

## **Policy suggestions for free and independent media in Estonia**

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### **Policy summary**

In our first report for the MEDIADEM project ('Background information report. The case of Estonia'), we presented a brief summary of the existing media structures and regulations which set the framework for public communication and media performance in Estonia. We also presented a schema of actors, based on their level of activity or passivity with regard to the implementation of media policies in Estonia. Our second report ('Case study report. Does media policy promote media freedom and independence? The case of Estonia') focused on the interplay between the different actors who influence the implementation of media policy in Estonia and the dominant values followed by these actors (both reports are available at the MEDIADEM website). The analysis of the implementation of media policy included an analysis of the Supreme Court cases related to the media since 2000, as well as an analysis of the implementation of the legal framework and the self-regulation system with an emphasis on the cases proceeded by the two impartial bodies for the settlement of press disputes: *Avaliku Sõna Nõukogu* (ASN – the Public Word Council) and the publishers' Press Council (PC). Different empirical sources were used to analyse any problems related to the perception of media performance and the policy tasks for different actors: academic research articles, articles from the press, as well as seventeen semi-structured interviews conducted with politicians, public officials, representatives of national regulatory authorities, journalists and editors-in-chief.

According to the Freedom House, Estonia ranked 22nd in terms of 'global media freedom' in 2012, sharing its position with the United States. Besides the strong constitutional protection of press freedom, the small size of the media market is an important contextual factor that determines media policy. At the same time the Estonian market (with a total population of 1.3 million of whom 0.9 million are consumers of the Estonian language media) disfavours competition among several media companies, as too many companies would cause fragmentation of resources. An important contextual factor is also the ultra liberal and market-oriented media policy. By taking into consideration these contextual factors and the research tasks performed in the framework of the MEDIADEM project, the major policy recommendations for the promotion of media freedom and independence in Estonia are the following:

- 1. Review the liberal and market-oriented approach to media policy**
- 2. Enhance independent mechanisms for the scrutiny of broadcasting organisations**
- 3. Support professional journalism, transparency of job appointments and accountability of individual journalists**
- 4. Balance the freedom of the press and individual rights in the context of justice administration**
- 5. Promote multi-faceted debate on media ethics**
- 6. Integrate journalists' professional education and media literacy in the media policy**

## Key observations

While the Estonian national strategy of media politics has been liberal since the 1990s and the freedom of speech – and especially the freedom of the press – has been highly protected, the overall media policy of the country is highly heterogeneous. Unlike other post-soviet countries, there is no political parallelism. **Economic factors are more relevant to the issue than political ones.** Research findings provide evidence that Estonia has a liberal and market-oriented approach to media policy. The state does not subsidise professional journalism either directly or indirectly (e.g. via taxes).

**The small market favours oligopoly of professional media channels:** the press market is predominantly shaped by two media groups: *Eesti Meedia* and *Ekspress Grupp*. The first of these groups possesses 5 out of the 25 local newspapers. There are also two major groups that dominate the radio market and another two that dominate the television market. The number of local radio stations is few (six), and local television stations cannot emerge because of technical aspects of the state digital TV policy. Prime news flows are produced by a few media organisations, and consequently the number of people who decide upon news content has been narrowed down.

**The system of financing the public service broadcaster (PSB) is unpredictable and unsustainable, and does not fully safeguard the growing importance of production of public broadcasting content.** The parliament allocates finances to the PSB annually, while the law prescribes three-year envisagement. Recent years' budgets have enabled the PSB to fulfil short-term tasks, but long-term tasks still remain poorly performed. Political influence on the PSB is relatively low, although it has increased within the last couple of years.

The media content is regulated only in licensed broadcasting. **The provisions concerning broadcasting** (audiovisual media services under the new law, including radio), however, **have been supervised randomly, except for advertising TV quotas.** The position of the current Minister of Culture, Mr. Rein Lang, indicates that the government would rather abolish the licensing and restrictive programming provisions than allocate more resources for surveillance. Divergent compliance with legal provisions by some market players creates unequal competitive conditions and infringes legitimate expectations of the general public towards the channels which make use of the limited resources (broadcasting frequencies).

**The Electronic Communications Act sets out technological neutrality as the core principle.** This keystone has never been questioned.

**In Estonia, the professional culture of journalism is protected by tradition: a history of reading newspapers, professional education and media research.** Professional education and research have a crucial influence on journalistic culture. Estonian professional education in journalism dates back to 1954. Since then, the Estonian approach to journalistic education has been developed in the academic environment. However, better cooperation and dialogue between educators of journalism and representatives of the mass media and the public is needed, as there is some tension between the practice of the (market-led) journalistic institutions and public expectations about the functions of 'good journalism'.

**The ability of the journalists' trade union to carry out its social mission is weak, and journalists are rather marginalised as a group of media policy actors.** Editors-in-chief are better represented via the Estonian Newspaper Association and its self-regulatory body, the Press Council. The number of professional journalists has fallen from app. 1,200 in 2004 to app. 900 in 2012. This might become one of the most critical factors to work against the independent performance of the media.

**The small job market together with the liberal approach to media policy and the weakness of the trade union of journalists might endanger professional journalism on both the institutional and individual level.** At the same time, economic pressure from marketing communication is growing. It is unequal towards different channels and formats of journalism. Magazines, some television channels and soft news producers at daily newspapers experience more pressure than journalists who work at hard news departments. Estonian professional journalists do not form a homogenous community with well-established professional ideology. The borders between the news media, infotainment and advertorials are increasingly blurring and the audience needs special competencies to distinguish between news and marketing messages.

**The Supreme Court has demonstrated an extremely defensive attitude towards the freedom of the press,** especially until the beginning of the 21st century. Since then, the quality of argumentation has been increasing in the court rulings. Truth is the value that has been discussed most of all, while the rulings of the Supreme Court indicate that truth is also the most advocated value. As defamation is not covered by the Penal Code, there are no criminal procedures that could be applied against the freedom of the media. Besides, it is rather expensive to bring a lawsuit against a media organisation – there have only been 29 media-related cases discussed in the Supreme Court since 2000.

**The biggest barrier to the promotion of media literacy and the implementation of the concept of the use of communications skills is the lack of political decisions concerning citizen education on how to behave in the information society.**

The levels of effort applied by different actors to the implementation of media policy appear to be unequal. Politicians are passive actors, rather preferring not to interfere. The influence of the owners of private media is indirect and not transparent. The influence of editors is ambiguous, and the influence of journalists on the media policy is marginalised. Public criticism of the media is marginal. On the other hand, the court system operates on a clear value-oriented basis, and the self-regulatory system with its two bodies has provided a forum for a relatively wide discourse on relevant moral dilemmas and good journalistic conduct. There is an ongoing value conflict between the protection of privacy and the public need for information, which is also reflected in cases dealt with by the Data Protection Inspectorate.

## **Policy recommendations**

### **1. Review the liberal and market-oriented approach to media policy**

The EU liberal media policy, which advocates private media, is not appropriate for a very small media market. First, the explosion of information has increased the number of options for choice, but has also led to a high degree of information waste and an overload of information. Secondly, the telecommunication companies have become major players and profit-makers, while content producers (especially news producers) are currently losing their resources. While the majority of consumers might prefer entertainment, democracy needs professional journalism to perform surveillance over small and big power-holders. Therefore content producers need some force to counterbalance the market forces. As Estonia is one of the few European countries that does not subsidise the production of journalistic content, an appropriate taxing policy should be discussed to support professional news production. A new model for financing the public service media should be developed.

Multidimensional analysis implies systematic data collection and the possibility to monitor the dynamics of resources on an annual basis. At the same time, a system of obligatory and regular collection of data on the media should be developed with a special focus on the dynamics of human resources (e.g. numbers of professional journalists in media organisations and freelancers; their age, level of education, career, experience and employment contracts – full-time or part-time, salaries). Existing data, found in various databases, should be synthesised. This would enable rational decisions concerning the professional resources that are needed for the functioning of high-quality journalism. Representatives of various media organisations and researchers should work together to develop such a system of continuous data collection where the human resources data and financial data would be integrated.

**The liberal and market-oriented approach to the media policy should be critically reviewed according to the needs of the Estonian democracy and culture. Political decisions should be based on a multidimensional analysis of the performance of different media sectors as well as specific analysis of the media economy in Estonia.** In this respect, the following measures might be pointed out for consideration:

- When planning state activities concerning the media, the state authorities should take into account the ongoing changes in the media economy.
- Media practitioners and media researchers should promote appropriate knowledge about the complexity of media regulation and policy.
- A new media policy strategy, based on systematic data collection and analysis, should be adopted.
- A new business model for the public service media should be developed after public discussion to ensure the growing importance of the public service media in the production of high-quality information.

## **2. Enhance independent mechanisms for the scrutiny of broadcasting organisations**

Estonia has not adopted any legal act to regulate the media in general, although there is a law that regulates the audiovisual media. The research conducted within the framework of the MEDIADEM project proved that there is no monitoring of the performance of broadcasting organisations. Penalties for not complying with the law or the licence conditions have only been applied in very few cases and thus possible penalties do not motivate the broadcasters to follow the licence conditions or the law. The development of media policy, the processing of licences as well as supervision – all these are responsibilities of the Ministry of Culture. No actual compromise of independent regulatory functions has occurred, but this can apparently be suspected. Moreover, the media department of the Ministry is currently not manned at all and, therefore, it cannot perform its tasks. For this reason it is necessary to establish an effective independent body to supervise the performance of media organisations.

**State authorities should perform effective and sufficient scrutiny concerning the performance of media service providers.** In this respect, the following measures might be pointed out for consideration:

- The provisions of the Media Services Act should be equally enforced on all market players.
- A supervisory body should be established with appropriate financial and human resources to carry out surveillance functions.
- An effective independent regulator should be established to supervise the performance of media organisations.
- The existing legislation should be assessed and relevant amendments made if necessary to assure effective and sufficient monitoring of the performance of broadcasters.

### **3. Support professional journalism, transparency of job appointments and accountability of individual journalists**

Because of extensive changes in the media economy and business models during recent years, resources for the production of professional high-quality news content have been cut down. Journalists say that they need to work quicker and have less time for analysis and checking facts; some journalists describe a value conflict between what they consider high-quality reporting and what is valued by their media organisation (e.g. speed and news to satisfy public curiosity). At the same time, while being critical, they do not ‘fight’ for their personal values. For their job safety, it is more reasonable for them to remain loyal to the values of their organisations.

The changing business model in journalism is also causing some changes in career models in Estonia and all over Europe. More journalists are earning money as freelancers or part-time employees, irrespective of the fact that this type of career model is insecure from the economic point of view.

There is a need to reinforce the trade union of journalists in Estonia, which is weak in protecting the autonomy of individual journalists and their job safety. The requirement for job safety should first of all serve as a tool for the protection of the autonomy and accountability of individual journalists and as a tool to balance against the commercial interests of the media organisations. The existence of a small professional community means that each single journalist might have a strong influence on news discourse. Therefore it is important that entrance to the journalistic market - and journalists’ competences – become more transparent. It is not in the public interest to guarantee job security equally for all journalists, but rather to support highly qualified journalists and journalists who are working outside the capital. Therefore the public should know for what reasons any key journalist is employed or dismissed by media organisations: is it for his or her professional competencies (and which ones?), moral sensitivity, close relations with politicians or something else?

Given that this kind of regulations that serve the public interest can only be applied in the public sphere, transparency of job appointments should first be applied in the PSB as the implied flagship of high-quality journalism.

The individual accountability of journalists should also be promoted. This could be achieved if journalists themselves present their personal explanations to both press councils (ASN and PC). Although the explanations provided by the media organisations and editors-in-chief are indeed important for the public debate on media ethics, the analysis shows that such explanations are dominated by organisational values, while personal dilemmas and the personal responsibility of the reporter or the middle-rank editor are hidden for the public.

Newsroom decision-making processes and background stories are seen by the editors-in-chief of national newspapers as inside information and therefore as a form of trade secret. Local journalists and the editors-in-chief of local newspapers tend to value a more open editorial process and close relations with the community. Therefore the dissemination of best practice cases of editorial transparency and individual accountability might promote positive changes in newsroom mentalities regarding the transparency and autonomy of individual journalists.

Given that media critique is almost nonexistent and the news organisations are not transparent to the public, it is the cases that are brought to either one of the press councils, the ASN or the PC, which help to create public discourse on media ethics and hopefully some kind of dialogue between the press and the public. The two press councils provide more diversity to the debate on media ethics, which is important for the development of professional ideology.

**Policy makers and publishers should clarify the professional competencies required from journalists and increase transparency as regards the conditions of entry to the journalistic job market. The individual accountability of journalists should be promoted.** In this respect, the following measures might be pointed out for consideration:

- The Union of Journalists should be encouraged to insist more on protecting the autonomy of journalists as individuals (collective agreements as well as individual accountability).
- The Council of the PSB should be encouraged to initiate public discussion on the mandatory competencies of journalists and heads of department at the PSB.
- Media organisations should encourage individual journalists to respond to either one of the press councils in case of complaints on their reporting themselves.
- There should be mandatory collection of statistical data on journalists: the number of professional journalists in media organisations and freelancers (including their age, level of education, career, experience, type of employment contract, and workload), in order to make rational decisions on the professional resources needed for high-quality functioning of journalism.

#### **4. Balance the freedom of the press and individual rights in the context of justice administration**

The Estonian courts have been supportive of free media in their rulings, while in recent years they have also focused on the protection of individual rights, such as privacy and the protection of personal data. The court practice has shifted towards more sophisticated argumentation on the need to balance the rights of individuals and the public need for information. Still, relatively few cases are taken to the Supreme Court. One reason for this

might be the high costs related to a lawsuit and fairly small indemnifications for moral damages. Common people without high incomes have hardly any motivation to defend themselves at court, even if they have been seriously harmed by the media. Today, the Internet archives provide very easy access to any published materials that may be incorrect in terms of their content, defamatory or cause infringement of privacy. In some cases, the Supreme Court has overruled the argumentations of the basic values adopted by the courts of the first and second instance. It is therefore important that the media-related lawsuits would end up in the Supreme Court. However, one cannot appeal to the Supreme Court without employing a lawyer.

Estonian courts have been rather sparing at sentencing moral damages. One of the largest compensations sentenced from a media organisation was EEK 200,000 (EUR 12,782), while the average compensation has been approximately EUR 320.

In conclusion, although the Supreme Court has generally protected universal values, such as truth and privacy, in its rulings, the Court's influence on the media policy has been meagre. Perhaps the most influential case in this respect was the *Vjatšeslav Leedo* case. As a result of the settlement of this case, it was clarified whether the online reader comment sections on the media websites must be considered as part of the journalistic output, and whether the media organisation is liable for the content of such sections.

**The legislator should develop *modi operandi* to balance the freedom of the press and the individual rights of persons both in judicial and extrajudicial proceedings, and grant individuals the right to define their private life and oblige the media to provide the general public with information that is highly important for democracy.** In this respect, the following measures might be pointed out for consideration:

- The potential positive influence of indemnifications for moral damage on the access of media organisations and individuals to courts should be analysed, with the final aim to better satisfy the public need for trustful information.
- Individuals should be enabled to define their private sphere and be sufficiently indemnified for any serious personal damage.
- The state should provide sufficient legal assistance to individuals in order to enable common persons to re-establish their individual rights against the mass media.
- The state legal assistance system should also include extrajudicial proceedings to remedy any violations of personal rights.
- Freedom of information should also be assured in cases related to personal data protection proceedings in order to avoid an unbalanced and excessive application of the Personal Data Protection Act, and also emphasise the individual's own responsibility at providing personal data.

## **5. Promote multi-faceted debate on media ethics**

With its two press councils, Estonia experiences a two-faceted situation. On the one hand, many journalists consider this situation to be confusing. On the other hand, the analysis of the argumentation quality of the adjudications of these two councils (particularly of the cases

examined by both councils) demonstrates a positive influence on the diversity of public debate about moral dilemmas that may occur in journalistic work.

Journalists themselves complain about the pressure exercised on them by advertisers and public relations. However, some journalists do not see this blurring borderline between journalism and marketing as a moral conflict or as questioning professional ethics. One reason for this could be the absence of an ethics council for advertisers and marketing communication. Because of the lack of such a council, there are no sample cases that could help increase the sensitivity of journalists, of the public and of marketing professionals towards the value of objectivity in the news and the harm that could be caused by the ongoing legitimisation of hidden advertising. The existing Advertising Act seems insufficient to provide such mechanisms.

Even though professional journalists possess wide and relevant experience in their field, decision-making on public communication may not be trusted to one single interest group. Unlike legal norms, moral choices are always disputable, and the discussion should always give the answer to the question of ‘who watches the watchdog?’ In this respect, the two complementary press councils is a currently a good solution for the sake of principle of variety.

**The state, the industry and civil society organisations should engage diverse actors involved in the field and initiate debate on media ethics in order to balance the different interests and values related to the mass media.** The following measures might be pointed out for consideration:

- More discussions should be launched on moral issues – from the aspect of public interest.
- A self-regulatory or co-regulatory body should be established to examine complaints and problems that occur in the field of public relations and marketing. The principle of co-regulation could be included in the Advertising Act.

## **6. Integrate professional journalistic education and media literacy in the media policy**

The development of media and communication competencies already at primary and secondary school should be incorporated in the general media policy as one of its important aims. Media education is indeed compulsory at Estonian schools under the national curriculum. It could be applied as a cross-curricular theme or as a special course (as part of the curriculum in the Estonian language and literature). Media education should, however, not be about just providing media literacy, but also about implementing a completely new style of learning and teaching (e.g. one of the principles of media education is to discuss about the students’ media experience, and this cannot be done without giving the students time to talk, to discuss and to argue, while the teachers must have methodological competencies to teach their students to analyse). Therefore media and communication competencies should be included in the teacher training programmes.

Professional journalistic education should also be considered as an important part of media policy. Besides bachelor and master programmes, it should receive attention also by higher levels of education. The journalists of today need a kind of education that enables them to learn and adopt new methods of processing information, makes them capable of noticing



value conflicts and carrying out value clarifications, provides them with the skills they need to learn the possibilities of new technology, etc. The challenge is not the curriculum but the didactics of teaching and the motivation to learn. The problem is that the needs of the news organisations do not always coincide with the needs of individual journalists. This is particularly true with regard to the clarification of values: quite often organisations rather prefer ‘collectively accepted values’.

Until now the media policy has belonged to the administrative field of the Ministry of Culture, while the Ministry of Education and Science has been responsible for education. Communication between the two ministries in the field of media literacy and professional journalistic education has not been sufficient, however.

**The government should promote an understanding of the interrelatedness of professional journalistic education and overall media literacy.** In this respect, the following measures might be pointed out for consideration:

- The importance of the Estonian news journalism as well as of the studies on journalism should be underlined as part of the Estonian cultural heritage.
- In order to improve the media and communication competencies of citizens, the communication between the Ministry of Culture and the Ministry of Education and Science as well as the universities that provide media and journalism education and teacher training programmes should be improved.
- Academic professional education should be promoted as a means to serve the public interest and the independent competitiveness of individual journalists, in order to provide a material force to counterbalance the commercialisation of the media and create a healthy tension between the various interests of the media industry.