB, section 8.2.1.

<sup>633</sup> Statute of the Russian Federation on the Mass Media (*О средствах массовой информации*), No. 2124-1 of 27 December 1991 (with amendments as of 8 December 2003), Article 49 (English version available at: [www.legislationline.org/documents/id/16867](http://www.legislationline.org/documents/id/16867)).

<sup>634</sup> *Ibid.*, Article 51.

<sup>635</sup> See the committed media via links at E. Grundström, *Mitkä mediat kuuluvat JSN:n sääntelyn piiriin*, <http://www.jsn.fi/blog/mitka-mediat-kuuluvat-jsn-n-saantelyn-piiriin/>. See above, Chapter 6 - FI, section 6.2.1.

<sup>636</sup> See above, Chapter 11 - NL, section 11.2.1.

<sup>637</sup> <https://www.francetelevisions.fr/mediateurs>.

<sup>638</sup> <http://mediateur.radiofrance.fr>.

<sup>639</sup> [http://www.francemediasmonde.com/pdf/charte\\_deontologie\\_journalistes.pdf](http://www.francemediasmonde.com/pdf/charte_deontologie_journalistes.pdf).

<sup>640</sup> <https://www.lci.fr/la-mediatrice-vous-repond/>.

<sup>641</sup> <https://blog.francetvinfo.fr/mediateur-info-france-2/wp-content/blogs.dir/357/files/2017/04/RAPPORT-DU-MEDIATEUR-2016-VERSION-DP-On-Line.pdf>.

<sup>642</sup> See above, Chapter 4 - DE, section 4.2.1.

<sup>643</sup> See above, Chapter 5 – ES, section 5.2.2.1.2.

<sup>644</sup> See above, Chapter 6 - FI, section 6.2.1..

<sup>645</sup> See above, Chapter 7 – FR, section 7.2.1.

<sup>646</sup> See above, Chapter 13 - RU, section 13.1.1.



governing the right of reply with respect to broadcast media. For example, in Italy, the right of reply with respect to television or radio programmes is expressly provided for in broadcasting legislation.<sup>649</sup> This establishes that whoever claims that their honour or reputation has been harmed because of the broadcast of false content is entitled to ask the relevant linear audiovisual media service provider (including the public service provider), or the persons in charge of monitoring programmes, to broadcast a rectification.

A third issue evident from the country reports was the role of defamation law in relation to accuracy in news. For example, in Finland, the Criminal Code's provisions on defamation cover the spreading of false information or insinuations about a person or disparaging a person in another manner.<sup>650</sup> Similarly, in Italy, defamation is punished under Article 595 of the Italian Criminal Code; notably, in the case of the broadcasting of defamatory statements consisting of the allegation of a specific fact, more serious penalties may apply, including imprisonment for between one and six years.<sup>651</sup> However, these penalties do not apply to the person who made defamatory statements, but instead to the person in charge of monitoring the relevant broadcasts. Furthermore, in relation to the general issue of criminal defamation, it may also be relevant to refer here to the COE Parliamentary Assembly's 2007 Resolution towards decriminalisation of defamation<sup>652</sup> (as discussed in Chapter 3), which called on member states to abolish prison sentences for defamation without delay.

Lastly, it is also notable from the country reports that many of the main public and commercial broadcasters have their own polices and codes reflecting the importance attached to the issue of accuracy, objectivity and fairness in news and current affairs reporting. For example, in Poland, the Media Ethics Charter was adopted in 1995, having been prepared in agreement with broadcasters and organisations representing the media industry, thus ensuring that it would be incorporated into internal editorial policies.<sup>653</sup> In addition, individual broadcasters, such as Polish Television (TVP), follow their own principles of journalistic ethics.<sup>654</sup> Similarly, in France, in its Ethics Charter (*Charte de déontologie*),<sup>655</sup> the rolling news channel BFMTV "undertakes to guarantee pluralism and to broadcast accurate and factually correct information, which prohibits any one-sided

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<sup>647</sup> Broadcasting Act 2009, section 49, <http://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/index.html>.

<sup>648</sup> See above, Chapter 14 - SK, section 14.2.1.

<sup>649</sup> Article 32-*quinquies* of Legislative Decree no. 177/2005 (*Testo unico dei servizi di media audiovisivi e radiofonici*), <http://www.camera.it/parlam/leggi/deleghe/05177dl.htm>. See above, Chapter 10 - IT, section 10.2.1.

<sup>650</sup> Criminal Code of Finland (39/1889) (*Rikoslaki*) 19.12.1889/39, §§ 9-10, Ch. 24 (Unofficial English translation by the Ministry of Justice, [https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039\\_20150766.pdf](https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039_20150766.pdf)).

<sup>651</sup> Article 30, para. 4, of Law no. 223/1990

<sup>652</sup> Parliamentary Assembly of the Council of Europe, Resolution 1577 (2007) Towards decriminalisation of defamation, 4 October 2007, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17588&lang=en>.

<sup>653</sup> Media Ethics Charter (1995), <http://www.mediawise.org.uk/poland-2/>. See above, Chapter 12 - PL, section 12.2.2.

<sup>654</sup> Telewizja Polska (2016) *Zasady etyki dziennikarskiej w Telewizji Polskiej S.A.* – informacja, publicystyka, reportaż, dokument, edukacja (Principles of Professional ethics in the Polish Television), <http://s.tvp.pl/repository/attachment/0/e/e/0eea386c0fa98ad0c49f73f1a9f7c8e71445347977947.pdf>.

<sup>655</sup> <http://www.bfmtv.com/static/nxt-bfmtv/info/deontologie/pdf/Charte-Deontologie-BFMTV.pdf>



presentation of the facts". In Spain, Antena 3 has its own code of ethics,<sup>656</sup> as does Mediaset España.<sup>657</sup>

### 15.3. Print media

The second issue explored in the country reports was the domestic regulatory frameworks designed to ensure accuracy, objectivity and fairness in news and current affairs reporting by print media organisations. Most member states examined in the country reports have rules on accuracy, objectivity and fairness in self-regulatory codes. For example, the Netherlands Press Council handles complaints concerning violations of good journalistic practice;<sup>658</sup> and according to Council's Code, proper journalism is truthful and accurate, impartial and fair, verifiable and sound.<sup>659</sup> Complaints can be filed against practices that do not meet these standards. In order for an individual or company to file a complaint with the Council, it must have been directly targeted by a publication. Similarly, in Spain, there exists a self-regulatory system established by the *Federación de Asociaciones de Periodistas de España* (FAPE).<sup>660</sup> Furthermore, newspapers have developed their own complaints procedures as well. For instance, the Dutch newspaper *NRC* has appointed its own ombudsman who handles complaints about reports written by *NRC* journalists.<sup>661</sup> *NRC's* Ombudsman assesses journalistic practice by taking into account both *NRC's* own journalistic code and the general ethical standards applicable to all Dutch journalists. In Spain, *El País* also has a readers' ombudsman,<sup>662</sup> while in France, *Le Monde* and other newspapers have an ombudsman tasked with replying to public criticism of information disseminated.<sup>663</sup> Furthermore, the issue of the effectiveness (and enforceability) of self-regulatory mechanisms was also raised in the country reports. For example, in the UK, the Independent Press Standards Organisation (IPSO) can require newspapers to publish corrections or its adjudications and, in the case of serious breaches, can fine publishers up to GBP 1 million.<sup>664</sup> However, in certain member states, self-regulatory bodies may lack a sanctioning power to enforce decisions.<sup>665</sup>

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<sup>656</sup> Código Deontológico de los Servicios Informativos de Antena 3, <http://www.atresmediacorporacion.com/documents/2012/06/13/4C98559C-9E62-4ECF-9591-99CEB7349907/00005.pdf>.

<sup>657</sup> Código Ético de Mediaset España, [https://album.mediaset.es/file/10002/2017/09/22/thearchive\\_cd34.pdf](https://album.mediaset.es/file/10002/2017/09/22/thearchive_cd34.pdf).

<sup>658</sup> Netherlands Press Council, Procedure to complain, <https://www.rvdj.nl/english/procedure-to-complain-2>.

<sup>659</sup> Raad voor de Journalistiek, Guidelines of the Netherlands Press Council, preface, <https://www.rvdj.nl/uploads/fckconnector/f60f0e13-cfde-43b7-9ea3-d3d49e012c78>.

<sup>660</sup> The *Federación de Asociaciones de Periodistas de España* (FAPE) is the first professional organisation for journalists in Spain with 49 federated and 19 linked associations representing around 19,000 members, <http://fape.es>.

<sup>661</sup> NRC, Statuten Ombudsman NRC, <https://www.nrc.nl/nieuws/2016/07/28/statuten-ombudsman-nrc-a1513705>.

<sup>662</sup> <http://blogs.elpais.com/defensor-del-lector/>.

<sup>663</sup> <http://mediateur.blog.lemonde.fr>.

<sup>664</sup> See above, Chapter 8 – GB, section 8.3.2.

<sup>665</sup> For example, see above Chapter 5 – ES, section 5.3.1.





In addition to self-regulatory frameworks, some member states have specific legal provisions on accuracy, objectivity and fairness in legislation. For example, in Germany, *Land* press laws (apart from in Hesse) contain a provision requiring the press to check the content, origin and factual accuracy of news with the highest standard of due diligence required by the circumstances before disseminating it.<sup>666</sup> However, *Land* legislation does not directly require that a sanction be imposed for a breach of due diligence obligations under press legislation; nor can the individual infer from that legislation a right to truthful reporting. Furthermore, in the Russian Federation, the Statute on the Mass Media also applies to print media journalists; it provides that journalists have an obligation to verify the authenticity of information reported,<sup>667</sup> and not to abuse their privileges and rights “with the purpose of the concealment or falsification of publicly important information [or] the spread of rumours under the guise of authentic reports”.<sup>668</sup>

Secondly, a number of member states – such as Finland,<sup>669</sup> Italy,<sup>670</sup> the Russian Federation<sup>671</sup> and Poland – have legislative rules governing the right of reply which apply to the print media.<sup>672</sup> In Finland, for example, under the Act on the Exercise of Freedom of Expression,<sup>673</sup> the right to correction enables private individuals, corporations, foundations, and public authorities to have false information concerning them contained in a periodical corrected in the same publication, with the exception of errors of minor significance.<sup>674</sup> In Poland, a daily newspaper or magazine “shall publish, free of charge, the subject matter and factual correction of inaccurate or untrue press material.”<sup>675</sup> Editors-in-chief (of daily newspapers) are obliged to publish the corrections in the next issue, but not later than seven days after receiving the reply. If an editor-in-chief refuses to publish the reply (thus violating the relevant provisions of the 1984 Press Law Act), the interested party may bring a court action for the publishing of the correction.<sup>676</sup> In addition to legislative rights of reply, self-regulatory codes also contain provisions on the right of

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<sup>666</sup> Section 6 LPresseG BW; section 3 BayPrG; section 3 BPresseG; section 6 BbgPG; section 6 PGB; section 6 HPG; HPresseG; section 5 LPrG M-V; section 6 NdsPrG; section 6 LPG NRW; section 7 LMG Rh.-Pf.; section 6 SMG; section 5 SächsPresseG; section 5 LPresseG ST; section 5 LPresseG SH, section 5 TPG.

<sup>667</sup> Statute of the Russian Federation on the Mass Media (О средствах массовой информации), No. 2124-1 of 27 December 1991, Article 49.

<sup>668</sup> Statute of the Russian Federation on the Mass Media (О средствах массовой информации), No. 2124-1 of 27 December 1991, Article 51.

<sup>669</sup> Act on the Exercise of Freedom of Expression in Mass Media (460/2003) (Laki sananvapauden käyttämisestä joukkoviestinnässä), § 9.

<sup>670</sup> See above, Chapter 10 - IT, section 10.3.1.

<sup>671</sup> Statute of the Russian Federation on the Mass Media (О средствах массовой информации), No. 2124-1 of 27 December 1991 (with amendments as of 8 December 2003) (English version, [www.legislationline.org/documents/id/16867](http://www.legislationline.org/documents/id/16867)), Art. 44.

<sup>672</sup> See above, Chapter 12 – PL, section 12.3.1.

<sup>673</sup> Act on the Exercise of Freedom of Expression in Mass Media (460/2003) (Laki sananvapauden käyttämisestä joukkoviestinnässä), § 8.

<sup>674</sup> Act on the Exercise of Freedom of Expression in Mass Media (460/2003) (Laki sananvapauden käyttämisestä joukkoviestinnässä), § 9.

<sup>675</sup> *Ibid*, Article 31a (1).

<sup>676</sup> *Ibid*, Article 39(1).



reply, such as the UK's Editors' Code of Practice, which provides that a fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.<sup>677</sup>

As in the case of the broadcast media, the country reports also emphasised the role of defamation law in relation to accuracy and fairness. Notably, in some member states, a heavier punishment applies if defamatory conduct is committed by means of the press.<sup>678</sup> Indeed, in Italy, the editor and vice-editor of a newspaper (in addition to author of the offending material) may be held liable for the offence of defamation. Thus, in the event of the publication of defamatory statements in the print edition of a newspaper, the editor and vice-editor may face penalties in addition to the author of the material in question.<sup>679</sup>

Lastly, it also seems evident from the country reports that many of the most widely-read newspapers have their own polices and codes reflecting the importance attached to the question of accuracy, objectivity and fairness in news and current affairs reporting. For instance, *NRC*, one of the most widely-read newspapers in the Netherlands, has developed its own Code of Conduct,<sup>680</sup> while in France, there is the *Le Monde* group's Charter of Ethics and Good Practice.<sup>681</sup> However, some country reports also noted that while some print media organisations may have internal guidelines concerning editorial practices, these may not be publicly available.<sup>682</sup>

## 15.4. Online media

The country reports also explored the domestic regulatory frameworks designed to ensure accuracy, objectivity and fairness in news and current affairs reporting by online media organisations. Most member states covered by the country reports adopt self-regulatory mechanisms aimed at ensuring accuracy, objectivity and fairness in online news media. In this regard, an important finding was that press councils in a number of member states, including Finland, Germany, Ireland, the Netherlands, and the United Kingdom, regulate not only the online publications of newspapers, but also online-only news organisations. For example, in Germany, the provisions of the Press Code are applicable to some of the most widely-read online news sources, including *Spiegel Online* and *T-Online News*, and the vast majority of complaints to the Press Council concern online news articles. Similarly, in Finland, the Council for Mass Media (*Julkisen sanan neuvosto*) has also issued many decisions on accuracy in online media, including in respect of the two online news publications (the online versions of the *Iltta-Sanomat* and *Iltalehti* newspapers), which reach half of the Finnish population that uses the Internet on a weekly basis. Furthermore, some of most popular online-only news publications are subject to self-regulation in a

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<sup>677</sup> Editors' Code of Practice, Article 1(iii), <https://www.ipso.co.uk/editors-code-of-practice/>.

<sup>678</sup> See above, Chapter 10 - IT, section 10.3.1.

<sup>679</sup> See above, Chapter 10 - IT, section 10.3.1.

<sup>680</sup> NRC, NRC Gedragscode, [https://www.nrc.nl/static/front/pdf/NRC%20Gedragscode%20HR%20\(006\).pdf](https://www.nrc.nl/static/front/pdf/NRC%20Gedragscode%20HR%20(006).pdf).

<sup>681</sup> [http://www.lemonde.fr/actualite-medias/article/2010/11/03/la-charte-d-ethique-et-de-deontologie-du-groupe-le-monde\\_1434737\\_3236.html](http://www.lemonde.fr/actualite-medias/article/2010/11/03/la-charte-d-ethique-et-de-deontologie-du-groupe-le-monde_1434737_3236.html).

<sup>682</sup> See for example, above, Chapter 12 - PL, section 12.3.2; Chapter 5 - ES, section 5.3.2.



number of member states. In the Netherlands, the news website *NU.nl*, which is the most popular online news source, is a member of the Dutch Association for Chief Editors,<sup>683</sup> and is subject to the Guidelines of the Netherlands Press Council.<sup>684</sup> In the United Kingdom, over 1,165 online publications are subject to the Independent Press Standards Organisation's Editors' Code of Practice.<sup>685</sup> Thus, many of the most widely-read online news publications are subject to self-regulation in respect of the issues of accuracy, objectivity and fairness. However, and as mentioned above, the enforceability of self-regulatory decisions may vary, depending on the member state involved.

Notably, some member states have enacted specific legislation aimed at ensuring accuracy in online news. For example, in 2016, the Russian Federation made amendments to the Federal Law on Information, Information Technologies and Protection of Information which require owners of "news aggregators" with more than one million daily users to be accountable for the truthfulness of content "essential for the public", except when such content represents a verbatim reproduction of materials published by media outlets registered in Russia.<sup>686</sup> The statute prescribes a procedure by which executive bodies – with or without a court decision – may (i) monitor relevant online content, (ii) determine "dissemination of untruthful news information essential to the public under the guise of truthful information", and (iii) order "news aggregators" to stop disseminating such information. Violation of the statute carries administrative penalties.<sup>687</sup> Furthermore, in France, Section 6-V of the Confidence in the Digital Economy Act (*Loi pour la confiance dans l'économie numérique*) of 21 June 2004<sup>688</sup> makes the definition of offences punishable under the Freedom of the Press Act of 29 July 1881 applicable to online public communication services – in particular its provisions making it a criminal offence to disseminate false news or defamatory remarks and enabling the publication of inaccurate information to be punished. The procedure for interim measures provided for in section 6-I-8 of the 2004 Act allows the judicial authority to prescribe all appropriate measures to prevent or halt damage caused by the content of an online public communication service. In addition, there is currently a bill before the French parliament on countering false information during election periods.<sup>689</sup>

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<sup>683</sup> Nederlands Genootschap van Hoofredacteuren, Ledenlijst Media, <http://genootschapvanhoofredacteuren.nl/ledenlijst-media/>.

<sup>684</sup> Guidelines of the Netherlands Press Council 2015, <https://www.rvdj.nl/uploads/fckconnector/f60f0e13-cfde-43b7-9ea3-d3d49e012c78>.

<sup>685</sup> See above, Chapter 8 - GB, section 8.4.1.

<sup>686</sup> Federal Statute "On amendments to the Federal Statute 'On Information, Information Technologies and Protection of Information' and to the Code of the Russian Federation on Administrative Offences" (О внесении изменений в Федеральный закон "Об информации, информационных технологиях и о защите информации" и Кодекс Российской Федерации об административных правонарушениях) of 23 June 2016, N 208-FZ. Published in the official daily Rossiyskaya gazeta on 28 June 2016 – N 139 <https://rg.ru/2016/06/28/zashita-dok.html>. See Richter, A., "New Aggregators restricted in picking news", IRIS 2016-8/32, <https://merlin.obs.coe.int/iris/2016/8/article32.en.html>.

<sup>687</sup> Ibid.

<sup>688</sup> <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000801164>.

<sup>689</sup> Proposition de loi relative à la lutte contre les fausses informations, 21 March 2018, <http://www.assemblee-nationale.fr/15/propositions/pion0799.asp>. For election-related regulation, see Cappello M. (ed.), Media coverage of elections: the legal framework in Europe, IRIS *Special*, European Audiovisual Observatory, Strasbourg, 2017, <https://rm.coe.int/16807834b2>.



In relation to the right of reply, the law of certain member states contains provisions applicable to online media. For example, in Finland, the right to correction enables private individuals, corporations, foundations, and public authorities to have false information concerning them contained in a “network publication”, corrected in the same publication, with the exception of errors of minor significance.<sup>690</sup> A “network publication” is constituted by “a set of network messages, arranged into a coherent whole comparable to a periodical from material produced or processed by the publisher, and intended to be issued regularly”.<sup>691</sup> Similarly, in Poland, all provisions concerning the right of reply and corrections apply also to the online media. In particular, one of the very few specific legislative provisions that covers the online sector only includes the stipulation of a shorter deadline for publishing a correction (in respect of incorrect news) than in the print titles. Article 32(1)1 states that an editor-in-chief is obliged to publish a correction “in the electronic form of the daily newspaper or the magazine in which the press material in question was published – within three days of receiving the correction.”<sup>692</sup> However, in Italy, by contrast, the right to respond granted by the Law on the Press is not applicable to the online version of newspapers.<sup>693</sup>

Lastly, the country reports examined whether online media organisations have developed their own policies and codes on the importance attached to issue of accuracy, objectivity and fairness in news and current affairs reporting. Notably, the country reports seem to reflect a divergence between the member states examined. On the one hand, some of the most widely-read online-only news publications, such as *De Correspondent.nl* in the Netherlands, have developed ethical codes containing principles that those news organisations aim to comply with,<sup>694</sup> including accuracy, objectivity and fairness. Similarly, in France – as in the case of the “charters of ethics” (*chartes d’éthique*) of certain print publications that have an online version<sup>695</sup> – the editorial charters of players such as the French online investigative and opinion journal *Mediapart*<sup>696</sup> and the online news portal *Rue89*,<sup>697</sup> refer to the Charters of 1918<sup>698</sup> or 2011 of the SNJ (the national journalists’ union, the *Syndicat national des journalistes*) and to the 1971 Charter of Munich on the duties and rights of Journalists.<sup>699</sup> *Mediapart’s* mission is “to be at the service of the right to know and the freedom to say (*la liberté de dire*), in the interests of factual truth and the pluralism of opinions”. Several traditional media organisations (including Agence France-

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<sup>690</sup> Act on the Exercise of Freedom of Expression in Mass Media (460/2003) (*Laki sananvapauden käyttämisestä joukkoviestinnässä*), § 9.

<sup>691</sup> *Ibid.*, § 2.

<sup>692</sup> The 1984 Press Law Act, Article 32(1)1.

<sup>693</sup> Court of Udine, 15 September 2010, <https://associazioneindi.files.wordpress.com/2011/06/tribunale-udine-15-09-20101.pdf>.

<sup>694</sup> De Correspondent, Manifest, <https://decorrespondent.nl/manifest>.

<sup>695</sup> <http://static.latribune.fr/files/CharteTRIBUNE.pdf>.

<sup>696</sup> <https://www.mediapart.fr/charte-de-deontologie>.

<sup>697</sup> <http://docplayer.fr/18649972-Charte-de-la-societe-des-journalistes-de-rue89.html>.

<sup>698</sup> <http://www.snj.fr/article/charte-des-devoirs-professionnels-des-journalistes-français>.

<sup>699</sup> Declaration of the Rights and Duties of Journalists (approved at a meeting of representatives of the Journalists’ Unions of the six countries of the European Community in Munich, Germany, on November 23-24, 1971), <https://accountablejournalism.org/ethics-codes/International-Declaration>.



Presse<sup>700</sup>, *Le Monde*<sup>701</sup> and *Libération*<sup>702</sup>) have established fact-checking tools and blogs or websites.

However, in other member states there is a lack of transparency arising from – on the part of online-only media organisations – the lack (i) of internal editorial guidelines on the principles of accuracy, objectivity and fairness, or (ii) procedures concerning complaints or the right of reply.<sup>703</sup>

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<sup>700</sup> <https://factuel.afp.com>.

<sup>701</sup> <http://www.lemonde.fr/verification/>.

<sup>702</sup> <http://www.liberation.fr/desintox/99721>.

<sup>703</sup> See, for example, Chapter 5 -ES, section 5.4.2.





## 16. Conclusion

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This IRIS *Special* has sought to examine the principles of accuracy, objectivity and fairness in news and current affairs reporting by European media organisations, including broadcast, print and online media organisations. In this regard, Chapter 2 described the Council of Europe law on this issue, reviewing in particular the case law of the European Court of Human Rights. The overview revealed the importance attached to these principles in the Court's case law not only in relation to broadcast media, but also for print and (more recently) online media. Indeed, it is worth reiterating that the Court's principle that the safeguard provided by Article 10 of the ECHR to the media when reporting on matters of public interest is "subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism" was established over 20 years ago,<sup>704</sup> and is still being applied in 2018.<sup>705</sup> Chapter 3 then examined common standards and policies, and demonstrated the centrality of accuracy, objectivity and fairness in respect of the relevant standard-setting instruments from Council of Europe bodies. Indeed, the centrality of these principles for European media and journalist organisations (e.g. the European Federation of Journalists, the European Broadcasting Union, the Alliance of Independent Press Councils of Europe, and the Ethical Journalism Network also came to fore.

Building upon the opening chapters, Part 2 contained country reports detailing the regulatory and self-regulatory frameworks in 11 Council of Europe member states for ensuring accuracy, objectivity and fairness in news and current affairs reporting. These chapters also sought to examine how media organisations themselves (whether broadcast, print or online-only) view accuracy, objectivity and fairness in news and current affairs, and in particular what mechanisms they may have in place to ensure accuracy, objectivity and fairness.

In order to make a number of brief points in conclusion, it seems helpful to have regard to the latest Resolution adopted by the Parliamentary Assembly of Council of Europe in April 2018 on the protection of editorial integrity. Firstly, the Resolution reiterates that media professionals are accountable to the public, and should maintain high editorial standards and adopt codes of conduct that promote essential ethical

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<sup>704</sup> See, for example, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, 20 May 1999, para. 65, <http://hudoc.echr.coe.int/eng?i=001-58369>; and *Fressoz and Roire v. France* [GC], no. 29183/95, 21 January 1999, para. 54, <http://hudoc.echr.coe.int/eng?i=001-58906>.

<sup>705</sup> *Ólafsson v. Iceland*, no. 58493/13, 16 March 2017, para. 53, <http://hudoc.echr.coe.int/eng?i=001-171974>.



principles, such as truth and accuracy, independence, fairness and impartiality, humanity and accountability.<sup>706</sup> This *IRIS Special* has highlighted how European news media organisations recognise the importance of these principles, seek to adhere to ethical codes containing these principles, and are implementing important correction and reply mechanisms when reporting falls short of these standards. These self-regulatory mechanisms are complemented by comprehensive legislative frameworks, which are also designed to ensure accuracy, objectivity and fairness in news.

The second point relates to defamation law, which – as is evident in the country reports and case law of the European Court of Human Rights – is regularly used where news reporting may be, or is claimed to be, inaccurate or unfair. Importantly, the Resolution reaffirms the Parliamentary Assembly’s 2007 Resolution, *Towards decriminalisation of defamation*,<sup>707</sup> which called on member states to abolish without delay prison sentences for defamation. Notably, the 2018 Resolution also reaffirms that statements or allegations in the media, even if they prove to be inaccurate, should not be punishable, provided that they were made without knowledge of their inaccuracy and without conscious intention to cause harm, and that their truthfulness was checked with proper diligence. This latter call from the Parliamentary Assembly is particularly important to note where legislatures may be considering drafting new regulation targeting inaccurate news reporting.

Thirdly, the Parliamentary Assembly also invited media organisations to develop internal oversight mechanisms such as a readers' editor or ombudsperson, as well as self-regulatory mechanisms, in order to ensure that persons considering themselves targets of unreasonable press intrusion and inaccurate reporting have ready access to an effective system of complaints and redress, while safeguarding editorial integrity and independence.<sup>708</sup> This *IRIS Special* has also attempted to map these mechanisms, and a number of country reports document the important role of readers' editors or ombudspersons, including for online media.

The final point concerns the role of regulators, whether created by statute, or independent self-regulatory bodies supported by media organisation themselves. The indispensable role of such bodies, including their remit in respect of online media publications, was a distinct feature in many of the country reports. These regulatory mechanisms also play a vital role in providing redress to viewers, readers and subscribers, and ensure the public’s continued trust in media reporting of news and current affairs.

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<sup>706</sup> Parliamentary Assembly of the Council of Europe, Resolution 2212 (2018) *The protection of editorial integrity*, 25 April 2018, <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=24734&lang=EN>, para. 1.

<sup>707</sup> Parliamentary Assembly of the Council of Europe, Resolution 1577 (2007) *Towards decriminalisation of defamation*, 4 October 2007, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17588&lang=en>.

<sup>708</sup> Parliamentary Assembly of the Council of Europe, Resolution 2212 (2018) *The protection of editorial integrity*, 25 April 2018, para. 1.





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