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ETHICAL JOURNALISM AND HUMAN RIGHTS

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FOREWORD

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

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

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

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

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

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

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

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

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

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

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

- There should in all member states of the Council of Europe be constitutional support for freedom of expression. Limits to this freedom should be narrowly defined and reflected in law. Defamation and libel should be decriminalised and unreasonably high fines in civil cases relating to media should be avoided.
- While legislation to regulate content of journalism should generally be avoided, the media community should be encouraged to develop a system of effective self-regulation based on an agreed code of ethics and a mechanism to receive and respond to complaints, for instance through an ombudsman or a media council.
- In order to assist the efforts by media to satisfy the public's right to know, governmental and local authorities should respond constructively to queries from journalists. Laws on access to information from public bodies should be enacted with narrowly-defined exceptions for reasons of security, public welfare and individual integrity.

Thomas Hammarberg

SUMMARY

Ethical journalism concerns the way in which reporters, editors and others provide commentary on the events that shape people's lives. It is rooted in moral values and has evolved hand in hand with human rights protection in Europe. Today journalism and human rights intersect at a moment of remarkable and historical change linked with globalisation and the explosion of digital media. The aim of this Issue Paper is to set out a framework for fresh discussion of the ethical challenges that create tension between human rights and journalism. It looks at the human rights base, the changing media and information landscape and its impact on journalism, and concludes with certain recommendations for policymakers and professionals alike.

The first section highlights the close relationship between ethics of journalism and human rights standards enshrined notably in major international and European human rights treaties. It points out that journalists, at least as much as governments, have a vested interest in the defence and promotion of high standards of human rights, particularly the right to freedom of expression enshrined in the International Covenant on Civil and Political Rights and in the European Convention on Human Rights.

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

In section three the Issue Paper focuses on a number of major legal restraints on journalism, and examines current state practice and the development of relevant human rights law, notably through the European Convention on Human Rights and the Strasbourg Court's case-law. The areas covered are: access to information and people's right to know; defamation; blasphemy; right to privacy; protection of sources, security and terrorism; and hate speech. Through a critical prism the author makes clear the difficult and delicate task of balancing respect and protection of freedom of expression, of information and of the media while taking into account the legitimate interests of states or individuals.

The fourth section deals with major practical means by which ethical journalism may materialise: codes of conduct for journalists and self-regulation. Codes reflect the aspirations of journalists to be responsible and accountable. However, codes need to be complemented by detailed guidelines and training that should be developed by media professionals with the support of states. Also, self-regulation of the media is presented as a valuable means of resolving conflicts, which protects the independence of journalism, promotes ethical standards and reduces the risk of legal sanctions on journalists and their concomitant chilling effects on freedom of expression.

The final substantive section refers to a number of important initiatives that aim to promote actively ethical standards of journalism and the protection of human rights on international, European or national level, and may serve as examples for further good practice: the Ethical Journalism Initiative, the Charter of Rome, Media 4 Diversity, the EU Neighbourhood Policy Media Programme and the Camden Principles.

Introduction

Ethical, watchdog journalism is how reporters, editors and others provide commentary on the events that shape people's lives. It is rooted in moral values. When journalists aspire to tell stories based upon truth-telling, accuracy and fairness; when they seek to minimise harm; and when they make themselves accountable to peers and the wider community, they define the essential elements of what we might call journalism as a public good.

Reporters and editors are not the mouthpiece of government or of corporate power or of human rights defenders. But they can raise awareness of what is acceptable and unacceptable, what is admirable and what is contemptible, what is shameful and what is worthy of pride.

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

The evolution of ethical journalism and human rights protection in Europe has gone hand in hand for 150 years. In the mid-19th Century as Jean-Henri Dunant crystallised his vision of humanity in times of war that gave birth to the Red Cross and the Geneva Conventions, leading European editors were articulating ethical principles for their newspapers. A hundred years later, in the same year as the European Convention on Human Rights was adopted, the International Federation of Journalists agreed the first international code of principles for the conduct of ethical journalism.

Today journalism and human rights intersect at a moment of remarkable and historical change. In an era of globalisation and the explosion of digital media, the information landscape is being redrawn, posing new questions about journalism, human rights and information policy.

Today people have more opportunities to exercise their freedom of expression than ever before, but how do they take responsibility for their views? How do people judge what is reliable information? How do media and journalists continue to shape norms and contribute to building a new ethic of information that includes everyone when tendency is towards fractured, anonymous communications? And, not least, how can media policy, rather than law, become an instrument for creating an information environment that respects ethical norms, including respect for human rights?

To examine these questions, this paper sets out a framework for the discussion – the human rights base, the changing media landscape and its impact on journalism, and the ethical challenges that create tension between human rights and journalism. Finally, it provides some concluding thoughts and recommendations for policymakers and professionals alike.

I. Human rights standards relevant for journalism

To explore the linkage between ethics of journalism and human rights we need to ask how they both link to values, morality and the law. This is not an intellectual exercise. For people in journalism it is directly relevant to their world of action and the choices they face in their work.

It should also be a positive exercise with the aim of identifying the role that ethical journalism and human rights play together in a time of political tension, growing inequality and social dislocation.

Human rights are enshrined in the treaties between states, particularly the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966) and the European Convention on Human Rights (ECHR, 1954) which guarantee the rights of all persons within the jurisdiction of the contracting parties. These rights are enshrined in law and in practice, as with the exercise of journalism, they are closely linked to the moral climate in which we live.

Journalists themselves have a vested interest in the defence and promotion of high standards of human rights, particularly the right to free expression under Article 19 of the UDHR and the ICCPR and Article 10 of the ECHR.

Article 10 states that everyone has the right to free expression. But this is a qualified right and may be overridden by decisions taken in the interest of such matters as national security, prevention of disorder or crime, protection of an individual's reputation.

It is these potential limitations on free speech that worry journalists, who fear that governments when passing laws are prone to unacceptably broad definitions of what constitutes "security" or "disorder" or "reputation" which can constrain free speech and legitimate scrutiny of public affairs.

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

Lawmakers and journalists alike know that freedom of speech can come into conflict with some interpretations of the right of individuals to a private life. There is no straightforward way of making judgments, either in the courtroom or the newsroom, without giving one priority over the other.

For journalists to make judgments that are morally and legally defensible they must be competent, well trained, informed and, above all, able to operate freely in conditions which encourages them to act ethically.

Many journalists in Europe work in a very different environment. Some of them, perhaps most, may be driven by ideals of humanity, but they are unable to act according to their own personal conscience. They are often constrained by limits on their freedom imposed by undue political or corporate influence or by the application of law. This stifling atmosphere not only leads to self-censorship, it intimidates and silences the sources upon which journalism depends.

Even worse, journalists are victims of violence. Over the past 20 years more than 2,000 have been targeted and murdered. Some of Europe's most distinguished writers and journalists have been killed, many of them victims of political enemies when alive and victims of political indifference when dead with evidence of widespread impunity.¹

This paper encourages media policy to promote ethical norms in the work of journalists and restraint in the use of law to determine and control information content. There are great challenges as old media (press, radio and television) struggle to present balanced views while new media technology opens the door to anonymous communication, criticism and unsubstantiated assertion, some of it potentially dangerous. One response is to revive and encourage a debate about the need for ethical journalism, individual responsibility and a legal framework that cherishes free expression.

II. All Change for Journalism in Europe

Spectacular advances in digital media have changed the way journalists work and the way traditional media are organised. They have made newsgathering and dissemination of information global and there is a dynamic new space for dialogue and interaction with the audience.

This is good news for freedom of expression, but at the same time a deep economic crisis has blown media off course, particularly in the press. Newspapers across Europe have struggled to adapt to structural change, technological convergence and the rise of the Internet.

¹ See www.newssafety.org and www.ifj.org for the reports of killings of journalists in Europe in 2010. The International News Safety Institute and its supporters including the International Federation of Journalists and groups like Reporters Sans Frontières regularly monitor and record the victims of violence in media and the failure of state authorities to bring the killers and those who ordered the killings to justice.

New forms of communication and online services provide fresh challenges. So-called "citizen journalism" and the growth of "networked journalism" legitimise the use of amateurs in a weakened media industry.

Because traditional market models no longer deliver profitable returns for media companies, there have been sharp cuts in editorial budgets. Titles have closed, many thousands of journalists have lost their jobs or been forced into precarious work and there has been a fall in investment in journalism – particularly in training, investigative reporting and routine coverage of local affairs. There are signs that commercial ambitions are overriding the ethical aspirations of journalists to maintain impartiality.²

Increasingly, there is growing pressure on the State to play a more active role to counter these developments, either by providing public money and subsidy to support media and the continuation of public interest journalism or to reinforce rules about media ownership in favour of transparency and pluralism.

Within journalism these new debates are also reigniting discussions about the quality and objectivity of public service media and not least about guaranteeing editorial independence. In some countries such media, particularly broadcasting, are seen as instruments of propaganda. Confidence in public media is very low.

The debate about public service values and support for media is widening, but the fundamental question remains -- how to maintain media pluralism and to ensure that journalism remains beyond political control when it is paid for out of the public purse.

Currently, in many European countries the independence of existing public media is not secure. This was acknowledged at the ministerial meeting of the Council of Europe on media held in Iceland in May 2010 which called for more editorial freedom and increased investment in new technologies.³

The febrile atmosphere in which media now work, defined by a 24-hour, seven day, multi-platform news market, has created a great deal of uncertainty about media's role in supplying information to help people define the norms of moral behaviour.

Nevertheless, in times of trouble people return to old media and trusted brands of journalism that have a reputation for reliability.

They know that raw and unprocessed information only becomes meaningful when it is placed in context and this has been the traditional role of journalists. Although people consume information in many different ways, there is still a heavy reliance on journalism to build a moral consensus and journalism is becoming more important as a guarantor of reliability.

The WikiLeaks incident at the end of 2010, when distinguished journalists on five of the world's leading newspapers – *The New York Times*, *The Guardian*, *El Pais*, *Le Monde* and *Der Spiegel* – were asked to filter thousands of detailed documents leaked from diplomatic sources in the United States, proved beyond doubt that the future of ethical journalism is secure in a world where people are increasingly overwhelmed by information from an abundance of sources, most of which they cannot trust.

Despite this positive assessment there remain continuing obstacles to progress not least in the continuing collisions at national and, increasingly, international level between the law and the work of journalists.

² See OECD (2010), *News in the Internet Age: New Trends in News Publishing*, OECD Publishing and IFJ (2010), *Journalism: In Touch With the Future*.

³ 1st Council of Europe Conference of Ministers Responsible for Media and New Communications Services. A new notion of media? (28-29 May 2009, Reykjavik, Iceland. See: [http://www.coe.int/t/dghl/standardsetting/media/MCM\(2009\)011_en_final_web.pdf](http://www.coe.int/t/dghl/standardsetting/media/MCM(2009)011_en_final_web.pdf).

III. Free Expression in the Shadows: Legal Restraints on Journalism

3.1 Access to Information and People's Right to Know

In order to combat corruption and to monitor public affairs journalists need access to useful and reliable information. Their job has been made easier over the past decade as dozens of countries have passed laws guaranteeing people access to government information.

Around 70 nations, covering more than half the world's population, have freedom of information laws. In Europe, the tradition of openness is a long one, stretching back to 1766 when Sweden established the constitutional right of citizens to ask for and receive any document. But despite history and the recent information revolution, some countries in Europe display limp and inadequate commitment to the public's right to know.

A 2006 survey by the Open Society Justice Initiative found some of Europe's new democracies in Armenia, Bulgaria and Romania significantly outperforming countries like France and Spain in this area. The survey found particularly poor legislation in Austria, Spain and Italy.⁴

Often campaigners achieve a legal breakthrough only to meet resistance from political and official institutions which construct bureaucratic obstacles to transparency. One report from the BBC revealed that official reaction to public enthusiasm for access to information can lead to heavy fees or a reduction in the number of staff available to deal with requests leading to lengthy delays in providing requested information.⁵

At the same time, concerns about security and terrorism have led to a narrowing of available information with an increasing list of exceptions to what must be released. Such restrictions are spread through international institutions such as the European Union.

In 2008 the Council of Europe adopted the world's first treaty on access to information, the European Convention on Access to Official Documents, but this only applies to a narrow range of public bodies and, to the dismay of journalists, does not impose maximum time-limits for responding to requests.⁶

The campaign that ten years ago started out with the aim of putting open government on the international agenda has only been partly won. Some European countries have yet to act convincingly and among those that have, new battles have to be fought to keep them on track.

3.2 Defamation

Reputation is everything, both in public life and in journalism. It's what encourages media interest in the lives of celebrities, and it's at the heart of one of the most difficult dilemmas in journalism – how to report on issues that damage or diminish the lives of others.

Editorial decisions are more hazardous in those countries where laws of defamation are blunt weapons used by governments and powerful people to protect their image and to punish intrusive reporters.

Journalists worry about these laws not least when they are used to protect public figures from scrutiny, despite the clear intention of human rights law that public figures and bodies should tolerate more criticism than ordinary people, not less. The threat of prosecution has a deterrent effect on watchdog journalism and encourages media self-censorship.

⁴ For more information, see David Banisar, Freedom of Information around the World. A Global Survey of Access to Government Information Laws. <http://www.privacyinternational.org/foi/foisurvey2006.pdf>.

⁵ BBC World Service, Right to Know, 16 August 2008.

⁶ Available at: <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>.

Only 11 of the 56 participating States of the Organisation for Security and Co-operation in Europe (OSCE) have decriminalised defamation according to the OSCE Representative on Freedom of the Media who says that criminal statutes still are the most often used tool to punish and imprison journalists. All Western European countries, with the exception of Cyprus, retain criminal defamation provisions on their books even if they are rarely used. In some countries previously under communist rule (Armenia, Bosnia and Herzegovina, Estonia, Georgia and Ukraine) they have been abolished, possibly because these countries have experience of how such laws were used to stifle dissent in their recent history.⁷

According to figures from the Dutch government, between January 2002 and June 2004 more than 100 people were incarcerated in the Netherlands for defamation, libel and insult. In 2005 five of the six freedom of expression cases decided by the European Court of Human Rights (ECtHR) involving Western European States, concerned defamation laws and the Court found a violation of free expression in four of the five. Journalists have also been sentenced for defamation in Belgium, Denmark, Malta, Finland, Italy, Norway and Switzerland. According to the anti-censorship group ARTICLE 19 since January 2005 at least 22 people in Europe and Central Asia have been imprisoned for defamation.⁸

Traditionally, the ECtHR has been a shield defending legitimate journalism against the misuse of defamation in criminal or civil law, but in a recent case, the Strasbourg Court has suggested that unethical journalism may itself undermine the right to publish information even where it raises public interest.⁹

A controversial newspaper article in 2003 about a high school in Moldova criticised the headmaster on the basis of an anonymous letter from a group of parents alleging that he misused school funds and that he had taken bribes. The paper refused to publish a letter from the head, who accused the paper of sensationalism, of using anonymous sources and of failure to properly investigate the allegations.

Despite the evidence of three witnesses under oath that the claims of bribery were true, the district court found the newspaper guilty of defamation arguing that *“to be able to declare publicly that someone is accepting bribes, there is a need for a criminal court decision finding that person guilty of bribery”*.

Since the head teacher had never been found guilty of bribery, they said, it was not right to accuse him of it. This extraordinary judgement was upheld by the Court of Appeal in Moldova, which said no media could make allegations unless someone had already been convicted of a crime, effectively dismantling the watchdog role of the media.

When the newspaper appealed to the European Court of Human Rights, it divided the judges, but in July 2008 the majority (four votes to three) found against the newspaper, saying that the conviction was not a violation of free expression. In making the ruling they judged that shortcomings in journalistic quality outbalanced the public interest in serious allegations of bribery.¹⁰

The Court rejected the Moldova court’s assertion that allegations of serious misconduct cannot be made unless they have first been proved in criminal proceedings. However, it found that the right to freedom of expression does not confer on newspapers an absolute right to act in an irresponsible manner by charging individuals with criminal acts in the absence of a basis in fact at the material time. The Court came to the conclusion that the newspaper acted in flagrant disregard of the duties of responsible journalism.

⁷ See Regular Report to the Permanent Council of the OSCE by Dunja Mijatovic, 16 December 2010.

⁸ See <http://www.article19.org/advocacy/defamationmap/overview.html>

⁹ European Court of Human Rights: Case of *Flux nr. 6 v. Moldova*, IRIS, Legal Observations of the European Audiovisual Observatory, 2008/9 (in print).

¹⁰ Judgment by the European Court of Human Rights (Fourth Section), case of *Flux (nr. 6) v. Moldova*, Application no. 22824/04 of 29 July 2008, available at <http://www.echr.coe.int> .

The three dissenting judges who voted in favour of the newspaper pointed out that the newspaper had made enquiries about persistent rumours and found three witnesses whose integrity had not been put in doubt. They said that the Court's majority had penalised the newspaper not for publishing untruths but for '*unprofessional behaviour*'.

Journalists at large see a threat to press freedom in this judgement, not least because as the dissenters put it "*disregard for professional norms is deemed by Strasbourg to be more serious than the suppression of democratic debate on public corruption.*" Not surprisingly, media argue the Court should have given precedence to the public interest, over and above the unseemly conduct of the journalists.

3.3 Blasphemy

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

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

British blasphemy laws for example, only protect the Anglican faith, and were used by Christians to try to ban one of the most successful comedy films of all time, *The Life of Brian*, in the 1980s, and again in 2005 to try to prevent a television showing for the long running stage show *Jerry Springer — The Opera*. Later British Muslims called unsuccessfully for the prosecution of the author Salman Rushdie for his alleged blasphemy in the *Satanic Verses* and, in 2006, Danish Muslims attempted to force prosecution over publication of the cartoons of the Prophet Mohammed. Perhaps the most welcome aspect of all these legal actions was that they failed.

However, the constraints of legal cover for religious intolerance remain. The United Nations Human Rights Council regularly adopts resolutions calling for defamation of religion laws and, even in Europe, threats to unwary journalists remain. In Ireland, for instance, an amendment to the country's Defamation Bill in 2009 provides for the offence of blasphemy if a person publishes material which is "*grossly abusive or insulting to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion*", a law which angered many free speech activists.

3.4 Right to Privacy

Journalists understand the need for privacy and most see no contradiction between honest and ethical reporting and privacy protection. However, journalists do not accept that "privacy" should become a protective cover for "secrecy" when matters of public interest are at stake.

The right to respect for private life, including privacy, is a human right, like freedom of expression. Article 8 of the ECHR determines that every human being has a right to respect for private and family life and it has been called upon in many thousands of court cases, defending unfairly sacked employees, adulterers, and victims of sexual harassment.

But in many countries this fundamental right is abused by state institutions. In countries ruled by totalitarian and military regimes invasions of privacy routinely intersect with violations of other fundamental rights and freedoms including media freedom.¹¹

Privacy and media freedom are instrumental and appear in most charters of human rights because they facilitate the enjoyment of other rights such as freedom of expression, freedom to act according to conscience and freedom of association. The key ethical question for journalists is

¹¹ A key global organisation campaigning for privacy is Privacy International <http://www.privacyinternational.org>.

how to balance respect for privacy rights with their own need for legitimate investigation, scrutiny and disclosure?

Privacy rules are an important check on the use of power because they ensure that people are free to exercise some control over their own personal information. Ethical journalists are conscious of the need to respect personal privacy but they are generally less concerned about state or corporate confidentiality, where claims to “a private life” is often about limiting accountability and disguising hypocrisy.

The difference between what constitutes a “public” person and a “private” person is at the heart of the ethical dilemma faced by journalists. In this regard the European Court has repeatedly acknowledged the reduced rights to privacy of public figures while protecting the interests of private persons. In 2010 considering five cases from Finland, for example, one involving complaints by magazines and journalists about criminal prosecutions for invasion of privacy over an incident in 1996 when a well-known politician and his girlfriend got into a fight with the man’s wife, the Court held that the prosecutions were a breach of Article 10 and awarded compensation in each case.¹²

Journalists, who are nowadays subject to official surveillance on an unprecedented scale, should be among the first to demand protection for privacy rights, but serious media worry when too rigorous application of privacy rules may make it close to impossible for them to publish anything touching on the fundamental aspects of a person’s private life such as their family life, sexual behaviour, orientation or medical conditions and show that such publication is in the public interest.

One answer to this must be in more clear definition of the rights of legitimate journalism and of privacy and more journalistic attachment to privacy rights. European countries could exempt media organisations for acts or practices done in the course of journalism where the organisation is committed to observe privacy standards.

Certainly, it is impossible to ignore the need for more effective self-regulation in this area. The recent controversy in the United Kingdom over illegal telephone “hacking” by journalists, for instance, has raised a question about the credibility of media which claimed to have eliminated the practice and then were exposed as having misled both Parliament and their own Press Complaints Commission on the matter.¹³

Journalists need to be precise in explaining their role when they argue that the public has a right to know and that the public interest outweighs the privacy interests of the person involved. In all cases where privacy is in danger of violation, a journalist should consider the nature of someone’s place in society, their reputation, and their position in public life.

Codes in this regard can be important. In Great Britain, for example, the code of conduct of the National Union of Journalists states that a journalist “*Does nothing to intrude into anybody’s private life, grief or distress unless justified by overriding consideration of the public interest.*”

It is that last consideration, ‘what constitutes the public interest?’ which in the end defines the rights of journalists to ask questions and file stories.

3.5 Protection of sources, security and terrorism

Nearly 100 countries have adopted specific legal provision for journalists to protect their sources, either in the general laws or within constitutional protections for free speech. In at least 20 countries those protections are near absolute. In countries without any legal cover, journalists are more open to coercion to divulge their sources, but in many democratic states exceptions that

¹² See <http://merlin.obs.coe.int/iris/2010/5/article2.en.html> *Iltalehti and Karhuvaara v Finland – 6372/06 [2010] ECHR 445; Flinkkila and Others v Finland – 25576/04 [2010] ECHR 446; Soila v Finland – 6806/06 [2010] ECHR 449* and *Tuomela and Others v Finland – 25711/04 [2010] ECHR 452*

¹³ See a Special IFJ Ethical Journalism Initiative report on this affair at <http://ethicaljournalisminitiative.org/en/contents/calling-to-account>

undermine this right are being extended while political and legal pressures are increasing, often on the back of concerns about national security.¹⁴

The judgements of the ECtHR have over the years provided important support in the fight for press freedom particularly in relation to violations of Article 10 of the ECHR which provides the right to freedom of expression subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society." This right includes the freedom to hold opinions, and to receive and impart information and ideas.

In particular, the European Court of Human Rights has ruled that protection of sources is an essential part of free expression, most notably in a landmark ruling in 1996 where it concluded that British judges had violated the rights of Bill Goodwin, a magazine journalist, who was convicted of contempt when he refused to name the source of information that a company claimed threatened their business.¹⁵

This case established that the right of journalists to protect confidential sources of information was covered by free expression rights under European human rights law. The Court found that the balance between free speech and the rights of others should weigh in favour of the public interest, even if publishing confidential information might cause the firm financial harm and even lead to job losses.

In a memorable phrase (in paragraph 39), the Court said that an order to disclose a source had a "potentially chilling effect" on the exercise of press freedom and continued:

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

The Court has been a committed defender of the principle of protecting sources, recognition that is critical in times when journalists are under pressure from police and authorities to hand over computer files, photographs, film or notebooks, containing information about what they have witnessed or details of contacts.

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

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

In 2007 the International Federation of Journalists challenged the governments of the United States, Great Britain, Germany, Italy, the Netherlands and Denmark over telephone tapping, planting spies in newsrooms, judicial intimidation and mischievous prosecution of reporters to unearth information about their contacts.

Many of these actions have been made easier by the widening war on terrorism and the cloak of security, which has raised concerns about weakening of civil liberties.¹⁶ Journalists worry, rightly, that these are not isolated cases.

¹⁴ More information is available from the European Federation of Journalists which produced a report (September 2008) on these matters and from [www. privacyinternational.org/foi/ silencingsources.pdf](http://www.privacyinternational.org/foi/silencingsources.pdf).

¹⁵ *Goodwin v. The United Kingdom*, Application No. 17488/90, Judgement of 27 March 1996.

¹⁶ See the IFJ-Statewatch Report *Civil Liberties, Journalism and the War on Terror* (Aidan White, 2002) for information on how laws around the world have been enacted that compromise legitimate journalism. <http://www.ifj.org/assets/docs/103/230/f9c7f67-07c13e6.pdf>.

Journalists face a dilemma when trying to protect their sources — do they rely on the moral force of ethical charters and codes, or do they seek more legal protection, even if that opens the door to difficult discussions about exceptions, such as national security?

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

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

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

Although at European level the Strasbourg Court has been strongly supportive of journalists in recent rulings related to free expression, it has begun to take a worrying interest in the professionalism of journalists, an important topic, but arguably not one that should be dealt with by the courts.

In 2006, for instance, the Court held that Switzerland had violated free expression after journalist Martin Stoll was fined 800 Swiss Francs (€500) for publishing “official confidential deliberations”.¹⁷ The story dated back to 1996, when the Swiss ambassador to the United States produced a “strategic document” in the course of negotiations regarding compensation due to Holocaust victims for unclaimed assets deposited in Swiss banks.

The story had been reported in a robust manner, indeed some criticised it as being too sensational, a view supported by the Swiss Press Council. However, the Strasbourg Court found that the journalist should not have been convicted by the Swiss courts or fined, asserting that the public interest in the negotiations and Switzerland’s role in the Second World War was more important than the style of presentation.

The Swiss government called for a review and the Court’s 17-member Grand Chamber controversially overturned this opinion. A majority of the judges agreed that the journalist did not act illegally by obtaining the leaked document, but they said that as a journalist he could not claim in good faith to be unaware that disclosure of the document was punishable under Swiss law and the Court found shortcomings in the quality of the articles — saying that they were written and presented in a sensationalist style and were in part trivial, inaccurate and likely to mislead the reader.

A group of five dissenting judges disagreed and warned that the majority decision was a “*dangerous and unjustified departure from the Court’s well established case-law concerning the nature and vital importance of freedom of expression in democratic societies*”.

In the Grand Chamber ruling judges involved themselves in the question of whether the story had been responsibly handled or well written. When judges begin to ponder editorial issues of taste and professional presentation alarm bells ring around the newsrooms. Media welcome case law in favour of press freedom and public interest values in journalism, but when courts cast their

¹⁷ See Judgment by the European Court of Human Rights (Fourth Section), case of *Stoll v. Switzerland*, Application no. 69698/01 of 25 April 2006 and Judgment of the European Court of Human Rights (Grand Chamber), case of *Stoll v. Switzerland*, Application no. 69698/01 of 10 December 2007. Also Dirk VOORHOOF <http://merlin.obs.coe.int/iris/2008/3/article2.en.html>.

eyes over headlines, pictures and the behaviour of reporters and editors rather than the public interest value of stories, journalists tend to fear undue interference in their work.

3.6 Hate speech

One critical area where ethical journalism comes up against the law is in the application of “hate speech” legislation. Such laws are a legitimate antidote to racism, insofar as they protect vulnerable groups from objective harm, such as incitement to hostility, discrimination or violence. But in some countries hate speech laws go beyond protection from objective harm and prohibit any statements which are perceived as offensive.

After the experience of the Balkan wars of the 1990s and the Rwanda Genocide, no journalist can doubt the capacity of media to do great harm when it is under the control of fanatical and ruthless forces and the codes of reporters and editors are filled with warning to guard against forms of speech that degrade, intimidate, or incite violence or prejudicial action against others.

The European Court of Human Rights has famously concluded that free speech extends also to statements which “shock, offend or disturb”.¹⁸ However, some countries have in place laws that invite a collision between judges and journalists over where to draw the line.

In France, for instance, the *Loi sur la liberté de la presse* prohibits ‘attacks against honour’ by reason of ethnicity, nationality, race or religion. This concern is well motivated — Europe is only two generations away from the Holocaust — but a provision like this can be also misused to stifle criticism of a religious conviction or practice, even if that criticism is not motivated by hatred and is the expression of a sincerely held belief.

Some European countries devastated by the impact of fascism and war including Austria, Belgium, France and Germany and Switzerland have laws that prohibit denial of the Holocaust. In Germany, the wearing of Nazi symbols is also forbidden.

Most journalists would say that those who deny the Holocaust should be exposed to public ridicule rather than being imprisoned. The history of this era is too well documented for it to be seriously questioned.

The major question arises whether this type of law is an appropriate or effective way to combat racism. There are compelling reasons to believe that free expression and the application of ethical journalism are important parts of a democratic State’s strategy for eradicating bigotry and enlightening citizens.

Another problem with denial laws is their potential to proliferate. In October 2006, a draft law prohibiting the denial of the 1915 Armenian genocide was adopted by the French National Assembly. Turkey prosecuted the writer Orhan Pamuk for “public denigration of Turkishness” on the basis of Article 301 of the Criminal Code after he referred to the killing of one million Armenians and 30,000 Kurds. The trial was halted in 2006 on technical grounds, but Article 301 remains in place. The journalist and writer Hrant Dink was convicted in 2005 for his statements in an article which concerned, inter alia, the issue of the Armenian genocide. He received threats from nationalists, who viewed him as a traitor and he was murdered in January 2007. In September 2008 another Turkish writer, Temel Demirer, was charged under the same law after speaking out about Dink’s murder.

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

The Strasbourg Court ruled in October 2008 on a case concerning the French political cartoonist, Denis Leroy, who was convicted in 2002 over a cartoon published in a Basque weekly newspaper *Ekaitza* portraying the 11 September 2001 terrorist attack on the World Trade Centre in New

¹⁸ *Handyside v UK (1976) 1 EHRR 737.*

York, with a caption which parodied an advertising slogan: “*We have all dreamed of it... Hamas did it.*”¹⁹

The drawing was published two days after the attack and, unsurprisingly, caused a storm of protest. In its next issue, the magazine published reactions, including from the cartoonist himself, who contritely admitted that when he drew the cartoon he failed to take account of the human suffering caused by the attacks. His intention was not to add to the hurt of the victims, but to communicate his own anti-Americanism through a satirical image illustrating the decline of American imperialism.

By any standards the cartoon was insensitive (some might say gratuitously offensive given the timing) but, as most journalists acknowledged, that is what cartooning is about.

Nevertheless, the public prosecutor, charged Leroy and the newspaper’s publishing director with condoning terrorism under France’s Press Act of 1881. The director was convicted and Leroy was found guilty of complicity in condoning terrorism and each was fined €1,500. The cartoonist took his case to the European Court. Surely, he argued, it was not against the law to communicate his anti-Americanism through satire.

But the Court rejected his appeal, finding that the cartoon went beyond criticism of American imperialism, by supporting and glorifying the violent destruction of the United States. By approvingly commenting on the attacks, said the judges, the cartoonist had diminished the dignity of the victims. It upheld the verdict of the French court and said that the conviction of the cartoonist was “*necessary in a democratic society.*”

Previous Court findings had been careful to define a line between genuine incitement to violence or provocation to commit acts of terrorism and the right of journalists and others to “offend, shock and disturb” (as used in the *Goodwin* case) on matters of public interest.

Journalists fear that the judgement in the Leroy case may open the door to more prosecutions and convictions over media content that is regarded as deeply offensive rather than posing serious and genuine threat to people and society.

IV. Ethical Journalism and Law in the Balance

4.1 Codes of Conduct

All of these issues and reflections raise a major test for journalists and that is how to convince lawmakers and the public at large that ethical journalism works best when it is not constrained by legal rules that go beyond the general law.

Codes of professional conduct are in theory the guarantor of value-based journalism. They are aspirational and a statement of commitment from journalists to be responsible and accountable. In this way they provide protection for media owners and journalists against undue criticism and legal action.

Codes are developed by journalists’ groups, media outlets (both public and private) and by regulation bodies such as press councils. They should be always drafted by media professionals. The state has no role to play in this process. Indeed, the first codes in Europe were drafted almost 100 years ago specifically to head off attempts by governments to legislate over the editorial excesses of a so-called “yellow-press.”

There are more than 400 codes of one form or another in existence. It is unlikely that more are needed, although standards of good practice will always help to provide journalists and media professionals with a framework to realise the core aspirations and values of their work.²⁰

¹⁹ See Dirk VOORHOOF, <http://merlin.obs.coe.int/iris/2009/2/article1.en.html>, Judgment by the European Court of Human Rights (Fifth Section), case of *Leroy v. France*, Application no. 36109/03 of 2 October 2008.

Although codes vary from country to country reflecting different sensitivities and traditions, there are certain elements which are universal and recognised by all journalists – that is a commitment to the truth and accuracy, to independence and fairness, and to minimise harm.

The Declaration of Principles on the Conduct of Journalists agreed in 1954 at the International Federation of Journalists Congress in Bordeaux in France is an inclusive and mercifully brief statement about ethics in journalism reflecting universal values.

This code embraces all of the key values and aspirations of journalism. It has been endorsed by unions and associations of journalists coming from vastly different cultures and traditions and under a global standard for media quality.

The code calls for respect for truth, ethical expression of fair comment and criticism and the correction of errors; it warns journalists to use fair methods to obtain news; to uphold professional secrecy as a cardinal principle and to recognise the danger of discrimination being furthered by media.

The IFJ code in particular identifies the professional crimes of plagiarism, malicious misrepresentation, libel, unfounded accusations and any form of bribe in consideration of either publication or suppression.

Ethical journalism comes with a simple message: journalism is not propaganda and media products are not just economic, they add value to people's lives and allegiance to a code is an important way of defining who is and who is not a journalist. Codes are important as benchmarks for quality.

However, a code is only a start. Detailed guidelines and training are also needed to illustrate how they work in practice — how to avoid hate speech, sexual stereotyping, or discrimination in reporting on minorities, for example, or identifying and resolving conflicts of interest.

But there can be no consistent body of ethical or quality journalism unless the principles of media freedom are protected by the state, defined in law and upheld in practice.

Creating an ethical rights environment for journalism is, therefore, a duty of government as well as a responsibility of media practitioners. In the transformative era of the Internet there is also a role for other players – the audience and wider civil society.

The age has passed when journalism was delivered by a professional elite, distanced from the public and often perceived to be arrogant in its failure to account for its mistakes. Today reporters and editors who aspire to the notion of journalism as a public good understand that everyone has a stake and a role to play in ensuring respect for human rights and basic freedoms including free expression.

4.2 Self-regulation

Self-regulation is a solemn promise by quality-conscious journalists and media to correct their mistakes and to make themselves accountable to the public. For this promise to be fulfilled there needs to be self-restraint by government and the state in the ownership, control and administration of media and the work of journalists.

There are a number of positive advantages of self-regulation:

²⁰ The most extensive collection of available codes of conduct has been assembled by Media Accountability Systems is found at <http://www.rjionline.org/mas/codes-of-ethics.php> and a list of 50 codes in 30 European countries has been assembled by Ethicnet at <http://ethicnet.uta.fi/>. There is also a list developed in conjunction with the IFJ by the Mediwise Trust <http://www.mediawise.org.uk>.

- Self-regulation provides a voice for civil society and acts as a counter to political influence or corporate control of media.
- Self-regulation protects the right of journalists to be independent and for their professional performance to be judged not by those in power but by their peers.
- Self-regulation dealing with complaints about media content can save legal fees and reduce the risk of sanctions on journalists by the courts
- The promotion of ethical standards helps maintain public credibility in systems of self regulation.

Media accountability in whatever form it comes should be based upon the principle of self-rule and must balance the rights of the individual and the community and the rights of journalists and the press. But it must not be self-serving. It is vital that press councils act on behalf the public and the profession and are not there to shield owners from criticism or ethical scrutiny.

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

In short, a media accountability system needs to serve a number of purposes. There are at least seven:

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

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

To make the most of this opportunity media have to promote new forms of corporate and professional responsibility which allow people to complain without legal representation and can help generate trust in the quality of news. And they have to do so in the context of a vastly increased public information space and a merged media environment.

The days when press and television could have their news content subject to separate and viable jurisdictions are coming to a close. In a converged media system a single stream of journalism is available on different platforms and often from the same newsroom. Traditional models of accountability often applying different models of regulation for press and broadcasting are rendered obsolete by the online world and convergence.

New systems need to be considered perhaps cast in the mould of self-rule, but underpinned by legal guarantees. These may involve adapting existing structures such as press councils, but there will be a continuation of less complex forms of peer review, such as the use of readers' editors or ombudsmen, or through media journals or in the systematic monitoring and reporting of media activity by concerned NGOs and human rights bodies.

One key question is that of funding. Who pays for media accountability? There is a case for some form of public support and in some countries, including Germany and Sweden, taxpayers do pay some of the costs, but media also pay their share. Any budgetary support from the state or other external support must be provided in a manner that safeguards independence of action and does not allow for governmental or political interference.

Public service broadcasting generally has different bodies to scrutinise editorial standards. The BBC, for example, has a statutory system that seeks to give editorial independence to the editorial directors. Although based on statute this is clearly aimed at self-regulation, and designed to protect the BBC from government control.

There is a constant argument about the role of law in this area. Most media and journalists hold steadfastly to a belief that self-regulation is always preferable to the law in judging the editorial conduct of journalism.

Even well intentioned legal controls are the path to destruction of media freedoms, they warn. However, most accept some legal restrictions, for example on hate speech or material inciting ethnic or religious hatred.

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

V. Building Support for Rights and Ethics

There are a number of current activities promoting ethical standards and rights protection. These include:

Ethical Journalism Initiative (EJI): Launched by the International Federation of Journalists in 2005 this extensive programme of support for training in ethical journalism and debate about the future of journalism has been launched in across the countries of the Middle East and Asia and in 2010 country specific programmes were established in Azerbaijan and Russia.²¹

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

European Standards of media Ethics: In 2011 UNESCO published a book covering after a two-year project examining media self-regulation in South East Europe and Turkey. Involved were the OSCE, the Alliance of Independent Press Councils of Europe and the South East Europe Network for Professionalisation of Media.²²

Charter of Rome: Italian publishers and journalists issued an industry Code of Conduct in 2008 to promote ethical reporting of refugee and immigration issues. This initiative followed protests by the United Nations High Commission for Refugees (UNHCR) over racist media coverage of a multiple murder. The Charter sets out ethical guidelines and is part of a programme of awareness-raising, training and creation of an independent observatory monitoring media coverage of discrimination issues.²³

Media 4 Diversity: A 30-country study on media and diversity in European Union member states and Iceland, Norway and Liechtenstein published in 2009 and providing specific examples of good professional practice and aimed at improving quality of journalism in reporting issues of discrimination.²⁴

The Camden Principles: Human rights groups and media supporters are seeking endorsement for the Camden Principles on Freedom of Expression and Equality adopted in 2009. The Principles

²¹ See www.ethicaljournalisminitiative.org for more information.

²² UNESCO (2011) Professional Journalism and Self-Regulation: New Media, Old Dilemmas in South East Europe.

²³ The Code is a Protocol to the Journalist's Charter of Duties (Carta dei Doveri del Giornalista).

²⁴ Media4 Diversity: Taking the Pulse of Diversity in Media (2009) European Commission report prepared by IFJ, Internews and Media Diversity Institute.

represent a progressive interpretation of international law and standards and were compiled by a high-level group of policymakers, academics and experts in humanitarian rights law, journalism and public affairs.²⁵

The thinking behind the principles is a concern that when considering competing visions of rights, there has been a disproportionate focus on the potential tensions, rather than encouragement to embrace the positive relationship between these rights.

VI. Conclusions

In redefining ethical journalism as a public good, we introduce a new narrative about the importance of ethical information and how European society is informed, but we may also open the door to wider analysis of the ethical environment in which we live.

In this sense the revival of the notion of mission in journalism is an appeal to idealism and dedication to principles that nourish democracy and respect for human rights not just in media but across the whole of society.

But this will not happen automatically. For to rekindle a sense of mission and commitment to the principles and practices that most journalists cherish it is necessary to examine the conditions – social, professional and legal – in which journalists work and to see how they can be improved.

Journalists, many of them already working in precarious conditions, often find themselves constrained by law when it is used to weaken protection of sources of information or to restrict scrutiny of public figures or to put hard questions to governments.

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

Journalists and media do not look for new laws to regulate their work. They seek instead information and media policy that nourishes transparency, encourages responsibility and self-regulation, and that promotes innovation and fresh thinking about funding the future of independent journalism.

In the new world of information people in the audience have become active players in the work of journalists, but they do not replace the important role played by information professionals whose skills, competence and attachment to a framework of values helps us draw meaning and clarity from the torrent of information that surrounds our everyday lives.

The WikiLeaks stories are evidence enough that access to information is not enough for democracy to function. People need access to information that is reliable, useful and comprehensible and this is even more necessary in the age of 24-hour instant multimedia news.

The information challenge, therefore, is not just about journalism or the people who work in media. It is necessary to open dialogues within journalism and between civil society, media practitioners and policymakers and to reach out to humanitarian forms of thought from all sections of society, representing all cultures and communities.

The aim is straightforward: to create a modern vision of journalism and human rights protection that suits the age and its technologies and that serves the interests of all the people of Europe.

²⁵ Published April 2009 by ARTICLE 19, the Global Campaign for Free Expression.

In sum:

- Governments at national and international level should avoid legislating on matters related to the content of journalism. They should promote self-regulation and put an end to all forms of governmental interference in the media and journalism.
- In line with European Court on Human Rights case law all forms of regulation must be defined in law, must be in pursuit of a legitimate aim, and must be necessary in a democracy.
- Governments should take action to raise awareness about the importance of ethical information, personal responsibility and the positive role played by journalism and human rights protection in creating the conditions for free expression. This could include support for media literacy programmes and professional education.
- Governments should carry out audits of national legal standards and repeal media laws that are inappropriate and potentially in conflict with existing human rights standards. Offences of libel, slander and insulting comment should be decriminalised and dealt with in civil law courts, and then in a proportionate manner.
- Access to information laws should be enacted that apply to all public bodies, with narrowly-defined exceptions for reasons of security and public welfare. There should be time limits imposed for responding to requests and those requesting information should have a right to appeal.