

For Distribution to CPs

PRESS COUNCILS IN WESTERN EUROPE

MOD400001302

For Distribution to CPs

MOD400001303

STUDIES for the NETHERLANDS PRESS FUND – S22

Press Councils in Western Europe

Daphne C. Koene LL.M.

AMB

2009

The series 'Studies for the Netherlands Press Fund' consist of papers published in the context of a research project supported or commissioned by the Press Fund. The responsibility for the content of the study lies with the author(s).

Supervisory Committee:

T.G.G. Bouwman, Chairman of the Board, Netherlands Press Council Foundation

A. Herstel LL.M., Chairman of the Netherlands Press Council

drs. M.M.P.M. Kreyns LL.M., Board member of the Netherlands Press Council Foundation

A.H. Schmeink LL.M., member of the Netherlands Press Council

Originally published as *Raden voor de Journalistiek in West-Europa*,

© 2008 – St. Raad voor de Journalistiek, Amsterdam & Stimuleringsfonds voor de Pers, Den Haag (ISBN 97890 79700 042)

ISBN 97890 79700 09 7

© 2009 Netherlands Press Council Foundation, Amsterdam/The Netherlands Press Fund, The Hague

No part of this publication may be reproduced and/or published in print, through photocopies or in any way, without prior written permission of the copyright owner.

AMB Press – P.O. Box 7 – 1110 AA Diemen – The Netherlands – info.amb@xs4all.nl

Table of contents

Preface	viii
1. Introduction	1
2. Summary	5
2.1. Foreword	5
2.2. Organisation and funding	6
2.3. Task description	7
2.4. Competence and admissibility	7
2.5. Secretariat	8
2.6. Composition of the press council	9
2.7. Complaints procedure	10
2.8. Sanctions	12
2.9. Other activities	13
2.10. Statistics for 2007	14
3. Conclusions and recommendations	15
4. Country profiles	23
5. The Netherlands – Raad voor de Journalistiek	27
5.1. Background	27
5.2. Organisation and funding	28
5.3. Task description	29
5.4. Competence and admissibility	30
5.5. Secretariat	31
5.6. Composition of the press council	32
5.7. Complaints procedure	33
5.8. Sanctions	35
5.9. Other activities	36
5.10. Statistics for 2007	38
6. Sweden – Allmänhetens Pressombudsman and Pressens Opinionsnämnd	39
6.1. Background	39
6.2. Organisation and funding	40
6.3. Task description	42
6.4. Competence and admissibility	43
6.5. Secretariat	44
6.6. Appointment of ombudsman and composition of the press council	45
6.7. Complaints procedure	47
6.8. Sanctions	49

6.9. Other activities	51
6.10. Statistics for 2007	51
6.11. Thoughts and comments	52
7. Denmark – Pressenævnet	55
7.1. Background	55
7.2. Organisation and funding	57
7.3. Task description	57
7.4. Competence and admissibility	58
7.5. Secretariat	59
7.6. Composition of the press council	60
7.7. Complaints procedure	61
7.8. Sanctions	64
7.9. Other activities	64
7.10. Statistics for 2007	65
7.11. Thoughts and comments	66
8. Great Britain – Press Complaints Commission	69
8.1. Background	69
8.2. Organisation and funding	71
8.3. Task description	72
8.4. Competence and admissibility	74
8.5. Secretariat	75
8.6. Composition of the complaints commission	75
8.7. Complaints procedure	77
8.8. Sanctions	80
8.9. Other activities	81
8.10. Statistics for 2007	81
8.11. Thoughts and comments	82
9. Germany – Deutscher Presserat	87
9.1. Background	87
9.2. Organisation and funding	88
9.3. Task description	89
9.4. Competence and admissibility	92
9.5. Secretariat	93
9.6. Composition of the press council	94
9.7. Complaints procedure	95
9.8. Sanctions	99
9.9. Other activities	100
9.10. Statistics for 2007	100
9.11. Thoughts and comments	102
10. Flanders – Raad voor de Journalistiek	105
10.1. Background	105
10.2. Organisation and funding	107
10.3. Task description	109

10.4. Competence and admissibility	109
10.5. Secretariat	110
10.6. Composition of the press council	110
10.7. Complaints procedure	112
10.8. Sanctions	114
10.9. Other activities	115
10.10. Statistics for 2007	116
10.11. Thoughts and comments	117
11. Summary of recommendations	119
Annexes	
<i>I Foreign contacts</i>	121
<i>II Questionnaire</i>	125
<i>III Bibliography</i>	129
<i>IV Other activities of the Netherlands Press Council 2007/2008</i>	131
<i>V Websites of the abovementioned organisations</i>	133

Preface

It took several years before the Netherlands Press Council decided to send a delegate, which happened to be me, to the annual meetings of the Alliance of Independent Press Councils of Europe. Severe budget restrictions meant that the council only started to participate from the 7th meeting onwards, which was held in Luxembourg in 2005. It turned into an instant success, since it immediately became apparent that exchanging knowledge and experience with foreign colleagues generates useful information for our own council.

When the council grappled with the question as to how it could best improve its own working methods, it therefore seemed an obvious choice to investigate how these things are done in neighbouring countries. After all, many neighbouring countries have been faced by similar problems and an investigation seemed useful in order to learn from their experience.

The Board of the Foundation promptly decided it would be a good idea for me, secretary of the press council, to conduct the survey. I am very grateful to the Board for the trust they put in me. Furthermore, I would like to thank the supervisory committee for its support during the compilation of this report. A word of thanks also goes to my colleagues at the secretariat, who took over some of my usual duties for almost an entire year.

Evidently, I am extremely grateful to all my contacts abroad – particularly my colleagues in the other secretariats – who freed up some time to see me and who provided me with the necessary information. Without their co-operation, this report would never have seen the light of day.

Många tack! Mange tak! Many thanks! Herzlichen Dank! Hartelijk bedankt!

The results of the research are set out in this report. Due to the limited scale of this project, which after all did not involve any long-term scientific research, I restricted my analysis to some key points. In the full knowledge that a much longer account could be written about the different organisations described here, I hope that the report can nevertheless make a useful contribution towards the plans to strengthen our own council.

Daphne Koene
Secretary Netherlands Press Council

Amsterdam, November 2008

1. Introduction

The importance of an efficient press council is virtually growing by the day. In their role of ‘the watchdogs of democracy’, the media are to an increasing extent held publicly accountable for their behaviour. In that context, it is important to note that the media are undergoing major developments in contemporary society. Take the rise of the new media, the emergency of citizen journalism and the development of cross media, for example. More and more, it prompts the question as to what constitutes journalistic activity and who can be held accountable for it.

As a body that can be easily approached by private persons and organisations alike with complaints about journalistic conduct, the council is pre-eminently suited to deliver self-regulation in the media. For each case, it can investigate whether reporters have abided by professional ethics.

In addition, the council is also the institute responsible for shaping opinions and developing journalistic norms, since its rulings establish general principles (for example, about granting the right of reply). The amalgamation of all rulings ever made – considering several hundreds of cases have been dealt with over the years – create a good picture of the journalistic ethics in our country.

However, the council regularly picks up rumours casting doubt on its reputation. As S. ten Hoove remarked, ‘authority, or to be more precise, a lack of authority, has been a running theme in the council’s history’.¹

The Board of the Netherlands Press Council Foundation – which facilitates the press council – has been focusing for some time on improving the council’s standing. Several years ago, the Board commissioned an analysis of the rulings issued by the council for that purpose. It led to the aforementioned publication by Ten Hoove. Partly as a result of the publication, many steps were taken over the last few years to strengthen the council’s position. For example, in 2003, the council introduced a fast-track procedure and in 2004, it made its website more accessible. In 2005, it expanded its secretariat, recruited freelance registrars and expanded the number of council members. As a result, the council has been able to hold more frequent sessions and to deliver its rulings much faster than before.

Furthermore, it is important to make the council more visible in society. In that context, the council published a guidebook in 2007,² giving journalists and the

1. S. ten Hoove, *Grenzen in de journalistiek – Raad voor de Journalistiek tussen 1987 en 2003*, Otto Cramwinckel Uitgever, Amsterdam, 2003.

2. *Leidraad van de Raad voor de Journalistiek* (Guidebook of the Netherlands Press Council), April 2007, amended in April 2008, available from the secretariat of the council or can be downloaded from www.rvdj.nl.

public an insight into the general principles the council is guided by when evaluating complaints.

Furthermore, the council increasingly accepts invitations to meetings about ethics in journalism. A work group of the council is currently investigating how it can raise its profile even further. In that context, contacts have been made with the MediaDebat Foundation and tentative plans are underway for possible future collaboration. Further to the investigation into the ‘Mabelgate’ affaire,³ plans are afoot to strengthen the ties with the Netherlands News Monitor.

The above does not mean that criticism on the operation of the council has subsided. For example, P. Broertjes, Chief Editor of the *Volkskrant*, advocated the introduction of the ‘Swedish model’ during his retirement speech as chairman of the Netherlands Society of Chief-Editors on April 21st, 2006.⁴ In the model concerned, an ombudsman deals with the first-line processing of complaints whereas a press council forms the second line, i.e. to deal with appeals.

In his thesis, J. Mentink LL.M. pointed out the need for an easily accessible, free-of-charge institution where private people can take their complaints about journalistic behaviour.⁵ According to Mentink, the press council is capable of fulfilling this role, provided it makes the necessary improvements to its operating procedures. Mentink therefore rounded off his study with 12 conclusions and recommendations. Although the council does not share all of Mentink’s conclusions and recommendations – see the comment from the council’s chairman, A. Herstel LL.M., included in the thesis – there is no denying that further improvements in the council’s functioning would not be welcome or overdue.

Furthermore, a number of reports over the last few years have thrown the spotlight on quality and accountability of the media. One of the points raised is that journalism as a profession needs to tighten up its accountability procedures.⁶ In addition, it was noted that the media also carry a great social responsibility and that the government must put the media under strong pressure, if necessary, to justify their editorial decisions to the public.⁷ All these reports mentioned that the Netherlands Press Council needs to build up its position.

3. Netherlands News Monitor, *Media en Mabel – een onderzoek naar de berichtgeving in vijf landelijke dagbladen over de affaire Mabel Wisse Smit*, Amsterdam, December, 2007.

4. The annual statement is published on the Society’s website.

5. J. Mentink LL.M., *Veel raad, weinig baat – Een onderzoek naar nut en noodzaak van de Nederlandse Raad voor de Journalistiek*, Ad. Donker, Rotterdam, 2006.

6. See: Raad voor Maatschappelijke Ontwikkeling (Council for Social Development), *Medialogica – Over het krachtenveld tussen burgers, media en politiek*, The Hague, January 2003; Wetenschappelijke Raad voor het Regeringsbeleid, *Focus op functies – uitdagingen voor een toekomstbestendig mediabeleid*, Amsterdam University Press, Amsterdam, 2005; Research committee of the Vereniging Media- en Communicatierecht, *Klachten over media-publicaties – Een onderzoek naar de mogelijkheden van eenvoudig toegankelijke niet rechterlijke procedures*, Amsterdam, 2007.

7. See: Wetenschappelijke Raad voor het Regeringsbeleid (Scientific Council for Government Policy), *Trends in het medialandschap – vier verkenningen*, Amsterdam University Press, Amsterdam, 2005.

The council shares the prevailing opinion in journalistic circles that the government must have as little involvement as possible with the press, and that the sector needs to regulate itself. For that matter, the government seems to agree. On this very subject, drs. H.M. van Bockxmeer, head of the media policy sector of the Ministry of Education, Culture and Science, recently wrote the following in a contribution on the weblog of Kimforum, the forum of the Catholic Institute for Mass Media for reflection on journalism:⁸

“At the same time, the government expects the media to take up their social responsibility of their own accord. Citizens must be able to rely on it that journalistic information is not influenced by corporate interests or by the government. Through self-regulation, the journalistic sector ensures that editing and commercial interests remain separated, with news and information being generated independently. (...) The government does not want and must not be allowed to find itself in a position in which it can have direct influence on the field of tension between editing and commerce. Freedom of the press requires the government to maintain its distance and a good equilibrium. It does not mean that the government can simply sit back and do nothing. It is conducting an active policy through incentive measures and subsidies, encouraging self-regulation.”

It is then up to the media to voluntarily submit to self-regulation, which can only happen if the press council can reinforce its authority. The salient question is therefore:

WHAT CAN BE DONE TO IMPROVE THE FRAMEWORK AND THE OPERATING PROCEDURES OF THE PRESS COUNCIL, ALLOWING THE COUNCIL TO FUNCTION APPROPRIATELY AS A SELF-REGULATORY BODY IN THE MEDIA, THEREBY BOOSTING ITS AUTHORITY AMONG THE PROFESSION, THE PUBLIC AND THE GOVERNMENT?

During meetings of the Alliance of Independent Press Councils of Europe (AIPCE), attended by the council's secretary, it emerged that quite some differences exist between the various press councils in Western European countries, both in terms of their organisation and working methods.

In our neighbouring countries, the threat of government intervention has resulted in self-regulating bodies becoming more effective. The British Press Complaints Commission, for example, plays an important mediating role. The same can be said of the secretary of the Flemish 'Raad voor de Journalistiek' (Council for Journalism), who also plays the role of ombudsman.

The German 'Presserat' – which incidentally receives a significant level of funding from the state – is dedicating itself to freedom of the press, in addition to dealing with complaints. For that matter, the German Press Council does not apply the

8. Drs. H.M. van Bockxmeer, *De rol van de overheid in een goed functionerend medialandschap*, see: <http://kimforum.nl/blog>, March 26th, 2008.

criterion that the person lodging a complaint must have a direct interest in the matter, and the council can start up complaints procedures of its own accord.

In Denmark, criticism on the council's operations has led to a self-regulatory body enshrined in with a legal basis.

THE COUNCIL IS OF THE OPINION THAT THE EXPERIENCES OF PRESS COUNCILS IN THE AFOREMENTIONED COUNTRIES CAN BE EXTREMELY HELPFUL WHEN IT COMES TO ANSWERING THE QUESTION ABOUT IN WHICH MANNER THE POSITION OF THE COUNCIL CAN BE STRENGTHENED.

For that reason, the council carried out a comparative study into these press councils, from September 2007 until July 2008 inclusive, supplemented by the self-regulatory body in Sweden, in view of the 'Swedish model' referred to above. The results of the study are set out in this report.

It was decided to carry out research by conducting as many interviews as possible, since it transpired that simply analysing written material about the organisations concerned would not generate sufficient insight into the operating methods of these organisations. Efforts were made to have conversations with spokesmen of all actors in the media sector. An overview of the interviewees and additional foreign contacts communicated with through correspondence is included in Annex I. In addition, I attended sessions of the councils or hearings of the complaints commissions in all countries.

Based on a questionnaire (Annex II), various aspects were raised, including the internal organisation, funding, complaints procedure, options for mediation, procedure for pronouncing rulings, the use of code of practice and other activities. The above was placed in the perspective of population and media: what authority did the council concerned have with the general public, the media and the authorities? Which suggestions do these groups have for improving the press council in their own country?

In order to present the research results as transparently as possible, I will start with an overview in which the characteristics of the countries discussed will be compared. The following chapter contains a few conclusions and recommendations. Next, a brief profile of each country gives an outline of the situations in the various countries. In order to facilitate the comparison with the Dutch situation, I will then explain the current organisation and operating method of the council, followed by those of the countries concerned.

After analysing the report, the council will soon consider which steps it can take to strengthen its own position.

2. Summary

2.1. Foreword

In the introduction, the point has already been made that the media sector in the Netherlands strongly feels that the government should get as little involved as possible with the regulation of journalism. Also in Europe, self-regulation of the media is considered extremely valuable.

For example, Viviane Reding, European Commissioner for Information Society and Media, remarked the following:

“What are the aims of our European media policy today? Our most important aim is to have a strong European media landscape as an expression of media pluralism and to face up to international competition. Media policy in Europe is in essence a national responsibility, so the European Commission can only lay down a general framework and this must be filled out by the Member States in accordance with their national traditions. Only in the case of obviously cross-border issues does the European Commission itself have a mandate to take political decisions. These certainly do not always have to be new legislative proposals. On the contrary, the new Commission under President Barroso which has been in office since November 2004 has repeatedly made it very clear that, in our view, self-regulation can in many cases be much more sensible and effective than adding yet another layer of regulation – especially for the media industry.”¹

Miklós Haraszti, OSCE Representative on Freedom of the Media, wrote recently:

“I see self-regulation and the promotion of quality journalism as additional safeguards of media freedom and even of media power.”²

The survey indicates that in the countries investigated, the procedures for regulation or self-regulation may well differ, but they are applied in each country by a media organisation or press council.³ Taking into account that the cultural and social backgrounds of the countries differ to some extent, the conclusion beckons that no ‘one-fits-all’ model exists for a self-regulating body or a journalistic code.

1. See the speech Reding gave at the conference of the ‘Bundesverband der Deutschen Zeitungsverleger’ in Berlin on September 26th, 2005, published on the website of the European Union: <http://europa.eu>.

2. See the foreword by Haraszti in *The Media Self-Regulation Guidebook – All questions and answers*, Office of the Representative on Freedom of the Media, Organization for Security and Co-operation in Europe, Vienna, 2008.

3. French professor Claude-Jean Bertrand, who passed away in 2007, mapped out over 100 different ‘media-accountability-systems’ (M*A*S) worldwide. He considered press councils (PCs) as “potentially the most useful media accountability system and the greatest weapon in the fight for quality news media” (see his contribution: ‘Watching the Watchdog-Watching Dog – A call for Active Press-Councils’ in: Torbjörn von Krogh (ed.), *Media Accountability Today... and Tomorrow – Updating the Concept in Theory and Practice*, Nordicom, University of Gothenburg, Göteborg, 2008, p. 115-118).

This is also the view taken by the Alliance of Independent Press Councils; in this respect, harmonisation is not desirable and even considered impossible.⁴ It does not alter the fact that exchanging knowledge and experience enables us to learn from the positive and less positive aspects of other organisations, hence this survey.

In this chapter, succinctly all the elements scrutinised in the survey will be listed. The overview could easily prompt the conclusion that ‘the grass is much greener in the neighbouring gardens’. However, we must take care not to apply tunnel vision and to keep in mind the aforementioned differences in background.⁵

2.2. Organisation and finance

<i>The Netherlands</i>	<i>various media organisations, fully financed by sector itself, annual budget approx. € 144,000⁶</i>
Sweden	various media organisations, financed by sector only, annual budget approx. € 575,000
Denmark	statutory basis, financed only by sector annual budget approx. € 260,000
Great Britain	only publishers, financed only by sector annual budget approx. € 2,480,000
Germany	publishers and journalists, co-financed by the government (directly), annual budget approx. € 570,000 ⁷
Flanders	various media organisations, co-financed by the government (indirectly), annual budget approx. € 175,000

With the exception of Denmark, where the press council is regulated, all countries have a self-regulation system in which at least one or more organisations from the sector take part, whereas the complaints procedure is handled by separate committees. In Germany and Flanders, it is actually possible to belong to both bodies simultaneously.

In four countries, the system is fully financed by the sector itself. In Germany and Flanders, part of the finance comes directly or indirectly from the government; there is no evidence of it being linked to government intervention.

4. See in this context also Yavuz Baydar, ‘Setting up a journalistic code of ethics – The core of media self-regulation’, in: *The Media Self-Regulation Guidebook – All questions and answers* (p. 21-32), who observed: “Firstly traditions of journalism differ from one country to another. Secondly, some countries act or react more slowly than others to develop and amend their guidelines. Thirdly, and most importantly, there are different sensitivities within every society, based on the nature of democracy and on the social-cultural-ethnic-religious codes of conduct. These sensitivities are often reflected in the news content.”

5. A noteworthy example is that in Flanders, the work load and work pressure are deemed ‘considerable’ whereas the Flemish council deals with approximately half the number of cases processed by the Netherlands council, although the former has a comparable level of office staffing, more council members and a higher budget.

6. Excluding the non-structural contribution by the *Democratie en Media* Foundation.

7. Excluding the contributions for self-regulation in relation to editorial data protection.

The structural annual budget of the Netherlands Press Council emerged as being the lowest, which is even more pertinent since all the media – even broadcasting companies – are participating in the system. Furthermore, it is noteworthy that both the population and the sector are significantly greater in the Netherlands than in Sweden, Denmark and Flanders.

2.3. Task description

The Netherlands to assess complaints concerning journalistic behaviour, to act as intermediary, to make its own views known (if matters of principle arise) and to make statements at the request of its members in matters of common interest when principles are at stake⁸

Sweden	information, dealing with complaints and making a contribution to the development of ethics in the press
Denmark	to deal with complaints about journalistic ethics, to contribute to the development of press ethics, to handle complaints about the legal right of correction
Great Britain	to handle complaints based on the editorial Code of Practice
Germany	to stand up for and defend freedom of the press, including by dealing with complaints
Flanders	to promote and defend professional ethics, to formulate guidelines, to deal with questions and to assess complaints after mediation

In proportion to the countries surveyed – with the exception of Great Britain – the Netherlands Press Council has a fairly limited statutory scope of responsibilities according, which does not include contributing to the promotion, safeguarding and/or development of professional ethics.

2.4. Competence and admissibility

The Netherlands 'journalistic conduct' in all media, complainant must have a 'direct interest'

Sweden	print media (appearing at least 4 times a year), no broadcasting companies, limited Internet, complainant must have a 'personal interest', only publications, no journalistic methods
Denmark	print media (appearing at least twice a year), broadcasting corporations, Internet (registered), complainant must 'have a legitimate interest'
Great Britain	97% of commercial print media, no broadcasting companies, limited Internet, complainant must have 'a personal interest', except for 'general matters of fact'

8. See article 3 of the articles of association of the Netherlands Press Council Foundation.

Germany	print media, except free local papers, no broadcasting companies, limited Internet, anyone can lodge a complaint
Flanders	all Dutch-language media appearing in Flanders, complainant must have a 'personal interest',

The competence of the Netherlands Press Council comprises the evaluation of 'journalistic conduct' in relation to all media without exception, and it is therefore much more comprehensive than in most other countries in this survey.

As far as the admissibility of the complainants is concerned, most countries have more-or-less similar criteria in relation to the complainant's interest. In the Netherlands, in the event a publication compromised not an individual but a collective interest, it is possible for an organisation that has the collective interests at heart – pursuant to its articles of association – to lodge a complaint. The same option exists in Flanders, but not in Sweden or Denmark.

In Great-Britain, anyone can lodge a complaint about a 'matter of general fact' under item 1 of the Code on the subject of accuracy, provided no one with a direct interest is named who could lodge a complaint.

Only in Germany does the general right exist to submit a complaint.

2.5. Secretariat

The Netherlands 1.75 FTE⁹

Sweden	4.5 FTE (including ombudsman and deputy ombudsman)
Denmark	3.27 FTE
Great Britain	12.8 FTE (excluding 3-day weekly contract of chairman)
Germany	6 FTE (plus job students, additional help for accounts and outsourced IT work)
Flanders	1.6 FTE

Since the activities conducted by the different organisations vary quite a lot, it is impossible to draw specific conclusions from simply comparing the number of full-time employees.

The secretariat of the Netherlands Press Council currently has a reasonable level of staffing, considering its present workload and the option of deploying freelance registrars.

9. Excluding freelance registrars, for which no *structural* finance is available at present.

2.6. Composition of the press council

<i>The Netherlands</i>	<i>chairman and 3 vice-chairmen (lawyers), minimum 10 non-journalist members and minimum 10 journalist members (some nominated by the Netherlands Union of Journalists, some by the Netherlands Society of Chief-Editors)</i>
Sweden	chairman and 3 vice-chairmen (with jurisdiction), 14 members (4 from publishers, 2 from journalist association, 2 from press club, 6 'public members') and 14 substitutes (identical distribution)
Denmark	chair (member of Supreme Court) and vice-chair (lawyer), 6 members (2 journalists, 2 editorial management, 2 'public members') and 6 substitutes (with same distribution)
Great Britain	17 members, 10 of which are 'public members' (including the chairman) and 7 chief-editors
Germany	28 members (14 from publishers, 14 from reporters' associations), no 'public members'
Flanders	18 effective members (6 from media companies, 6 from reporter associations and 6 'public members'), and 18 substitute members (identical distribution)

Only in Germany the press council is entirely composed of members from the sector itself. All other countries include 'public members' in some shape or form. Note that the non-journalist members in the Netherlands are or have been involved in some way in journalism, whereas in several countries the public members are explicitly excluded from having such involvement.

Just as in Sweden and Denmark, the chairmanship in the Netherlands consists of lawyers, whereas the chairman in Great Britain is a public member, and in Germany and Flanders, the chairman is elected by the council from among its members.

In three countries, substitute members are appointed in addition to the normal members. In Sweden and Flanders, the substitutes are always invited to participate in hearings, whereas the substitutes in Denmark are only asked to attend in the absence of ordinary members.

2.7. Complaints procedure

<i>The Netherlands</i>	<p><i>six months time limit for lodging a complaint</i> <i>mediation by mediator of the council</i> <i>fast-track procedure</i> <i>usually oral hearings</i> <i>in practice no factual investigation</i> <i>evaluation in chambers, unanimous decisions</i> <i>no review option</i> <i>on average, procedure takes approx. 13 weeks¹⁰</i></p>
Sweden	<p>three months time limit for lodging a complaint first evaluation by ombudsman, who may dismiss the case (appeal is possible), barely any mediation usually oral hearings limited factual investigation evaluation in closed meeting, dissenting opinions¹¹ possible complaints can be upheld in 3 different ways. review possible press ombudsman procedure takes approx. 13-17.5 weeks press council procedure takes approx. 13-17.5 weeks duration of total procedure takes at least 26 weeks</p>
Denmark	<p>time limit for lodging a complaint: 4 weeks simplified procedure (no objection possible) no oral hearing no factual investigation evaluation in closed meeting, dissenting opinions possible review possible procedure takes on average approx. 11.5 weeks</p>
Great Britain	<p>two months time limit for lodging a complaint (except for material on the Internet) intermediation by the secretariat simplified procedure ('decisions', no objection) no oral hearing no factual investigation evaluation by full committee, unanimous decisions review possible complaints about council activities can be lodged with the Charter Commissioner</p>
Germany	<p>procedure takes on average approx. 7 weeks one year time limit for lodging a complaint (inactive) mediation simplified procedures (objection possible) no oral hearing</p>

10. The case for which the council sought expert advice was an exception.

11. A 'dissenting opinion' is a deviating opinion of a council member, which is included in the decision.

Flanders	<p>limited factual investigation evaluation by chambers, dissenting opinions possible (but it never happens) complaints can be upheld in 3 different ways review possible procedure takes on average approx. 17.5 weeks time limit for lodging a complaint: 30 calendar days mediation by secretary/ombudsman simplified procedure (no objection possible) oral hearing by separate committee hearing of witnesses, no other factual investigation assessment by full council, dissenting opinions possible (but no instance so far) review (procedural) impossible procedure takes on average approx. 17.2 weeks</p>
----------	---

First of all, it is worth noting that both Sweden and Flanders have an 'ombudsman', be it in very different ways. In Flanders, the secretary of the council is also called ombudsman, because he plays a mediating role. In Sweden, the ombudsman acts as the first contact point for complaints. The research showed that:

- the Swedish ombudsman hardly ever mediates;
- the procedure is only conducted in writing;
- the Swedish ombudsman can only dismiss complaints; not adjudicate them;
- the procedure with the Swedish ombudsman takes approximately 3 to 4 months and the adjudication of a complaint (over which the Swedish Press Council has jurisdiction) takes at least 6 to 7 months.

Furthermore, the complaints procedures also vary greatly. For starters, the different countries apply very different time limits for lodging a complaint, ranging from four weeks to one year. In addition, in some countries, complaints can be lodged by e-mail and/or complaint forms are available online via the website.

In most countries, mediation is attempted in one form or another, to a lesser or great extent. Only in Denmark, there is no mediation at all. In Germany, the option exists for some form of mediation ('Vermittlung'), but the council does not play an active role in it: the defendant is reminded of the option of examining of its own accord within three weeks whether the code was violated and whether the violation was or will be corrected.

Apart from the specific ombudsman procedure in Sweden, all other countries -- with the exception of the Netherlands -- use a simplified procedure for processing complaints in cases when the council clearly has no jurisdiction, the complainant is obviously inadmissible and/or the complaint is plainly unjustified. Moreover, the Netherlands Press Council is the only organisation with a fast-track procedure for urgent cases.

In Sweden and Germany, there is an active, be it limited, factual investigation. In the other countries, no investigation of facts takes place in practice, although some countries, including the Netherlands, have provided an opportunity to do so in their regulations. In Flanders, witnesses are nevertheless heard.

Oral hearings are held only in the Netherlands and in Flanders. In the Netherlands, the parties are heard by a division of the council, which will also decide on the complaint. In Flanders, ad-hoc reporting committees are set up (with three council members) to hear the parties concerned, but complaints are eventually adjudicated by the full council.

The countries differ not only in the preliminary phase of the procedure, but also in the manner in which they adjudicate complaints. In four countries, the complaints are adjudicated by complaints divisions. In Great Britain and Flanders, all complaints are assessed by the full council. Only in the Netherlands and Great Britain do the councils need to make unanimous decisions; whereas dissenting opinions are possible in the other countries. In addition, in Sweden and Germany, complaints can be upheld in three different ways, dependent on the gravity of the journalistic neglect.

Only Sweden provides the possibility of an appeal, but only in the event the complainant does not agree with his complaint being dismissed by the ombudsman. In that case, the complaint is submitted to the press council. In none of the countries examined is it possible to appeal against a decision of the press council or complaints committee.

However, most countries provide an opportunity for reviewing decisions, for cases when new facts and circumstances occur. In Great Britain, it is furthermore possible to complain about the council's procedure to a separate officer.

Lastly, the average duration of the complaints procedures vary, i.e. the period from receiving the complaint to the date of the decisions – from 7 weeks until at least 26 weeks. Only in Great Britain and Denmark the average processing time is shorter than in the Netherlands. Considering that no simplified procedure exists (yet) in the Netherlands and that meetings are also often held orally, the average duration of approximately 13 weeks is very respectable.

2.8. Sanctions

The Netherlands *no damages, no fines*
 a request to publish the decision in all cases

Sweden no damages, but 'fines' (administrative compensation)
 request to publish the decision in the event the complaint was
 justified

Denmark	no damages, no (direct) fines publication decision ordered for most of justified complaints (penalty on non-compliance: fine or custodial sentence)
Great Britain	no damages, no fines request to publish the decision in event of 'upheld adjudication'
Germany	no damages, no fines request to publish the decision only if public ticking-off is given
Flanders	no damages, no fines request to publish the decision only for 'more serious' cases

In none of the countries analysed does the complainant have the option of getting damages via a procedure lodged with the press council or complaints committee.

Only in Sweden media that have been found guilty are obliged to meet an administrative fine, in order to co-finance the work of the ombudsman and the press council.

Furthermore, defendants are requested (in Denmark, ordered) to publish the decision of the press council or complaints committee. In the Netherlands, this applies to every single case, but in the other countries, only to some of the legitimate complaints.

In Denmark, the defendant is legally obliged to comply with this publication order. In the other countries, compliance is on a voluntary basis.

2.9. Other activities

<i>The Netherlands</i>	<i>information, education, etc. by secretariat, chairman and council members</i>
Sweden	information, education, etc. by ombudsman (40% of the work) and deputy ombudsman (10% of the work)
Denmark	issuing statements about general journalistic subjects in annual reports
Great Britain	information, education, etc. by secretariat and chairman issuing guidelines and leaflets
Germany	information, education, etc. by secretariat, spokesmen and chairmen issuing guidelines and leaflets
Flanders	information, education, etc. by secretariat and council members issuing guidelines and leaflets

Although the tasks of the Netherlands Press Council set out in the current articles of association are limited (see above under 2.3.), the activities of the council have been steadily expanding in order to raise the council's profile. The members and the secretary of the council are increasingly participating in debates, granting interviews, writing articles and giving lectures.¹²

12. See Annex IV 'Other activities of the Netherlands Press Council 2007/2008'.

Similar activities are carried out in all other countries, except in Denmark. The activities in the Netherlands are nevertheless currently primarily aimed at the peer group and comparatively less at the general public, in comparison with other countries.

2.10. Statistics for 2007

<i>The Netherlands</i>	<i>2 complaints resolved by mediation¹³ 84 cases dealt with by the council, of which 40 were (partly) justified</i>
Sweden	273 complaints dismissed by the ombudsman 123 cases dealt with by the council, of which 40 were (partly) justified
Denmark	34 complaints dismissed in a simplified procedure 125 cases dealt with by the council, of which 45 were (partly) justified
Great Britain	483 cases resolved via mediation 714 complaints dismissed in a 'decision' 32 cases dealt with at a hearing, of which 16 were justified
Germany	194 complaints dismissed in a simplified procedure 330 cases dealt with by the council, of which 173 were justified (including 4 unpublished and 31 published reprimands)
Flanders	15 cases resolved via mediation 7 dismissed in a simplified procedure 18 cases dealt with by the council, of which 10 were (partly) justified

A comparison of these figures could easily prompt the conclusion that the number of complaints lodged in the Netherlands lags far behind the number of complaints filed in neighbouring countries and that the authority of the Netherlands Press Council is consequently significantly less than that of press councils or complaints committees in other countries.

However, this interpretation would be incorrect, or at least premature, in the light of differences in the social and cultural background of the countries examined. For example, it was explained in Sweden that the population of that country is quite fond of submitting problems to the authorities. In addition, the point was made in Great Britain that, essentially, the press there is significantly different from the press in other Western European countries.

Without further sociological research into the size and nature of both the population and the media, which was not feasible in the scope of this particular survey, it is impossible to draw conclusions from the statistics.

13. By the secretary before a formal procedure was started, rather than via the mediation procedure described in the council's rulebook.

3. Conclusions and recommendations

Let us now turn to the question as to what an ideal media committee or press council would look like. According to Claude-Jean Bertrand, it is as follows:

“(...) a true press council takes advantage of the fact that it brings together and represents the people who own the power to inform, those who possess the talent to inform and those who have the right to be informed. Also that it is a permanent institution that is democratic, independent, flexible, multifunctional, harmless and that its sole purpose is to improve media service to the public. And so it can afford to do more than just settle complaints.”¹

Evidently, none of the organisations outlined in this report fully meets this perhaps over-ambitious description. It is also clear that the Netherlands Press Council shows some room for improvement and a need to improve, in terms of several of the elements listed in the above description.

Task description

According to the articles of association the Netherlands Press Council has a fairly limited task description, in comparison with most of the examined countries. It aims to deal with complaints by assessing them rather than by mediating between the parties. In practice, the council has extended its activities and it no longer limits itself to merely reaching decisions. That practice must be anchored in the articles of association.

- The tasks of the council must be formulated more broadly, as has already happened in other countries, with the exception of Great Britain; the articles of association must include that the council is responsible for contributing to the development of professional ethics.

Activities

The council has been increasingly active over the last few years in areas other than dealing with complaints. Among other things, it is progressively taking part in more debates and interviews. Similar activities are carried out in all other countries, except for Denmark. The activities in the Netherlands are nevertheless currently primarily aimed at the profession and comparatively less at the general public, in comparison with the other countries.

1. See Bertrand's contribution referred to in note 3, chapter 2.

- The council must become increasingly visible, in order to raise its profile even further.
- To this effect, it must continue on the path taken, i.e. to increase its activities, since it definitely reaches the members of the profession.
- In addition, the council must examine how it can also improve on reaching the public. Possible methods are giving presentations open to the public (as is currently happening in Sweden and Great Britain) and compiling and distributing leaflets aimed at the general public (as is happening in Great Britain and Flanders).

Ombudsman

Before the council can expand the aforementioned tasks, it needs more staff members and a 'recognisable face towards the public'. In the context of making improvements to the council, the possibility of appointing an ombudsman has been discussed repeatedly, which would be modelled on the Swedish system. However, in the discussion, the term 'ombudsman' has started to lead its own life and it was therefore used as a concept without any factual interpretation.

Both Sweden and Flanders have an 'ombudsman', but in two very different forms. In Flanders, the secretary of the council is also given the title of ombudsman because of his mediating task. In Sweden, the ombudsman acts as the first contact point for complaints. Contrary to common perception, the Swedish ombudsman hardly ever does any mediating. Furthermore, the procedure is largely performed in writing and the ombudsman can only dismiss complaints but not decide on them. Lastly, the procedure with the Swedish ombudsman takes approximately three to four months and the adjudication of a complaint (over which the Swedish Press Council has jurisdiction) takes at least six to seven months. Introducing an ombudsman in line with the Swedish model will therefore not bring the necessary improvement of self-regulation in the Netherlands.

- The operations of the council would not be improved by the appointment of a Swedish-style ombudsman. It would be better to take inspiration from Great Britain, Germany and Flanders, where these activities are currently performed by the chairman and the secretariat working together.

Complaints procedure

Furthermore, it should be investigated how the complaints procedure can be improved. After all, the complaints procedure must be user-friendly. As described in the previous chapter, the complaints procedures vary quite a lot in the countries examined. In several countries, the procedure is more accessible than in the Netherlands.

- It must become possible to submit complaints by e-mail, like in Denmark, Great Britain and Flanders, subject to conditions.
- The council must provide an online complaints form on its website, as in Great Britain and Germany.
- The time limit for filing complaints on Internet publications must be extended, like in Great Britain.

In most countries mediation is attempted in one form or another, and to greater or lesser extent. Only in Denmark, there is no mediation at all. In the Netherlands, the option of mediation is increasingly made use of, not only by the chairman of the council when a formal complaint is lodged, but also by the secretary of the council in the preliminary stage of complaints procedures.

- The line of mediation by the chairman and secretary of the council must be extended. There is no need to make any formal adjustments to the procedure.

Apart from the specific ombudsman procedure in Sweden, all other countries – with the exception of the Netherlands – use a simplified procedure for processing complaints in cases when the council clearly has no jurisdiction, the complainant is obviously inadmissible and/or the complaint is plainly unjustified.

The work of the council can be organised more efficiently if a simplified procedure is introduced. It must then be considered whether an option to appeal/object must be provided (like in Germany) or not (as in Denmark and Flanders).² The need for such option seems incontrovertible, to allow the entire procedure to proceed as meticulously as possible. However, it must be born in mind that if such option is made too easily accessible, it may be routinely used, which would undermine the efficiency of the entire procedure.

- The council needs to introduce a simplified procedure for dealing with complaints in cases when the council evidently has no jurisdiction, when the complainant is inadmissible or when the complaint is clearly unjustified.
- The organisation of this procedure must be akin to the procedures in Denmark, Germany and Flanders.

In none of the countries examined is it possible to appeal against a decision of the press council or complaints committee, if either party disagrees with the decision. Due to the limited consequences associated with opinion-based decisions from the council (see also below under sanctions), there is no need to introduce an appeal procedure.

2. In Great Britain, cases are dealt with more simply, outside a hearing, but they are adjudicated by the full council. The possibility of objections or appeals therefore does not arise.

However, it is possible that a case is adjudicated unfairly without taking into account certain facts or circumstances, or because mistakes are made in the course of the complaints procedure. In the Netherlands, no procedure exists as yet to deal with these cases, whereas most countries have provided the possibility of a review.

- The council must provide the possibility of a review for cases when certain facts or circumstances were unfairly left outside consideration or when mistakes were made during the complaints procedure.

Lastly, the average duration of the complaints procedures ranges from seven weeks until (at least) twenty-six weeks. Only in Great Britain and Denmark the average processing time is shorter than in the Netherlands. Although the council is reproached fairly regularly for having an excessively long procedure, it is dubious whether the procedure can actually be shortened.

In this respect, it is relevant to note that the countries examined do not use oral hearings, except for Flanders. In the Netherlands, hearing the parties is considered extremely important. By being heard in person, the complainant feels that he is taken seriously and that his voice is heard. Furthermore, having an oral hearing, during which both parties can further explain their points of view and the council members can ask questions, helps the council during its decision-making about the case. Although having an oral hearing somewhat prolongs the time it takes to process a case in comparison with other countries, there is no need to change the practice for that reason alone.

An alternative may be to shorten the time limit for submitting a defence (like in Denmark and Great Britain). However, it is often necessary for chief editors to consult with the journalist(s) concerned before compiling a defence, so this also requires a certain amount of time. It already happens regularly that the council grants a deferment to the defendant(s) before they submit a defence.

The council has actually been able to considerably shorten the time between the hearing and the decision by deploying freelance registrars.

It does not alter the fact that – due to the various links in the process³ – a substantial amount of time goes by before the decision can eventually be sent to the parties. This operating method must be scrutinised to see whether some time can be saved.

- The duration of the complaints procedure must be shortened whenever possible. For example, the time limit for submitting a defence can be shortened, and the method used for drafting the decisions must be changed.
- The starting principle of an oral hearing must be maintained.
- The deployment of freelance registrars must be continued.

3. Compilation of draft by freelance registrar, evaluation/adjustment of draft by the secretary, evaluation/adjustment of draft by chairman, evaluation/adjustment of draft by other council members, if applicable, another evaluation by the chair, compilation of final decision by the secretary, decision sent to chairman for signature, then sent back by the chairman to the secretariat.

Competence and admissibility

The power of the Netherlands Press Council comprises the evaluation of 'journalistic conduct' in relation to all media without exception, and it is therefore much more comprehensive than in most countries included in this survey. Although the council will undoubtedly be forced in future to work out whether Internet publications involve 'journalistic conduct', the scope provided by the council's current articles of association is sufficient on this point.

- No statutory change in the competence of the council is needed.

Apart from Germany – where there is a general right of complaint – all countries apply more or less comparable criteria concerning the interest of complainants in order to assess the admissibility of complaints. In the Netherlands, complainants must have a 'direct interest'. In the event a publication compromises a common interest, complainants with a 'direct interest' are also considered to include organisations whose brief includes protecting the interests of the collective group concerned, based on the organisations' articles of association.

For the evaluation of this criterion, it is assumed that the council is an easily accessible complaints organisation for people and institutions that may be adversely affected by a certain journalistic conduct.

- The 'collective right of complaint' must be registered in the articles of association.
- The council must broaden its interpretation of the concept 'party with a direct interest' somewhat.
- Unless it is decided to choose a different starting principle, like in Germany, there is no need to broaden the scope of admissibility in the articles of association. However, it is not considered as a good idea to broaden the admissibility of the council into a general right of complaint.

Composition of the press council

Only in Germany the press council is entirely composed of members from the sector itself. All other countries include public members in some shape or form. In addition to the chairmanship, half of the Netherlands Press Council is currently made up of journalist members and the other half of non-journalist members with a specific involvement (past or present) in the media business. Such involvement by the public members is explicitly excluded in some countries.

The most pertinent point about the composition of the council is that it must inspire confidence with all parties. It emerged from the discussions in all the countries examined in the survey that appropriate community representation by public members was considered fundamental.

- The council must use a transparent selection procedure to attract public members without any involvement in the media sector.

Sanctions

In most countries, there is no option to impose sanctions. That option does not need to be provided here, either, the council must in some sense remain 'harmless' (see Bertrand). Bear in mind that the possibility of imposing sanctions when the freedom of expression is at stake is very limited pursuant to article 10 clause 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).⁴

The council will need to consider how its decisions can be published by all media concerned. It may be achieved by re-establishing the voluntary agreement by all chief editors to publish the decisions or by entering into new agreements with the publishers (like in Germany).

Furthermore, it must be noted that in the countries examined, publication is only requested in cases when decisions find in favour of the complainants. The Netherlands Press Council requests for all its decisions to be published, but it attaches specific importance to the publication of decisions in cases when the complaint is deemed wholly or partly justified. The publication in cases when complaints have been wholly or partly upheld is very important as a form of redress for the sake of the complainant as well as a contribution to the ongoing discussion about the boundaries of journalism. However, it is understandable when media decide to withhold publication of a dismissed complaint, even if it is not to be seen gloating.⁵ This practice must be formalised in line with what happens in neighbouring countries, which means that in future, publication is only requested in cases when complaints are considered wholly or partly well-founded.

- The publication of decisions must be enforced more stringently by means of agreements on the subject with the sector.
- Requests for publication must be limited to decisions partly or wholly upholding complaints.

4. Article 10 of the ECHR reads:

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

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

5. See the council's press release of October 31st, 2003 'Large majority of media publishes decisions of the press council,' published on the council's website.

Financing

When the *structural* annual budget of the Netherlands Press Council is compared with that of neighbouring countries, it emerges as the lowest. Furthermore, the budget is even too low to allow the council to continue with its current level of activities; for example, the deployment of freelance registrars is paid from *occasional* additional contributions. The aforementioned proposed changes are only possible provided the council's budget is significantly increased on a structural basis.

Considering the fact that the council is also at the service of the public – and therefore also of the government – partial (indirect) government finance (already in place in Germany and Flanders) cannot be excluded, as long as the council's independence towards the government can be guaranteed.

- The council's structural budget needs to be substantially increased, whereby the option of partial (indirect) finance by the government must be contemplated.

All in all, the council has its work cut out for now. With the dedication and enthusiasm of everyone concerned, the council can be assured a healthy future and a joyful celebration of its fiftieth anniversary in 2010.

For Distribution to CPs

MOD400001331

4. Country profiles

In the **Netherlands**, all media organisations of any significance have joined the Netherlands Press Council Foundation. The participants take care of the annual budget of approximately € 144,000. The chairmen of the council are (former) members of the judiciary; the rest of the council is composed in equal numbers of journalists and non-journalists.

The council is competent to adjudicate complaints about 'journalistic conduct'. Complainants must have a 'direct interest'. Complaints are assessed by chambers, composed of a chairman, two journalist members and two non-journalist members. Usually, a public hearing is held, at which the parties can clarify their respective positions. The written decision follows within four to six weeks after the hearing. At the request of the complainant, the chairman of the council has the power to opt for a fast-track procedure. The council always asks for its decisions to be published in the media concerned.

The **Swedish** self-regulation system is maintained by associations of publishers, the journalists union and the national press club, which are jointly responsible for the annual budget of approximately € 575,000. The chairmen of the press council are members of the judiciary. The other members are chief editors, journalists and public members.

In addition to the press council, there is a press ombudsman, who acts like a representative to the outside world. The press ombudsman and the press council do not adjudicate in relation to broadcasting companies, and any complainants must have a 'personal interest'. Complaints about journalistic methods are inadmissible.

The press ombudsman functions to a limited extent as a court of first instance and he virtually never mediates. He can dismiss a complaint, after which the complainant can appeal to the press council. If the press ombudsman is of the opinion that a complaint is well-founded, he will present it to the press council, who will evaluate the complaint in a chamber. A decision is made based on written documents, so there is no hearing. Media found guilty must pay an administrative fine. Furthermore, if complaints are upheld, the chief editor concerned is asked to publish the decision.

In **Denmark**, a legal basis has been created for the press council. The financing comes from the media; the annual budget is approximately € 260,000. The chairman of the press council is a member of the Supreme Court, whereas the vice-chair is a lawyer. In addition, the press council consists of journalists, delegates of the editorial management and public members.

The press council has jurisdiction over all media, including Internet organisations insofar they are registered with the press council. The complainant must have a 'legitimate interest'. The chairman can dismiss complaints that clearly fall

outside the competence of the press council or that are manifestly unfounded. Furthermore, the chairman can dismiss complaints when the complainant is evidently inadmissible. The complainant is unable to object to such a decision. Although the press council is free to hold hearings, it does not use that option in practice. An order is made to publish the council's decision for the majority of upheld complaints.

In **Great Britain**,¹ the journalist associations do not form part of the self-regulation system. The annual budget of approximately € 2,480,000 is paid in full by the publishers. The self-regulation is based on a code drawn up by the chief editors. The press complaints commission, consisting of chief editors and public members, enforces the code. The broadcasting companies are regulated separately. Only individuals named in publications are allowed to file complaints. If a 'matter of general fact' is involved, anyone is allowed to lodge a complaint.

The chairman and secretariat play an important role towards the outside world. Mediation is performed by the staff of the secretariat. The full press complaints commission evaluates complaints, on the basis of written documents. The majority of complaints are declared unfounded in 'decisions' made outside formal sessions. Complaints that are more based on matters of principle and that appear to be justified are discussed during meetings. In those cases (approximately 30 a year), an 'adjudication' follows. Only an 'upheld adjudication' must be published by the chief editor.

The working method of the complaints commission is audited by the Charter Compliance Panel. In addition, complainants can consult the Charter Commissioner, if they think that the complaints commission has not dealt with their complaint correctly.

The **German** Press Council is maintained by publishers and journalist associations. The annual budget is approximately € 570,000, part of which (maximum 49%) comes from the government. The press council does not adjudicate broadcasting corporations nor advertising papers.² An important difference with all other countries is that anyone is allowed to file a complaint. The press council does not include any public members but only delegates from participating organisations. The self-regulation is based on a very comprehensive code, drawn up by the press council.

In consultation with the chairman, the secretary may declare the complainant inadmissible during a 'Vorprüfung' ('preliminary hearing'). Furthermore, the chairman can deal with simple cases in a 'Vorsitzendenentscheidung' (i.e. by using the chairman's discretion). In both cases, it is possible to object, after which the complaint will be dealt with after all in one of the complaints chambers of the press council. Oral hearings are possible in theory, but have not been held since 2000.

If a complaint is well-founded, it will result in a 'Hinweis', 'Missbilligung' or 'Rüge', depending on the gravity of the journalistic negligence involved. Only in

1. In this report, 'Great Britain' and 'British' are used as synonymous to 'the United Kingdom of Great Britain and Northern Ireland'.

2. Those are comparable with free door-to-door papers in the Netherlands.

the case of a public 'Rüge' (approximately 25-30 a year) the chief editor is asked to publish the decision. A publication agreement exists with the publishers, yet it happens fairly regularly that rulings are not published regardless.

Lastly, the **Flemish** Council for Journalism counts a large number of media organisations among its members. The council is indirectly co-financed by the government, via subsidies to reporter associations. The annual budget is approximately € 175,000. The council is competent to adjudicate cases involving any media using the Flemish language.³ A complaint must be lodged by someone with a 'personal interest'. In addition, the council also deals with requests for advice from journalist associations about general subjects touching on journalistic ethics. The council is composed of one third representatives of media companies, one third of journalists and one third of public members.

The secretary of the council is also an ombudsman, which means that he will try to mediate whenever possible. Before the full council decides on a complaint, the parties concerned are usually heard by a reporting commission, consisting of three members. In the course of its five-year existence, the council only asked a chief editor on one occasion to publish its decision; but the request was not complied with.

3. A press council for the francophone press is being set up.

For Distribution to CPs

MOD400001335

5. The Netherlands – Raad voor de Journalistiek

5.1. Background

The Netherlands Press Council had its origin as far back as 1948. In the years of reconstruction after the Second World War, a need arose among journalist associations to safeguard the professional standards of the journalistic occupation. The main concern was to preserve the consistency of the profession.

In 1948, the Federation of Netherlands Journalists¹ set up a Disciplinary Council, the 'Raad van Tucht', which operated as some sort of press council until 1960. The jurisdiction of that particular council only extended to the members of the Federation, who were obliged to refrain from any actions that could 'compromise the dignity of the position of Netherlands journalists'. In the event of unprofessional journalistic conduct, the Disciplinary Council was able to impose sanctions: warnings, reprimands, temporary suspensions or terminating membership of the Federation. Overall, the Disciplinary Council dispensed fifteen rulings in its period of existence.

In 1960, an incident about a violated embargo resulted in the press council being set up. The case revolved around a newspaper journalist who published an article about a government statement, although the statement concerned was still under embargo. The journalist concerned disregarded the embargo because he had learned about the content of the statement from his own sources. In response to the event, the Dutch government excluded that particular journalist for an entire year from receiving any government information. When the prime minister was asked to comment, he said that the government was not prepared to hand over the case to the Disciplinary Council, since the latter was only competent to evaluate cases concerning reporters actually joined up to the Federation. In principle, it was therefore possible for journalists to escape disciplinary action by cancelling their membership before a complaint against them had been dealt with by the Disciplinary Council, thereby forestalling the council's adjudication of the complaint.

The position adopted by the Netherlands government in this case prompted the Federation of Netherlands Journalists to convert the Disciplinary Council into the 'Raad voor de Journalistiek' ('Press Council'). The new council was also given authority to deal with complaints against journalists not affiliated to any organisation, but it lost the authority to impose sanctions in the process.

1. The Federation of Netherlands Journalists was set up in 1946. It was joined by the Netherlands Journalists' Circle ('Nederlandse Journalisten-Kring' or NJK), the Catholic Netherlands Journalists' Circle ('Katholieke Nederlandse Journalisten-Kring' or KNJK), and from 1949 onwards, by the Protestant-Christian Journalists' Circle ('Protestants-Christelijke Journalisten-Kring'). In 1968, the Federation was disbanded and the Netherlands Union of Journalists ('Nederlandse Vereniging van Journalisten' or NVJ) was set up.

Furthermore, several *statutory* regulations apply in the Netherlands that may possibly affect journalistic expressions, for example:

- Section 7 of the Constitution (freedom of expression)
 - Section 6:162 and following of the Civil Code (wrongful act/wrongful publication)
 - Section 261 and following of the Criminal Code (defamation/libel)
- and the provisions from the Copyright Act and Media Act.²

The council does not check journalistic statements against those *statutory* regulations. If an involved party considers its interests compromised by a publication, a claim for damages or correction can be lodged in a civil procedure.³ It occasionally happens that a case is filed both with the council and the courts.

5.2. Organisation and finance

The current press council (hereafter referred to as: the council) has been set up by the Press Council Foundation (hereafter: the Foundation), which currently counts the following organisations among its members:

- the Netherlands Union of Journalists ('Nederlandse Vereniging van Journalisten', NVJ)
- the Netherlands Society of Chief Editors ('Nederlands Genootschap van Hoofdredacteurs', the Society)
- the Dutch Publishers Association ('Nederlands Uitgeversverbond', NUV)⁴
- Netherlands Public Broadcasting ('Nederlandse Publieke Omroep', NPO)
- the Dutch Association of Local Newspapers (organisatie van lokale nieuwsmidia, NNP)
- the co-ordinating organisation of regional broadcast ('Stichting Regionale Omroep Overleg en Samenwerking', ROOS)
- the Netherlands National News Agency ('Algemeen Nederlands Persbureau', ANP)
- RTL Netherlands
- SBS Broadcasting

The participating organisations are financing the council's work: the media (associations) jointly contribute approximately 87%, while the NVJ and the Society each contribute approximately 6.5%. In 2007, these innings amounted to approximately € 141,000.

In addition, the Netherlands Public Broadcasting made a one-off contribution of € 40,000 in 2004/2005 for the purpose of strengthening the council by expanding its secretarial support services and by engaging freelance registrars. In

2. See also: Prof. G.A.I. Schuijt LL.M., 'Kroniek van het Nederlandse mediarecht 2001-2006', *Auteurs & Media* 2006-3, p. 238-256.

3. On the same subject, see also: L.R. Harinxma thoe Slooten LL.M., *Toegang tot het recht in perszaken*, Boom Juridische Uitgevers, The Hague, 2006.

4. i.e. the Dutch Newspaper Publishers Association ('Groep Nederlandse Dagbladpers' or NDP) and the Consumer Magazines Group ('Groep Publiekstijdschriften' or GPT) of the Dutch Publishers Association.

order to ensure that the council could continue to operate on the same level, the Foundation subsequently received additional contributions from the 'Democratie en Media' Foundation of € 20,000 in 2006, € 30,000 in 2007 and € 15,000 in 2008.

The Board of the Foundation, consisting of representatives of the participants, appoints the members of the press council and compiles the Rules for the council's activities.

5.3. Task description

Based on article 3 of the articles of association of the Netherlands Press Council Foundation, the council's brief is to evaluate lodged complaints concerning journalistic conduct, and to decide whether 'limits of what is socially accepted in terms of journalistic responsibility have been transgressed'. Furthermore, the council's duties include mediating between the public and institutions on the one hand and mass media on the other hand when the need arises.

In addition, the council can make its views known of its own accord on matters of principle, when this is considered necessary.

Furthermore, organisations joined up to the Foundation can ask the council to express a view about matters of general interest when specific principles are at stake. In that case, the organisation is considered to have a direct interest.

As said in the introduction, the council has gradually formulated general points of view about journalist behaviour, which were summarised in 2007 and grouped per subject into a set of guidelines. The set of guidelines, which was amended for the first time in April 2008, contains six chapters:

- general
- journalistic methods, subdivided in:
 - openness
 - sources
 - right of reply
 - privacy
 - financial & economic reporting
 - embargo
 - interviews
 - preview
- column, cartoon, review
- visual material
- readers' letters and responses on websites
- corrections.

5.4. Competence and admissibility

The council is competent to adjudicate complaints about 'journalistic conduct'. This is interpreted as: 'a journalist's acts or omissions while exercising his occupation' as well as 'acts or omissions in the context of journalistic activities by someone who contributes regularly and against payment to the editorial content of mass media without being a journalist'.

Article 4 clause 2 of the articles of association contains a further specification of what is understood by a 'journalist': 'anyone who makes it their prime occupation, either as employee or on free-lance basis, to work on the editorial supervision or editorial composition of mass media'.

The articles of association originally included an exhaustive list of mass media, which did not include books. In 2001, the articles of association were amended in this respect and the exhaustive list was replaced by a non-exhaustive list which includes all regular media.⁵ With all media, it is about what can be summarised as the editorial content.

The council is therefore also empowered to adjudicate complaints relating to audio-visual media. The Commissariat for the Media may well be the supervisory body for the national public broadcasting corporation, for Radio Netherlands Worldwide ('Wereldomroep') and for regional broadcasting companies, but this supervision does not relate to professional ethics.⁶

Over the years, the council has made numerous decisions on whether conduct amounted to 'journalistic conduct' as defined in the articles of association. For example, the council declared itself incompetent to adjudicate instructions given by a chief editor to his employees, a carnival paper written by a journalist and conduct in the context of legal proceedings between a complainant and the medium concerned.⁷

Due to the rise of 'new media' and other developments in the Internet, the introduction of citizen journalism and the development of 'cross media', the question increasingly arises as to what exactly constitutes journalistic conduct and who can be held to account for it, as referred to in the introduction. For example, the council recently took a stance on journalistic responsibility for the inclusion of hyperlinks,⁸ and in the middle of 2007 on the publication on the Internet of an

5. After the articles of association were amended in that respect, the council issued several substantive statements about books written by journalists (NPC 2008/13, 2007/40, 2007/21 and 2003/23).

6. The Commissariat conducts financial supervision and it also monitors programme regulations (mandatory ratio of information, culture and education) and advertising and sponsorship regulations. Furthermore, it monitors to what extent regional and local broadcasting companies comply with the obligation to retain all programmes broadcast for two weeks. Lastly, the operation of the decision-making body for programming policy is included in the evaluation.

7. Netherlands Press Council 2006/77 (chief editor instructions), 2006/60 (carnival paper) and 2005/52 (legal procedure).

8. Complaints by Manon Thomas against telegraaf.nl, ad.nl and nu.nl (NPC 2008/6, 2008/7 and 2008/8).

audiovisual recording not made by a journalist, and about posting anonymous responses written by visitors to websites.⁹

No definite interpretation of the concepts ‘journalist’ and ‘journalistic behaviour’ has been given yet and for the time being, it remains controversial, both within the council’s own ranks and outside.¹⁰

It means that the council can adjudicate complaints concerning *all* journalists, in relation to publications in *all* media – with the aforementioned restrictions – but the complainant must have a ‘direct interest’. This means that the complainant must be *directly involved* with the contested publication and that the publication must compromise that person’s *personal* interest. In general, it can be said that this is the case when the publication is about the complainant or if the complainant has been named in the publication concerned. The procedure is actually not restricted to complaints received from people. Companies, public sector bodies or institutions have equally the right to file a complaint.

Furthermore, publications occasionally compromise collective interests rather than an individual interest. In that case, institutions for which defending the collective interest concerned is enshrined in their articles of association, are authorised to file a complaint. It will then be up to the council’s discretion to evaluate whether the institution lodging the complaint is admissible.

The council does not deal with complaints from third parties voicing general objections about reporting in the media.

5.5. Secretariat

The council has an office in the premises of the Netherlands Union of Journalists in Amsterdam,¹¹ where the council also holds its meetings.

The secretariat employs a secretary (28 hours/week) and secretarial assistant (32 hours/week). Furthermore, a lawyer of the Union of Journalists is a deputy secretary of the council (3 hours/week) (total FTEs = 1.75). All are employed by the Netherlands Union of Journalists, who invoices the Foundation for staffing costs and facilities.

In addition, thanks to the additional finance received, since 2005 the council has been using freelance registrars, who prepare the draft decisions under the supervision of the secretary. For that reason, the council has been able to significantly reduce the term between meetings and decisions.

9. Complaints concerning short film ‘roof murder in The Hague’ against ad.nl and geenstijl.nl (NPC 2007/35, 2007/36, 2007/37 and 2007/38).

10. See the following publications, among others: B. Brouwers, ‘Wie is journalist? Negen principes!’, www.denieuwereporter.nl, November 26th, 2007; Th. Bruning, ‘Wetgeving bronbescherming verstevigt een gezond persklimaat’, www.denieuwereporter.nl, December 5th, 2007; H. Blanken, ‘Wie is journalist en wat is journalistiek?’, www.henkblanken.nl, December 8th, 2007; Prof. G.A.I. Schuijt LL.M., ‘De juridische relevantie van de begrippen ‘journalist’ en ‘journalistieke werkzaamheden’, *Mediaforum* 2008-5, p. 191-197.

11. The council’s secretary and secretarial assistant share one office (of approximately 16 m²). In addition, the council shares the conference room and other facilities on the Netherlands Union of Journalists’ premises.

5.6. Composition of the press council

The council has a chairman and at the most, three deputy chairmen, who must be 'lawyers, not journalists' based on the articles of association. In practice, all chairmen are current or former members of the judiciary. In addition, the council consists of at least ten journalist members and at least ten non-journalist members.

All members are appointed by the Board of the Foundation; they perform their activities independently and not bound by any instructions. The chairman and deputy chairmen are appointed for four years and they are eligible for reappointment immediately, without a maximum term. Unless the board decides otherwise, the other members of the council occupy their posts for a period of four years, after which they are eligible for reappointment for a single period of four years.

Journalist members are partly appointed after being nominated by the Netherlands Union of Journalists (7/10) and partly after being nominated by the Society of Chief Editors in consultation with the board of the chief editors' group of the Netherlands Union of Journalists (3/10). Both sets of nominations contain at least twice as many names as the number of members to be appointed.

Journalist-members have a track record in various journalistic sectors: newspaper, magazine, broadcasting companies and the Internet. Non-journalist members may occupy various positions in society, but they are all or have all been engaged in some way or another in journalism. For example, some members are teaching on courses in journalism, while several others are managers in publishing houses or broadcasting companies.

Every six months, the secretariat draws up a list of meetings and the members are subdivided into chambers for hearing complaints, based on their availability. The chambers must contain at least three and no more than five members, i.e. the chairman or the deputy chairman and an equivalent journalist members and non-journalist members (1/1 or 2/2). Usually, five members attend the meetings. If one of the members is unavoidably detained, cases can also be dealt with by four members, unless the parties appearing at the hearing raise grave objections.

Sessions are held once every two to three weeks.¹² On average, three to five complaints are handled on average per session. Chairmen receive an allowance of € 113.45 per hearing; other members receive € 45.38 (both amounts exclude travel expenses).

In addition, the full council meets once a year to discuss general matters and to ratify the annual report. Since the last few years, the council has also held a further two plenary discussion meetings. The members do not receive an allowance for the latter meetings.

12. In total, the council holds approximately 20 sessions per year.

5.7. Complaints procedure

Complaints must be filed within six months from the day during which the contested journalistic conduct took place. If the complaint has not been filed in time, the complainant is ruled inadmissible, unless he can demonstrate that he cannot reasonably be held responsible for exceeding the deadline.

The complaint must include the publication that the complaint relates to. It can be a photocopy of an article, or – in the case of a radio or television broadcast – a recording of the broadcast concerned or, if possible, a typed-up verbatim transcript. Eight copies of the signed complaint must be sent to the council's secretariat. It is not possible to submit a complaint by e-mail or fax.

The complaints procedure is free of charge and the parties are entitled to seek assistance from a legal expert or other adviser. Complainants are not obliged to waive their right to legal proceedings.

When filing a complaint, complainants are entitled to ask for it to be dealt with in a fast-track procedure. The chairman will grant that request if he deems that the interests at stake warrant that type of treatment.

If a complaint lends itself to it, the secretary will alert the complainant to the option of mediation provided by the council. If the complainant wishes mediation to take place and the defendant is prepared to cooperate, the complaint is passed on to a mediator appointed from the council. The mediator has the power to mediate between the complainant and defendant, using his own discretion. If the mediator does not consider the mediation to have been successful within a period of eight weeks, the mediator will inform the secretary; the complaint will then be processed as usual. The mediator will not play any part in the subsequent handling of the case. If the mediation is successful, the complaint is considered withdrawn.

It happens fairly regularly, despite the parties being informed of the mediation option, either that the complainant wants the council to make an immediate decision, or that the defendant does not anticipate any benefit from the mediation process. In those cases, the usual complaints procedure is followed.

In various other instances, the secretary has fulfilled the role of mediator before the case was officially lodged with the council. In a number of cases, the parties found a satisfactory solution.¹³ In a number of other cases no resolution was reached, but the complainants decided not to pursue their complaint for reasons of their own.

If a complaint is (further) dealt with, the journalist and/or chief editor concerned is asked to respond to the complaint within three weeks in writing. A copy of the response will be sent to the complainant.

13. For example: removal of an article from the Internet.

While the latter receives confirmation of receipt of the complaint and the defendant is asked to submit a response, both parties are simultaneously notified of the date when the council will deal with the complaint. In principle, complaints are dealt with in the order they are received, and assigned the first available slot at a subsequent hearing,¹⁴ taking into account the time limit for the defence.

Usually, both parties are invited to the hearing together, but there is no obligation to attend in person. The council may be able to reach a decision based on the documents alone (i.e. the notice of complaint and the statement of defence), rendering an oral hearing unnecessary. This is usually the case when the council must first decide on its competence and/or on the admissibility of the complainant.

The notice of complaint and the written statement of defence from the other party are mostly all the council needs in terms of preparation. If the chairman considers that the case needs more extensive preparation, he may ask the complainant, possibly in the form of specific questions, to respond in writing to the statement of defence (reply), followed by a request to the defendant to another written response (rejoinder).

It also happens that either party informs the secretariat that there is no need for an oral hearing, while asking for an opportunity to elucidate its point of view in writing. Moreover, the secretariat receives regular requests from parties to be allowed to submit other documents. In that case, the secretary decides, if required in consultation with the chairman, whether the request can be granted.

The chairman is also authorised to invite the complainant and/or defendant in preparation of a hearing for a preliminary investigation. In that case, the secretary would compile a written report of the discussion held with the complainant and/or defendant. In practice, this never happens, no more often than it happens that witnesses or experts are invited at hearings to be heard, although this is allowed under the rules. Recently, the council asked for a written expert report concerning archiving on the Internet, before evaluating a complaint on the subject.¹⁵

That part of the hearing at which the complainant and defendant are present, possibly accompanied by their representatives, is open to the public unless the chairman decides otherwise in the interest of either the complainant or the defendant. The cases that will be heard in public during a particular session are announced in a press release distributed approximately one week before the hearing. The announcement is also published on the council's website.

During the hearing, both parties are given the opportunity briefly to clarify their position in person, possibly followed by a few supplementary questions by the council. Once the council feels it has sufficient information, the hearing is concluded. Then a consultation occurs behind closed doors. The council decides by a

14. As stated under 5.6., each session deals with three to five cases, on average.

15. See NPC 2007/67, containing a summary of the expert report by H. Blanken, and, inter alia: 'Moeten media kunnen vergeten?', www.henkblanken.nl, November 21st, 2007.

majority of votes; the secretary has an advisory vote. The council can also decide to refrain from making a decision.¹⁶

Moreover, the complainant and defendant are allowed to challenge any member of the council based on any facts or circumstances that may result in a conflict of interest within the council. This request can be made as soon as the facts or circumstances are known to the requesting party, at the latest in the course of the hearing. The request is made in writing, including the reasons.

Such request can also be made verbally at the start of the hearing. Unchallenged members will decide as quickly as possible what to do about the challenge. In the event the votes are tied, the challenge is deemed to have been upheld.

In the event referred to above, when facts or circumstances arise that may throw doubt on a council member's impartiality, the member concerned must be excused from the proceedings.

Unless the council considers a further investigation necessary, it will come to a decision within eight weeks from the hearing. If the special nature of the investigation requires it, the council can extend the time limit by three weeks. By using freelance registrars (see above under 5.5.) the council has been able to reduce the time between a hearing and the decision to four to six weeks.

Decisions are sent in writing to the parties involved. It is not possible to appeal against the council's decision.

5.8. Sanctions

The council only dispenses rulings based on opinions; it cannot impose sanctions. It is therefore incapable of preventing erring peers from continuing to carry out their profession, unlike some disciplinary bodies, or impose fines. Nor can the council compel a journalist or medium to correct inaccurate reporting. The council cannot award damages to complainants, either.

In principle, the medium concerned is always asked to publish the decision. The obligation is not enforceable, but media increasingly comply with it. On the odd occasion, the complainant asks for no request to be made to publish the decision.

The Press Council Foundation has entered into a voluntary agreement with several chief editors, whereby the medium gives an undertaking that it will cooperate with the council's procedure when necessary and publish the decision.¹⁷ Some chief editors refused to sign the agreement on principle, because they considered

16. For example, when the points of view of the parties are linearly opposed and the council cannot establish which point of view is correct.

17. The agreement has not (yet) been presented to all chief editors or all media.

it undermines the freedom of the press. However, it does not automatically follow that they never publish the council's decisions.

Following the original draft agreement, the audiovisual media let it be known that they were reticent about giving an undertaking that the council's decision would always be included in the contested programme. This has been resolved; if a complaint relates to a particular radio or television broadcast, the medium is asked to announce the decision *preferably* in the programme concerned and otherwise to publish the decision on its website or in another appropriate medium.

Furthermore, all decisions are published in full on the council's website. In addition, the secretariat ensures that summaries of decisions are published in *De Journalist*, the trade paper of Netherlands journalists, and distributed via a press release. The complainant will receive a copy from *De Journalist* featuring his case. Furthermore, the council's annual report contains summaries of decisions, grouped by subject. If complainants object to having their name included in the publication of a decision, they can let the council know.

5.9. Other activities

The council is free to express its opinion on cases involving journalistic conduct of a general nature, when a principle is at stake. Decisions to make such announcements are taken by the full council, either on the proposal of one or more members of the council, or at the request of one or more organisations participating in the Netherlands Press Council Foundation. The chairman decides how the matter is handled, which in practice means that the council will set up a working group to prepare the statement, after which the final statement is decided in a full meeting.

To date, the council has issued three such official statements:

- concerning journalists using illegally obtained data that were not intended for publication (NPC 1995/32)
- concerning the use of concealed recording equipment (NPC 1996/44)
- concerning embargoes (NPC 2003/50)

Furthermore, the council has been very busy investigating how it can raise its own profile. In that context, it has been involved with the following tasks over the last two years.

Drawing up a set of guidelines

As said before, the council formulated general points of view about journalistic conduct over the years, which it developed of its own accord or in judgements against journalists and media. The points of view about what the council deems socially responsible or irresponsible behaviour from a journalist have been summarised and grouped by subject into a set of guidelines established by the council in April 2007 and presented at its annual meeting of April 24th, 2007.

The guidelines, which can be requested from the secretariat or downloaded from the council's website, enable journalists and the public to easily learn about the general principles followed by the council when evaluating complaints.

The guidelines also indicate the relationship between the council's viewpoints, the standards contained in the Code of the International Federation of Journalists and the behavioural code of the Netherlands Society of Chief Editors, and the legal framework of the ECHR.

By making its own criteria transparent, the council provides pointers for journalistic practice, without imposing professional rules. The desirability of self-regulation for each media is not challenged at all. The guidelines also contain viewpoints about aspects of journalistic conduct which the council receives frequent questions about from the public.

The council will check regularly whether there is a need to amend the guidelines. After all, journalistic standards are not set in stone for eternity. For that reason, the guidelines must continuously remain a subject of discussion and review. In April 2008, the council amended the guidelines for the first time.

Social profiling

The council never ceases to discuss how it can meet the requirement – expressed both within the council and in society – for the council to have a higher profile in the public discourse on the quality of journalism.

The council has set up a working group to that effect, which is drawing up discussion papers on the subject. Both the working group and the council will examine what role the council can play in the social discourse on journalistic conduct.

The Internet and citizen journalism

The secretariat has received questions about journalistic responsibility for weblogs. Another topic that has been raised in various media is citizen journalism. A working group of the council is preparing a discussion paper on the developments of new media and the knock-on effect on the council's working methods.

Furthermore, the council is increasingly accepting invitations to attend meetings about journalism or ethics in journalism and to contribute to publications and broadcasts. An overview of the activities conducted in 2007 and 2008 (the first half year), is included in Annex IV.

5.10. Statistics for 2007¹⁸

In 2007, the council accepted 80 (93) new complaints. Another eight (six) complaints were received that were not pursued, for example due to a lack of direct interest.

The secretary of the council mediated four times this year before the cases were formally filed with the council. In two cases, the parties found a satisfactory solution. The other two cases were not resolved, but the complainants decided not to pursue their complaint to the council for reasons of their own.

Furthermore, a complainant asked for mediation in one case. After the defendant informed the council that he sees no point in mediation, the council decided on the substance of the complaint.

Moreover, two complainants withdrew their complaint after it was filed, since the parties had reached a satisfactory resolution between them after all.

The council issued 84 (90) decisions. Two (thirteen) of those decisions related to complaints dealt with in the previous year, whereas the final decision was only made in 2007. For five complaints dealt with in 2007, a decision was made in 2008.

The decisions of the council, relating to 51 different media and two books can be subdivided as follows:¹⁹

• upheld	26	(30)
• partly upheld	14	(15)
• unfounded	38	(38)
• inadmissible	5	(9)
• admissible (interim decision)	1	(-)
• decision reserved	5	(2)
• outside scope of council	3	(4)

On average, the duration of the procedure (the time lapse between receiving the complaint and the date of the decision) was on average approximately 13 weeks, which can be broken down as follows:

• 12 weeks or less	38
• from 12 to 16 weeks	30
• from 16 to 20 weeks	7
• from 20 to 24 weeks	6 ²⁰
• longer than 24 weeks	3 ²¹

18. In all paragraphs concerning the statistics of various countries, the figures for 2006 are shown between brackets.

19. The number of subdivided decisions does not match the total number of decisions per year, because a 'double' decision was made in several cases (e.g. partly inadmissible and partly unfounded).

20. One of which due to an extended preliminary phase and one due to the hearing being postponed at the request of the complainant's solicitor.

21. Two of which due to a late response from the complainant about proceeding with the complaint (time lapse between response and decision: 9.5 and 13 weeks respectively), and one of which was due to an expert opinion being requested (NPC 2007/67).

6. Sweden – Allmänhetens Pressombudsman and Pressens Opinionsnämnd

6.1. Background

The Swedish self-regulation system is the oldest one on the world, dating back to 1916, when the Swedish Press Council ('Pressens Opinionsnämnd') was set up. Initially, it did not act as a complaints committee, but as a sort of forum to adjudicate conflicts between publishers and journalists, namely about the presentation of news. In that function, the council protected 'the requirements of honour' and 'the standing of the press'.

Gradually, a system was developed which also enabled the public to submit complaints. However, complainants were expected to pay such a high fee for expenses that it had a prohibitive effect on the ordinary public.

In the nineteen fifties and nineteen sixties, the press council came in for a great deal of criticism. The number of complaints increased, partly as a result of evolving – more person-centred – journalistic practice, but the council did not know very well how to deal with it and it was considered inefficient.

This resulted in pressure from the government and the announcement of legal measures, including the introduction of a right of reply. It led to the system being drastically changed in 1969, with the intention of making it easier for members of the general public to file complaints. It saw the installation of a press ombudsman ('Allmänhetens Pressombudsman'), while public members joined the press council, more information about the press council became available and the charges for expenses were scrapped.

It is difficult to consider the self-regulation system in Sweden independently from the comprehensive legislation on freedom of the press. In countries where the freedom of expression and freedom of the press are secured in the constitution, the constitution usually only contains basic principles on the subject. The 'Tryckfrihetsförordningen värnar om det fria ordet i tryckt form' (Freedom of the Press Act, FPA)¹ – which forms part of the Swedish constitution is much more comprehensive and it includes provisions on the public nature of official documents and the right to anonymity, including the protection of sources.²

1. Published on the website of 'Sveriges Riksdag'.

2. See the FPA 'Chapter 2. On the public nature of official documents' and 'Chapter 3. On the right to anonymity'. Moreover, even the first Freedom of the Press Act of 1766 already contained more than merely general provisions, for example, it already regulated on the public nature of official documents.

In Chapter 5 of the FPA, it has been determined that a medium must have a designated 'responsible editor' – who may also be the publisher – who needs to be registered by a public authority.³ A 'certificate of publication' must be obtained from the latter authority, the 'Patent- och Registreringsverket' ('Swedish Patent and Registration Office'), showing that no legal impediments exist for publishing the medium concerned.

For an Internet edition (online periodical), it will be necessary to register a separate responsible editor if the edition is not identical to the paper version. The 'Radio- och TV-verket' ('Swedish Radio and TV Authority') is the competent authority in this respect.

The FPA also contains provisions about the liability of publications. An important distinction with the Netherlands legislation is that damages can only be received in Sweden if a criminal act has been committed (libel or defamation).⁴ Such a legal procedure rarely occurs, whereas only a quarter of cases results in a conviction by the jury (the only form of jurisdiction by a jury in Sweden). Furthermore, all judges are reticent to award high amounts of damages to the victims.⁵

In 1991, the 'Yttrandefrihetsgrundlagen värnar om yttrandefriheten i andra medier än tryckta skrifter, till exempel radio och tv' ('Fundamental Law on Freedom of Expression', FLFE) was passed, which included provisions comparable with the FPA for electronic media.

6.2. Organisation and finance

The four main media organisations are participating in the self-regulation system: the association of newspaper publishers ('Tidnings Utgivarna'),⁶ the association

3. See Chapter 1 article 7 of the FPA: "Periodical is understood to mean any newspaper, magazine or other such printed matter, which, according to its publishing schedule, is intended for publication in at least four issues or installments a year, appearing at different times under a particular title, and posters and supplements pertaining thereto."

4. See Chapter 11 article 1 of the FPA: "A private claim for damages based on an abuse of the freedom of the press may be pursued only on grounds that the printed matter to which the claim relates contains an offence against the freedom of the press." in relation to Chapter 7, article 4 of the FPA: "With due regard to the purpose of freedom of the press for all under Chapter 1, the following acts shall be deemed to be offences against the freedom of the press if committed by means of printed matter and if they are punishable under law: (...) 14. defamation, whereby a person alleges that another is criminal or blameworthy in his way of life, or otherwise communicates information liable to expose another to the contempt of others, and, if the person defamed is deceased, the act causes offence to his survivors, or might otherwise be considered to violate the sanctity of the grave except, however, in cases in which it is justifiable to communicate information in the matter, having regard to the circumstances, and proof is presented that the information was correct or there were reasonable grounds for the assertion; 15. insulting language or behaviour, whereby a person insults another by means of offensive invective or allegations or other insulting behaviour towards him; (...)"

5. The course of proceedings in cases involving freedom of the press is regulated in Chapter 12 of the FPA. Moreover, no adjudication takes place by jury, if both parties declared to be against it. If a case is submitted to a jury after all, conviction follows if at least six of the nine members of the jury agree.

6. The association has approximately 240 members. *METRO* is the only newspaper that is not a member of the association, but it co-operates with procedures lodged with the press ombudsman and the press council.

of magazine publishers ('Sveriges Tidskrifter'),⁷ the Swedish union of journalists ('Svenska Journalistförbundet')⁸ and the national press club ('Publicistklubben'). The latter organisation was set up in 1874 as a society for chief editors, primarily in order to defend the freedom of the press, and it organises debates on journalistic ethics.⁹

The Swedish News Agency 'Tidningarnas Telegrambyrå' belongs to a number of publishers of national and regional newspapers, and is therefore not represented separately.

Representatives of the four organisations are united in a board ('Pressens Samarbetsnämnd'), hereafter referred to as: the board. The board, which meets four times per year, consists of 12 members; two members and a substitute per organisation. The chairman of the national press club is the chairman of the board.

An important task of the board is to draw up and amend the Ethical Code for press, radio and television in Sweden.¹⁰ Furthermore, the council is committed to drawing the code to the attention of the profession and to ensure the self-regulation system continues to receive general support. According to the code 'the concept of self-regulation means that the parties define the ethical and professional guidelines and see to it that these guidelines are respected.' The code also states:

"The press, radio and television shall have the greatest possible degree of freedom, within the framework of the Freedom of the Press Act and the constitutional right of freedom of speech, in order to be able to serve as disseminators of news and as scrutinizers of public affairs. In this connection, however, it is important that the individual is protected from unwarranted suffering as a result of publicity.

Ethics does not consist primarily of the application of a formal set of rules but in the maintenance of a responsible attitude in the exercise of journalistic duties. The

Remarkably, some newspapers in the association are represented by their managing director and some by their chief editor. The explanation given is that the association considers both commercial and editorial issues on its agenda and that the newspaper management needs to be in charge of both areas. If a newspaper has a managing director as well as a chief editor, they need to work together.

7. The association has approximately 410 members, consisting of consumer magazines as well as specialist journals. Although Sweden has approximately 4000 magazines in circulation, about 90% of the commercial market is represented in the association. The association has actually only been participating for a few years in the self-regulation system. It saw the light of day in 1997 through a merger of 'VECTU' (the Swedish Weekly Magazine Publishers Association) and 'Fackpressen' (The Swedish Trade Press Publishers Association), who did not participate at the time.

8. The association has a union density of approximately 95% and counts approximately 18,000 members.

9. Moreover, the national press club first accepted a real written code in 1923. Currently, the press club has approximately 5000 members (primarily journalists), divided over six regional sections. The chairmanship of the press club is a voluntary position. The current chairman is employed by Sveriges Television AB and spends approximately 50% of his time on his role of chairman, which is considered as a prestigious honourable position.

10. The code notably also relates to radio and television, although the audiovisual media are not represented in the board. This can be explained because the code relates to all members of the journalistic association, hence also to journalists working in audiovisual media (see: L. Weibull and B. Börjesson, 'The Swedish Media Accountability System: A Research Perspective', *European Journal of Communication*, Vol. 7, 1992, p. 121-139). The current text of the code – which can be found on the website of the ombudsman and press council – actually dates from 1993. The board has recently appointed a commission of two members to bring the text up-to-date.

code of ethics for press, radio and television is intended to provide support for this attitude.”¹¹

Furthermore, the board defends the freedom of the press, including by getting involved in discussions on new legislation on the subject. In addition, the board determines the procedures for the press ombudsman and press council.¹²

Moreover, the board can only make decisions by consensus – each organisation has veto rights – which complicates the decision-making process on issues in which the participants have differing interests, but which are seen as essential for maintaining the system.

The annual budget for the press ombudsman and press council combined amounts to approximately € 575,000¹³ (SEK 5,400,000). The board decides how the budget is funded. Over 75% is contributed by newspaper publishers, approximately 5% by magazine publishers and less than 1% – a symbolic amount – by the journalists’ union and press club combined.¹⁴

The remainder of the budget (approximately 20%) is collected through the administrative fees paid by the media when complaints are upheld (see more on this under 6.8. below).

6.3. Task description

The duties of the press ombudsman are formulated in the ‘Instruktion för Allmänhetens Pressombudsman’. In summary, the brief of the press ombudsman is to provide advice and support to individuals who feel offended by a publication, to investigate aberrations from good journalistic practice, to inform and advise the public on press ethics and to contribute to general knowledge about matters relating to the professional ethics of journalists.¹⁵ The press council has as its task to evaluate issues concerning good journalistic practice.

The press ombudsman and press council carry out their tasks based on the code drawn up by the board. The code has 17 articles, covering the following subjects:

11. See in this connection also Weibull and Börjesson, *EJC*, Vol. 7, 1992: “The conclusion, so far, must be that rules and regulations in themselves cannot solve any problem. But they still have a mission, as things to be constantly discussed, criticized and sometimes changed. This discussion will force everyone in journalism to think about what is good and bad, and why it is so. And this process, it is believed – and we agree – is what makes a journalist a responsible journalist.”

12. The press ombudsman and press council perform their work independently. No or little formal consultation takes place between the board on the one hand and the press ombudsman and the press council on the other hand.

13. Exchange rate on March 5th, 2008: SEK 100 = € 10.68.

14. The reason for this distribution is that those who are responsible for the content of the media are expected to pay for the self-regulation system, in order to prevent any mandatory regulation being imposed on them.

15. In § 11 of the Instructions for the Office of the Press Ombudsman is also provided that the press ombudsman cannot carry out any other tasks than those specified in the instructions without informing and obtaining the prior consent of the press ombudsman Foundation. This foundation is administered by the four participating media organisations.

- providing accurate news
- treating rebuttals generously¹⁶
- respecting individual privacy
- exercise care in the use of pictures
- listening to each side
- be cautious in publishing names.

According to the code, the press ombudsman and press council are responsible for interpreting the concept ‘good journalistic practice’ insofar it concerns the press (rather than radio and television).¹⁷ Lastly, it is provided that the medium concerned must publish the decision of the press council.

6.4. Competence and admissibility

The press ombudsman and press council have the power to adjudicate over complaints concerning newspapers and magazines, which appear at least four times a year.¹⁸ The complaint must name the registered responsible chief editor. For the time being, it is only possible to complain about text published on Internet sites provided the Internet site concerned belongs to a medium that is joined up to one of the participating organisations.

Moreover, a chief editor can only be held responsible for readers’ comments posted on the website insofar the comments are moderated.

Broadcasting corporations fall under the competence of the Swedish Broadcasting Commission, called ‘Granskningsnämnden för radio och TV’.¹⁹ This commission monitors compliance with the Swedish Radio and Television Act (‘Radio- och TV-lag’) and deals with complaints in this area.²⁰

The statutory regulations – including the licence agreements – include provisions about objectivity, accuracy, corrections, privacy and advertising. Moreover, no ethical standards are taken into consideration for the evaluation of complaints.

Furthermore, it is only possible to complain about an actual publication, not about journalistic methods used. This is partly due to the fact that it is only possible to complain about the responsible chief editor rather than the journalist who used

16. In that respect, article 6 of the code provides: “Publish without delay critical rulings issued by the Swedish Press Council in cases concerning your own newspaper.”

17. See also § 1 Charter of the press council: “The press council shall review cases concerning good journalistic practice. The council shall be entitled to interpret the meaning of this concept as it sees fit.”

18. See note 3 above.

19. Most interviewees are of the opinion that it would be preferable for a single ‘media council’ to be in charge of the self-regulation of press and broadcasting services.

20. Most complaints come from people who have no direct interest.

Please note: In Sweden, separate bodies exist for issuing licences on the one hand and for monitoring conduct on the other hand. The Swedish Radio and TV Authority grants licences, except to public broadcasting services, which receive their licences from the government. Moreover, this authority issues orders concerning standards on television, and it publishes information, including statistics. The Swedish Broadcasting Commission supervises the content of radio and television.

a particular method. The journalists' association is of the opinion that it is best-placed to evaluate this and it therefore has separate 'rules of professional conduct'²¹ and its own 'professional ethics council' ('Yrkesetiska Nämnd', YEN), which actually barely ever deals with any complaints.²²

In addition, it is generally felt that the evaluation of journalistic methods would soon run into problems about a need for evidence in the event of two contradicting points of view, whereas the content of a publication is a given and can therefore always be evaluated.

A complaint does not always need to be just about editorial content. It is also possible to evaluate other complaints, for example about public service advertising²³ and obituaries.²⁴

The route to the press ombudsman and press council is not accessible to anyone. The complainant must have a 'personal interest' which means that he must be identifiable in the publication. Complaints from companies, organisations or public authorities must relate to a correction of facts or a rebuttal of accusations.²⁵

In the event a publication concerns a more collective interest, it is not possible for organisations generally protecting the collective interest concerned to file a complaint.²⁶

6.5. Secretariat

The office of the press ombudsman and press council²⁷ is located in Stockholm, in the premises of the association of newspaper publishers, which is paid rent.

Other than the ombudsman himself, the staff in the office of the press ombudsman consists of his deputy, who is also appointed on a full-time basis, a young lawyer (fulltime) and a secretarial assistant (50%). A fulltime secretarial assistant is based in the secretariat of the press council (total FTEs = 4.5).

21. This code contains provisions about journalistic integrity, gathering material and guidelines on separating editorial content and advertising.

22. In a recent survey, respondents were asked about the importance of various 'media accountability systems'. In the ranking by the profession itself, the YEN ended up in the 27th place (organisations were ranked from 1 to 34 in order of decreasing importance), alongside with debates held by the 'Publicistklubben'. The top three was led by the 'internal "devil's advocate" on the news desk when "witch hunts" start up', followed by 'internal investigations after controversial stories' and 'readers' panels'. Moreover, codes and national press councils were left out of the ranking. See T. von Krogh, 'Constructive Criticism vs Public Scrutiny – Attitudes to Media Accountability in and Outside Swedish News Media' in: *Media Accountability Today... and Tomorrow*, p. 119-136.

23. One example given was a political advert depicting a picture of the complainant, who did not wish to be associated with the political party concerned.

24. An example was an obituary published by someone in order to damage the complainant, who was still alive.

25. See § 2 Charter of the press council.

26. Any right of those organisations to complain would probably clash with the freedom of the press.

27. Consisting of four offices, a storage room and a small kitchen (approximately 204 m²). In addition, the meeting room can be used of the association of newspaper publishers.

6.6. Appointment of the ombudsman and composition of the press council

The press ombudsman is appointed by a commission consisting of the chief parliamentary ombudsman,²⁸ the chairman of the Bar Association and the chairman of the board. The term of the appointment is three years and it is automatically extended by three years. The press ombudsman is employed by the press ombudsman Foundation, which is administered and financed by the media organisations referred to under 6.2. Given the employment status of the press ombudsman, the duration of his appointment is limited by the retirement age, which is 67.

In accordance with the instruction for the organisation of the press ombudsman ('Instruktion för Allmänhetens Pressombudsman') the press ombudsman must have a profound knowledge of press ethics and related questions. Journalistic experience is not required, but it is also taken into account and is generally considered as an advantage. The current press ombudsman used to be a journalist.²⁹

The deputy press ombudsman is appointed by the board of the Press Ombudsman Foundation in consultation with the press ombudsman. The current deputy press ombudsman is a lawyer.

The press council contains a chairman and three vice-chairmen, all of which are members of the judiciary. They are appointed by the board in consultation with the incumbent presidium. In addition, the council has fourteen members and fourteen deputy members,³⁰ who are appointed as follows:

- two members and two deputies by the association of newspaper publishers.
At the moment, only chief editors are appointed, because they represent the group that is criticised by the press council. Usually, two members are chosen from subscription-based magazines and two from the evening tabloids.
In addition, an attempt is made to spread the geographic distribution. Given the legal responsibility of the chief editors, they are all expected to have an interest in press ethics.
- two members and two deputies by the association of magazine publishers.
These are also chief editors, well-educated and with experience. The magazine sector covers a broad terrain and the aim is to obtain representation from the entire sector, by appointing members from large, commercial newspapers as well as from small, less commercial newspapers. In addition, the gender distribution is also taken into account.
- two members and two deputies by the journalists' association.
When selecting journalists for these positions, attention is paid to work experience and interest in press ethics. The intention is to achieve representation of the entire sector – excluding broadcasting services, since they do not fall under the authority of the press ombudsman and press council – and the intention is

28. The organisation of 'Riksdagens ombudsmän' ('Parliamentary ombudsmen') or 'Justice ombudsmen' has a total of four ombudsmen, one of which is appointed chief justice ombudsman ('Chief Parliamentary Ombudsman').

29. After many years in which only lawyers were ever appointed press ombudsman, a former journalist was appointed press ombudsman in 1992 for the first time.

30. Usually, people are first appointed 'deputy member' for a few years, in order to accrue knowledge and experience, followed by promotion to member of the press council.

also paid to the gender distribution. The members are generally well-known to their colleagues and respected across their profession.

- two members and two deputies by the national press club.
Since most members of the press club are journalists, and since most cases lodged with the press ombudsman and press council are about the day-to-day work of journalists, the people appointed are usually journalists.³¹ Gender distribution and geographic distribution are usually taken into account. Furthermore, the members must be interested in ethical standards and dilemmas, which may have become apparent from debates or publications on the subject.
- six members and deputies from the public, appointed by the Chief Parliamentary Ombudsman and the Chairman of the Bar Association, acting jointly.
The public members must be respectable citizens with broad experience in national issues. They are not allowed to have any ties with media organisations.³² No formal procedure exists for these appointments. No specific criteria are used, but efforts are made to appoint people from different backgrounds (in terms of career and geographically), ensuring that large and varied sections of the Swedish population are represented.
Another aspect involved in the appointment, is that a member of the press council is considered to have integrity and capable to raise his voice.³³

The chairman and vice-chairmen are appointed for two years, with an option of being re-appointed until a maximum term of eight years. The members and deputy members are appointed for two years, with an option of being re-appointed until a maximum term of six years. If necessary, any of the four media organisations can appoint temporary replacements. The chairman has the power to do so for the public members.

The secretarial assistant of the press council divides the members and deputies into two chambers that deal with complaints.³⁴ The chambers consist of a chairman, vice-chairman and seven other members: one member appointed by the newspaper publishers, one member appointed by the magazine publishers, one member appointed by the journalists' association, one member appointed by the press club and three public members. Deputy members are also invited to the meetings. They can take part in the discussion, but they have no vote in the decision-making.³⁵

31. Besides, also from broadcasting services.

32. Charter of the press council § 6: "(...) members, who shall be respected citizens with wide experience of national affairs. They must not be dependent on any newspaper company or press organization."

33. The current public members and their deputies include: a lecturer in clinical bacteriology, a barrister, a priest, a chairman of the consumers' association, a doctor in philosophy and a therapist.

34. This method was conceived in the nineteen-nineties, to avoid the risk of rigidity in the press council.

35. Moreover, several interviewees actually claim that the press council contains too many members, which creates logistical problems, high expenses and problematic discussions when cases are evaluated; it would be easier to work with a smaller group.

The press council holds approximately 15 sessions per year. The council meets approximately once a fortnight,³⁶ but during the summer it breaks up for approximately 2.5 months (from mid June until the end of August).

Per meeting, the members receive the following allowance (excl. travel expenses):

- the chairmen approximately € 320 (SEK 3000)
- representatives of the media approximately € 32 (SEK 301)
- ordinary public members approximately € 192 (SEK 1801)
- substitute public members approximately € 112 (SEK 1051)

In addition, the full council meets twice a year, before joining the organisation of the press ombudsman for a dinner. Members receive the aforementioned allowance for these meetings, too.

Furthermore, the press council and press ombudsman meet once every two to three years outside Stockholm, where they visit a publisher and have an overnight stay.

6.7. Complaints procedure

Complaints must be submitted in writing³⁷ within three months of the publication concerned – unless special circumstances are involved.³⁸ This time limit for complaints also applies to Internet publications, which is actually a controversial point.

The complaint procedure is free of charge. A complainant does not need to relinquish his right to initiate legal proceedings, but the press council has the option of dismissing a complaint if a legal procedure has already been started.³⁹

The complainant is not required to send a copy of the contested publication, but has to provide sufficient specification about the publication, unless the complaint relates to an Internet publication. In that case, the complainant must attach a print-out of the publication. Complainants are allowed to seek assistance from a solicitor.

The complaint is first handled by the press ombudsman. Although the press ombudsman must seek to resolve the issue via mediation or a preliminary recommendation pursuant to § 4 of his instructions, he ‘only’ mediates in approximately 5% of the cases (75% of which are resolved successfully),⁴⁰ which partially depends

36. These sessions currently take place from 3 – 5 p.m., which some consider as too short a duration. It must be borne in mind that some members travel to the meetings from far outside Stockholm.

37. The clarification provided is that it is the complainant's responsibility that it concerns a serious complaint.

38. Examples cited are: the complainant has been ill or the complaint relates to a series of articles.

39. The Comment on the Charter of the press council provides the following clarification on the subject: “If legal proceedings under the Freedom of the Press Act or the Freedom of Speech Act regarding a matter referred to the council have begun or have already been completed, the council should particularly consider whether it is necessary to review the case also from an ethical point of view, keeping in mind that journalistic ethics under no circumstances may obstruct the exercise of freedom of the press.” The press council used to be obliged to dismiss a case if it had already been lodged with a court.

40. The percentages are estimates, because no administrative record is kept of mediations and attempted mediation.

on the preferences of the complainant.⁴¹ In cases where it is appropriate,⁴² the ombudsman must endeavour to get a correction or rebuttal published.

The procedure is in principle entirely conducted in writing.⁴³ Sporadically, a complainant brings his notice of complaint in person and provides some explanation during a brief conversation. In the opinion of the interviewees, it would form too great a burden for the system if the parties were allowed to clarify their viewpoints orally.

The press ombudsman takes approximately three to four months to process a complaint from start to finish. The press ombudsman only operates partly as a first instance: he can dismiss a complaint independently, but he cannot uphold it on his own accord. When dismissing a complaint, the press ombudsman must also take into account whether a correction or rebuttal was published.⁴⁴ A complainant can appeal to the press council within one month of a complaint being dismissed.

If the press ombudsman considers the complaint well-founded or hesitates about which decision to take, he will submit the case to the press council for a formal decision. The procedure of the press council is in writing and it also takes three to four months from start to finish. It therefore takes at least six months before a complaint is formally upheld.⁴⁵

No special provision exists for putting a complaint through a fast-track procedure. If (the secretariat of) the press ombudsman or the press council is of the opinion that a particular issue is more urgent, the case is given higher priority.

Before the complaint is evaluated by the press ombudsman or the press council, the parties are allowed to change their viewpoint several times.⁴⁶ In principle, the (flexible) deadline for doing so is two weeks. It is not regulated how often the parties can respond, since this is determined by the secretariat for each individual case.

A decision is made, even when the chief editor does not respond to the complaint. This barely ever happens in the procedure with the press ombudsman. However, it happens fairly regularly that the chief editor in the procedure lodged with the press council no longer responds.

41. The explanation given is that in Sweden, mediation is considered more as an aspect of judicial proceedings.

42. This is interpreted as: cases when the article was not published more than approximately one month earlier.

43. The impression that an ombudsman performs much more mediation and usually hears the parties concerned is characterised as the 'continental concept' of an ombudsman.

44. See § 5 Instructions for the Office of the Press Ombudsman.

45. The duration of the procedures is not regulated. Due to the summer break, the total procedure may last up to a year, which actually barely ever draws any criticism.

46. Except for the notice of complaint, the other documents can be submitted by e-mail or fax if required.

The press ombudsman and press council research the facts independently to some extent, for example by asking questions of the authorities (including the police and the court). No witnesses are heard.

The press council evaluates complaints through chambers, which are in principle composed of a chair or vice-chair and seven members (see above under 6.6.). An attempt is made to reach a unanimous decision, but it is possible that a council member asks to record a dissenting opinion, which occurs a couple of times a year.

The press council is nevertheless also competent to evaluate the case when five members, including two public members, are present in addition to the chairman or vice-chairman. If it is obvious that a complaint is unfounded, the press council may come to a decision with a chairman or vice-chairman, one member appointed by one of the four media organisations and one public member, provided the decision is made unanimously. Cases in which a principle is at stake can be submitted to the full council, although this rarely ever happens.⁴⁷

While a complaint is being dealt with, no members representing or employed by the organisation responsible for the contested publication are allowed to take part in the adjudication.⁴⁸

No decisions by the European Court of Human Rights (ECHR), nor any national verdicts are taken into account for the evaluation, since those decisions relate to the legal rather than the ethical perspective.

The press council can uphold the complaint in three different ways: a mild ('åsidosatt'), normal ('brutit') or serious violation ('grovt brutit') of good journalistic practice. The distinction lies in the nuance. The sanctions (see below) are nevertheless the same. In principle, the press council may reserve its opinion but this never actually happens, because there are always aspects which the press council can comment on.

There is no formal procedure to object to a decision of the press council. The council can agree to review a case if new facts or circumstances come to light. It is not often asked to do this. In addition, the press council conducts a very restrictive policy in this respect. Over the last ten years, it has only ever reviewed two cases.

6.8. Sanctions

The press council cannot award any damages to complainants, but media that are found guilty are obliged to pay an administrative fine, depending on the circulation:

- for a print run of up to 10,000 copies, approximately € 1068 (SEK 10,000)
- for a print run of over 10,000 copies, approximately € 2670 (SEK 25,000).

47. See § 2 Charter of the press council.

48. See § 9 Charter of the press council.

In the event the case concerns an Internet publication, the damages depend on the circulation of the printed version of the medium concerned.

The size of the fine is under discussion at the moment. For example, the size of the fine does not depend on the type of breach involved in the case, on whether the publication was a daily paper or on the financial assets behind the medium involved.

Furthermore, the general impression is that the current fines have barely any effect (the term 'fine' is also considered incorrect) and that the media, particularly the tabloids, are simply resigned to them. If the fine is set too high, the medium may become tempted to 'buy itself out' with the complainant, which means the case would no longer be lodged with the press ombudsman and press council.⁴⁹

In § 13 of the Charter of the press council is provided that "a printed or online publication criticized by the council shall without delay publish the entire, unabridged text of the council's statement in a prominent place in the publication and without special reminder report to the council that it has done so."

There is no generally enforceable obligation for media to publish decisions of the press council,⁵⁰ but in a great majority of cases, the media comply with the request. The association of magazine publishers nevertheless forces its members to publish the decisions of the press council. Moreover, the code states that a criticized medium 'will' publish the decision of the press council (see also note 16).

The media are expected not to comment on the decisions. If a medium initially does not go ahead with the publication, the chief editor is contacted and put under pressure, which has been successful on every occasion so far.

As mentioned in the Charter of the press council, a decision needs to be published in full. In the meanwhile, an option has been developed to publish a summary drawn up by the press council.⁵¹

Whether the decision of the press council is published on its website depends on the preferences of the complainant. If the complainant prefers it to be published, the decision is in principle published without mentioning a specific name. Furthermore, the name of the chief editor is very rarely mentioned, except if it is abundantly relevant. The medium concerned is obviously mentioned.

Unfounded complaints are not published on the website, but included in the printed reports of the press council, which appear four times a year with all the decisions made.

Furthermore, decisions are regularly briefly reported in *Pressens Tidning* ('The Press Journal') and in *Journalisten* ('The Journalist').⁵²

49. Certain evening papers (tabloids) are rumoured to be already offering complainants money if they withdraw their complaint.

50. For that reason, the press council is considered as a 'court of honour'.

51. This change took place because the complete decisions were considered as proclamations and they were barely ever read.

52. In this respect, it must be noted that giving the decisions added publicity may boost the authority of the press council and the respect for media ethics.

6.9. Other activities

The Press Ombudsman is the recognisable face for the outside world. Approximately 40% of the work of the press ombudsman and 10% of the work of the deputy press ombudsman consists of writing articles, granting interviews, attending meetings, giving lectures and holding readings.⁵³ Furthermore, the press ombudsman never remarks in public on any actual publications, but only about general issues.

Although the press ombudsman can initiate cases on his own accord, this is rare and only in the event of a clear breach of good journalistic practice and when it is difficult for the complainant himself to submit a complaint. In such case, the press ombudsman gets in touch with the person concerned, who must give consent for the case to be dealt with.⁵⁴

The regulations of the press council explicitly state that it is not the task of the council to carry out investigations of a general nature.

6.10. Statistics for 2007

At the end of 2006, 97 (39) cases were still being processed by the press ombudsman and in 2007, 313⁵⁵ (405) new complaints were received. The press ombudsman dismissed 273 (300) complaints and submitted 44 (48) cases to the press council, which means that, as on December 31st, 2007, another 93 (96) cases needed to be finalised.

At the press council, 44 (50) cases had not yet been concluded on January 1st, 2007. The total of new complaints received, which were either submitted by the press ombudsman as a matter of principle or brought by complainants in appeal – amounted to 110 (128).

53. Lectures for journalists in training as well as for lawyers, in secondary schools and to various types of community leaders.

54. The example given was the report of a traffic accident when the bodies of the victims were shown whereas the relatives were grieving.

Please note: In the nineteen nineties, criticism built up in publishing and journalistic circles on the role of the ombudsman, who might operate in a more active way than necessary. The press ombudsman was more considered as a critic of the press than as a defender of press ethics. For that reason, the position of press ombudsman has been formally somewhat watered down.

55. Since 1980, the number of complaints has been fluctuating between approximately 300 and 400, from a minimum of 270 in 1992 to a maximum of 443 in 1996. As a possible explanation for the comparatively high number of complaints, it was mentioned that the Swedish people generally like to submit their problems to an authority and that it is also extremely difficult to obtain compensation through a legal procedure.

Furthermore, it must be noted that newspapers play an important role in Sweden. The circulation per inhabitant is one of the highest in the world (see: Weibull and Börjesson, *EJC*, Vol. 7, 1992).

Moreover, one interviewee is of the opinion that the press council only deals with ten 'real' (pertinent) cases per year.

The press council dealt with 123 (126) cases, with the following result:

- lodged by the press ombudsman and upheld as a
 - mild breach of good journalistic practice: 21 (26)
 - normal breach of good journalistic practice: 11 (17)
 - serious breach of good journalistic practice: - (1)
 - lodged by the complainant and upheld as a
 - mild breach of good journalistic practice: 7 (4)
 - normal breach of good journalistic practice: 1 (-)
- One decision (8 in 2006) was taken with a 'dissenting opinion'.
- lodged by press ombudsman and declared unfounded: 6 (15)
 - lodged by complainant on appeal and declared unfounded: 49 (44)
 - lodged by complainant on appeal and declared inadmissible: 18 (21)
 - lodged by complainant on appeal and withdrawn by complainant: - (2)

6.II. Thoughts and comments

The self-regulation system is generally perceived as efficient by the people who were interviewed.⁵⁶ However, it was emphasised that the government is exercising constant pressure to give the system more bite, for example by raising the level of the administrative fines. In that context, it needs to be pointed out that it is very difficult for the government to amend the legal regulation of freedom of the press, since it forms part of the constitution.

Contrary to what is often thought in the Netherlands, the press ombudsman barely does any mediating, the procedure is not accessible for everybody and it is purely performed in writing. Besides, the ombudsman can only dismiss complaints rather than adjudicate them. Moreover, the procedure takes longer than in the Netherlands, since the procedure used by the press ombudsman requires approximately 3 to 4 months and the validation of a complaint (over which the press council has jurisdiction) takes at least 6 to 7 months.

Despite the fact that the press ombudsman frequently fulfils many external engagements,⁵⁷ it is questionable whether the system is sufficiently known by the

56. See in this connection also Von Krogh ('Constructive Criticism vs. Public Scrutiny – Attitudes to Media Accountability in and Outside Swedish News Media' in: *Media Accountability Today... and Tomorrow*, p. 119-136, Göteborg, 2008): "The responses reported here suggest there is some dissatisfaction with the traditional Swedish ethical accountability system among groups outside the media, coupled with an interest in developing new and different accountability systems.

Media practitioners are accustomed to – and perhaps satisfied with – the well-established system of ethical rules and the institutions of Press Ombudsman and the National Press Council. But their survey responses also hint of a growing curiosity about other, parallel models. (...) The responses also contain hints of ignorance and prejudice, both in and outside the news media. For this reason, annual conferences of representatives of the media, the public, the research community and policy-makers to discuss media content and the methods used to produce it may well have a role to play."

57. One interviewee does not consider the press ombudsman essential to the system. In his opinion, the tasks of the press ombudsman could also be carried out by the chairman of the press council.

ordinary public. It seems that most complainants who manage to find a way to the press ombudsman have a higher education.⁵⁸

In a research carried out several years ago by the faculty for Journalism and Mass Communication of the University of Göteborg, it turned out that approximately one third of the respondents (a representative sample of the Swedish population) were aware of the press ombudsman's and press council's existence.⁵⁹

Furthermore, some are of the opinion that complainants are not always given sufficient (moral) satisfaction⁶⁰ and that the press council can be characterised as a 'tiger with small teeth'.

Now and then, there is a great deal of criticism about the press council wielding insufficient power, but such criticism usually concerns a specific case.⁶¹ In general, the freedom of the press is rated as more important, so any move to extend the council's powers would not enjoy overwhelming backing from the public.⁶²

It was also noted that the authority of the press council among the media has declined over the last few decades. The respect for decisions made by the council is less visible than before and some chief editors seem not overtly concerned about the decisions.⁶³ On the other hand, the decisions have a 'chilling effect'⁶⁴ in the sense that they lead to greater ethical awareness and a welcome interaction takes place between the press ethics developed by the press ombudsman and press council and those working in the profession.⁶⁵

Lastly – according to some interviewees – the press council could be more active, for example by engaging in matters affecting press ethics, and it has become more important to go along with developments in the new media.

58. No statistics are available in this respect.

59. By way of comparison: approximately 50% knows the Swedish Broadcasting Commission.

60. According to one interviewee, some complainants (wrongly) get the impression that complaints are not dealt with objectively since the press is evaluating itself.

61. The example given is as follows: the press council may well criticise the name of a suspect being mentioned, but it cannot prevent it happening again.

62. In that context, it was also pointed out that the Swedish people have a fairly high level of confidence in the media.

63. In an investigation several years ago, 75% of journalist-respondents said that the decisions of the council have little (64%) to no (11%) relevance for their daily work (see: Weibull and Börjesson, *EJC*, Vol. 7, 1992).

64. The term 'chilling effect' is used to explain that the threat of prosecution or legal proceedings may lead to self-censorship and therefore to an unwanted (excessive) restriction of freedom of expression. The term originated in American jurisprudence (see: U.S. Supreme Court, *Dombrowski vs. Pfister*, 380 U.S. 479, 1965, among others).

65. One interviewee thinks that journalists therefore remain too stringently within the boundaries.

For Distribution to CPs

MOD400001363

7. Denmark – Pressenævnet

7.1. Background

From 1964 onwards, Denmark had a self-regulating press council ('Dansk Pressenævnet'), which only had the co-operation of written media on a voluntary basis. This press council was set up by the association of newspaper publishers ('Danske Dagblades Fællesrepræsentations') in order to monitor compliance with the code – compiled by that association in 1960 – concerning 'God presseskik ved omtale af straffesager' ('sound press ethics in the coverage of criminal cases'). The chairman of the press council was a lawyer and the other three expert advisers were appointed by the aforementioned association. No journalists joined up to the council and the council nor the code were supported by the Danish journalists' association ('Dansk Journalistforbund').

After the authority of the press council was extended to serious breaches outside the area of reporting in criminal cases in 1968, a commission was set up in 1974 in order to review the code. The journalists' association, which was also represented in this commission, made known its explicit wish that it wanted the code to include standards for the protection of the freedom of the press and for the integrity of the individual journalist. Since no agreement could be reached on this score with the association of newspaper publishers – which furthermore insisted on being allowed to have a majority representation in the press council – the revised ethical guidelines 'God Presseskik' ('Sound press ethics') were not acknowledged by the journalists' association, either.

Since the voluntary press council covered only a limited proportion of the media and since the members of the council did not represent all interests involved, it meant that the council could not fulfil its role in society in a satisfactory way.

Next, a report of the media commission was published in 1985, with the proposal to compile uniform press ethical guidelines and to set up a general complaints authority for the media. This is how the Media Liability Committee was set up,¹ which explored the options and reported in 1990. The report also covered 'Vejledende regler for god presseskik' ('Advisory rules of sound press ethics'), which met the aforementioned wish of the journalists' association. These 'Advisory rules' included the following, under 'Fundamental views':

1. This commission was chaired by a justice of the Supreme Court and it was composed of representatives from various media organisations – publishers' associations, a journalists' association and broadcasting services – as well as representatives from the government and the public.

“Safeguarding the freedom of speech in Denmark is closely connected with the free access of the mass media to collect information and news and to publish it as correctly as possible. Free comment is part of the exercise of the freedom of speech. In attending to these tasks the mass media should recognise that the individual citizen is entitled to respect for his personal integrity as well as the sanctity of his private life and the need for protection against unjustified violation hereof.

Breach of sound press ethics also includes the withholding of rightful publication of information of essential importance to the public and compliance with outsiders' demands for influence over the content of the mass media, if such compliance may raise doubt as to the freedom and independence of the mass media.²

Furthermore, a breach of sound press ethics exists if tasks that are in conflict with the present press ethical rules are imposed on a journalist.

Journalists should not have tasks imposed on them that are contrary to their conscience or convictions.”

At the same time, the commission worked on a review of the Press Act of 1936. This resulted in the ‘Medieansvarsloven’ (‘Media Liability Act’, MLA) of 1991 (hereafter referred to as: the act), which took effect on January 1st, 1992 and which also applied to electronic media, contrary to the old Press Act.³

This act created the legal basis for the current press council (‘Pressenævnet’). Although the journalists and chief editors were reticent about this solution, they accepted it, because the aforementioned ‘Advisory rules’ do not form part of the act but are included as a schedule. In Chapter 5 of the act concerning ‘Presseetik’ (‘Press ethics’) is provided in Section 34 on the subject: “The content and conduct of the mass media shall be in conformity with sound press ethics.”

Furthermore, it is perfectly clear that public authorities nor the government can exercise any influence on the decisions of the press council.⁴ Moreover, the journalists and chief editors agreed that a press council covering all media, which represented the interests of the press as well as those of the public, would generate more public support for freedom of the press.

The act also includes provisions about the appointment of a ‘responsible chief editor’⁵ as well as about the criminal and civil-law liability for statements by the media. Furthermore, the act also regulated the so-called ‘Genmæle’ (‘reply’), which does not involve a right of rebuttal (i.e. the right to respond to accusations), but the right to correct factual inaccuracies.⁶

2. This is called the ‘principle of non-information’.

3. The full text of the Media Liability Act can be consulted on the press council’s website.

4. In Section 50 of the act is provided that “the decisions of the council cannot be brought before another administrative authority.”

5. In Section 3.2. of the act is also explicitly stated that a medium cannot have more than one responsible chief editor.

6. Section 36.1. of the act reads: “Requests for reply in the mass media to information of a factual nature which might cause anyone significant financial or other damage, and which has been published in a mass media, must be heeded, except where the correctness of the information is unquestionable.”

Lastly, the act is important for the protection of journalistic sources, since the provisions in this respect in the ‘Retsplejeloven’ (‘Administration of Justice Act’) refer to Section 1 of the Media Liability Act, specifying the scope of the act.⁷

7.2. Organisation and finance

Chapter 7 of the act provides for the establishment of the press council. The various provisions – including the composition, task and working procedure of the council – will be dealt with separately in the paragraphs below.

In the guidelines about the working methods of the press council (‘Forretningsorden’, hereafter referred to as: ‘the guidelines’), which were drawn up in conformity with Section 52 of the act by the Minister of Justice after consultation with the council, it was established how the costs for the council would be funded.⁸

- DR⁹ 29%
- TV2 21%
- the association of newspaper publishers (‘Danske Dagblades Forening’) 41%
- the association of magazine publishers (‘Dansk Magasinpresses Udgiverforening’) 3%
- representatives of regional and local papers (‘Landsrepræsentationen for Danske Distriktsblade og Lokalaviser’) 3%
- the trade press (‘Dansk Fagpresse’) 3%

The annual budget for the press council amounts to approximately € 260,000¹⁰ (DKR 1,960,000).

7.3. Task description

In conformity with Section 43.1 of the act, the press council’s responsibility is to evaluate cases when it is queried whether the content and/or conduct of the medium concerned complies with decent press ethics as specified in Section 34 (see above under 7.1.).

7. See *Mediaforum* 2006-3 p. 76-78, *Nordisk Film vs. Denmark*, ECHR December 8th, 2005: “B. Relevant domestic law The provisions of the Administration of Justice Act (‘Retsplejeloven’), in so far as relevant, read as follows: 172 1. Editors and editorial staff employed by a publication covered by Section 1, subsection 1, of the Media Responsibility Act (‘Medieansvarsloven’) are under no obligation to testify as a witness about: (i) the identity of the source of information or the author of an article, or the person who has taken a photograph or procured another figurative production. If publication is made, it is a condition for exemption from the duty to testify as a witness that the source, author, photographer or producer is not identified in the publication. (...)” Moreover, the discussion of this case by Prof. Dr. D. Voorhoof, in the same issue of *Mediaforum*, contains an interesting explanation about the protection of journalistic sources in relation to Section 10 of the ECHR.

8. The journalists’ association does not contribute any funding. This is not considered unreasonable, since it is impossible to make complaints against individual journalists.

9. Formerly: Danmarks Radio, the Danish Broadcasting Corporation.

10. Exchange rate on March 5th, 2008: DKR 100 = € 13.42.

The aforementioned 'Advisory rules' are assumed to form the basis for adjudications by the press council. These rules are also published on the website of the press council under 'Regler for god presseetik' ('Press ethical rules'), where it is specified in the introduction:

"The press council determines whether the conduct of the media is contrary to sound press ethics. Its decision is based on the 'Advisory rules of sound press ethics' which formed part of the Media Liability Bill of 1991, but the 'sound press ethics' standards keeps pace with developments in determination of what is unethical, and adopts standpoints on new situations that arise."

With its decisions, the press council therefore contributes towards the development of standards for sound press ethics.

In total, the 'Advisory rules' contain 20 provisions distributed over three subjects:

- correct information
- conduct contrary to sound press ethics
- court reporting

Please note that these rules have not been amended since 1991.¹¹

Furthermore, the press council deals with complaints about the legal right of correction. As apparent from Section 43.2. of the act, the council not only evaluates whether the medium concerned is obliged to publish a correction, but also the content, form and place of the correction.

7.4. Competence and admissibility

The press council is empowered to hear complaints about all printed national media, insofar they appear at least twice a year,¹² and about broadcasting services, insofar they hold a Danish broadcasting licence.¹³

Other mass media (like Internet media) only fall within the scope of the act – hence coming under the competence of the press council – if they are registered with the press council. A list of registrants is published on the website of the press council.¹⁴

11. Since these are very global rules, it is not considered necessary to submit them to a continuous review, unlike the situation in Great Britain, for example.

12. In the act, which is applicable to domestic periodical publications, among others, it is provided in Section 2.3, that "a publication shall not be considered periodical except where it is to be published at least twice a year."

13. For example, TV3 Denmark (part of Viasat Broadcasting and therefore also part of the Modern Times Group MTG AB) is broadcasting from Great Britain and therefore does not fall under the competence of the press council but under that of the British Ofcom organisation (see below under 8.4.), although the programmes are wholly targeted at the Danish market.

14. As on October 16th, 2008, the list contained 267 different electronic media. The importance of registration lies in the source protection that it brings. In order to prevent the system being watered down, registration may actually be refused. For example, it is impossible to register a private website. (See: 'Lov om massemediers informationsdatabaser', published on the press council's website.)

Moreover, the press council is of the opinion that discussion websites, where there is no question of one-way communication and which contain unedited postings, are not subject to the act. Readers' comments posted on websites can therefore only be adjudicated by the press council if they undergo editorial screening.

According to the act, the press council can evaluate operating methods as well as the full content of the contested publication. For example, complaints can also be lodged about mixing editorial content with advertising,¹⁵ at least as far as the press is concerned.¹⁶

Complainants, whether they are individuals, companies or organisations, must have a legitimate interest ('retlig interesse') in the complaint.¹⁷ In practice, it means that the complainant must have been named, shown, or made identifiable in another way. The concept 'legitimate interest' is given a strict interpretation. For example, an employer is generally not considered to have a legitimate interest in a publication naming one of his employees, unless the employee grants him authorisation.¹⁸

In its 1997 annual report, the press council provided the following explanation on its practice:

"It is not possible to lodge a complaint because of a general interest in a certain subject, or because someone thinks, that the media in general or a certain media handles a case or subject in a wrong manner. The complaints that have been rejected for lack of legal interest concerned discussions etc. in the media, where the plaintiff was neither directly nor indirectly mentioned."

This strict practice occasionally attracts criticism from interest groups, among others. In 2007, the press council discussed its working methods at a plenary session and decided to maintain them. Just like in Sweden, it is therefore not possible – in the event a publication concerns a more collective interest – for organisations protecting the collective interest concerned to file a complaint.

7.5. Secretariat

The office space¹⁹ is leased and situated in Copenhagen, in the same premises as the Danish Civil Affairs Authority ('Civilstyrelsen') of the Ministry of Justice.

15. In the 'Advisory rules', it is provided under B. 'Conduct contrary to sound press ethics' under 4. "A clear distinction shall be drawn between advertising and editorial text. Text and images generated by direct or indirect mercantile interests should be published only if a clear journalistic criterion calls for publication."

16. In relation to the content of advertising on radio and television and any complaints about it, reference is made to the provisions of the Danish Radio and Television Broadcasting Act. Based on that act, complaints about advertising and sponsoring are lodged to the Radio and Television Board.

17. Pursuant to Section 43.2. under 2) the chairman can dismiss a complaint originating from persons, organisations, etc., "with no cause of action in the matters against which a complaint has been lodged."

18. See the 2007 annual report under D. 1.2., 'Retlig interesse – arbejdgivere'.

19. There are three offices; the other areas and facilities are shared with other tenants.

A secretary and lawyer work full-time in the secretariat, dealing with the complaints. In addition, they have the support of a full-time secretarial assistant and of a law student for about ten hours per week (total FTEs = 3.27)

7.6. Composition of the press council

The press council has a chairman, vice-chairman and six other members, who are all appointed by the Minister of Justice. According to the act, the chairman and vice-chairman must be law graduates. In practice, the chairman is a member of the Supreme Court and the vice-chairman is a solicitor. Both are appointed on the nomination of the chairman of the Supreme Court. The other members are selected as follows:

- Two members are nominated by the journalists' association. The members are known as highly qualified journalists. They have amassed the necessary experience, for example as senior journalist or documentary maker, that they are considered well-equipped to participate in the press council. Furthermore, care is taken to ensure that the press and electronic media are equally represented. Moreover, the extent to which people are involved in the work of the journalists' association is not used as a criterion. It is not (yet) possible to apply for the position.
- Two members are appointed by the media to represent the editorial management of press, radio and television. For the position, they look for experienced general editors or deputy editors and chief editors.²⁰
- Two members, representing the public, are appointed by the Danish Association for Adult Education ('Dansk Folkeoplysnings Samråd'). No specific criteria are applied and there is no formal application procedure. The association forms part of the 'civic society' and the board nominates candidates of its own choosing with knowledge and integrity.²¹

In addition, deputies are appointed in the same manner for all members, but they are rarely ever used. Appointments are made for a four-year term, with the option of reappointment. No maximum term is imposed on the length of service; there is a natural turnover of members.²²

The press council holds a hearing once a month, except for a break in July, for its chamber of four members to hear complaints. The chamber is made up of the chairman or deputy chairman and a member from each of the aforementioned

20. One interviewee is of the opinion that the media should appoint more senior people, with more experience or in higher positions.

21. One of the interviewees remarked that the persons nominated – because of the position they hold in society – tend to be over forty. In his opinion, the council contains too many 'old' members who have little knowledge of modern developments in the field of journalism.

22. But some remain members for a long time. For example, the current deputy chairman Axel Kierkegaard has been involved with the press council since 1992.

groups. Chambers are assembled based on the availability of the members and they can therefore differ on every occasion. Per (non-public) hearing, lasting for approximately two hours, about ten cases are dealt with.

The members receive the following allowances for attending hearings (excluding travel expenses):

- chairman and deputy chairman € 540 (DKR 4019.11)
- other members about € 375 (DKR 2801.19).

In addition, the council holds two plenary meetings a year. The members receive the same allowances for attending these meetings.

Moreover, the chairmen carry out another 40 hours per quarter for the press council, including dealing with cases that can be processed using the shorter procedure (see below under 7.7.), preparing plenary meetings and compiling the annual report. For this work, they are paid an additional € 87 (DKR 648) per hour.

7.7. Complaints procedure

The act provides that a complaint concerning press ethics must be lodged within four weeks with the medium concerned or with the press council. If the complaint is first lodged with the medium, the complainant can submit the decision of the medium – within another period of four weeks – to the press council for consideration. A special rule applies to complaints against public broadcasting corporations: those complaints must always first be lodged with the broadcasting company concerned.²³

A request to publish a correction must *always* first be made in writing to the responsible chief editor. A complaint concerning the right of correction – either about a refusal to publish a correction or about the publication of an inaccurate correction – can be lodged with the press council within four weeks of the refusal or inaccurate publication.²⁴

23. This rule stems from the general obligation on *public* organisations to (first) deal with complaints internally. Moreover, DR has a designated editor for listeners and viewers (a member of the Organisation of the News Ombudsmen, ONO) who acts as some form of appeal instance – after the complaint has been submitted to the responsible chief editor – and hence acting as some sort of screener for the press council. Anyone can lodge his complaint to this officer, so it is not necessary to have a legitimate interest. This function has been enshrined in law since January 1st, 2007 (see Section 17.3. of the ‘Promulgation of the Radio and Television Broadcasting Act – Consolidated Act no. 338 of 11/4/2007’).

One respondent feels that the obligation for complainants to first contact the chief editor should equally apply to all media, since the parties would probably be able to work out a solution between them.

24. Pursuant to Section 40 of the act, in the event a correction is refused, complainants must be informed that they can lodge a complaint with the press council within a period of four weeks. The address of the press council must be included in the notification.

In its 2007 annual report, the press council explicitly stated that this time limit for complaints also applies to Internet publications. The council considers the option of consulting articles via the Internet as a 'shortcut to the library'.²⁵

According to the act, complaints must be submitted in writing, but complaints received by e-mail are nevertheless taken in consideration.²⁶ The complaints procedure is free and complainants can have legal representation.²⁷ There is no need to waive the right to initiating court proceedings.

There is no provision for a fast-track procedure, but complaints that clearly fall outside the competence of the press council or that are obviously unfounded can be dismissed by the chairman. Furthermore, the chairman can declare a complainant inadmissible if there is insufficient personal interest or if the complaint was lodged after the time limit expired. These cases are closed on receipt of the notice of complaint, without the chief editor being asked to comment. No appeal can be made against such a decision made by the chairman.

If there is no reason to resort to the aforementioned simple procedure, the complaint is forwarded to the chief editor with a request to provide a response. Pursuant to Section 46, clause 1, cases are followed up with any unnecessary delays. By virtue of clause 2, the press council is entitled to deal with the case on the basis of the available information in the event the medium concerned does not respond within seven calendar days. However, this rarely ever happens. The time limit is not rigid and the deadline can be put back.

Next, the complainant can respond to the defence, after which the chief editor is usually given another chance to reply. If new information comes to light, the secretariat can give the parties an opportunity to continue exchanging viewpoints in writing.

The parties can be invited to give an explanation in person, but this never actually happens in practice. According to a number of interviewees, having an oral hearing would unnecessarily delay proceedings, increase costs and result too much in a 'court case' for which the parties want to deposit their evidence. Many consider it undesirable, since it would render the procedure less accessible to the ordinary public.²⁸

The press council does not conduct a factual investigation nor does it arrange to hear any witnesses. For example, the council does not ask for the taped recording

25. See the 2007 annual report under D. 1.1. 'Fristberegning – artikler på Interettet'.

26. Complaining may therefore have been made a little too easy. However, complainants must endeavour to include the contested publication.

27. This is increasingly the case: according to the press council's 2007 annual report, it happened in 20% of cases. One respondent told that this is not experienced as beneficial, since lawyers sometimes unnecessarily complicate things.

28. However, it has been suggested that the council should make an exception in big cases of general interest.

of an interview, if it receives a complaint about the way the interview was written up.²⁹

The council does not mediate, either.³⁰ Unless the parties eventually reached a mutual agreement after all,³¹ the press council decides with a majority of votes. In the event of a tie, the chairman has a casting vote. The council aims for a unanimous decision, but it has made a couple of decisions each year when a dissenting opinion was recorded.³² In that context, it has been pointed out that a decision first includes the opinion of the press council, followed by the dissenting opinion, which may create some confusion about the actual outcome.³³

Furthermore, it has been provided in Section 47 of the act that a council member is not allowed to take part in the proceedings if his impartiality may be in doubt due to the circumstances of the case.

The press council is involved in an internal discussion about jurisprudence in relation to Section 10 of the ECHR (see note 4, chapter 3) and other relevant judicial decisions, but this is rarely reflected in the decisions of the council. Furthermore, a distinction must be made between criticism uttered by the council and a condemnation made by a court. Since criticism does not in itself influence the freedom of expression to a large extent, it is feasible that the press council issues a sharper judgement about a particular issue than a judge.

If new facts are revealed after a decision, either party can ask for the case to be reopened. This request will be weighed up by the chamber that originally dealt with the case. The chairman can dismiss a request to reopen the case, if the request is manifestly inappropriate (§ 14 of the regulations).

There is no possibility for a further appeal, but it is not considered necessary, either. After all, if a complainant is dissatisfied about the outcome of a procedure, he can always lodge the case with the court. Such a civil procedure is actually considerably more expensive in terms of time and money (for legal representation), whereas it only carries a slim chance of success.

29. As a result, the decisions of the press council are of very little value, according to one of the people interviewed. Another one told that if the facts are considered insufficiently proven, there was a tendency towards awarding the case in favour of the medium concerned. Furthermore, it was noted that – from the complainant's perspective – the press council must conduct more factual investigations, but that asking for the original recordings might lead to an outcry from the media.

30. One interviewee felt it was an interesting idea, but pointed out that it would require a bigger – and hence more expensive – organisation which would also make the procedure run slower. Another one is of the opinion that 'mediation' is a task for the media itself rather than for the press council.

31. Which rarely happens; very rarely, a complaint is withdrawn in the course of the procedure (see the statistics about this as referred to in 7.10.).

32. Originally, the media organisations feared somewhat that the deputy chairman would be more inclined to choose the side of the public member, which would result in decisions with a specific (negative) pattern. Following a proposal by a political party to increase the number of public members, a survey was carried out several years ago into the decisions made by the press council. It transpired as a result that in the vast majority of cases, decisions are made unanimously and that no specific pattern can be discerned in the dissenting opinion.

33. See for example, in the 2007 annual report, pp. 23-24 and 30.

7.8. Sanctions

The press council cannot award any damages, but it can order for the decision to be published in a manner specified by the press council. The council only ever issues such a request when complaints are well-founded, and only in cases concerning press ethics. No order is issued when a correction has already been published. In cases concerning the right of correction, the media are expected to publish it of their accord.³⁴

Pursuant to the act, the chief editor is obliged to comply with a publication order³⁵ and he is not allowed to add a comment. Non-compliance with this mandatory obligation is punishable with a prison sentence of up to four months. It has happened occasionally that a fine of about € 670 (DKR 5,000) was imposed.

All decisions of the press council are published on the website.³⁶ A summary of the main decisions appears in the annual report. The publications only contain the name of the medium concerned, not those of the complainant and chief editor. The council does not give its decisions any further publicity.

7.9. Other activities

Pursuant to Section 44.2. of the act, the press council has the power to make statements of its own accord about issues arising of a fundamental or prominent nature. Since 1997, when seven statements issued on the subject of a picture report about crown prince Frederik attracted a great deal of criticism, the council has never again availed itself of that option.³⁷

In this context, the point has been made that the neutrality of the council in those cases is debatable, since it is simultaneously fulfilling the roles of plaintiff and judge.

Moreover, it would be difficult for the council to preserve a balance in its position; once it has made a statement of its own accord about a specific situation, it is expected to do so when other similar circumstances arise. The council would then become an organisation that is permanently controlling or monitoring the media, with the associated problems of censorship, which must be avoided.

A feasible solution may be to set up a general right of ombudsmen to complain, but this plan has not (yet) been implemented.

34. In view of the mandatory duty to publish a correction.

35. The mandatory obligation is considered as a positive element of the system.

36. Dismissals by the chairman within the simplified procedure are not published.

37. The press council took up the matter because the royal family never instigates cases itself, but the council neglected to ask the crown prince for his written comments, contrary to its own regulations. On a number of counts, the council considered the picture report, depicting the crown prince and his then girlfriend in a private environment, in breach of Section B.1. of the Advisory rules, which reads: "Information which may violate the sanctity of private life shall be avoided unless an obvious public interest requires public coverage. The individual is entitled to protection of his/her personal reputation" (see the 1997 annual report of the council).

However, in its annual reports the press council voices comments on general journalistic subjects. Under 'Matters of principle' ('Principielle spørgsmål'), the council elucidates basic principles developed in the course of the year, either in its decisions on complaints or in discussions during plenary meetings. For example, in its annual report for 2006, the council announced its new practice concerning the publication of recorded conversations or hidden microphones ('offentliggørelse af bandede samtaler/skjult mikrofon').³⁸

The press council is not developing any activities in the domain of distributing information and promoting education. In that context, the point was made that in view of its legal status, the council has to observe restrictions when participating in public debates.³⁹

7.10. Statistics for 2007

In 2007, the press council received 164⁴⁰ (177) complaints, and issued 125 (123) decisions. Of the cases dealt with by the press council, 109 (102) related in full or in part to press ethics,⁴¹ 10 (12) only concerned the legal right of correction and 6 (9) related to decisions after a request to reopen a case. The press council upheld 45 (53) complaints in part or in full and it dismissed 80 (70) complaints. In 24 (34) cases, the decisions were published.

In addition, 34 (48) cases were dismissed by the chairman in a simplified procedure, as follows:

• due to a lack of direct interest	14	(15)
• due to a lack of competence	2	(6)
• due to a missed deadline	10	(17)
• due to a lack of any grounds	4	(3)
• concerning a request to reopen a case	4	(7)

Lastly, 4 (5) cases were withdrawn by the complainant and 7 (2) cases set aside by the secretariat because the complainant did not respond to the request to provide further information.

38. The practice amounts to the fact that the council no longer makes a distinction between press and electronic media, and that in the event the press can publish the statement as a quote, then the electronic media are allowed to publish the recorded statement. Previously, broadcasts made via radio or television of a tape-recorded conversation were equated with covert recordings, the publication of which was considered contrary to sound press ethics. Even when a reporter has introduced himself as such, broadcasting a recorded telephone conversation may be contrary to sound press ethics.

39. Some members give lectures, but purely in their own name.

40. Please note: Complaints made against an article published in print as well as on the Internet, were registered as two complaints. This manner of counting complaints will probably be changed. In 2007, it only related to one case, anyway.

41. Please note: of these 109 cases, 24 also related to the statutory right to correction.

In 2007, the average time in which a complaint was dealt with by the council start to finish was 76 (80) days, which can be subdivided as follows:

• 40 days or less	16
• 41-60 days	24
• 61-80 days	34
• 81-100 days	34
• more than 100 days	17 ⁴²

The average processing time for the shortened procedure was 23 (13) days.

7.II. Thoughts and comments

As a rule, the system enjoys the support from the public as well as from the press. The fact that the press council is enshrined in law is not considered as 'state control', yet it does render the system somewhat inflexible. After all, any significant changes would require a change of law. It is feared that if the council would seek to make some modifications, for example in view of developments on the Internet, it may also result in some undesirable changes and in sweeping government intervention. Moreover, because of its statutory basis, the press council is less active than comparable institutions in other countries.⁴³

As a rule, the journalists and chief editors respect the opinions of the press council.⁴⁴ Yet, the decisions do not have the chilling effect in the sense that they curb the freedom of the press or result in undesirable self-censorship. In this context, it has been pointed out that the influence on some media (the 'bad guys') is minor,⁴⁵ but that one should focus on the other media. Many do actually consider a reprimand issued by the press council as a stigma and it can therefore have some bearing on journalistic conduct. Moreover, the impression exists that the effect is not sufficiently known to complainants, thereby reducing the moral satisfaction for complainants.

In relation to the obligation to publish decisions, it has been pointed out that the press council does not have the option of specifying in detail *in which manner* the publication is to be made. Occasionally, the complaint relates to a prominent article or television programme, whereas the decision is published in a much less eye-catching manner. The public is therefore often unaware of the press council's decisions. It would be better if the press council would be given more options in this respect.

42. Although the processing time has been considerably reduced over recent years (in 2005 it was 124 days), it is still considered as too long. In that context, it was reported that decisions in 'high-profile' cases fairly regularly only follow after four to six months.

43. For that reason, one of the interviewees pinpointed the council's statutory basis as 'the weakness of the system'.

44. Several years ago, a decision about mentioning the nationality of a suspect was heavily criticised by the media, who refused to comply with the decision. It prompted the press council to change its stance should a similar case arise.

45. The tabloids earn a lot of money from 'scandal reporting' and very serious sanctions are needed to hit those media, according to one interviewee.

Furthermore, the press council is said to be far too anonymous, playing too minor a role in the media debate. One of the reasons for this is due to the fact that the decisions of the council are said to be too formal and unclear, and open to several interpretations. For that reason, the council set up a working group to compile – if appropriate –⁴⁶ a ‘popular’ version of the decision, which the medium concerned is expected to publish. Not everyone rates the results of this initiative sufficient. The idea that the text of what is published would be entirely left up to the chief editors – like what happens in the Netherlands – is simply unthinkable. In discussions, a compromise solution was proposed whereby chief editors would submit their own summary to the press council for approval. This proposal has not (yet) been implemented.

It would also be preferable if the council’s decision would be given more widespread publicity, for example in the trade journal *Journalisten*, but this is not happening at the moment.

In the discussion on the question about whether the press council is a ‘strong watchdog’ or a ‘lame duck’, it is furthermore also relevant that the council does not hold oral hearings and does not issue statements of its own accord. Its appraisals are therefore rather a desk study and the council does not occupy a strong position in society, unlike the Press Complaints Commission in Great Britain, according to one of the interviewees.

46. Only if a request for publication is made (see above under 7.8.).

8. Great Britain – Press Complaints Commission

8.1. Background

The self-regulation of the press in Great Britain dates back to 1953. Due to developments in the press after World War II, a press council was set up under the name ‘General Council of the Press’, to uphold journalistic ethical standards and to safeguard the freedom of the press.

However, in the nineteen eighties, several media lost sight of the basic ethics and the press council was unable to provide an appropriate response. Since the council gradually lost confidence – also from several people inside the sector – the Parliament became convinced that the council was not sufficiently effective. Some members of parliament thought it would be better to introduce a privacy act and a right of reply, and to set up a statutory press council that could impose sanctions enforceable by law.

Due to the far-reaching implications of the above, a ministerial commission was set up, under the supervision of barrister Sir David Calcutt, to examine how the system could be improved. The commission particularly had to investigate which measures (in law or otherwise) were required to provide more protection to individual privacy and to improve the options available to the public to present its side of the story.

The commission published its report in 1990, in which it recommended the establishment of a new complaints commission that would get eighteen months time to prove “that non-statutory self-regulation can be made to work effectively. This is a stiff test for the press. If it fails, we recommend that a statutory system for handling complaints should be introduced.”¹

An important point in the recommendations was that the new complaints commission should no longer occupy itself with defending the freedom of the press. That task was not easily reconcilable with stamping out excesses in the press, according to the commission.²

The media responded forcefully. For the first time in history, a commission composed of national and regional chief editors was compiling a formal ‘Code of Practice’ that could be applied by the new complaints commission. All chief editors undertook to uphold the code and committed themselves to providing sufficient finance for the complaints committee.

1. The commission had already presented a model for a statutory complaints tribunal in attachment to its report.

2. This recommendation was not taken up.

Next, the Press Standards Board of Finance (PressBoF) was set up, after the model of the self-regulation system in the advertising sector, and it was ordered to collect financial contributions from the sector. This is how the complaints commission would be financed independently. Finally, in 1991, the current Press Complaints Commission was set up.³

The press complaints commission has regularly come under fire since it was set up, but far-reaching proposals for reform – for example, for the establishment of a statutory press ombudsman ‘to oversee the press self-regulatory process’⁴ – were never implemented.

The complaints commission is still closely watched by the Culture, Media and Sport Committee of the House of Commons (hereafter referred to as ‘Select Committee’).⁵ The Select Committee included the following in its report ‘Privacy and media intrusion’ (Fifth Report of Session 2002-03, published in June 2003):

“Overall, standards of press behaviour, the Code and the performance of the Press Complaints Commission (PCC) have improved over the last decade. However, the question arises of whether the progress made in raising press standards, from the very low baseline conceded by editors themselves, has gone far enough. (...) The key to this system must be that it commands the full commitment of the industry itself as well as the confidence of Government, Parliament and crucially, the public.”

The Select Committee then came up with 34 conclusions and recommendations, which led to various adjustments in the working method of the complaints commission.

The complaints commission was for example instructed to take greater care to engender trust in its independence. Since then, the number of public members has grown and the procedure to nominate those members has changed (see below under 8.6.).

Furthermore, the complaints commission seemed to display a lack of accountability. It resulted in the appointment of a Charter Commissioner, who deals with complaints about the way the secretariat or the complaints commission operates. Furthermore, a Charter Compliance Panel was set up, to audit the complaints commission (see below under 8.7.)

3. See R. Shannon, *A Press Free and Responsible: Self-regulation and the Press Complaints Commission 1991-2001*, John Murray Publishers, London, 2001: “The PCC was grudgingly welcomed by the press industry pretty much as the press council had been in 1953: making the best of a ‘bad job’. There was, however, one big difference: the industry understood well in 1990 what it had not well understood in 1953. The best really had to be made of a bad job.”

4. See Shannon p. 129.

5. This committee is appointed by the House of Commons ‘to examine the expenditure, administration and policy of the Department for Culture, Media and Sport and its associated bodies.’ For more information on these and comparable commissions, see the website of the United Kingdom Parliament. On the website www.publications.parliament.uk, full reports of the Select Committee can be found.

8.2. Organisation and finance

As observed above, PressBoF is responsible for collecting the contributions. Furthermore, PressBoF is responsible for defining the competence of the complaints commission.

All five publishing associations are represented in PressBoF:⁶

- Newspaper Publishers Association (NPA)
- Newspaper Society (NS)
- Periodical Publishers Association (PPA)
- Scottish Daily Newspaper Society (SDNS)
- Scottish Newspaper Publishers Association (SNPA)

The board of PressBoF consists of ten members, nominated by the publishers' associations (NPA – 3, NS – 3, PPA – 2, SDNS – 1 and SNPA – 1).

The National Newspapers Association (NPA) contributes 54.2% of the total budget. Since the other associations do not want to impose a financial burden on their members, PressBoF collects the other contributions from individual publishers of regional and local newspapers and magazines. The level of those contributions depends on the circulation and frequency of the publications.⁷ Although the majority of publishers acknowledge that it is in the interest of the sector to support self-regulation, a few smaller organisations refuse to pay, since they are of the opinion that the system is more applicable to tabloid newspapers. Payment is nevertheless on a voluntary basis.

The annual budget is approximately € 2,480,000⁸ (GBP 1,900,000) and is put up in full by the newspaper and magazine sector. By far the largest part of the budget is being spent on salaries (approximately € 1,450,000). Other great cost items are: external specialists (approximately € 270,000),⁹ lease and maintenance (approximately € 205,000),¹⁰ office expenses (approximately € 190,000) and travel costs/entertainment/public relations (about € 185,000).¹¹

Additional sponsors are sought to fund the organisation of special events, such as the annual meeting of the Alliance of Independent Press Councils of Europe.

6. The National Union of Journalists (NUJ) and the Chartered Institute of Journalists do not form part of the self-regulation system. The NUJ had four representatives in the old press council, but it was left out when the current complaints commission was launched. The point was made that the legal position of trade unions versus the employers organisations in Great Britain has weakened considerably in the nineteen eighties and that trade unions are no longer involved in every possible consultation event. Furthermore, it must be noted that eventually, the publishers and chief editors rather than individual journalists are held responsible for the publications.

7. For example, the semi-annual contributions paid for morning or evening papers vary from about € 206 for a print run of up to 1600 copies to about € 5,800 for a print run of over 600,000 copies; for free weekly papers they vary from about € 110 to about € 1,350; and for weekly magazines from about € 200 to about € 960.

Please note: The proposal to base the contributions on the number of upheld complaints per medium, which would involve a punitive element, as suggested by the Select Committee in the aforementioned 'Privacy and media intrusion' report (recommendation 26), was rejected as unfair and unworkable.

8. Exchange rate on March 14th, 2008: GBP 100 = € 130.58.

9. They are legal advisers (see notes 37 and 40), other consultants and speakers.

10. The move of the secretariat had an impact on this amount.

11. See for example, in the 2007 annual report, p. 36.

8.3. Task description

The basis of the self-regulation system is the Editors' Code of Practice, compiled and revised by the Editors' Code of Practice Committee. The members of this committee – chief editors of national, regional and local papers and magazines – are appointed by the Appointments Commission (see more about this commission under 8.6.) based on the nomination of publishing associations.

The code has a dual function. On the one hand, it offers the sector a sound set of starting principles for the day-to-day practice:

“All members of the press have a duty to maintain the highest professional standards. The Code, which includes this preamble and the public interest exceptions below, sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know. It is the cornerstone of the system of self-regulation to which the industry has made a binding commitment. It is essential that an agreed code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest.”

On the other hand, for the complaints commission the code is a clear and consistent framework within which complaints can be processed. In other words: the complaints commission is the enforcer of the code, which has also been explicitly included in the opening paragraphs of the code: “The Press Complaints Commission, which has a majority of lay members, is charged with enforcing the Code, using it to adjudicate complaints.”

The code has 16 paragraphs, covering the following subjects:

- accuracy
- opportunity to reply
- privacy
- harassment
- intrusion into grief or shock
- children and children in sex cases
- hospitals
- reporting of crime
- clandestine devices and subterfuge
- victims of sexual assault
- discrimination
- financial journalism
- confidential sources
- witness payments in criminal trials and payments to criminals.

The code is periodically reviewed.¹² Comments made by the public and members of parliament are also taken into account during reviews. In addition, reports written by the complaints commission are also taken into consideration.

The Editors' Code of Practice Committee has compiled a handy guide for the sector: 'The Editors' Codebook – The handbook to the Editors' Code of Practice'.¹³ It sets out – based on decisions and statements made by the complaints commission – how the code must be implemented in practice.

In addition, the complaints commission compiled several advisory notes on the code for the public and various guidance notes for chief editors, expounding on the code.¹⁴

Although the code and any changes made to it need to be ratified by the complaints commission, it is emphasised that the code is drawn up by the sector responsible for commitment to the self-regulation system – and hence the work of the complaints commission – from every corner of the sector.

The code includes the obligation to contribute to the procedures of the Complaints Commission.¹⁵

The relevance of the sector co-operating with the self-regulation system has been emphasised only recently by the chairman of the Editors' Code of Practice Committee in his report on 2007/2008:

“The industry itself must now show to the Ministry of Justice, which is overseeing the relevant legislation, that it is treating the matter extremely seriously. This means educating its staff in the application of the Data Protection Act and the Code rules, and demonstrating publicly the various mechanisms it has introduced collectively and individually in-house to ensure compliance. In particular, we need to explore using other means – such as The Editors Codebook, and the new Code Committee website – to increase awareness of the rules, and reinforce industry guidance and the PCC's adjudications on them.”¹⁶

12. Since the code was first published in 1991, it has been adjusted in 30 different places. An overview of the changes can be found on the website of the Editors' Code of Practice Committee.

13. The Code Book can be downloaded from the website referred to in the previous note.

14. For the public, it covers 'harassment' and 'hospitals and similar institutions', among other subjects, whereas for chief editors it covers subjects like 'refugees and asylum seekers', 'the reporting of cases involving paedophiles', and 'Prince William and privacy'.

15. In the introduction of the code it is stated that: “editors should co-operate swiftly with the PCC in the resolution of complaints. Any publication judged to have breached the Code must print the adjudication in full and with due prominence, including headline reference to the PCC.”

Moreover, the complaints commission issued a 'Best practice note on editorial co-operation with the PCC' on September 15th, 2005, explaining that “the Commission encourages newspapers and magazines to carry regular slots advertising the PCC's existence; editors should make potential complainants aware of the PCC; editors should not unnecessarily delay replies to the PCC during an investigation; reference to the resolution of complaints should be tagged on a publication's records and the information made available as widely as possible.”

16. The entire report was published on the website of the Editors' Code of Practice Committee.

It is noteworthy that the code is incorporated in many employment contracts of chief editors and journalists. The request from the National Union of Journalists (NUJ) to also include a 'conscience clause' in the code – stating that journalists have the right to refuse work that is in breach of the code – was not granted.¹⁷ Moreover, the NUJ has its own 'Code of Conduct' and an 'Ethics Council', dealing with complaints lodged by members about other members.¹⁸

8.4. Competence and admissibility

The complaints commission only adjudicates complaints relating to newspaper and magazine publishers that are connected to the self-regulation system through the publishers' associations. This accounts for approximately 97% of all commercial print media. It does not include satirical publications, hobby magazines, and a few independent local newspapers.

Complaints about publications on the Internet can only be dealt with if it concerns publications by associated publishers. Moreover, the competence of the commission was extended at the start of 2007, in the sense that it can now also evaluate editorial audiovisual material on websites of newspapers and magazines, if the material complies with the following conditions:

- that the chief editor is responsible for it and can reasonably be expected to have exercised editorial control on it and to have applied the rules of the code;
- that it has not been pre-edited in order to comply with the online or offline standards of another media-regulating institution.¹⁹

The above also applies to user-generated content published on websites.²⁰

In principle, broadcasting services fall under the authority of the Office of Communications (Ofcom), which is the first port of call for any citizens with complaints.²¹ Ofcom has its own code, which also involves provisions about 'fairness'

17. In its report 'Self-regulation of the press' (Seventh Report of Session 2006-07, published in July 2007) the Select Committee remarks in this respect: "We nonetheless support the inclusion in staff contracts of a clause requiring adherence to the Code of Practice as a condition of employment, which we believe would safeguard journalists who believed that they were being asked to use unethical newsgathering practices."

Please note: An earlier recommendation made by the Select Committee (in its report 'Privacy and media intrusion') to include in the Code 'that journalists are enabled to refuse an assignment on the grounds that it breaches the Code and, if necessary, refer the matter to the Commission without prejudice', was not followed up.

18. The approach adopted by the ethics council 'is less disciplinary than educational'.

19. See the news release from PressBoF on February 8th, 2007, published on the complaints commission's website.

20. The reaction of the Select Committee is striking in this respect, when it welcomes the extended authority in its report of July 2007 (see note 17), but also wonders "whether it should have gone further. Editors bear a measure of responsibility for all content on their publications' websites, whether or not they have editorial control over it. We did not explore this issue fully in evidence, although we have no doubt that it will be in editors' interests for their publications not to host any user-generated content which is in breach of the law or the Code of Practice."

21. The tasks of Ofcom, incidentally set up on a legal basis, also include 'applying adequate protection for audiences against offensive or harmful material' and 'applying adequate protection for audiences against unfairness or the infringement of privacy.'

and ‘privacy’.²² Complaints about accuracy and impartiality in BBC programmes nevertheless need to be lodged with the BBC itself.²³

Complaints can be made about the editorial content and about the methods used, but in principle only by persons with a ‘direct interest’. Anyone can lodge a complaint about a ‘matter of general fact’ pursuant to item 1 of the Code on the subject of accuracy, provided no one with a direct interest is named who could lodge a complaint (this concerns approximately 5% of the total number of cases).²⁴

The competence of the complaints commission is further limited to complaints falling under the provisions of the code. For example, the commission does not concern itself with issues of good taste and decency.²⁵

8.5. Secretariat

The office of the complaints commission²⁶ is leased and situated in an office block in the centre of London.

Working fulltime in the secretariat are: one director, two assistant directors, one personal assistant to the director and chairman of the complaints commission, three complaints officers, one complaints assistant, one administration manager, one information and events manager and one communications officer. In addition, there is some part-time staff: an external affairs manager (0.6 FTE), a receptionist (0.8 FTE) and an administration assistant (0.4 FTE) (total FTEs = 12.8).

It has been explicitly provided that the officers in the secretariat cannot be former or current journalists, which implies that they carry out their work independently from the sector.

8.6. Composition of the complaints commission

According to the regulations²⁷ the complaints commission consists of not less than nine and not more than 17 members. The majority of the members are public members, in order to ensure independence from the sector.

The chairman must be a public member, cannot have any relationship with the press and is appointed by PressBoF, for a term that seems appropriate to the Press-

22. The Ofcom code states about these provisions: “(they) are different from other Sections of the Code. They apply to how broadcasters treat the individuals or organisations directly affected by programmes, rather than to what the general public sees and/or hears as viewers and listeners.”

23. More information on this topic can be found on the BBC’s website under ‘complaints’.

24. In 2007, the Charter Compliance Panel suggested that the complaints commission should clarify its procedure on this point (see also below under 8.7.).

25. Examples are complaints about cartoons and offensive articles. In relation to the latter category, it has been pointed out that the magazine sector has a separate self-regulation commission, that ‘ensures that the sexual content of teenage magazines is presented in a responsible and appropriate manner’. This commission, the Teenage Magazine Arbitration Panel (TMAP), uses its own regulations: the TMAP guidelines.

26. Various offices, a meeting room, an open-plan office, small kitchen and toilets (approx. 246 m²).

27. See article 5 of the ‘Memorandum of Association of the Press Complaints Commission’.

BoF. The chairman has an important public duty and an employment contract for three days a week for performing his work.

In addition, the complaints commission has included nine other public members and seven members of the press since January 1st, 2004. They are all appointed by the Appointments Commission, which consists of five people: the chairman of the complaints commission, the chairman of PressBoF and, in addition, three other independent people (not connected to the press), which are appointed jointly by the chairmen of the complaints commission and by PressBoF.²⁸

The term of the appointments is not regulated by law. The public members are usually appointed for a term of two years. The appointment term of the members of the press usually depends on the publishing associations they represent. All members can be reappointed; there is no maximum term.

Since the autumn of 2003, vacancies for public members have been publicly advertised in various national and regional newspapers.²⁹ The description of the position and application procedure³⁰ mentions that the estimated time requirement is about 1.5 hours per week, in addition to attending meetings of the complaints commission. Applicants must have an interest in and appreciation for the dynamics of the free press and the principles of self-regulation, as well as the necessary skills to process and analyse a large quantity of written material. Furthermore, it is important to have an understanding of the problems experienced by people in the media spotlight, particularly by vulnerable groups in society. Moreover, applicants are asked to complete a monitoring information form to check whether all demographic groups are fairly represented (including age, race, religion and sexual preference).³¹

All applications (about 1000 each time) are first screened by an Independent Panel, consisting of former public members, which draws up a shortlist of 50 which is submitted to the Appointments Commission.

The lay members receive an annual allowance of about € 14,000 (GBP 11,000 in 2008, excluding expenses), with the exception of the chairman, who receives a salary commensurate with 0.6 FTE.

28. Due to the influence of PressBoF on the Appointments Commission – and hence indirectly on the nomination of the public members – the complaints commission still attracts criticism claiming that it is fully dominated by the sector.

29. About the changes made to the number of public members and the appointment procedure, see also the complaints commission 2003 annual report. In the past, the appointment procedure was not transparent. The report of the Select Committee of June 2003 included the following on the subject: “The PCC seems to have been quite relaxed in its pre-appointment procedures, that is before names go to the independent Appointments Commission. Ms Vivien Hepworth, lay commissioner and former chairman of an NHS trust, gave the impression in oral evidence that she was asked to be a candidate for the Commission because she was a friend of the PCC director. (...) We welcome the assurance of the Chairman of the PCC that the selection of candidates for the role of lay commissioner would be put on a proper, open and transparent footing from now on.”

30. For the most recent vacancy, see the press release of the complaints commission of April 29th, 2008.

31. According to the ‘monitoring information’ form, the information does not influence the application: “The information you supply will be kept confidentially and will only be used to provide an overall profile analysis for the Press Complaints Commission. Your answers will be kept separately and will not affect your job application in any way.”

Members from the press must have experience at senior editorial level and they are all chief editors. They do not receive a separate allowance.

Considering the discussion in the Netherlands about the question if members of the council are allowed to be active or have an active past in politics, it is furthermore remarkable that the Rules on conflict of interest state that ‘membership of a political party or of the House of the Lords (does) not, in itself, disqualify a member from participating in the consideration of a complaint’.³²

The complaints commission meets for a plenary session lasting about two hours, approximately once every six weeks. During those sessions, the commission only deals with the content of complaints that may be well-founded or with fundamental relevance (see also below under 8.7.). Furthermore, those meetings also deal with ongoing general issues. In addition, the commission also holds an annual meeting.

8.7. Complaints procedure

A complaint can be lodged free of charge by fax or e-mail. The website of the complaints commission even provides an online complaint form. The complaint must be accompanied by a copy of the contested publication, but it can be transmitted electronically, if preferred.

A complainant can seek help from a solicitor and does not need to waive his rights to initiate legal proceedings.³³ The secretariat can also provide help with the wording of a complaint.

In principle, a complaint must be made within two months of the contested publication being published or after any correspondence with the chief editor has concluded. The complaints commission nevertheless considers downloading as a renewed publication. This means that it is generally possible to complain about material that is freely available on the Internet from the publisher’s website, even when the material was not originally published less than two months ago.

If the secretariat is of the opinion that the Code was clearly not breached, the complaint is not forwarded to the chief editor for a response, but is immediately placed in front of the complaints commission to be rejected. Such complaint is then concluded through correspondence by the full complaints commission in a ‘decision’, unless it is nonetheless included in a hearing at the request of one or more commission members.

32. Pursuant to the report of the Select Committee of June 2003, a previous complainant can also apply for the position of public member (see § 65 of the report, as well as the Section ‘Examination of Witness’ by Sir Christopher Meyer, Q989 and further). The website of the complaints commission also publishes a ‘Register of interests’ mentioning all professional and public functions of the commission members.

33. The latter recently caused problems, because a particular solicitor immediately initiated legal proceedings after a settlement with the medium concerned had been reached through mediation by the secretariat. Several media are outraged about this.

If it is likely that the Code was breached, the chief editor is asked to respond to the complaint with a (non-statutory) period of seven days. Next, the complaints officer will try to resolve the issue through negotiation by phone and/or by e-mail. For example, it may suggest printing a correction, an apology, a follow-up article or a reader's letter. Another possibility is that the archives will be annotated.³⁴

If the mediation fails, or at least fails to satisfy the complainant, the complainant is given an opportunity – insofar it is considered appropriate – to respond in writing to the defence.

Sometimes, mediation is carried out in a case, which in the complaints officer's view did not involve a breach of the code,³⁵ without the complaints officers making the parties aware of it. In such a case, the chief editor may be asked to explain his conduct or to send the complainant a letter of apology.

If the complaints officer is of the opinion that the chief editor offered an adequate solution, which the complainant nevertheless refused to accept, then the case is also put in front of the complaints commission to be dealt with in writing and rounded off with a 'decision'. In such a decision, the commission considers that the chief editor may well have breached the code in the beginning, but that this was followed by 'sufficient remedial action'.

The other cases – those involving a breach of the code without an adequate solution being proposed and cases involving fundamental principles – will be adjudicated by the full complaints commission during its sessions, which are held approximately once every six weeks. The commission purely bases itself on written documents, without giving the parties an opportunity to elucidate their viewpoints during a hearing.³⁶ The rulings in these cases are recorded in so-called 'adjudications'. All conclusions reached by the complaints commission, even the 'decisions', are reached unanimously.³⁷ In the 'Rules on conflict of interest' is explained when a commission member needs to absent itself from the proceedings.

In its adjudications, the complaints commission also takes into account previous court decisions, including those from the ECHR. The commission keeps an eye on judicial trends and maintains fairly close contact with members of the judiciary.

34. On this subject, see the report written by the Charter Compliance Panel about 2005 under 15. and the Best Practice Note from the complaints commission (see also note 15) under 'Resolution of complaints and tagging of records': "Current practice on the majority of publications is for published resolutions such as a correction or apology – or a reference to it – to be tagged to the original archived piece. The Commission endorses this approach. Tagged records – whether private warnings or those referring to published remedies – should also be made as widely available as possible within the industry on any shared systems so that errors or intrusions are not repeated by others."

35. For example: a complaint pursuant to article 5 of the Code 'intrusion into grief or shock'.

36. One of the interviewees remarked on the subject that the commission must carry out its work objectively and that in the event of oral hearings, subjective feelings about the parties might intrude.

37. What's more, a draft of all decisions is reviewed by external solicitors, to ensure that the decisions are consistent with legislation in the field of libel and human rights.

The secretariat and complaints commission do not carry out any independent factual research, in a way of approaching third parties for information. However, they can ask the parties to submit further documentary evidence.

There is no formal fast-track procedure, but particular cases can be given priority if the secretariat considers it appropriate.

Nor is there a formal procedure for reviewing cases, but the complaints commission is generally prepared to reopen a case if there is new evidence or if it misinterpreted the earlier evidence. It happens approximately six times a year. The commission does not review cases simply because either party is not satisfied with the decision.

Since 2004, the parties have had recourse to the Charter Commissioner to voice complaints about the manner in which the case was dealt with by the secretariat or the complaints commission. The Charter Commissioner subsequently reports his findings and makes recommendations to the complaints commission. It is explicitly not his task to review the substance of the Commission's decisions. In 2007, the Commissioner received 47 complaints and instructed further action to be taken in six cases.³⁸

In addition, a Charter Compliance Panel was set up in 2004, which the Charter Commissioner also sits on and which audits the complaints commission's work. The task of the Panel is to investigate a number of cases at random each year, in order to verify whether the complaints commission is giving the promised standard of service to complainants. In 2007, the panel made several recommendations, including in relation to publicity given to cases resolved through mediation, complaints from people without a direct interest and communication with complainants.

The activities of the Charter Commissioner and the Charter Compliance Panel are reported on in separate annual reports, which are published on the website of the complaints commission.

Meanwhile, the secretariat is working with a Complainants' Charter, which explains what service the complainants can expect.³⁹ In addition, each complainant receives a feedback form.

Incidentally, the press complaints commission's decisions can become the subject of legal proceedings. A couple of times a year, the commission encounters dissatisfied complainants who want to instigate court proceedings after the complaints commission decided against them.⁴⁰ In the few cases taken to court so far, the judges have consistently refused to adjudicate the actual substance of the decisions, since no technical mistakes had been made in the proceedings and the code had been interpreted correctly.

38. For example, for apologies to be sent about delays incurred during the proceedings.

39. Further to recent recommendations made by the Charter Compliance Panel, two new provisions will shortly be added to the Charter, i.e. about mediation and about the explanation of decisions.

40. Also for those cases the complaints commission uses external solicitors.

8.8. Sanctions

The complaints commission cannot award damages or impose fines, which incidentally was discussed again in the Select Committee's report of July 2007 (see note 17).⁴¹ According to the report, there have been several suggestions (including from the National Union of Journalists) to introduce a system whereby the level of the fine would depend on the severity of the breach of the Code. Another suggestion has been to award the complainant damages, payable by the chief editor, to compensate for the time and effort spent on the complaints procedure. The complaints commission has explicitly rejected those suggestions, also arguing that it has no means to enforce any sanctions, which could undermine its authority if a chief editor refuses to pay.

The Select Committee subsequently concluded:

“We do not find all the PCC's arguments against the introduction of fines convincing. While there is little evidence that the industry would support financial penalties, if that was the price of maintaining a self-regulatory system the likelihood is that they would accept them. However, we accept that giving the PCC powers to impose fines would risk changing the nature of the organisation and might need statutory backing to make the power enforceable. This would be a major step which we would not recommend without a broader examination of the subject.”⁴²

Only when complaints are upheld the medium concerned is asked to publish a text drawn up by the complaints commission. Pursuant to the code, the publication must be carried out in an appropriate manner, which means commensurate with the violation of the code, and under a header referring to the complaints commission.⁴³ Chief editors are not prohibited from commenting on decisions, but they are expected not to comment and they rarely do.⁴⁴

The ‘adjudications’ and summaries of cases that were successfully mediated are published on the website and in the biannual reports. Prior to the publication, the complainant is informed that he can request anonymity.⁴⁵ Furthermore, the medium concerned is mentioned by name, but not the chief editor.

41. The complaints commission is therefore sometimes described as ‘toothless’.

42. A previous recommendation from the Select Committee on introducing a mildly punitive element and a moderately compensating element has also been rejected (see the report of June 2003, recommendation 25 onwards and also note 7).

43. Incidentally, the publication is not always sufficient according to the Charter Compliance Panel ‘to catch the eye’ (see the Panel's annual report for 2006).

44. Noteworthy in this context is the recommendation by the Select Committee in relation to archives and databases: “We believe that annotating press archives as to their accuracy and sensitivity should be automatic in all serious cases, and certainly all upheld adjudications, and furthermore that the publication should be responsible for removing the relevant article from publicly available databases” (see the report of June 2003, recommendation 24. and compare with note 34).

45. The standard assumption is that complainants like to be mentioned by name, which is usually the case. Complainants preferring anonymity have usually complained about an intrusion of their privacy, so they prefer to avoid any further publicity.

8.9. Other activities

As observed above, the chairman and secretariat play an important role in the commission's public relations. Regular information meetings are held for the professional group and open days for the public. In addition, the secretariat's officers also participate in training events for prospective journalists and the commission makes speakers available.

Furthermore, the complaints commission issues guidelines for chief editors, for example in relation to reporting on mental health issues, and leaflets to the public, for example about the protection of children.

When drastic events take place – such as the 2005 bomb attacks in London – the secretariat promptly contacts the chief editors for consultation and information, and the public is given more information about the complaints procedure.

Furthermore, the secretariat can get in touch of its own accord with people – mostly through their representatives – who are at the centre of big, mostly tragic, news stories, and who may feel under siege from the media.

In addition, the secretariat informs chief editors about the concerns of individuals regarding possible nuisance by journalists, in order to prevent formal complaints.⁴⁶

Lastly, the complaints commission occasionally speaks out of its own accord over practical issues, about which no complaints of people with a 'direct interest' are expected, such as financial reporting or witness payments in criminal cases.

The annual report for 2007 was the first one to include a separate chapter on the commission's activities, to make them better known with the public: 'Our range of services – Behind the scenes and pro-activity'.

8.10. Statistics for 2007

In total, the commission received 4,340 (3,325) new complaints, but a large proportion of those, i.e. 1,973 (1,286) were not pursued, for example because the complainant did not respond to the request to provide the secretariat with more information, such as the contested publication.

The number of complaints received has risen by approximately 30% compared with 2006, but this is strongly influenced by a series of complaints about the same publications. For example, the complaints commission received 485 complaints from readers about an article in the *Daily Mirror*, published under the title 'Oh, up yours señor', concerning the Madeleine McCann case, none of which involved a breach of the Code.⁴⁷

46. As yet, the sector considers these 'alerts' valuable, but care must be taken that they are not simply used to protect the exclusivity of interviews, according to one interviewee.

47. See the 2007 annual report, p. 25.

In addition, 950 (990) complaints were set aside by the secretariat, of which:

- 619 (766) on matters outside the responsibility of the complaints commission⁴⁸
- 199 (138) because they were not lodged by someone with a 'direct interest'
- 115 (63) because they related to 'matters of taste and decency'
- 17 (23) because the time limit for lodging a complaint had been exceeded.

Eventually, 1,229 (1,010) cases were formally dealt with. The increase in comparison with 2006 is attributed to a greater visibility of the complaints commission, a growing awareness of what the complaints commission is doing, the ease of submitting a complaint via e-mail and the extended competence of the complaints commission (more on this under 8.4. below).

Of the cases that were formally dealt with, 405 (270) were directly put to the complaints commission for dismissal and 822 (740) cases prompted further investigation by the secretariat, which involves asking the chief editor for a response.

These cases were concluded as follows:

- 483 (418) cases were resolved through mediation
- 560 (450) complaints were dismissed in a 'decision' because the code had not been breached
- 154 (111) complaints were dismissed in a 'decision' because the chief editor offered an adequate solution, which had not been accepted by the complainant
- 16 (21) complaints were considered unfounded in an 'adjudication'
- 16 (10) complaints were considered well-founded in an 'adjudication'.

The average length of time taken to deal with the 822 complaints that were investigated was 41 (42) days.

8.II. Thoughts and comments

Resolving complaints through mediation is generally considered as one of the complaints commission's main objectives. However, the criticism has been made that too many cases are settled through mediation. Several complainants have let it be known that they felt under pressure to accept a settlement, and that any mistakes were simply swept under the carpet.⁴⁹ In that context, the Charter Compliance Panel previously recommended that in the summaries of these cases, which have been published on the complaints commission's website, an explanation would be given for the reason of the complaint.⁵⁰

Since the commission has improved its practice in this respect, the panel recommended on this point in its 2007 annual report that 'even greater care is taken (...) to identify clearly the error', that these cases are listed per medium in the

48. For example, complaints about advertising and broadcasting services.

49. Some critics assert that the commission tends to favour the sector's interests, namely averting claims for damages, over those of the public.

50. See the 2005 report of the Charter Compliance Panel.

biannual report of the commission and that a document is distributed among chief editors ‘highlighting the general lessons to be learned’.⁵¹ Furthermore, the Complainants Charter will be extended to include a provision ‘which commits the Commission to investigating and seeking to resolve complaints (where appropriate) fairly and impartially’.

Despite the great volume of complaints received by the commission, the question remains whether the commission is sufficiently visible to the ordinary public.⁵² In the annual report for 2007, Sir Christopher Meyer, chairman of the Complaints Commission, remarks:

“It always troubles me that there are people, for instance, who feel that their privacy has been violated, but do not know where to go for help. That is why I said last year that there was more the industry could do to raise awareness of the PCC. The response to my challenge has generally been extremely positive. (...) But there is still a way to go before the practice is universal as it should be, both in print and online. So, the school report is a B+: good progress, but could, and should, do more.”

Furthermore, it has been pointed out that not all media know exactly how the system works, either, until they are faced with a practical complaint. The initiatives of the secretariat to explain the work of the commission in meetings with the sector are therefore considered as a good thing.

In relation to the possible chilling effect, it has been noted that chief editors usually view any adjudication by the commission against them as ‘serious punishment’, but that there is no question of the freedom of the press being curbed, at least not at chief editorial level.⁵³

Apart from that, the manner in which the media concerned publish cases dealt with by the complaints commission has attracted a fair amount of criticism. In many cases the publication is not considered sufficiently prominent.

The people who were interviewed nevertheless had a positive general impression of the complaints commission’s work. Most people emphasised that the authority of the commission is strongly associated with the Code – which was compiled by the sector itself. Furthermore, the interviewees were aware of more or less permanent government pressure.⁵⁴

51. Further to these recommendations, the complaints commission has in the meanwhile paid attention in its newsletter of April 2008 to ‘Lessons from resolved complaints’. See in this context also recommendation II. of the report by the Select Committee in July 2007.

52. In 2006, external research indicated that 72% of respondents – after several names of organisations were read out – indicated that they had heard of the complaints commission, of which 17% ‘know (it) very well/a fair amount’. The results of this survey can be found on the complaints commission’s website.

53. Due to the Code being incorporated in employment contracts (see under 8.3. above), employees can be dismissed if they breach one of the Code’s provisions. Arguably, it may have an undesirable impact on the freedom of the press from the perspective of individual journalists.

54. One of the interviewees expressed it as follows: “Largely it comes back to the point that there is a recognition among the press industry that if the PCC fails, there will be government regulation of some description and nobody knows what it will be like. It might be fine, but it might not be. And nobody wants to run that risk.”

In that context, it is also important to note that in its report of July 2007,⁵⁵ the Select Committee voiced perspicuous criticism of the sector as well as of the complaints commission, including the observation:

“If the industry is not prepared to act unless a breach of the law is already shown to have occurred, then the whole justification for self-regulation is seriously undermined.” and “We also find that the press did not observe its own Code of Practice in relation to Ms Middleton. (...) The response of the Press Complaints Commission was less than impressive: it waited for a complaint to be made on Ms Middleton’s behalf but could have intervened sooner by issuing a desist notice to editors.”

To the relief of the sector, the commission then concluded:

“We do not believe that there is a case for a statutory regulator for the press, which would represent a very dangerous interference with the freedom of the press. We continue to believe that statutory regulation of the press is a hallmark of authoritarianism and risks undermining democracy. We recommend that self-regulation should be retained for the press, while recognising that it must be seen to be effective if calls for statutory intervention are to be resisted.”

The danger of further government intervention may well have subsided for now, but drastic changes in the near future are not excluded. Halfway through 2007, then Prime Minister Tony Blair let it be known in what was dubbed his ‘feral beast’ speech that in his opinion, the regulation of the media needs to be reviewed at some point.⁵⁶

The Select Committee may give this further consideration now. In its report of July 2007, the commission in any case commented:

“The system for regulation of the press raises serious and complex issues which may merit a broader investigation than we have been able to undertake here. We believe that this is a subject which, particularly in the light of the recent speech by

Please note: A story does the rounds that several years ago, a chief editor refused to publish a decision, but that it ended up being published after all, after the then chairman of the complaints commission threatened to call the Prime Minister with the message that the chief editor concerned had caused the self-regulation system to fail. 55. The reason for this report were various events which ‘have again led the public and politicians to question the integrity of methods used by reporters and photographers to gather material for publication by the press’ (see also note 17).

56. The speech was named that way because of the following passage: “(...) the fear of missing out means today’s media, more than ever before, hunts in a pack. In these modes it is like a feral beast, just tearing people and reputations to bits. But no-one dares miss out.”

Furthermore, Blair remarked that “the regulatory framework at some point will need revision. The PCC is for traditional newspaper publishing. Ofcom regulate broadcasting, except for the BBC, which largely has its own system of regulation. But under the new European regulations all television streamed over the internet may be covered by Ofcom. As the technology blurs the distinction between papers and television, it becomes increasingly irrational to have different systems of accountability bases on technology that no longer can be differentiated in the old way.”

The full text of the speech is published on the websites of the BBC, Reuters and The Independent newspaper.

Tony Blair about the behaviour of the press and the regulatory framework for the industry, deserves careful examination in the future.”

Although the complaints commission has thus far weathered all criticism,⁵⁷ it will need to remain vigilant, and with it, the entire sector that is keeping the commission in existence.

Tim Bowdler, chairman of PressBoF, described it as follows in the report of PressBoF for 2006-2007:

“The experience of recent months underlined the observation I made in last year’s report that while self-regulation is widely regarded as a successful model enjoying wide support, we should be aware that conditions could change rapidly.”

Furthermore, Sir Christopher Meyer wrote in the annual report for 2007:

“In the nature of things, our work is frequently controversial; and we have our critics. I don’t see that changing anytime soon. Actually, it is good for us: keeping the PCC on its toes and spurring us on in the constant endeavour to improve the service we offer to the public.”

57. See also Shannon (p. 333): “That the Press Complaints Commission had defended itself well was not in doubt. As it entered its tenth year in January 2000, even those who accused it of regulating badly conceded its talent to survive.”

For Distribution to CPs

MOD400001395

9. Germany – Deutscher Presserat

9.1. Background

As early as in the Weimar republic, the idea was conceived to set up a Reich Media Chamber ('Reichspressekammer'), which was expected to underpin the supervision by the Ministry of the Interior. The parties concerned became opposed to the establishment of the chamber on those terms and in 1927, they set up the 'Reichsverband der Deutschen Presse'. During the period of national socialism, between 1933 and 1945, the entire German press was brought into line with the 'Gleichschaltung'¹ and subordinated to the NSDAP. After World War II, the right to freedom of expression and freedom of information were enshrined in law, the freedom of the press was reintroduced and the prohibition on censorship was emphasised.²

In 1952, the Ministry of the Interior requested the introduction of a federal media act, which would provide for the establishment of a public law institution monitoring the media. However, this plan met with great resistance from journalists and publishing associations which – in order to avoid any further bills – set up the German Press Council in 1956, modelled on the British Press Council set up in 1953.

Initially, the only participants were the association of newspaper publishers ('Bundesverband Deutscher Zeitungsverleger') and the German journalists' union ('Deutscher Journalisten-Verband'). In 1957, the association of magazine publishers ('Verband Deutscher Zeitschriftenverleger') also joined the press council. Since 1960, the 'Industriegewerkschaft Medien/Fachgruppe Journalismus' (currently called: 'Deutsche Journalistinnen- und Journalisten-Union')³ also participates in the self-regulation system.

After the idea took hold in the late nineteen sixties to compile a 'Leitfaden für gutes journalistisches Verhalten' ('Handbook for good journalistic conduct') the council established its first 'Pressekodex' in 1973. The council has been checking all journalistic activity it is asked to adjudicate against this code.

From April 1st, 1976 onwards, the press council has received part of its financial funding from the government, which is recorded in the 'Gesetz zur Gewährleis-

1. 'Gleichschaltung' ('levelling'), refers to the German national socialists' endeavour to model all social and cultural organisations on the national socialist ideal. Various means were used to that end, including censorship and influence exerted on the mass media.

2. See Ilka Desgranges and Ella Wassink, 'Der Deutsche Presserat (1956)' in: Achim Baum, Wolfgang R. Langenbacher, Horst Pöttker and Christian Schicha (Hrsg.), *Handbuch Medienselbstkontrolle*, VS Verlag für Sozialwissenschaften/GWV Fachverlage GmbH, Wiesbaden, 2005, pp. 79-88.

3. The journalists section of the 'Vereinte Dienstleistungsgewerkschaft'.

tion der Unabhängigkeit des vom Deutschen Presserat eingesetzten Beschwerde-ausschusses' ('by law, in an act guaranteeing the independence of complaints tribunals held by the German Press Council').

In the period 1982-1985, the press council was forced to suspend its activities, since its requests to publish public decisions were not sufficiently followed up. At the beginning of 1985, the four participating media organisations set up the present-day 'Trägerverein des Deutschen Presserats' (association of sponsors of the German Press Council hereafter referred to as: the association) and compiled new articles of association and guidelines. Furthermore, the majority of all publishers agreed to publish the public decisions of the press council in their own medium.

Since January 1st, 2002, self-regulation in relation to 'Redaktionsdatenschutz' ('editorial data protection') comes under the responsibility of the press council.⁴

The 'Pressegesetze' ('rule books') of the federal states stipulate that periodicals must include the name of the 'verantwortliche Redakteur' ('responsible editor'). Furthermore, those rules also regulate the right of reply ('Gegendarstellung')⁵ and the criminal liability. The German Civil Code ('Bürgerliches Gesetzbuch') contains provisions about the civil liability.

9.2. Organisation and finance

As apparent from the association's articles of association, its purpose is to stand up for freedom of the press in the Federal Republic of Germany and to safeguard the reputation of the German press. The association needs to set up the 'Deutscher Presserat' institute in order to fulfil its objective.⁶

The board of the association ('Mitgliederversammlung', hereafter referred to as: the board) consists of two representatives of each of the four participants, listed under 9.1.⁷ The board can choose a chairman and deputy chairman (together

4. An extensive chronicle can be found on the press council's website.

5. See for example § 11.1. of the 'Pressegesetz für das Land Nordrhein-Westfalen': "Der verantwortliche Redakteur und der Verleger eines periodischen Druckwerks sind verpflichtet, eine Gegendarstellung der Person oder Stelle zum Abdruck zu bringen, die durch eine in dem Druckwerk aufgestellte Tatsachenbehauptung betroffen ist. Die Verpflichtung erstreckt sich auf allen Neben- oder Unterausgaben des Druckwerks, in denen die Tatsachenbehauptung erschienen ist."

("The editor and publisher responsible for a periodical publication are obliged to print an account of an opposing point of view by the person or organization affected by any factual statements in the article. This obligation extends to all related or sub-publications of the printed article that contains this factual statement.")

6. See § 1. of the 'Satzung für den Trägerverein des Deutschen Presserats' e.V. (hereafter referred to as: 'the Satzung').

7. Besides, there are other journalists associations. The participating associations are the biggest ones: the 'Deutscher Journalisten-Verband' (DJV) has over 40,000 members, whereas the 'Deutsche Journalistinnen- und Journalisten-Union' (DJU) has about 23,000 members.

referred to as: 'der Vorstand') for a two-year term. The chairmanship must alternate between a representative of the publishers associations and a representative of the journalists associations. The deputy chairman must always be a representative of the other group. The articles of association stipulate that the board cannot take any decisions which one of the representatives explicitly opposes.

The tasks of the board include setting the budget, issuing regulations for the press council and complaints committees, appointing the secretary and nominating a spokesperson for the press council.⁸

In § 10 of the articles of association is provided that the association will request that publishers give a written undertaking to abide by the Code and the principles of editorial data protection, as well as to comply with any sanctions issued by the press council. This includes complying with the obligation to publish public decisions of the press council in their media. The publication agreement drawn up for the purpose is given to publishers to sign, rather than to the individual chief editors, as happens in the Netherlands.⁹ Approximately 93% of the publishers has actually signed the agreement.

The work of the press council has two sources of finance: firstly, the participants and secondly, the government, which provides funding specifically intended for the work performed by the complaints committees.

In order to guarantee the independence of the press council, the parties explicitly agreed that government funding will not exceed 49% of the total revenue.¹⁰

The budget for 2007 amounted to about € 570,000. Of that, the publishing associations contributed approximately € 152,500 each, the journalists associations almost € 44,000 each and the government € 178,000.

In addition, the organisation has been receiving contributions since 2002 (in 2007 about € 40,000) from unassociated publishers¹¹ specifically for the purpose of self-regulation in relation to editorial data protection, for which a separate complaints commission was set up.

9.3. Task description

In § 9 of the articles of association, the extensive duties of the press council are listed, namely:¹²

8. See § 5. of 'the Satzung': 'Aufgaben der Mitgliederversammlung'.

9. The template of this undertaking (called 'Selbstverpflichtungserklärung') is published on the website of the press council.

10. This is not stipulated in the act itself, but in minutes of discussions held between the parties before the act was introduced.

11. Such as the 'Bundesverband Deutscher Anzeigenblätter' e.V. (see also below under 9.4.). The newspaper publishers are said to oppose this association joining the press council, for fear of competition, according to one of the interviewees.

12. One of the interviewees observed that this creates a conflict of interest: a 'strong tendency of general morals' in the code versus a 'strong tendency of professionalism and press freedom' in the council's decisions. See in

- to pinpoint immoral practices in the press and work on dispelling them;
- to evaluate complaints about individual newspapers and magazines or press bureaus;
- to issue recommendations and guidelines for journalistic practice (which also includes compiling the code);
- to stand up for the unrestricted access to news sources;
- to act against any developments that may endanger the public's freedom of information and freedom of opinion;
- to organise self-regulation concerning editorial data protection.

The rule book of the press council (the 'Geschäftsordnung') provides that it will meet every six months in order to perform those tasks. Furthermore, the council must also report publicly about its activities.

As mentioned before, the press council evaluates the complaints submitted to it based on the 'Pressekodex', which contains the 'Publizistische Grundsätze', the ground rules for publishers. In the preamble of the code, the relationship between freedom of the press and professional ethics is explained as follows:

“Die im Grundgesetz der Bundesrepublik verbürgte Pressefreiheit schließt die Unabhängigkeit und Freiheit der Information, der Meinungsäußerung und der Kritik ein. Verleger, Herausgeber und Journalisten müssen sich bei ihrer Arbeit der Verantwortung gegenüber der Öffentlichkeit und ihrer Verpflichtung für das Ansehen der Presse bewusst sein. Sie nehmen ihre publizistische Aufgabe fair, nach bestem Wissen und Gewissen, unbeeinflusst von persönlichen Interessen und sachfremden Beweggründen wahr.

Die publizistischen Grundsätze konkretisieren die Berufsethik der Presse. Sie umfasst die Pflicht, im Rahmen der Verfassung und der verfassungskonformen Gesetze das Ansehen der Presse zu wahren und für die Freiheit der Presse einzustehen.”

(“The freedom of the press, as laid down in the Constitution of the German Federal Republic, includes the independence and freedom of information and speech. In carrying out their duties, publishers, editors and journalists have to be aware of their responsibility towards the public and their obligation to protect the reputation of the press. They must carry out their publishing tasks in a fair manner, to the best of their knowledge and conscience and not be motivated by personal interest or reward.

this context also Achim Baum, 'Lernprozess und Interessenkonflikt – Die freiwillige Selbstkontrolle der Presse dient der ganzen Gesellschaft', in: *Handbuch Medienselbstkontrolle*, pp. 112-124: “Die Mitglieder des Presserats müssen zu jedem Zeitpunkt deutlich machen, dass sie in einem allgemeinen gesellschaftlichen Interesse handeln, um die Privilegien der Presse in einer freien Gesellschaft insgesamt rechtfertigen und damit aufrechterhalten zu können – ein Spagat, der zusätzlich dadurch erschwert wurde, dass die selbst gesetzten Regeln der freiwilligen Selbstkontrolle den Verdacht nähren, einem elitären Kreis der gesellschaftlich unkontrollierten Kontrolleure anzugehören.”

(“At all times, the members of the press council have to indicate clearly that they are acting in the general public interest and at the same time justify and maintain the press privileges in a free society – a balancing act that is additionally complicated by the fact that the self-imposed rules of voluntary self-regulation feed the suspicion of belonging to an elitist circle of enforcers, unchallenged by the public.”)

These conditions of publication should form the concrete professional ethics of the press. They include the duty to protect the reputation of the press, in accordance with the constitution and constitutional law and to vouch for its freedom.”)

The code has 15 paragraphs, covering the following subjects:

- truthful reporting and respect for human dignity (‘Wahrhaftigkeit und Achtung der Menschenwürde’)
- meticulousness (‘Sorgfalt’)
- correction (‘Richtigstellung’)
- unauthorised research methods (‘Grenzen der Recherche’)
- professional confidentiality (‘Berufsgeheimnis’)
- separation of activities (‘Trennung von Tätigkeiten’)
- separation between advertising and editing (‘Trennung von Werbung und Redaktion’)
- privacy (‘Persönlichkeitsrechte’)
- protection of reputation (‘Schutz der Ehre’)
- religion, world view and decency (‘Religion, Weltanschauung, Sitte’)
- scandal journalism and the protection of children (‘Sensationsberichterstattung, Jugendschutz’)
- discrimination (‘Diskriminierungen’)¹³
- presumption of innocence (‘Unschuldsvermutung’)
- medical reporting (‘Medizin-Berichterstattung’)
- bribery (‘Vergünstigungen’).

Lastly, § 16 of the Code provides that public decisions of the press council must be published, particularly in the medium concerned.

In addition to the code – which incidentally was last reviewed at the end of 2006¹⁴ – most paragraphs contain a number of ‘Richtlinien für die publizistische Arbeit nach den Empfehlungen des Deutschen Presserats’, explaining how the code can be used in practice.¹⁵

13. For a critical reflection of the code and the press council’s directive on the subject, see: Horst Pöttker, ‘Überzeugend für Journalisten? – Der Pressekodex soll vor Diskriminierung schützen’, ‘Convincing for Journalists? – The Press Code should protect against discrimination’, *Journalistik Journal* 2/2007, pp. 20–21. Pöttker observes: “Der Presserat stellt sich die Verteidigung der Pressefreiheit als wichtigste Aufgabe. Kann aber mit einem fixierten Publikationsverbot wie der Richtlinie 12.1 der Pressefreiheit gedient sein? Muss nicht befürchtet werden, dass solche Verbote auf Dauer auch in anderen Bereichen für legitim gehalten werden?”

(“The press council sees the protection of press freedom as its most important task. However, can a fixed publication ban, as stipulated in guideline 12.1, be helpful? Is there no danger that such restrictions could be seen as legitimate in other areas later on?”)

14. The history of the code is further explained on the website of the press council. According to critics, the Code has not yet been developed sufficiently. One of the interviewees remarked in this context: “Die Ethik ist immer ein paar Jahre hinter der Entwicklung der Gesellschaft zurück.”

(“Rules of ethics usually run behind the development of society by several years.”)

15. Originally, the guidelines of the council were used as a starting point for dealing with complaints. The guidelines generally focused on actual cases rather than being formulated in general terms. Since various types of complaints recurred over time, it was decided to rephrase the guidelines in general terms and to incorporate them in a code.

For an explanation of the code and for guidelines illustrated by examples, see also: Institut zur Förderung publizistischen Nachwuchses Deutscher Presserat (Hg.), *Ethik im Redaktionsalltag*, UVK Verlagsgesellschaft mbH, Konstanz, 2005.

9.4. Competence and admissibility

Complaints about free ‘Anzeigenblätter’¹⁶ fall outside the press council’s competence, unless they concern editorial data protection. Furthermore, the broadcasting services are regulated separately,¹⁷ which has been a controversial issue both within and outside the profession.¹⁸

To date, complaints can only be made about material published on the Internet that is identical to publications that have appeared in print. Recently, a committee has been set up to draft proposals about extending the competency of the press council in this area.¹⁹

Due to the responsibility of the association and press council to safeguard the reputation of the press, the right to complain is not restricted to anyone with a ‘direct interest’, but extended to everyone. First of all, this has a clear-cut impact on the number of complaints: only about 25% of the total number originates from people with a ‘direct interest’.²⁰

In that context, the press council has recently tackled the question of whether complaints coming from BILDblog.de – which set out to shadow the glossy magazine ‘Bild’ in order to catch it out on any misdemeanours – must be dismissed because of an abuse of the right to complain.²¹

The press council answered that question as follows:

16. They are comparable to the Dutch free door-to-door papers.

17. From way back, the ‘Bundesländer’ have been autonomously in charge of their own cultural affairs, including broadcasting services. Each federal state has its own media sector and its own supervisory authority for the media. The ‘Rundfunkrechtliche Grundlagen’ (‘statutory broadcasting principles’) published by the ‘Landesanstalt für Medien Nordrhein-Westfalen’ (LfM) contain 15 sets of regulations, including the ‘Landesmediengesetz’ (‘regional broadcasting law’ Nordrhein-Westfalen), the ‘Rundfunkstaatsvertrag’ (jointly entered into by all federal states) and ‘Gemeinsame Richtlinien der Landesmedienanstalten’. The complaints procedure is regulated by § 42 of the ‘Landesmediengesetz’ whereas § 44 of the act contains provisions about the publication of a right of reply (‘Gegendarstellung’). Moreover, the Landesanstalt’s scope of responsibility only covers private broadcasting services. The public WDR has its own media authority: the ‘WDR-Rundfunkrat’.

18. See Ingo Fischer, ‘Eher unbekannt als anerkannt’, *Journalistik Journal* 1/2008, pp. 36-37: “93 Prozent der Probanden sprachen sich für ein gemeinsames Ethikgremium für alle Journalisten aus – dies würde de facto eine Ausweitung des Presserats auf alle Medien bedeuten. Ein solcher Schritt scheint möglich oder gar notwendig zu sein, zumal 94 Prozent der Befragten davon überzeugt sind, dass sich alle Journalisten an denselben standethischen Grundsätzen orientieren sollten – ganz gleich, für welches Medium oder Ressort sie arbeiten.” (“93 percent of people asked declared themselves in favour of a common Ethics Committee for all journalists – in fact, this would mean an expansion of the press council, to include all media. Such a step appears to be possible, or even necessary, as 94 percent are convinced that all journalists should adhere to the same ethical principles – no matter which media area they are active in.”)

19. See the press releases of the press council issued on March 12th, 2008 ‘Presserat bereitet sich auf Selbstkontrolle für Online-Presse vor – Kodex soll künftig auch dort gelten’ (‘The press council is preparing itself for self-regulation in the online press – a code will be in place in this area shortly’) and of November 6th, 2008 ‘Trennungsgebot: Presserat gibt Entscheidungshilfe für Redaktionen – Plenum nimmt Online in Kodex auf’, (‘Separate Regulation: Press council provides editorial guidelines – plenary meeting includes Online in the code’) published on the council’s website.

20. In 2007: 188 of 735.

21. See § 2.1. of the complaint rule book (the ‘Beschwerdeordnung’): “Anonyme oder offensichtlich missbräuchliche Beschwerden werden nicht behandelt.”

(“Anonymous complaints, or the obvious abuse of the right to complain will not be taken in hand.”)

“Mit den Beschwerden wurden Verstöße gegen den Pressekodex geltend gemacht. Nach Auffassung des Plenums handelt es sich in allen Fällen um medienethische Anliegen, mit denen sich der Presserat nach eigener Aufgabenstellung zu befassen hat. (...) Der Presserat wird auch in Zukunft darauf achten, dass das Jedermann-Beschwerderecht nicht durch Missbrauch gefährdet wird. Er behält sich vor, bei erkennbarem Missbrauch Beschwerden nicht anzunehmen.

Ein Missbrauch kann vorliegen, wenn Beschwerden etwa im Rahmen organisierter Kampagnen gegen einzelne Medien erhoben werden.”²²

(“The complaint asserted a violation of the press code of ethics. The plenary meeting is of the opinion that, in all cases, it represents media-ethical issues that the press council, in accordance with the nature of its responsibilities, needs to address. The press council will continue in the future to ensure that the common right to complain is not jeopardized by misuse. It reserves the right, in cases of recognizable misuse, not to accept complaints.

A case of misuse can occur when, for instance, complaints are raised in the context of organised campaigns against individual media.”)

Furthermore, the all-encompassing right of complaint affects the subject of the complaints: a significant proportion of the complaints are about the violation of standards concerning the mandatory separation between advertising and editorial content.²³ Moreover, complaints can be made about publications as well as about journalists’ methods, but the latter is rare.

9.5. Secretariat

The leased office of the press council is situated in the centre of Bonn.²⁴ In order to emphasise the council’s independence, a conscious decision was made not to base the secretariat in a building belonging to a media organisation. For its hearings, the council uses the meeting rooms of the University of Bonn.

Furthermore, § 3.4. of the rule book states: “Erkennt der Beschwerdeausschuss Anhaltspunkte für einen offensichtlichen Missbrauch des Beschwerderechts, gibt er die Beschwerde zur abschließenden Entscheidung über die Missbräuchlichkeit an das Plenum des Deutschen Presserats ab.”

(“Should the complaints commission find an obvious attempt to misuse the right to complain, it will be referred to the plenary meeting of the German Press Council, for a final decision on its misuse.”)

22. See the press council’s press release of March 12th, 2008 ‘Beschwerderecht nicht missbraucht – Vorliegende Bild-Blog-Beschwerden können behandelt werden’ (‘Right to complain not abused – the Image-Blog complaint can be dealt with’).

Please note: The press council also receives a large number of complaints each year from the University of Mainz, where a professor and his students are lodging complaints as part of a research project (33 in 2007, 118 in 2006).

23. After all, a complaint from a person with a ‘direct interest’ in this subject is not easy to conceive.

See also Rolf Karepin, ‘Gefährliche Grauzone’, *Journalist* 11/2007, pp. 50-53: “Redaktionen sollen keine Reklame machen. So sieht es der publizistische Ehrenkodex vor. Doch in der Praxis wird immer wieder gegen das Trennungsgebot verstoßen. Mit steigender Tendenz.”

(“Editors should not practise advertising. This is stipulated in the publishing code of integrity. Yet in practice the separation rule is abused time and time again.”)

24. Consisting of six offices, a conference room, a kitchenette, two toilets and a storage area (approx. 180 m²). Meanwhile – mid 2009 – the secretariat has moved to Berlin.

The fulltime staff of the secretariat consists of the secretary ('Geschäftsführer'), a PR officer, an officer for the complaints committees and two secretarial assistants. In addition, two officers are employed part-time to deal with the self-regulation of the editorial data protection (total FTEs = 6).

Furthermore, regular use is made of students, an additional worker is coming in once a week to deal with the accounts and the ICT work is outsourced.

9.6. Composition of the press council

The full press council (the 'Plenum') contains seven delegates from each participant in the association. The participants appoint their own delegates using a variety of procedures. For example, all members of the 'Deutsche Journalistinnen- und Journalisten-Union' can apply for the position and the council members are subsequently elected by the general meeting. With the publishing associations, candidates are approached with a request to join the council.²⁵ Incidentally, a member of the press council can also sit on the board.²⁶ The term of membership is two years and can be extended. There is no maximum term.²⁷

The articles of association explicitly stipulate that delegates must be independent and not bound by instructions from the organisation they represent. Membership of the press council is unsalaried ('ehrenamtlich'). Only the chairmen and journalist members receive an allowance for travel expenses and accommodation.²⁸

At the first meeting of the calendar year, the press council elects a spokesperson and deputy spokesperson from among its own ranks, based on nominations by the board, for a two-year period. The position of spokesperson must alternate between representatives of the publishers and of the journalists respectively. The deputy spokesperson must always represent the other group. The spokesperson or his deputy chairs the press council meetings and represents the council in public.

The full council elects members from its own ranks to two (ordinary)²⁹ complaints committees, each consisting of eight members. Half of the members in each committee must be active in the publishing sector, and the other half in journalism. Furthermore, two deputies must be appointed to each committee. Appointments

25. One of the interviewees remarked that the work for the press council is quite time-consuming, which makes the position of council member not very popular and the selection process fairly straightforward.

26. There is no conflict of interest or there are no problems with independence, because the members of the press council are not appointed by the (board of the) association, according to one of the interviewees.

27. Some are of the opinion that it results in too low a natural turnover among the council members. One of the members has already been associated with the council for over twenty years. Others, on the other hand, consider the long experience useful. Moreover, the fact that some council members are retired and no longer active in the sector also attracts some criticism, according to one interviewee.

28. Since the council members travel from various regions of the Federal Republic, some of them stay in Bonn overnight before or after the meetings in view of the travel distance. Besides, one of the interviewees considered it a good idea that the council members do not receive attendance fees, since council members must hence be carrying out the position for the right reasons (out of passion).

29. Furthermore, as stated above, a separate complaints committee deals with cases relating to editorial data protection. This committee also represents the publishers association of the free papers ('Anzeigenblätter').

are made for a two-year term with the possibility of reappointment; there is no maximum term.

The members of the complaints committees then elect a chairman and deputy chairman from among its ranks for a period of two years. These positions are equally expected to alternate between representatives of publishers and journalists.

The complaints committees meet four times a year. During those sessions, which virtually last for an entire day, the committees deal with forty to fifty cases.

9.7. Complaints procedure

Complaints must be submitted in writing; they cannot be submitted by e-mail. However, it is possible to download an online complaints form which must then be sent by post. Complaints are addressed at the chief editor rather than against individual journalists.

The notice of complaint must be accompanied by a copy of the contested publication. The time limit for lodging a complaint is one year.³⁰ The rulebook for complaints explicitly states that anonymous complaints or complaints abusing the right to complain will not be dealt with.³¹

The complaint procedure is free of charge. Complainants are not obliged to waive their right to initiate legal proceedings. The press council can nevertheless halt the complaints procedure if there are practical indications that a decision of the council may influence the outcome of a mediation or court proceedings.³²

If the chairman of one of the complaints committees is of the opinion, in consultation with the secretary, that the complainant is inadmissible or the complaint unfounded, the case is dismissed without defence or deliberation during the pre-selection process. At the complainant's request, a decision may be made not to inform the defendant of the case.

Furthermore, the chairman can deal with simple cases in a 'Vorsitzendenentscheidung' (using his discretion). In that event, the chief editor is actually asked to respond to the complaint within three weeks. The chairman can dismiss complaints as well as uphold them and issue advisory notices ('Hinweis').

Both at the preselection ('Vorprüfung') stage and the chairman's selection ('Vorsitzendenentscheidung') stage, the parties can object within a period of two weeks.

30. This comparatively long term to complain follows from the council's duty to safeguard the reputation of the press.

31. See also above under 9.4.

32. However, this rarely ever happens. For example, a request from a medium to discontinue the proceedings at the press council, because the press council must not act like a gateway to the court, was turned down. Furthermore, the decisions of the council relate to ethical standards rather than legal norms.

It is then up to one of the complaints committees to evaluate whether the case will be taken to the next stage.³³

In 2006, the possibility of mediation ('Vermittlung') was enshrined in the rulebook for complaints, in order to improve the work of the press council. It is up to the press council to determine whether a case lends itself to mediation.³⁴ Moreover, the council does not play an active role in the mediation procedure.³⁵ The defendant is made aware of the option of investigating for itself within a period of three weeks whether the code was violated and whether the violation has been corrected or whether corrective action will still be taken. Corrective action is deemed sufficient if it involves a measure to preserve the professional ethics and to restore the reputation of the press. It must be done in a new publication.

When the deadline has passed, the chairman of either complaints committee discusses with the manager of the secretariat whether the defendant has corrected the breach of the code. If not, the press council takes up the case for further action. For the time being, fairly little use is made of the mediation option.³⁶

In principle, all other cases are dealt with by the complaints committees. At the request of at least two members of a complaints committee, a complaint can be submitted to the full council for appraisal. Furthermore, all cases where a matter of principle is at stake are dealt with at a full hearing, as well as all cases whereby one complaints committee opts to take a different stance on an ethical question from the other complaints committee.

According to the complaints rulebook, oral hearings are theoretically possible, but the last time that the parties were invited to a hearing was in 2000.³⁷ Witnesses can be called, but it rarely happens. The press council does perform factual research, for example by enquiring with the police or by inviting statements from third parties.

The complaints committees are not bound by the aspects of the case that are presented by the parties in their documents. If a complaint is withdrawn, the complaints committee may still decide to pursue the case.

33. According to one interviewee, it is so simple to object that objections are made in an increasing number of cases. For that reason, these simplified procedures may end up costing more time than they save.

34. In that context, it has been pointed out that the press council's main task is to safeguard professional ethics rather than to settle disputes between parties, either through mediation or otherwise. Recently, a medium's request for mediation was dismissed, because it was suspected that the medium was only trying to delay the proceedings.

35. More money is needed for the council to play a more active role, according to an interviewee.

36. It has been used ten times over the last eighteen months. See about this also the press council's year book ('Jahrbuch') for 2008: 'Blick hinter die Kulissen – Eine Vermittlung und ihre Wirkung' ('A look behind the scenes – Mediation at work').

37. In this respect, it is pointed out that Germany's territory is much larger than that of the Netherlands and Belgium, where oral hearings take place (so the parties would need to travel much further) and the German press council deals with a significantly higher number of complaints.

The parties must be informed of the aspects the press council will consider before reaching its decision and be given an opportunity to explain their viewpoint in that respect.

The decisions are usually based on the notice of complaint and the statement of defence. Remarkably, the statement of defence is not sent to the complainant for information, but (only) included in the decision.³⁸

The deliberations are not held in public. The complaints committees are allowed to come to a decision when a quorum of five members is present. Decisions are made by a simple majority.³⁹ Members can ask that their contrary viewpoint be recorded, but no such request has been made since 1992. Chapter 9 of the complaints rulebook contains provisions concerning council members being challenged or excused from proceedings due to a conflict of interests.

Although the press council will consider national court rulings and rulings made by the European Court for Human Rights, it does not automatically follow that the council will always go along with them. In a press release of September 8th, 2004, the press council explicitly acted against the ECHR ruling in the ‘Caroline-Entscheidung’ case,⁴⁰ calling up the government to use this decision against the ruling because it was considered damaging for the freedom of the press.

If a complaint is well-founded, it is in principle followed by an advisory notice (‘Hinweis’), notice of disapproval (‘Missbilligung’) or a public or private reprimand

38. In a survey held among complainants, ‘Der Deutsche Presserat und seine Beschwerdeführer’ (March 2000), Marina Antonioni established that the working method of the press council can be frustrating for the complainants. Antonioni observes: “Es kann darum nur im Sinne des Presserats sein, die Beschwerdeführer stärker in das Verfahren einzubeziehen. Denn solange die Beschwerdeführer keinen Einblick haben, wird er sich den Vorwurf gefallen lassen müssen, bei seiner Arbeit auf die Empfindlichkeiten der Presse Rücksicht zu nehmen. Selbstkontrolle ist eben nicht bloß eine brancheinterne Angelegenheit, sondern der Presserat muß, um als ‘moralisches Gewissen’ der Presse glaubwürdig zu sein, auch die Position des Lesers berücksichtigen. Wünschenswert wäre darum – sozusagen als Mindestanforderung – daß die Stellungnahmen der Zeitungen und Zeitschriften auch den Beschwerdeführern zugehen, damit sie besser nachvollziehen können, wie eine Entscheidung zustande kommt. Auch von der in der Beschwerdeordnung vorgesehenen Möglichkeit, Beteiligte zu den Sitzungen des Ausschusses einzuladen bzw. ihnen die Teilnahme – falls gewünscht – zu ermöglichen, sollte im Sinne einer größeren Transparenz des Verfahrens häufiger Gebrauch gemacht werden.” (“For that reason, it would be sensible for the press council to more fully involve the complainants in the process. Because as long as the complainants are not involved, it will, in carrying out its duties, have to tolerate the accusation of taking into account the sensitivities of the press. After all, self-regulation is not only an internal matter, but the press council should, in order to be the credible ‘moral conscience’ of the press, also take the position of the reader into account. It would, therefore, be desirable – as a minimum effort, as it were – if the positions of the newspapers and magazines in the dispute were to also be made available to the complainants, to enable them to ascertain how a decision is arrived at. It would also be in the interest of transparency, if the possibility to invite the party to be present during the sessions of the Appeals Tribunal, or even – if this were desirable – to participate, would be more often utilized, as provided for in the complaints procedures.”)

39. The full council can only make decisions when a quorum of 17 members is present. Decisions are made with a two-thirds majority, but with a quorum of 14 votes present.

40. ECHR June 24th, 2004, Caroline von Hannover vs. Germany, also published in *Mediaforum* 2004-7/8 annotated by Prof. G.A.I. Schuijt LL.M.

('Rüge'), depending on the gravity of the journalistic breach.⁴¹ A reprimand is made public unless it would be against the complainant's interest. The council may desist from imposing a measure if the medium concerned has taken remedial action in the meanwhile, for example by publishing a reader's letter or by publishing an editorial correction.

Cases can be reviewed by the very body (the complaints committee concerned or the plenary council) that made the initial decision. A request for a review must be made immediately and must involve new facts that may provide grounds for a substantially different decision. Reviews may also be prompted in the event the parties were not informed in time of crucial viewpoints of the council, or if the council did not take them into account. The mere dissatisfaction of either party about the decision is not enough reason to spark a review.

Incidentally, the press council was faced with a civil procedure in 2007, instigated by a medium which the council had publicly reprimanded and that claimed it had been damaged as a result.

Noteworthy is that the Court ('Landgericht') of Frankfurt am Main initially judged that the council was not allowed to distribute the public reprimand any further. The Court considered "dass es sich bei der beanstandeten Äußerung des Beklagten nicht nur um eine bloße Meinungsäußerung, sondern um eine unwahre Tatsachenbehauptung handele." ("that in this case the defendant did not only make his accusatory comments as merely a expression of opinion, but as an untrue statement of facts.")

The viewpoint of the press council that press-ethical decisions cannot be held legally liable and as 'vereinsinterne' decisions cannot be verified by ordinary courts, was rejected by the 'Landgericht'.⁴²

The press council evidently appealed against the decision. In its ruling of June 30th, 2008, the Oberlandesgericht Frankfurt am Main decided in favour of the council, concluding: "Die Presseinformation des Beklagten ist von der Meinungsäußerungsfreiheit gemäß Art. 5 Abs. 1 GG gedeckt. Unwahre Tatsachenbehauptungen oder die Grenze zur Schmähkritik überschreitende Äußerungen enthält sie nicht."⁴³ ("The Defendant's (the press council) press information is covered by the Freedom of Expression Act, art. 5 para 1 GG. The information does not contain untrue factual statements, nor comments that fall outside the limits of invective criticism.")

41. The system is subject to a great deal of criticism. The manner in which the press council or complaints committees come to a particular measure is lacking transparency, critics claim. The decisions are said to be inconsistent.

42. See also the discussion of this judgement by Rechtsanwalt Dr. Harald Wiggenhorn, 'Eine Presseratsrüge als unwahre Tatsachenbehauptung?', *AfP* 05-2007, pp. 416-423.

43. See also the press release of the press council on July 9th, 2008, 'Arbeit des Presserats erneut gerichtlich bestätigt'. ('Renewed court verdict endorses activities of the press council'.)

9.8. Sanctions

The press council cannot award damages or impose fines.⁴⁴ Any contention to the (possible lack of) compensation for complainants is rebutted, by pointing out that the press council's main task is to safeguard the reputation of the press and the associated right to complain, which renders any damages for complainants unnecessary.

Only in the event of a public reprimand, issued about 25 to 30 times a year, the medium concerned is obliged to publish the decision. This is remarkable, since journalistic breaches have also been committed in the case of a 'Hinweis' ('advisory notice') or 'Missbilligung' ('notice of disapproval'). It is hard to understand why these cases do not need to be disclosed to readers.⁴⁵

Besides, the press council cannot prescribe the volume of the publication or on which page it must be published. Nor does the press council expect the media to offer apologies or any explanation. The press council is not opposed to the decision being annotated. It is considered as an act benefiting transparency, which informs readers that different opinions exist.⁴⁶ Despite the publication agreement with the publishers, it happens fairly regularly that decisions do not get published.

Usually, the press council only circulates a summary of reprimands in a press release. Exceptions are made for other decisions when matters of principle are involved.

Press releases are also preferably sent by fax, since it is noticed more than an e-mail message. Furthermore, all decisions are published on a CD-ROM added to the year book. Noteworthy decisions are included in the year book itself.

These publications do not include the names of the complainants. The press releases only name any media that were reprimanded, without naming the chief editors. Any other personal details in press releases for reprimands that are not publicly disclosed are made anonymous.

In the publications in the year book and on the CD-ROM, the names of the media are not mentioned, but it is only indicated what type of medium (e.g. 'a national newspaper') the decision relates to. The year book does contain an overview of the media that were given a reprimand in the last ten years.

44. For that reason, the press council is sometimes viewed as a 'paper tiger'.

45. Conspicuously, in *Ethik im Redaktionsalltag* (see also note 15), there is an explicit referral to mistakes even in the case of an advisory notice, i.e. the least severe measure. In the context of the obligation to publish, the observation is made: "Die Leser sollen von einem Fehlverhalten der Redaktion erfahren." ("The reader should be informed of editorial misconduct.") Why this does not seem to apply for the advisory notice or notice of disapproval is not explained. This does not alter the fact that media sometimes actually publish an advisory notice or notice of disapproval, even when it is not obligatory.

46. Further to a publication in *BILD* on November 29th, 2007 under the header 'Irre! Presserat rügt BILD wegen dieses Brandstifters' ('It's mad! Press council reprimands BILD about this arsonist') the press council issued a press release on the next day, giving the entire decision: 'Presserat dokumentiert Entscheidung zum Fall al-Masri – Leser sollen sich ein korrektes Bild von der öffentlichen Rüge gegen BILD machen können'. ('Press council records the decision in the case of al-Masri – Readers should be enabled to form a correct view on the BILD reprimand'.)

Furthermore, the secretariat distributes a newsletter by e-mail with interesting decisions to journalists and to others with professional dealings with the media. This newsletter does not include the names of the media.

Lastly, participants are obliged, pursuant to § 10.3. of the articles of association, to publish reprimands in their internal publications.

9.9. Other activities

Very occasionally, the press council makes public statements through press releases or interviews about general journalism-related issues.⁴⁷ It has been explicitly provided that the spokesperson or his deputy and the chairmen of the complaints committees are not allowed to pre-empt decisions of the press council when commenting in public about actual questions on press ethics. The other members are not allowed to express an opinion in public about ongoing affairs.

The press council could make statements of its own accord about actual publications, but it rarely makes use of that option.

In view of the task of the press council to stand up for the freedom of the press, the council gets involved with forthcoming bills on the subject and conducts negotiations with the government about them. Other than that, the secretariat organises training events for journalists, participates in panel discussions when invited, and looks after publications on the topic of ethics in journalism.

9.10. Statistics for 2007

In 2007, the press council received 735 (954)⁴⁸ complaints. Of those, 120 (137) were not taken up, for example, because the complainant was anonymous, because the complaint did not relate to the code or because the publication was over one year old. A further 29 (27) cases were outside the council's competence because they related to broadcasting services and advertising, and 33 (29) complaints related to free papers ('Anzeigenblätter').

Eventually, 552 (761) complaints could be examined on the basis of the code, 125 (176) of which were still being dealt with at the end of 2007.

Combining those figures with the carry-over of 117 cases from 2006, a total of 544 (634) cases were concluded as follows:

47. Examples given related to the paparazzi when Princess Di died and to clandestine advertising.

48. In the 2008 yearbook, the decrease in the number of complaints is attributed to 'Fehlende Massenbeschwerdeführer' ('Reduction in number of mass complaints'): in 2007, no complaints were received for the first time in years from Sinti and Roma gypsies (compared to 50 in 2006), no mass protest was held (whereas 90 complaints were received in 2006 about the Danish Mohammed cartoons) and the University of Mainz submitted far fewer complaints (see more on this under note 22).

• withdrawn		13	(7)		
• resolved through mediation		7	(–)		
• dismissed as blatantly unfounded in a Preselection		182	(221)		
• concluded in a ‘Vorsitzendenentscheidung’		12	(20)		
of which were unfounded	7	(12)			
of which were founded:					
- without a measure	2	(4)			
- with an advisory notice (‘Hinweis’)	3	(4)			
• adjudicated by the complaints committees		328	(371) ⁴⁹		
decision reserved	2	(1)			
unfounded	135	(135)			
founded					
- no measure taken	16	(8)			
- advisory notice issued (‘Hinweis’)	48	(65)			
- notice of disapproval issued (‘Missbilligung’)	74	(64)			
- non-public reprimand issued (‘Rüge’)	4	(6)			
- public reprimand issued (‘öffentliche Rüge’)	31	(36)			

Of the public reprimands, 21 (26) were published in the medium concerned.

Lastly, 2 (15) complaints related to readers’ letters. These cases were not taken up by the complaints committees, because the press council only takes a general point of view on them, referring to guideline 2.6. of the code: “Den Lesern sollte durch Abdruck von Leserbriefen, sofern sie nach Form und Inhalt geeignet sind, die Möglichkeit eingeräumt werden, Meinungen zu äußern und damit an der Meinungsbildung teilzunehmen.” (“Through the printing of readers’ letters, as long as these are suitable in form and content, the readers should be given the possibility to express opinions and, in that way, to participate in opinion-forming debate.”)

15 (11) cases were dealt with by the complaints committees after being dismissed during the preselection (‘Vorprüfung’) and then objected by the complainant. In one case, it led to an advisory notice (‘Hinweis’), in another case to a notice of disapproval and in the other 13 (10)⁵⁰ cases, the dismissals of the complaints were upheld by the complaints chambers. Furthermore, 1 (0) objection was made against a complaint being dismissed by a chairman’s decision (‘Vorsitzendenentscheidung’). That decision was upheld by the complaints committee.

The average duration for dealing with complaints is four months.⁵¹

49. The breakdown description of adjudications adds up to a smaller number in comparison with the complaints adjudicated, because several cases were dealt with together and were subject to a general decision.

50. In 2006, one case was halted because the facts could not be established.

51. Critics are of the opinion that the procedure takes too long in general (sometimes even one year). On the other hand, court cases take even longer. Furthermore, shorter processing times would require more funding and manpower, possibly even an additional complaints committee, according to an interviewee.

9.II. Thoughts and comments

The press council is the target for a fair amount of criticism. One of its main endemic weaknesses is that the council only contains members from its own sector.⁵² It has contemplated attracting media experts (e.g. media lecturers) as council members, but no consensus exists as yet on that score within the organisation.

This is not helped by the fact that the entire complaints procedure is taking place 'behind closed doors', which makes the work of the council insufficiently transparent. The council is regularly urged to making the hearings publicly accessible when general principles are at stake, while the facts and viewpoints of the parties are discussed.⁵³ So far, it has not happened yet.⁵⁴

Furthermore, the press council's profile is not visible enough to society in general⁵⁵ as to the professional group. Particularly young journalists are said to be insufficiently aware of the council's work. In that context, it is also important to note that approximately one third of the public reprimands is not published by the medium concerned, despite the problems in the past and the current obligation to publish. Not only do the decisions barely have any chilling effect, but it is also questionable whether the code and the decisions of the council contribute anything to the professional ethics. In a recent article under the heading 'Eher unbekannt als anerkannt'⁵⁶ it was reported as follows:

“Die Studie zeigt, dass der Presserat sein Ziel deutlich verfehlt hat, seine Publizistischen Grundsätze zum ‘Leitbild’ aller Journalisten zu machen. Wenn seine Sprechpraxis kaum wahrgenommen wird, kann sie mitnichten eine ‘unumstößliche Grenze’ für die tägliche journalistische Arbeit darstellen.”

(“The study shows that the press council has clearly failed in reaching its objective of turning its basic publication principles into a ‘model’ for all journalists. If in practice their big words are hardly noticed, there is no way it can establish ‘strict limits’ for the daily activities in journalism.”)

52. One interviewee observed that it is due to corporatism, leaving no room for participants with other interests. By way of comparison: the media committee of the ‘Landesanstalt für Medien Nordrhein-Westfalen’ contains representatives of various church organisations, the women’s council/family associations, the sports council, consumer organisations and migrants (see § 93 of the ‘Landesmediengesetz’).

53. No one seems to question that the deliberation itself must take place behind closed doors, leaving the council members to discuss their findings freely and independently.

54. See in this context also Ilka Desgranges and Ella Wassink, ‘Der Deutsche Presserat’ (1956): “Die Öffnung der Sitzungen des Presserats für Nicht-Mitglieder wird immer wieder gefordert. Dadurch können neue Impulse für die Beurteilung der Fälle gegeben werden. Für das Verfahren selbst könnte es sich jedoch auch als lähmend erweisen. (...) Ansonsten gilt: Freiwillige Selbstkontrolle basiert auch auf Vertraulichkeit.”

(“There are continuous demands to make the sessions of the press council accessible for non-members, thereby introducing new perspectives in the assessment of cases. However, for the proceedings themselves this could also have a paralysing effect. (...) Additionally, the following rule applies: Voluntary self-regulation is also based on confidentiality.”)

55. In this context, it has been noted that the annual volume of complaints is actually comparatively small, considering the general right to complain.

56. An article by Ingo Fischer published in *Journalistik Journal* 1/2008, see also note 18.

Despite these shortcomings, the effect of the system must not be underestimated. As Pöttker⁵⁷ observed:

“Die für den Inhalt der Medien Verantwortlichen wissen: Je mehr die Selbstkontrolle versagt, desto überzeugender sind die Argumente für die Einführung von Zensur (die heute natürlich nicht mehr Zensur genannt werden würde).

Zensur aber ist für die wenigsten Medienunternehmen ein gutes Geschäft, für die meisten bedeutet sie das Ende aller Geschäfte. Wer die Selbstkontrolle für unwirksam hält, vergißt diesen Mechanismus.”⁵⁸

(“Those responsible for media content know that the more self-regulation fails, the more convincing the arguments for the introduction of censorship become (which, of course, would no longer be called censorship today).

However, censorship is only good for a few media organisations, for most it spells the end of everything. Whoever considers self-regulation to be unworkable is forgetting this mechanism.”)

It nevertheless seems necessary for the press council to improve its working method in the near future. It has been suggested that the press council may evaluate its work in consultation with media experts. At the very least, the council must ensure that its decisions are given greater publicity. The closing paragraph of the aforementioned article ‘Eher unbekannt als anerkannt’ speaks volumes:

“Wenn der Deutsche Presserat seine selbst definierte Aufgabe ernst nimmt, dann darf er sich tief greifenden Reformen nicht mehr länger verschließen. Insbesondere sein Pressekodex, in dem die wichtigste journalistische Aufgabe – Information der Öffentlichkeit – kurioserweise noch nicht einmal explizit genannt wird, muss von Grund auf neu erarbeitet werden. In ihrer jetzigen Form haben sich Presserat und Pressekodex als untauglich erwiesen.”

(“If the German Press Council takes its own self-defined tasks seriously, then it should no longer postpone far-reaching reform. In particular, its press code, in which the most important task of journalism – providing information to the public – is curiously not even clearly mentioned, should be reworked in its entirety. In its present form, both press council and the press code have been shown to be unfit for purpose.”)

57. Prof. Dr. Phil. Horst Pöttker is, among other things, chairman of the ‘Verein zur Förderung der publizistischen Selbstkontrolle e.V.’. This association “(...) will sich also nicht an der publizistischen Selbstkontrolle beteiligen. Er sieht seine Aufgabe vielmehr in einer kritischen, konstruktiven und kontinuierlichen Beobachtung der publizistischen Selbstkontrolle aus gesellschaftlicher Perspektive.”

(“clearly does not want to take part in self-regulation in the publicity sector. It finds its duties much more in critical, constructive and continuous monitoring of self-regulation from a public perspective.”)

58. See Horst Pöttker, ‘Der Deutsche Presserat und seine Kritiker – Playdoyer für eine transparente Selbstkontrolle des Journalismus’, in: *Handbuch Medienselbstkontrolle*, pp. 125-131.

For Distribution to CPs

MOD400001413

10. Flanders – Raad voor de Journalistiek

10.1. Background

The General Belgian Press Association ('Algemene Belgische Persbond', ABP) established a Disciplinary and Arbitration council as early as in the nineteen twenties. The council supervised the practice of journalism within the Press Association and at the request of its own members, it made a judgement about facts 'undermining the professional honour or camaraderie'.

The ABP was a heterogeneous organisation, consisting of journalists and publishers, which aspired, among other things, to developing a legally based, protected title for professional journalists. The membership conditions of the association eventually served as a source of inspiration for the 'Act of December 30th, 1963 concerning the recognition and protection of the title of professional journalist'.¹ Official press documents are made available to professional journalists, granting them access to certain information. Furthermore, professional journalists can also claim collective provisions stipulated in the collective agreements.

Incidentally, the scope of this act is limited. It does not restrict freedom of the press and 'does not prejudice anyone's right to write in a newspaper'. Titles such as 'journalist' or 'reporter' can be freely used.²

1. Section 1 of this act reads: "No one can be authorised to carry the title of professional journalist unless he meets the following conditions: 1° be at least twenty-one years old; 2° in Belgium not having totally or partially lost the rights listed in Sections 31 and 123sexies of the Criminal Code, and subject to the provision in Section 2, not having been convicted abroad of a crime which, if the conviction had been issued in Belgium, would result in said person wholly or partially losing said rights; 3° participating as his main occupation and against payment in the editing of newspapers or periodicals, radio or television broadcasts, film journals or press agencies, intended for general reporting; 4° to have performed that occupation for at least two years as a regular occupation without having ceased the occupation for a period exceeding two years; 5° not perform any trade, particularly no occupation aimed at advertising, except as the director of a paper or periodical, a news broadcast, a film journal or a press agency."

2. The 'Act of April 7th, 2005 for the protection of journalistic sources' is not restricted to professional journalists'. Pursuant to Section 2 of the act, the following people can call for protection: "1° anyone making a direct contribution to the collection, editing, production or distribution of information to the public through a medium; 2° members of the editorial staff, i.e. anyone who acquires information while carrying out their work that may reveal a source, regardless of whether the revelation occurred during the gathering, editorial processing, production or distribution of the information concerned."

Section 2.1° has been amended by ruling no. 2006/01 of the Court of Arbitration made on June 7th, 2006. The original text read: "1° journalists, i.e. anyone working freelance or as employee, as well as any legal entity, who regularly makes a direct contribution to the gathering, editing, production or distribution of information for the public through a medium". Due to the changes made by the Court of Arbitration, an appeal to source protection can now also be made by bloggers, for example, publishing news stories or opinions online at regular intervals. In their article 'Bronnengeheim voor bloggers' (NjW 2006, pp. 630-636) Werkers, Lievens and Valcke observe as follows, among other things: "Given the technological changes, the line between professional and non-professional journalists is becoming increasingly hard to draw. (...) It nevertheless seems useful to separate the wheat from the chaff, even for the new forms of journalism and to extend the concept 'journalist' (which should come associated with certain rights as well as duties) to anyone who may not be gathering information

However, anyone who wrongfully calls himself 'professional journalist' in public risks incurring a fine.³

In Belgium, the right for citizens to complain is still comparatively new. Due to internal problems in journalists' associations, the Belgian sector did not follow the international trend to set up a press council in the years after World War II.

In the nineteen seventies, plans were conceived for the introduction of a National Press Council, but within the sector, there was great discord about the question of which powers needed to be awarded to such a council. For example, the media executives were against linking government subsidies to the press to the launch of a press council. The journalists are opposed to any complaints being adjudicated on the basis of a specially developed code. Furthermore, it was proposed during that period to establish a statutory Ombudsman for the Press, who would be assigned all the powers of an examining magistrate. This level of control was viewed as an excessive and risky intervention in the freedom of the press and it met with heavy criticism from the sector.

The amalgamation in 1979 of the ABP and the 'Beroepsunie van de Belgische Pers' (which stands for 'Professional Union of the Belgian Press') into the 'Algemene Vereniging van de Beroepsjournalisten in België' ('General Association of Professional Journalists in Belgium', AVBB) necessitated a reform of the deontological supervision procedure. The Disciplinary and Arbitration Council was abolished and the executive Office primarily acted as a deontological committee, with the management board acting as appeal body. In order to nip in the bud any parliamentary initiatives – to regulate the conditions for court reporting by law – a Deontological Council was set up in 1988. This council did not operate efficiently either, escalating the calls for a reinforcement of self-regulation, possibly supplemented by legislation.

The structure of the supervision was subsequently changed. From 1995 onwards, monitoring was carried out on three levels: the Office of the AVBB, the Deontological Council and – as an appeal body – the College for Deontology. From then onwards, citizens could also lodge complaints. Those instances came in for a great deal of criticism, because they only contained journalists. To make matters worse, there was no professional secretariat, resulting in ever increasing delays in dealing with complaints.

In the meanwhile, the debate about the responsibility of the journalistic profession raged on. In the nineteen nineties, a number of media scandals led to a storm of ardent criticism against the press from the public and politicians alike. Once again, the question came up about whether the government should intervene. After for-

in a professional capacity, but who gathers and distributes information in a thorough manner, rather than drop any reference to the term 'journalist' like the Court of Arbitration has done. This 'thorough manner' could then be measured by complying in practice with deontological rules."

3. Currently, the fine can be up to € 5,000.

mer minister De Clerck submitted a bill in 2000 for a press council encased in law, the sector joined forces and the current Press Council Association was set up in 2002. Although the participation of the Francophone media sector remained on the cards for a long time,⁴ it could not be achieved at the time, due to diverging opinions. The articles of association of the Flemish association still provides for co-operation with an as yet to be founded Walloon Press Council (see below under 10.3).⁵

Besides, in Belgium, there has been a statutory right of reply since 1961. The right is fairly far-reaching, particularly in relation to the print media. The mere fact of being named in an article is sufficient to call on the right within a three-month period after publication.

It is not necessary for the article to contain a mistake or an accusation; strictly speaking, people can call on the right simply to emphasise that a positive article has appeared about them.⁶ The answer must be included in full without interjection, in the same place and the same font as the original text it relates to. Then again, the above does not preclude that the answer must meet certain conditions and that publishing the reply can be refused on specific legally defined grounds. For that matter, the editorial team is allowed to publish an afterword underneath the publication of the reply.⁷

After all, just as in the Netherlands, the Belgian Criminal Code and the Belgian Civil Code have provisions that are relevant to the legal liability of journalists.⁸

10.2. Organisation and finance

The council was founded by the following organisations:

- Flemish Association of Journalists ('Vlaamse Vereniging van Journalisten', VVJ)
- Association of Journalists in Periodicals ('Vereniging van Journalisten van de Periodieke Pers', VJPP)
- Flemish newspapers ('Vlaamse Dagbladpers', VDP)
- The Ppress (formerly: 'Federation of Belgian Magazines', Febelmag)
- Union of Publishers of Periodicals ('Unie van Uitgevers van de Periodieke Pers', UPP)
- Flemish Media Company ('Vlaamse Media Maatschappij', VMMA)
- Non-public Regional Television corporations of Flanders ('Niet-Openbare Regionale Televisieverenigingen Vlaanderen', NORTV)

4. Preference was given to a federal system with two separate associations.

5. For a fully comprehensive historical overview of self-regulation of the press in Belgium, including Flanders: Anne-Lies Verdoodt, *Zelfregulering in de journalistiek – De formulering en handhaving van deontologische standaarden in en door het journalistieke beroep*, K.U. Leuven, Faculty of Law, 2007.

6. The regulation in relation to audio-visual media, which was introduced in 1977, is slightly different, since complainants must be able to demonstrate a personal interest and the reply must involve either a correction of one or more inaccuracies or a rebuttal of one or more facts or statements undermining someone's good name (see art. 7 of the act).

7. The effect of the act on the number of cases lodged with the council is not clear.

8. See Section 443 and following of the Criminal Code on crimes involving libel and Section 1382 of the Civil Code concerning acting unlawfully.

- Vitaya
- ENG Videohouse
- PVS Productions
- Photonews

In the meanwhile, Belga News Agency, the Flemish Radio and Television Broadcasting service ('Vlaamse Radio en Televisieomroep', VRT) and several smaller media organisations have joined up.

The association is managed on an equal footing by journalists and people with editorial responsibility (employers or chief editors), and it has a minimum of 16 voting members. The members originate from so-called A- and B-groups. Members in the first group are journalists' associations or individual journalists, members in the second group are associations of media companies or individual media companies. The number of members with voting rights is always even.

Members are nominated as follows:

A-group

- minimum of six by the VVJ
- minimum of two by the VJPP

B-group

- minimum of three by the VDP
- minimum one by the Ppress
- minimum one by the UPP
- at least three by the subgroup of other media (including broadcasting services)

The General Meeting is held twice a year.

Furthermore, there is a Board of Directors with 16 directors, appointed in accordance with the same formula by the General Meeting for a term of four years. In addition, the executive board consists of two journalist members and two members representing the media companies; it meets four to five times a year.

In 2007, the budget was € 175,000. The members of the A- and B-groups are each responsible for half the finance, in the understanding that the financial contribution in the A-group is fully regulated by the VVJ.⁹

The maximum contribution per member is € 250,000 per year. The distribution key is the same as for the composition of the General Meeting and the Board of Directors.

The contribution of the publishers and media companies is calculated on the basis of the number of journalists in service. The contribution of the journalists' associations is fully subsidised by the Ministry of the Flemish Community.¹⁰

9. The VJPP is a small organisation with a few delegates but it does not contribute any funding.

10. This subsidy forms part of a wider subsidy received by the VVJ, the rest of which is meant for the VVJ's own operating costs and for the payment of a top-up pension for retired journalists.

Moreover, it is anticipated that a protocol will shortly be signed concerning a joint venture between the Flemish Government and the Flemish printed media sector 'for the preservation of a multiform, independent and highly productive Flemish printed media', for which the government undertakes to make a minimum amount of € 1,000,000 available.

The Flemish government will provide additional finance for special projects, like the celebration of the five-year anniversary of the council.

10.3. Task description

Pursuant to the articles of association, the association's objective is to stand up for the journalistic ethics, to formulate guidelines on professional ethics for journalistic practice, to deal with questions and to adjudicate complaints about journalistic practices after attempting mediation. 'Journalistic practice' is described as: the delivery of news, interpretation, and informative contributions on social subjects.

The operational regulations describe the objective of the council in greater detail. The council safeguards and defends the journalistic ethics, formulates guidelines for journalistic practice and deals with requests about journalistic conduct.¹¹ The council decides of each individual case in an unassailable manner whether a principle of journalistic ethics is involved.

It has been explicitly provided that the council can apply its powers in consultation or in collaboration with other organisations with a similar aim. This includes any co-operation in the future with a Walloon Press Council, which is still being set up.¹²

The council does not (yet) have its own code. It uses the rules of professional ethics laid down in several ethical codes, such as the Declaration of the rights and duties of the journalist (1971), the Code of journalistic principles (1982),¹³ existing editorial codes and additional texts.¹⁴ In its decisions, the council refines those rules and gives them a practical interpretation.

10.4. Competence and admissibility

The council's competence covers adjudicating the editorial content of all news media in Dutch, to anyone who is active in journalism – regardless of their employment status or social security status¹⁵ – and to acts or omissions during the various phases of the journalistic process.

11. The council therefore has an internal function, aimed at the professional group, as well as an external function, aimed at the public. A certain field of tension exists between these functions, making it difficult to fulfil both functions well, according to Verdoodt in *Zelfregulering in de journalistiek – De formulering en handhaving van deontologische standaarden in en door het journalistieke beroep* (see note 5).

12. The Walloon council will probably be based in law (to provide a stable structure), receive a similar-size budget as the Flemish council and also be given some indirect government funding. Contrary to Flanders, the chief editors will be represented separately (next to the journalists and publishers) in the Walloon council.

13. Code of the Algemene Vereniging van Beroepsjournalisten in België (AVBB), the Belgian Association of Newspaper publishers and the National Federation of news magazines (since 1999 Febelma, now The Ppress).

14. Like the 'Recommendations for reporting about immigrants' published in 1994 by the AVBB, together with the Centre for the fight against racism. The recommendations do not have the character of formal deontological standards, but they can be taken into account when the council is dealing with a complaint.

15. The council can consequently also formally deal with complaints against people who are not professional journalists. The competence of the council is not yet fully crystallised on this point. See also in this respect Werkers, Lievens and Valcke, 'Bronnengeheim voor bloggers', (see note 2).

The complainant must have a ‘personal interest’, which means that he must be directly involved in the contested journalistic conduct. This is the case when the complainant is named in an article. The council interprets ‘personal interest’ in a fairly broad way. For example, complaints are also accepted from organisations serving collective concerns.¹⁶

Moreover, the council does not accept complaints between journalists of the same editorial team¹⁷ if no publication or broadcast took place.

In addition, the council also uses its complaints procedure to deal with requests for advice from journalists associations about general subjects relating to journalistic ethics.¹⁸

10.5. Secretariat

The secretariat is using a leased office¹⁹ in the International Press Centre in Brussels. It was deliberately decided to install the council in a separate office. The secretary-general, who is also the ombudsman of the council, is employed on full-time basis. The administrative assistant works part-time (total FTEs = 1.6).

10.6. Composition of the press council

The council has 18 active members, namely:

- six journalist members, of which:
 - five nominated by the VVJ. No specific criteria apply. Within the Board of Directors, it is asked who wants to be a member of the council. Furthermore, they ensure that all types of media are represented.
 - one nominated by VJPP.
- six members representing media companies, of which:
 - two nominated by VDP. For this association, it is difficult to find volunteers to become member of the council, because the work is time-consuming and it is not paid.
 - one nominated by The Ppress. The members are on the Board of Directors of the organisation. An invitation is sent out before the appointment. Criteria are professional affinity and competence; the members have usually been working in the sector for several years.
 - one nominated by UPP.
 - two nominated by other media.

16. See also the council's news report of February 10th, 2006 ‘Anyone lodging a complaint must be able to demonstrate a personal interest’, published on the council's website and referring to the decision of the council on February 9th, 2006 in the case Verreycken against Rogiers and *De Morgen* (2006-03). An interviewee observed that a more universal right to complain – like in Germany – would lead to serial complainants, which is not the intention.

17. See article 22 of the articles of association. An example given of this type of complaint concerned a complaint from a journalist about his article being amended by the subeditor or chief editor. Furthermore, the council is sometimes used to fight over internal quibbles between colleagues, according to an interviewee.

18. For example, the recent advice in response to a question from the VVJ in relation to the role and position of chief editors (decision 2008-07).

19. An office measuring 78 m². In addition, the council uses a shared conference room for its meetings.

- six additional public members, of which:
 - three nominated by VVJ and VJPP.
 - one nominated by VDP.
 - one nominated by The Ppress and UPP.
 - one nominated by other media.

The candidates must have some affinity with the material and carry some authority. Apart from that, no specific criteria are applied. It has also been observed that members need to be articulate and have good linguistic skills.²⁰

All members are appointed by the Board of Directors²¹ for a period of four years, after which they are eligible for reappointment; there is no maximum term. Furthermore, there are 18 substitute members who are nominated and appointed in the same way.²²

The council elects a chairman and vice-chairman from among its members, which are in turn nominated by the journalists association or the media companies.

In principle, the council meets once a month, except for during holiday periods.²³ During those sessions, which last approximately two hours, ongoing cases are discussed and an average of two to three decisions made.

The substitute members are always invited to attend the meetings, but in the event of any votes, it is always first investigated whether sufficient actual members are present. Substitute members are only allowed to vote if this is not the case. On average, twenty council members were present per meeting in 2007.

In addition, the council sets up ad hoc reporting committees, based on the availability of the members, to hear parties involved in a complaint. In 2007, a total of 11 hearings took place (see more about this under 10.7.).

Furthermore, a meeting is held every year to discuss on one or more general topics.

Public members, including the chair, receive € 20 per hearing or meeting of a reporting committee, while journalists receive € 50,²⁴ both amounts inclusive of

20. Since the public members are nominated by the sector, it would be reasonable to wonder to what extent those members can really be considered independent. Moreover, some of them used to work in journalism. To some, the appointment procedure seems insufficiently transparent. Furthermore, the council is thought to contain too many academics. Dirk Voorhoof and Ann Braeckman suggest that nominations should be put forward from the social middle ground. (See their article 'Slotbeschouwing en suggesties' in: *Vijfjaar Raad. Een balans* (pp. 88-90), published by the council in the context of its fifth anniversary.)

21. Originally, the members of the Board of Directors (then the Board of Governors) appointed twelve council members *from among their own ranks* (journalist members and media representatives). The articles of association have changed in that respect; it is only possible but not necessary to be a member of both simultaneously (see article 20.a. of the articles of association ratified on April 18th, 2006).

22. The VRT has its own deontological code – incorporated into the editorial status – as well as a deontological advisory council and an appeal board. The chairman of the advisory council is a substitute journalist member. Noteworthy is that only five of the thirty-six members are women, four of which are public members.

23. In 2007, the council met eight times (in 2006, seven times).

24. Freelance journalists receive a higher allowance because they cannot earn money during their work for the council.

a travel allowance. Other members receive no allowance. Their expenses are considered to be reimbursed by the organisations they represent.

10.7. Complaints procedure

According to the rules, complaints must be lodged in writing, but e-mails are also accepted. In case of the latter, complainants are usually asked to submit a written confirmation. All other documents can be sent in by e-mail. The time limit for lodging a complaint is 30 calendar days.

Noteworthy is that a complaint cannot only be made against an individual journalist or (the chief editor of) a medium, but also against a journalists' association. The council has consequently expressed an opinion, at the request of a journalist, about a journalists' association being financed by a sponsor and/or advertising money.²⁵

In practice, the procedure is free of charge.²⁶ The regulations nevertheless provide that the council can request a financial contribution to the costs, but so far, the option has never been put into practice. Complainants are not obliged to waive their right to initiate legal proceedings.²⁷ No fast-track procedure exists.

Within eight days of receiving the complaint, the secretary sends the complainant a confirmation of receipt. The secretary of the council is also an ombudsman, which means that he will try to mediate as much as possible, in an active or passive way. In practice, it means that the secretary/ombudsman always asks both parties to indicate their willingness to consider proposals for an amicable settlement.

Only when the secretary considers a case eminently suitable for mediation he adopts an active approach.²⁸ In the majority of cases, the contact is in writing, by phone or by e-mail.²⁹

In the first few years of the council's existence, approximately half of all cases were settled amicably. Currently, it only happens in about 25% of cases. The settlement may involve the publication of a correction, or the complainant receiving

25. Decision 2005-03 concerning advice on the question raised by Deckmyn in relation to the Belgian-Journalist association on Information Technology (B-JIT).

26. One interviewee is of the opinion that the absence of any barriers to complaining is wrong, since the complainant does not run any risks when lodging a complaint.

27. It occasionally happens that a case is lodged both with the council and with the court. Recently, the Court of the first instance of Brussels dismissed a claim for damages from two complainants, whereas the council had declared the complaints concerned well-founded (see the decisions made by the council on May 11th, 2006 (2006-06 and 2006-07) and the judgements made by the Court of Brussels (Court 20) on January 18th, 2008 against journalist Vanhellemont).

28. At the hearing of the council on January 10th, 2008, 23 cases were discussed, of which 13 were dealt with without mediation. For example, no mediation takes place when a complainant objects to it or in cases when a fundamental principle is at stake.

29. See Ann Braeckman, 'De minnelijke schikkingen geanalyseerd', in: *Vijfjaar Raad. Een balans* (pp. 43-53). In her article 'De Vlaamse hoofdredacties over de Raad' in the same publication (pp. 54-70), she actually observed that most media tend to favour an amicable settlement, 'provided it does not come across as a confession'.

an apology. Occasionally, a complainant decides to withdraw his complaint after receiving additional information about the case from the ombudsman.³⁰

The average duration of mediation is between one and two months. However, no time limit is set for the attempt at mediation. In early 2008, a case was still in mediation that had been started in 2005. If mediation is unsuccessful, the case is listed for the next council meeting.

In the event it emerges immediately upon a complaint being lodged or during the mediation process that the complainant is inadmissible or that the complaint is unfounded, the secretary informs the chairman of the council. At the very next meeting, the council is able to decide not to deal with the complaint for that reason. The parties will be informed of the decision by the secretariat. This decision cannot be appealed.³¹

During the first discussion, the council usually³² sets up a reporting committee (made up of 1 journalist member, 1 member representing the media companies and 1 public member), which arranges a hearing.

Within eight days from the council meeting, the parties are informed that the substance of the complaint will be evaluated. The defendant must submit a statement of defence within 30 days, which is forwarded to the complainant within eight days of receipt. The complainant then has 30 days to reply.

After that, the reporting committee holds its hearing.³³ Worth noting is that in many cases, the parties are first heard separately, in order to give them a chance to speak freely.³⁴

Fairly regularly, third parties (witnesses) are also heard at the request of either party.³⁵ No publicity is given to the hearings. They can be attended by third parties, provided the parties involved do not object.

No further factual investigation work is carried out, except if reference is made to previous articles that can be traced on the Internet.³⁶

30. The information may have come from the defendant or be documents from the judicial system.

Braeckman (see the note above) observed in this respect that the ombudsman occasionally recommends that the complainant withdraws his complaint, after which the complainant may agree or not get in touch again. In fact, these cases must not be considered as successfully resolved through mediation, but as the complaint appearing to be unfounded, according to Braeckman.

31. This simplified procedure is considered an efficient filter.

32. In approx. 95% of all cases. It does not happen when the parties decide against it.

33. Until recently, a separate hearing was held for each case. Nowadays, the same reporting committee will endeavour to hold oral hearings for several cases on the same day.

34. Although this is attributed to consideration for the emotional aspects of the complainant, this working method is deemed particularly important to the protection of journalistic sources. In this way, the journalist can disclose his sources to the council, while they remain concealed to the complainant. Ann Braeckman and Liselot Hudders observe in their article 'De klagers over de Raad', in: *Vijf jaar Raad. Een balans* (pp. 72-86) that several complainants currently have the impression that it gives the journalists a natural advantage and that they would therefore prefer a confrontation at the hearing.

35. For example, a social worker, or someone who can comment on the circumstances in which an interview was held.

36. More factual research is not considered necessary, because the council does not actually evaluate facts but the way in which facts are presented. If the council were to receive more research options, it would be tricky to determine where to impose any boundaries, according to an interviewee.

After the hearing, a draft decision is drawn up; in 80 to 90% of cases by the secretary, in other cases by the reporting committee. Next, the complaint is discussed by the *plenary* council, based on the draft.³⁷

The council is able to make a valid decision when at least ten (out of 18) members are present. Attempts are made to reach a consensus. If that is impossible, the council has the option of hearing the parties again and to hold another deliberation, but this rarely happens. It is also possible to have a vote and reach a decision by ordinary majority. In the event of a tie, the chairman has a casting vote. The decision contains the final judgement and any minority views, but this has not happened so far. Article 23 of the operational regulations provides for the challenging of council members.

For its activities, the council also takes into account existing court decisions and rulings by the ECHR.³⁸ The council nevertheless takes the view that it considers the ethical aspects of cases, whereas the judge considers the legal aspects.

As observed above under 10.1, the predecessor of the current council used to have an appeal body. Since little recourse is made to appeals, the decisions by the appeal body tended to uphold the council's decisions and since the current council also includes public members, there is currently no option to appeal.³⁹

The review option is not included in the operational regulations and to date, this has not been requested. Pursuant to article 1. of its regulations, the council nevertheless has the power to examine a case of its own accord. The council could probably avail itself of that option and reopen a case, for example in the event of cases of great social interest or that are controversial.

10.8. Sanctions

The press council cannot award damages or impose fines. For years, talk has been about linking the official recognition of 'professional journalist' to the observance of professional ethics. In that case, a professional journalist convicted by the coun-

37. Most interviewees are of the opinion that this boosts the authority of the decisions, and that it is preferable over complaints being treated by chambers. The 2006 Annual Report of the council described it as follows: "The fact that all decisions have been carried by the full council so far bestows a greater moral authority on the decisions than if they were taken in a smaller chamber". The system with separate chambers may carry a risk of inconsistent jurisprudence, but it is doubtful whether this manner of dealing with complaints can be maintained if the number of complaints increase in future, according to the annual report. Moreover, the current procedure is probably the reason for the fact that the decisions are 'never particularly high-profile', 'sometimes too prudent' or in any case 'very middle of the road', like several chief editors indicated in a recent survey (See Ann Braeckman, 'De Vlaamse hoofdredacties over de Raad', in: *Vijfjaar Raad. Een balans.*)

38. See in this context, decisions 2007-02 and 2007-03, and the directive from the council relating to financial news reporting.

39. One of the interviewees observed that the possibility of higher appeal is not necessary, since the decisions concern moral judgements. A further point was made about the need to prevent excessive parallels with the court system.

cil would hence lose his title of ‘professional journalist’ and the associated privileges. A bill is still pending on the subject.⁴⁰

The regulation also sets out that the ruling *may* include a decision on whether the ruling must be published in the medium concerned. The council decides in all cases separately, taking into account the individual nature of media and possibly after consulting the medium concerned, how and by when the decision must need to be published by the medium (article 29 clause 2 of the operation regulations).

Nowhere is laid down in which circumstances the council must decide that the decision is to be published. The general intention is to make it compulsory to publish decisions in ‘more severe’ cases, for example in the event of a repeat offence.

In its five-year existence, the council only asked a medium involved one single time to publish its decision. Moreover, the request was not complied with, because the journalist no longer worked for the medium concerned by that time.⁴¹

The council publishes its decisions in full on its website and briefly refers to them in its annual report. In headline-grabbing cases, a press release is distributed, which happened on two occasions up to early 2008. Furthermore, all decisions are published in *De Journalist*. For that publication, the introduction (course of the proceedings) is usually summarised or omitted.

Published decisions generally include the full name of the complainant as well as the defendant. In a few cases where the complainant’s privacy was at stake,⁴² the complainant’s identity was not disclosed. The council takes an autonomous decision about it, possibly based on a request from the person concerned.

10.9. Other activities

In accordance with its own regulations, the council is also responsible for acting on its own initiative if it considers it necessary to examine specific journalistic conduct. The council issued several guidelines in order to implement the task.⁴³ It is possible that the council makes its opinion known on topical issues of its own accord, but it has not happened so far.⁴⁴

The council remains detached in its consultation with the government concerning any new or anticipated legislation, but it intervened years ago in the discussion about the possible membership of the VRT, i.e. the ‘Vlaamse Radio- en

40. See Verdoodt, *Zelfregulering in de journalistiek – De formulering en handhaving van deontologische standaarden in en door het journalistieke beroep*, p. 431.

41. In his article ‘De beslissingen van de Raad geanalyseerd’ in: *Vijf jaar Raad. Een balans* (pp. 8-41), Dirk Voorhoof observed that “niet duidelijk (is) waarom in andere dossiers geen publicatie is verzocht, hoewel daar (ook) wel reden toe was” (“it is unclear why publication was not also requested in other cases, where it would also have been appropriate”).

42. To date, approximately ten cases. Examples quoted: children and victims of rape.

43. For example, about the way the press deals with victims (2003), editing images (2006) and undercover journalism (2007).

44. Via a ‘diversion’ – receiving a request for advice – the council can express an opinion about topical issues, without anyone with a ‘direct interest’ having made a complaint. See for example decision 2007-11: advice on the question from the Board of Directors of the VVJ in relation to a report on safety in Telefacts/VTM.

Televisieomroep' (Flemish Radio and Television Broadcasting Services), which meant that the statutory duties of the Flemish Regulator for the Media needed to be changed.⁴⁵

The secretary as well as several council members participate fairly regularly in public discussions about media ethics, including through readings, articles and lectures.⁴⁶

Once a year or so, the secretary grants an interview if this is requested. No interviews are given to discuss a specific case.

Furthermore, the council has co-operated with other organisations on several leaflets intended for journalists, including about reporting on mental illness⁴⁷ and on suicide.⁴⁸

10.10. Statistics for 2007

In 2007, the council received 41 (42) new complaints. At the beginning of 2007, it was still dealing with 20 complaints lodged in previous years (18 filed in 2006 and two in 2005). The council dealt with 41 (42) cases as follows:

• discontinued ⁴⁹		1	(4)
• successfully mediated by the ombudsman		15	(11)
• declared inadmissible in simplified procedure		7	(5)
- missed deadline	3	(3)	
- lack of personal interest	1	(-)	
- filed anonymously	1	(-)	
- related to entertainment programme	1	(1)	
- related to broadcast from the Netherlands	1	(1)	
• decisions		18	(18) ⁵⁰
- well-founded	7	(4)	
- partially founded	3	(4)	
- unfounded	5	(8)	
- inadmissible	1	(1)	
- advice/guideline ⁵¹	2	(1)	

45. See also the news items released by the council on the subject on February 25th, 2003 'VRT werkt mee met Raad voor de Journalistiek' ('VRT co-operates with the Press Council') and of April 19th, 2006 'VRT volwaardig lid van de Raad voor de Journalistiek' ('VRT full member of the Press Council'). Please note: The Flemish regulator for the Media has been operating since early 2006. This organisation integrates the 'Vlaams Commissariaat voor de Media' ('Flemish Media Authority'), the 'Vlaamse Geschillenraad' (which translates as the 'Flemish Dispute Council') and the 'Vlaamse Kijk- en Luisteraad' (which stands for the 'Flemish council for viewers and listeners').

46. Some interviewees feel that the council should refrain from acting publicly, which behaviour is more appropriate for journalists associations.

47. Collaboration with VVJ and organisations from the sector.

48. Collaboration with VVJ and Werkgroep Verder ('Working Group Further').

49. This happens when nothing is heard anymore from the complainant, despite reminders. In the 2005 annual report, such cases were still classified as having been settled amicably.

50. In 22 cases.

51. These have been added to the decisions since the same procedure is followed as for complaints files.

On average, complaints were dealt with in 86 (123) working days. According to the 2007 Annual Report of the council, this average was lowered thanks to seven files having been dealt with within 15 days through mediation and three complaints having been declared inadmissible within a few days.

However, dealing with a complaint from start to finish usually takes between six months and a year.⁵² Since two cases from 2005 are currently still open – at the parties' requests – the council expects that it will not be able to maintain the shorter average time needed to deal with complaints.

10.11. Thoughts and comments

Considering the council's brief existence so far, it is difficult to come to a reliable evaluation of its activities. On the one hand, any young organisation inevitably faces some teething problems. Conversely, new initiatives tend to be welcome and viewed as positive, particularly if they replace ineffective bodies (in this case: the former Deontological Council). Furthermore, it has been said that the Flemish media are fairly 'well-behaved', particularly in relation to foreign media, and that the public has a much higher level of trust in the media in Flanders than is average in the European Union.⁵³

This does not alter the fact that the interviewees generally spoke of the council's work in favourable terms.⁵⁴ Particularly the flexible consensus model, which the council bases its decisions on, and the contribution made by the public through the public members are experienced as positive features.

Improving the council's public profile is mentioned as still on the 'to-do' list.⁵⁵ It is not sufficiently known among the public and journalists alike, which also undermines the council's authority.

In relation to the public, it has been pointed out that the majority of complainants to the council are currently highly educated. Others may find it harder to locate the council or may have to overcome other barriers, despite the council being easily accessible. One way in which the council can improve its reputation and accessibility is by having its logo printed in the media and by distributing it

52. See in this context also the interview with the secretary of the council in *De Standaard* of December 17th, 2007 under the header 'Lezer klaagt over inbreuk op privacy' ('Reader complains about violation of privacy'). Most interviewees consider the total time taken from start to finish as too long, but there is no ready solution for how to shorten it. In this context, one interviewee questioned the use of the complainant's opportunity to reply to the statement of defence.

53. See the Flemish Regional Indicators (VRIND) for 2008, published by the Study department of the Flemish government and published on its website.

54. Likewise, the recent survey carried out by a research group from the communication sciences department of Ghent University indicated that the council's work is 'more than adequate'. (See Voorhoof and Braeckman, 'Slotbeschouwingen en suggesties', in: *Vijfjaar Raad. Een balans*, pp. 88-90.)

55. One interviewee regards it not only a task for the council itself, but also for the media.

via leaflets to organisations that are in touch with potential complainants (social services, town councils, etc.).⁵⁶

In relation to journalists, the point has been made that courses in journalism should pay (more) attention to the council's work. Prospective journalists must learn to respect the council, according to an interviewee.

In relation to the (lack of sufficient) authority of the council, it is worth noting that the decisions made by the council currently have no real consequences and therefore too little impact. The publication of the decisions leaves a lot to be desired, also – or mainly – due to the absence of an obligation for the medium concerned to publish the decision, which is not satisfactory enough for the complainant.

Most interviewees declared to be against a 'pillory mechanism', considering publication in *De Journalist* as sufficient and predicting conflicts with some of the media if a duty to publish were to be introduced. However, the council will need to contemplate how its working procedure can be adjusted on that point, in order to reduce the non-committal nature of its decisions.

In view of the above, it is not so surprising that the decisions of the council are not considered to have a chilling effect. The decisions are nevertheless thought to have some influence within the peer group. "Bij redacties kleeft het aan de ribben als ze hun job niet goed gedaan hebben" ("Editorial staff are left with a bitter taste in the mouth when they have not done their job very well"), according to one of the people interviewed.

Furthermore, it has been argued that customer complaints must first and foremost be dealt with by the editors. This barely ever happens, there is too little dialogue between complainants and the media concerned.⁵⁷ In that context, it has also been pointed out that there are increasingly fewer internal ombudsmen, given their difficult position within their own organisation.

Lastly, it is considered important that the standards of journalistic ethics are externalised, including on the basis of statements made by the council. On the one hand, the council seems the obvious instance, because it contains a representation of all media. On the other hand, it is debatable whether all parties participating in the council can come to an agreement on the substance of the standards, since viewpoints on particular topics differ, particularly when it comes to privacy.

The chairman of the council said poignantly in his closing observation, in the foreword with the 2007 Annual Report, be it in a slightly different context: "Er zijn nog zeer veel uitdagingen, er is nog veel werk aan de winkel." ("We still have countless challenges and a great deal of work ahead of us.")

56. In the context of the study carried out by Braeckman (see note 29), chief editors actually voiced their concern that the council may be flooded by 'unnecessary or futile' complaints if it becomes better-known.

57. One interviewee wondered whether complainants may be less likely to contact the media first because of the mediating role of the council's combined secretary and ombudsman.

11. Summary of recommendations

- The tasks of the The Netherlands Press Council must be formulated more broadly; the articles of association must include that the council is responsible for contributing to the development of the professional ethics.
- The council must raise its profile and become increasingly visible both to the public and within the profession itself.
- Before the council can expand its tasks, it will need a higher level of staffing and a recognisable face towards the outside world. The operations of the council would not be improved by the appointment of a Swedish-style ombudsman. It is more beneficial to follow the example of Great Britain, Germany and Flanders, where those activities are currently being performed by the chairman and the secretariat working together.
- The complaints procedure must be made more accessible.
- The mediation approach, currently performed by the chair and secretary of the council, must be extended.
- A simplified procedure must be introduced and an option to review cases set up.
- Where possible, the council must try and reduce the duration of the complaints procedure.
- The 'collective right to complain' must be enshrined in the articles of association and the concept of 'directly interested person' must be given a slightly broader interpretation.
- The council must use a transparent selection procedure to attract public members not involved in the media sector.
- The publication of decisions must be enforced more stringently through specific agreements with the sector.
- The council's structural budget must be substantially increased, arguably through (indirect) finance from the government.

For Distribution to CPs

MOD400001429

Annex I – Foreign contacts

Sweden

- * *Axberger, Hans-Gunnar*, former Allmänshetens Pressombudsman (Press Ombudsman), professor of Media Law and since February 18th, 2008 Riksdagens Ombudsman (Parliamentary Ombudsman)
- * *Bröms Lumpus, Kerstin*, legal adviser, Regeringskansliet, Justitiedepartementet, Grundlagsenheten (Ministry of Justice, Division for Constitutional Law)
- * *Fisherström, Barbro*, managing director Tidnings Utgivarna (Swedish Newspaper Publishers' Association)
- * *Fjaestad, Björn*, editor in chief and publisher Forskning & Framsteg, member of Pressens Opinionsnämnd (Swedish Press Council)
- * *Fredrikson, Stig*, foreign commentator 'Aktuellt' (The News) Sveriges Television AB (Swedish Television), chairman Publicistklubben (Swedish Press Club), and chairman of Pressens Samarbetsnämnd (Joint Committee of Press Associations)
- * *Hirschfeldt, Johan*, chairman of Pressens Opinionsnämnd (Swedish Press Council)
- * *Lindblom Hulthén, Agneta*, chairman of Svenska Journalistförbundet (Swedish Union of Journalists)
- * *Magnusson, Synnöve*, secretarial assistant of Pressens Opinionsnämnd (Swedish Press Council)
- * *Melin, Mats*, Chefsjustitieombudsman (Chief Parliamentary Ombudsman) ([in writing](#))
- * *Söderberg, Kersti*, Allmänshetens Biträdande Pressombudsman (Deputy Press Ombudsman)
- * *Stenius, Yrsa*, Allmänshetens Pressombudsman (Press Ombudsman)
- * *Strandberg, Lars*, managing director Sveriges Tidskrifter (Swedish Magazine Publishers Association)
- * *Tetzell, Eva*, deputy director Granskningsnämnden för radio och TV (Swedish Broadcasting Commission)
- * *Weibull, Lennart*, professor in mass media research, Journalistik och masskommunikation, Göteborgs Universitet (Department of Journalism and Mass Communication, University of Göteborg) ([in writing](#))

Denmark

- * *Christensen, Henrik*, secretary of Danks Folkeoplysnings Samråd (Danish Adult Education Association) ([in writing](#))
- * *Druedahl, Marianne*, headmistress, LOF (Liberal Association of Adult Education in Denmark) in Roskilde and member of Pressenævnet (Danish Press Council)
- * *Grubbe, Niels*, legal counsel in the Højesteret (Supreme Court) and former chair of Pressenævnet (Danish Press Council)
- * *Kierkegaard, Axel*, lawyer and vice-chairman of Pressenævnet (Danish Press Council)
- * *Kirstensen, Jan*, chief editor of Fyens Stiftstidende and member of Pressenævnet (Danish Press Council)
- * *Møllerup, Jacob*, readers' and listeners' editor of DR (Danish Broadcasting Corporation)
- * *Olesen, Sanne Godthaab*, secretary of Pressenævnet (Danish Press Council)
- * *Rosendal, Holger*, head of legal department, Danske Dagblades Forening Pressens Hus (Danish Newspaper Publishers' Association)
- * *Rowold, Finn*, head of department at DR and member of Pressenævnet (Danish Press Council)
- * *Sare, Lene*, journalist with Fyens Stiftstidende and member of Pressenævnet (Danish Press Council)
- * *Schelin, Anne Louise*, head of legal affairs, Danks Journalistforbund (Danish Union of Journalists)
- * *Trier, Tyge*, lawyer

Great Britain

- * *Abell, Stephen*, assistant director of Press Complaints Commission (PCC)
- * *Beales, Ian*, secretary of Code of Practice Committee
- * *Cubbon, Sir Brian*, Charter Commissioner and chairman of Charter Compliance Panel
- * *Dudman, Graham*, managing editor of *The Sun*
- * *Evans, James*, senior legal executive of Periodical Publishers Association
- * *Gopsill, Tim*, editor of *The Journalist*
- * *Gore, William*, assistant director of PCC
- * *Hepworth, Vivian*, chief executive of Grayling Political Strategy and member of PCC
- * *Hodge, Eleanor*, senior policy adviser at Department for Culture Media and Sport
- * *Irwin, Simon*, editorial director of Kent Messenger Group and member of PCC
- * *Lezard, Tim*, journalist, former chairman of National Union of Journalists
- * *Neilson, Kerry*, director of legal & public affairs, Periodical Publishers Association
- * *Pinker, Prof. Robert*, former member and substitute chairman of PCC, international consultant PCC
- * *Raeburn, Jim*, director of Scottish Daily Newspaper Society, secretary and treasurer Press Standards Board of Finance (PressBoF) (*in writing*)
- * *Satchwell, Bob*, executive director, Society of Editors
- * *Toulmin, Tim*, director of PCC

Germany

- * *Neusser, Hermann*, publisher of Bonner Zeitungsdruckerei und Verlagsanstalt H. Neusser GmbH, member Bundesverband Deutscher Zeitungsverleger, substitute chairman Trägerverein des Deutschen Presserats and member of complaints committee, Deutscher Presserat (German Press Council)
- * *Pöttker, Prof. Dr. Phil. Horst*, professor Institut für Journalistik at Universität Dortmund, chairman of Verein zur Förderung der publizistischen Selbstkontrolle e.V. and manager of Initiative Nachrichtenaufklärung
- * *Protze, Manfred*, editor of Deutsche Presse-Agentur GmbH, substitute chairman of Deutsche Journalistinnen- und Journalisten-Union, spokesperson and member of complaints committee, Presserat (German Press Council)
- * *Tiarks, Peter*, director of Bergmoser + Höller Verlag AG and chairman of complaints committee, Presserat (German Press Council)
- * *Tillmans, Lutz*, secretary (Geschäftsführer) Presserat (German Press Council)
- * *Wassink, Ella*, PR officer (Referentin für Öffentlichkeitsarbeit) Presserat (German Press Council)
- * *Widlok, Dr. Peter*, spokesman for Landesanstalt für Medien Nordrhein-Westfalen

Flanders

- * *Braeckvelt, Duncan*, media officer, Cabinet of the Flemish Minister for Administrative Affairs, Foreign Policy, Media and Tourism
- * *Brewayes, Eric*, state councillor with the Council of State, VUB university lecturer and chairman of the Raad voor de Journalistiek (Flemish Press Council)
- * *Criel, Wim*, solicitor with Roularta Media Group and actual member of the Raad voor de Journalistiek (Flemish Press Council)
- * *Daenen, Paul*, chief editor of *Het Laatste Nieuws*
- * *Deltour, Pol*, national secretary of the Algemene Vereniging van Beroepsjournalisten (General Association of Professional Journalists) in Belgium and the Vlaamse Vereniging van Journalisten (Flemish Association of Journalists)
- * *Desmet, Yves*, chief editor of *De Morgen*
- * *Dupain, Marc*, head of external relations of the Vlaamse Media Maatschappij (Flemish media corporation)

-
- * *Fordyn, Prof. Alex*, general director of the Vlaamse Dagbladpers, chairman of the Flanders Raad voor de Journalistiek Foundation and substitute member of the Raad voor de Journalistiek (Flemish Press Council)
 - * *Knapen, Pieter*, chief editor of Vlaamse Radio- en Televisieomroep (Flemish radio and television broadcasting services) and actual member of the Raad voor de Journalistiek (Flemish Press Council)
 - * *Lambrechts, Alain*, general manager of The Ppress
 - * *Rubbens, Astrid*, coordinator Steunpunt Verkeersslachtoffers (Support service for traffic accident victims) and actual member of the Raad voor de Journalistiek (Flemish Press Council)
 - * *Braeckvelt, Duncan*, Media officer, Cabinet of the Flemish Minister for Administrative Affairs, Foreign Policy, Media and Tourism
 - * *Voets, Flip*, ombudsman and secretary of the Raad voor de Journalistiek (Flemish Press Council)

For Distribution to CPs

MOD400001433

Annex II Questionnaire

1. Function and position of the Press Council (PC)

- * Who established/maintains the Press Council?
- * What is the competence of the PC?
 - all media, print, audio/visual, internet, free newspapers?
 - only professional journalists or also someone who, on a regular basis and for remuneration, collaborates on the editorial content of a mass medium?
 - all contents/all editorial matter/only news?
 - only publications or working methods as well?
- * What is the function of the PC? (dealing with complaints and/or developing standards for journalistic behaviour)
- * Are there any other bodies of self-regulation? (e.g.: ombudsman or body for appeal)
- * If not, why not? Should there be such body?
- * Is there any (legal) obligation for the journalist/medium to co-operate with the PC? If not:
 - is there any effort from the publishers' associations to assure that their member companies co-operate with the PC?
 - how does the PC deal with a complaint if the journalist/medium refuses to reply/co-operate either structural or incidental?
- * Are there any laws that have an effect on the work of the PC (e.g. legal right of reply)?

2. Financing

- * What is the structural annual budget?
- * Who finances the PC? What proportion of income is coming from media owners, employee organizations, governmental institutions, private foundations, business firms, fees for filing complaints, fines and/or other sources?
- * Are there any additional funds?

3. Organization

- * How is the secretariat/office of the PC organized? (how many employees, fulltime equivalent, accommodation etc.)

4. Composition

- * What is the assembly of the PC?
 - (vice-) presidents: members of judiciary
 - media members: management, journalists, editors in chief
 - non-media members: representatives of the public, institutions, lawyers etc.
- * Who nominates and/or appoints the members?
- * What is the assembly of the PC?
- * Is there a candidate profile? (can everybody be a member, are there any criteria for the expertise of (journalist-)members)
- * Do the members receive a remuneration and/or compensation for expenses?
- * Are there regulations on challenging and/or exemption of members?

5. Access

- * Must a complainant be directly involved?
- * Must a complainant be an individual?
- * Is there a possibility for a class-action?
- * Is there a term in which a complaint must be filed?
- * Is the procedure free of charge?

- * Must a complainant first get in contact with the journalist/medium before he files a complaint?
- * Must a complaint be filed in writing or is sending in by e-mail or fax allowed (followed by writing)?
- * Must a complaint be aimed at a medium, individual journalist and/or editor in chief?
- * Must a complainant abandon his right to sue in court?
- * Are there any (other) criteria for admissibility?

6. Complaint procedure

- * Does the PC use a screening committee or an individual screener?
- * In which stage of a 'conflict' does an average complainant get in contact with the PC?
- * Are parties (sometimes) assisted by lawyers/solicitors, is it allowed/obliged? (possibility of pro bono assistance?)
- * Is there a possibility of accelerated treatment?
- * Is there a (public) hearing? (obligation of appearance)
- * Are there any (other) formalities?
- * What time does an average procedure take?

7. Decisions

- * Are complaints examined by the whole council or in a chamber?
- * How often does the whole council/chamber meet?
- * How does the PC come to a decision?
- * fact finding
- * hearing witnesses
- * consideration behind closed doors
- * unanimous/dissenting opinions
- * If dissenting opinion is possible, is there any effect, and if so: which, of dissenting opinion on complainant and media concerned (e.g. regarding enforcement power of PC)?
- * Is there a written code of ethics and if so, who formulated the code?
- * Does the PC use any other codes/guidelines? (e.g. code of International Federation of Journalists, codes formulated by editors in chief/specific media, guidelines formulated by non-media institutions)
- * Based on what (other) principle(s) does the PC examine a complaint?

8. Sanctions

- * Can the PC impose a sentence? (expulsion, fine)
- * Can the PC assure the complainant financial damages?
- * Is there an obligation for the journalist/medium to publish the decision of the PC?
- * How does the PC execute its sanctions?
- * How does the PC give publicity to its decisions?

9. Further practice

- * Does the PC mediate and if so, what is the procedure for mediation?
- * Does the PC give statements about general journalistic issues of principal interest on its own initiative?
- * Does the PC give opinions on specific cases on its own initiative?
- * Does the PC speak for the media to the public?
- * Does the PC speak for the media to the government (e.g. on legislation proposals)?
- * Does the PC defend media freedom against threats from governmental agencies and/or business forces?
- * Does the PC watch media ownership concentration?
- * Does the PC take active interest in media research, monitoring the performance of the media and reporting on trends?
- * Does the PC organize or take part in training of journalists?
- * Are there any other activities?

10. Legal aspects

- * What does the PC think of the 'chilling effect' of its decisions?
- * What is the relation between the PC and the court of justice?
- * Does the PC take decisions of the European Court of Human Rights (art. 10) and/or decisions of other courts of justice into consideration?

11. Reputation, enforcement power and criticism

- * How well known is the PC among public, media and politicians?
- * How is the enforcement power to be considered by public, media and politicians? (is there enough satisfactory for the complainant or is it a 'tiger without teeth'?)
- * What aspects can increase the enforcement power?
- * What aspects may decrease the enforcement power?
- * How does the PC promote itself?
- * Is there a spokesperson and if so, what is his task?
- * What criticism was heard in the past and what has been done with it?
- * Is there any criticism in the present and if so, what is the response of the PC?

12. Research

- * Has there been any research among the public and/or journalists about the practice of the PC and if so, what is the outcome?

13. Statistics

- * How many complaints did the PC receive last five years, with a specification per category (daily newspapers, magazines, internet etc.)? When is something counted as a complaint?
- * How many of the complaints were withdrawn or settled?
- * How many of the complaints were (examined and) rejected?
- * How many of the complaints were (partially) upheld?
- * How often was a complainant (partially) not-accessible?
- * How often did the PC consider itself not competent?
- * Were there any cases in which the PC has abstained judgment?
- * How many advises did the office of the PC give by phone/writing/e-mail?

Annex III Bibliography

- * Allmänhetens Pressombudsman – Pressens Opinionsnämnd, *Årsberättelse 2007*, Österbergs & Sörmlandstryck, Nyköping, 2008;
- * Allmänhetens Pressombudsman – Pressens Opinionsnämnd, *Årsberättelse 2006*, Österbergs & Sörmlandstryck, Nyköping, 2007;
- * Antonioni, Marina, *Der Deutsche Presserat und seine Beschwerdeführer* – Freie wissenschaftliche Arbeit zur Erlangung des Grades eines Diplom-Journalisten (Dipl.-Journ. Univ.) am Institut für Kommunikationswissenschaft (ZW) der sozialwissenschaftlichen Fakultät der Ludwig-Maximilians-Universität München, maart 2000;
- * Baum, A., Wolfgang R. Langenbacher, Horst Pöttker, Christian Schicha (Herausgeber) (editor), *Handbuch Medienselbstkontrolle*, VS Verlag für Sozialwissenschaften/GWV Fachverlage GmbH, Wiesbaden, 2005;
- * Beales, Ian (Editors' Code of Practice Committee), *The Editors' Codebook*, The Press Standards Board of Finance Ltd, 2005;
- * BBC News, *Full text: Blair on the media*, news.bbc.co.uk., June 12th, 2007;
- * Blanken, H., 'Wie is journalist en wat is journalistiek?', www.henkblanken.nl, December 8th, 2007;
- * Blanken, H., 'Moeten media kunnen vergeten?', www.henkblanken.nl, November 21st, 2007;
- * Bockxmeer, Drs. H.M. van, *De rol van de overheid in een goed functionerend medialandschap*, kimforum.nl/blog, March 26th, 2008;
- * Brouwers, B., 'Wie is journalist? Negen principes!', www.denieuwereporter.nl, November 26th, 2007;
- * Bruning, Th., 'Wetgeving bronbescherming verstevigt een gezond persklimaat', www.denieuwereporter.nl, December 5th, 2007;
- * Deutscher Presserat, *Jahrbuch 2008*, UVK Verlagsgesellschaft mbH, Konstanz, 2008;
- * Deutscher Presserat, *Jahrbuch 2007*, UVK Verlagsgesellschaft mbH, Konstanz, 2007;
- * Fischer, Ingo, 'Eher unbekannt als anerkannt – 'Empirische Studie zum Einfluss des Deutschen Presserats'', *Journalistik Journal* 1/2008, p. 36-37;
- * Harinxma thoe Slooten LL.M., L.R., *Toegang tot het recht in perszaken*, Boom Juridische Uitgevers, The Hague, 2006;
- * Hoove, S. ten, *Grenzen in de journalistiek – Raad voor de Journalistiek tussen 1987 en 2003*, Otto Cramwinckel Uitgever, Amsterdam, 2003;
- * House of Commons, Culture, Media and Sport Committee, *Self-regulation of the press – Seventh Report of Session 2006-07*, The Stationery Office Limited, London, July 2007;
- * House of Commons, Culture, Media and Sport Committee, *Privacy and media intrusion – Fifth Report of Session 2002-03*, The Stationery Office Limited, London, June 2003;
- * Institut zur Förderung publizistischen Nachwuchses Deutscher Presserat (Hg.), *Ethik im Redaktionsalltag*, UVK Verlagsgesellschaft mbH, Konstanz, 2005;
- * Karepin, Rolf, 'Gefährliche Grauzone', *journalist* 11/2007, p. 50-53;
- * Krogh, Torbjörn von (ed.), *Media Accountability Today... and Tomorrow – Updating the Concept in Theory and Practice*, Nordicom, University of Gothenburg, Göteborg, 2008;
- * Mentink LL.M., J., *Veel raad, weinig baat – Een onderzoek naar nut en noodzaak van de Nederlandse Raad voor de Journalistiek*, Ad. Donker, Rotterdam, 2006;
- * Nederlandse Nieuwsmonitor, *Media en Mabel – een onderzoek naar de berichtgeving in vijf landelijke dagbladen over de affaire Mabel Wisse Smit*, Amsterdam, December, 2007;
- * Organization for Security and Co-operation in Europe, The Representative on Freedom of the Media, *The Media Self-Regulation Guidebook – All questions and answers*, Wenen, 2008;

- * Pöttker, Horst, Überzeugend für Journalisten? – Der Pressekodex soll vor Diskriminierung schützen, *Journalistik Journal* 2/2007, p. 20-21;
- * Press Complaints Commission, *The Review* 2007, London, 2008;
- * Press Complaints Commission, *Annual Review* 2006, London, 2007;
- * Press Complaints Commission, Charter Commissioner, *Fourth Annual Report 2007*, London, 2008;
- * Press Complaints Commission, Charter Commissioner, *Third Annual Report 2006*, London, 2007;
- * Press Complaints Commission, Charter Commissioner, *Second Annual Report 2005*, London, 2006;
- * Press Complaints Commission, Charter Commissioner, *First Annual Report 2004*, London, 2005;
- * Press Complaints Commission, Charter Compliance Panel, *Fourth Annual Report 2007*, London, 2008;
- * Press Complaints Commission, Charter Compliance Panel, *Third Annual Report 2006*, London, 2007;
- * Press Complaints Commission, Charter Compliance Panel, *Second Annual Report 2005*, London, 2006;
- * Press Complaints Commission, Charter Compliance Panel, *First Annual Report 2004*, London, 2005;
- * Pressenævnet, *Årsberetning* 2007, Copenhagen, April 2008;
- * Pressenævnet, *Årsberetning* 2006, Copenhagen, May 2007;
- * Pressenævnet, *Årsberetning* 1997, Copenhagen, 1998;
- * Press Standards Board of Finance Limited, The, *Sixteenth Annual Report 2006-2007*, 2007;
- * Raad voor Maatschappelijke Ontwikkeling, *Medialogica – Over het krachtenveld tussen burgers, media en politiek*, The Hague, January, 2003;
- * Shannon, R., *A Press Free and Responsible: Self-regulation and the Press Complaints Commission 1991-2001*, John Murray Publishers, London, 2001;
- * Schuijt LL.M., Prof. G.A.I., ‘De juridische relevantie van de begrippen “journalist” en “journalistieke werkzaamheden”’, *Mediaforum* 2008-5, pp. 191-197;
- * Schuijt LL.M., Prof. G.A.I., *Kroniek van het Nederlandse mediarecht 2001-2006*, Auteurs & Media 2006-3, pp. 238-256;
- * Study committee of the Vereniging Media- en Communicatierecht (Association for media and communication law), *Klachten over mediapublicaties – Een onderzoek naar de mogelijkheden van eenvoudig toegankelijke niet rechterlijke procedures*, Amsterdam, 2007;
- * Sveriges Riksdag, *The Constitution of Sweden – The fundamental laws and the riksdag act*, Riksdag, Stockholm, 2004;
- * Verdoodt, Anne-Lies, *Zelfregulering in de journalistiek – De formulering en handhaving van deontologische standaarden in en door het journalistieke beroep*, K.U. Leuven, Faculty of Law, 2007.
- * Verhoest, Filip, *Lezer klaagt over inbreuk op privacy*, De Standaard, December 17th 2007;
- * VZW Vereniging van de Raad voor de Journalistiek, *2007 Annual Report*, Brussels, 2008;
- * VZW Vereniging van de Raad voor de Journalistiek, *2006 Annual Report*, Brussels, 2007;
- * VZW Vereniging van de Raad voor de Journalistiek, *Vijfjaar Raad. Een balans.*, Brussels, 2007;
- * Weibull, L. and B. Börjesson, ‘The Swedish Media Accountability System: A Research Perspective’, *European Journal of Communication*, Vol. 7, 1992, pp. 121-139;
- * Werkers, E., E. Lievens and P. Valcke, ‘Bronnengeheim voor bloggers’ (*NjW* 2006, pp. 630-636);
- * Wetenschappelijke Raad voor het Regeringsbeleid, *Focus op functies – uitdagingen voor een toekomstbestendig mediabeleid*, Amsterdam University Press, Amsterdam, 2005;
- * Wetenschappelijke Raad voor het Regeringsbeleid, *Trends in het medialandschap – vier verkenningen*, Amsterdam University Press, Amsterdam, 2005;
- * Wiggernhorn, Dr. Harald, Eine Presseratsrüge als unwahre Tatsachenbehauptung?, *AfP (Zeitschrift für Medien- und Kommunikationsrecht)* 05-2007, pp. 416-423.

Annex IV Other activities of the Netherlands Press Council 2007/2008

Meetings

- * MediaDebat 'Aapjes kijken' (MediaDebate on privacy issues)
- * guest lecture at Fontys Hogeschool
- * MediaDebat 'Opening van zaken' (MediaDebate on reporting about criminal cases)
- * VVOJ-café 'Veroordeeld door de RvdJ...nou en?' (meeting Association of Investigative Journalists 'Found guilty by the press council, so what?')
- * City of Maastricht, 'Minisymposium integriteit in het openbaar Bestuur te Maastricht' (Mini symposium on integrity in the Maastricht local authority)
- * Seminar of the Ministry of Education, Culture and Science, 'Journalistiek en Zelfregulering' (Journalism and self-regulation)
- * University of Amsterdam, Master Journalistiek en Media, symposium 'Code, Keurmerk of Beroepsvereniging?' (Code, hallmark or professional association?)
- * Nederlands Gesprek Centrum, Symposium 'De tandeloze waakhond' ('The toothless watchdog')
- * guest lecture at Rijksuniversiteit Groningen – Wegener ervaringsplaatsen (Work placements at Wegener)
- * presentation Nederlandse Nieuwsmonitor (Netherlands News Monitor) and MediaDebat on 'Mabelgate'
- * discussion with Minister of Education, Culture and Science about self-regulation/ombudsman
- * guest lecture at Media Academie
- * congress of the Netherlands Press Fund 'Press and press support in a digital age'
- * focus group Maatschappelijke onrust (Social unrest), Ministry of the Interior
- * consultation with Ministry of Education, Culture and Science about triad for self-regulation in the media
- * spring meeting of Vereniging voor Media- en Communicatierecht, 'Klachten over mediapublicaties' (meeting Association for Media and Communication law, 'Complaints about articles in the media')
- * consultation with College bescherming persoonsgegevens (Dutch Data Protection Authority) about privacy and the Internet
- * NOS (Netherlands Broadcasting Foundation) course 'User generated content'
- * training for editorial staff at Media Academie
- * MediaDebat 'Media stil na drama?' (MediaDebate 'Media quiet after drama?')
- * consultation with Fontys Hogeschool about survey into authority of the Netherlands Press Council
- * meeting with Free Voice
- * KIM lecture '16 miljoen aanklagers. Over Justitie en Mediamacht' (lecture Catholic Institute for Mass media, 'Sixteen million complainants. About the administration of justice and media power')

In addition, the secretary of the council was invited by the Center for Independent Journalism to give a lecture during the international workshop 'Patterns and models of media self-regulation in Europe' in Budapest about the Netherlands Press Council, and she also sat on the panel of the EU Expertenkonferenz zur europäischen Medienpolitik in Leipzig. The chairman of the board of directors of the foundation visited Kosovo to advice the press council of Kosovo, at the invitation of Press Now.

Publications/broadcasts

- * *Staatscourant* 'Journalistieke waakhond' ('Watchdog for the press')
- * Amnesty-magazine *Wordt Vervolgd*, 'Religie & homorechten' ('Religion & gay rights')
- * *Magazine Nationale Veiligheid en Crisisbeheersing* (Min.BZK), 'Crisisbeheersing en de pers – onverenigbaar?' ('Crisis management and the press: irreconcilable?')
- * 'MM Magazine' (NCRV Radio 1) radio programme about MediaDebate
- * Funx (radio) programme about columns
- * Council press release concerning media reports relating to missing person Natalee Holloway
- * 'MM Magazine' (NCRV Radio 1) radio programme about Belgian leaflet on victims and the media
- * *De Journalist*, 'Raad is van de journalistiek' ('The press council belongs to the press')
- * *Mediaforum*, 'De Raad voor de Journalistiek – wel iets aan doen maar veel zo later' ('The Netherlands Press Council – Some fine-tuning required, but things can stay as they are')
- * item 'Editie NL' (RTL4) about hoax reports
- * 'Netwerk' report regarding GeenStijl
- * www.denieuwereporter.nl, 'Gezag Raad voor de Journalistiek is nooit onderzocht' ('Authority of the Netherlands Press Council has never been investigated')
- * www.denieuwereporter.nl, 'Bij beschuldigingen is zorgvuldigheid vereist' ('Treat allegations with care')
- * www.denieuwereporter.nl, 'Professionele journalistiek in verwarring' ('Professional journalism in disarray')
- * 'RTL Boulevard' programme about the privacy of suspects and convicts
- * *Het Parool*, 'Column uit de zeer losse pols' ('Off the cuff')
- * 'MM Magazine' (NCRV Radio 1) radio programme about decision on Volkert vd G/De Telegraaf
- * Council press release concerning media reports relating to family dramas
- * 'MM Magazine' (NCRV Radio 1) radio programme about the ombudsman and the press council

Annex V Websites of the abovementioned organisations

The Netherlands

- * Algemeen Nederlands Persbureau (Netherlands National News Agency) – www.anp.nl
- * Commissariaat voor de Media (Dutch Media Authority) – www.cvdm.nl
- * MediaDebat (Media Debate) – www.mediadebat.nl
- * Nederlandse Nieuwsblad Pers (Netherlands Newspaper Press) – www.nnp.nl
- * Nederlandse Nieuwsmonitor (The Netherlands News Monitor) – www.nieuwsmonitor.net
- * Nederlandse Publieke Omroep (Netherlands Public Broadcasting) – www.publiekeomroep.nl
- * Nederlandse Vereniging van Journalisten (Netherlands Association of Journalists) – www.villamedia.nl
- * Nederlands Genootschap van Hoofdredacteuren (Netherlands Association of Chief Editors) – www.genootschapvanhoofdredacteuren.nl
- * Nederlands Uitgeversverbond (Dutch Publishers Association) – www.nuv.nl
- * Raad voor de Journalistiek (Netherlands Press Council) – www.rvdj.nl
- * Stichting Democratie en Media (Democracy and Media Foundation) – www.stdem.org
- * Stichting Regionale Omroep Overleg en Samenwerking – www.roosrtv.nl
- * Stimuleringsfonds voor de Pers (The Netherlands Press Fund) – www.stimuleringsfondspers.nl
- * RTL Nederland (RTL Netherlands) – www.rtl.nl
- * SBS Broadcasting – www.sbs.nl

Sweden

- * Allmänshetens Pressombudsman (Press Ombudsman) – www.po.se
- * Granskningsnämnden för radio och TV (Swedish Broadcasting Commission) – www.grn.se
- * Patent- och Registreringsverket (Swedish Patent and Registration Office) – www.prv.se
- * Pressens Opinionsnämnd (Swedish Press Council) – www.po.se
- * Publicistklubben (Swedish National Press Club) – www.publicistklubben.se
- * Radio- och TV-verket (Swedish Radio and TV Authority) – www.rtvv.se
- * Svenska Journalistförbundet (Swedish Journalists Association) – www.sjf.se
- * Sveriges Riksdag (Swedish parliament) – www.riksdagen.se
- * Sveriges Tidskrifter (Swedish magazines) – www.sverigestidskrifter.se
- * Tidningarnas Telegrambyrå (Multi media news provider) – www.tt.se
- * Tidnings Utgivarna (Swedish Newspaper Publishers' Association) – www.tu.se

Denmark

- * Danske Dagblades Forening (Danish Newspapers Association) – www.danskedagblade.dk
- * Dansk Fagpresse (Danish Specialist Press) – www.danskfagpresse.dk
- * Dansk Folkeoplysnings Samråd (Danish Adult Education Association) – www.dfs.dk
- * Dansk Magasinpresses Udgiverforening (Danish Magazine Publishers' Association) – www.dmu-mags.dk
- * Dansk Journalistforbund (Danish Journalists' Trade Union) – www.journalistforbundet.dk
- * DR (Denmark Radio) – www.dr.dk
- * Landsrepræsentationen for Danske Distriktsblade og Lokalaviser (National representation for Danish regional papers and advertising papers) – www.ugeaviserne.dk
- * Pressenævnet (Danish Press Council) – www.pressenaevnet.dk
- * TV2 – www.tv2.dk

Great Britain

- * BBC – www.bbc.co.uk
- * Chartered Institute of Journalists – www.cioj.co.uk
- * Editors' Code of Practice Committee – www.editorscode.org.uk
- * National Union of Journalists – www.nuj.org.uk
- * Newspaper Society – www.newspapersoc.org.uk
- * Ofcom (independent media regulator) – www.ofcom.org.uk
- * Periodical Publishers Association – www.ppa.co.uk
- * Press Complaints Commission – www.pcc.org.uk
- * Scottish Newspaper Publishers Association – www.snpa.org.uk
- * Society of Editors – www.societyofeditors.org
- * Teenage Magazine Arbitration Panel – www.tmap.org.uk
- * United Kingdom Parliament – www.parliament.uk

Germany

- * Bundesverband Deutscher Anzeigenblätter (German free local paper owners) – www.bvda.de
- * Bundesverband Deutscher Zeitungsverleger (German newspaper owners) – www.bdzv.de
- * Deutsche Journalistinnen- und Journalisten-Union (German Journalists' Union) – www.dju.verdi.de
- * Deutscher Journalisten-Verband (German Journalists Association) – www.djv.de
- * Deutscher Presserat (German Press Council) – www.presserat.de
- * Initiative Nachrichtenaufklärung – www.nachrichtenaufklaerung.de
- * Landesanstalt für Medien Nordrhein-Westfalen – www.lfm-nrw.de
- * Verband Deutscher Zeitschriftenverleger (German magazine owners) – www.vdz.de
- * Vereinte Dienstleistungsgewerkschaft (Ver.di Trade Union) – www.verdi.de
- * Verein zur Förderung der publizistischen Selbstkontrolle (Association for the promotion of Media Self-control) – www.publizistische-selbstkontrolle.de
- * WDR (Westdeutscher Runfunk, West German broadcasting corporation) – www.wdr.de

Flanders

- * Algemene Vereniging van Beroepsjournalisten in België – www.agjpb.be
- * ENG Videohouse – www.videohouse.be
- * Cabinet of the Flemish Minister for Administrative Affairs, Foreign Policy, Media and Tourism – www.vlaanderen.be
- * Laatste Nieuws, Het (national newspaper) – www.hln.be
- * Morgen, De (national newspaper) – www.demorgen.be
- * Photonews – www.photonews.be
- * Ppress, The (trade press) – www.theppress.be
- * Raad voor de Journalistiek (Flemish Press Council) – www.rvdj.be
- * Roularta Media Group – www.roularta.be
- * Unie van Uitgevers van de Periodieke Pers (Union of the Publishers of Periodicals) – www.upp.be
- * Vereniging van Journalisten van de Periodieke Pers (Association of Journalists working for Periodicals) – www.ajpp-vjpp.be
- * Vitaya (magazine) – www.vitaya.be
- * Vlaamse Dagbladpers (Flemish Newspaper PresS) CVBA – www.dagbladpers.org
- * Vlaamse Media Maatschappij (Flemish Media Company) – www.vmma.be
- * Vlaamse overheid (Flemish government) – www.vlaanderen.be
- * Vlaamse Radio- en Televisieomroep (Flemish Radio and Television Corporation) – www.vrt.be
- * Vlaamse Regulator voor de Media (Flemish Regulator for the media) – www.vlaamseregulatormedia.be
- * Vlaamse Vereniging van Journalisten (Flemish Journalists' Association) – www.agjpb.be

For Distribution to CPs

MOD400001444

For Distribution to CPs

MOD400001445