

# Local law for dummies

Latvian legal guide for journalists



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# Introduction

Freedom of expression and of the press is one of the cornerstones of a democratic, open society. Journalism as a profession is the guardian of this freedom, gathering information, holding power accountable and disseminating the diverse opinions on matters of public interest.

The base for practising journalism in Latvia – the freedom of speech – is laid down in the Constitution. Special laws (Law on the Press and Other Mass Media, Electronic Media Law) show the special rights granted to the profession: to operate autonomously, regardless of external (publisher, advertiser, political, economic) pressure, to be at locations of socially important events, to request and disseminate information, to protect its sources.

But a journalist also has special obligations: to objectively try to find the truth, to separate opinion from the news, to verify the facts, to protect and disseminate various opinions, retract false information.

The journalist's work is being carried out on behalf of the mass media with which he/she has concluded job contract or journalist is a member of professional media organisations. There are two journalists' organisations in Latvia – Latvian Journalists' Association and the Latvian Union of Journalists. Their members are bound by their codes of ethics, which serve as a guide in a slippery situations that are becoming more common due to shortening the time for verification of news.

The tasks are given to the journalist by an editor whose editorial independence is protected by the Law on the Press. The editor represents the newsdesk in relationships with the publisher and other external parties and, with one exception, is responsible for all content published or broadcast.

The freedom of expression is not absolute: it is limited by lies, discrimination and intolerance, based on a person's belonging to a particular ethnic group, age or sexuality, national security considerations, the privacy of individuals and the specific situation of crimes against children.

Part of the restrictions on the journalists' activities is laid down in the Criminal Law, the Civil Law, Law on the Protection of Children's rights, Personal Data Protection Law and other laws. This guide explains the basics that journalists need to know.

## I Legal commandments of journalists

**1.** The right to information, freedom of expression and criticism are the cornerstones of a free society. The right of the journalist to be in places of important events, to **receive information** and disseminate it is based on those rights.

**3.** A journalist **protects** the right to a **fair** comment and **criticism**.

**4.** A journalist must **protect their sources** of information. Their disclosure can only be demanded by the court.

**7.** A journalist **does not allow conflict of interest** in his or her activities.

**8.** A journalist issues correction if facts he has published turn out to be wrong.

**2.** A journalist is responsible for the truthfulness (facts) and impartiality of the information, and **always offers the person/party concerned the right of reply**.

**5.** A journalist refuses a task that is related to the violation of the law or contradicts his or her views.

**6.** A journalist can revoke his or her byline if the content of material is **distorted during the editing process**.

**9.** A journalist scales the public's right to know vs. the individual's right to privacy. A journalist is particularly careful when the situation involves minors.

**10.** A journalist respects copyrights.

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# 1. Criminal Law

## The obligation to observe the prohibitions in the Criminal Law

- ▶ If a journalist violates the Criminal Law, criminal liability arises.
- ▶ Journalists are prohibited from publishing state secrets; information that calls for violence or political coup; promotes war, cruelty, racial, national or religious superiority and intolerance. It is not permitted to disseminate an information that incites to commit any other crime.<sup>1</sup>

**Example:** *A journalist, in a TV story, showed how to quickly make a bomb from a former army landfill, revealing details of the device. The journalist was accused of producing and storing explosives.*

## The right to participate in court proceedings

- ▶ Judgments are publicly announced, including those from closed sittings (abbreviated).<sup>2</sup>
- ▶ Journalists can take part in all open criminal court sittings, except in the cases mentioned in the law and in proceedings that are announced closed at their beginning.

**Example:** *Journalists' presence is not allowed in court proceedings of sex crimes. The cases of adoption and official secrets are also heard behind closed doors. Also, the temporary arrest of individuals (a pre-trial security measure) is not decided by the judges openly.*<sup>3</sup>

## The obligation to respect the presumption of innocence

- ▶ The journalist refrains from calling the accused or sentenced persons "criminals". Only the judgment that has come into force gives the right to call a person guilty of a crime.<sup>4</sup>
- ▶ It should also be taken into account that sentences are eliminated by the time, because each crime committed is time-barred.

## Criminal liability for defamation

- ▶ A journalist can be held criminally liable for defamation (deliberate release of false, shameful fabrication about other individuals).<sup>5</sup> It rarely happens, but the provision still exists.

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1 Law on Press and Other Mass Media, Section 7 Paragraph 1.

2 Law on Judicial Power, Section 28<sup>2</sup> and Section 19.

3 Law on Criminal Procedure, Section 274.

4 Law on Judicial Power, Section 23 Paragraph 1.

5 Criminal Law, Section 157.

- ▶ The journalist may publish and broadcast offensive, shocking, distracting, critical information if the form is not abusive and the message is based on true facts.<sup>6</sup>
- ▶ A journalist is protected from criminal liability if:
  - 1) He or she relied on official statements by public officials, authorities or public and political organizations;
  - 2) At the time of the publication the journalist had complete conviction that the information was true and he or she acted in good faith.
- ▶ The responsibility in case of defamation lays with author, not with editor-in-chief.<sup>7</sup>

**Example:** *A newspaper published articles, the content of which was offensive for J.Š honour and dignity, because the news were false and and form of expression was chosen with the intent to humiliate J.Š. in front of readers. The court acknowledged that the articles were defamatory, but the author of the article escaped from the criminal sentence due to wrong charges (editor was charged and therefore case collapsed).*<sup>8</sup>

## 2. Civil Law

### The obligation to protect the privacy, honour and dignity of a person

- ▶ Court proceedings may be initiated against a journalist who has disseminated false information which insults subject's honour and dignity, or has inflicted moral damage. The court may order a journalist, media company or editor to pay the compensation.<sup>9</sup>
- ▶ A journalist may be exempted from liability if:
  - 1) A state institution (authority) or an official has been indicated as the source;
  - 2) The publication separates the news from the commentary, because the opinion cannot be subjected to the test of truthfulness;
  - 3) The information has been of public interest;
  - 4) Before the publication, the journalist had carefully scrutinized the facts, even if errors were discovered later.

**Example:** *Former economy minister Laimonis Strujevics sued the newspaper "Diena" and its columnist Aivars Ozolins about the the critical publications which allegedly caused minister moral damage. In his columns, the author assessed Strujevics's actions, which envisaged changes in the privatization of state-owned enterprises. The European Court of Human Rights (ECHR) acknowledged that Ozolin's publications were offensive and incriminating, however they did not violate the borders of*

<sup>6</sup> See also Code of Ethics of the Latvian Journalists' Association Chapter II Article 1.

<sup>7</sup> Law on Press and Other Mass Media, Section 7 Paragraph 5 and Section 24 Paragraph 1 Clause 2 and Section 29, also Section 16 and Section 25 Paragraph 1 Clause 1.

<sup>8</sup> Decision of the Department of Criminal Cases of the Senate of the Supreme Court of the Republic of Latvia of 25 September 2007 in the case No SKK-270/2007.

<sup>9</sup> Civil Law, Section 2352<sup>1</sup> and Section 1635.

*the freedom of expression of journalists, and evaluation of the politician's activities was in the public interest.*<sup>10</sup>

**Example:** *Former Member of the Parliament Māris Gulbis filed a moral damages claim against "Mediju nams" LLC. Its tabloid had published contemptuous articles about Gulbis family and private life. Although the court pointed out that politicians can be judged more rigorously than ordinary people, the author of the article and the media unduly interfered with the politician's private life by criticizing and cynically discussing the break-up of the politician's parents, and private relationships between his father and step-father.*<sup>11</sup>

### 3. Access to Information

#### FOI request

- ▶ A journalist has the right to obtain information in any manner not prohibited by law and from any lawful source.<sup>12</sup> While doing so, ethical and moral limits must be taken into consideration. The purpose of journalist should be raising public discussion, therefore the manner of obtaining information should contribute to the purpose.
- ▶ Journalists have the legal right to receive information from the governmental and public organizations.<sup>13</sup>

**Example:** *In the sense of the Freedom of Information Law, companies which belong to state or municipality are not public bodies, therefore they may deny information requests.*<sup>14</sup> *However, journalists may turn to the shareholder (i.e., municipality or state body) or to the Administrative Court, requesting for the information to be provided to media.*

#### The right to receive information on the use of public funds

- ▶ Journalists may request information on the use of state and local government funds. It is illegal to hide the salaries of public sector employees.

**Example:** *The State Chancellery refused to disclose the names of employees who received bonuses to the newspaper. The Supreme Court ruled that the information had to be provided, since information on remuneration, including bonuses, of public servants and governmental employees and officials did not contain information about the private life of a regular person protected by law. Every state or local*

<sup>10</sup> ECHR judgment of 12 July 2007 A/S Diena and Ozoliņš vs. Latvia.

<sup>11</sup> Judgment of the Department of Civil Cases of the Senate of the Supreme Court of the Republic of Latvia of 1 February 2012 in the case No SKC-8/201.

<sup>12</sup> Law of Press and Other Mass Media, Section 24.

<sup>13</sup> Law of Press and Other Mass Media, Section 5.

<sup>14</sup> Judgment of the Department of Administrative Cases of the Supreme Court of the Republic of Latvia of 24 March 2016 in the case No A420227714 SKA-49/2016.

*government official or employee must be aware that information on earned income in the performance of their duties is freely available to the public. The official's declaration, published once a year, is not enough.*<sup>15</sup>

### The right to request and receive copies of final decisions

- ▶ Refusals to initiate criminal proceedings and decisions on termination of the case by police, KNAB (Corruption Prevention and Combating Bureau), prosecutor's office, etc. investigating bodies are issued anonymized to journalists upon request.<sup>16</sup>

### The right to receive information on departmental inspections

- ▶ Materials of departmental inspections are regarded as restricted access information. They are considered as a possible basis for criminal proceedings. A journalist justifies the request with the Freedom of Information Law, indicating the necessity and purpose.<sup>17</sup>

### The right to receive court case materials

- ▶ A judgment made at an open court sitting is publicly available information at the time of its announcement. It is published anonymized on <https://manas.tiesas.lv/>.
- ▶ Materials reviewed at an open court sitting are regarded as restricted access information. Therefore during the proceedings journalist cannot read the volumes or copy a materials. However it is permitted to publish what has been heard at the court sitting.
- ▶ Only the introductory and operative part of the adjudication made in a closed sitting is available.
- ▶ Materials of closed sittings is protected for 20 years since the final judgement; in cases of child's birth, adoption, divorce and incapacity for 75 years.<sup>18</sup>

### Admissibility of rejection of the requested information

- ▶ Officials of state and public organizations may refuse to issue information if the law prohibits its publication.

**Example:** *Information, which contains official secrets or would promote violence, discrimination, hatred in society may not be provided. Pre-trial investigation materials may be issued with the authorisation of the prosecutor. A journalist may also receive a refusal if the information is related to the protection of the rights of the child, or the use of information requires a permission from the person.*

**Example:** *One of the reasons for not disclosing information is often the argument that the information requested is for internal use of the institution and disclosure would be detrimental to the institution's*

<sup>15</sup> Decision of the Department of Administrative Cases of the Supreme Court of the Republic of Latvia of 1 July 2010 in the case No A42404707 SKA-347/2010.

<sup>16</sup> Criminal Procedure Law, Section 375 Paragraph 2.

<sup>17</sup> Freedom of Information Law, Section 2 Paragraph 1.

<sup>18</sup> Law on Judicial Power, Section 28<sup>4</sup>.

*operation. The law does not provide for any kind of information intended for internal use by an institution to be considered as restricted access information.<sup>19</sup> In this case, the journalist has the authority to request re-issue of information or to apply to the Administrative District Court.*

## 4. Administrative Law

### Disruption of the journalist's work

- ▶ If a journalist is disrupted while gathering information, or not permitted to film in public places, the police should be called to draw up an administrative violation report and punish the offender. A violation of the journalist's work may lead to a penalty of up to € 140 for the offender.<sup>20</sup>

**Example:** *The cameraman of the crime TV program filmed rescuers pulling a car out of the ditch. He was attacked by the car owner. The cameramen called the police and filed an administrative offense case against the offender. The court found the attacker guilty of disrupting journalist's work.<sup>21</sup>*

## 5. Children's Rights

### Interviewing and filming restrictions

- ▶ Up to the age of majority, the child is under the guardianship of parents. Therefore their consent must be sought if the minors are filmed, photographed or interviewed in situations involving them as a victims, touching upon their private lives or about similar situations with another child who is absent.<sup>22</sup>
- ▶ In the rest of cases, journalist should weigh the interests of minor speaking out vs possible consequences of doing so.

**Example:** *Media are banned of publishing information about a child who has become a victim, a witness or has committed a crime, and information that could harm the child immediately or in the future. News in such cases shall not allow to identify the child, for example, via interviews with neighbours, teachers, showing a house etc.*

<sup>19</sup> Judgment of the Department of Administrative Cases of the Senate of the Supreme Court of the Republic of Latvia, 4 November 2011 in the case No A42862609 SKA – 464/2011.

<sup>20</sup> Latvian Administrative Violations Code, Section 201<sup>9</sup>.

<sup>21</sup> Judgment of the Riga District Court of 22 September 2016 in the case No 33084216.

<sup>22</sup> Civil Law, Section 177.

## Exceptions

- ▶ Exceptions are the cases when the child wants to talk about what happened and parental (or other legal representatives of the child) consent has been obtained. If criminal proceedings are initiated, the police or prosecutor's permit is required.
- ▶ In public events where the legal representatives are not present and their consent cannot be asked for, the "best interests of the child" principle must be observed. In the schools, kindergartens, the journalist coordinates his or her arrival with the managers of the institution.
- ▶ Increasingly, children take part in media as 1) users, 2) interview-persons or sources, 3) editors themselves. This challenge must be met:
  - 1) Respect that more content should be written or showed in a way respecting that children are among the users. Until the appearance of social media, print media and broadcast media were able to make division between general content and content produced for children. Now children are users in a completely different way and particularly without any control or help from their parents, teachers or media professionals.
  - 2) As media has become a part of a child's normal life, they would more often be ready to be interviewed and could provide sources for journalists. This situation calls for revisit and in some countries a review of ethical standards.
  - 3) As digital citizens from a very early age, children are able to create websites. Often their first website would be a profile on Facebook or other social media. They will upload content from themselves or from other sources without having any knowledge on basic journalistic rules and authors' rights. This should be met through media literacy with a firmly engagement from journalists.

## 6. Personal Data Protection

- ▶ A person can be identified by the name, surname, social security code, characteristic physical or genetic features – fingerprints, etc.

**Example:** *An electronic mailing address that contains a given name and surname (name.surname@domain) is regarded as personal data by Latvian law. The address name.s@domain, is not because it does not allow the identification of a particular person.*

### Data processing for journalistic purposes

- ▶ Journalists can process personal data without asking permission from the person.<sup>23</sup> However, the data must be collected and transmitted in accordance with the established purpose and scope.

**Example:** *A journalist cannot disclose individual's social security number, but can state the age of the individual (Latvian social security numbers were formed in a way that their first part constituted date*

<sup>23</sup> Personal Data Protection Law, Section 5, Section10 Paragraph 1 Clause 2.

*of birth). If journalist has not obtained permission of the person, they cannot disclose the medical diagnosis, but can say that person is in a need of medical treatment (the rule is not applicable to President of Latvia).*

### Preventing personal identification

- ▶ The Criminal Procedure Law states that persons may not be filmed during the conduct of procedural acts (for example, during arrest or detention). However, the law does not directly prohibit filming of persons, for example, on the way to the courtroom.
- ▶ Consequently, it is advisable to provide face masking and not to mention the name of a detainee, unless their names have already been disclosed by their lawyer, police officer, prosecutor or judge.

### Public's right to know vs. the right to privacy

- ▶ Journalists should have a reasonable assurance that information is important to society and justifies interference with private life protected by the Constitution.

**Example:** *Police CCTV cameras inadvertently filmed an attempt by a depressed man to kill himself. After a while, these videos, where a man was seen with a knife at hand at the moment of the suicide attempt, were published by a newspaper and later broadcast on the TV. Since the man was not in a public event, nor he was a public figure or had given consent to publishing, the court acknowledged the violation of privacy.<sup>24</sup>*

- ▶ It is forbidden to publish personal correspondence, transcript of telephone conversations without the consent of the participants (or their heirs).

**Example:** *If a journalist has obtained a transcript of a tapped phone conversation which is of significant public interest, it is not recommended to broadcast live immediately without the consent of both recipients. If the editors decide that the publication can be justified, retelling or actor's voiceovers shall be employed to maximally try to avoid direct violation of Criminal Law.*

### Privacy restrictions of public persons

- ▶ Public persons, such as politicians, have fewer rights to restrict the use of their image than private individuals. With this status, a person loses the right to privacy in matters such as education, travel, awards, work dinners, etc.
- ▶ In addition, if a person receives remuneration from the state or local government budget, information about the income of this person is subject to considerably lower standards of privacy protection than other personally sensitive information at the disposal of the state and municipalities.<sup>25</sup>

<sup>24</sup> Peck v. The United Kingdom.

<sup>25</sup> Judgment of the Department of Administrative Cases of the Senate of the Supreme Court of the Republic of Latvia, 10 September 2012 in the case No A420675111.

**Example:** *The court acknowledged that information about who has received the personal firearms as an award in the annual ceremony in the Ministry of Interior is not a personal data. Ministry was ordered by the court to provide the information on what grounds each official was granted award, where firearms were purchased and how much they cost.*<sup>26</sup>

**Example:** *ECHR declared that by forbidding a journalist to publish a photo of a politician, right to the freedom of expression was violated. Firstly, the person was a politician; secondly, photos per se do not reveal details of private life.*<sup>27</sup>

## 7. Copyright

- ▶ Copyright and related rights must be respected when publishing and using materials.<sup>28</sup> Broadcasting rights-protected material for a general public (for example, phonogram of a popular song performance) without owner's consent is considered an infringement. Disposal or circumvention of technical restrictions for protection is not permitted.<sup>29</sup>

**Example:** *A newspaper, without the consent of the author, reproduced and published photographs which were not previously showed to the public or allowed for further reprinting with or without remuneration, thus violating the author's rights.*<sup>30</sup>

- ▶ A work may be used without author's consent and remuneration:
  1. For educational and research purposes.
  2. For reproduction so the visually impaired and hearing-impaired persons can use it.
  3. For informative purposes.

**Example:** *The author's work is used to provide information on, for example, visits, cultural activities, sporting events. This includes the use of a short passage (audio, video, text).*

4. A work is used for the purposes of museums, libraries and archives.

**Example:** *For example, large-scale contemporary art installations exhibited in the centre of Riga can be filmed and included in news stories without author's permission and remuneration.*

5. A work is ephemerally used by the broadcaster.

**Example:** *In the TV report, a journalist includes a piece of music from the concert. It is generally accepted to use fragments for up to 60 seconds, but there is no common practice.*

<sup>26</sup> Judgment of the Administrative District Court of 12 April 2012 in the case No A420707610.

<sup>27</sup> Krone Verlag GBMH & CO. KG v. Austria.

<sup>28</sup> Law on Press and Other Mass Media, Section 17.

<sup>29</sup> Copyright Law, Sections 68, 19, 20, 21, 27, 36, 37, 39.

<sup>30</sup> Judgment of the Department of Civil Cases of the Supreme Court of the Republic of Latvia of 2016 in the case No SKC - [B]/2016.

6. A work is parodied or caricatured.
7. A work is reproduced for the purposes of judicial proceedings.
8. A work is used in a public performance during official or religious ceremonies, as well as in education institutions for the education process.
9. Copyright term has expired.

**Example:** *In 2014, the copyright term expired for Latvian poet's Aspazija works, so they are now freely available digitally.*

### Copyright and websites

- ▶ Copyright must be respected when publishing content also through hyperlinks or embeds.
- ▶ It is allowed to hyperlink to material published on another site. The link must indicate the location of the original story. If a hyperlink makes available content provided for registered subscribers of other websites, this is a violation because its content has been protected.

**Example:** *The website contains hyperlinks to the materials available on the websites of various newspapers. The EU Court of Justice acknowledged that there was no copyright infringement, as the author made them freely available to the public.<sup>31</sup>*

- ▶ Liability is triggered if a publisher of hyperlinks meets two criteria:
  - 1) he or she knew that the hyperlink indicates illegal work;
  - 2) posted a hyperlink to make a profit.

**Example:** *Before official publication of photos, they are posted on the internet and sent to journalists. A magazine places a hyperlink to the posted photos on its website. Both criteria are met for the responsibility for copyright infringement, because, first of all, journalists knew that the photos were originally obtained illegally before the author communicated them to the public. Secondly, the magazine posted the hyperlink to photos deliberately for profit.*

## 8. Protection of Sources

### The right not to disclose the source of information.

- ▶ The protection of their sources is the duty of journalists. They can refuse disclosure regardless of whether their informants obtained the information lawfully or illegally.<sup>32</sup>

**Example:** *The police cannot require journalists to present documents containing references to the identity of the source, to wiretap the journalist's conversations, to search his or her house, to remove the data carriers during the search.<sup>33</sup>*

<sup>31</sup> Judgment of the Court of Justice of the European Union of 13 February in the case No C-466/12 Svensson.

<sup>32</sup> Law on Press and Other Mass Media, Section 22.

<sup>33</sup> Judgment of the European Court of Human Rights of 16 July 2013 in the case of *Nagla v. Latvia*.

- ▶ In Latvia, a request for the disclosure can only be made by an investigating judge. In their decision, judges must explain why the disclosure of source is more important than the freedom of expression. If the decision of the investigating judge is not proportionate, it can be appealed to a higher court. It will review the complaint in writing within 10 days, and its judgment will be final.

**Example:** *The desire to find out who disclosed a company's confidential business plan or spilled information in a secret criminal proceeding does not constitute an overriding public interest that could justify disclosure of the source of information from a journalist. Another thing is crime, for example, child abuse. Source identification can help identify a criminal. In addition, the judge has made sure that there is no other way of uncovering the criminal.*<sup>34</sup>

## 9. Protection of Official Secrets

- ▶ Journalists in Latvia do not have criminal procedure immunity; therefore, they are bound by the protection of official secrets and national security interests. At the same time, the obligation not to publish secret, in particular sensitive and confidential information, should be in line with the journalist's duty to inform the public about the unlawful use of state power and service status.

**Example:** *The content of a legally wiretapped phone conversation is protected as official secret. However, the so called "Ridzene talks" by local oligarchs and their henchmen (named after hotel where they took place) were wiretapped by local anti-corruption office and leaked after the prosecutor decided not to press charges. Magazine "Ir" published them on justification that they are in a public interest due to the fact that possible illegal actions by officials are discussed.*

**Example:** *Based on the protection of official secrets, governmental institutions often deny information to journalists. However, Section 5 of the Law on Official Secrets lists exceptions to the information that cannot be official secrets: information on the President's health, economic situation in the country, natural disasters, corruption cases, crime of officials, and their remuneration.*<sup>35</sup>

## 10. Commercial Law

- ▶ Everyone has the right to read the documents submitted to the Register of Enterprises on the establishment and operation of companies.<sup>36</sup> The media have a duty to observe commercial secrets, because disclosure of economic and financial information can negatively affect the competitiveness of a given entrepreneur and cause losses.

<sup>34</sup> Criminal procedure Law, Section 154.

<sup>35</sup> Law on Official Secrets, Section 5.

<sup>36</sup> Commercial Law, Section 7 Paragraph 1.

- ▶ In practice, commercial secrecy is often used as a pretext for failing to provide information.
- ▶ Contracts concluded in accordance with the Public Procurement Law or other types of agreements with regard to dealing with state and local government funds and property are not commercial secrets.<sup>37</sup> Generally known or publicly disclosed information is not a commercial secret.<sup>38</sup>

**Example:** *The NGO "Tautas balss" (People's Voice) asked the Ministry of Transport for information on the sale of its airline company "airBaltic" brand and related trademarks. The Supreme Court acknowledged that information containing commercial secrets may be obtained if its provision is provided for by law or if the requested information is of significant public interest and disclosure is commensurate with the potential damage to the interests of the capital company.*<sup>39</sup>

## 11. Filming, Audio recordings and Drones

The laws do not specify exactly which journalistic methods, experiments and technical equipment can be used. However, any activity must be proportionate to the integrity of the privacy of a person, data protection and public interest.

### Private property

- ▶ The procedure for taking pictures and filming in a private real estate (in premises or territories) is determined by the owner or legal user, for example, the tenant.<sup>40</sup> Failure to comply with the protection of a private property is justified only if that is the only means for journalists to prove that something illegal takes place there.

**Example:** *A journalist enters a fenced area to prove that it contaminates the nature and endangers the ones living in the surrounding area.*

### Public places

- ▶ Journalists are not subject to the restrictions set out in the Personal Data Protection Law - the need to obtain permission from a person before taking photographs or filming in public places. However, it should be noted that there are sensitive public places (such as public baths, religious buildings and their territory, hospitals, schools, kindergartens), where a journalist should assess the purpose of photography and whether the rights of a person to privacy are not violated.

<sup>37</sup> Freedom of Information Law, Section 5 Paragraph 3.

<sup>38</sup> Freedom of Information Law, Section 5 Paragraph 6 and Section 7 Paragraph 5.

<sup>39</sup> Judgment of the Administrative District Court of the Republic of Latvia of 25 February 2015 in the case No A420418311.

<sup>40</sup> Criminal Law, Section 143.

**Example:** *The Supreme Court dismissed the claim by lawyer Kristine Dupate against the tabloid magazine for interference in the private life by publishing secretly taken photographs with her leaving a hospital with her newborn child. The court acknowledged that photographing a person in a public place without consent itself does not constitute a violation of privacy. The court noted that this was a single case, not a long-term observation and tracking. The judgment was favourable to the media, not only because photographs were taken at a public place, but partly because the child's father, Janis Naglis, was a public figure at the time of taking photos and did not oppose the photo publishing.*

**Example:** *The Supreme Court partially upheld the claim of Alla Spale – the assistant to the judge of the Constitutional Court and the godmother of MP Aleksejs Loskutov's daughter, for non-pecuniary damages when photograph of the baptism of MP's daughter was published by another tabloid magazine. The court assessed that the disputed photograph was taken at an event not accessible to the general public, the claimant was not a public figure and her image was not related to any political or other socially important discussion. Therefore, the interference with the applicant's private life was not justified.*

### The right to use a hidden camera and audio recording

- ▶ It is permitted to use hidden camera / audio recordings if:
  1. The issue is of public importance;
  2. It is not possible to obtain the information otherwise;
  3. The journalist adheres to ethics, for example, by way of technical means masking an interviewed person's face or changing their voices.

**Example.** *The court ruled in favour of the LTV broadcast "Aizliegtais paņēmiens" (Prohibited Technique) journalists who secretly recorded a pastoral conversation and played a piece of that it during the programme. The court acknowledged that the use of the provocative method was justified because it was used in the interests of an open and meaningful discussion.<sup>41</sup> The ECHR has repeatedly emphasized that "freedom of expression" extends not only to information that is favoured or neutral, but also to one that is insulting, shocking, or worrying a part of society. The ECHR also pointed out that press freedom involves certain bias up to exaggeration or even provocation.<sup>42</sup>*

### The right to record court sittings

Filming and recording of sound is permitted at all open court sittings in criminal, civil and administrative cases. Criminal cases require the consent of all parties.<sup>43</sup>

### The right to film with drones

Government has issued a regulation for filming with drones.<sup>44</sup> Most importantly, flights must not

41 Judgment of the Riga City Latgale Urban District Court of 27 January 2016 in the case No C29776714.

42 Judgment of the ECHR of 26 April 1995 in the case *Prager and Obershlik vs. Austria*.

43 Criminal Procedure Law, Section 485.

44 Regulations of the Cabinet of Ministers No 737 of 22 November 2016.

harm people's lives, health, privacy or property, environment, endanger safety and security of aviation flights, or national security interests.

**Example:** *Particular consideration should be given to the use of journalists' drones in major fires, other accidents or natural disasters, when rescue workers use helicopters, as the drone endangers their work.*

- ▶ The drone must not be further than 500 meters away from its controller and closer than 50 meters to a public venue. In order to film above the event, such as a meeting or demonstration, the drone's weight should not exceed 1.5 kg and filming requires a written permission from the organizer.
- ▶ The organizer must coordinate the drone flight with the respective municipality. When flying over a public event, the drone requires a parachute that will operate in the event of an accident and will be equipped with a light and sound signal.
- ▶ It is forbidden to approach certain places: for example, prisons, army bases, the President's Palace and other buildings mentioned in the regulations.
- ▶ Unclear situations should be consulted at the "Civil Aviation Agency" as it can impose administrative sanctions.

## 12. Retractions and Legal Consequences

### The obligation to retract false news

- ▶ The law requires the media to retract false news, but the deadlines for electronic media and others are different, as they are governed by different laws.
- ▶ The offended may request retraction and right of the reply by submitting a written application to the electronic media. He/she has a right to demand only to broadcast of the response, without asking for anything to be retracted.
- ▶ The claim must be submitted within 14 days after the disputed broadcast and the media must decide on it within 7 days. If the broadcasted claim does not stand up to scrutiny, the correction must be issued no later than on the fifth day after the decision of the media, at the same place and at the time when it was disseminated (if that is not possible, then by use of equivalent means).
- ▶ If the media disagree with the claimant, it has to notify him/her within 7 days from the receipt of the application. Claimant can then choose to continue the dispute in civil courts.
- ▶ The same terms apply to the right of the reply, which can be both reading a person's text or an interview. The shortest response time is 90 seconds.<sup>45</sup>
- ▶ For other media types complaints can be made six months after the publication of the news, submitting a protest to the editor. The application must be reviewed within 7 days of receipt, and the apology must be published in the same place and font as the offence.<sup>46</sup>

<sup>45</sup> All requirements are stated in the Electronic Media Law, Sections 50 to 52.

<sup>46</sup> All requirements are stated in the Law on Press and Other Mass Media, Section 21.

**Example:** *A journalist published allegations that were offensive but not verified. ECRH pointed out that the right to freedom of expression is subject to obligations and responsibilities. By publishing defamatory and unfounded allegations, the journalist did not fulfil her professional duties. The court imposed on the journalist a fine of EUR 800 for damages and a decision to retract the news as a penalty.*<sup>47</sup>

**Example:** *ECHR did not force the editor of the magazine to withdraw the article, which was a sharp critique of the homophobic statements of a politician, acknowledging that the limits of critique of politicians are wider. Especially if the statement or opinion was provocative.*<sup>48</sup>

**Example:** *The Supreme Court overturned the decision that the former Minister of Justice should withdraw a statement published on the website of the Ministry, as he could not be required to withdraw his views.*<sup>49</sup>

## 13. International Context: War, Terrorism, Refugees

Changing media landscape because of globalization and the development of online and social media have changed the news chain dramatically.

**The internet and a global approach** have created three new challenges:

- ▶ Online media requires constantly deadlines, and because of competition, journalists and media could be forced to violate basic rules about fact checking and having at least two sources on an article.
- ▶ Social media only rarely respect ethical standards and will release news, unjustified stories and names regardless of normal rules, which will influence other media.
- ▶ Data has become the new gold. Media is dependent on the tech industries ownership of data-streams that has a huge potential to influence on the content.

**The right to be forgotten** is a topic born together with the online media. The difference from print media is the access to information through news aggregators. If somebody during his or her teenage years has taken part in doubtful cases, it might come up, when potential employers are looking at candidates for jobs. Such cases can follow an individual all through her or his life. Before the online media employers had to go to libraries or archives and go through a big number of newspapers to find such material, and nobody would even think about doing it.

Our policy should be: Don't try to make changes in the history, don't make it possible to delete stories, facts – also regarding situations, which obviously would be unfair to individuals. But according to common sense there is a point about the right to be forgotten. In respect of both media and self-regulation systems, we should find mechanisms in every specific situation.

<sup>47</sup> Judgment of the ECHR in the case *Harlanova v. Latvia*.

<sup>48</sup> Judgment of the ECHR in the case *Mladina d.d. Ljubljana v. Slovenia*.

<sup>49</sup> Statement to the press by the Supreme Court of 21 February 2017.

## Refugees and migrants

- ▶ The situation for refugees and migrants should normally be regarded from different perspectives at least two sides.
- ▶ Many stories on refugees, immigration and migration are concentrated on numbers, because that is often what counts for European citizens. Therefore, this should not be ignored.
- ▶ On the other hand, it is about humans, about individuals. According to human rights principles, the individual should be respected as there will always be a story for each person.
- ▶ Therefore, as very clearly mentioned in the 5-point guide developed by Ethical Journalism Network (EJN):
  - 1: Be accurate, impartial, inclusive and fact-based in reporting;
  - 2: Know the law and use the right definitions of migrants, refugees, asylum seekers;
  - 3: Show humanity, but keep emotions in check and avoid victimization;
  - 4: Speak for all;
  - 5: Challenge hate by being cautious about such descriptions as “swarms”, “floods” and “waves”.

## War and conflict areas

- ▶ Remember that the truth always has been the first victim in any war. The important role for the journalist is to deliver as much facts as possible and make sure that reporting is based on accuracy, multiple sources and perspectives. The principle in Art 3 of the code of conduct developed by the International Federation of Journalists (IFJ) says: *“The journalist shall report only in accordance with facts of which he/she knows the origin. The journalist shall not suppress essential information or falsify documents”.*
- ▶ Journalists can easily get emotional or high on being in a warzone. Be careful neither to be victimized nor be a war-reporting junky.
- ▶ Be impartial and transparent in your reporting. Embedded journalism is often the only way to get close to the warzone, so it should always be emphasized for the readers, listeners or viewers.
- ▶ Ensure your safety, physical and psychological.

## Hate speech

It is not possible to make an exact definition on hate speech. The EJN has developed a 5 points test which suggests:

1. Test the position or status of a speaker. Be careful that quoting has an impact and not just a mic for the speaker.
2. Test the reach of the speech. Is there a pattern of behavior?
3. Test the objectives of the speech. It is important to reflect ethical standards and make sure if the speech has an intention to attack or diminish human rights.
4. Test the content and form of speech. Remember, that it is not a crime to have views and disseminate them, but be aware if it leads to prosecution of the law or promote an intensification of hatred.

5. Test the economic, social and political climate. This could be about the heat of an election or an atmosphere where comments are not always fact-based.

### **Terrorism and catastrophes**

- ▶ Breaking news is the normal way to inform about terror, which creates high risks for inaccurate journalism. The news flow going on for hours, the competition and the duty to inform have a potential to go beyond ethical standards.
- ▶ Remember that the terrorism coverage has a huge potential for prejudgments. It is also important to show respect for victims and being able to balance it to the need of telling the story.
- ▶ As a journalist, it is important to distinguish between journalism and being a helper or seen as an intruder. Make sure that experienced journalists are responsible on journalism regarding terrorism and catastrophes.
- ▶ Respect international conventions and resolutions as these are not always taken for granted by authorities or citizens in general.

## Annex

### Code of Principles of the International Federation of Journalists

**This international Declaration is proclaimed as a standard of professional conduct for journalists engaged in gathering, transmitting, disseminating and commenting on news and information in describing events.**

1. Respect for truth and for the right of the public to truth is the first duty of the journalist
2. In pursuance of this duty, the journalist shall at all times defend the principles of freedom in the honest collection and publication of news, and of the right of fair comment and criticism
3. The journalist shall report only in accordance with facts of which he/she knows the origin. The journalist shall not suppress essential information or falsify documents.
4. The journalist shall use only fair methods to obtain news, photographs and documents.
5. The journalist shall do the utmost to rectify any published information which is found to be harmfully inaccurate.
6. The journalist shall observe professional secrecy regarding the source of information obtained in confidence.
7. The journalist shall be aware of the danger of discrimination being furthered by the media, and shall do the utmost to avoid facilitating such discrimination based on, among other things, race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins.
8. The journalist shall regard as grave professional offences the following:
  - plagiarism;
  - malicious misrepresentation;
  - calumny, slander, libel, unfounded accusations;
  - acceptance of a bribe in any form in consideration of either publication or suppression.
9. Journalists worthy of the name shall deem it their duty to observe faithfully the principles stated above. Within the general law of each country the journalist shall recognize in professional matters the jurisdiction of colleagues only, to the exclusion of every kind of interference by governments or others.

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