Statement to the Leveson Inquiry

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I submit this paper as an academic researcher of freedom of speech and media law. I'm also a member of the Finnish press council representing audience. I have followed the Strasbourg court's case law and the British discussion on media, privacy and phone hacking scandal. I present some Strasbourg court judgements concerning distinctions between public interest and privacy in Finnish cases. I make some comparisons between conditions for self-regulation and legal regulation.

Public interest

1.

Public interest is something that affects the community on local, national or international level. The relations between individuals are not in public interest as such if they do not affect any larger community. Public interest is a justification in a free press to tell facts and opinions that have meaning for larger community even against objections of those whom they are concerned.

There are several Strasbourg court judgements concerning the distinction between public interest and privacy in Finland. In Strasbourg court judgements of the safety of medical operations (Selistö 16.11.2004), misuse of public funds (Eerikäinen 10.2.2009), criminal conviction of the husband of the MP (Karhuvaara and Iltalehti 16.11.2005), the conduct of the police officer (Lahtonen 17.1.2012) were matters of public interest which the press could report. The outside marriage dating of the campaign assistant during the presidential election could be reported as background information because some public interest was involved (Saaristo 11.10.2010 and Reinboth 25.1.2011). A private person had entered the public domain by her own behaviour and the disclosure of her identity was a matter of public interest (6.4.2010 Flinkkilä, Tuomela Jokitapale, Soila and Iltalehti). In all these cases Finland had violated Article10 freedom of expression by giving priority to privacy in circumstances when some public interest was concerned.

The Finnish cases show that it is possible to go too far in protection of privacy. Finland has had since 1974 privacy protection in criminal law. Even though the public figures in politics and in economic power do not have similar protection of privacy, the courts have preferred privacy on the cost of the freedom of expression. The strict privacy laws may lead to situations where conduct of minor public figures and officials and those close to public figures belongs to the protection of privacy. The courts may prefer privacy if they think that the article is not newsworthy and purposes to titillate audiences. The strict legal regulation and ambiguous definition of privacy give courts discretion to decide public interest and newsworthiness. These Finnish cases in Strasbourg Court had both private facts and matters of public interest. However, the private facts cannot overweigh the balance for the privacy alone.

The dating of footballers or celebrities is not in public interest on mass curiosity or on role model reasons as professor Phillipson describes in his statement. If dating leads to the misuse of power or misuse of public or private funds, public interest might be involved. The identity of victims and their family members is not a matter of public interest. In Finland the press can report accidents and crimes without telling the names of victims. In publishing names of suspected or convicted persons the balance between public interest and fairness for the perpetrator must be considered.

Selling newspapers and public interest are not contrary because professional journalism needs commercial success. The European Court of Justice has considered that profit-making purpose and commercial success are essential conditions for professional journalism. [1] Commercial purpose is a necessary condition for journalism but it is not an excuse for bad journalism.

2. The freedom of expression is wider and covers other areas of expression than press and media activities do. Freedom of expression is a right of everyone and includes rights to impart and receive information and ideas. Freedom of expression covers artistic expressions, films, theatre, entertainment, meetings and demonstrations. The Strasbourg Court has considered radio signals, light music, leaflets, posters, art exhibitions, films,

[1] 16.12.2008 C-73/07, para 59: "Secondly, the fact that the publication of data within the public domain is done for profit-making purposes does not, prima facie, preclude such publication being considered as an activity undertaken 'solely for journalistic purposes'. As Markkinapörssi and Satamedia state in their observations and as the Advocate General noted at point 82 of her Opinion, every undertaking will seek to generate a profit from its activities. A degree of commercial success may even be essential to professional journalistic activity. "

public speeches and many other forms of expressions from freedom of expression viewpoints of article 10. Internet and social media are the recent extensions for the use of free speech beyond press environment. The existence of mediums outside the press and extensions of internet are in public interest.

The freedom of expression consists of other contexts of expression than merely press. The other contexts of expression may vary from political speech to various aspects of contemporary society and pure entertainment. However, it is easier to consider whether particular restrictions to freedom of expression are justified than to give positive definition of comprehensive public interest. Defamations, invasions of privacy, racist and hate speech do not belong to the protection of the freedom of expression. The distinction between cases which might have some public interest involved and cases of simply violations cause most of the discretion in courts.

3. In maximising overall public interest, the balance between freedom of expression and other interests must be optimal. The unlimited and absolute freedom of expression is not optimal for good society even if the ideas of balanced freedom of expression vary from time to time. The Strasbourg court uses evaluative interpretation in balancing between the rights and justified restrictions of Article 10.

a) The political speech belongs to the core of the freedom of expression in which restrictions are hardly justified. The interest of the public as a whole in political governance
   - National security, public order and economic well wellbeing are mentioned as justified reasons for access restrictions and secrecy obligations in freedom of information acts. However, the information in these fields may vary from clear and present danger if revealed to trivial data. The public authorities try to keep secrecy against the freedom of information act and in Finland the Supreme Administrative Court has in many rulings preferred access to information.
   - The rule of law, access to justice, open justice and independence of courts are in the core of the public interest. The operation of justice and law enforcement agencies is in public interest and the public has the right to know how the justice has been administrated. The contempt of court rules and restrictions try to balance the open justice between the fair trial and privacy of parties in court. The

Scandinavian tradition of publicity of documents has covered proceedings and documents in courts. This has caused problems whether a public document of a court can be published in media. The criticism against court rulings is in public interest. However, the courts must be protected from malicious attacks.

- The government enjoys the least protection against critics in political discussion. The democratic accountability of government is in the heart of public interest and the public has the right to know the planning and the implementation of policy. In the field of political discussion and in critics against politicians hardly any restrictions are justified.

b)

The choice between freedom of expression and privacy is easy if only matters of public interest are concerned. In many cases they are mixed. In balancing between private facts and matters of public interest the reporters must be careful and show consideration to people they are dealing with. In an Austrian case Krone Verlag GmbH 19.6.2012 the Strasbourg court considered that revealing the identity and photos of a child in custody dispute of his parents was not in public interest although custody disputes and the way authorities treat those disputes are in public interest. The Strasbourg court has emphasized that it is not up to courts to replace journalists in reporting techniques. If minors and victims of crimes and vulnerable people are concerned, the media should not ruin their lives. People who voluntarily seek publicity or enter the public domain in circumstances where public attention is obvious through their own behaviour cannot expect similar protection. The Strasbourg court considers that the press should not make harassment on celebrities if purpose is only to satisfy the public curiosity.

The European data protection directive and national data protection laws regulate the processing of personal data. Yet we take granted programs and tools like Google and Facebook which mainly operate beyond European jurisdictions. The privacy settings of those tools can be changed without prior notification or consent from users.

The distinction between public interest and confidential communications is clear. Phone hacking and breaking in computers and digitally held private information are not in public interest. Breaking confidential communications is a crime. In Finland the managers of Sonera telecom operator (nowadays

Teliasonera) were convicted to 4-7 months conditional prison sentences of misusing identification information of their subscribers in telecom operator activities.

Press ethics

8. The Code of Practice and the process in PCC are quite similar to the ethical code and practice of the Finnish press council. The codes and functions of press councils do not explain the phone hacking scandal. The only difference I notice that there are quite many possibilities for public interest exceptions in the British Code for the Conduct of journalists. In my opinion the Finnish press council does not act as a mediator between editors and audience but as a master of the code making remarks on the press of their errors.

There is a rule of simultaneous hearing in the Finnish Guidelines for Journalists:

21. If the intention is to present information about the activities of a clearly identifiable person, company or organization in a manner that would present them in a very negative light, the object of the criticism must be granted the right of reply on the issue in question.

This rule is not exactly compatible with the notification proposed in Mosley case. However, the interim injunction is not available in Finland because it would be contrary to the freedom of expression and prohibition of prior restraints in the Finnish Constitution Act. The right to reply before publishing could prevent wrong facts but could lead to prior restraints if an interim injunction is available.

9. The representation of journalists' organizations could improve the commitment to the code and the press council. The main distinction between the PCC and the Finnish Mass Media Council is that the journalists are represented in the Finnish council. The Finnish press council has representatives of editors, journalists and audience. The Finnish ethical code is called guidelines for journalists. It is based on the structure of journalistic work and it reflects the commitment of journalists to the code. The Finnish Union of Journalists is one of the associations supporting the Mass Media Council. The associations of editors are also members supporting the Mass

Media Council. There are several ways to organize the press council.[2] If the associations of journalists attend the press council that increases the number of participants committed to the self-regulation.

The conditions of self-regulation and legal regulation of media are different. The press councils cannot hear witnesses like courts can do or make crime investigation like police can do. The procedure in a press council is different from the procedures in courts. If participants lie to press council, it has no powers to investigation. It would be impossible to any press council to discover phone hacking by its own available measures. If a media enterprise breaks law in a serious manner, the investigation must be left to police or other public authorities.

If a press council has powers to financial sanctions and investigations in locations of the press, it is acting like an authority or a court. The Article 8 of the European Convention on Human Rights shall be applied to the procedural rules of search warrants and requires legal safeguards against interference with information sources (Sanoma Uitgevers B.V. 14.9.2010). If a body based on self-regulation has effective investigatory powers like search and seizures, it should have legal safeguards. I understand that many people in Britain prefer self-regulation to legal regulation. If self-regulatory body has effective investigatory powers that interfere with home and confidential communications in the meaning of Article 8, it should be based on legal rules and safeguards. In Denmark the activities of the press council are regulated in the Media Liability Act. However, the Danish press council has similar powers than the other Scandinavian press councils.

Statement of Truth

I believe the facts stated in this witness statement are true.

Signed …[redacted]**.....**
Date …3rd July 2012……..

[2] Article on Scandinavian press councils in Columbia Journalism Review by Lauren Kirchner April 24 2012 "Self-Regulation Done Right". In a recent meeting with Scandinavian press councils we considered we are acting in similar ways.