

ESTONIA

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1. TV VIEWERS' PARTICIPATION IN ESTONIA

Eesti Televisioon (ETV) today is a public service broadcaster like other European public service broadcasters and a member of the European Broadcasters Union (EBU). Before 1990 it was a Moscow-ruled soviet-type organisation. Yet, already in Gorbachev's times the organisation started to argue for the independence of Estonia from the Soviet Union. The process of restructuring the media landscape began in 1992 when the first private TV broadcasters were established. Foreign capital plays a dominant role in Estonia: all important private media are owned by foreign companies. The most prominent feature of the Estonian media landscape today is the commercialisation and with it the scandalisation of media offers. Today, there are three national TV channels (one public service channel – ETV – and two private stations – Kanal 2 and TV3 – owned by foreign companies) and one local station.

The possibilities for the viewers to participate are relatively low.

1.1 Government bodies

Concerning the interests of Estonian citizens, a Broadcasting Council has been established that is liable for ETV and needs to make sure that it observes the applicable laws. It consists of nine members, five of them are parliamentarians and four are media experts. Nevertheless, these council members are not elected by or represent the viewers directly.

The private channels get their licences from the Ministry of Culture, which accordingly is the supervisory body. The Ministry of Culture established an expert commission in order to protect children and minors from pornography and violence. The commission's task is not to issue licences but to give expert opinion on works provided to them by law enforcement bodies or companies that want to import their material to Estonia, in order to get permission from the commission.¹

1.2 Self-Regulation

The only possibility for Estonian viewers to participate individually is to complain to the *Estonian Press Council (EPC)* and to the *Newspaper Council*. These self-regulatory bodies of the Estonian media deal with every complaint on the basis of a Code of Ethics (adopted in 1997; see 3., and Annex 1.B.)

1.3 Other organisations

Beyond the government bodies and the Estonian Press Council, no viewer organisations or other options for viewers to participate could be identified in Estonia.

2. TV VIEWERS' RIGHTS: THE REGULATORY FRAMEWORK²

The *Constitution* (1992) guarantees everybody's right to express one's ideas, opinions, convictions and any other information freely in all possible means, and to get public information without limits (§ 44); no censorship is allowed. Yet, § 45 encompasses the possibility for certain constrictions regarding protection of morals, family, private life and state secrets.

2.1 Sector specific regulation

The *Broadcasting Act* was adopted in 1994 and an amendment was adopted by the parliament in 2001. The Estonian Broadcasting Act is in accordance with the European Broadcasting regulations. It provides regulation for private as well as public broadcasters. The Ministry of Culture is responsible for issuing broadcasting licences and decides the categories, number and conditions of the broadcasting licences. The supervisory body for public broadcasters is the Broadcasting Council (see 2.3). The public broadcasters are free in designing their programmes, but have the duty to serve the advancement of Estonian culture, language and democratic state and should have well-balanced programmes targeting all ethnic groups.

Cases regarding libel are covered by the *Law of Obligations Act*, and the burden of proof in such cases rests with the media. A person has the right for a correction and can sue the media outlet for any accrued damages. In cases of defamation of persons under international immunity, representatives of the state authority, the court, or the judge, the new Penal Code stipulates certain penalties. But there are no legal penalties for "irresponsible journalism". Further regulation can be found in the *Copyright Act* (1997), the *Language Act*, the *State Secret Act* and the *Public Information Act* (2000).

2.2 Regulatory practices for positive and negative content regulation

The Broadcasting Act³ incorporated many of the requirements of the EU "Television without frontiers" directive, e.g. 51 % of the transmissions of the broadcasters, excluding the time appointed for news, sports events and games programmes, shall be European productions, and 10 % shall be produced by independent producers. At least 10 % of monthly programming should be reserved for own productions.

Private broadcasters have to broadcast news for at least 5 % of one day's total broadcasting time; advertising and teleshopping are restricted to 20 % of total time respectively 12 minutes per hour.

Apart from this, the Broadcasting Act contains provisions dealing with protection of minors (e.g. §§ 15, 16) advertising and teleshopping as well as the functions of Eesti Raadio and Eesti Televisioon.

The *Advertising Law* (1997) states that promoting alcohol is legitimate for all media, but promoting weapons, pornographic products, prostitution or tobacco is not permitted for any broadcaster. Several restrictions apply to pharmaceutical advertising in all types of media.

Since 2002, the public broadcaster ETV is no longer allowed to broadcast commercials, teleshopping or sponsoring.

2.3 Instruments established by law

The supervisory body for the public broadcaster is the Broadcasting Council, which consists of nine members (five parliamentarians, four media experts), who are appointed for five years. The Council is responsible for choosing the managing directors of ER and ETV, approving budgets and principles of public service broadcasting. In addition, the council reports back to Parliament. In the first years the members have been in the majority

politically neutral, elected by academic or cultural institutions. This formation of the Council proved to be ineffective because the members were not competent to deal with financial and practical questions. For this reason, the formation changed with the amendment of the Broadcasting Act. Now members are elected with experiences in political, financial and technical questions.

The Broadcasting Act determines in § 42 that officials of the media division of the Ministry of Culture exercise supervision over compliance with this act and with the conditions of a broadcasting licence.

Finally, with regard to the protection of minors, an expert commission drawn up under the law on the protection of minors from pornography and violence has been created by the Ministry of Culture. The commission's task is not to issue licences but give expert opinion on works provided to them by law enforcement bodies or importers.⁴

2.4 Complaints procedures

There is no legal basis for a specific complaint procedure. The Broadcasting Act just states the right of reply for those individuals whose lawful rights have been damaged by an assertion of incorrect facts (§ 8). The right to reply has to be realized within 20 days after the transmission of the respective programme. In reasoned cases, the broadcaster shall broadcast the reply in the same programme within 20 days after the receipt of the request.

3. VIEWERS' ORGANISATIONS SOCIAL IMPACT

Since there is no direct dedication of official bodies or broadcasters to the viewers' interests, a more detailed analysis of the social impact of one means to secure viewers' interests can just be done for the case of the self-regulatory organisations in Estonia.

3.1 Case study: Estonian Press Council and Newspaper Council⁵

The Estonian Press Council is the most important institution of viewers' participation in Estonia, because there are no ombudsmen, no viewers' organisations and no participation of viewers' in any kind of boards in the media landscape. Through the ESP viewers can complain on every kind of violation of viewers' interests. However, the ESP does not have much influence in the media scene just like its counterpart – the Council of the Newspaper Association. The problem of the ESP lies in its history and in a general trend towards commercialisation in the Estonian media landscape.

The ESP was founded in 1991 by the Estonian Newspaper Association and several other organisations. Some years later the Council underwent reorganisation. On the one hand, public opinion displayed an uncertainty about the impartiality of the Council because of the formal connection with the publishers' organisation. On the other hand the Newspaper Association wanted to bring the decision making process of the Council under their control. In 1997 the Newspaper Association split off and established its own Press Council. The ESP was newly founded as an independent NGO with the participation of the media and journalists' organizations and various non-media organisations, which delegated representatives to the Council.⁶

Both Councils refer to the same Code of Ethics⁷, but both are said not to have much influence. The media appear either not to care about the decisions of the two Councils or they completely reject any kind of criticism.

In comparison with the Norwegian situation, where the media themselves are willing to take part in a public discussion on media ethics and media content, the Estonian media are merely profit-oriented and try to prevent critique at their offers. The problem is that foreign investors in Estonian media are more concerned about the profit rather than the content of their products. Due to the strong influence of economic interests in the media landscape,

there currently does not seem to be any development in Estonia that might advance viewers' participation or a discussion on media ethics. When people from the general public actually file complaints, they do so at both councils, hoping that the interests of one of them will coincide with their particular inquiry. But the complaints become less every year. The complaints the councils usually receive are mostly about: inaccurate or misleading information/facts, broadcasters invasion in privacy and sometimes they are about advertising. The decisions of the two councils differ. Both councils publish their decisions on their website. Yet, the defendants often do not seem to care about the complaints and the decisions reached by the councils.

4. BEST AND INNOVATIVE PRACTICES

The situation of Estonian media is – like in many other (Eastern) European countries – dominated by economic interests of the broadcasters. Although the legislation incorporates the European standards for content regulation etc. the media seem to be quite free to act independently of viewers' interests. Even the existing self-controlling bodies, the Estonian Press Council and the Newspaper Council do not have sanctionary power. And as there are no viewers' organisations a powerful counterpart to the media's profit interests does not exist.

From this point of view, a European platform for viewers' interests should take into account the fragmented situation of the viewers' interests in this country and try to encourage and support any initiative to improve this situation.

NOTES

¹ See Tammerk, Tarmu (2000): The Estonian Media Landscape. In: The European Media Landscape, available at: <http://www.ejc.nl/jr/emland/estonia.html#4>

² Translated documents may be found at: www.legaltext.ee.

³ Available at: http://www.ijnet.org/FE_Article/ml/EstBroadAct.html

⁴ See Tammerk, Tarmu (2000): The Estonian Media Landscape. In: The European Media Landscape, available at: <http://www.ejc.nl/jr/emland/estonia.html#4>

⁵ Based on an interview with Prof. Epp Lauk, researcher at the University of Tartu and member of the ESP, and information at the website of the ESP 222.asn.org.ee.

⁶ See Harro-Loit, Halliki; Lauk, Epp: Self-regulation: watchdog's collar or shelter for the guild? Unpublished manuscript.

⁷ The Code of Ethics was adopted by the Press Council in 1997 and includes issues like: independence of journalists, relations with sources, editorial guidelines, right of reply and advertising. Available at: http://www.ijnet.org/FE_Article/codeethics.asp?UILang=1&Cid=8295&CidLang=1

⁸ Available at: <http://www.esis.ee/legislation/broadcasting.pdf>.

⁹ Available at: http://www.asn.org.ee/english/code_of_ethics.html.