



Preserving media
independence:
regulatory
frameworks

Compiled by Cees J. Hamelink

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regulatory frameworks

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Preface

The right to freedom of expression as guaranteed by Article 19 of the United Nations Universal Declaration of Human Rights is one of the most cherished rights of mankind and the basis of many other rights and freedoms: freedom of speech, freedom of the press, freedom of the media, children's rights to freedom of expression, the rights of indigenous peoples, cultural rights. And yet this basic right can be tempered, hedged in, influenced or otherwise affected by laws and legislative frameworks enacted at the national level where there are not only bodies to formulate law, but also authorities and methods of enforcement.

The purpose of this monograph is to show exactly how media freedoms are affected by legislative frameworks at the national level. It sets out firstly to propose a methodology and then an outline of the kinds of law that may affect media freedoms. For each country selected for this survey of European and North American countries, the monograph provides a profile of laws and other forms of legal enactments that can affect freedom of expression. In this way, this first study can serve as a model for adaptation to and comparison with other countries and regions of the world.

Gathering the data for this exercise was most difficult, as some countries still in transition to some form or level of democratic process were also in the process of reformulating or revising their media laws, usually in the national language. To obtain copies of these formulations, sometimes in draft form, and to ensure the accuracy of translation into English, respecting carefully each legal formulation, was not an easy task. It was therefore necessary to confirm the work with specialists from the countries concerned before finalizing this survey. The project of

putting together these texts, in consultation with the appropriate national specialists, was in itself a fruitful exercise and certainly contributed to making a comprehensive study.

Eventually, this effort might still lead to a worldwide comparative assessment which could serve as an important resource for policy-makers (both in state and non-state institutions), freedom-of-speech advocates and media practitioners in their attempts to design new regulations or strengthen existing regulatory policy. A project such as this is obviously never perfect, not only because data are not always available in complete and comprehensive form, but also because the field of regulation is rapidly changing.

The study concludes that most current regulatory frameworks are not sufficiently supportive of editorial independence. This implies that much more work in this field is required, not only in terms of more adequate statutory and self-regulatory provisions, but also in the sense of more robust procedures and mechanisms for implementation. The present study is an unfinished work, the data collected should be expanded and updated, and the exercise carried out in other regions of the world.

It is also important that international and regional forums of media researchers, practitioners and policy-makers render full attention to the regulatory strengthening of the fundamental human right to freedom of information, to ensure the 'free flow of information by word and by image, and the wider, better balanced dissemination of information at international and at national levels, without any infringement on the freedom of expression'.

This study is a result of the special efforts of all those mentioned in the resource persons list, and in particular Sandra Coliver, Mihai Coman, Halliki Harro, Karol Jakubowicz, Jan Jirak, Ad van Loon, Oleg Manaev, Andrei Richter and the compiler, Professor Cees J. Hamelink, Centre for Communication and Human Rights, Amsterdam, who met in Paris in March 1997 for a special editorial meeting.

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Introduction

‘We, the participants in the United Nations/UNESCO Seminar on Promoting an Independent and Pluralistic African Press, held in Windhoek, Namibia, from 29 April to 3 May 1991, declare that: “Consistent with Article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.”’

AIM OF THE STUDY

The general aim of this comparative study is to identify regulatory conditions that maximize the space for the independent editorial work of publishers, editors, journalists and broadcasters, and minimize opportunities for interference with this independence. The specific aim is the design of a checklist of critical questions to be posed in connection with media independence. Such a list could be used (with the necessary amendments) by policy-makers (both in state and non-state institutions), freedom-of-speech advocates and media practitioners in their attempts to design new regulations or strengthen existing regulatory policy.

MEDIA INDEPENDENCE

Media independence can be defined as the autonomous control over editorial content by publishers, broadcasters, editors and journalists. This control implies that the work of collecting, editing and publishing information is conducted within the framework of editorial aims that are

articulated and adopted by the professionals involved and without interference from third parties (public authorities or private-interest groups). Control over editorial content has to be protected against a variety of pressures that are external to the media, including direct and indirect political pressures, the use of financial resources, the control of production and distribution to pressurize the media into serving specific commercial interests, or efforts to use the media to promote sectional sociocultural interests.

Control over editorial content also has to be protected against pressures from inside the media, such as efforts by owners, publishers and managers to make that content subordinate to interests other than the agreed editorial aims.

SIGNIFICANCE OF MEDIA INDEPENDENCE

Although the concept of media independence itself does not explicitly appear in the body of binding international information law, its importance has been implied in various governmental and non-governmental documents. Media independence appears explicitly in the UNESCO-supported Declarations of Windhoek (1991), Almaty (1992), Santiago (1994), Sana'a (1996) and Sofia (1997); in resolutions and declarations of the European Ministerial Conference on Mass Media Policy; and in various declarations made by the International Federation of Journalists.

In the Windhoek Declaration (3 May 1991), media independence is defined as independence from 'governmental, political or economic control' or from 'control of materials and infrastructure' that are essential for the production and dissemination of the media. The General Conference of UNESCO at its twenty-sixth session (Paris, October–November 1991) stated in Resolution 4.3 (on the promotion of press freedom in the world) that it noted with interest the Declaration adopted by participants at the Windhoek seminar and invited the Director-General to extend to other regions of the world the action taken so far in Africa and Europe to encourage press freedom and promote independence and pluralism of the media. The twenty-eighth session of the General Conference (Paris, October–November 1995) underlined the importance of the Declarations of Windhoek, Almaty and Santiago (Resolution 4.6) and endorsed these Declarations.

For a democratic society, the existence of a public sphere is of essential significance. This encompasses all those platforms where political debate takes place and where citizens can inform themselves on those

social issues on which they may be expected to make political choices. The public sphere, of which the mass media are a critical part, can fulfil its function effectively only when it is independent of the institutions of the state and the powerful economic players in society. Without belittling the importance of other institutions of the public sphere, the media are arguably the most vital channels for public participation in the political decision-making process.

Democratic governance requires people to participate in public decision-making and to be adequately informed to do so. As the European Court of Human Rights (Strasbourg) has stated on several occasions, the citizen in a democratic society has the right to be properly informed. According to the Court, this implies that the task of the mass media is 'to impart information and ideas on matters of public interest'. This implies that the media should not be subject to the interests of political or financial elites. If the media of public information were totally subservient to such partisan interests, they would function as instruments of propaganda.

Although media owners are entitled to exercise their right to freedom of expression and may opt to promote specific political, commercial or cultural interests, such partisanship is not appropriate to properly informing the citizens of democratic societies. A democratic society cannot live by propaganda alone as a basis for decision-making in matters of public interest, and needs independent forums for the provision of information and the exercise of public debate. Democracies require public accountability for those who exercise substantial power in a society. This is particularly important since in most democratic societies there is a strong tendency to let relatively small elites decide on behalf of majorities. In large and complex societies, it has become difficult to avoid forms of delegation of power to government executives, parliamentarians or market forces. There may be nothing wrong with delegating decisions, but democracy means that those entrusted with deciding for others should provide a full and transparent account to those on whose behalf they are acting.

This implies that democratic societies need independent institutional forums – foremost among them being the mass media – for the debate on public accountability. To ensure the independence of this debate, it is essential that there is maximum distance between the forums of public accountability and the powers-that-be.

MEDIA INDEPENDENCE: THE BROADER CONTEXT

The space for media independence is in most countries under pressure from a variety of sources. Interference may come from public authorities, private-interest groups or individuals. Pressures are exerted on the media by governments that dismiss prominent journalists who ask awkward questions, advertisers who seek to influence the direction of broadcast programming or criminals who decide to execute investigating journalists.

In the Eastern European region, countries are passing through transitional phases towards new forms of democratic governance. In all these countries one finds different stages of the development of media regulation. In some countries the former regulatory regime still holds, while in others new media legislation has been passed or combinations of the old and the new legal order implemented. In the post-communist countries, state control over broadcasting remains very strong. All these experiences imply both opportunities and risks for media independence. In North America and Western Europe, a public debate has begun in connection with such issues as violence in the audiovisual media and pornographic, extremist or racist information and opinions in computer networks. In the debate, legislative proposals have been made that amount to threats to the right to free speech.

The economic environment in which today's mass media operate is characterized by industrial consolidation (mergers, acquisitions, the emergence of mega-multimedia conglomerates) in some countries and scarcity of basic resources (print, equipment, distribution mechanisms, levels of payment) in others. In either case, media independence is under threat. The worldwide commercialization of the media is leading to a variety of linkages between the media and other operators in the market. As a result of such deals (for example, between television networks and advertising agencies) the traditional separation of editorial and commercial interests is increasingly under pressure. Large advertisers are acquiring increasing influence on media content.

In a growing number of countries, labour conditions are moving towards 'flexible' arrangements. This means that media enterprises hire journalists not as permanent employees but as freelancers. Such insecure working and financial conditions thus promote a trend towards sensational, market-oriented reporting, undermining the quality of professional work. The increase in racism in several countries is leading to increased pressure on legislators to enact so-called 'hate speech' legislation. How-

ever necessary it is to curb expressions in the media that discriminate against individuals and groups of individuals, there is a risk of restricting media independence on unconstitutional grounds. In many countries laws on defamation continue to exert a 'chilling' effect on the independence of media reporting. With the threat of million-dollar lawsuits by would-be plaintiffs, publishers and editors tend towards forms of self-censorship.

In some countries groups of concerned media clients, in particular television audiences, have confronted the mass media with demands for better-quality programming. The right of reply is also being increasingly exercised by those critical of media reporting and in many countries an increase in complaints to Press Councils can be observed. All this represents a much-needed development in media awareness and criticism, but it should be carefully monitored lest it slide towards forms of 'populist' censorship and thus unduly affects media independence.

It is also important to note that the professionalization of journalism is at different stages in different societies. Strong supportive regulation for media independence can be seriously undermined when professional standards are inadequate and a robust professional style has not yet developed.

MEDIA REGULATION

Media regulation is one of several instruments through which protection against interference can be achieved. It provides rules, procedures and institutional mechanisms for relations between the mass media, the political sphere, the market-place and the public. Existing regulations may provide an effective defence against a variety of pressures on independence; they may equally fail to do so. Existing regulations may even facilitate external pressures on the editorial process by allowing a broad range of restrictions on free speech. Any assessment of the quality of existing regulatory conditions in relation to media independence starts from the following two considerations.

- The human-rights rule that speech should be free can be formulated, implemented and enforced with varying degrees of robustness.
- The rule can be limited to negative action (e.g. the prohibition of interference with speech) or can be extended to forms of positive action.

The human-rights rule that speech should be free is not absolute. Even the most robust regulatory process will permit exceptions. This raises the question of the balance between the free-speech rule and other

human-rights standards. Although not all restrictions of the free-speech rule will erode the effective defence of media independence, they invariably imply the risk of abuse and may thus facilitate censorship. The analysis will have to distinguish between restrictive measures that can be justified with due regard for the free-speech rule and those restrictions that unduly undermine this rule.

In all countries, media regulation addresses the tension between the state and civil society, on the one hand, and the tension among members of civil society, on the other. Civil society will tend to strive towards a maximum of freedom to express different ideas and opinions, whereas the state will seek to control this freedom somewhat in its ambition to protect such standards as the integrity of the state, public order and national security. Among the members of civil society, too, are found different perspectives as to the degree of free speech. Journalists, for example, will often claim more freedom of expression than the people they report on.

The present study deals with media regulation both in the sense of the legal framework (with provisions that are legally enforceable, such as constitutional guarantees), and the self-regulatory regime (with rules that depend on voluntary compliance, such as in professional codes of conduct). The analysis focuses on regulation in the sense of regulatory instruments. A more comprehensive analysis would also have to take into account the actual function of these instruments as reflected in the jurisprudence that emerges from the jurisdiction of courts and the judgements of self-regulatory bodies. The relative strength of legal and self-regulatory regimes depends not only on the legal status of the rules, but also on the force of procedures and institutional mechanisms for rule enforcement. This kind of material falls outside the logistical possibilities of the present study, but it would result in an incomplete comparison because several of the selected countries have so far only had limited experience with the implementation of their regulatory instruments.

LIMITS OF REGULATION

Meeting the formal conditions for independence is not an absolute guarantee that the media are also free and pluralistic. The media may indeed have a very broad regulatory freedom and – for a variety of reasons – not use it effectively. Countries may also experience an effectively large degree of freedom for the media while scoring low on the formal regulatory protection of media independence. The clear conclusion is

that regulatory instruments alone are an inadequate indicator of media independence.

Constitutions may provide robust protection for freedom of expression but are of little significance if governments do not respect them. The effectiveness of media regulation will depend very much on how the division of political power operates in reality. Will presidential decrees, for example, overrule existing legislation? In some countries, the executive branch of government effectively erodes constitutional guarantees through a series of administrative decrees that limit the circulation of information and access to official sources of information. Governments may in fact monopolize the means of public information or the technical resources to operate them. Constitutional protection may not prevent strong economic pressures from being exerted on the mass media through advertisers or sponsors. Governments may refuse editors and journalists accreditation to press conferences or may freeze their bank accounts. Media independence may also be seriously threatened when journalists are beaten, kidnapped or killed, and governments refuse to investigate such cases. Government pressures may lead to the dismissal of journalists who are about to expose illegal acts by governments. In many countries, local authorities may use public subsidies, control of printing facilities and charges of libel to censor and manipulate the mass media.

On the other hand, there may also be the potential of severe limits to public speech which are, however, not enforced by governments or courts. In some countries there are laws against the defamation of the state and the president, but courts may give suspended sentences only or presidents may decide to pardon the defendants. There are also situations in which the government may respect the legal guarantees of media independence, but with increasing privatization and commercialization of the mass media, a small number of owners may control most means of public information and limit the variety of viewpoints available to the public. It should also be noted that the concept of professional self-regulation is understood and appreciated in different ways in different societies. It is perceived by some as a supportive mechanism for professional independence but by others as a nuisance, not to say a hindrance.

Bearing these qualifications in mind, this study is based on the premise that the degree of robustness of existing regulatory regimes makes a difference to the protection that the media require against interference with editorial content. As the regulatory regime weakens,

the chances increase that the space for freedom and pluralism will be under greater threat.

The regulatory regimes in the selected countries are assessed in terms of their strengths and weaknesses with a view to developing a checklist that may be useful in preparing or reviewing media regulation. The list is intended as a tool for critical thinking about the provisions that a national media regime requires if the political purpose is to promote the independence of the information media. The list asks the user to go carefully through the present provisions in law and self-regulation and to assess how adequate these are in the light of the protection of editorial independence. The detailed implementation of such provisions will obviously have to follow the legal traditions and systems of different countries.

I. Methodology

A comparative approach

The significance of media independence reaches beyond national frontiers. The growing internationalization of the media compels the international community to seek adequate responses to this issue. The commitment of many nations to international legal obligations also makes it compulsory to monitor the national fulfilment of these obligations and, whenever necessary, to correct them. This implies the need to take a comparative look at the various national regulatory approaches to media independence. The present comparative analysis will bring out both similarities and differences.

It is obvious that different countries – given their distinct political and legal traditions and systems – will find different accommodations for the protection of media independence. Also, the self-regulatory regimes in different countries vary in the degree of support they provide for media independence. The method of comparative analysis used in the current study takes the following steps: selection of national situations for comparison; identification of regulatory regimes for comparison; identification of indicators in these regimes pertinent to the issue; collection of information about the selected regimes; description of the selected regimes on their own terms; comparison of all regimes in terms of the selected elements and establishment of similarities and differences; critical assessment of regimes with a view to developing a checklist for regulations to protect media independence.

SELECTION OF NATIONAL SITUATIONS FOR COMPARISON

The study offers a comparative analysis of media regulation in both established democratic societies and emerging democracies. The

selected countries represent different legal traditions. Their media regulation is determined by a common-law tradition, a civil-law tradition (such as in the continental, non-socialist European countries), or the legacy of a socialist-law tradition which for the nations of Central and Eastern Europe is the framework within which the transition to a new democratic order takes place. This transition draws mainly on the continental European civil-law tradition.

These legal traditions have distinct features not only between each other but also within themselves. The family of civil-law countries, for example, can be divided according to French, German, Scandinavian and Spanish/Portuguese/Italian legal traditions.

To represent the common-law approach, the following countries were selected: Canada, the United Kingdom and the United States of America.

To represent the civil-law approach, the following countries were selected: for the French tradition, France and the Netherlands; for the German tradition, Germany and Austria; for the Scandinavian tradition, Denmark and Sweden; and for the Spanish/Portuguese/Italian tradition, Spain.

To represent the transition to democracy, the following countries were selected: Belarus, the Czech Republic, Estonia, Hungary, Lithuania, Poland, Romania, the Russian Federation and Slovenia.

IDENTIFICATION OF REGULATORY REGIMES FOR COMPARISON

For all countries, media regulation is analysed in terms of both the legal regime and the self-regulatory regime.

IDENTIFICATION OF INDICATORS IN THESE REGIMES

In the national situations selected the indicators described below were identified as relevant to the issue of media independence.

Protection against interference

The basic regulatory instrument to address this protection is the national Constitution. All Constitutions provide for freedom of expression as the essential standard in the maintenance and development of democratic societies. However, the constitutional guarantee of freedom from interference is stated in different ways. Some Constitutions use a

positive statement, while others use a negative formulation. In some Constitutions freedom of expression is an absolute norm, in others the norm is qualified.

Since the exercise of the right to freedom of expression may clash with important national interests (such as national security or public health) or individual rights (such as the right to privacy), most Constitutions recognize limitations on the freedom of expression. It is particularly important to describe and compare such ‘qualifiers’ that justify limitations on constitutional guarantees. If qualifiers are very general and open to different interpretations, there is a serious risk that the very core of the provision is under threat. Sweeping and general exceptions leave a large degree of discretion for government officials and courts of law to judge between permissible and non-permissible expressions. Therefore, the degree of elasticity of qualifiers is used as an important indicator for regulatory robustness. Less elasticity means that limitations are stated in limited and specific ways. Qualifiers are ‘elastic’ where essential criteria for limitation (such as ‘morality’) are not defined in the relevant legal text.

Protection against interference can also be addressed by common media statutes. The explicit presence or absence in such statutes of provisions for the protection of the independent operation of the media is used as an indicator.

In the self-regulatory regime the rejection of outside interference by professional ethical codes is used as an indicator.

In the self-regulatory regime the adoption of clauses of conscience in professional ethical codes is used as an indicator. Clauses of conscience imply that journalists have the right to refuse an assignment if it breaches their professional ethics or violates their moral beliefs.

In the self-regulatory regime the common use of editorial statutes by media institutions is used as an indicator. Editorial statutes regulate the internal relationships between editorial staff, advertising and commercial departments, and boards of directors. They generally provide as minimum standards of media independence that:

- the editorial staff controls the moral and intellectual capital of publishing houses and broadcasting stations;
- the editorial council has the right to be consulted on decisions which affect the appointment and dismissal of the editor-in-chief, the definition of editorial policy and content, personnel policies, and changes of tasks of journalists in the editorial department;

- the editorial council has the right to be heard on matters of grievance concerning editorial policy;
- the editorial staff has the right to prevent interference by management or by third parties in editorial content.

Statutory limitations on freedom of expression

All countries have regulatory instruments that restrict the information content that the media can disseminate. Such limitations relate to the interests of the state (national security, public order, safety), important social values (racism, obscenity), and individual rights (defamation, privacy).

Most countries, for example, enact laws that aim at the protection of the individual against unjustified defamation. Such laws can obstruct media independence when, in balancing of free-speech provisions and anti-defamation provisions, the emphasis on the latter is too great. Defamation law and jurisprudence can have a ‘chilling’ effect on media independence if the burden is primarily on the defendant, the law offers inadequate defence, and the risk of severe punishment (prohibitive compensatory payments) inclines editors towards the caution of self-censorship. In a landmark decision of the United States Supreme Court (*New York Times v. Sullivan*, 1964) the US libel law was constitutionalized. This means that the highest priority is given by courts to constitutionally protected free speech except in clear cases of intentional harm to the targets of a publication. This also implies that courts will generally accept a ‘good faith’ defence on the part of journalists, especially in cases where plaintiffs are public persons. It could be argued that such ‘constitutionalization’ is particularly necessary in countries where existing laws on defamation do not provide a reasonable balance between freedom of expression and the protection of individual rights.

Constitutionalization, however, is not helpful when – and this prevails in most countries – the constitutional provisions can only be applied in disputes involving state bodies. Related to regulation on defamation is legislation on ‘hate speech’: laws that prohibit group libel, harassment and incitement. Such regulation is found in criminal codes (with criminal sanctions), civil codes (providing for civil remedies), anti-discrimination acts, the ratification of international agreements, and professional self-regulatory instruments. Rules on ‘hate speech’ can be abused to limit media independence and the question is whether indeed the justification of banning ‘hate speech’ is used to suppress the views of

one side in a conflict, or to silence critics of the government. The indicator used here is the elasticity of the statutory limitations to freedom of expression.

Access to public information

A maximum degree of access to publicly held records is vital to media independence. One indicator here is whether media claims to such access are secured by constitutional provision.

In some countries access to information is provided in the Constitution. If this is not the case, the question is whether legal claims to maximum public access to official records and documents have been articulated in special acts. An important question here is whether such acts limit access to information in such ways as to hinder media independence. This can be the case when the exemptions are too elastic. National security, in particular, has been invoked to justify restrictions on providing access to public information. An indicator is whether judicial review is provided in case of denial of requests for public information.

Protection of professional secrecy

Media independence can be threatened when editors are forced to identify their sources. This may unduly restrict media independence and the indicator is whether special regulatory provisions (in the Constitution, in statutes, in self-regulation) are in place that recognize the need for professional secrecy. Another important indicator is whether such provisions allow only courts to compel journalists to reveal their sources.

Public support for media pluralism

Do special statutes provide for affirmative action for media independence? In addition to the negative rights (no interference in free speech) that are provided in most Constitutions, some countries have also enacted affirmative legislative instruments to support pluralism and autonomy of the mass media. The indicator is whether national legislation recognizes such measures as government subsidies to media that cannot independently survive, or other direct or indirect forms of assistance or concessionary tariffs such as tax, post or telephone.

Control of ownership

Since media independence can be threatened when the media become too strongly concentrated in the hands of a few owners, measures to

protect pluralism and autonomy may also address the issue of mass-media ownership and the concentration of ownership to the extent that monopoly positions are created. Media independence can come under threat when legal provisions restrict media ownership through registration requirements that imply government approval or through limits on foreign ownership.

International obligations

Although there is no explicit reference in international law to media independence, there are various international and regional instruments that provide for the protection of freedom of expression and information. These instruments provide for the right to freedom of expression, the limitations on this right, the legitimacy of these limitations, and legal recourse against violations of these provisions. The instruments pertinent to the present study are:

- the Universal Declaration of Human Rights (1948)
- the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol (1966)
- the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1950)
- the American Convention on Human Rights (1969).

The crucial indicator is whether governments have ratified the relevant treaties and adopted the provisions on individual complaints and remedies such as provided in the First Optional Protocol to the ICCPR or Article 25 of the European Convention and whether these provisions have been incorporated in domestic legislation. National legal orders recognize different approaches to the status of international treaty provisions. In the present international legal order, the status of international treaties derives from (constitutional) provisions in the municipal legal order. In some countries, ratified treaties take precedence over domestic statutes and can be applied by domestic courts without further legislative measures. Examples in the sample include Spain and the Netherlands.

In other countries, ratified treaties are also directly enforceable but a requirement is that their provisions are considered self-executing. This means that such provisions can be applied without further legislation and that they are specific and mandatory. Self-executing provisions imply that individuals can directly appeal to treaty provisions, and their application can take place without complementary legal measures by domestic governments. This is the case in France and the United States.

There is however an important difference in that France considers most treaty provisions self-executing, while the United States declared at the time of its ratification of the ICCPR that it did not deem its provisions to be self-executing.

In some countries both the ICCPR and the ECHR have the status of domestic statutes (Germany), whereas in other countries only the ECHR has this status (Austria). In many countries (examples include Canada, Denmark and Sweden) special legislation must endorse treaty provisions before they can be applied by the courts. Some countries that have not incorporated either the ICCPR (for example, Canada) or the ECHR (for example, the United Kingdom and Sweden) maintain that domestic statutes should follow the standards of international law. There are however important differences in actual jurisdiction by courts. Courts in Sweden, for example, have shown more regard for treaty provisions than courts in the United Kingdom.

Freedom of expression

- *Universal Declaration of Human Rights*
Article 19 states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

- *International Covenant on Civil and Political Rights (ICCPR)*
Article 19 provides:

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

- *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)*
Article 10 states:

- (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

Methodology

- *American Convention on Human Rights*

Article 13 provides:

(1) Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

(3) The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or implements or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

Limitations on the right to freedom of expression

- *Universal Declaration of Human Rights*

Article 29 provides:

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

- *International Covenant on Civil and Political Rights (ICCPR)*

Article 19 provides:

(3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but they shall be such as are provided by law and are necessary: (a) for respect of the right and reputation of others; (b) for the protection of the national security or of public order, or of public health and morals.

Article 20 provides:

(1) Any propaganda for war shall be prohibited by law.

(2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 12 provides:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 11 provides:

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

- *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)*

Article 10 provides:

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 8 provides:

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

Article 6 provides:

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

- *American Convention on Human Rights*

Article 13 provides:

(2) The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law and be necessary in order to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

(5) Any propaganda for war and any advocacy of national, racial or religious hatred that constitute incitement to lawless violence or any other similar illegal action against any person or group of persons on any grounds including those of race, colour, religion, language or national origin shall be considered as offences punishable by law.

Article 11 provides:

(2) No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or unlawful attacks on his honour or reputation.

Permissible limitations

For the legitimacy of limitations, the international instruments propose a threefold test:

1. Limitations must be provided by law.
2. Limitations must serve purposes expressly stated in the treaties.
3. Limitations must be shown to be necessary in a democratic society.

Legal recourse in case of violations

- *Optional Protocol to the ICCPR* provides in Article 1:

A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the United Nations Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant . . .

- *European Convention for the Protection of Human Rights and Fundamental Freedoms* provides in Article 25:

(1) The Commission may receive petitions addressed to the Secretary-General of the Council of Europe from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.

COLLECTION OF INFORMATION

In order to describe the selected indicators the following regulatory instruments were consulted in the selected countries:

In the legal regime:

- Constitutional Provisions on Freedom of Expression.
- Special Media Statutes (e.g. press and/or broadcasting laws, statutes on public support for media pluralism and autonomy).
- Freedom of Information (Access to Information) Statutes.
- Legal provisions relevant to media independence in general statutes (e.g. civil and/or criminal codes).
- International obligations.

In the self-regulatory regime:

- Professional codes of conduct.
- Editorial statutes.

For the composition of country profiles, primary data were collected with the help of a list of questions [Appendix A] that was sent to resource persons and institutions [Appendix C]. Data could also be found through a variety of secondary sources; most of these are listed under the regulatory instruments that were consulted for each country and in Appendices B and D. The present data are by no means definitive and the data collection should be continued and expanded.

DESCRIPTION OF THE SELECTED REGIMES

For each of the selected countries a common regulatory profile is used:

1. The Constitution
 - 1.1. Freedom of expression
 - 1.2. Access to public records
2. Media legislation
 - 2.1. Outside interference
 - 2.2. Limitations on media content
 - 2.3. Professional secrecy
3. Statutes limiting freedom of expression
 - 3.1. State interests and public order
 - 3.2. Social values
 - 3.3. Individual rights
4. Access to information legislation
5. Public support for media independence
6. Media ownership

7. Self-regulation
 - 7.1. Professional code of conduct
 - 7.2. Editorial statutes
8. International obligations
9. Regulatory instruments consulted

ASSESSMENT OF REGULATORY REGIMES

The regulatory regimes in the selected countries are assessed in terms of their strengths and weaknesses with a view to developing a checklist that may be useful in preparing or reviewing media regulation. The list is intended as a tool for critical thinking about the provisions that national media regimes require if the political purpose is to promote the independence of the information media. The detailed implementation of such provisions will obviously have to follow the legal traditions and systems of different countries.

2. Selected countries

Austria

1. THE CONSTITUTION

1.1. *Freedom of expression*

The fundamental legal rules governing the media are the constitutional guarantees for freedom of opinion and the press in the *Staatsgrundgesetz* (Basic Law) of 1867 (which provides in Article 13: ‘Everyone has the right within the limits of the law freely to express his opinion by word of mouth and in writing, print or in pictorial representation. The press may be neither subjected to censorship nor restricted by the licensing system. Administrative postal distribution vetoes do not apply to inland publication’), the International Covenant on Civil and Political Rights of 1966, which guarantees the unhindered procurement of information irrespective of national borders, the right to free expression of opinion under the European Convention on Human Rights and Fundamental Freedoms of 1950 (as constitutional provision since 1964), the prohibition of censorship under a Decision of the Provisional National Assembly of October 1918, and the Federal Constitutional Act on Guarantees for the Independence of Radio and Television (1974), which defines the term ‘broadcast’ (radio and television) and lays down general conditions to be complied with, and the constitutional guarantees for the freedom of the arts (1982). These provisions also form the legal basis for the Media Act of 1981 (Federal Act on the Press and other Journalistic Media, *Federal Gazette*, No. 314/1981).

Prior restraints are unconstitutional (Article 13 of the 1867 Basic Law). Acts of Parliament that restrict freedom of the press are subject to judicial review by the Constitutional Court. This Court is the final arbiter on the constitutionality of restrictions on freedom of communication.

1.2. *Access to public records*

The Federal Constitution Law, Article 20 (4), provides that ‘All functionaries entrusted with *Bund*, *Länder* and *Gemeinde* administrative duties of other public law corporate bodies shall impart information about matters pertaining to their sphere of competence in so far as this does not conflict with a legal obligation to maintain secrecy; an onus on professional associations to supply information extends only to members of their respective organizations and this inasmuch as fulfilment of their statutory function is not impeded.’

Access may be restricted by such provisions as the protection of official secrets (Article 20 (3)). The details are regulated by the so-called *Auskunftspflichtgesetz*, *Federal Gazette*, No. 287/1986, which regulates access of the general public to information held by public authorities.

2. MEDIA LEGISLATION

2.1. *Outside interference*

The media regulatory framework is based on the Media Act of 1981 which replaced the Press Act of 1922. The Act covers all the media. The main purviews of the law are binding provisions for owners and operators of the media (imprint, disclosure and identification requirements), penal provisions (journalists’ duty to exercise due care) and sanctions (such as the provision that seizures require a court order or judgement), provisions governing the exercise of the profession of journalist, and above all provisions regarding protection of the rights of individuals, i.e. protection of citizens against defamation, being made ridiculous or slandered in one of the media, including the right to claim damages, and prohibition of making television or radio recordings or films at public court hearings. The law also governs the right of reply, by which the victim of a defamatory statement has to be given an opportunity to publish a counter-statement in the same medium and before the same audience.

The law also has provisions on the freedom of the press such as protection of the editor’s privilege and protection of sources. In Article I, Section 2, of the Act there are provisions on the protection of the journalistic profession. These take the form of a clause of conscience (Section 2, paragraph 2 (1)) by which all media employees have the right to refuse to contribute to media products on the grounds of conflict with fundamental principles of journalism and by reference to the possibility

of concluding editorial statutes between media owners and editorial representatives (Section 2, paragraphs 5 (1), (2), (3), (4)).

The importance of broadcasting is recognized by special constitutional provisions on its independence. The Parliament adopted in 1974 a Federal Constitutional Act on Guarantees for the Independence of Radio and Television under which broadcasts may be made only on the basis of a special Broadcasting Act. This Act, which defines the duties and institutional aspects of the Austrian Broadcasting Corporation (ORF), provides for the independence of public broadcasting. Members of the Board of Trustees of Austrian Broadcasting are not subject to external directives. In Chapter III of the Act on the status of programmers employed by the ORF, Sections 17–19 provide for journalistic independence, special representatives of journalists and editorial statutes. The *Redakteurstatut* protects the independence and individual responsibility of all programme makers, as well as the right of all journalistic personnel to exercise the freedom of the journalistic professions performing the duties imposed on them.

The ORF is obliged by law to observe the independence and responsibility of its programme-makers and the freedom of the professions of journalists. A journalist who is given notice of separation because of his or her activity has the right of contestation.

2.2. *Limitations on media content*

The Media Act provides for the protection of privacy in Article I, Section 3, paragraphs 7 (1), (2) and 7a (1), (2), (3). The Broadcasting Act concerning the responsibilities and establishment of Austrian Broadcasting as amended in 1987 contains provisions on content of programmes (Section 2/2a). Section 2 of the Act provides that Austrian Broadcasting offers comprehensive information to the general public concerning all important political, economic, cultural and sports issues. Public broadcasting is intended to constitute a forum for freedom of expression and opinion; the service has to offer impartial and objective news and information reflecting a plurality of views.

A high standard of quality is expected of all radio and television programmes concerning the arts, public education or national politics. Broadcasts must not contain any hatred on the grounds of race, sex, religion or nationality. The Act contains programming principles in Section 4 (1) on requirements of objectivity and plurality, (2) adequate representation of public, cultural and economic life in their area of dissemination, and (3) prohibition of pornographic or violence-extolling

material. In July 1993 the National Council (with the votes of the two government parties) adopted a Regional Radio Act (Federal Act to Regulate Regional and Local Radio, *Federal Gazette*, No. 506/1993) which authorized the simultaneous existence of radio programmes by the public ORF and private stations that have broadcast licences. The private programmes must be objective and offer a variety of opinions that reflects public cultural and economic life in the area of transmission (Section 4 (1)). The main social and political groups and organizations must be given an opportunity to voice their opinions. Programmes must not glorify violence or include pornographic material (Section 4 (2)).

2.3. *Professional secrecy*

Article I, Section 5, paragraph 31, of the Media Act supports the confidentiality of journalists' sources. Media owners, publishers and editors have the right to refuse to answer questions that a court may ask them about the sources of their information. The Act also prohibits – except by special court order – the surveillance of the telecommunication traffic of a media enterprise.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

The legitimate interests of public order such as national and public security, avoidance of crime and protection of health, are shielded by the penal system principally laid down in the *Strafgesetzbuch* (Criminal Code, *Federal Gazette*, No. 60/1974 as amended 622/1994). In connection with the protection of state interests the Criminal Code provides punishment for public disgrace of the state in Article 248. The Code also provides rules against the defamation of public authorities (Article 116) and for cases of treason or sedition (Article 242). It also permits restrictions in cases of assaults on public peace (Articles 274–87), the spreading of false rumours (Article 276) and incitement to offences against ethnic and religious groups (Article 283). All these restrictions are repressive measures since preventive censorship is unconstitutional.

3.2. *Social values*

The protection of important social values is articulated in the provisions of the Criminal Code that address incitement to violent acts against eth-

nic or religious groups and propaganda for national socialist activities (Article 283). To protect public morality there are provisions on pornography in the Criminal Code (Articles 218–20) and in the Act on Pornography (*Pornographiengesetz*, as amended 1988/599). Provisions on defamation are found in criminal and civil law.

3.3. *Individual rights*

For the protection of personal honour and reputation there are provisions on defamation in the Criminal Code (Article 111). The Article renders public accusations that defame other individuals a criminal offence punishable with imprisonment of up to one year. In case the court finds for the plaintiff there can be damage compensation to a maximum of S100,000 (approximately \$US9,000). In civil law (Civil Code, Article 1330) damage awards can be very high (up to S1 million) but the insulted person cannot claim for non-material damage and has to prove the falsity of the statement. In defamation cases press defendants only have to prove that they fulfilled the requirements of journalistic care. Austrian libel law is ‘constitutionalized’, which implies that cases will be balanced in terms of freedom of information and principles of democracy. The Media Act provides for the protection of privacy in Article I, Section 3, paragraphs 7 (1), (2) and 7a (1), (2), (3). Article 7 prohibits disclosures about a person’s intimate sphere (sexual life, health, family relations) when they imply an undesired exposure to the public without a strong public interest defence. Article 7a protects the victims and relatives of criminal offenders – and even these – by prohibiting the reproduction of their names, photos and addresses without their consent. Protection of privacy is also covered by Article 76 of the Copyright Act of 1936 (*Federal Gazette*, No. 111/1936) which provides that it is inadmissible for the press to distribute pictures of a person when such publication is a violation of legitimate rights.

4. ACCESS TO INFORMATION LEGISLATION

There is no special ‘freedom of information’ act. However, Article 20 (4) of the Federal Constitution provides a right of the public to information held by public authorities. Editors may also invoke the constitutional right to ‘freedom of communication’ if they are prevented from getting information by acts of the police or other public authorities. Also, in 1973 the Federal Ministries Act was amended to provide limited right

of access to public documents. The amendment proposed that a minister has the duty to give out information, but no statutory right of access was enacted.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

The government administers a promotion system giving subsidies to all daily newspapers. The aim is to promote the survival of as many newspapers as possible and maintain a wide range of editorial opinions. There are also reduced postage rates for newspapers and subsidies to printing enterprises. Public support is provided through the Press Promotion Act of 1985, amended in 1992, in particular the special subsidy for saving media pluralism (promoting daily newspapers), and the Periodical Promotion Act of 1984, amended in 1991 (promoting periodical publication in the area of politics and culture). Public support is also provided for film production – through the Film Promotion Act of 1981 (amended in 1993), book publishing and literature. There are also several public support initiatives undertaken by regional governments.

6. MEDIA OWNERSHIP

The Media Act (Article I, Section 4, paragraph 25) obliges publishers to publish an annual account of ownership and interconnections with other media companies. In 1993 specific provisions were introduced on media mergers. They can be prohibited if they constitute a dominant market position. They should be notified when the annual turnover of the new company exceeds ECU1 million. In the Regional Radio Act of 1995 there were limits on ownership in Section 10 which provided that publishers of daily or weekly newspapers cannot own broadcast stations, although they can have a limited percentage (26 per cent) of shares or voting rights. In 1995 this Act was cancelled by the Supreme Court. A new law was expected to pass Parliament subsequently. Provisions on limits of ownership would remain the same. In the draft law on cable and satellite television, paragraph 5 provides that publishers of daily or weekly newspapers and radio and television broadcasters should be limited to ownership of 26 per cent of the shares of a private broadcaster in the country.

7. SELF-REGULATION

7.1. *Professional code of conduct*

The Austrian Press Council adopted principles governing publicistic work in the form of a Code of Honour of the Austrian Press on 31 January 1983. The Code explicitly rejects interference by outsiders. Article 2 states: 'Interference by outsiders in the contents or form of information is prohibited.'

The Press Council was founded in 1961 by the Austrian Journalists Union and the Association of Austrian Newspaper Publishers. The Council – as a system of voluntary self-regulation – has no power of enforcement. The only sanction is the publication of a judgement. Such publication cannot be enforced. The Council aims to ensure that the press fulfils its professional duties and that the freedom of the press is not violated. The Council defends the interests of the press before Parliament, the administration and the public. The Press Council was reformed in 1996 and is now preparing agreements with publishing houses on the voluntary publication of its judgements.

7.2. *Editorial statutes*

In Austrian Broadcasting the editorial statute (between representatives of the journalists and the ORF) regulates the protection of professional freedom, journalists' rights, their participation in decisions relating to journalists and an arbitral authority.

8. INTERNATIONAL OBLIGATIONS

Austria has ratified the International Covenant on Civil and Political Rights (in 1978) and its First Optional Protocol (in 1988); the European Convention on Human Rights and Fundamental Freedoms (in 1958, with deposition of the declaration on the competence of the European Commission of Human Rights, Article 25 (1) that year).

The European Convention on Human Rights and Fundamental Freedoms has been incorporated into domestic constitutional law. This means that everyone can rely on the protection provided by the Convention and that courts must directly apply the obligations imposed by the Convention. Individuals can file complaints against the government with the European Commission of Human Rights.

The International Covenant on Civil and Political Rights (ratified

in 1978) has not been incorporated into domestic law and is not directly applicable. Through ratification of the First Optional Protocol in 1987, Austrian citizens have the right to file complaints against the government with the United Nations Human Rights Committee.

9. REGULATORY INSTRUMENTS CONSULTED

- Federal Constitution
- *Bundesgesetz über die Presse und andere publizistische Medien*
- *Bundesgesetz über die Aufgaben und die Einrichtung des Österreichischen Rundfunks*
- Press Promotion Act
- Periodical Promotion Act
- Access to Information Act
- Criminal Code
- Civil Code
- Act on Pornography (*Pornographiegelgesetz* BGB1, as amended 1988/599)
- Principles Governing Publicistic Work by the Austrian Press Council

Belarus

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Belarusian Constitution adopted on 15 March 1994 provides for freedom of speech and the media. Article 33 states: 'Every person is guaranteed freedom of opinion and conviction and has the right to freely exercise it.' The same article provides that monopolization of mass media by the state, public association or individuals is prohibited. The article also expressly prohibits censorship. Restrictions of the right to freedom of expression are governed by Article 23 (1) which states: 'Restriction of personal rights and liberties shall be permitted only in the instances specified in law, in the interest of national security, public order, protection of the morals and health of the population, and the rights and liberties of other persons.'

1.2. *Access to public records*

Article 34 of the Constitution guarantees to all citizens of Belarus the right to receive, retain and disseminate complete, reliable and timely information on the activity of state bodies, public associations, political, economic and international life and the state of the environment. In paragraph 2, Article 34 states: 'State bodies, public associations, and officials shall afford citizens of the Republic of Belarus an opportunity to familiarize themselves with material that affects their rights and legitimate interests.' It is contested whether this constitutional provision does indeed guarantee the media free access to government information.

2. MEDIA LEGISLATION

2.1. *Outside interference*

At present Belarus has no media law. A Draft Law on the Press and other Mass Media is under discussion. This draft law was first submitted to Parliament in late 1990 by the Commission of Glasnost, Mass Media and Human Rights. It was not until autumn 1993 that the draft was adopted at the first reading.

At the same time, the Draft Law on Television and Radio Broadcasting proposed by the State Television and Radio Company was submitted to the Ministry of Information. The proposed Press Law contains provisions on freedom of expression in Article 3 which give the citizens of Belarus the right to found mass media freely, and the right to seek, obtain, use and distribute information without obstacle. It can be argued that the limitation to citizens of the Republic contravenes international legal provisions that grant the right to freedom of expression and information to everyone. Article 3 states that 'the State promotes creative, economic and financial independence of the media, in particular, those media which are active in the formation of national consciousness and enrich the spiritual potential of the people'. In Article 4 the inadmissibility of media censorship is stated. The article however permits censorship of a text or a broadcast programme by the state official who was interviewed for it.

The articles on registration of the mass media open the possibility of prior restraint by state officials as the government is provided the right to refuse the registration of a media enterprise. The present draft (in Article 16) gives the state the authority to close down media enterprises when they violate the law of the land. The Draft Law on Broadcasting extends state control beyond the state media by saying (in Article 2) that 'the provisions of the Law extend to all types of television and radio bodies, their agency affiliation notwithstanding'. Both draft laws are based upon the 'Concept for Developing Informational Space in the Republic of Belarus' as proposed by a Task Force that included the Ministry of Information, the state media and the Department of Journalism of the Belarusian State University. The document was approved by the Ministry of Information and published in 1993. The preamble of the 'Concept' states that 'at its foundation lies the idea of freedom of mass media as one of the main guarantees of human freedom and democratic development of society'. Media freedom is however mainly interpreted from the perspective of state control over these.

2.2. *Limitations on media content*

Article 5 contains restrictions on media content. It prohibits in very broad wording ‘hate speech’ (instigating national, religious and social intolerance or conflicts), the publication of state secrets, the production of pornographic materials, and interference with the honour and dignity of citizens. The article also prohibits the use of the mass media to call for the overthrow of the government or the violation of the sovereignty and integrity of the Republic. Article 43 refers to the journalist’s duty to provide objective information and Article 45 prohibits the dissemination of rumours under the guise of truthful information.

2.3. *Professional secrecy*

Articles 41–5 deal with the rights and duties of journalists. They contain no provisions on editorial independence or professional privilege. There is reference to a clause of conscience but in the sense that journalists are obliged to refuse certain tasks.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

Restrictions on media content on the basis of legitimate public and national interests are permitted through provisions in the Constitution, the Criminal Code and the Civil Code.

3.2. *Social values*

Restrictions on media content on social and moral grounds can be defended with reference to the Constitution, the Civil Code and the Draft Law on Broadcasting.

3.3. *Individual rights*

The Constitution guarantees the protection of privacy in Article 28 (on Privacy, Secrecy of Communication) as follows: ‘Everyone shall be entitled to protection against unlawful interference with his private life, including encroachments on the privacy of his correspondence and telephone and other communications, and on his honour and dignity.’ Provisions on defamation are contained in the Civil Code. The law does not distinguish between private and public actors or between private matters or issues of public interest. As a result, critical publications about government officials may lead to defamation suits. The law also extends

defamation claims beyond the injured person to relatives and members of defamed organizations. The law does not require proof that actual injury was caused. The defamation provisions constitute a strict liability tort which means that the defendant is liable irrespective of whether he or she had the intention to injure the plaintiff's reputation. The only requirement is that the defamatory statement be false and cause injury. The Criminal Code (Article 154) contains provisions against defamatory statements. It states that 'intentional dissemination of information defaming honour and dignity of citizens is punishable by a fine'.

4. ACCESS TO INFORMATION LEGISLATION

Article 34 of the Draft Media Law on the right to obtain information provides the citizens of Belarus with the right of access to information. Access can be refused (Article 35) when information pertains to state, commercial or other secrets specifically protected by law. There are some provisions on access to information in the Law on Presidential Elections which was adopted in March 1994. Article 4 of the Law guarantees the media access to all meetings connected with the elections and requires the Election Commission, government bodies, political parties and all other organizations involved in the presidential elections to make the necessary information available to the media.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

Newspapers receive state subsidies. According to the government, this implies that these media, far from being part of the free press, are subject to state control. According to the 'Concept for Developing Informational Space in the Republic of Belarus' (1993), the media receiving public support are those 'which cover topical public, political, social, economic, scientific and technological issues from the standpoint of state interests, contribute to building up accord within society, and abstain from extremist statements that are harmful to the spiritual and moral health of the people'.

6. MEDIA OWNERSHIP

The Law on the Press and other Media prohibits the existence of a press monopoly. Article 3 states that 'an individual or a legal entity cannot establish or control more than five per cent of national sociopolitical

and other mass media'. However, the government controls the press de facto through the ownership of most printing and broadcasting facilities and the distribution of the print media. All media must be registered with the government and registration requirements can be used as instruments of censorship.

7. SELF-REGULATION

7.1. *Professional code of conduct*

No specific provisions.

7.2. *Editorial statutes*

No specific provisions.

8. INTERNATIONAL OBLIGATIONS

Belarus ratified the International Covenant on Civil and Political Rights (in 1976) and the First Optional Protocol (in 1992). The protection that international instruments provide is not directly applicable in national courts.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution of 1994
- Draft Law on the Press and other Mass Media
- Civil Code

Canada

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Canadian Constitution encompasses the unwritten conventions (such as parliamentary democracy, the rule of law, and freedom of the press) that were inherited from the United Kingdom, the Constitution Act of 1867 and the Constitution Act of 1982. The Act of 1867 was the essential constitutional text until the adoption by the Canadian Parliament of the Act of 1982. This Act incorporated provisions on the fundamental rights of Canadians that were articulated in the Canadian Charter of Rights and Freedoms. Section 2 of the Charter provides that ‘Everyone has the following fundamental freedoms: freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.’ This section applies to the Federal Government, the provinces and the territories.

Part I, Article 1, of the Constitution Act allows the government to impose reasonable limits on free speech: ‘The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.’ The Supreme Court has the final judgement in constitutional matters. It judged in a 1986 case (*Retail, Wholesale and Department Store Union, Local 580 v. Dolphin Delivery Limited*) that the Charter cannot be applied to private disputes. The implication is that when a non-state body interferes with freedom of expression, there is no legal remedy.

1.2. *Access to public records*

No special provisions.

2. MEDIA LEGISLATION

2.1. *Outside interference*

Canada does not have a comprehensive press act. For the different aspects of radio and television broadcasting there is the comprehensive Broadcasting Act of 1991. Section 2.3 of the Act states: 'This Act shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcast undertakings.'

2.2. *Limitations on media content*

An important limitation on media content is provided by Section 3.1 of the Broadcasting Act which reads: 'It is hereby declared as the broadcasting policy for Canada that . . . the programming originated by broadcasting undertakings should be of high standard.' And, in the same section, ' . . . the programming provided by the Canadian broadcasting system should . . . provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern . . .'. The 1986 Radio Broadcasting Regulations provide, for example, that (Section 3) 'A licensee shall not broadcast: (a) anything in contravention of the law; (b) any abusive comment that, when taken in context, tends or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability; (c) any obscene or profane language; (d) any false or misleading news; or (e) any telephone interview or conversation, or any part thereof, with any person unless: (i) the person's oral or written consent to the interview or conversation being broadcast has been obtained prior to the broadcast, or (ii) the person has telephoned the station for purposes of participating in a broadcast.' Both the Canadian Broadcasting Corporation and private broadcasters have adopted 'self-regulatory' codes that address issues such as sexual and ethnic stereotyping, advertising directed at children, and violence. The Canadian Radio-Television Telecommunications Commission (CRTC) requires broadcasters to be licensed to follow the pertinent industry codes in their areas of transmission and programming.

2.3. *Professional secrecy*

No special provisions.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

In a variety of statutes limitations on media content are provided in order to protect the interests of the state, important social values and the rights of the individual.

3.1. *State interests and public order*

State interests are mainly defined in terms of the protection of national security, public order, and judicial proceedings. National security interests are addressed in the Emergencies Act (1988) and the Official Secrets Act (1985). Public order interests are addressed in the Criminal Code, in the sections on criminal and defamatory libel. The protection of judicial proceedings is addressed by the uncodified law of criminal contempt and by statutory provisions (particularly in the Criminal Code) that limit freedom of expression in order to protect the fair administration of justice.

3.2. *Social values*

Limitations based upon the protection of important social values deal in particular with expressions of racism and obscenity. Racist expressions are addressed in the Criminal Code under sections 318, 319 and 320.

The Criminal Code states in section 318 (1): 'Everyone who advocates or promotes genocide is guilty of an indictable offence and liable to imprisonment for five years.'

Section 319 (1) reads: 'Everyone who, by communicating statements in any public place, incites hatred against any identifiable group where such indictment is likely to lead to a breach of the peace is guilty.'

Section 319 (2) provides: 'Everyone who by communicating statements, other than in private, wilfully promotes hatred against any identifiable group, is guilty of (a) an indictable offence and is liable to imprisonment for two years; or (b) an offence punishable on summary conviction.'

Section 320 (1) deals with the seizure of materials, and states: 'A judge who is satisfied by information upon oath that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is

hate propaganda, shall issue a warrant under his hand authorizing seizure of copies.’

In relation to hate propaganda there is also a limitation provided in Section 181 of the Criminal Code providing that ‘Everyone who wilfully publishes a statement, tale or news that he knows is false and that causes or is likely to cause injury or mischief to public interest is guilty of an indictable offence and is liable to imprisonment for two years.’ Obscenity is addressed by the Criminal Code under Sections 163–9. These sections define offences that corrupt morals and deal with the seizure of obscene materials. Obscene publications are described in Section 163 (8) as ‘any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely crime, horror, cruelty and violence, shall be deemed to be obscene’. In 1986 and 1987 new legislation was introduced that would restrict pornography on the grounds of its harmful effect on women. The proposed bills (C-114 and C-54, respectively) failed to pass. The Supreme Court has in a 1992 decision in the *Rex v. Butler* case adopted as a test for restriction of obscene material that the images are ‘degrading and dehumanizing’.

3.3. *Individual rights*

The protection of rights of individuals is addressed under legal provisions pertaining to defamation and the right to privacy. These provisions are contained in civil law rules (both in common law and in provincial statutes) on libel and slander. For the media, particularly, the provisions on libel are relevant since individuals can sue for injury to their reputation.

Libel is considered a strict liability tort which means that the defendant is liable irrespective of whether he or she had the intention to injure the plaintiff’s reputation. The most important defence against an alleged libellous statement is the truth. The protection of individual privacy is not recognized in a common law right to privacy. Its protection is addressed by parts of the Constitution (Section 8 of the Charter), and common law tort principles.

4. ACCESS TO INFORMATION LEGISLATION

The Federal Access to Information Act was passed by Parliament in 1982 and took effect in 1983. The Act is meant to give citizens access to government information. The Act proposes that ‘government information should be available to the public’.

The Act states (in Section 2) that ‘necessary exemptions to the right of access should be limited and specific’. This implies that disclosure of records shall be refused (under Sections 13–18) if, for example, they contain ‘information that was obtained in confidence from (a) the government of a foreign state or an institution thereof; (b) an international organization of states or an institution thereof; (c) the government of a province or an institution thereof; (d) a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government’. Information may also be refused if this could reasonably be expected to be injurious to the conduct by the Government of Canada of federal-provincial affairs.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

No special provisions.

6. MEDIA OWNERSHIP

The CRTC has no policy on concentration of media ownership. No government rules are in place.

7. SELF-REGULATION

7.1. *Professional code of conduct*

The Canadian Association of Broadcasters and the Canadian Cable Television Association have adopted various codes on issues related to content which are recognized by the CRTC as meeting the Commission’s regulatory requirements. There is no national press council. There are some provincial councils, and community councils. Membership is voluntary. The complaints process is generally respected by the press.

7.2. *Editorial statutes*

There are no editorial statutes provided in the Broadcasting Act. Unionized journalists who work under a collective agreement are protected against pressures from directors or owners of mass media. There is no provision that protects freelancers or non-unionized journalists.

8. INTERNATIONAL OBLIGATIONS

Canada ratified the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol in 1976. Federal and provincial statutes have been brought into line with the provisions of the Covenant. The Optional Protocol allows individuals to file complaints against the Canadian Government with the United Nations Human Rights Committee. The ICCPR is often used by courts as support for corresponding rights in the Canadian Charter.

9. REGULATORY INSTRUMENTS CONSULTED

- Canadian Charter of Rights and Freedoms
- Access to Information Act
- Official Secrets Act
- Criminal Code

Czech Republic

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Constitution of the Czech Republic adopted on 16 December 1992 by the Czech National Council incorporates the Charter of Fundamental Rights and Freedoms. The Charter provides for freedom of speech.

1.2. *Access to public records*

No specific provisions.

2. MEDIA LEGISLATION

2.1. *Outside interference*

With the amended Act No. 86/1990 of 28 March 1990 – based on the 1966 law on the periodical press and other media – the government formally abolished all state control of the press and other media. The revised law provides that individuals, including foreigners, can own and publish periodical publications. Former licensing requirements were replaced by simple registration procedures. The Federal Broadcasting Law (Law No. 496/1991, The Operation of Radio and Television Broadcasting) and the 1991 Acts, No. 483 on Television and No. 484 on Radio, make up the legislative framework for Czech public radio and television. The Act establishes the dual system of public and private broadcasting. It also governs radio licensing and frequency allocation.

It provides in Part Two, Article 4, that broadcasters transmit programmes freely and independently and prohibits censorship in Article 17.

The Acts on Czech Radio and Czech Television establish that both media are public media run solely by their managements and supervised by independent councils appointed by Parliament.

2.2. *Limitations on media content*

The Broadcasting Law imposes on broadcasters the duty to provide 'objective and balanced information' and states that freedom of expression can be restricted when this measure is necessary in a democratic society for the protection of rights and freedoms of others, in the interests of national security, public safety, public health and morals. Public and private broadcasters are bound to follow provisions in the law dealing with human rights, advertising and sponsorship. These provisions generally address the need to avoid disturbing the public order. The public broadcasters face the special duty to serve the public interest, reflect pluralism, contribute to democracy, promote cultural and social identity, the interests and needs of minorities, domestic production and programming diversity.

On the restriction of content, the law states in the same article that contents may be interfered with only according to and within the boundaries of the law. Broadcasters are required to provide objective and balanced information essential for the free expression of opinions. The issuing of broadcasting licences is linked to the requirement of ensuring pluralism and balance in broadcasting. The Czech Government submitted draft principles to the relevant parliamentary committee in 1995 for a new Press Act.

The draft provides in Principle 7 that if the periodical press has published a statement containing false or biased data about a person identifiable from this statement, the editor's duty is to publish a corrigendum when the person concerned demands it. Principle 8 adds that if the periodical press has published a statement expressing an attitude or view offending the honour or good name of a person determinable from this statement, the editor's duty is to publish a response, if this has been decided by a court of law in a libel procedure. Corrections are also required if the press publishes statements about criminal proceedings and the persons concerned are not sentenced. Legal persons are not allowed to sue the media for libel and defamation.

2.3. *Professional secrecy*

On professional secrecy the draft principles provide (Principle 14) that the editor has the right of non-disclosure of the origin of information.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

Defamation of the Republic and the President is punishable under the Criminal Code with prison terms of up to two years.

3.3. *Individual rights*

Restrictions on defamatory statements are provided in the Civil Code and the Criminal Code.

4. ACCESS TO INFORMATION LEGISLATION

No specific provisions.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

No specific provisions.

6. MEDIA OWNERSHIP

The examination of applications for broadcasting licences includes an inquiry into the possibility that the applicant may acquire a dominant position in the mass media.

7. SELF-REGULATION

7.1. *Professional code of conduct*

The Syndicate of Czech Journalists follows the Declaration of Principles on the Conduct of Journalists adopted by the International Federation of Journalists in 1954 and amended in 1986. This code mentions interference by outsiders. Article 9 reads: 'Journalists worthy of the name shall deem it their duty to observe faithfully the principles stated above. Within the general law of each country, journalists shall recognize in professional matters the jurisdiction of colleagues only, to the exclusion of every kind of interference by governments or others.'

7.2. *Editorial statutes*

Some newspapers may have an internal code which they consider to be a classified document. The public Czech Television has adopted a code of ethics which is largely inspired by the one in use at the BBC.

8. INTERNATIONAL OBLIGATIONS

The Czech Republic has ratified the International Covenant on Civil and Political Rights (in 1993) and its First Optional Protocol (in 1993), the European Convention on Human Rights and Fundamental Freedoms (in 1992) and Article 25 (1) (recognition of the competence of the Commission to receive petitions) in 1992.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution
- Law on Broadcasting No. 468/1991
- Law No. 483/1991 on Czech Television
- Law No. 484/1991 on Czech Radio
- Law No. 103/1992 on Czech Broadcasting Council
- Law No. 36/1993 governing regulations in the field of broadcasting
- Law No. 252/1994 covering radio and television licence fees
- Law No. 253/1994 governing the funding of the Czech Broadcasting Council
- Draft Principles for a new Press Act
- Criminal Code

Denmark

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Constitution of the Kingdom of Denmark of 1953 provides in Article 77: 'All persons shall be entitled to publish their thoughts in printing, in writing, and in speech, provided that they may be held answerable in a court of justice.' Article 77 also states that 'Censorship and other preventive measures shall never again be introduced.' Court orders however make it possible to seize editorial materials used in the preparation of broadcast programmes or to seize confidential letters received by journalists.

1.2. *Access to public records*

No special provisions.

2. MEDIA LEGISLATION

The Danish media are regulated by the Radio and Television Broadcasting Act which was thoroughly amended by Law No. 1208 of 27 December 1996 and by the Media Liability Act of January 1992.

2.1. *Outside interference*

The Radio and Television Broadcasting Act provides explicitly that broadcasting licence-holders shall carry out their programme activity independently. The Media Liability Act includes a specific system of liability. It implies in particular that the editor and journalists responsible for specific articles or programmes can alone be held responsible. This system of liability is arranged so as to respect freedom of expression and

freedom of information as well as to counteract the adverse effects from media concentration on media content.

2.2. *Limitations on media content*

Articles 7 and 18 of the Radio and Television Broadcasting Act state that the supply of programmes aims at quality, versatility and variety. News reporting must be fair and impartial. There are no rules on prohibited programmes.

2.3. *Professional secrecy*

Article 172 of the Court Procedure Act guarantees the right of editors to protect their sources. This can be overruled if a court deems the revealing of sources absolutely necessary, such as in cases of serious crime.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

Limits are provided by Section 109 of the Penal Code as well as by Section 13 of the Open Files Act.

3.2. *Social values*

Article 265b of the Criminal Code states that it is a criminal offence to make derogatory remarks about a person's ethnic background. Article 266b of the Criminal Code states: 'Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion or sexual orientation, shall be liable to a fine or to a term of imprisonment not exceeding two years.'

3.3. *Individual rights*

Article 267 of the Criminal Code provides that 'any person who violates the personal honour of another by offensive words or acts or by making or spreading accusations of (a kind) likely to disparage them in the eyes of their fellow countrymen' commits a criminal offence. In cases of defamation there is no formal difference in protection between private and public figures. The courts have, however, made a difference.

Section 264–264d of the Criminal Code guarantees the right of privacy, *inter alia*, by banning the photographing of persons on private property and the unjustified passing of information regarding other persons' private affairs.

4. ACCESS TO INFORMATION LEGISLATION

In 1964 Denmark passed an information law entitled Access of Parties to Documents in Administrative Files. In 1970 this law was amended under a new title, the Access of the Public to Documents in Administrative Files Act (Open Files Act).

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

In connection with the Radio and Television Broadcasting Act there is an annual allocation of 50 million Danish kroner for the support of non-commercial local radio and television. Legislation on public support for low-subscription newspapers has been proposed by the office of the Prime Minister.

6. MEDIA OWNERSHIP

The Radio and Television Broadcasting Act provides that in the case of local media no person can be a member of the board of more than one local television station. No one can be responsible for management and/or programming in more than one local television station. There have also been efforts by the Danish Monopolies and Mergers Commission to apply competition law to restrict possible abuse of dominant market positions. There are further laws on the media: Law No. 421 (15.VI.1973) as amended on 11.II.1992; Law No. 335 (4.VI.1986) concerning TV2; Law No. 228 (9.IV.1990) on public financing of short-wave activities.

7. SELF-REGULATION

7.1. *Professional code of conduct*

A legal code was adopted by the Danish Parliament with the acceptance of the National Union of Journalists in 1992. The preamble of the Code refers to a clause of conscience, stating that 'A journalist should not be

given tasks that are contrary to his conscience or conviction.’ The Danish Press Council was founded in 1964 by media owners. Today it operates under the authority of the Media Liability Act. Its members (representatives of the Journalists’ Union, editorial management and the general public) are appointed by the Minister of Justice on the recommendation of the bodies represented.

7.2. *Editorial statutes*

In common use in broadcast and print media.

8. INTERNATIONAL OBLIGATIONS

Denmark ratified the International Covenant on Civil and Political Rights (ICCPR) (in 1976) and its First Optional Protocol (1976); the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (with deposition of the declaration on the competence of the European Commission of Human Rights) (in 1953). Once ratified, treaties are not directly incorporated into domestic law. A specific law must be passed by Parliament. In jurisdictional practice, the courts will in cases of conflict between a ratified treaty and domestic law, make an attempt to interpret the latter according to international law. The ICCPR is not directly applicable by Danish courts. There is however at present no Danish domestic law that conflicts with the provisions of the Covenant. The ECHR was made directly applicable through Law No. 285 which entered into force on 1 July 1992.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution
- Radio and Television Broadcasting Act
- Media Liability Act
- Access of the Public to Documents in Administrative Files Act
- National Code of Conduct
- Criminal Code
- Court Procedure Act

Estonia

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Estonian Constitution (which entered into force on 3 July 1992) provides in Article 44: 'All persons shall have the right to freely receive information circulated for general use.' Article 45 prohibits censorship and provides that 'All persons shall have the right to freely circulate ideas, opinions, beliefs and other information by word, picture and other means. This right may be restricted by law in order to protect public order or morals, or the rights and liberties, health, honour and reputation of others. The law may likewise restrict this right for state and local-government officials, in order to protect state or business secrets or confidential communications, which, due to their service, the officials have access to, as well as to protect the family life and privacy of others, and the interests of justice. There shall be no censorship.'

1.2. *Access to public records*

Article 44 states explicitly the right to gather information. 'At the request of an Estonian citizen, and to the extent and in accordance with procedures established by law, all state and local-government authorities and their officials shall be obligated to provide information on their work, with the exception of information which is prohibited from disclosure by law, and information which is intended for internal use only. Every Estonian citizen shall have the right to obtain information about himself or herself held by state and local-government authorities and in state and local-government archives, in accordance with procedures established by law.'

‘This right may be restricted by law in order to protect the rights and liberties of others and the secrecy of a child’s parentage, as well as in order to prevent a criminal act, to apprehend a criminal or to establish facts in criminal proceedings.’

2. MEDIA LEGISLATION

There is no comprehensive press law. For audiovisual communication the Law on Radio and Television Broadcasting was adopted by the State Assembly on 19 May 1994. Important regulatory provisions affecting the mass media are also found in the Civil Code, the Criminal Code, and in laws dealing with business law, corruption, and the police.

2.1. *Outside interference*

Article 6 of the Law on Radio and Television Broadcasting provides for ‘freedom of activities’. It states: ‘(1) Radio and television stations have the right to make independent decisions about the contents of their transmissions and programmes so long as such transmissions adhere to existing laws and the conditions contained in the broadcast licence; (2) Any person who restricts freedom of creation guaranteed by law is punishable by administrative or criminal sanction.’

2.2. *Limitations on media content*

In connection with restrictions on broadcasting, the Law provides in Article 6 (d) that the court may, on the basis of and in a manner stipulated by law, forbid the broadcasting of transmissions in connection with a matter under [some form of official] investigation. Article 9, on ‘providing morality and legality’, states that radio and television should not broadcast immoral transmissions or transmissions in contradiction with the Constitution. This is further developed in Article 13 on responsible editors. A responsible editor: ‘(2.1) adheres to the principle of free speech; (2.2) separates facts from commentary; (2.3) adheres to demands of the law; (2.4) adheres to the norm of morality and dignity; (2.5) adheres to appropriate linguistic norms.’

2.3. *Professional secrecy*

Article 7 of the Law addresses the protection of sources of information. It states in paragraph 1 that radio and television stations shall not divulge the identity of a person who conveys information in confidence,

if the person does not wish to be revealed. In paragraph 2 the law provides that radio and television stations are not required to divulge sources in connection with their information-gathering activities.

Paragraph 3 adds that if requests are made under paragraphs 1 and 2 of this Article, radio and television stations must produce facts and information to the court to buttress a claim of truth, in a manner prescribed by law. In connection with editorial independence, the Law provides in Article 28 that Estonian radio and television may create their own transmissions and programmes for radio and television broadcasts independently and guided only by standards of law. The Law also stipulates in Article 18 that advertisers must not influence the structure or the maintenance of the transmission.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

The relevant restrictive regulation is contained in the State Secrecy Act, which was passed in June 1994. The law defines categories of information that should be kept secret. State secrets represent information concerning defence matters and economic, technical or political topics which if made available to other states might endanger the Estonian State and its economic or political interests. Article 3 of the Law gives the list of topics which may be defined as state secrets. They mainly concern matters of defence. Article 4 of the Law proposes five categories of information that should not be kept secret, which are information about such events as major catastrophes, environmental and demographic issues, violations of human rights, corruption and crime statistics, and salaries and privileges of state officials and local authorities.

3.2. *Social values*

The Constitution prohibits racial discrimination. There have been recent attempts by local governments to prohibit the dissemination of pornographic materials.

3.3. *Individual rights*

Relevant provisions are articulated by the Civil Code (of 1994) on defamation. Article 23 of the Code guarantees individuals the right to protect their honour from defamation by the media. Paragraph 1 of Article 23 states that 'A person is entitled to bring an action in court to

claim termination of defamation and refutation of false communication which injures his reputation, unless the person who has committed defamation is able to prove its accuracy. The person also has the right to claim compensation for moral and material damage caused by defamation.'

Paragraph 2 adds that 'If a false communication has been disseminated in the mass media, it must be refuted by the same mass media.' Similar provisions also hold for legal persons. Article 42 provides that legal persons and individuals have the right to take legal action for the termination of defamation and for the correction of false information. They are also entitled to claim compensation for material damage caused by defamation.

The Criminal Code (Section 129) considers untrue and insulting information criminally libel. The right to the protection of privacy is guaranteed by Article 29 of the Constitution and by Article 24 of the Civil Code. The Code considers the gathering of information on a person's private life a breach of the right to privacy when the act takes place without legal ground or against a person's will.

4. ACCESS TO INFORMATION LEGISLATION

No special provisions in addition to the constitutional rule. The Anti-corruption Law (passed in January 1995) may provide some legal opportunities to demand the publication of information relating to the financial interests of politicians and state officials.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

There are some grants from public funds for academic publications and cultural magazines.

6. MEDIA OWNERSHIP

There is no special legislation on ownership of the press. The Broadcasting Act states that an information monopoly in specified territories is prohibited. In Paragraph 49, Section 8, the law says that it is unlawful to grant a licence to a person who already owns two of the three media institutions (newspaper, radio, television). According to the Business Law (which entered into force in September 1995), the register of business

enterprises (which includes mass media organizations) should be open to the public (Article 28).

In case of emerging information monopolies, the law on fair competition (June 1993) could be applied.

7. SELF-REGULATION

7.1. *Professional code of conduct*

The Estonian Newspapers Association set up a Press Council in 1991. It is supposed to act as an intermediary between the press and the public. The Council has no binding powers, but its decisions are made public. Its main mandate is to protect the independence of the media and promote good journalistic practice. There is no formal code and the Council adopts a case-by-case approach. Between January 1993 and mid-1996 it handled forty-six cases.

The jurisprudence of the Council is starting to lay the foundations for good journalistic professional standards. On the protection of sources, the Council has judged (22 September 1994) that a journalist should not publish his/her sources if he/she has promised confidentiality. There have been no cases addressing issues of outside interference or clauses of conscience. In spring 1996 the Estonian Press Council decided that it would be useful to develop and adopt a Code of Ethics.

7.2. *Editorial statutes*

Not in common use.

8. INTERNATIONAL OBLIGATIONS

The Estonian Republic has ratified the International Covenant on Civil and Political Rights (in 1992) and its First Optional Protocol (in 1992); and the European Convention for the Protection of Human Rights and Fundamental Freedoms (with deposition of the declaration on the competence of the European Commission of Human Rights) (in 1996).

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution
- Law on Radio and Television Broadcasting
- Civil Code
- Criminal Code

France

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Constitution of 1958 (incorporating Article 11 of the 1789 Declaration of the Rights of Man and the Citizen) provides in the Preamble: 'The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen can freely speak, write, and print, subject to responsibility for the abuse of this freedom in the cases determined by law.'

The authorities are empowered to seize foreign publications (banned under Article 14 of the 1881 Act) and publications which incite hatred against a group. In emergency situations, under Article 16 of the Constitution, the government is authorized to apply censorship.

1.2. *Access to public records*

No special provisions.

2. MEDIA LEGISLATION

2.1. *Outside interference*

'Concerning printed communication, the 1881 Act provides the basic regulatory framework. The Act offers a strong defence of the freedom of the press. It also addresses such issues as registration of publications, the import of foreign publications, defamation and libel.

2.2. *Limitations on media content*

The Act is remarkable for the large number and wide variety of press offences. The formulations chosen to proscribe media conduct are in

the main very broad. For example, Article 23 of the Act provides that if someone successfully incites the commission of an offence he is punishable as an accomplice. This is the case irrespective of whether the crime was actually committed or merely attempted. Other provisions that proscribe media content are incorporated in laws such as the National Service Code, the Military Justice Code, the Criminal Code (with rules on disclosure of information in relation to national security), the Civil Code (with rules on privacy and the presumption of innocence), and special Acts that deal, *inter alia*, with the regulation of ownership (the Act of 1 August 1986, amended in 1996 and 1997).

The essential law for audiovisual communication is the Act of 30 September 1986 (Law No. 86-1067 on Freedom of Communication), as amended on 27 November 1986 and complemented by further legislation between 1987 and 1994. The Act states that audiovisual communication is free and can only be limited in view of the respect for human dignity, freedom of others, plurality of opinion, protection of public order, national defence, technical constraints or the need to develop a national audiovisual industry.

The Conseil Supérieur de l'Audiovisuel (CSA) guarantees the exercise of this freedom and the independence and impartiality of public broadcasting. There are no statutory requirements for the quality of programmes. The CSA supervises respect for pluralism and impartiality of national programme associations, especially in the case of information programmes.

2.3. *Professional secrecy*

Professional secrecy (permitted under Article 378 of the Criminal Code) does not extend to journalists. The revised law of January 1993 (amending the code of criminal procedure) provides in Article 109 (2) that 'Any journalist who appears as a witness concerning information gathered by him in the course of his journalistic activity is free not to disclose its source.' Concerning searches of media premises, the law provides in Article 56 (2): 'Searches of the premises of a press or broadcasting company may be conducted only by a judge or state prosecutor, who must ensure that the investigations do not endanger the free exercise of the profession of journalism and do not obstruct or cause an unjustified delay in the distribution of information.'

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

The state and its institutions are protected against libel by Article 30 of the 1881 Act. The Act also prohibits insults to the President of the Republic (Article 26), defamation of civil servants (Article 31), and incitement to treason (Article 24). Threats to public order and national security provide grounds for restrictions.

3.2. *Social values*

The Act of 1 July 1972 (the legal basis against group libel and racial incitement) provides that discrimination on racial, ethnic, religious or national grounds is an offence punishable by up to one year's imprisonment and/or a fine. Since 1972 several amendments to the Act have been adopted by Parliament. These relate to sex discrimination, prohibition of exoneration from crimes against humanity, and of denial of the existence of crimes against humanity. Limitations on grounds of morality are provided by Criminal Code Article 283 on obscenity. According to Article 24-*bis* of the 1881 Statute (as amended in 1990) the denial of certain crimes against humanity is considered an offence.

3.3. *Individual rights*

Honour and reputation are protected by rendering defamation both a criminal offence and a civil tort. Libel actions can lead to court orders to the defendants to pay criminal fines and civil damages whenever the existence of libel has been established.

In principle, defendants can defend themselves by reference to truth and prudence. The burden of proof is with the defendant. Individual privacy is protected under Article 9 of the Civil Code which states that everyone is entitled to respect for his/her private life. It also provides for the courts to seize and prohibit materials if these threaten to violate someone's privacy. The article also constitutes the basis for the award of material and immaterial damages. In 1978 French legislators supplemented this protection with Law No. 78-17 on Informatics, Data Storage and Rights.

This law complements the existing civil-law approach with criminal sanctions and establishes a national commission for informatics and fundamental freedoms (Commission Nationale de l'Informatique et des Libertés).

4. ACCESS TO INFORMATION LEGISLATION

The Law on Freedom of Access to Administrative Documents (of 17 July 1978) provides the right to information concerning administrative documents (i.e. in so far as they do not mention individual persons). Access can be refused if documents concern secret deliberations of the government, money and public credit, the safety of the state and public security, national defence or foreign policy, ongoing judicial procedures, private lives, personal files, medical files, confidential commercial and industrial matters, investigations by competent services of fiscal and customs violations, or secrets otherwise protected by law.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

There are provisions for special postal rates (Article 6 of the Decree of 29 December 1990 on Rates and Conditions of Posts and Telecommunications). The structure of postal rates is intended to promote pluralism. The same applies to special telephone rates. There is also direct state financial aid to daily newspapers: Decree of 12 March 1986 for national dailies; Decree of 28 July 1989 for regional and local dailies. Special tax conditions are provided by articles in the Tax Code.

6. MEDIA OWNERSHIP

The Act of 1 August 1986 (amended by the Act of 27 November 1986) provides rules on concentration of press ownership. The Constitutional Council has ruled that press pluralism is a constitutional value. The Act determines limits to shares of the market that media owners can control.

7. SELF-REGULATION

7.1. *Professional code of conduct*

The Charter of the Professional Duties of French Journalists, which was adopted by the National Syndicate of French Journalists in 1918 and revised in 1938, states that a journalist 'recognizes the jurisdiction of his colleagues as the only one which is sovereign in matters of professional honour', and 'keeps professional secrecy'.

7.2. *Editorial statutes*

Not in common use.

8. INTERNATIONAL OBLIGATIONS

France has ratified the International Covenant on Civil and Political Rights (in 1981) and its First Optional Protocol (in 1984); the European Convention for the Protection of Human Rights and Fundamental Freedoms (in 1974) (with deposition of the declaration on the competence of the European Commission of Human Rights) (in 1981). International treaties take precedence over domestic statutes in accordance with Article 55 of the Constitution. All courts can directly apply treaty provisions provided the treaty is self-executing. This implies that the provisions can be implemented without special acts of Parliament.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution of 1958 (incorporating Article 11 of the 1789 Declaration of the Rights of Man and the Citizen)
- Act of 27 November 1986 (Law on Freedom of Communication)
- Law on Freedom of Access to Administrative Documents (17 July 1978)
- Law No. 78-17 on Informatics, Data Storage and Rights
- Decree of 29 December 1990 on Rates and Conditions of Posts and Telecommunications
- Decree of 12 March 1986 for national dailies
- Decree of 28 July 1989 for regional and local dailies
- Charter of the Professional Duties of French Journalists
- Criminal Code
- Civil Code
- Code of Criminal Procedure

Germany

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Basic Law of 1949 (*Grundgesetz*) provides in Article 5:

‘(1) Everyone shall have the right freely to express and disseminate his opinions in speech, writing and pictures and freely to inform himself from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed.

‘(2) These rights are limited by the provisions of the general laws, the provisions of law for the protection of youth, and by the right to inviolability of personal honour.’

Editorial independence can be restricted on the basis of Article 1 (protection of human dignity), Article 2 (free development of one’s personality), Article 12 (free choice and practice of a profession), and Article 14 (right to property). But according to Article 19, no law or measure may violate the essence of fundamental freedoms which include freedom of the press.

In various pronouncements, the Federal Constitutional Court has articulated the independence of broadcasters from the state. The Basic Law also provides in Article 5 (1) that there shall be no censorship. The public prosecutor may use prior restraint and seize materials that insult state organs, imply threats to state security or carry treason.

1.2. *Access to public records*

No special provisions.

2. MEDIA LEGISLATION

2.1. *Outside interference*

Legislation on the press as well as on broadcasting has been transferred to the *Länder* (states) in accordance with Article 72 of the Constitution. The power of the Federal State to enact framework laws for the press (Article 75, paragraph 1 of the Constitution) has not been exercised by the Federal State. Therefore, all the *Länder* have been able to enact press statutes. Although there are variations, most follow a similar pattern. Most press laws, such as the Hamburg press law, lay down that the press is free and that its freedom is subject only to those limitations allowed by the Constitution and the provisions of this law. Special measures of any kind which encroach upon press freedom are forbidden.

There is an Inter-*Länder* Treaty on Broadcasting and an Inter-*Länder* Treaty on the public broadcasting organizations, ZDF and ARD. However, there is a longstanding and detailed jurisprudence of the Federal Constitutional Court as well as a right of self-administration of public-service broadcasters. There are no specific guarantees for the independence of broadcasting. There are no special guarantees for the independence of journalists.

Media independence is derived from Article 5 of the Constitution which provides protection against state interference. This has been upheld in decisions of the Constitutional Court.

2.2. *Limitations on media content*

Private broadcasters are bound to consider plurality of opinions. Information activities of public and private stations should be guided by the principles of independence, fairness and truth. Comments have to be separate from news and their authors should be named. There is prohibition of pornography as well as of incitement to racial hatred or violence.

2.3. *Professional secrecy*

Professional secrecy is recognized in several provisions of the Civil Procedure Code and the Criminal Procedure Code.

Section 383 of the Civil Procedure Code recognizes the right to refuse testimony when information is given in confidence.

Section 53 of the Criminal Procedure Code recognizes the right to refuse to testify.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

Criminal law provisions protect the Constitution, the state institutions, the President, state symbols, civil servants, and public order in various sections of the Criminal Code.

3.2. *Social values*

Articles 130 and 131 of the Criminal Code provide protection of ethnic and national groups by the prohibition of such acts as incitement to hatred, provocation to commit violent or arbitrary acts, insult, ridicule and defamation. The dissemination of pornographic materials (especially involving violence and/or abuse of children) is prohibited under Section 184 of the Criminal Code.

3.3. *Individual rights*

The protection of honour and reputation is provided by a variety of rules in civil and criminal law and is derived from the constitutional guarantees in Articles 1 and 2 of the Basic Law. Under the Civil Code (Sections 823 ff.), defamation constitutes a tort and, under the Criminal Code (Sections 185 ff.), a criminal offence. The publication of a defamatory statement in the knowledge that it is false is a crime (Section 187). In libel actions the plaintiff has to prove that the defendant was negligent. There are various provisions that protect the right to privacy. These are found in the Constitution, the Criminal Code, the Data Protection Act (1990) and the Copyright Law (1907).

4. ACCESS TO INFORMATION LEGISLATION

The *Länder* press laws provide for a right of access to government information. The statute of Hamburg, which is reasonably representative, provides, for example, that the government has a general duty to answer requests for information and to state the reasons in cases where it refuses to respond. Reasons for refusal could be that access would interfere with judicial proceedings, the rules of secrecy, or overriding public or private interests.

A crucial role in media access to public information is played by rules that discourage potential sources to 'leak' information. The Criminal Code provides that civil servants who disclose secrets can receive heavy prison sentences. The related issue is that although there is statu-

tory protection of professional privilege, the Constitutional Court has not always allowed all information to be protected by this provision.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

No specific provisions exist since the legislator believes that the market will provide for pluralism. The statutes of the public broadcasting organizations refer to the need for 'internal pluralism' in the sense of pluralistically composed supervisory boards. They also have the obligation to present all socially relevant viewpoints and opinions. Private broadcasters also have to present a plurality of viewpoints.

6. MEDIA OWNERSHIP

The Federal Cartel Law was amended in June 1976 in order to specifically include mergers of small- and medium-sized newspapers. The Inter-*Länder* treaty as amended in January 1997 stipulates that no private company may receive a new television licence or acquire an additional television channel or parts of it, if its programmes have reached an audience share of 30 per cent on an annual average.

7. SELF-REGULATION

7.1. *Professional code of conduct*

In 1956 the two journalists' unions and the two largest publishing houses set up the *Deutscher Presserat* (German Press Council). Although the Council has played a significant role in defending the regulatory space for media independence, its importance has seriously declined due to the divided opinions of publishers and unions.

In 1973 the Council formulated, in collaboration with the press associations, a Code of Ethics and supplementary Guidelines for Editorial Work. The Code was updated in 1994. In Article 5 the Code deals with confidentiality of sources and states that 'Where an informant agrees to supply information for publication on condition that he or she remains unidentified and protected as a source, that stipulation shall be respected.' One of the Council's functions is 'to protect freedom of the press and preserve access to information sources'.

7.2. *Editorial statutes*

Journalists have taken measures to ensure editorial independence. Some papers have 'editorial understandings' that give journalists the right to

determine editorial policy independently of the owner, and a voice in the appointment of the editor-in-chief. This is not common practice. Only six newspapers have an editorial statute. In some *Länder* there are legal requirements to conclude editorial statutes. Several editorial statutes also exist in broadcasting.

8. INTERNATIONAL OBLIGATIONS

Germany ratified the International Covenant on Civil and Political Rights in 1976 and the First Optional Protocol in 1993; the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1952 (with acceptance of the right of individual petition to the European Commission of Human Rights under Article 25 of the Convention and with deposition of the declaration on the competence of the European Commission of Human Rights in 1955). Both the ICCPR and the ECHR have the status of federal statutes in German law and take precedence over all laws of the *Länder*.

9. REGULATORY INSTRUMENTS CONSULTED

- Basic Law of 1949 (*Grundgesetz*)
- Hamburg Press Law
- Inter-*Länder* Treaty on Broadcasting
- Inter-*Länder* Treaty on public broadcasting organization, ZDF
- Law on the Right to Refuse to Reveal Sources of Information to Press and Radio
- Civil Code
- Civil Procedure Code
- Criminal Code
- Criminal Procedure Code
- Federal Cartel Law
- Codes of Professional Conduct drawn up by the German Press Council in collaboration with the Press Associations

Hungary

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Constitution of the Hungarian Republic (Act No. 20 of 1949 amended by Act No. 31 of 23 October 1989) provides in Article 61: 'In the Hungarian Republic everybody has the right to freely express opinions, and in addition to become acquainted with data of public interest and to distribute them. . . . The Hungarian Republic acknowledges and safeguards the freedom of the press.'

1.2. *Access to public records*

The Constitution provides in Article 61 that everyone is entitled 'to obtain . . . data of a public nature'.

2. MEDIA LEGISLATION

The legislative framework for the mass media is constituted primarily by Act No. 2 of 1986 on the Press (amended by Act No. 11 of 1990) and Act No. 1 on Television and Radio Broadcasting which entered into force on 1 February 1996. In addition there are important provisions affecting the media in the Civil Code and the Criminal Code.

2.1. *Outside interference*

Media independence is explicitly provided in the Press Act and the Act on Radio and Television Broadcasting. The Press Act provides freedom to publish in the country. The Broadcasting Act states that broadcasters are free to choose their own programming.

2.2. *Limitations on media content*

The Broadcasting Law includes rules on the supervisory system of broadcasting which is executed by the National Television and Radio Board (NTRB). Among the tasks of the NTRB is the establishment of a Complaints Commission. Individuals can file complaints with the Commission when broadcasters provide a one-sided view on matters of public interest or if the requirement of pluralist information is violated in any other way. If broadcasters are found guilty of infringing the obligation to be pluralist, the decision of the Commission should be made public without comment. Fines can be imposed in case of recurrent infringements. Appeals against the decisions by the Commission can be brought before a court of law.

With regard to content, the Broadcasting Act imposes rules for a number of areas. News programmes have to be independent and without commentary. There is a strong requirement for nationally produced programmes. Advertising and sponsorship are restricted in particular with regard to the protection of children. Public broadcasters have special duties and responsibilities. Among these are to assist in fostering the culture and language of national minorities, produce programmes independent from political influence, and objectively present the plurality of cultural, scientific and religious viewpoints in the country. The Broadcasting Act prohibits programmes which depict wanton use of violence.

2.3. *Professional secrecy*

Only orders from a legal court can force journalists to disclose sources.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

Article 8 of the Constitution reads: 'During a national crisis, state of emergency or of danger, the exercise of fundamental rights may be suspended or restricted.' The constitutional right to freedom of expression is not excepted from this provision.

3.2. *Social values*

The Hungarian Criminal Code (Act 4 of 1978) contains no provisions on pornographic publications. Chapter 11 of the Criminal Code contains provisions on incitement to war in Title 1, Section 153: (1) 'The

person who incites to war, or otherwise displays war propaganda, commits a felony and shall be punishable with imprisonment for two to eight years; (2) The punishment shall be imprisonment for five years, if the crime is committed before a large public.'

On crimes against a national, ethnic, racial or religious group the Code provides (Section 156): 'The person who causes grave bodily or mental harm to a member of any national, ethnic, racial or religious group because the latter belongs to the group, commits a felony and is punishable with imprisonment from two years to eight years.'

3.3. *Individual rights*

Article 59 (1) of the Constitution on Honour and Privacy provides that 'In the Republic of Hungary, everyone has the right to the good standing of his reputation, the privacy of his home and the protection of secrecy in private affairs and personal data.'

Both the Civil and the Criminal Codes have provisions for limitations on the basis of slander and libel. The Civil Code states in Title 4 on the protection of persons under civil law in Section 79 (1): 'If a daily newspaper, magazine (periodical), radio, television or newsreel publishes or spreads false facts about a person or puts true facts in a false light, the person concerned may claim – in addition to other claims ensured by law – the publication of a communication indicating which statement of fact is false, which facts are put in a false light, and what the true facts are.'

Various forms of protection of privacy are covered in Sections 81 (on the secrecy of correspondence and business secrets), 82 (on private homes and premises) and 83 (on computerized data-processing).

4. ACCESS TO INFORMATION LEGISLATION

There is no special act. The 1986 Press Law (Act 2) in Article 4 (1) provides for the obligation of the public authorities to disclose information of public interest.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

Public and public-service broadcasters, in order to fulfil their public-service function, are exempt from the payments of transmission fees, corporate taxes and duties. There is a National Cultural Fund that (through the Ministry of Culture) can grant subsidies to culturally significant papers that economic developments are likely to eliminate.

6. MEDIA OWNERSHIP

The Broadcasting Act restricts media ownership in order to prevent the development of media monopolies. It proposes limits on the ownership of shares in media companies. There are also limits imposed on cross-media ownership.

7. SELF-REGULATION

7.1. *Professional code of conduct*

A Journalists' Ethical Code was adopted by the National Association of Hungarian Journalists in 1994. The Code states that journalists have the right to obtain and publish information and to criticize. They are also entitled to have opinions and convictions and to express these. There are, however, no explicit provisions on outside interference or on clauses of conscience. The execution of the Code's provisions is supervised by the Ethical Committee which is empowered to hear and initiate cases. The Committee may impose sanctions such as suspension of membership rights for up to one year, or exclusion from the National Association.

7.2. *Editorial statutes*

Not in common use.

8. INTERNATIONAL OBLIGATIONS

Hungary ratified the International Covenant on Civil and Political Rights (in 1976) and its First Optional Protocol (in 1988), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (in 1992) (with Article 25 (1) in 1992). There is no automatic incorporation into domestic law. The authority of international law needs special legislation. The Constitution states that the legal system of the country 'shall harmonize the country's domestic law with the obligations assumed under international law'.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution
- Act 4 (1959) of the Civil Code
- Act 4 (1978) of the Criminal Code

- Act 17 of 1996 on the Amendment to Act 4 (1978) of the Criminal Code
- Act 1 (1996) on Radio and Television Broadcasting
- Act 2 (1986) on the Press
- The Journalists' Ethical Code adopted by the National Association of Hungarian Journalists (1994)

Lithuania

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Constitution of the Republic of Lithuania (adopted in 1992) provides in Article 25: 'Every person has a right to his own opinions and to express them. A person has a right to look for, receive and disseminate information and ideas.' The same Article states that 'Freedom to express one's opinions, to receive and obtain information cannot be limited other than by law, provided it is necessary to secure health, dignity, privacy, morals or constitutional order. Freedom of expression and dissemination of information cannot be harmonized with the expression of racial, national or social hatred, violence or discrimination, slander or disinformation.' Article 44 of the Constitution states that 'Censorship of mass information is forbidden.'

1.2. *Access to public records*

On access to information, Article 25 of the Constitution provides that 'Every citizen has a right to obtain information about himself from public and government institutions according to law.'

2. MEDIA LEGISLATION

The basic legal framework is based on the 1992 Law on the mass media, the 1996 Law on the Provision of Information to the Public, and the 1996 Law on National Radio and Television.

2.1. *Outside interference*

Article 2 of the 1992 Law on the Mass Media provides that ‘all mass media organizations shall be free and not subject to censorship or interference of any kind’. The Law on the Provision of Information to the Public provides for (Article 3) ‘freedom to provide information to the public’. In paragraph 2, it states: ‘The right to express one’s convictions, and to obtain and disseminate information may not be restricted by any other means except by laws, should this become necessary to protect human rights, health, dignity, privacy, morals or constitutional order.’

Paragraph 4 of Article 3 states that ‘Monopolization of mass media shall be prohibited.’ And paragraph 5 says that ‘Censorship of the mass media shall be prohibited.’ This legislation prohibits government officials from hindering the mass media in disseminating news to the public or from illegally refusing to supply information to representatives of publishers of public information or to journalists.

Article 5 of the Law that addresses the legal restrictions on freedom of the provision of information to the public provides in paragraph 2 that ‘The government, ministries and other state institutions and municipalities shall have no right to limit the freedom of the provision of information to the public through legal acts.’

2.2. *Limitations on media content*

The Law on the Provision of Information to the Public provides for rules on the obligations of journalists by stating in Article 19: ‘A journalist must furnish correct, accurate and unbiased news.’

Under Article 18 on the right to collect and publish information, and the related restrictions, it is prohibited ‘to film, photograph or make sound and video recordings without the consent of the individual in the place belonging to him; to film, photograph or make sound and video recordings during indoor events without the consent of the organizers of the event, who have the right to organize such events; to film and photograph individuals with obvious physical deficiencies without the consent of these persons’.

The Law on the National Radio and Television states (Article 4) the following programme requirements: ‘A variety of topics and genres must be ensured. . . . Broadcasts must be oriented towards the various strata of society and persons of different ages, nationalities and convictions; biased political views should not be allowed to predominate in

programmes.’ Furthermore, ‘Information . . . must be balanced and reflect different political views, while opinions and factual news must be authenticated, substantiated and comprehensive.’

2.3. *Professional secrecy*

Concerning professional secrecy, Article 7 of the Law provides for the protection of the confidentiality of sources of information. The relevant provision reads: ‘The producer of public information and its owner or journalists shall not have to reveal the source of information and shall not have the right without the consent of the individual who submitted such information to reveal his surname, name and other data.’

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

The Law on the Provision of Information to the Public says in Article 5 that ‘The freedom of the provision of information to the public may not be restricted by any other means than by laws ordaining: (1) a state secret and protection thereof; (2) an official secret and protection thereof . . .’ A special law on state secrets (October 1995) defines the nature and scope of these.

3.2. *Social values*

Article 8 of the Law on the Provision of Information to the Public prohibits the dissemination of information that ‘incites war and national, racial and religious enmity’. The Law also prohibits the dissemination of pornographic materials.

3.3. *Individual rights*

Article 5 of the Law on the Provision of Information to the Public protects the individual’s health secrets and the right of the individual to his private life. The secrecy of personal data is also regulated by the June 1996 Law on Legal Protection of Personal Data.

4. ACCESS TO INFORMATION LEGISLATION

In the 1992 Law on Press and the Mass Media, Article 4 provides that ‘All state, political, public organizations or movements and their leaders must give information to the mass media. . . .’ The Law on the Provi-

sion of Information to the Public states in Article 6, on The Right to Obtain Information, that 'Every individual in the Republic of Lithuania shall have the right to acquaint himself with all the official documents of the State, municipal governments and government institutions and other budgetary organizations, with the exception of those which shall be classified according to law.'

Government officials refusing to provide official information must, not later than the next working day, inform those requesting such access of this fact in writing and indicate the reason for the refusal. The law shall establish the liability of state officers who refuse access unjustifiably.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

The Law on the Provision of Information to the Public states in Article 17 that 'The State shall support the cultural and educational activity of public information producers. State financial support shall be provided for public information producers solely through the Fund for the Support of the Press, Radio and Television. State subsidies and tax relief shall be provided without preconditions.'

6. MEDIA OWNERSHIP

The Constitution (Article 44) states that 'The State, political parties and public organizations and other institutions or persons may not monopolize the mass media.' The Law on the Provision of Information to the Public contains anti-trust rules in Article 16. The Law states that 'The State, its institutions, state and non-state enterprises, organizations or persons may not hold a monopoly on public information either in the production or the dissemination thereof.'

7. SELF-REGULATION

7.1. *Professional code of conduct*

On 25 March 1996, delegates appointed by the Lithuanian Union of Journalists, the Lithuanian Association of Journalists, the Association of Publishers of Periodicals, the Lithuanian Radio and Television Association, and the Lithuanian Centre of Journalism adopted the Code of Ethics of Lithuanian Journalists. On the independence of journalists,

Article 29 provides that journalists shall not carry out assignments by any authorities, private entities or individuals and shall be engaged only in the assignments given by mass-media managers.

Article 37 states that not only the mass media, but also journalists shall be free. They have to refuse to carry out assignments that contradict national laws, the ethics of journalism and their personal convictions. The Law on the Provision of Information to the Public also addresses the ethics of journalism in various articles.

Article 19 provides support for the Code of Ethics by stating that journalists must 'refuse to carry out the assignment of public information producers, if the assignment entails violation of law or the code of ethics of journalists and publishers in Lithuania'.

Article 23 provides that 'Professional ethics in the sphere of the provision of information to the public shall be regulated by the Code of Ethics of Journalists and Publishers.' The Law also proposes that 'The Ethics Commission of Journalists and Publishers shall be formed, and its operation shall be established by, a meeting of the representatives of journalist organizations.'

The Commission will examine violations of the Code of Ethics and present its decisions in publications and radio and television broadcasts.

In addition to this support for self-regulatory mechanisms, the Law also established the office of the Inspector of Journalist Ethics (Article 25): 'The inspector of journalist ethics shall be a state officer.' The appointment of the officer is by the Lithuanian Parliament on the recommendation of the Ethics Commission of Journalists and Publishers. The inspector reports no less than once a year to Parliament.

7.2. Editorial statutes

Not in common use.

8. INTERNATIONAL OBLIGATIONS

The Republic of Lithuania has ratified the International Covenant on Civil and Political Rights (in 1992) and its First Optional Protocol (1992); it ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms (with deposition of the declaration on the competence of the European Commission of Human Rights) (in 1995). Once they have been ratified, international treaties become domestic law.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution
- Law on the Press and Mass Media
- Law on the Provision of Information to the Public
- Law on National Radio and Television
- Law on Legal Protection of Personal Data
- Code of Ethics of Lithuanian Journalists and Publishers

Netherlands

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Constitution of 1983 states in Article 7 that '(1) No one shall require prior permission to publish thoughts or opinions through the press, without prejudice to the responsibility of every person under the law; (2) Rules concerning radio and television shall be laid down by Act of Parliament. There shall be no prior supervision of the content of a radio or television broadcast; (3) No one shall be required to submit thought or opinions for prior approval in order to disseminate them by means other than those mentioned in the preceding paragraphs, without prejudice to the responsibility of every person under the law. The holding of performances open to persons younger than sixteen years of age may be regulated by Act of Parliament in order to protect good morals; (4) The preceding paragraphs do not apply to commercial advertising.'

The Constitution prohibits any prior restraints on the publication of opinions. The modality (time, place and method) of distribution of opinions could however be restricted.

1.2. *Access to public records*

Article 110 of the Constitution provides that 'In the exercise of their duties government bodies shall observe the right of public access to information in accordance with rules to be prescribed by Act of Parliament.' (See also paragraph 4.)

2. MEDIA LEGISLATION

2.1. *Outside interference*

Since April 1987 a comprehensive media act is in force that replaces earlier acts for broadcasting and the press.

This Media Act (*Mediawet*) is intended to guarantee the pluralism of radio, television and press through rules on broadcast licence fees, production and dissemination of radio and television programmes, and supportive measures for the print media. The Act contains no explicit provisions on editorial independence. Article 48 determines that all institutions granted broadcast time will define format and contents of their programmes. Article 64, paragraph 1 (d), prescribes a statute that regulates the journalistic rights and duties of employees responsible for broadcast programmes.

2.2. *Limitations on media content*

Article 48 of the Media Act limits programme content only by reference to responsibility before the law.

2.3. *Professional secrecy*

There are no special provisions in the Media Act.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

Article 98 of the Criminal Code addresses the violation of state secrets. The disclosure of information the secrecy whereof is in the interest of the state or its allies, can be punished with a prison term of up to six years. The same penalty applies to the disclosure of classified information relating to state security.

In connection with the protection of state interests, there are also provisions in the Criminal Code that address the defamation of the King and members of the Royal Family and the distribution of such statements (Article 113), or the dissemination of defaming publications about heads of friendly states, members of the government of such states or their ambassadors (Article 119).

3.2. *Social values*

Concerning the protection of important social values, the Criminal Code deals in Article 137 with insults to groups of persons on account of their race, religion or convictions (paragraphs c, d, e, respectively). The article also addresses incitement to hatred or discrimination. There is a strong constitutional base for the prohibition of racist speech in Article 1 of the Constitution which prohibits discrimination and contains an obligation of equal treatment.

There is no hierarchy between Articles 1 and 7 and the Constitution sets no limits on fundamental rights. When these are in conflict they are weighed in the light of the Parliament's authority to impose certain limitations. The courts decide eventually and can deal with racist speech both as criminal offence and as civil tort. There is no explicit prioritization of the prohibition of racist speech over free speech.

Under the protection of social values, there are also provisions regarding pornography in the Criminal Code (Article 240) which punishes the dissemination of pornographic material with prison terms of up to two months.

3.3. *Individual rights*

Injury to reputation and personal honour is addressed in the Criminal Code in Articles 261, 262 and 265. For slander that is publicly disseminated the maximum prison term is twelve months. The slander has to be intentional and truth is an absolute defence. If the slander is committed in the knowledge that the defamatory statement was untrue, the prison term is up to two years. Defamation is also considered a tort under civil law (New Civil Code, Article 6:162). Under the rules of the new Civil Code the plaintiff no longer has to prove the defamatory intent of the defendant. In libel suits plaintiffs can claim payments for material and immaterial damages, the publication of the court's opinion, a correction, and the prohibition of any repetition of the defamatory statement.

Individual rights are protected in the constitutional provision on privacy (Article 10), in the Copyright Law (Article 21) and under the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8. Invasions of individual privacy by the media can also be addressed under the new Civil Code by reference to Article 6:162 on tort.

4. ACCESS TO INFORMATION LEGISLATION

The basic text is the Act on Public Access to Information of 1991 which entered into force on 1 May 1992. The Act, which is based on Article 110 of the Constitution, obliges the Government to authorize passive (Article 3) and active (Article 8) access to public information. Exemptions are set out in Articles 10 (1) and 10 (2).

Article 10 (1) lists dangers to the unity of the Crown, state security and the protection of confidential information provided to the government by private parties. Article 10 (2) covers foreign relations, the economic and financial interests of the state and other public bodies, investigation and prosecution of crimes and protection of privacy. Article 11 provides that disclosure of documents for 'internal consideration', such as personal views on policy matters, can be refused. Appeal against denials of requests for information is possible with the Council of State.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

In 1974 the Press Fund was set up to provide support to papers and magazines in financial difficulties. Its legal basis is the Media Act of 1988. Section 123 of that Act states: 'There shall be a Press Fund with the aim of maintaining and promoting the diversity of the press, in so far as it plays an important role in providing information and forming opinions . . .' The Act specifies two requirements for benefiting parties: they should have an editorial statute (Article 129, 2(c)) and the publication should be offered for sale (Article 129, 2(f)). The political responsibility for the Fund rests with the Ministry for Education, Culture and Science.

6. MEDIA OWNERSHIP

There are no specific regulatory provisions for media ownership. The Act on Economic Competition (1956, amended 1989) could be applied in case of abuse of market position by media owners. There is a self-regulatory instrument on press mergers adopted by the association of the National Daily Press (NDP).

7. SELF-REGULATION

7.1. *Professional code of conduct*

There is no special code of professional conduct. In general, Netherlands journalists follow the Declaration of Principles on the Conduct of

Journalists adopted by the International Federation of Journalists in 1954 and amended in 1986. This Code specifically mentions interference by outsiders. Article 9 reads: 'Journalists worthy of the name shall deem it their duty to observe faithfully the principles stated above. Within the general law of each country, journalists shall recognize in professional matters the jurisdiction of colleagues only, to the exclusion of every kind of interference by governments or others.'

In 1960 a National Press Council was set up. The Council is a self-regulatory body supported by the professional community; it hands down judgements about ethical behaviour in journalism. Judgements carry no sanctions but are published in the journal of the Dutch Association of Journalists. Members of this association are expected to participate in any investigation conducted by the Council.

7.2. Editorial statutes

Editorial statutes exist for the printed press in general, although not so much for broadcasting institutions.

8. INTERNATIONAL OBLIGATIONS

The Netherlands has ratified the International Covenant on Civil and Political Rights (ICCPR) (with reservation as to Article 20) and its First Optional Protocol (1979), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1954) (with deposition of the declaration on the competence of the European Commission of Human Rights) (1960). Article 94 of the Constitution provides that ratified international treaties shall prevail over domestic statutes. The provisions of the ICCPR and the ECHR are directly applied by the courts.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution
- Media Act for Broadcasting
- Act on Public Access to Information
- Criminal Code
- Civil Code
- Model Editorial Statute

Poland

1. THE CONSTITUTION

1.1. *Freedom of expression*

The new Polish Constitution adopted in April 1997 addresses freedom of speech in Article 54, thus: '(1) Everyone shall have the right to express his opinions and to receive and impart information. (2) Pre-publication censorship of the media of social communication and the licensing of the press shall be banned. A statute may require the licensing of radio or television stations.'

Article 14 reads: 'The Republic of Poland shall guarantee freedom of the press and other means of social communication.'

1.2. *Access to public records*

The Constitution states in Article 61 (1) that 'Citizens shall have the right to obtain information about the activity of the public authorities or individuals holding public office. This right shall also extend to obtaining information about the activity of economic and professional self-government bodies, as well as other individuals or organizational units in so far as they perform functions of public authorities and manage property belonging to local government of the State Treasury. (2) The right to obtain information shall include the right of access to documents and to the meetings of collective public authorities elected in general elections, and also to record sound and pictures. (3) The right specified in paragraphs 1 and 2 shall be limited exclusively to statutory provisions concerning the protection of freedom and rights of other persons and economic entities, as well as protection of public order or secu-

rity, or of important State economic interests. (4) Procedures for access to information as specified in paragraphs 1 and 2 shall be defined in statutes and, with regard to the Diet and Senate, according to their rules of procedure.'

The statutory regulation referred to in paragraph (4) had not yet been enacted in October 1997.

2. MEDIA LEGISLATION

2.1. *Outside interference*

The Broadcasting Act (passed on 29 December 1992) provides that the ownership rights of the state should not influence the programming policy of public broadcasters. The Ministry of Finance, representing the state, cannot exercise editorial influence. The Press Act which was passed in January 1984 is still valid but was amended and liberalized in 1989 and 1990. The amendment of April 1990 abolished censorship. The Press Act provides in Article 2 for state institutions 'to create the necessary conditions for the editorial boards of dailies or periodicals, differentiated by their programmes, specific interests and attitudes, to fulfil their duties and functions'. The Act also binds state organs (Article 4) to provide information on their activities. Article 6 states: 'It is forbidden by law to hinder the press from collecting critical materials or to suppress in any other way the expression of critical opinions.'

2.2. *Limitations on media content*

The Broadcasting Act addresses the conditions of licensing for radio and television stations. Licences can be refused if broadcasting endangers the interests of national culture, national safety or defence capabilities, harms public morality or violates state secrets. Licences can be withdrawn when broadcasting violates the law or the conditions under which a licence was granted. The Act states in Article 6 that radio and television must respect freedom of speech and are 'open and pluralistic'. Articles 18 and 23, however, provide that broadcasters should 'respect the system of Christian values'. The Constitutional Tribunal has judged these provisions to be constitutional. Article 18 of the Broadcasting Act prohibits programmes which propagate activities or convictions contrary to morality. Paragraph 3 of this Article reads: 'Programme items likely to impair the physical, mental or moral development of children shall not be transmitted between 6 a.m. and

11 p.m.’ The National Broadcasting Council issued in November 1994 its ‘Regulations concerning the special rules for transmitting broadcasts that may threaten the psychological, emotional or physical development of children and teenagers by radio and television programme services’. Among the provisions are the restriction of programme items that portray brutality and violence, especially pictures of assault, torment or other vicious scenes, that depict behaviour which transgresses the customary limits of socially accepted behaviour and contain vulgar phrases, words or gestures, or that demonstrate methods and techniques of criminal activities. The Press Act places certain limits on the dissemination of information. This concerns in particular criminal investigations and judicial proceedings. All obligations or prohibitions need to express statutory legitimation.

2.3. *Professional secrecy*

Article 15, paragraph 2, of the Press Act (1984) states that journalists are under the obligation not to reveal the sources of those who wish to remain anonymous. The Penal Procedure Code (Article 163) reads: ‘A person under an obligation to keep an official secret or a secret connected with their profession or function may refuse to testify regarding circumstances covered by that obligation, unless the court or a prosecutor has released him/her from the obligation to keep that secret.’

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

In March 1997 the lower chamber of the Polish Parliament passed a new penal code which, adopted by the Senate and the President, replaces the Penal Code of April 1969.

The new Penal Code contains several articles that deal with the defamation of public figures and the protection of state institutions. Article 132 reads: ‘Whoever publicly insults the Polish Nation or the Republic of Poland shall be subject to the penalty of deprivation of liberty for up to three years.’ Article 134, paragraph 2, reads: ‘Whoever publicly insults the President of the Republic of Poland shall be subject to the penalty of deprivation of liberty for up to three years.’ Article 225, paragraph 3, provides that ‘Whoever publicly insults or degrades a constitutional organ of the Republic of Poland shall be sub-

ject to a penalty of a fine, limitation of freedom or deprivation of freedom of up to two years.'

With regard to the treatment of public officials, the Penal Code states in Article 221: 'Whoever violates the personal inviolability of a public functionary or a person called upon to assist him, or in connection with the performance of official duties, shall be subject to the penalty of a fine, limitation of freedom or deprivation of freedom of up to three years.' And Article 225 reads: 'Whoever insults a public functionary or a person called upon to assist him, in the course or in connection with the performance of official duties, shall be subject to the penalty of a fine, limitation of liberty or deprivation of liberty for up to one year.'

State interests are also protected by the Law on the Protection of State and Official Secrets (1982). This defines a state secret as any piece of information which, if revealed to unauthorized persons, may jeopardize defence, security or some important state interest, relating *inter alia* to law enforcement and security agencies, banking and negotiations of international agreements. An important provision is found in Article 5.1 which reads: 'The obligation to keep state secrets is binding on everyone who has come into possession of such information.'

The Penal Code also addresses the matter of state secrets. Article 264, paragraph 1, reads: 'Whoever discloses, or in violation of statutory provisions uses, information constituting a state secret, shall be subject to the penalty of deprivation of liberty for from three months to five years.' Article 264 further states: 'If the information referred to in paragraph 1 is disclosed to a person acting in the name of or for the benefit of a foreign entity, the perpetrator shall be subject to the penalty of deprivation of liberty for from six months to eight years.'

Article 265, which is particularly important for journalists, reads in paragraph 1: 'Whoever discloses or uses, in violation of a statute or an obligation he had undertaken, information with which he has become acquainted in connection with his public function or work, and public, civic, economic or scholarly activity, shall be subject to the penalty of deprivation of liberty for up to three years.'

3.2. *Social values*

The Penal Code in Article 225 provides that 'Whoever publicly propagates fascism or any other totalitarian state system, or incites to hatred for reasons of nationality, ethnicity, race, religion or against non-

believers, shall be subject to the penalty of a fine, limitation of liberty or deprivation of liberty for up to two years.'

The related Article 256 reads: 'Whoever publicly insults a group of people or an individual person by reason of their nationality, ethnicity, race, religion or for having no religious affiliation, or for these reasons does bodily harm to another person, shall be subject to the penalty of deprivation of liberty for up to three years.'

The Penal Code also takes a position on the production and dissemination of pornography. Article 201, paragraph 1, reads: 'Whoever publicly presents pornographic content in such a way that its reception may be imposed on unwilling persons, shall be subject to the penalty of a fine, limitation of liberty or deprivation of liberty for up to one year.' Paragraph 2 reads: 'Whoever presents pornographic content or objects of the same nature to persons under the age of fifteen, shall be subject to the penalty of a fine, limitation of liberty or deprivation of liberty for up to two years.' And the next paragraph states: 'Whoever produces, imports or disseminates pornographic content with the participation of persons under fifteen years of age, or involving the use of violence against animals, shall be subject to the penalty of deprivation of liberty for between three months and five years.'

3.3. *Individual rights*

Individual rights to the protection of honour are provided by the Civil Code adopted in April 1964. Article 448 of the Code (as amended in 1996) reads: 'In case of violation of personal rights, the court may in addition to ordering actions required to redress the offence, adjudge in favour of the injured person an appropriate sum of money as damages for the wrong he suffered, or at his request adjudge an appropriate sum of money in favour of some social purpose specified by him.'

The right to respect for religious feelings is protected by the Penal Code in Article 195: 'Whoever offends the religious feelings of other persons by outraging in public an object of religious worship or a place dedicated to the public celebration of religious rites, shall be subject to the penalty of a fine, limitation of liberty or deprivation of liberty for up to two years.'

4. ACCESS TO INFORMATION LEGISLATION

No special provisions.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

There is public support through various parliamentary acts for periodicals and magazines, as well as for broadcasting.

6. MEDIA OWNERSHIP

No special provisions.

7. SELF-REGULATION

7.1. *Professional code of conduct*

The Chart of Ethics in the Media was adopted by the Association of Polish Journalists and the Union of Publishers in 1995. The Chart expressly mentions interference by outsiders and includes a clause of conscience. Under the 'Principle of Honesty', the Chart provides that the journalist 'should not yield to outside influences, and should be incorruptible and refuse to act against his beliefs'.

There is also a set of ethical guidelines for Polish Public Television which refers to professional secrecy in Article 5: 'One must not identify a person or show a picture of an informer if the latter clearly and explicitly asked for anonymity. One must not reveal information gathered as secret.'

7.2. *Editorial statutes*

Not in common use.

8. INTERNATIONAL OBLIGATIONS

Poland has ratified the International Covenant on Civil and Political Rights and its First Optional Protocol, the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention on Transfrontier Television.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution
- Broadcasting Act
- Press Act
- Chart of Ethics in the Media
- Criminal Code

Romania

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Constitution that was adopted in November 1991 provides in Article 29: '(1) Freedom of thought, opinion, and religious beliefs may not be restricted in any form whatsoever'; and in Article 30: '(1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable; (2) Any censorship shall be prohibited; (3) Freedom of the press also involves the free setting-up of publications; (4) No publication may be suppressed.' In terms of limitations, the Constitution provides (paragraph 6) that 'Freedom of expression shall not be prejudicial to the dignity, honour, privacy or person and the right to one's image', and (paragraph 7) that 'Any defamation of the country and the nation, any instigation to war or aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality, shall be prohibited by law.'

The Constitution also mentions (Article 30, paragraph 8) that indictable offences of the press shall be established by law. Article 31 recognizes the right to information but qualifies this by stating (paragraph 4): 'The public and private means of mass communication are obligated to ensure that public opinion is accurately informed.' Article 31, paragraph 5, specifies that public radio and television are autonomous.

1.2. *Access to public records*

Article 31 (1) of the Constitution provides that 'A person's right of access to any information of public interest cannot be restricted.' This is qualified in paragraph 3, which states: 'The right to information must not jeopardize measures to protect the young or national security.'

2. MEDIA LEGISLATION

2.1. *Outside interference*

The Law on Radio and Television Broadcasting (Law No. 48/1992/21 May 1992) provides for an independent National Audiovisual Council (NAC) as an independent public authority that guarantees the public interest in the audiovisual field. The NAC functions according to the fundamental rights provided by the Constitution: freedom of conscience, freedom of expression and freedom of information. The Council has been concerned with preparing a new legal framework for the Romanian audiovisual media. According to Article 32 of the 1992 Act, the NAC shall establish compulsory norms regarding 'the transmission of information on calamities and cases of state necessity, advertising, programming, and granting the right to retort, sponsoring, the mode of settling disputes, as well as norms referring to other aspects connected with the application of the present law'.

In connection with editorial independence, the 1992 Law on Radio and Television Broadcasting states in Article 1: (1) 'The free expression of ideas and opinions and the free communication of information by means of radio and television are warranted by law, in the spirit of constitutional rights and liberties.' And in paragraph (3) the Law states, 'Censorship of any kind is prohibited.' The Law on the Organization and Operation of the Romanian Radio Broadcasting Corporation and of the Romanian Television Corporation (Law No. 41/17 June 1994) provides in Article 1 that the Romanian Radio Broadcasting Corporation and the Romanian Television Corporation shall be set up as editorially independent, autonomous public services of national interest through the reorganization of Romanian Radio and Television.

Article 8 of this Law states that 'the activities of the public radio broadcasting and television services shall be autonomous and editorially independent. The autonomy and editorial independence of the public radio broadcasting and television services are guaranteed by law and their programmes shall be safeguarded against any interference from

public authorities as well as against influence exercised by any parties, socio-political formations, trade unions, commercial and economic organizations or by pressure groups'. Article 10 provides that the specialist staff of the public radio broadcasting and television services shall enjoy the protection of the law and the rights established by the statute of the radio broadcasting journalist and that of the television journalist, respectively, for the duration of the exercise of their office. These statutes provide, *inter alia*, for the defence of journalists and the other programme producers against any attempt to diminish their media independence and to injure their rights. They also provide that 'it is forbidden to exert any form of physical or psychological constraints, any pressure or intimidation against the specialized staff of the public radio and television services, intended to obstruct the staff's activity or to cause damage to its social and professional prestige'.

2.2. *Limitations on media content*

Article 30 (6) of the Constitution provides that 'Freedom of expression shall not be prejudicial to dignity, honour, privacy of person, and the right to one's own image.' Article 31 (4) of the Constitution also provides that 'Public and private media shall be bound to provide correct information to the public.' Article 3 of the Law on the Organization and Operation of the Romanian Radio Broadcasting Corporation and of the Romanian Television Corporation states that in all their activity, the Romanian Radio Broadcasting Corporation and the Romanian Television Corporation shall be bound to ensure pluralism, the free expression of ideas and opinions, and the free communication of information as well as the correct information of public opinion.

On the restriction of contents, the Law on Radio and Television Broadcasting provides in Article 1 (2) that both public and private broadcasters should 'ensure accurate information'. Article 2 (1) states that: '(1) The freedom of audiovisual expression shall not be prejudicial to the dignity, honour and private life of a person, nor to the right to own one's image. (2) Defamation of the Country and of the Nation, instigation to war of aggression, national, racial, class, or religious hatred, incitation to discrimination, territorial separatism, or public violence are prohibited by law. (3) The broadcasting of information which, according to the law, has a secret character, or may cause prejudice to the national security, shall be prohibited. (4) The programming and broadcasting of obscene manifestations contrary to morals shall likewise be prohibited.'

2.3. *Professional secrecy*

No special provisions.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

Article 5 of the Law on the Protection of State Secrets (1971) states that the publishing and broadcasting abroad of any kind of works prejudicial to Romanian state interests is forbidden. In the latest revisions of the Criminal Code (1994) by the Senate and the Chamber of Deputies, special punishments were proposed of one- to five-year prison terms for 'communicating or disseminating, through whatever means, news, data or false information or falsified documents, of facts of a nature to undermine the security of the State or Romania's foreign relations'.

Article 236 proposes a prison sentence of from three months to one year for 'any manifestation expressing contempt for the emblems and symbols that are used by the authorities'. Article 238 deals with protection for government officials. It provides for a prison sentence of six months to five years in case of damage to the honour of or threats made in public against public officials.

Article 239 prohibits insults, libel or threats to a civil servant or public functionary while carrying out their functions. The proposed Code also specifies that insult, libel or threat against magistrates or law enforcement officers or the military shall lead to an additional prison sentence of three years.

3.2. *Social values*

Article 317 of the proposed Criminal Code makes nationalist propaganda and incitement to racial and national hatred a criminal offence. The Code also prohibits the spreading of materials that contain obscenity. The dissemination of material that can be seen as war propaganda is also forbidden.

3.3. *Individual rights*

In the latest revisions of the Criminal Code (1994) by the Senate and the Chamber of Deputies, special punishments were proposed for journalists in cases of defamation, insult and injury against individuals and particularly against government officials (Articles 205, 206, 236 and 239). Following strong national and international protest, the Chamber

of Deputies (in October 1995) voted to eliminate the provisions on special punishments against journalists. Since the Chamber did not approve the draft Penal Code, the matter remained undecided.

Article 205 addresses damages caused by exposure to ridicule of the honour or reputation of an individual, a guilty verdict resulting in prison sentences of one month to two years.

4. ACCESS TO INFORMATION LEGISLATION

The Constitution provides access to any kind of public information, but with considerable qualifications and latitude for denial of access. There is no special law that secures such access for journalists. In 1992 an attempt was made by journalists to have the Parliament adopt a three-article law on access to information. The proposed law was rejected. The Law on the Protection of State Secrets discourages freedom of information by an extremely broad range of information categories defined as 'state secrets'.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

Law No. 41/1994, Articles 1.3, 1.4, 8.1 and 8.2, relates directly to public support for media independence: 'Radio and television companies are organized as autonomous public services of national interest, with editorial independence.' The two public services are subsidized by the state budget. The companies benefit from exemption of customs duties for imported equipment, which are granted by the government on a case-by-case basis.

6. MEDIA OWNERSHIP

No special provisions.

7. SELF-REGULATION

7.1. *Professional code of conduct*

No special provisions.

7.2. *Editorial statutes*

No special provisions.

8. INTERNATIONAL OBLIGATIONS

Romania has ratified the International Covenant on Civil and Political Rights (in 1976) and its First Optional Protocol (in 1993), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1994) (with deposition of the declaration on the competence of the European Commission of Human Rights) in 1994.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution
- Law on Radio and Television Broadcasting
- Law on the Organization and Operation of the Romanian Radio Broadcasting Corporation and the Romanian Television Corporation
- Law on the Protection of State Secrets

Russian Federation

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Constitution of the Russian Federation in Article 29 guarantees the exercise of free expression: ‘Everyone shall have the right to freedom of thought and speech . . . The freedom of the mass media shall be guaranteed. Censorship shall be prohibited.’

1.2. *Access to public records*

Access to information is provided for in Article 24 of the Constitution, which states that ‘The bodies of state authority and the bodies of local self-government and the officials thereof shall provide to each citizen access to any documents and materials directly affecting his/her rights and liberties unless otherwise stipulated under the law’, and in Article 29, which says that ‘Everyone shall have the right to seek, get, transfer, produce and disseminate information by any lawful means.’ The list of information constituting state secrets shall be established by the federal law.

2. MEDIA LEGISLATION

2.1. *Outside interference*

The Mass Media Act of the Russian Federation (RF) which entered into force in 1991 provides in Article 1, on the freedom of mass information, that ‘There shall be no restrictions in the Russian Federation on the search for and collection, production and dissemination of mass infor-

mation, nor on the making, acquisition, storage and operation of technical devices and equipment, and raw and other materials designed for the making and dissemination of mass media products, with the exception of those specified by RF legislation on the mass media.’ Article 3 of the Act, on the inadmissibility of censorship, adds: ‘There shall be no censorship of mass information, that is, requirement by persons in office, state agencies, organizations, institutions or public associations that mass-media editorial offices shall coordinate, in advance, reports and materials (except where the person in office is the author or interviewee), or imposition of a ban on the dissemination of reports and materials or parts thereof. There shall be no institution or funding of organizations, establishments, agencies or official posts with the tasks or functions of exercising censorship of mass information.’

The Act provides for the establishment of editorial statutes. Article 20 states: ‘The statutes of the mass-media editorial office shall be adopted at a general meeting of staff-member journalists by a majority of votes in the presence of at least two-thirds of the staff members, and shall be confirmed by the founder. The editorial office statutes must define: (1) the mutual rights and obligations of founder, editorial office, editor-in-chief; (2) powers of the staff-member collective of journalists; (3) procedure of appointment (election) of editor-in-chief, editorial board and/or governing bodies of editorial office; (4) grounds for and procedure of termination and suspension of operation of the mass media; (5) transfer and/or retention of the right to title, other legal effects of replacement of founder, change in body of co-founders, wind-up of mass media, liquidation or reorganization of editorial office, alteration of its legal-organization form; (6) procedure of confirmation and amendment of editorial-office statute, and other provisions specified by the present Act and other legislative acts.’

Under Article 49 on journalists’ rights, the Act also provides the right ‘(9) . . . to set forth one’s own personal judgements and assessments in reports and materials intended for dissemination under his/her name; (10) to refuse preparation, under his/her own name, of reports or materials contrary to his/her convictions; (11) to remove one’s own name from reports or materials whose content he/she believes to have been distorted in editorial preparation, or to prohibit or in other ways make reservations concerning the conditions and nature of the use of the given report or material, in conformity with part one of Article 42 of the present Act; (12) . . . to disseminate prepared reports and materials under one’s own name, under a pen-name or unsigned.’ Article 42 also contains rules on

the use of authored works and signed letters. It states, *inter alia*, that the 'Editorial office shall have the duty to respect the rights to used works, including copyright, publishing right and other rights to intellectual property. The author or other holder of rights to the work may specify the conditions and way in which work made available to the editorial office is used.' Article 49 (8), on the duties of journalists, states that journalists shall have the duty 'to reject assignments from editor-in-chief or editorial office, where it or its performance involves violation of the law'.

The Act provides for liability in a number of cases (Article 58): 'Infringement of freedom of mass information, that is, creation of impediments, in any form whatsoever, by citizens, persons in office, state agencies and organizations, and public associations to the lawful activity of founders, editorial offices, publishers and distributors of mass-information products, and of journalists, including the following: exercise of censorship; interference in the activity of an editorial office and infringement of its professional independence; unlawful termination or suspension of mass-media activity; infringement of the right of the editorial office to inquire for and obtain information; unlawful withdrawal, and also destruction of printing issue or part thereof; coercion of journalists to disseminate information or to abandon dissemination thereof; restriction on contacts with journalists and on transmission of information to journalists, except for information constituting state, commercial or other secrets expressly protected by law; infringement of journalists' rights, as laid down by the present Act, shall entail criminal, administrative, disciplinary and other liability under RF legislation.'

Discovery of agencies, organizations, institutions or official posts whose functions include exercise of censorship of mass information shall entail instant termination of their funding, and their liquidation in the manner specified by RF legislation. Interference constituting liability for breaches of the mass-media legislation include (Article 60), 'creation of impediments to lawful distribution of mass-media products, and imposition of unlawful restrictions on the retail sale of periodical print publications'.

2.2. *Limitations on media content*

The Mass Media Act provides that the media cannot be 'subject to restrictions unless so provided by the legislation of the Russian Federation pertaining to the mass media'. The Act states (Article 4) that the media cannot be used for 'the commission of criminal acts, the disclosure of information constituting state or other secrets expressly protected

by the law, the issue of calls for the take-over of power, violent change of the constitutional system and integrity of the state, incitement of national, class, social or religious intolerance or strife, or the propaganda of war'. The Act also prohibits the 'use of subliminal insertions in television, video and filmed news programmes'.

The rights of journalists can be restricted under the Mass Media Act (Article 51) in cases of inadmissible abuse of those rights. 'Journalists' rights as held out by the present Act shall not be used with the object of concealing or falsifying information of public importance, spreading rumours in the guise of authentic reports, or collecting information for the benefit of outside non-mass-media persons or organizations.'

2.3. *Professional secrecy*

The Mass Media Act obliges journalists to protect their sources. Article 41, on confidential information, provides that editorial offices shall not be entitled to disclose information provided by citizens on the condition of secrecy. Editorial offices shall have the duty to keep secret the source of information and shall not be entitled to identify the person providing information on condition of non-disclosure of his/her name, except where the demand has come from a court of law in connection with judicial proceedings.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

Limits are referred to in the Constitution. Article 29, which provides for access to public information, mentions (paragraph 4): 'The list of information constituting state secrets shall be established by federal law.' Specifically listed are the Law on State Secrets and the Mass Media Act. Article 4 of the Act prohibits the 'disclosure of information constituting state secrets' as well as 'calls for the takeover of power, and violent change of the constitutional system and the integrity of the state'.

3.2. *Social values*

The Constitution states in Article 29 that 'Propaganda or campaigning inciting social, racial, national or religious hatred and strife is prohibited. The propaganda of social, racial, national, religious or language superiority is forbidden.' The Mass Media Act in Article 4 prohibits 'in-

citement of national, class, social or religious intolerance or strife' and 'propaganda of war'. The Criminal Code has provisions for punishment of distribution and production of illegal pornography.

3.3. *Individual rights*

In Chapter 8, Articles 151–2 of the Russian Civil Code of January 1995 contain provisions on the protection of the honour, dignity and business reputation of individuals and legal persons against false defamatory statements, and provide for plaintiffs to seek substantial compensation for material and moral damage. The law does not define strict limits on the award of damages. Article 152 (1) states that the burden of proof regarding the truth of the defamatory expression rests with the defendant. The latter is liable even if there is no intent to harm.

The Mass Media Act (in Article 51) considers it an inadmissible abuse of journalists' rights 'to disseminate information with the object of defamation of citizens or individual categories of citizens solely on the grounds of gender, age, race or nationality, language, attitude to religion, occupation, profession or place of residence, or political persuasions'.

The Constitution prescribes in Article 23 that 'Everyone shall have the right to privacy, personal and family secrets, and protection of his/her honour and good name.' And Article 24 provides that 'It shall be forbidden to gather, store, use and disseminate information on the private life of any person without his/her consent.' The Civil Code also offers protection against violations of privacy. The Mass Media Act, in addressing journalists' duties, also refers to privacy in Article 49, paragraph 5, by stating the duty 'to obtain consent to dissemination in the mass media of facts concerning the private life of a citizen or of his/her legitimate representatives (except where protection of public interests is at stake)'. This forms part of the general provision that 'In the course of his/her professional pursuits, the journalist shall have the duty to respect the rights, legitimate interests, honour and dignity of citizens and organizations.'

The Act also sets out rules (in Article 57) for release from liability, as follows: 'The editorial office, editor-in-chief and journalist shall not bear the burden of liability for dissemination of statements which are not true and which are defamatory to citizens and organizations, or which infringe the rights and legitimate interests of citizens, or which amount to abuse of freedom of mass information and/or the rights of journalists: (1) where these statements are contained in obligatory reports; (2) where these have

been received from news agencies; (3) where these are contained in answer to inquiry for information or in materials of press services of state agencies, organizations, institutions, enterprises, or agencies of public associations; (4) where these are verbatim reproductions of fragments of statements by people's deputies at congresses and sessions of Soviets of People's Deputies, delegates to congresses, conferences and plenary meetings of public associations, and also of official statements by officers of state agencies, organizations and public associations; (5) where these are contained in authored works broadcast without preliminary recordings, or in texts not subject to editing in conformity with the present Act; (6) where these are verbatim reproductions of reports and materials or fragments thereof disseminated by other mass media which may be identified and prosecuted for the said breach of Russian Federation mass-media legislation.' In addressing the moral injury that may be inflicted upon citizens by infringing their individual rights, the Mass Media Act states (Article 62): 'Moral (intangible) harm caused to citizens as a result of dissemination by mass media of false and defamatory statements, or statements inflicting on citizens other intangible damage, shall be compensated, under court order, by the mass media, and also by the offending persons in office and citizens, in the amount awarded by the court.'

4. ACCESS TO INFORMATION LEGISLATION

A constitutional provision (Article 29) and Article 38 of the Mass Media Act, on the right to obtain information, state that 'Citizens shall have the right to prompt receipt through the mass media of authentic information on the activities of state agencies and organizations, public associations and their officials. State agencies and organizations, public associations and their officials shall supply information concerning their activity to the mass media on editorial-office request, and also by holding press conferences, and by circulating reference and statistical materials in other forms.'

On requests for information, Article 39 provides that 'Editorial offices shall have the right to request information on the activity of state agencies and organizations, public associations and their officials. Requests for information may be made either orally or in writing. Requested information must be made available by the heads of the aforesaid agencies, organizations and associations, their deputies, public-relations officers, and other duly authorized persons, under their authority.'

On denial of access to information, the Act states in Article 40 that 'Information may be denied only where it contains elements constituting state, commercial or other secrets expressly protected by the law.' The Article also specifies the form that denial must take: 'Notice of denial shall be delivered to an editorial-office representative within three days of receipt of written request for information.'

Notice must state: '(1) the reasons for which requested information may not be separated from elements constituting a secret expressly protected by law; (2) the person in office denying the information; (3) the date of the denial decision. Deferral of requested information may be permitted where it cannot be produced within a period of seven days. Deferral notice shall be delivered to an editorial-office representative within three days of receipt of written request for information.' Notice must indicate: '(1) the reasons for which requested information cannot be produced within a period of seven days; (2) the date by which requested information will be made available; (3) the person in office taking the deferral decision; (4) the date of the deferral decision.'

Article 47 of the Mass Media Act, which addresses journalists' rights, reads: 'Journalists shall have the right to: (1) seek, ask for, obtain and disseminate information; (2) visit state agencies and organizations, firms and institutions, agencies of public associations or their press services; (3) be received by persons in office in connection with inquiry for information; (4) have access to documents and materials, except fragments thereof containing information constituting state, commercial or other secrets expressly protected by the law; (5) copy, publish, publicize or reproduce in other ways documents or materials, with the proviso of observance of the requirements of part one of Article 42 of the present Act; (6) make notes and recordings, including the use of audio and video facilities, film and photography, except in cases specified by law; (7) visit protected sites of natural calamities, wrecks and serious accidents, mass disorders and mass gatherings of citizens, and also localities under a state of emergency; attend rallies and demonstrations; (8) check the authenticity of information communicated to him/her . . . '.

A draft Freedom of Information Act was prepared by the Presidential Chamber for Information Disputes in 1996.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

The Russian Statute on State Support for the Mass Media (1996) rules on procedures for state support for the mass media and book publish-

ing. The law regulates tax and customs exemptions, sale of foreign currency, and postal, telegraph and telephone rates. It also contains special provisions on the privatization of firms that facilitate the publication of newspapers, journals and books. Article 14 of the Statute provides for the establishment of a National Fund for Mass Media Development. The Fund will be created for the purpose of accumulating and investing funds in the development of the material and technical base of mass media and book publishing.

6. MEDIA OWNERSHIP

The Draft Russian Statute on Radio and Television Broadcasting contains an anti-monopoly guarantee in Section 3, Article 22: 'No firm or financial-industrial (or financial) group may, directly or through its offshoots, own (or co-own) more than one radio and television company if the zone of service of the radio and television companies overlaps fully or by more than two-thirds.' There is also the Law on Mass Media and the Press (1991).

7. SELF-REGULATION

7.1. *Professional code of conduct*

The Code of Professional Ethics of Russian Journalists was adopted by the Congress of the Union of Russian Journalists in 1994. There is explicit reference to interference by outsiders in Article 2: 'The journalist observes the law of his country, but where the fulfilment of his professional duty is concerned, he recognizes the jurisdiction of his colleagues only, and rejects any attempts at pressure and interference from the government or any other source.' On professional secrecy, the Code in Article 4 reads: 'The journalist maintains strict secrecy in regard to his sources. No one can force him to reveal these.' On clauses of conscience, the Code states in Article 9, 'The journalist refuses an assignment if, by fulfilling it, he shall violate one of the above-mentioned principles.'

7.2. *Editorial statutes*

See paragraph 2.

8. INTERNATIONAL OBLIGATIONS

The Russian Federation ratified the International Covenant on Civil and Political Rights in 1976 and its First Optional Protocol in 1992. The Russian Press Law provides that international agreements have precedence over the text of the statutes.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution
- Law on Mass Media
- Draft Russian Statute on Radio and Television Broadcasting
- Draft Russian Statute on State Support for the Mass Media
- Code of Professional Ethics of Russian Journalists
- Civil Code

Slovenia

1. THE CONSTITUTION

1.1. *Freedom of expression*

Article 39 of the Constitution reads: 'Freedom of expression of thought, freedom of speech and public appearance, freedom of the press and other forms of public communication and expression shall be guaranteed. Everyone may freely gather, receive and impart news and opinions.' The Constitution explicitly prohibits censorship.

1.2. *Access to public records*

On access to information, Article 39 states: 'Everyone has the right to receive information of a public nature, provided he/she has a legally grounded interest, except in cases determined by law.'

2. MEDIA LEGISLATION

2.1. *Outside interference*

The Mass Media Law adopted by the Parliament of the Republic of Slovenia on 25 March 1994 declares in Article 7: 'The activity of the mass media is based on freedom of information, the untouchability and protection of human personality and dignity, the free flow of information and openness of those media to different opinions, the autonomy of journalists performing their job, the respect of codes of journalist ethics and the personal responsibility of journalists for the consequences of their work.'

Article 33 of the Law states that ‘The editor-in-chief, editors and journalists work in the framework of a specific programme concept and the spirit of an independent ethical code. Journalists cannot be discharged, their wages reduced, their status on the editorial board changed or suffer a fall in status due to the presentation of their own points of view that are in accordance with the programme concept and the ethical code of journalists or because of their determination not to publish information of an opinion that is counter to the programme concept and the ethical code of journalists.’

In March 1994 the Slovene Government passed a law governing the organization and operations of the public Radio-Television Slovenia (RTV Slovenia). The law contains no special provisions on editorial independence.

2.2. *Limitations on media content*

In its programme planning, RTV Slovenia undertakes to take account of basic principles such as the dignity of man, the right of privacy, impartiality and authenticity of information and of diversity of opinion. Article 4 states: ‘In designing and preparing its programmes, RTV Slovenia should respect people’s personality and dignity, the principles of impartiality and authenticity of information, pluralism of opinion, world philosophy and religion, and political independence and autonomy; ensure full and impartial information and freedom to form opinions; further Slovene culture, encouraging creativity and freedom of artistic creation; educate and develop culture and speech; and protect children and young persons from programme content that could be harmful to their mental and physical development.’

2.3. *Professional secrecy*

No special provisions.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

The Penal Code prohibits libel against the Republic of Slovenia, the President of the Republic, the flag, and the national emblem and anthem (Article 174); against foreign countries or international organizations (Article 175); and against the Slovene national and Italian and Hungarian minorities in Slovenia (Article 176).

3.2. *Social values*

Article 63 of the Constitution states: 'Any incitement to national, racial, or any other type of inequality, and propagation of national, racial, religious or any other hatred or intolerance, is unconstitutional. It is unconstitutional to incite to violence or war.'

3.3. *Individual rights*

The Penal Code guarantees protection against libel and slander in Articles 169–73. The Constitution provides for the privacy of personal data (Article 38), the privacy of letters (Article 37), and personal privacy (Article 35).

4. ACCESS TO INFORMATION LEGISLATION

The 1994 Mass Media Act (Article 24) explicitly provides for the right of public access to government information and documents. Such access shall be denied when access affects the security and defence of the state or if disclosure impairs law enforcement, violates personal privacy or commercial secrecy. Classified materials have to be defined by statutes.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

No special provisions.

6. MEDIA OWNERSHIP

The 1994 Mass Media Act regulates media ownership and prohibits mergers. The Act also limits share ownership in stock companies. The Media Act also prohibits the establishment of companies that would control over 50 per cent of newspaper or broadcasting markets.

7. SELF-REGULATION

7.1. *Professional code of conduct*

The Slovene Code of Journalists was adopted in 1991 by the Assembly of the Association of Journalists of Slovenia. It expressly mentions interference by outsiders: 'It is irreconcilable with the journalistic code to accept bribes or publish information to serve the purpose of and benefit an outside party.' The Code also provides for a clause of conscience: 'A

journalist has the right to refuse to perform any task that is in contradiction with this code and his personal belief, without being punished.’

On professional secrecy, the Code states that ‘A journalist is obliged to respect the confidence demanded by his/her source of information.’ Since 1944 there has been a Court of Honour, which was established by the Journalists’ Association. The most severe sanction is expulsion from the Association.

7.2. *Editorial statutes*

There is provision for the establishment of editorial statutes in Articles 32–7 of the Mass Media Law. These are not commonly used in the press.

8. INTERNATIONAL OBLIGATIONS

Slovenia has ratified the International Covenant on Civil and Political Rights (in 1991) and its First Optional Protocol (in 1993); the European Convention for the Protection of Human Rights and Fundamental Freedoms (in 1994) (with deposition of the declaration on the competence of the European Commission of Human Rights) (1994). International treaties, once ratified, become domestic law.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution
- Mass Media Law
- Act on Radio-Television Slovenia
- Code of Ethics of Slovene Journalists

Spain

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Spanish Constitution of 1978 states in Article 20: '(1) The following rights shall be recognized and protected: (a) to express oneself freely, and (b) to disseminate thoughts, ideas and opinions orally, in writing or by any other means of reproduction; (2) This freedom shall extend to respect for the rights secured in this Title, by the provisions of the implementing laws; they comprise in particular the rights to honour, privacy, controlling the use of one's image and protecting youth and children.'

Article 20 of the Constitution provides that 'The exercise of these rights cannot be restricted by any form of prior censorship.' The right of free expression may be suspended in a state of emergency (Article 55). The right to free expression has in the main been strengthened by the rulings of the Constitutional Court.

1.2. *Access to public records*

Article 105 of the Constitution provides that there shall be: 'Access by the citizens to administrative archives and registers except where this affects the security and defence of the State, the investigation of crimes and the privacy of persons.'

2. MEDIA LEGISLATION

2.1. *Outside interference*

In contrast to the press, broadcasting is heavily regulated by the laws of January 1980, December 1983 and May 1988. The Radio and Television Statute (Article 24) states that access to television is guaranteed to the country's main social and political groups and the choice of concessional companies shall be conditional on the 'need to guarantee free and pluralistic expression of ideas and currents of opinion'.

The law of May 1988 guarantees editorial independence to public broadcasters.

2.2. *Limitations on media content*

Article 4 of the Law of the Press (1966) provides that the government may be consulted before publication.

2.3. *Professional secrecy*

Article 20 of the Constitution provides for the right to receive and communicate accurate information by any means of dissemination. The right to invoke the conscience clause and that of professional confidentiality shall be governed by statute.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

The Criminal Code contains various provisions that protect the institutions and officials of the state against defamation. Protection is in particular awarded to the Head of State (Article 147), the Government and the Constitutional Court (Article 161), the military (Article 242) and public officials (Articles 240, 241, 244). Freedom of expression may also be limited on grounds of national security or support of terrorism (Article 268).

3.2. *Social values*

There are no special provisions on expressions that address social groups. The Criminal Code contains provisions on offences of a moral nature. These address in particular the issue of pornography and are aimed at the protection of children (Criminal Code, Article 432).

3.3. *Individual rights*

The Constitution recognizes a basic right to protection of privacy; Article 18 states that everyone is entitled to the protection of his honour, his personal and family privacy and his own image.

A number of provisions in the Criminal and Civil Codes have strengthened this protection. In civil law, the Organic Law of 1982 on Civil Protection of Honour, Personal and Family Privacy and One's Image of Oneself means that infringement of the right to privacy is an offence. Section 9 (3) of the Law states: 'The protection afforded by the courts will include the taking of all necessary measures to end the illegal intrusion and to re-establish the victim in full possession of his rights, and preventing or impeding further intrusions. Among these measures can be included an injunction addressed to the prompt end of the illegal intrusion, and the admission of the right to reply, the discussion of the sentence and the conviction to pay damages.'

Following a Constitutional Court decision in 1986 (STC 104/86, 17 July), the right to privacy and the right to freedom of expression must be balanced in court decisions. The right to protection of one's honour is provided in both civil law (Organic Law 1/82 of 1982) and criminal law. The Criminal Code defines defamation as a punishable offence (Articles 453, 457). The Criminal Code (Organic Act 10/1995), which entered into force in May 1996, also addresses privacy and confidentiality and punishes, *inter alia*, 'The unauthorized appropriation, use or modification to the detriment of others, of confidential information of a personal or family nature pertaining to another, contained in computerized, electronic or telematic files or supports or in any other type of public or private file or record, as well as non-authorized access thereto by any means, and its alteration or use to the detriment of the owner of the information or any other person' (Section 197).

4. ACCESS TO INFORMATION LEGISLATION

Exceptions to public access to information are cited in Law 9/68 as revised by Law 48/78 which addresses the matter of official secrets. The Law provides for the classification of material. The classification can be challenged in a court of law on the basis of Article 20 of the Constitution.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

Law 29 of August 1984 provides for 'Assistance to Journalistic Undertakings and Information Agencies' through which the press can receive subsidies to meet the costs of publishing and to modernize printing machinery.

6. MEDIA OWNERSHIP

Two laws are relevant here: Law No. 31/1987 concerning telecommunications; and Law No. 10/1988 on television.

7. SELF-REGULATION

7.1. *Professional code of conduct*

The first formal code of conduct was adopted by the College of Journalists of Catalonia in 1992. Following this, an agreement on self-regulation was signed by the Ministry of Education and Science and the public and private television networks in 1993. A Commission to interpret and apply the Catalan Code has been appointed. In the same year the Deontological Code for the Journalistic Profession was adopted by the Federation of Spanish Press Associations. In 1994 the large press group *Grupo Correo* introduced its own professional code. Article 9 of the Deontological Code for the Journalistic Profession addresses outside interference as follows: 'A journalist has the right to protection from his or her own institution and the relevant associations or institutional organizations against those who, by any kind of pressure, attempt to divert him/her from the standard mode of conduct defined in this Code.'

Article 8 (d) provides a clause of conscience: 'The right to call on the clause of conscience, when the media to which he/she belongs proposes a moral attitude that is harmful to his/her professional dignity or which substantially modifies editorial policy.'

7.2. *Editorial statutes*

Not in common use.

8. INTERNATIONAL OBLIGATIONS

Spain has ratified the International Covenant on Civil and Political Rights (in 1977), and its First Optional Protocol (in 1985); the European

Convention for the Protection of Human Rights and Fundamental Freedoms (in 1979) (with deposition of the declaration on the competence of the European Commission of Human Rights in 1981). The Constitution refers to international human rights by stating that rights and liberties that are recognized in the Constitution ‘shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements on those matters ratified by Spain’ (Article 10.2). Article 96.1 states that ‘Validly concluded international treaties once officially published in Spain shall constitute part of the internal legal order . . .’. Through this provision, protections granted by international human rights instruments must be directly applied by courts of law. Courts will also follow the interpretations of these protections as given by institutions such as the European Commission and the European Court of Human Rights.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution
- Radio and Television Statute
- Organic Law 1/82 of 1982
- Criminal Code
- Deontological Code for the Journalistic Profession

Sweden

1. THE CONSTITUTION

1.1. *Freedom of expression*

The Constitution includes the Instrument of Government (1974), the Freedom of the Press Act (1949) and the Fundamental Law on Freedom of Expression (1991). Chapter 1, Article 1, of the Freedom of the Press Act states: 'Freedom of the press means the right of every Swedish subject, without prior hindrance by any central administrative authority or other public body, to publish any written matter, and not to be prosecuted thereafter on grounds of the content of such matter other than before a court of law, or to be punished in any case other than one in which the content contravenes an express provision of law, enacted to preserve public order without suppressing information to the public.'

No prior restraint is permitted. Chapter 1, Article 2, provides: 'No publication shall be subject to scrutiny before printing, nor shall the printing thereof be prohibited. Furthermore, no central administrative authority or other public body shall be permitted on grounds of the content of a publication to take any action not authorized under this Act to prevent the printing or publication of the material or its circulation among the public.'

1.2. *Access to public records*

The Freedom of the Press Act states that '... every Swedish subject shall have free access to official documents'.

2. MEDIA LEGISLATION

2.1. *Outside interference*

The regulatory framework is made up (in addition to the constitutional texts) of the Radio and Television Act of 1996 and the Local Radio Act of 1993, while government licence conditions the transmission of programmes terrestrially by the Swedish Broadcasting Company, the Swedish Television Company, the Swedish Educational Broadcasting Company and TV4.

An express ban on censorship can be found in both the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. The latter guarantees the independence of broadcasters and publishers. Whoever transmits a radio programme shall be free to determine without outside interference what the programme is to contain (Chapter 3, Article 4), and, furthermore, any publisher shall be empowered to supervise publication of the item and determine its content in such a way that nothing can be inserted in it against his will. Any limitation of such authority shall be without effect (Chapter 4, Article 3).

2.2. *Limitations on media content*

Programme companies are obliged by law to assert the fundamental ideas of the democratic form of government and the principles of equality of all human beings and the liberty and dignity of the individual. In the case of broadcasting licensed by the government, the latter may impose various conditions requiring, for example, impartiality and objectivity, a rich variety of programming of good quality and proper respect for the interests of minorities.

2.3. *Professional secrecy*

Freedom of sources from legal responsibility and the right to remain anonymous are both provided for in the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

The Freedom of the Press Act and the Fundamental Law on Freedom of Expression contain rules on offences against freedom of the press and expression. The most frequent types of offences are those against the

security of the realm and other high crimes, but they also include deliberate publication of an official document which is not available to the public, that is the disclosure of information, whereby a person responsible for the printed matter deliberately flouts his/her duty to observe secrecy as provided for in the Official Secrets Act. In a general sense (and based on the Act, the Official Secrets Act and the Criminal Code), three types of publication are proscribed: publication of facts the disclosure of which constitutes a crime against national security, such as espionage; intentional publication of an official record classified according to the Official Secrets Act; and intentional breach of an obligation to observe silence in cases listed in the Official Secrets Act.

3.2. *Social values*

The Freedom of the Press Act, in Chapter 7, Article 4, paragraph 11, defines as an offence against the freedom of the press 'persecution of a population group, whereby a person threatens or expresses contempt for a population group or other such group by alluding to its race, skin colour, national or ethnic origin, or religious faith'.

The Act also places limitations on child pornography and unlawful representations of violence. The Fundamental Law on Freedom of Expression contains a reference to these offences.

3.3. *Individual rights*

The Freedom of the Press Act and the Fundamental Law on Freedom of Expression contain rules on libel and insulting words and behaviour. Only libel and its variants, gross libel and libel on a deceased person are considered as being of real significance.

4. ACCESS TO INFORMATION LEGISLATION

The principle of free access to public documents goes back to the Freedom of the Press Act of 1776, which stated: 'Everyone shall have the right to request that he may examine documents in matters which are or have been under consideration by the public administration.'

Specific types of exemption are articulated in the Freedom of the Press Act and the Official Secrets Act. According to the Freedom of the Press Act, access to public records may be restricted only in connection with records that relate to national security or foreign affairs; the central financial, monetary and foreign exchange policy of the state; administrative action concerning inspection, control or other supervision; the pre-

vention or punishment of crimes; the economic interest of the community; the protection of personal privacy or economic data; or the preservation of an animal or plant species. The Official Secrets Act also addresses the role of public officials. It prohibits officials from disclosing the contents of classified documents. The Official Secrets Act acknowledges the legitimate right of the public to know, and attempts to balance this right with the state's need for secrecy.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

Since 1976 the Swedish *Presstödsnämnden* (Council for Support to the Press) has provided a range of supportive measures in order to protect press pluralism. There are both generic and indirect forms of support (such as exemptions from value added tax, or reductions of postal tariffs), and more direct forms of subsidy. The latter have become more consequential in response to growing press concentration. Direct support can include subsidy for the production of an existing newspaper but also funds for the establishment of a new paper. Various estimates put the volume of support at some 15 to 20 per cent of total press revenues.

6. MEDIA OWNERSHIP

Newspaper ownership and cross-ownership are not restricted by legal rules.

7. SELF-REGULATION

7.1. *Professional code of conduct*

The Ethical Code for Press, Radio and Television was originally adopted by the Press Cooperation Board (which groups the Swedish Federation of Journalists, the Swedish Association of Newspaper Publishers, and the Club of Publicists) in 1923, and amended in 1995.

The Code makes explicit mention of interference by outsiders. Part 2 (1) reads: 'Do not accept an assignment from anyone but the editorial staff leaders.' A clause of conscience is provided in Part 2 (5): 'Bear in mind the provision in the Collective Agreement for Journalists according to which a journalist cannot be ordered to write against his/her conviction or to carry out humiliating assignments.'

The three organizations mentioned above have also set up the Opinion Board of the Press which operates as a Court of Honour for cases that deal with professional ethics in the periodical press. The Press Ombudsman of the Public (appointed by three representatives of the Press Cooperation Board, the *Riksdag* Ombudsman and the Bar Association) brings cases to the Board which are decided on the basis of opinions on whether journalistic ethics has been violated. There are no legal procedures, and compliance with opinions of the Board is completely voluntary.

7.2. *Editorial statutes*

In broadcasting, editorial statutes are not in common use. No data are available for the print media.

8. INTERNATIONAL OBLIGATIONS

Sweden has ratified the International Covenant on Civil and Political Rights and its First Optional Protocol, and the European Convention for the Protection of Human Rights and Fundamental Freedoms (with deposition of the declaration on the competence of the European Commission of Human Rights). It has signed but not ratified the European Convention on Transfrontier Television. The prevailing view is that treaties, even when ratified, do not have the status of domestic law. Domestic law overrides international treaties.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution including the Instrument of Government (1974)
- Freedom of the Press Act (1949)
- Fundamental Law on Freedom of Expression (1991)
- Radio and Television Act
- Local Radio Act
- Code of Conduct for Press, Radio and Television, adopted by the Press Cooperation Board

United Kingdom

1. THE CONSTITUTION

1.1. *Freedom of expression*

Since the United Kingdom has no written Constitution, there are no constitutional guarantees for the freedom of expression. As a consequence British law does not recognize a constitutional primacy of free speech in conflicts between the right to freedom of expression and other civil rights.

1.2. *Access to public records*

No special provisions.

2. MEDIA LEGISLATION

2.1. *Outside interference*

There is no special press law in the United Kingdom. As the Royal Commission on the Press (1977) stated: 'The press should not operate under a special regime . . . but should . . . stand before the law in the same way as any other organization or citizen.' In contrast to this position, there is special legislation enacted in connection with the audiovisual media. Public service broadcasting is ruled by the Broadcasting Act of 1990 and the British Broadcasting Corporation (BBC) Royal Charter and Licence Agreement of 1981.

There are no explicit guarantees in the Broadcasting Act for independence of broadcasters. There are no editorial statutes and no provi-

sions on journalists' participation in decision-making. However, there is a long tradition of all-party consensus that the government does not interfere with programme content. This is acknowledged in the Annex to the Licence Agreement of the BBC. The Broadcasting Act allows the Secretary of State for National Heritage to proscribe a satellite service and effectively drive such a service off the air.

2.2. *Limitations on media content*

The 1990 Broadcasting Act gives the government the power to intervene in both the BBC and the commercial companies to order them not to broadcast any programme, or to oblige them to broadcast a programme or statement it thinks fit. There are various rules on programming in the Act. Section 4 (1) provides 'that nothing is included in the programmes which offends against good taste or decency or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feeling'. It also states that due impartiality should be preserved 'on the part of persons providing the programmes as respects matters of political or industrial controversy or relating to current public policy'.

Part I, 7 (1) of that Act states that an Independent Television Commission shall draw up, and from time to time review, a code giving guidance as to: '(a) the rules to be observed with respect to the showing of violence, or the inclusion of sounds suggestive of violence, in programmes included in licensed services, particularly when large numbers of children and young persons may be expected to be watching the programmes; . . . (c) such other matters concerning standards and practice for such programmes as the Commission may consider suitable for inclusion in the code.' In Part IV, 152, on the Broadcasting Standards Council, the Act provides: '(1) It shall be the duty of the Council to draw up, and from time to time review, a code giving guidance to: (a) practices to be followed in connection with the portrayal of violence . . . ; (b) practices to be followed in connection with the portrayal of sexual conduct . . . ; (c) standards of taste and decency . . .' In Part VII there are provisions on the prohibition of the inclusion of obscene and racially inflammatory material and defamatory statements in programme services.

The BBC Licence Agreement contains provisions that facilitate government interference. Section 13 (4) of the Agreement gives the Home Secretary the authority to prohibit transmission of any programme at any time. The only protection against this interference is that the BBC may tell the public that it is operating under a Section 13 (4) order.

The new United Kingdom Broadcasting Act of 1996 established a Broadcasting Standards Commission which replaced the Broadcasting Standards Council and the Broadcasting Complaints Commission. The new commission is expected to prepare guidelines on issues such as privacy, presentation of sex and violence, fairness, and standards of decency. The commission has produced a code of practice which tightens up, among other things, the right to privacy.

2.3. *Professional secrecy*

Section 10 of the Contempt of Court Act (1981) provides that no court may require an author or journalist to disclose the source of published information 'unless it is established to the satisfaction of the court that it is necessary in the interests of justice or national security or for the prevention of disorder or crime'. The penalty for refusal to comply is a term of imprisonment for up to two years.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

3.1. *State interests and public order*

State secrets are protected by the Official Secrets Act (1989). Disclosures of such secrets are defined as a criminal offence (Section 10.1). The state may prosecute if information is disclosed that concerns national security, defence or intelligence. Also the disclosure of information that may lead to a crime is prohibited (Section 4). Although the law on contempt of court has been largely developed in case law by the courts, there are statutory provisions in the Contempt of Court Act of 1981. In Section 2 (1) the Act determines that criminal contempt of court takes place if a publication 'creates a substantial risk that the course of justice in particular proceedings will be seriously impeded or prejudiced'.

3.2. *Social values*

Limitations based on protection against racist speech are found in the Race Relations Act (introduced in 1965), the Public Order Act of 1936 which was revised in 1986, and the Malicious Communications Act of 1988. The revised Race Relations Act defines as crime both the incitement to racial hatred by using written material and by words or behaviour. It has also introduced the offence of the possession of racially inflammatory materials. The law extended its authority to include broadcast and cable transmissions. At first the BBC and IBA (Independ-

ent Broadcasting Authority) were exempted, but this changed in 1990 with the Broadcasting Act (Section 164).

Section 5 of the Public Order Act of 1986 states that a person is guilty of an offence if he '(a) uses threatening, abusive or insulting words or behaviour, or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby'.

Section 18 of the Public Order Act makes the incitement to racial hatred an offence and Section 19 punishes the publication of material that stirs up racial hatred. Limitations on moral grounds can be based upon the Obscene Publications Act of 1959, revised in 1964. The Act defines it as a criminal offence to possess or publish obscene articles for gain (Section 1). Following the enactment of the 1990 Broadcasting Act, the Obscene Publications Act has also been applied to broadcasting. Strict provisions regarding obscene materials involving children are found in the Protection of Children Act of 1978.

3.3. *Individual rights*

The law of defamation is mainly common law with some statutory amendments. It addresses defamation through libel (more permanent form of communication; no proof of special damage is needed) and slander (more transient form of communication; special damage must be proven). The absolute defence against factual statements that are accused of being defamatory is the truth. Against alleged defamatory comments, the defence is honesty. Damages for defamatory communication awarded by juries can be very high. In order to ward off the potential 'chilling' effect of exceedingly high payments, the Faulks Committee (named after its chairman, Sir Neville Faulks) recommended in 1975 that juries should only say whether damage awards should be substantial, moderate, nominal or contemptuous, and leave the decision about actual figures to the judge.

In 1996 proposals for reforms were before Parliament in the form of the Defamation Bill. The Bill introduced – much like the 'Sullivan' case in United States law – the 'public figure' defence of privilege which would reverse the burden of proof that the allegations are false from the defendant to the plaintiff.

In the explanatory memorandum that accompanies the introduction of the Bill, it is stated that 'The effect of the Bill will be to simplify and streamline the procedure in defamation cases and to encourage earlier

settlement, so reducing the cost and the number of cases decided by the court.' The Bill proposes a summary procedure which allows defendants who have made defamatory statements without intent of defamation to admit the defamation, offer an apology and pay damages.

The defamation bill also extends protection to electronic network providers in the case of libel suits. They can use the same defence as all those who do not have primary responsibility for the information they disseminate, such as printers and publishers.

4. ACCESS TO INFORMATION LEGISLATION

The key document for access to official records is the Public Records Act of 1958 and 1967. There is also the Local Government Access to Information Act of 1985 and the Access to Personal Files Act of 1987. The Official Secrets Act of 1989 controls public access to information. It establishes obstacles for the free collection of information in connection with government activities. In particular, Section 2 of the Act guards against a great variety of unauthorized communications. Section 2 states more than 2,000 information offences. In 1972 a special committee (the Franks Committee) proposed that Section 2 be replaced by a more specific 'Official Information Act'. At the time of writing this recommendation had not been implemented.

There have been strong requests for a Freedom of Information Act but so far governments have not acted upon this. In 1993 M. Fisher, a Labour Member of Parliament, introduced a Right to Know Bill in the House of Commons. Clause 1 of the Bill states that the public has a right 'to obtain access to information held by public authorities'. The Bill provided that disclosure could be refused if it 'could reasonably be expected to cause damage to the interests of the United Kingdom in the conduct of international relations' (Clause 19) or when it would be 'likely to cause significant damage to the lawful commercial or professional activities of a third party' (Clause 24).

The British Government has proposed to proceed on the issue with a non-statutory approach and has introduced the Code of Practice on Access to Government Information. The Code, which came into effect in 1994, provides that its enforcement falls under the remit of the National Ombudsman.

In 1977 the Government published a White Paper, *Your Right to Know*, which proposed a Freedom of Information Act for the United Kingdom. The Act intended to give citizens the right to access publicly

held records and to force public bodies to provide more information. The White Paper proposed the appointment of an Information Commissioner who would report annually to Parliament. This office, which would include the review of refusals of access, would initially be executed by the Ombudsman.

No appeal to the courts is possible against the decision of the Information Commissioner, the argument being that appeals could be used by public authorities to delay disclosure of information. Although the proposed Act covers a broad range of public institutions, the government proposes that the following bodies should be completely excluded from the provisions of the new Act: the Security Service, the Secret Intelligence Service, Government Communication Headquarters and the Special Forces. The White Paper identifies some specific interests, such as national security, international relations, and protection of decision-making and policy advice, which justify non-disclosure when 'substantial harm' can be demonstrated. The Act was scheduled to take effect in 1998.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

No special provisions.

6. MEDIA OWNERSHIP

Concentration can in principle be addressed by the Monopolies and Mergers Commission. The Commission can only recommend against an acquisition if it can be proved that the merger is not in the public interest.

The 1996 Broadcasting Act permits a good deal of cross-ownership between newspapers and broadcasters, nationally and locally. It restricts such combinations, however, when one party controls over 20 per cent of the national market.

7. SELF-REGULATION

7.1. *Professional code of conduct*

There is a Code of Practice, ratified by the Press Complaints Commission in 1994, and a Code of Conduct adopted by the National Union of Journalists in 1994. The Code of Practice mentions in Article 17 the confidentiality of sources: 'Journalists have a moral obligation to protect

confidential sources of information.’ The Code of Conduct also refers to professional secrecy, stating that ‘A journalist shall protect confidential sources of information.’ This Code also explicitly refers to interference by outsiders with the rule that ‘A journalist shall not accept bribes, nor shall he/she allow other inducements to influence the performance of his/her professional duties.’

In 1949 the Royal Commission on the Press recommended the creation of a Press Council, which was established in 1953. In its 1962 Constitution the Council states that its aim is ‘to preserve the established freedom of the British press’. In 1991 a Press Complaints Commission took the place of the Press Council. Like the former Council, the Commission has no authority to enforce its views. Contrary to the voluntary self-regulation of the press, broadcasting is governed by legally binding regulations through the statutory Broadcasting Complaints Commission and the Broadcasting Standards Council, which are in the process of merging.

The Broadcasting Complaints Commission (proposed by the Broadcasting Act of 1981) was in function from June 1981 until its replacement by the Broadcasting Standards Commission in 1996. The Commission had the potential to restrict the independence of broadcasters, in that it had legal powers to oblige broadcasters to comply with its rulings. Its major areas of concern have been ‘sex and violence’.

7.2. Editorial statutes

Not in common use.

8. INTERNATIONAL OBLIGATIONS

The United Kingdom ratified the International Covenant on Civil and Political Rights (in 1976); the European Convention for the Protection of Human Rights and Fundamental Freedoms (in 1951) (with deposition of the declaration on the competence of the European Commission of Human Rights in 1966). Treaties do not become part of domestic law until Parliament passes the legislation. Presently, the United Kingdom is in the process of incorporating the European Convention on Human Rights into domestic law.

9. REGULATORY INSTRUMENTS CONSULTED

- Broadcasting Act of 1996
- BBC Royal Charter and Licence Agreement

- Local Government Access to Information Act
- Access to Personal Files Act
- Public Order Act
- Contempt of Court Act
- Criminal Law Act
- Official Secrets Act
- Obscene Publications Act
- Fair Trading Act
- Draft Right to Know Bill
- Code of Practice on Access to Government Information
- Government White Paper on Freedom of Information, *Your Right to Know*
- Code of Practice of the Press Complaints Commission
- Code of Conduct of the National Union of Journalists

United States of America

1. THE CONSTITUTION

1.1. *Freedom of expression*

The First Amendment to the Constitution (ratified in 1791) provides that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.' The Amendment addresses both freedom of speech and freedom of the press (the press is seen very broadly to include all types of publication). This has given rise to controversy about the advantages versus disadvantages of special constitutional attention for the press.

The First Amendment virtually prohibits all prior restraints. The federal governments, however, can use a variety of devices to control the dissemination of information, particularly in relation to the press coverage of armed conflicts. The Supreme Court is the ultimate arbiter on the constitutional legitimacy of all legal provisions that restrict free speech. The First Amendment guarantees protection against government action; however, it does not extend its protection to restrictions imposed by private parties, such as business corporations. The First Amendment is directed towards federal government; the states have a greater margin of appreciation to pass laws that limit freedom of information in such areas as defamation of individuals or the protection of sources.

The principal case of the First Amendment in operation is the Communication Decency Act (part of the Telecommunication Act) which

proposed prohibiting certain kinds of morally injurious or offensive or otherwise indecent content in public media, particularly on the Internet. The United States Supreme Court declared this Act unconstitutional in February 1997.

1.2. *Access to public records*

No special provisions.

2. MEDIA LEGISLATION

2.1. *Outside interference*

There is a variety of statutes on broadcasting but no overall legislation for the press. There are no specific guarantees for the independence of broadcasting. There are no rules for journalists' participation in electronic media decision-making.

2.2. *Limitations on media content*

The Federal Communications Commission (FCC) has imposed limitations on a great variety of broadcast content. The FCC's regulation of content was particularly visible through the application of the so-called Fairness Doctrine. This doctrine was introduced in the FCC's 1949 Report on Editorialising by Broadcast Licensees.

Under its ruling, the FCC would charge the broadcasters with the duty to seek out and broadcast contrasting viewpoints on controversial issues of public importance. The rationale was the consideration of the broadcasters' obligation to serve the public interest and the right of the public to be informed. In 1987 the FCC stopped enforcing the doctrine. The Telecommunications Act that was passed in 1996 contains provisions that limit the freedom of broadcasters. This is particularly prominent in the section on 'communications decency' and in the provisions on the violence chip ('V-chip'). These provisions address the content of entertainment programmes and could be extended to include news magazines and news broadcasts.

2.3. *Professional secrecy*

There is no federal statutory provision on professional secrecy, but there are 'shield laws' in almost half of the states to ensure that editors and journalists are well protected when they refuse to disclose confidential information.

3. STATUTES LIMITING FREEDOM OF EXPRESSION

Based upon the requirements of the First Amendment, freedom of expression can only be restricted in very specific situations.

3.1. *State interests and public order*

Federal and state governments claim a right to keep matters secret, publication of which would damage public interest. National security was invoked by the United States Government as a legitimate ground for limitations in the 'Pentagon Papers Case', but the Supreme Court upheld the protection of press freedom.

In the administration of justice the courts are obliged (under the Fifth and Sixth Amendments) to guarantee the accused the due process of law and trial by an impartial jury. This may clash with the requirements of a free press and public trial. In most cases where courts have given orders to limit freedom of the press, such orders have been declared constitutionally invalid.

Although representatives of the media can be found guilty of criminal contempt, the rules on contempt of court can only be applied under conditions of imminent danger to the administration of justice. By and large, the emphasis of the rulings of the Supreme Court has been on the protection of free speech with a very limited range of compelling reasons that would legitimate restrictions.

3.2. *Social values*

There are federal civil rights provisions that make criminal and civil action against 'hate' speech possible. There are also various statutes enacted by state governments that restrict hate speech and harassment. All such rules have to be tested against the very broad protection of free speech that the First Amendment offers.

Limitations based on moral grounds are applicable only under conditions of 'clear and present danger' in relation to violence or unlawful action. On a narrowly defined type of sexually explicit expressions (obscenity) the rulings of the Supreme Court do not apply the protection of the First Amendment.

3.3. *Individual rights*

The rights of honour and reputation are guaranteed by the common law of defamation. Defamatory statements which bring injury to the reputation of a living person or existing organization can take the form

of libel (defamatory communication of a permanent character) or slander (defamatory communication of a transient nature). An absolute common-law defence in defamation suits is the proof of the truth of the defamatory statement. In some cases also the defence of privilege is recognized. The defendant can claim a privilege to defame if, for example, the defaming serves crucial public interests. Another defence is 'fair comment', meaning that the defamatory comment is an honest expression made without malice.

The landmark case through which United States defamation law became 'constitutionalized' was that of *New York Times Co. v. Sullivan* (in 1964). In this case the Supreme Court held that public officials could not recover damages for defamation regarding their public conduct unless they could prove that the statements were false and made with 'actual malice'. It makes editors freer in their critique of public officials. The norm set by the Supreme Court implies that ruling on defamation must not have a 'chilling' effect on the freedom of expression. The First Amendment on unrestrained free speech is given clear primacy in the debate about public issues. The final test of defamation is an inquiry as to whether in the publication of information there is actual malice, that is knowledge that the information is false, or reckless disregard for whether or not it is false.

4. ACCESS TO INFORMATION LEGISLATION

The Federal Freedom of Information Act (FOIA) was adopted in the United States Senate in 1964, signed into law in 1966, became operative law in 1967 and has been revised several times since. The Act provides for disclosure of government-held information except where withholding of such information can be justified in accordance with established rules. The FOIA has enabled journalists to uncover a large amount of information. Government agencies have often obstructed access through long delays in providing the requested information. An Executive Order issued in 1982 made it possible for agencies to retroactively classify information.

Particularly, the rules relating to national security, classification and creation of new categories of 'sensitive' information may limit the independence of information-gathering. Denials of requests for information may be reviewed by the courts.

5. PUBLIC SUPPORT FOR MEDIA INDEPENDENCE

No special provisions.

6. MEDIA OWNERSHIP

No special provisions.

7. SELF-REGULATION

7.1. *Professional code of conduct*

The Code of Ethics of the Society of Professional Journalists (adopted in 1926 and revised in 1973, 1984, 1987), in Article II, provides that 'Freedom of the press is to be guarded as an inalienable right of people in a free society.' And in Article III, 'Journalists must be free of obligation to any interest other than the public's right to know the truth.'

The Code recognizes the confidentiality of sources with the provision (in Article III, paragraph 5) that 'journalists acknowledge the newsman's ethic of protecting confidential sources of information'. Many of the largest newspapers have established ombudsman offices for internal monitoring of professional quality.

7.2. *Editorial statutes*

Not in common use.

8. INTERNATIONAL OBLIGATIONS

The United States has ratified the International Covenant on Civil and Political Rights (in 1992), and the American Convention on Human Rights. Ratified treaties are not self-executing. Their incorporation into domestic jurisdiction needs specific legislation. The domestic role of international law is very limited.

9. REGULATORY INSTRUMENTS CONSULTED

- Constitution
- Amendments to the Constitution
- Communications Act of 1934

- Cable Communication Policy Act of 1984
- Electronic Communications Privacy Act
- Telecommunications Act
- Freedom of Information Act
- Code of the Society of Professional Journalists

3. Results

Results

GENERAL

Any comparative analysis runs the risk of containing incomplete data and especially data that have been revised or updated since they were collected. Accordingly, the present results cannot claim to be the final word on media regulation in the selected countries. They do however provide a basis for further study and discussion.

THE LEGAL REGIME

All countries have legal standards (in media laws, civil and criminal codes, and laws on state secrets) that limit the right to freedom of expression. These qualifiers range from the specific to the flexible. Their application by courts may be strictly circumscribed or more loosely provided. The available forms of defence may be more or less effective, and punishments for infringements may vary considerably.

In a strong legal regime, one would expect that limits may be exposed only if they are necessary in a democratic society, that defence of good faith and public interest are available, and that penalties are proportionate and limited to clearly delineated situations. In addition to a robust protection of the right to freedom of expression and limited elasticity of the statutory limitations on that right, stronger legal regimes are characterized by legal support for maximum access to public information, legal support for the protection of sources, legal support for affirmative measures to support media independence, and the direct application of international obligations.

Weaker legal regimes are characterized by the elasticity of limitations on the right to freedom of expression, the absence of explicit provisions in the media legislation that protect media independence, lack of legal support for the protection of sources, lack of affirmative measures to support media independence, and obstacles to the direct effect of international treaty provisions. Conversely, these are the countries that usually experience the harshest infringements on freedom of expression which, more often than not, stem from mainly subjective motivations.

The comparative analysis shows that the selected countries range from very strong legal regimes (as in Austria) to very weak ones (as in Belarus). Most countries stand somewhere between robust and relatively robust legal regimes.

PROTECTION OF FREE SPEECH

All countries have constitutional provisions on free speech, with the exception of the United Kingdom which has no written Constitution. These provisions range from mere 'freedom of expression' to a more encompassing 'freedom of communication'.

Most Constitutions have qualifiers on the right to freedom of expression. They range from minimal provisions on the limitation of freedom of expression, to narrowly defined grounds for limitation, and to a broad and flexible listing of grounds that can be used to limit freedom of expression.

An exceptionally minimal position is taken by the First Amendment to the United States Constitution ('Congress shall make no law abridging freedom of speech or of the press . . .'). In the case of a narrow definition, such as that of the United States, the most common qualifier is the reference to the laws of the country. Illustrations are provided by the cases of Austria: 'within the limits established by law'; France: 'provided they be responsible for any abuse of this freedom in cases determined by law'; and the Netherlands: 'the responsibility of every person under the law'. In some cases it is also specified which law this refers to, as in Germany: 'limited by the provisions of the general laws, the provisions of law for the protection of youth, and by the right to inviolability of personal honour'. In some countries the notion of necessity in a democratic society is added, as in Canada: 'object to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society'.

In the case of very broadly defined qualifiers, a set of concepts is used that are not operationally defined. Romania provides an example with the formulation that freedom of expression 'shall not be prejudicial to the dignity, honour, privacy or person and the right to one's image' and that 'Any defamation of the country and the nation, any instigation to war or aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law.'

INSTITUTIONAL PROTECTION

Not all countries have a specific constitutional provision for institutional freedom of expression. The constitutional guarantee extends in most countries to all people ('everyone', 'every person'), and in some countries only to the citizens of the country.

The following ten countries explicitly guarantee freedom of expression for institutions: Austria, Canada, Germany, Hungary, the Netherlands, Romania, the Russian Federation, Slovenia, Sweden and the United States.

CENSORSHIP

Fourteen countries have a blanket prohibition of censorship. In most, though not all, of these countries this prohibition explicitly refers to prior censorship (asterisked): Austria,* Belarus, the Czech Republic, Denmark,* Estonia, Lithuania, the Netherlands,* Poland,* Romania, the Russian Federation, Slovenia, Spain,* Sweden* and the United States.** (**Although the First Amendment to the United States Constitution does not explicitly contain a prohibition of censorship, its formulation is so absolute that it effectively proscribes all forms of prior restraint.)

It is clear that not all countries adopt an explicit censorship prohibition in their Constitution. Only a minority provides for a prior restraint prohibition.

ACCESS TO PUBLIC INFORMATION

Fifteen countries have different forms of regulatory provisions on access to information: Austria, Canada, Denmark, Estonia, France, Germany, Hungary, Lithuania, the Netherlands, the Russian Federation, Slovenia, Spain, Sweden, the United Kingdom and the United States.

Six countries have a Freedom of Information Act that guarantees access to public information: Canada, Denmark, France, the Netherlands, Sweden and the United States.

PROFESSIONAL SECRECY

The following countries provide some form of legal protection for professional secrecy: Austria,* Denmark,* Estonia,* France,* Germany,* the Netherlands,* the Russian Federation, Spain,* Sweden,* the United Kingdom* and the United States.

In the asterisked countries – which accept the authority of the European Court of Human Rights – professional secrecy is protected under a 1996 ruling of the Court. In the *Goodwin v. The United Kingdom* case the Court declared inadmissible (27 March 1996) the finding of the United Kingdom courts that the applicant (the journalist Goodwin) who had refused to disclose his sources of a publication acted in contempt of court. The Court concluded that the order requiring the applicant to reveal his sources and the fine imposed upon him constituted a violation of Article 10 of the European Convention. In its judgement the Court stated that the protection of journalistic sources is one of the basic conditions for press freedom. ‘Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public watch-dog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.’

Seven countries support affirmative public policy measures for media independence: Austria, France, Lithuania, the Netherlands, Poland, the Russian Federation and Spain.

SELF-REGULATORY REGIMES

The stronger self-regulatory regimes are characterized by the explicit rejection of any interference with editorial contents, clauses of conscience, claims to the protection of sources in professional codes of conduct, and habitual use of editorial statutes.

PROVISIONS IN SELF-REGULATORY REGIMES

In most countries there are neither clauses of conscience nor demands for professional secrecy in the professional codes.

PROFESSIONAL CODES OF CONDUCT

Explicit rejection of interference, clauses of conscience and claims to professional secrecy are found in the professional codes of Lithuania, Poland, the Russian Federation and Slovenia. Explicit rejection of interference and claims to professional secrecy are found in the professional codes of the Czech Republic, France and the United Kingdom.

Clauses of conscience are found in the professional codes of Denmark, Lithuania, Poland, the Russian Federation, Slovenia, Spain and Sweden.

Editorial statutes are commonly used in Austria, Denmark, the Netherlands, Spain and Sweden.

Conclusions and Recommendations

Conclusions

There are important differences in the degree to which the regulatory regimes of the selected countries protect the independence of the media. Even in established democracies with fairly solid traditions of press freedom, some of the regulatory provisions that could promote media independence are weak or sometimes totally absent.

Only a small number of countries has a very robust regulatory environment (including both legal and self-regulatory regimes) for the promotion of media independence. These countries are characterized by narrowly defined qualifiers on freedom of expression, support for institutional freedom of expression, the explicit prohibition of prior restraint, provisions on access, professional secrecy and/or affirmative public measures to support media pluralism, and the common use of editorial statutes. Examples are Austria, Denmark, Germany, the Netherlands, Spain and Sweden.

In a very general sense, the common-law countries tend to be quite explicit as to the prior-restraint rule and to avoid special media statutes (so far as the printed media are concerned; the common-law countries have statutes that rule on broadcasting).

The prevailing sentiment in the United States, for example, is that special press regulation may reduce media independence. Yet most of the federal states have adopted so-called 'shield laws' that effectively promote media independence through protection against interference with journalistic sources.

Among civil-law countries, there are important differences in terms of elasticity of restrictions. These are more limited and specific in Sweden than in France, for example. Sweden provides qualifiers to its free-speech provisions, but is specific about the restrictions.

While France also provides qualifiers, it neither limits nor explicitly defines them. In most countries the limitations imposed on freedom of expression on grounds of state interests, social values and individual rights remain problematic and continue to cause complex conflicts of rights. In some countries the limitations are ‘constitutionalized’, which means that more often than not courts find in support of the free-speech rule.

Constitutionalization is, however, unhelpful in cases (and this prevails in most countries) where the constitutional provisions can only be applied in disputes involving state bodies. This implies that there is no constitutional protection against media owners who impose limits on what their editors/journalists want to publish.

The most problematic characteristics of current regulatory regimes are:

- In many countries constitutional, statutory or uncodified limitations on freedom of expression are ‘elastic’, rather haphazard and random, and ill-defined.
- Countries with robust regimes to protect the media against forms of external interference (by state bodies) do not always provide equal protection for editors/journalists against forms of internal interference (by media owners, publishers and managers).
- Few countries provide for an explicit prohibition of forms of prior restraint.
- Few countries provide for adequate protection of professional secrecy.
- Although most countries provide for some guarantee of maximum access to public information, only a few countries have a special Freedom of Information Act and effective provisions on judicial review in cases of denial of requests for information.
- Few countries provide for affirmative public measures to support media pluralism.
- Few countries have robust provisions on editorial statutes in their self-regulatory regimes.

WORLD COMMUNICATION POLITICS

With the internationalization of the media, the issue of media independence is now an item on the agenda of world communication politics. This requires a critical look at the currently available international regulatory instruments and their implementation. The three-part test of the

legitimacy of limitations on freedom of expression – as proposed in international law – provides in principle an important support to media independence.

Its real significance, however, depends on effective implementation. This remains particularly troublesome. Even though the majority of countries in the sample have adopted the relevant international obligations and support the mechanisms of appeal and recourse, the real significance of these mechanisms is very limited and quite inadequate in view of the present trends in world communication and their implied threats to media independence.

Recommendations

GENERAL

The present study does not go beyond an analysis of the relationship between media regulation and media independence as an assessment of the quality of the existing regulatory conditions. The complexity of this relationship lies in the fact that, while regulatory conditions may be supportive of media independence, it is possible that, in actual day-to-day operations, full editorial control over editorial contents has not yet been achieved.

As stated in the Introduction, the regulatory environment is not the sole – and possibly not the most decisive – variable in the promotion of media independence. It can be safely assumed, however, in view of the variety of political and economic factors that diminish media independence worldwide, that a weak regulatory regime does little to counter these threats and may even tend to facilitate outside interference with media content.

The deduction that a majority of countries in the sample has not established a robust regulatory regime for the protection of media independence calls for urgent attention from state legislators and professional bodies.

The actual realization of media independence is determined not only by regulatory conditions but also by a set of social, cultural and economic ones. Further study is needed to analyse the interaction between regulatory and extra-regulatory conditions. Since one often finds great discrepancies between the formulation and the actual application of regulations, the full analysis will have to include relevant examples of rule implementation. The interpretation of regulatory provisions by judicial courts needs to be studied in addition to the analysis of the provisions themselves. In connection with ‘hate speech’, for

example, it is important to know what the case law is on the liability of editors for statements made by others.

Most countries have in their Constitution, criminal and/or civil codes, or in special acts, restrictive provisions against publications that are considered defamatory or libellous by persons or groups. The question is not only whether these provisions constitute a valid interference with media independence but, more importantly, how the courts have interpreted them in case law. Have judicial opinions by and large supported or eroded media independence? In connection with the self-regulatory regime, there is also a need to study the role of self-regulatory bodies (such as Press Councils) in the promotion of media independence.

SPECIFIC

In order to take this analysis one step further it is recommended that, where practicable, the National Commissions for UNESCO in countries where the present study was conducted take the initiative in organizing a one-day colloquium grouping legislators, media lawyers, media owners and managers, editors and journalists, members of self-regulatory bodies and media researchers.

The colloquium could discuss the findings of this study and compare them with the actual experiences of editors with regard to the existing regulatory environment and their real-life professional independence. The colloquium could help to identify extra-regulatory conditions that may contribute to maximizing the space for media independence and minimizing external and internal interference.

Important items on the agenda could include discussion of the role of the courts and self-regulatory bodies in implementing regulatory provisions on media independence.

Considering that the present study has been confined mainly to the conventional mass media of information, attention should also be given to the interaction between the new information and communication technologies, such as computer networks, and their autonomous control over editorial content.

Checklist for media regulation

In preparing or reviewing media regulation (with a view to promoting media independence), those in charge may wish to refer to the questions given below.

Interference with editorial content

1. Does the Constitution guarantee institutional freedom of expression?
2. Does the Constitution prohibit all forms of prior restraint?
3. Do media laws explicitly reject all forms of interference with editorial content?
4. Do professional codes explicitly reject all forms of interference with editorial content?
5. Do professional codes provide for clauses of conscience?
6. Are editorial statutes in common use by media institutions?
7. Is effective recourse available to legal institutions that protect freedom of expression?

Limitations on freedom of expression

8. Are constitutional limitations on freedom of expression confined, specific and necessary in a democratic society?
9. When media laws provide for restriction on content:
 - (a) Are clear definitions given of the grounds for the restriction of content?
 - (b) Is it clear who decides on the interpretation of these grounds?
 - (c) Are means of appeal against these interpretations effective?
10. When legislation (e.g. in civil and penal codes) provides for limitations in connection with the interests of the state, important social values, or individual rights:
 - (a) Do courts accept defence of good faith and public interest?
 - (b) Is the burden of proof primarily on the plaintiff?
 - (c) Are mechanisms in force to ensure that penalties are proportional?
 - (d) Are compensatory payments limited to actual damage?
 - (e) Are criminal penalties limited to situations where expressions advocate violence or hatred?

Access to public information

11. Does the Constitution recognize claims to maximum public access to official records?
12. Is access to public information secured by a special law?
13. Are grounds for denial of requests for access to public information specific, limited and necessary in a democratic society?

Conclusions and Recommendations

14. Is there a right of judicial review in case of denials of requests for public information?

Protection of professional secrecy

15. Does the Constitution provide for the protection of professional secrecy?
16. Do media statutes or special laws provide for the protection of professional secrecy?
17. Are only courts of law authorized to compel journalists to reveal their sources and only if this is necessary in connection with national security or criminal prosecution?
18. Do professional codes demand the protection of professional secrecy?

Public support for media independence

19. Do special statutes provide for affirmative action for media independence?

Control of ownership

20. Are registration requirements in force that limit the establishment of media or make the establishment of media dependent on state recognition?
21. Are legal provisions in force that limit ownership in media on other than grounds of monopoly?
22. Is there a statute limiting foreign investments in media?
23. Are legal provisions in force against forms of concentration of media ownership that create monopoly positions?

International obligations

24. Are international treaty provisions (ICCPR and ECHR) part of domestic law?
25. Can domestic courts directly apply the provisions of ICCPR and/or ECHR?

Epilogue

The jurisprudence of the European Court of Human Rights suggests that the mass media have a right to impart information. According to the Court this implies the responsibility 'to impart information and ideas on matters of public interest'. In democratic societies the public has a right to receive such information and ideas. The Court has ruled (in its interpretation of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) that it is essential that people have the right to be 'properly informed'.

A crucial requirement for the execution of this public responsibility is that editorial work in the mass media should be protected against interference that conflicts with editorial policies. Around the world trends are found today that pose serious threats to media independence. A commitment to fundamental human rights cries out for such threats to be countered by a variety of legal, political and professional remedies. The present study may be seen as an attempt to draw the attention of media researchers, practitioners and policy-makers to the challenge of strengthening the defence of a critical form of human freedom.

Appendices

Appendix A: Questionnaire

The constitution

1. Does the country acknowledge a Constitutional Court that can declare statutes unconstitutional?
2. Has the Constitutional Court interpreted the constitutional guarantee of freedom of expression broadly?
3. Has the Constitutional Court interpreted the constitutional guarantee of freedom of expression narrowly?

Positive action

4. Does the government consider it a duty for the public authorities to protect the media and/or provide for editorial independence?
5. If 'positive action' is an obligation, what measures are in force to implement it? Please give some illustrative examples in an appendix.

Governmental control

6. Are there any governmental institutions that may exercise censorship functions – such as state-related judicial bodies for information disputes or government-appointed media standards councils? If so, please give the titles of such bodies in a separate appendix.

Media statutes

7. What type of specialized media laws exist in your country? Is there a single media act, a single press act, or a single broadcasting act? Or another format? Please give the titles of the pertinent statutes in a separate appendix.
8. Do these laws contain express provisions on editorial independence?
9. Do these laws restrict editorial independence through the prohibition of certain types of content?

Information acts

10. Does your country have specific information acts (e.g. access to information laws) that strengthen editorial independence?

Creation of media

11. Does the creation of independent media require government recognition?

Grounds for restriction

12. On what grounds can the freedom of speech be restricted? Please tick any grounds for restriction that can be identified in your national legislation.

[Tick where applicable]

- respect for rights of others
- respect for reputation of others
- protection of national security
- prevention of disorder
- prevention of crime
- protection of health
- protection of morals
- protection of the judiciary
- advocacy of national hatred
- advocacy of racial hatred
- advocacy of religious hatred
- incitement to violence
- incitement to discrimination
- defamation based on race
- glorification of violence
- obscenity
- blasphemy

*If other grounds are applicable,
please indicate on a separate sheet*

13. Can editors be held liable for statements made by others?
14. If legal sanctions apply to cases of libel and slander, do they imply threats to editorial independence?

The right of reply

15. What is the status of the right of reply in your country? Is it a legally enforceable right?

16. Could an existing right of reply be used to restrict editorial independence?

Seizure and search

17. Have the national authorities used existing laws to sanction the entering and search of editorial premises and seizure of editorial materials (e.g. articles, photographs, films, sound recordings and electronic information)?

Safety of journalists

18. Are there regulatory measures to protect the right of journalists to exercise their profession safely?

Protection of sources

19. Are special regulatory provisions in place that recognize the need for professional secrecy?

Self-regulation

20. Have self-regulatory bodies been effective in the defence of editorial independence? If so, can concrete evidence be cited in support of their effectiveness in protecting editorial independence? Please give any evidence in a separate appendix.
21. Have editors adopted a professional code of conduct? Can concrete evidence be cited in support of their effectiveness in protecting editorial independence? Please give any evidence in a separate appendix.

Editorial statutes

22. Is the editorial statute an accepted regulatory instrument for internal relationships between editorial staff, advertising and commercial departments, and boards of directors? If yes, what minimum standards of editorial independence are provided? Please indicate these standards in a separate appendix.
23. Do editorial statutes give adequate protection against internal pressures to suppress information about the activities of the (parent) company or to promote the interests of advertisers?
24. Are the consultation rights of editors effective in practice?
25. Are clauses of conscience (providing the journalist with the right to refuse an assignment if it is in breach of professional ethics as laid down in the union's code of conduct) incorporated in :
 - editorial statutes?

- collective agreements?
 - employment contracts?
26. Do editorial statutes guarantee editorial independence when ownership changes?

Employment contracts

27. Is it accepted practice that employment contracts contain clauses on secrecy prohibiting release of information about the company?

Independent unions

28. Does your country recognize the right of journalists' unions to bargain collectively on behalf of their members?
29. Are most professional journalists organized in a union?

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Appendix C: Resource persons and institutions

- C. A. Arnaldo, Chief of Communication Policies and Research, UNESCO, Paris, France.
- K. Augustynek, Polish Journalists Association, Warsaw, Poland.
- Chr. Breunig, Trechtingshausen, Germany.
- S. Coliver, International Crisis Group, Sarajevo, Bosnia and Herzegovina.
- M. Coman, Journalism Faculty, University of Bucharest, Romania.
- CSCE Office for Democratic Institutions and Human Rights, Warsaw, Poland.
- F. D'Souza, Article 19, London, United Kingdom.
- J. Ecclestone, National Union of Journalists, London, United Kingdom.
- R. Errera, Conseil d'État, Paris, France.
- H. Fabris, Department of Journalism and Communication, University of Salzburg, Austria.
- Ä. B. Finnström, Ministry of Culture, Stockholm, Sweden.
- P. Göndör, Embassy of the Republic of Hungary, The Hague, Netherlands.
- R. Gudauskas, Faculty of Communication, Vilnius University, Lithuania.
- C. J. Hamelink, Centre for Communication and Human Rights, Amsterdam.
- H. Harro, Department of Journalism, Tartu University, Estonia.
- R. W. Hoffmann, Hamburg, Germany.
- S. D. Holmberg, Baltic Media Centre, Denmark.
- International Federation of Journalists, Brussels, Belgium.
- K. Jakubowicz, Institute of Journalism, University of Warsaw, Poland.
- J. Jirak, Charles University, Prague, Czech Republic.
- M. Klehm, Deutscher Journalisten-Verband E.V., Bonn, Germany.

- T. Koniuk, Institute of Journalism, Department of Press Law, Warsaw University, Poland.
- V. Kreuzschitz, Bundeskanzleramt, Vienna, Austria.
- Ch. Larouche, Fédération Nationale des Communications, Montreal, Canada.
- J. Linde, International Federation of Journalists/Danish Broadcasting, Copenhagen, Denmark.
- Ad van Loon, European Audiovisual Observatory, Strasbourg, France.
- E. Maceviciute, Faculty of Communication, Vilnius University, Lithuania.
- O. Manaev, Independent Institute of Socio-Economic and Political Studies, Minsk, Belarus.
- B. Möwes, Bundeskanzleramt, Bonn, Germany.
- National Audiovisual Council, Bucharest, Romania.
- M. Parés i Maicas, Faculty of Communication Sciences, Autonomous University of Barcelona, Spain.
- W. Pisarek, Press Institute, Cracow, Poland.
- L. Poulsen, Journalistforbundet, Copenhagen, Denmark.
- M. Raboy, Montreal University, Quebec, Canada.
- A. Richter, Media Law and Policy Studies Center, Moscow, Russian Federation.
- G. A. I. Schuijt, University of Amsterdam/University of Leyden, Netherlands.
- P. Sonninen, University of Tampere, Tampere, Finland.
- C. Sparks, University of Westminster, London, United Kingdom.
- S. Splichal, University of Ljubljana, Ljubljana, Slovenia.
- T. Szecskö, Magyar Radio, Budapest, Hungary.
- J. Szejnoch, Warsaw University, Poland.
- J. Tkatchouk, United Nations Office, Minsk, Belarus.

Appendix D: Useful World Wide Web sites

- Database of National Political and Legal Documents:
www.agora.stm.it/politic/
- European Court of Human Rights: www.dhcour.coe.fr/default.htm
- European Institute for the Media: www.eim.org
- Human Rights Instruments: www.umn.edu/humanrts
- Media and Law in Russia: www.internews.ras.ru/law/gov/
- People's Communication Charter: www.waag.org/pcc
- Post-Soviet Media Law and Policy Newsletter:
www.ctr.columbia.bia.edu/vii/monroe
- Tampere University Codes of Ethics Project/EthicNet:
www.uta.fi/ethicnet
- UNESCO: Compendium of texts on international media regulation:
www.unesco.org/webworld/com/compendium
- USA Media Law: www.cmcnyls.edu/public/default.htm