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Act on the Exercise of Freedom of Expression in Mass Media

(460/2003)

Chapter 1 — **General provisions**

Section 1 — *Objective*

This Act contains more detailed provisions on the exercise, in the media, of the freedom of expression enshrined in the Constitution.

In the application of this Act, interference with the activities of the media shall be legitimate only in so far as it is unavoidable, taking due note of the importance of the freedom of expression in a democracy subject to the rule of law.

Section 2 — *Definitions*

For the purposes of this Act:

- (1) *the public* means the group of freely determined message recipients;
- (2) a *network message* means information, an opinion or some other message provided to the public by means of radio waves, an electronic communications network or some other comparable technical arrangement;
- (3) a *program* means a coherent set of network messages that are primarily expressed as sound or moving picture;
- (4) a *publication* means printed matter, a data disc or some other text, sound or picture record produced by means of duplication, when provided to the public;
- (5) a *periodical* means a publication intended to be issued regularly, at least four times per year;
- (6) a *network publication* means a set of network messages, arranged into a coherent whole comparable to a periodical from material produced or processed by the publisher, and intended to be issued regularly;
- (7) *publishing* means the provision to the public of publications and network messages other than programs; and
- (8) *broadcasting* means the provision of programs to the public.

In the application of this Act, the headline banners and attachments of periodicals and network messages shall be considered to be parts thereof.

Section 3 — *Scope of application*

This Act applies to publishing and broadcasting in Finland.

When a private individual maintains a web site on an electronic communications network, he or she shall be subject to the provisions in sections 12, 14, 16, 18, 19, 22, and 24 only.

Operations consisting solely of the technical production, transmission, intermediation or distribution of publications or network messages shall be subject to the provisions in sections 17—20 and 22 only.

Separate provisions apply to copyright, to the right to pursue television and radio broadcasting operations, to the right to pursue telecommunications operations, and to the classification of pictorial

programming. In addition, separate provisions apply to the provision of information society services.

Chapter 2 — **Duties of publishers and broadcasters**

Section 4 — *Responsible editor*

The publisher shall designate a responsible editor for a periodical or a network publication. The broadcaster shall designate a responsible editor for a program. Also several responsible editors may be designated for periodicals, network publications and programs.

Persons who have attained the age of 15 years, who are not bankrupt and whose competency has not been restricted are eligible as responsible editors.

It shall be the duty of the responsible editor to direct and supervise editorial work, to decide on the contents of a periodical, network publication or program, and to see to the other tasks assigned to him or her by this Act.

Section 5 — *Duty of disclosure*

The publisher shall see to it that a publication, a periodical and a network publication contains information on the identity of the publisher. The publisher and the responsible editor shall see to it that a periodical and a network publication contains information also on the identity of the responsible editor. Moreover, a publication and a periodical shall contain information on its year of issue.

The broadcaster and the responsible editor shall see to it that broadcasts contain information on the identity of the broadcaster and the responsible editor.

If several responsible editors have been designated for a periodical, a network publication or a program, the publication or broadcast in question shall contain information on which part of the publication or broadcast each of them is responsible.

Everyone has the right to be informed of the identity of the responsible editor.

Section 6 — *Recording of a program or a network publication*

The publisher and the broadcaster shall see to it that every program and network publication is recorded, unless it is clear, on the basis of the technical realisation of the program, that its broadcasting cannot constitute a criminal offence due to the contents of the message. The record shall be retained for at least 21 days after the program has been broadcast or the network publication provided to the public.

The duty to retain the record shall continue beyond the period referred to in subsection (1) if a matter arising from the contents of the program or network publication is subject to pre-trial investigation, prosecutorial evaluation or court proceedings. In this event, the record may be disposed of only after it has been established that no charge will be brought in the matter or after the case arising from the contents of the program or network publication has been finally decided by a court of law. The prosecutor or the court last seised of the matter shall notify the publisher or the broadcaster of the expiration of the duty to retain the record.

Section 7 — *Official announcements*

The publisher and the broadcaster shall publish official announcements in a periodical, network publication or program free of charge, if this is necessary for the protection of human life or health or significant

environmental or property interests, or for some other comparable important reason.

Chapter 3 — **Reply and correction**

Section 8 — *Right to reply*

A private individual, who has a justified reason to consider that a message contained in a periodical, network publication or a comparable program that is broadcast on a repeated basis is offensive, has the right to have a reply published in the same publication or program.

Section 9 — *Right to correction*

A private individual, a corporation, a foundation and a public authority have the right to have erroneous information on them or their operations contained in a periodical, network publication or program corrected in the same publication or in a program by the broadcaster in question, unless such correction is manifestly unnecessary owing to the minor significance of the error.

Section 10 — *Duty to publish a reply or correction*

The responsible editor shall publish a reply or correction, free of charge and without undue delay, appropriately extensively and in the same manner as the message on which the demand for a reply or correction is based.

The contents of the reply or correction shall not be illegal or offensive.

Where necessary, the responsible editor shall assist in the technical realisation of the reply.

Section 11 — *Demand for a reply or correction*

The demand for a reply or correction shall be presented to the responsible editor within 14 days of the publication of the message on which the demand is based. The demand shall be presented in writing or electronically so that its contents cannot be unilaterally altered and so that it remains accessible to the parties.

If the demand for a reply or correction is rejected, the rejection and the reasons for it shall be notified to the person presenting the demand within seven days of the reception of the demand. Upon request, the reasons for the rejection shall be provided in writing. The person presenting the demand has the right to submit the issue of whether the preconditions for the right of reply or correction have been met for consideration by the District Court of his or her domicile, or by the District Court of Helsinki, no later than 30 days after the reception of the written notification of the reasons for the rejection.

In the event that the District Court orders the responsible editor to comply with his or her duties under section 10, the court may reinforce the order by imposing a threat of a fine. The court order on the imposition of the threat shall be open to appeal as a separate matter.

Chapter 4 — **Responsibility for the contents of a published message**

Section 12 — *Criminal liability of perpetrators and accomplices*

Criminal liability for an offence arising from the contents of a message provided to the public shall lie with the perpetrator or accomplice, as defined in the Penal Code of Finland (39/1889).

Section 13 — *Editorial misconduct*

If the responsible editor intentionally or negligently fails in an essential manner in his or her duty to manage and supervise editorial work, and the failure is conducive to the occurrence of an offence arising from the contents of a message provided to the public, and the offence occurs without him or her being considered the perpetrator or accomplice, the responsible editor shall be convicted of *editorial misconduct* and sentenced to a fine.

Section 14 — *Tort liability*

The provisions of the Tort Liability Act (412/1974) apply to liability for, and compensation of, injury or loss arising from the contents of a message provided to the public.

The publisher and the broadcaster are liable, under chapter 3 of the Tort Liability Act, for injury or loss referred to in subsection (1) and arising from their operations also in the event that the injury or loss has been caused by someone else than a person referred to in chapter 3, section 1, of the Tort Liability Act.

Section 15 — *Right of access to a recording*

Everyone has the right of access to a record referred to in section 6, free of charge, if he or she has a justified reason to consider that he or she is the victim of an offence arising from the contents of a program or network publication, or that he or she has sustained an injury or loss from the broadcasting of the program or the provision of the network publication to the public. Also a person who wishes to exercise his or her right to reply or correction has the same right of access. The publisher and the broadcaster shall also provide access to a record, without undue delay, to an official engaged in the pre-trial investigation or prosecutorial evaluation of an offence arising from the contents of a program or network publication.

Section 16 — *Confidentiality of sources and right to anonymous expression*

The originator of a message provided to the public, the publisher and the broadcaster are entitled to maintain the confidentiality of the source of the information in the message. In addition, the publisher and the broadcaster are entitled to maintain the confidentiality of the identity of the originator of the message.

Also a person who has become aware of the confidential information referred to in subsection (1) while in the service of the originator of the message, the publisher or the broadcaster is similarly entitled to maintain that confidentiality.

Separate provisions apply to the duty to disclose confidential information referred to in subsection (1) in a pre-trial investigation or court proceedings.

Chapter 5 — **Coercive measures**

Section 17 — *Release of identifying information for a network message*

On the request of an official with the power of arrest, as referred to in chapter 1, section 6(1), of the Coercive Measures Act (450/1987), a public prosecutor, or an injured party, a court may order the keeper of a transmitter, server or other similar device to release the information required for the identification of the sender of a network message to the requester, provided that there are probable reasons to believe that the contents of the message are such that providing it to the public is a

criminal offence. However, the identifying information may be ordered to be released to the injured party only in the event that he or she has the right to bring a private prosecution for the offence. The request shall be filed with the District Court of the domicile of the keeper of the device, or with the District Court of Helsinki, within three months of the publication of the message in question. The court may reinforce the order by imposing a threat of a fine.

A court order on the release of identifying information shall be open to appeal as a separate matter. The order shall not be enforced until it has become final, unless the appellate court otherwise orders.

Identifying information may be ordered to be released on the request of the authorities of a foreign state, if the provision of the relevant message to the public would constitute an offence in Finland under the prevailing circumstances, or if the release is based on an international agreement or on some other international obligation binding on Finland.

The keeper of a device referred to in subsection (1) is entitled to compensation from state funds for the reasonable direct costs arising from the release of the identifying information. The decision to pay compensation shall be made by the police chief of the district where the investigation was carried out or by the chief of a national police unit. The decision shall be open to appeal in an Administrative Court, in accordance with the procedure provided in the Administrative Judicial Procedure Act (586/1996). However, the injured party shall bear these costs when the information is being released to him or her in accordance with a court order.

Section 18 — *Order to cease the distribution of a network message*

On the request of the public prosecutor, the head of a pre-trial investigation, or the injured party, a court may order that the publisher, broadcaster or keeper of a transmitter, server or other comparable device is to cease the distribution of a published network message, if it is evident on the basis of the contents of the message that providing it to the public is a criminal offence. The court shall deal with the request as a matter of urgency. Before issuing a cease order, the court shall reserve the intended addressee of the order and the sender of the network message an opportunity to be heard, unless the urgency of the matter otherwise necessitates.

Notice of the cease order shall be served also on the sender of the network message referred to therein. If the sender is unknown, the court may order that the keeper of the transmitter, server or other comparable device sees to the service.

A cease order referred to in subsection (1) shall lapse, unless within three months of its issue a charge is brought for an offence arising from the contents of the relevant message, or a demand referred to in section 22 is made, or a tort action pertaining to the contents of the message is brought. On the request of the public prosecutor or the injured party, submitted before the deadline referred to above, the court may extend that deadline by three months at the most.

The person who has been issued with a cease order, as well as the sender of the network message, have the right to apply for the reversal of the cease order from the court that originally issued it. The provisions of chapter 8 of the Code of Judicial Procedure apply to the proceedings for the reversal of a cease order. However, the court shall take the necessary measures to hear the public prosecutor in the case. The application for a reversal shall be filed within fourteen days of the service of notice of the

cease order. The network message shall not again be provided to the public while the reversal proceedings are pending, unless the court seized of the matter otherwise orders. Also the public prosecutor has standing to appeal against the reversal of a cease order.

On the request of the public prosecutor or an injured party, the court may issue a cease order referred to in subsection (1) also when it is hearing charges based on the contents of a published message, a demand for a sanction referred to in section 22, or a tort action pertaining to the contents of the message. A cease order under this subsection shall not be open to appeal as a separate matter.

Section 19 — *Competent court*

The application for the cessation of the distribution of a network message shall be heard by the District Court of the domicile of the publisher, the broadcaster or the keeper of the transmitter, server or other comparable device, or by the District Court of Helsinki. The District Court shall have a quorum with a single judge.

Section 20 — *Seizure of a publication*

All copies of a publication that are intended for distribution may be seized only if it is probable that the publication will be ordered to be forfeited.

A seizure decision referred to in subsection (1), made by an official with the power of arrest, shall be submitted to a court, which is competent in a criminal case arising from the contents of the publication, for consideration without delay, and no later than on the third day after the seizure. The court shall decide whether the seizure is to remain in effect.

In other respects, the provisions of the Coercive Measures Act on the seizure of objects apply to the seizure of publications.

Chapter 6 — **Sanctions and right to prosecution**

Section 21 — *Penal provision*

A person who intentionally or through gross negligence violates the provisions in section 4(1) or 4(2) on the designation of a responsible editor, in section 5 on the duty of disclosure or in section 6 on the duty of recording shall be convicted of a *media violation* and sentenced to a fine.

Section 22 — *Forfeiture and order to destroy a network message*

The provisions in chapter 10 of the Penal Code apply to the proceedings relating to a forfeiture demand in the context of a criminal offence arising from the contents of a published message. Forfeiture may be ordered also in the event that the perpetrator of an offence arising from the contents of the message cannot be identified.

All copies of a publication that are intended for distribution may be ordered to be forfeited regardless of ownership, if an offence arising from the contents of the said publication has been committed and if such a sanction is necessary in order to prevent the further distribution of the message.

The court may order that a network message whose contents have been found unlawful be rendered unavailable to the public and destroyed. The provisions on procedure relating to forfeiture apply to such proceedings, in so far as appropriate.

Section 23 — *Publication of a judgment concerning a violation of honour and privacy*

If an offence referred to in chapter 24, sections 8–10, of the Penal Code has been committed in the context of a periodical, network publication or

program, the court may on the request made by the injured party during the criminal proceedings order that a notice of the judgment be published in the said periodical or network publication, or in a program of the same broadcaster. The court may reinforce the order by imposing a threat of a fine.

The notice of the judgment shall be published free of charge and reasonably extensively; the responsible editor shall see to it that so is done.

Section 24 — *Right to prosecution*

The Prosecutor General shall decide on the bringing of charges for an offence arising from the contents of a published message, where this is subject to public prosecution, and for editorial misconduct pertaining to such an offence. In this event, the Prosecutor General shall also designate a prosecutor for the case.

The right of the injured party to bring a charge shall be governed by the provisions of chapter 1, sections 14—17, of the Criminal Procedure Act (689/1997).

Chapter 7 — **Entry into force and transitional provisions**

Section 25 — *Entry into force*

This Act enters into force on 1 January 2004.

This Act repeals the Freedom of the Press Act (1/1919) and the Broadcasting Liability Act (219/1971), both as later amended.

Measures necessary for the implementation of this Act may be taken before its entry into force.

Section 26 — *Transitional provisions*

A criminal case pending in a court before the entry into force of this Act, as well as a matter pertaining to a reply or correction, may be heard and decided also by the court that was competent under the previous legislation.

Tort liability and compensation for loss or injury sustained before the entry into force of this Act shall be governed by the provisions of the previous legislation. A matter pertaining to a reply or correction shall be governed by the legislation in force at the time when the message, on which the reply or correction is based, was published.

At the entry into force of this Act, the matters that are pending in the Ministry of Justice under section 42(1) of the Freedom of the Press Act shall be transferred to the Prosecutor General. Such matters shall be governed by the provisions in section 24 of this Act on the right to prosecution.