**Press Freedom in the European Union**

What causes can be attributed to the large differences in press freedom in the countries of the European Union and what steps does the EU overall take to improve press freedom within its borders?



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# Executive summary

This report is the result of a research to press freedom in the European Union. In recent years, several EU-countries have experienced a dramatic fall in the ratings on press freedom. On the other side, EU-member Finland is the highest rated country in the world when it comes to press freedom. The aim of this research is to find out how differences in legislation are to blame for the large differences in ratings concerning press freedom and how the EU is tackling this problem.

Press freedom is one of the fundamental and universal human rights and therefore included in the Universal Declaration of Human Rights, which is signed by all UN-members. Press freedom can be defined as the freedom for journalists to do their work without interference from the government, organizations and individuals and without negative side-effects like extortion, intimidation and other physical or mental threats. Many different organizations engage with the subject of press freedom and each year on May 3rd World Press Freedom Day is organized to stress its importance.

In the EU, press freedom is guaranteed through the Charter of Fundamental Rights of the European Union (CFREU). It once only counted as a set of norms, but since it was included in the 2009 Lisbon Treaty it has the same legal binding as treaty. Apart from the charter, no other EU-legislation exists to protect press freedom.

In four selected EU-countries, representing the highest and lowest rated countries in the Press Freedom Index, it is researched and compared how national legislation concerning press freedom differs. In Finland, the highest rated country, press freedom is guaranteed through the constitution and the Act on the Exercise of Freedom of Expression in Mass Media. Based on the act, different laws are adopted to further guarantee press freedom. Moreover, it gives legal binding to the self-regulating, independent Council of Mass Media. Year after year this results in a stable press freedom rating in Finland.

This is different in the three lowest rated EU-countries of the Press Freedom Index; Italy, Greece and Hungary. All experience either lack of legislation to protect press freedom or have adopted legislation that is harmful and disrespectful to press freedom and all have no media council or have no media council that is independent from the government and/or miss the qualities to be a healthy, self-regulating body.

Especially after the press freedom problems in Hungary, the EU recognizes the problem EU-countries are facing with press freedom. On behalf of Euro-commissioner Neelie Kroes, the High Level Media Group has researched the matter and presented in January 2013 the final report with recommendations on how the EU could or should tackle the issues with press freedom. The report has received high criticism from different sides though Neelie Kroes has called the report the perfect basis for future discussions on press freedom.

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# Introduction

This dissertation focuses on press freedom within the borders of the European Union. The Press Freedom Index 2013 (monitored by Reporters Without Borders) shows that press freedom in some countries of the European Union is in a very poor state and is getting worse by year. These countries include Italy, Greece and Hungary. Finland, on the other hand, belongs to the highest rated countries in the world when it comes to freedom of the press. How is it possible that countries within the same union have such different rankings, how can such big gaps occur?

The aim of this dissertation is to explain the large differences in press freedom by comparing the legislation applying to press freedom in four selected countries and to research how and if the European Union tackles the press freedom problems that EU-countries experience. This will be researched by comparing the press freedom legislation in the three lowest rated countries from the Press Freedom Index with the press freedom legislation in the highest rated country of the European Union. The lowest rated countries are Italy, Hungary and Greece and the highest rated country is Finland. To underpin the comparison national legislation of the selected countries will be studied as well as what international legislation applies to the countries of the European Union. Legislation will be the core in the research to differences in press freedom since legislation is the official power that enables journalists to do their work.

The research question that will be used for this dissertation is the following:

*What legal causes can be attributed to the large differences in press freedom in the countries of the European Union and what steps does the EU overall take to improve press freedom within its borders?*

To answer the research question the dissertation has been divided into three chapters each answering one sub-question. Chapter 1 is a general introduction to the concept of press freedom. It will be described what is generally understood by the term press freedom and its importance will be outlined. Moreover, an overview will be given of the major organizations active in the European Union that engage with the subject of press freedom.

Once given a clear definition of press freedom, the dissertation will in Chapter 2 start the research to legislation applying to countries of the European Union. This is not only legislation implied by the European Union but also national and other international legislation (e.g. UN-norms) will be taken into account. A comparison will be made between the national legislation of Italy, Greece and Hungary and to that of Finland.

The last sub-question of the dissertation, Chapter 3, will look at how the current problems with press freedom are being tackled by the European Union. Does the European Union recognize the problems and, if so, how are they planning to restore the press freedom in the applying countries?

Finally, the answer to the research question will be discussed in the conclusion based on the found research results in the sub-questions.

# Chapter 1. Press freedom: what & who?

## The definition of press freedom

In almost every country worldwide press freedom (as part of freedom of expression) is seen as a fundamental and indispensable human right and often linked to the concept of democracy. Freedom of the press is included as a fundamental right in the Universal Declaration of Human Rights signed in 1948. In the declaration, signed by the countries of the United Nations, Article 19 states that:

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.* (United Nations, 2013)

Generally press freedom can be defined as the liberty for journalists to do their work without the interference of the government, governmental institutions or any other organizations or individuals. Moreover, journalists should be able to do their work without negative side-effects as extortion, intimidation and other physical or mental threats. Freedom of press and freedom of speech are two tightly related concepts but can actually both strengthen and weaken each other. In a healthy, democratic country press freedom gives a voice to the public and is a strong addition to freedom of speech within that country. However, having the concept of freedom of press is not a guarantee that freedom of speech is warranted within a country. Karen Sanders argues in her book that if media deliberately withhold information to the public or only give a voice to a restricted group of people, press freedom can actually have a negative consequence for freedom of speech in a country. (Sanders, K., 2003). It is important to comprehend this possible effect of freedom of press to realize the importance of fair, truthful journalists. For this reason quality of journalism is one of the requirements to assess and judge press freedom in a country.

Freedom of press means that journalists do not need to have the government’s permission to publish news, information and ideas. Journalists are allowed to write whatever is newsworthy, even if these articles are critical towards certain (groups of) people or institutes and might create controversy. However, one has to keep in mind that there is an essential difference is articles that are critical and articles that are discriminating, defamatory and/or encourage hate to certain people. Most national and international legislation state that discrimination and hate encouragement are forbidden and journalists who cross this line could get in trouble after publishing such articles. The line between criticism and discrimination are in certain cases extremely thin but both defend fundamental human rights.

## 1.2. The importance of press freedom in the European Union

To many the importance of freedom of the press seems rational and logic. Nevertheless only one third of the world’s population lives in a country where there is full press freedom. One other third lives in a country where the press in partially free and the last third lives in a country where there is hardly any press freedom or no press freedom at all. Despite the fact that nearly any country in the world has joined the UN (and therefore has signed the Universal Declaration of Human Rights), press freedom is by far guaranteed in every country. Moreover, in 2012 alone over a hundred journalists were killed of which 46% was murdered. Many more were imprisoned or physically and/or mentally violated. (Committee to Protect Journalists, 2012)

Fortunately in the European Union there are no recent cases of murdered journalists. The EU counts as one of the safest places in the world for journalists and media to do their job. A research to press freedom in the EU might therefore seem relatively unnecessary or superfluous when compared to other areas in the world where journalists have to fear for their lives, e.g. in Syria, Somalia and Pakistan. Press freedom in the European Union is often taken for granted. Nevertheless, serious concerns for press freedom have recently occurred in different EU-countries. Though these issues did not usually have violent characters, the fundamental right of press freedom has been disrespected. Later on in this research the issues of press freedom in the EU will be further discussed.

Though the answer seems simple, it is important to highlight *why* freedom of the press is crucial within a democratic country or intergovernmental institution like the European Union. The press is often referred to as the Fourth Estate, meaning that they are the fourth, though unofficial power after the legislative, judicial and executive power (Trias Politica). In a democratic country the national government has the responsibility to protect the democracy and its citizens. The fourth power, the press, has the role of ‘watchdog’; it monitors and supervises the society as an independent force without having any responsibility. Especially the latter is what makes the media unique compared to, for example, the government: while the government has the aim to run the society in a democratic manner resulting in having the responsibility for the well-being of the democracy, the press only works as an outsider that guards the democracy without having any responsibility for it. News and developments can therefore not harm or benefit the press with the result that they can truthfully present the news. (Rusbridger, Allen. October 6th, 2011)

When the press in a country cannot fully experience freedom, news will most likely (somewhat) get distorted. Other powers in a country can benefit when some news is censored, some news gets exaggerated or when opinions and news of certain entities do not get a platform. A democracy needs press freedom since a democracy means that everyone has equal rights. Every group and every person needs to have the possibility of a platform to share their news or opinions within that democracy. Press freedom is therefore a very important fundamental right that needs to fully be guaranteed at any time.

### 1.2.1. World Press Freedom Day

To raise awareness for the importance of press freedom, every year on May 3rd World Press Freedom Day is celebrated. The day was proclaimed in December 1993 by the United Nations after the General Conference of UNESCO. According the UN, the day gives the world the opportunity to:

* celebrate the fundamental principles of press freedom;
* assess the state of press freedom throughout the world;
* defend the media from attacks on their independence;
* pay tribute to journalists who have lost their lives in the line of duty.

(United Nations, 2012)

World Press Freedom day is celebrated in most EU-countries and is usually organized by national organizations engaged with press freedom. For example, in 2012 World Press Freedom day in The Netherlands was organized by Free Press Unlimited. The theme of that day was ‘Untold Stories’ and journalists from Turkey and Mexico were invited to share stories from their country that did not reach the media. (Free Press Unlimited, 2012)

## 1.3. Organizations for press freedom in the European Union

Press freedom in the European Union can only be reached when there is proper legislation combined with active organizations that are committed to improve, maintain and protect press freedom. Legislation applying to the European Union on press freedom will be extensively discussed and described in the next chapter.

Countless organizations in Europe engage with press freedom. Some are based in EU-cities; some are based elsewhere in the world but are amongst other active in the European Union. In the next few paragraphs the most significant, major organizations will be discussed including the role they play in the reach for press freedom in the European Union.

### 1.3.1. Reporters Without Borders

Reporters Without Borders (RWB) is a non-governmental organization founded in Montpellier, France and head-based in Paris, France. RWB is also commonly known by its French name, Reporters Sans Frontières (RSF). RWB has two main activities, the first is focused on Internet Censorship and New Media and the other is focused on helping journalists in dangerous areas in any way possible. According to its website, RWB’s mission is:

* To continuously monitor attacks on freedom of information worldwide;
* To denounce any such attacks in the media;
* To act in cooperation with governments to fight censorship and laws aimed at restricting freedom of information;
* To morally and financially assist persecuted journalists, as well as their families.
* To offer material assistance to war correspondents in order to enhance their safety.

(Reporters without Borders, September 12 2012)

Since 1996 RWB has a consultant status at the United Nations, meaning that RWB is one of the organizations that is frequently asked for the role of adviser whenever the United Nations need information or advice on press freedom. (Reporters Without Borders, 13 March 2012)

#### 1.3.1.1. Press Freedom Index

One of the most noticeable projects of Reporters Without Borders is the annual Press Freedom Index. The index is the result of a survey to press freedom in nearly every country in the world and ranks countries according to the extent of press freedom within its borders. The survey is conducted through a questionnaire that is being sent to journalists and news media in the different countries. In the questionnaire journalists and new media are asked to reflect on the degree of freedom they experience and to what extent authorities in the concerning country respect this freedom. (Reporters Without Borders, 20 January 2012) The full questionnaire used for the most recent index can be found in Appendix 1. The index is a significant, worldwide used indicator for press freedom. However, one has to keep in mind that the index only measures press freedom and not quality of journalism in a country.

Particular countries of the European Union are traditionally ranked on top the list. Eleven countries of the top-15 are EU-countries, with Finland and not EU-member Norway sharing the first place and Estonia and the Netherlands sharing the third place. Nonetheless, not all EU-countries are ranked high on the list. On the contrary: with Italy on the 61st place, Greece on the 70th place and Bulgaria on the 80th place the contrast could not be bigger. (Reporters without Borders, 2011-2012) Later on the research it will be discussed how it is possible that EU-countries seem to have such difficulty with press freedom and how the EU tackles these problems.

### 1.3.2. Freedom House

Freedom House is a non-governmental organization founded and based in Washington D.C., United States of America. Freedom House’s main goal is to expend different forms of freedom around the world, of which amongst other press freedom. According to its website the mission of Freedom House can be described as followed:

*Freedom is possible only in democratic political environments where governments are accountable to their own people; the rule of law prevails; and freedoms of expression, association, and belief, as well as respect for the rights of minorities and women, are guaranteed. Freedom ultimately depends on the actions of committed and courageous men and women. We support non-violent civic initiatives in societies where freedom is denied or under threat and promote the right of all people to be free.* (Freedom House, 2013)

Though based in the United States, Freedom House is active and present in all parts of the world. In Europe, Freedom House is presented in Brussels, Belgium from where they work to further increase and retain press freedom in Europe and to support Europe’s role in assisting democratic processes abroad.

#### 1.3.2.1. Freedom of the Press report

Since 1980 Freedom House annually presents the report on Freedom of the Press. The report measures the level of freedom the press and media experiences in 197 countries and territories worldwide. Other than the Reporters Without Borders’ Press Freedom Index, the Freedom of the Press report is not singly based on a questionnaire sent to journalists. Instead, consultants and other staff of Freedom House gather information from professional contacts (rating from individual visitors to journalists, findings of other freedom organizations, local media, etc.) in the different countries. Finally, the combination of information found is scored from 0 (most free) to 100 (not free). (Freedom House, 2012)

### 1.3.3. OSCE Representative on Freedom of the Media

The Organization for Security and Co-operation in Europe (OSCE) is an intergovernmental organization that focusses on security-oriented issues and human rights. It consists of 57 countries in mainly Europe but also in Asia and North-America. Since December 1997 the OSCE designate a Representative of Freedom of the Media who observes developments in the media of the participating countries and has the task to initiate when cases occur that might affect or are affecting freedom of the press. The Representative gathers information through different sources, including the participating states of the OSCE, non-governmental organizations focusing on press freedom and media organizations. In the case where serious press freedom issues occur, the Representative investigates the case and tries to find solutions to solve the problem. (OSCE, 2013)

### 1.3.4. Association of European Journalists

The Association of European Journalists (AEJ) is an in 1962 founded non-governmental, independent organization with the aim to defend freedom of information and freedom of press in Europe. The AEJ consists of twenty sections in countries that are part of the Council of Europe, whereat it has the status of Official Observer. Most activities of the AEJ take place on national level, but it also works as a cooperating institute for individual organizations. Moreover, the AEJ researches and report on media freedom in the European Union and the rest of Europe.

# Chapter 2. National and international legislation in the European Union

## 2.1. Introduction

In the previous chapter it was described what the universal definition of press freedom is. It is a universal, fundamental right agreed on by nearly every country in the world including the 27 countries of the European Union. Nonetheless, the individual countries of the EU seem to handle and deal with the concept in different ways, resulting in the fact that press freedom has different ratings in the European Union. This aim of this chapter consists of two parts. First of all, it will be researched what international legislation and norms apply to all countries in the EU. This is not only legislation introduced by the European Commission but will also include norms as agreed on by the United Nations. The second part of this chapter will take a look at the national legislation exclusively applicable in individual countries of the EU. For this, the legislation applying to press freedom of the highest rated country of the European Union, Finland, will be compared with those of the three lowest rated countries of the European Union, Italy, Greece and Hungary. Finally, it will be examined if and how the legal situation concerning press freedom in Finland could be a blueprint for the rest of the EU, specifically for Italy, Greece and Hungary.

## 2.2. International legislation

Press freedom is one of the fundamental human rights in the world and counts as an important factor to determine the degree of democracy within a country. Countries in the European Union are not only subject to national legislation that concerns with press freedom, but are, as being a EU- and UN-member also relying on international and intergovernmental legislation and norms.

### 2.2.1. UN-norms

All of the 27 countries of the European Union are also members of the United Nations. To be part of the UN, governments are obliged to sign the Universal Declaration of Human Rights (UDHR). In this declaration the fundamental human rights are named including the right to be able to experience a free media as described in Article 19;

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

The UDHR has the purpose to be a legal and moral standard to deal with human rights worldwide. National governments are expected to further create legislation based on this declaration. The same goes for press freedom: the UN has determined a basis for further legislation on press freedom in individual countries.

### 2.2.2. EU-legislation

Before looking at what EU-legislation applies to freedom of the press, it will be briefly described what different types of legislation exist in the EU. Any action the institutions of the EU can take is based on treaties that are signed by the 27 countries of the European Union. A treaty is a binding agreement that sets out what decisions can be made, how they are made, what role institutions of the EU have and what its objectives are. The EU cannot set out any legislation or decision when a particular area is not covered within a treaty. Based on the content of a treaty, the EU can adopt regulations, directives and other acts. A regulation is a binding, legal agreement directly applicable in all member states while a directive is a result that has to be achieved but is freely interpretable for legislation. (European Union, 2013)

#### 2.2.2.1. The Charter of Fundamental Rights of the European Union – Article 11

The Charter of Fundamental Rights of the European Union (CFREU), officially signed in December 2000 in Nice, France, is a charter concluded by the European Council with the aim to visualize the fundamental human rights applicable in the European Union. Besides the fundamental human rights it also includes the economic and social rights contained in the Council of Europe Social Charter and the Community Charter of Fundamental Social Rights of Workers. Until 2009 the CFREU was not an official legal framework and worked as a directive to the individual countries of the EU. This changed in 2009 with the signing of the Treaty of Lisbon. In the treaty a reference to the CFREU is made, making the charter legally binding. (European Union, 2010).One of the rights defended in the charter is freedom of expression and information, which includes freedom of the press. Article 11 of the CFREU states that;

*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.*

*2. The freedom and pluralism of the media shall be respected.*

Since the charter is included in the Treaty of Lisbon, it has the same legal status as a treaty: it is a mandatory basis for possible legislation that is or will be adopted by the European Union. The 27 countries of the EU that have signed the Treaty of Lisbon are therefore officially obliged to respect freedom and pluralism of the media. However, the treaty does not determine *how* and to what *extent* this should be respected.

Since the right to press freedom is only determined in a treaty, national governments are expected to create legislation to fulfill this expectation based on the treaty. The advantage to this is that the power and decision-making remain in the hands of the national governments and legislation can be adopted that perfectly suits the situation within a country. To fulfill this, a country needs a fair and loyal government that has the best interests of people at heart (or in this case: the interests of the press). It is possible that the striking differences in press freedom in the EU are due to the lack of EU- legislation resulting in national legislation that intentionally or unintentionally does not meet the standards that the EU has outlined for press freedom. This point will be discussed in the conclusion of this chapter in section 2.4.

## **2.3. National legislation**

Since the right of press freedom is only set out in a treaty, and not by regulations, national governments in the EU are expected to adopt legislation that meets the guidelines as described in the treaty. In this part of the research it will be described what national legislation applies in the four selected countries of the EU that present the extremes in the Press Freedom Index.

In the 2013 Press freedom index the selected countries were rated as following. The rank of each country is the result of how the country scores compared to the scores of other countries. Number 1 of the Press Freedom Index is the highest rated country in the world, number 179 is the lowest rated country in the world. The difference with 2012 indicates how the particular country scores compared to other countries in comparison to the year before. For example, in 2013 Italy rose four places from 61 to 57, meaning that on the average they got a higher score compared to other countries. Hungary, on the other hand, dropped from place 40 to 56, meaning that their press freedom was rated lower in 2013 than in 2012 compared to other countries.

 Figure 2.1. Press Freedom Index 2013

|  |  |  |
| --- | --- | --- |
| Country | Rank in 2013 | Difference with 2012 |
| Finland | 1 | 0 |
| Italy | 57 | +4 (61) |
| Greece | 84 | -14 (70) |
| Hungary | 56 | -16 (40) |

(Reporters Without Borders, 2013)

2.3.1.Finland
In January 2013, for the third time in a row, the Press Freedom Index named Finland the country with the best and most respected media and press freedom in the world. A remarkable score in an index that rates about 180 countries worldwide. This consistency of a high valued press freedom makes it exceptionally interesting to take a deeper look into its legislation and to make the situation a possible blueprint for the rest of the EU.

The right of press freedom in Finland is guaranteed in the Constitution that entered into force on March 1, 2000. The Constitution is the foundation to all legislation in the country and describes and gives a legal basis to the division of powers and the fundamental rights of the Finnish people. Freedom of the press is part of article 12 that describes the freedom to expression and the right to have access to information. (Ministry of Justice, Finland, 2013)

*Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.*

*Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.* (Ministry of Justice, Finland, 1999)

A more detailed explanation of the right to have freedom of expression and freedom of press is regulated in the “Act on the Exercise of Freedom of Expression in Mass Media”. The Finnish Ministry of Justice states that the act contains more detailed provisions on the exercise, in the media, of the freedom of expression enshrined in the Constitution. (Ministry of Justice, 2003) The act states that interference with the media is only legitimate in unavoidable cases that may harm the democracy and the rule of law. A noticeable point in the act is that the responsibility to protect freedom of expression lies in the hands of designated individuals that have to be identified by publishers of media. This form of self-regulation is known as the Council of Mass Media (CMM) and consists of a chairman (whom is appointed by the Managing Group of the CMM) and eleven members (seven of these members represent areas of expertise in the field of media and four represent the public). The existence of the CMM means that not the government, in the first place, is responsible for freedom of the press and the quality of journalism, but publishers and journalists themselves are responsible. The government can therefore only intervene with the media in highly exceptional cases where the rule of law has been put into danger. The CMM controls and regulates media and journalism and is the place where individuals can complain in cases where they feel pieces of journalism are insulting or incorrect. (The Council for Mass Media in Finland, January 22nd 2008)

The right and protection of press freedom in Finland is to a high extension defined in its legislation. Moreover, a legally established, self-regulating and non-governmental institution makes sure that press freedom will be maintained according to the applicable legislation. The clear legislation in combination with a healthy, self-regulating body causes Finland to maintain having a high rated press freedom. In the next paragraphs it will be researched if and how per lowest rated country in the EU this is different.

2.3.3.Italy
Like Finland, press freedom in Italy is constitutionally guaranteed. Article 21 of the Constitution states the following:

*Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication.* *The press may not be subjected to any authorization or censorship. (…) Publications, performances, and other exhibits offensive to public morality shall be prohibited. Measures of preventive and repressive measure against such violations shall be established by law. (*Sennato Republica, December 22, 1947)

This constitutional article on press freedom is comparable with the Finnish constitutional article on press freedom. Both describe that press freedom should be available for anyone and can only be prohibited in cases where it is offensive to individuals or groups.

Italy does not currently have further legislation based on the Constitution to protect press freedom. On the contrary: the 2004 Gasperri law is, according to many, a direct assault towards press freedom in Italy. The law was enacted after complaints of the dominant position in the media of the Italian government, especially the one of former president Silvio Berlusconi. Berlusconi owns some of the most popular TV-channels of Italy which gives him the power of 90% of the Italian television industry. The Gasperri law was introduced with the aim to end this; it stated that one is allowed to own 20% of all media at the highest (which later changed to 30%). At first sight this seemed unfavorable for Berlusconi. However, the law did not only apply to the TV-industry, but applied to *all* media including newspapers, radio, magazines and cinemas. Since Berlusconi had no interest in the other media anyway, he still met the criteria and could remain being the owner of 90% of the TV-industry.

Italy has its own Order of Journalists, established in 1963 by law, with the aim to self-regulate journalism in the country. Moreover, journalists in Italy are obliged to register their names and to indicate whether they are full or part-time journalists in order to enter the profession. However, the value of the order has been questioned for years. A 2005 survey to press freedom in Italy by the OSCE Representative of the Media describes how some of the government’s proposals to gain more power in the media question the (future) value of the Order of Journalists. (Occhini, C., 2005) One of these bills was proposed by the Italian Minister of Justice and contained sharper restrictions with high penalties on what journalists are allowed to publish. Moreover, the academic quality of the members of the Order of Journalists has been another point of concern.

In short, press freedom in Italy has gone through a tough time in the last decade. Instead of creating laws to protect this fundamental right, different laws were introduced that have received international criticism since these seem to limit press freedom. Another point of concern is the Order of Journalists. Intentionally the Italian Order of Journalists seems to be similar to the Finnish Council of Mass Media since both are self-regulating, legal and non-governmental organizations. However, the quality of the Order of Journalists and its questioned independency to the government raises serious concerns to the value of this organization.

2.3.4.Greece
Press freedom is guaranteed in the Greek Constitution under Article 14. The article states the following:

*1. Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State.
2. The press is free. Censorship and all other preventive measures are prohibited.
3. The seizure of newspapers and other publications before or after circulation is prohibited.
Seizure by order of the public prosecutor shall be allowed exceptionally after circulation and in case of:*

* *a) an offence against the Christian or any other known religion.*
* *b) an insult against the person of the President of the Republic.*
* *c) a publication which discloses information on the composition, equipment and set-up of the armed forces or the fortifications of the country, or which aims at the violent overthrow of the regime or is directed against the territorial integrity of the State.*
* *d) an obscene publication which is obviously offensive to public decency, in the cases stipulated by law. (Government of Greece, 2013)*

The Greek Constitution resembles the previous described constitutions on many levels. A striking difference is that it (more) extensively describes when press freedom can be limited, for example when the President gets insulted or when the Christian or any other religion gets offended. As described in the first chapter of this research, it is a common phenomenon that press freedom knows limits when it comes to offending or insulting (groups of) people. However, the thin line that exists between insults/offences and provocative opinions should be guarded very well so that journalists are still able to publish whatever is newsworthy.

Besides the Constitution, Greece hardly knows any legislation to protect press freedom. On the contrary: the 2007 “Concentration and Licensing of Media Enterprises and other Provisions” laws have been called a threat to diversity of opinions. The law set out new conditions regarding language, employment rules and finances which made it much harder for local and regional radio stations to obtain a license. In a survey by the AEJ (Association for European Journalists), the SEEMO (the South East Europe Media Organisation) states that the law appears “deliberately designed to actively hinder the regional media’s economic development and exclude minority groups from access to information.” Moreover, SEEMO accuses the Greek government of manipulation of the news in Greece. (Papandropoulos A., 2007).

Furthermore, a study by the Hellenic Foundation for European and Foreign Policy (HFEFP), a Greek non-governmental organization, shows that media-regulation in Greece is very much centralized by the government and a legal, well-working form of self-regulation of the media does not yet exist. Moreover, media-regulation seems to be often influenced by business and economic interests of the government. (HFEFP, 2012)

Legislation for the protection of press freedom in Greece seems to be in a very unstable state. Besides the constitution, no legislation exists to protect press freedom. Worse, legislation applying to the press in Greece actually only seems to have negative consequences for freedom of press. This in combination with no form of self-regulation by the press seems to provide a lot of influence to the Greek government when it comes to what the press may and may not publish. The press freedom legislation in Greece is not even comparable to the Finnish one, and this shows off in practice. While Finland has a steady place in the Press Freedom Index, Greece seems to fall more and more behind.

2.3.5.Hungary
The current version of the Constitution of Hungary is a relatively new one: it came into force on January 1, 2012. The fundamental right of press freedom, however, did not change much in the new Constitution compared to the old Constitution. Article 9 of the Constitution states that:

*Article IX*

*(1) Everyone shall have the right to freely express their opinion.*

*(2) Hungary shall recognize and protect the freedom and pluralism of the press, and ensure the conditions for freedom of information necessary for the formation of democratic public opinion.*

*(3) The detailed rules relating to the freedom of the press and to the organ supervising media services, press products and the infocommunications market shall be laid down in a cardinal Act*

Around the introduction of the new Constitution many new laws were enacted in Hungary. Among these are the 2010 “Mass Media and Press Freedom Act”. The act established a new media authority in Hungary, the National Media and Infocommunications Authority (NMHH). Part of the NMHM is the Media council, a five-member party that enforces the media laws that were introduced with the act. From the beginning the act and the laws received high criticism from the European Union and different international organizations, amongst others of the OSCE representative of the media, the United Nations special rapporteur on freedom of expression and some leading press freedom related organizations such as the Freedom House.

One of the concerns is that the president of the NMHM is directly elected by the Hungarian Prime-Minister and is automatically the appointed president of the Media Council. Moreover, the five members of the Media Council are chosen by a two-third majority of the parliament (currently a right-winged one-party-parliament). The system of “dual appointments” has questioned the independence of the Media Council and critics say that in this way the government has, in practice, full control over the Council and thus has major control over the media. (CMCS, 2011)

Besides the questioned independency of the Media Council, different legislation that was enforced with the Mass Media and Press Freedom Act has been criticized as well. On her blog on the website of Freedom House, Vice-President Paula Schriefer argues that the new legislation imposes too many restrictions on what media are allowed to publish or broadcast, something that endangers freedom of speech. Moreover, due to heavy fines and suspensions the Media Council can impose combined with the ambiguity and lack of clarity Hungarian journalists experience in the legislation, journalists are engaging self-censorship to protect themselves from possible sanctions. (Schriefer, P., December 2, 2011)

The (controversial) new media laws and (the lack of) press freedom in Hungary have been extensively described and discussed in European politics and media in recent years. Its dramatic fall in the Press Freedom Index has sounded alarm bells all over Europe and European press freedom has become a major point of attention in the European Union. Many wondered how it was possible that a national government could have been able to introduce laws that clearly suppressed and/or endangered press freedom in Hungary. The laws created an organization to control and regulate what was published in the press, but different from the Finnish Council of Mass Media, the Hungarian Media Council as part of the NMHM has been highly criticized for its dependency on the government and the influence the government can exert on the Media Council.

## 2.4. Conclusion

Press freedom in the European Union is mainly guaranteed through article 11 of the Charter of Fundamental Rights of the European Union. Much like the Universal Declaration of Human Rights introduced by the United Nations, the charter spells out press freedom as a fundamental human right. The charter works as a treaty, meaning that individual countries are expected to base national legislation on press freedom on this charter. This is where the difference between the described countries begins. Even though all the countries have included press freedom in their Constitution, the elaboration of legislation differs quite a lot. The highest rated country of the EU, Finland, has adopted legislation that seems to effectively protect press freedom in the country and gives a legal basis to the Council of Journalists. The Netherlands experience high rated press freedom as well, though press freedom is hardly legally protected in national legislation and the Press Council finds no legal basis. In recent years Italy, Greece and Hungary, the lowest rated countries in the Press Freedom Index, have all been criticized to have adopted legislation and measures that have negative consequences for press freedom in the country. Moreover, the Order of Journalists in Italy and Hungary are both questioned for their independence of the government while Greece does not even have a self-regulation body to protect and regulate the press.

Theory and practice show that Finland sets out a well-working example for the rest of the European Union. According to the Press Freedom Index, worldwide press freedom is best guaranteed and protected in Finland. When looking at its legislation to protect press freedom, this seems to make perfect sense. The “Act on the Exercise of Freedom of Expression in Mass Media” spells out reasonable and clear rights and duties for the media and journalists in order to protect the press and its freedom. Moreover, it gives a legal basis to the Council of Mass Media (CCM), a self-regulating body to control and regulate the media. In short, the reason why press freedom is so well guaranteed in Finland seems to be of the fact that it finds a strong protection in the Finnish legislation in combination with an effective, non-governmental tool (the CCM) to control and protect the media.

The situation is a whole lot different in Italy, Greece and Hungary. The three lowest rated countries in the Press Freedom Index seem to have at least one thing in common: all lack strong and clear legislation with the aim to protect the press and/or lack a well-working and independent self-regulating body to control and regulate the media and press. This results in the fact that press freedom in all three countries gets rated lower and lower each other. This seems strange for countries that belong to some of the wealthiest countries in the world. Instead, press freedom in Italy, Greece and Hungary gets worse ratings than countries like Burkina Faso, Haiti and Trinidad and Tobago. Unacceptable for a union like the European Union and for this reason is has been a major point of attention in European politics. In the next chapter of this research a detailed view will be given on how the EU is currently tackling this issue.

# Chapter 3. Tackling threats to press freedom in the European Union.

The Huffington Post, May 3, 2011: “**Press freedom under fire in Europe**.” (Julliard, J.F., Ohlsson, B.)

EU-observer, November 16, 2012: “**Press freedom under attack inside EU**.” (Nielson, N.).

## 3.1. A new situation in the EU

The dramatic fall in press freedom in the EU has been extensively discussed and described in European media in recent years. The previous chapter described how Finland, as a perfect example for media legislation, differs from countries like Italy, Greece and Hungary when it comes to press freedom. However, press freedom problems do not exclusively appear in those countries. In fact, EU-countries that do not experience press freedom problems at all are becoming an exception. In European Magazine Media Organization (EMMA), Jean-François Julliard, secretary-general of Reporters Without Borders, argues how being a journalist in Europe is no longer a safe profession due to repressive laws, political interference, economic pressures and physical attacks. Moreover, he states that freedom of press needs urgent protection by the European Union. (Julliard, J.F. 2012-2013)

The annual research report to press freedom by Freedom House argues how the decline in press freedom is (at least partially) due to the economic crisis that has hit the European Union in recent years. According to the report, especially the press in Southern-European countries has somewhat lost its strong position as a watchdog due to two main reasons. First of all, the press has come under pressure due to growing corruption by the government, organizations and individuals. Second of all, financial problems and cutbacks have caused to decline the platform of especially smaller and regional media. (Deutsch Karlekar, K., Dunham, J., 2013)

## 3.2. The report of the High Level Group on Media Freedom and Pluralism

The growing problems with press freedom has obviously also come under the attention of the European Union itself. Especially the new and controversial media laws in Hungary were reason to research the matter and this is why in October 2011 a research team named “The High Level Group on Media Freedom and Pluralism” was assigned by EU-commissioner Neelie Kroes and chaired by old Latvian president Vaira Vike-Freiberga. The aim of the group was “to provide a set of recommendations for the respect, the protection, the support and the promotion of pluralism and freedom of the media in Europe”. (Vike-Freiberga, V, January 2013)

The report is the result of research to press freedom conducted by four field experts. The final results were presented to Neelie Kroes in January 2013 and these results are personal conclusions and recommendations from the members of the group. The report can therefore not be seen as the opinion or recommendation from the European Commission and is not necessarily a future basis for new legislation. It is intended to stimulate debate and not to be a draft for new laws. (Robinsin, F., January 212013)

A very interesting point of this report is how it recommends having independent media councils under EU-oversight. According to the report, more and more European countries are in need of an overall framework for the media to self-regulate the operations in the media. Moreover, it should be very clear in media councils how self-regulation is applied and who is in charge inside these councils. The report also recommends how national media councils should have European-wide standards so that European values are surely guaranteed. According to the report, all national media councils should be protected and monitored by the European Commission so that the EC can be the watchdog of press freedom in the EU. (Vike-Freiberga, V., January 2013)

The report also states that the European Union should have a bigger role in the protection of the press and should therefore have more influence in the legislation applying to this principle. All countries should have legislation that is there to protect the press and publications in the press should be only be prohibited in very rare, exceptional cases. EU-legislation that would apply to all members of the EU could help to protect the right to experience press freedom and could set an end to intentional or unintentional vague, unclear and immoral national legislation that is possibly harming press freedom. (Vike-Freiberga, V., January 2013)

### 3.2.1. Criticism

Even though Euro-commissioner Neelie Kroes called the report “exactly what she was looking for” and the recommendations in it “an important basis for the heavy and tough discussion we urgently need to have”, a wave of criticism arose on the recommendations made in the report.. Nigel Farage, leader of the EU-skeptic United Kingdom Independence Party called the report a direct attack to press freedom. (Weghs, J. January 22, 2013). Farage is not alone; Member of European Parliament Daniel van der Stoep called the recommendations in the report a first step towards communism 2.0 and also different professors specialized in media law called the recommendations a danger to press freedom. (Mijnheer, D. January 25, 2013)

The main concern of the report was the recommendation on introducing independent media councils in all EU-countries. Especially the idea that these media councils will be monitored or even controlled by the European Union is what bothers most skeptics. In recent years, Europe’s influence over existing and future legislation has been a thorn in the eye to many EU-skeptics since they believe national governments should remain having control over legislation applying to the particular country. The idea that an intergovernmental organization decides on what a national media council should look like, who should be in this council and what its rights and duties are triggers their presumptions that the EU is moving to be a communistic organization. (Mijnheer, D. January 25, 2013)

Besides the influence the EU will have over the council, the recommendation in the report that media councils should gain enforcement powers is another point of concern to skeptics. These powers include imposing fines to journalists who cross a certain line, forcing printed or broadcast apologies in cases where articles or publications are harmful or insulting to (groups of) people or even withdrawing the journalistic status so that certain people are no longer allowed to fulfill the profession of journalist. (Waterfield, B. January 22, 2013)

## 3.3. The future role of the EU

It is once again important to stress that the report of the High Level Media Group is a report of recommendations *to* the European Commission and not the recommendation *from* the European Commission. The recommendations are set by a group of professionals, based on found research results and their personal opinions and conclusions. The recommendations are therefore absolutely not automatically drafts for future legislation on press freedom. Instead, the report should be contemplated as a basis for debates and discussion on how press freedom could or should be protected within the borders of the European Union.

During the time of this research, it was only four months ago that the report of the High Level Media Group was presented. It is therefore still unknown if the report’s recommendations will be used as a draft for future legislation. Euro-commissioner Neelie Kroes called the report to be exactly what she was looking for to start the debate on press freedom in the EU. Moreover, the Danish, Dutch, German and Finnish Ministers of Foreign Affairs have all called the European Commission to work out plans for a European watchdog to protect the fundamental right of press freedom in the EU. In an interview with the Dutch newspaper Trouw, Dutch Minister of Foreign Affairs Frans Timmermans stated that it is essential to further protect press freedom, since it does not only protect the work of journalists, but it also protects the freedom of expression and ability to debate for the rest of the society. According to Minister Timmermans a democratic society does not exist without press freedom. (Trouw, May 3, 2013)

To conclude, the future will show whether or not national media councils under EU-oversight or any other legislation to protect press freedom will be adopted. A first, important step has been taken: the recognition that the European Union is in fact experiencing serious problems with press freedom. With this, the debate on how (and if) the EU should tackle this problem has been given a platform.

# Conclusion

In recent years most countries in the European Union have experienced a dramatic decline in their press freedom. This is proven in different prominent studies like the Press Freedom index by Reporters Without Borders and the Freedom of the Press report by Freedom House. A noticeable fact, however, is that while some countries get very low ratings in these researches, Finland seems to experience a very stable rating year after year. This raises questions how it is possible that such large differences can occur within the European Union. The first aim of this research was therefore to look at possible legal differences between the highest rated country (Finland) and the three lowest rated countries (Italy, Greece and Hungary) as a possible explanation to the large differences. The second aim of this research was to take a look at how and if the EU recognizes the decline in press freedom within the borders of the EU and how they are tackling (or planning to tackle) this problem.

This final part of the research will try to give an answer to the research question:

*What legal causes can be attributed to the large differences in press freedom in the countries of the European Union and what steps does the EU overall take to improve press freedom within its borders?*

Press freedom is one of the universal, fundamental human rights and is therefore included in the Universal Declaration of Human Rights (UDHR). This declaration is signed by all 193 members of the United Nations, meaning that nearly every country worldwide has accepted press freedom to be a human right. The UDHR is not legislation, but can be seen as a set of norms that all responsible leaders of countries need to cling to.

International legislation that *is* applying to all EU-countries is the Charter of Fundamental Rights of the European Union (CFREU). This charter, like the UDHR, sets out the human rights that countries are obliged to respect and protect, including the right to experience press freedom. Since the charter is included in the 2009 Lisbon Treaty, the CFREU is no longer only a directive, but has the same official and legal status as a treaty.

Also the national constitutions of the four selected EU-countries show nearly any differences. All constitutions describe how freedom of the press, as part of freedom of expression, should be protected and respected by any entity and intervention in work, articles, publications or broadcasts from journalists is only allowed to happen in cases where (groups of) people get discriminated or insulted. Thus, so far, no differences in the legislation applying to individual countries of the EU.

Nonetheless, very large differences can be found in the national legislation applying to press freedom. Finland has, besides the constitution, legislation to protect the press as set out in the Act on the Exercise of Freedom of Expression in Mass Media. Through this act, different laws were adopted for the protection, rights and duties for the press. Moreover, the act gave a legal basis to Council of Mass Media, a self-regulating, non-governmental body that has the task of being a watchdog for what is published and broadcast in the press. The result of this legislation and a well-working self-regulating body causes Finland to be the number one country for years when it comes to press freedom.

The situation is a whole lot different in Italy, Greece and Hungary. Italy has, besides the constitution, no further legislation to protect press freedom. Instead, the 2004 Gasperri law is according to many a direct assault towards press freedom since the law allowed then-President Berlusconi to own the vast majority of the television industry. Also the Italian self-regulating body (the Order of Journalists) is hardly comparable to the Finnish body, since its independency to the government and the academic qualities of the Order’s members is seriously questioned.

Greece is more or less facing the same problems as Italy. The Concentration and Licensing of Media Enterprises and other Provisions has set out such conditions that makes it especially for local and regional journalists hard to do their job. Moreover, Greece does not know a self-regulating body for the media and instead media regulation is very much centralized by the national government. Thus, press freedom legislation in Greece is also hardly comparable with the Finnish legislation.

The last comparison, between Finland and Hungary, also shows the large differences. The Mass Media and Press Freedom Act that was introduced in 2010 generated different laws that were harmful and/or dangerous to press freedom. However, the act did create a self-regulating body to regulate the press, but also this result has been very controversial. The main concern is that this media council is far from being independent from the government, since its members are appointed by the Hungarian prime minister.

These comparisons give an answer to the first part of the research question. The high standard of press freedom legislation and a well-working, independent and self-regulating body to regulate the media causes Finland to be a stable and high rated country in different researches. The legislation in Italy, Greece and Hungary is intentionally or unintentionally incomplete, harmful and disrespectful to the fundamental right of press freedom. Moreover, the dependency to the government or the absence of a self-regulating body leads to the fact that the control over the press is either unstable or in the wrong hands.

For a long time press freedom was more or less taken for granted within the EU. However, this changed with the press freedom problems in Hungary that have occurred since 2011 have opened the eyes of the EU. The fact that a national government could adopt such controversial anti-press freedom legislation led to the creation of the High Level Media Group. Euro-commissioner Neelie Kroes assigned a group of four media experts, under supervision of former Latvian president Vaira Vike-Freiberga, and asked them to research the issues with press freedom and to give recommendations on how the EU could tackle this problem.

The results of the research and the recommendations in this report were presented to Neelie Kroes in January 2013. Neelie Kroes was very pleased with the results and recommendations and called them a good basis to further debate the issue in the EU. Nonetheless, the report also received high criticism from different sides. Various (mainly euro-skeptic) Members of European Parliament and other politics parties called the recommendations in the report a danger to press freedom. Especially the recommendation to introduce national media councils that are under control and supervision of the EU is to many a thorn in the eye.

The report is only a report with recommendations and intended to be a basis for future discussions about possible EU-legislation to protect press freedom. It is a first step on a hopefully successful path to legislation that will help to protect the press. It is up to the EU to further discuss the matter and to decide on whether new (EU-)legislation is needed and desired to tackle the problem. At the time of writing the conclusion of this research, the report of the High Level Media Group is only four months old and the EU has not yet come up with action steps to possible, new legislation. The only thing known is that the press freedom problems are high on the agenda of the European Commission. The next years will show how press freedom in the European Union will be guaranteed in the future.

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# Appendices

Appendix 1 = criteria\_for\_compiling\_the\_2011-2012\_press\_freedom\_index