# Response of Estonia on the promotion and protection of the right to freedom of opinion and expression

1. **Please indicate if there are norms or regulations which protect those in the media from the compelled disclosure of confidential sources of information. When these exist, what limitations on such protections may be accepted under the law?**

Protection of source of information in Estonia is regulated by the Media Services Act, Section 15, as follows:

*§ 15. Protection of source of information*

*(1) A person who is processing information for journalistic purposes shall have the right not to disclose the information that would enable identification of the source of information.*

*(2) A person who is processing information for journalistic purposes shall have no right, without the consent of the source of information, to disclose the information that would enable identification of the source of information.*

*(3) The obligation provided for in subsection (2) of this section shall not apply if the source of information has knowingly provided false information to the person processing information for journalistic purposes.*

*(4) Subsections (1)-(3) of this section shall be applied to a person who is professionally exposed to information that enables identification of the source of information of a person who is processing information for journalistic purposes.*

*(5) It is prohibited to use direct or indirect influence, to identify the source of information, on a person who is processing information for journalistic purposes or a person who is professionally exposed to information that enables identification of the source of information of the person who is processing information for journalistic purposes.*

*(6) A person processing information for journalistic purposes and a person who is professionally exposed to information that enables identification of the source of information of a person who is processing information for journalistic purposes are obliged to submit this information pursuant to the conditions and in the procedure provided for in the Code of Criminal Procedure.*

The Code of Criminal Procedure (§ 91) states the grounds on which a search is permitted on investigative purposes, protecting journalists from such searches:

### ***§ 91.****Search*

*(1) The objective of a search is to find an object to be confiscated or used as physical evidence, a document, thing or person necessary for the adjudication of a criminal matter, property to be seized for the purposes of compensation for damage caused by a criminal offence or of confiscation, or a body, or to apprehend a fugitive in a building, room, vehicle or enclosed area.*

*(2) A search shall be conducted at the request of a prosecutor's office on the basis of an order of a preliminary investigation judge or on the basis of a court ruling, taking into account the exceptions listed in subsections (21) and (3) of this section.*

*(21) A search may be conducted on the basis of an order of a prosecutor's office, except for searches of a notary's office or advocate's law office or at the persons processing information for journalistic purposes, if there is reason to believe that:*

*1) the suspect used or uses the site or vehicle to be searched at the time of commission of a criminal act or during the pre-trial proceedings, or*

*2) a criminal offence was committed at the site or in the vehicle, or it was used in the preparation for or committing of a criminal offence.*

*(3) In cases of urgency, a search may be conducted on the basis of an order of an investigative body without the permission of a court, but in such case the prosecutor's office shall notify a preliminary investigation judge of the search or the prosecutor's office in the case specified in subsection (21) of this section within 24 hours, and the preliminary investigation judge or the prosecutor's office shall decide on the admissibility of the search.*

*(4) A search warrant shall set out:*

*1) the objective of the search;*

*2) the reasons for the search.*

*(5) [Repealed]*

*(6) If a search is conducted, the search warrant shall be presented for examination to the person whose premises are to be searched or to his or her adult family member or a representative of the legal person or the state or local government agency whose premises are to be searched and he or she shall sign the warrant to that effect. In the absence of the responsible person or representative, the representative of the local government shall be involved.*

*(7) A notary's office or an advocate's law office shall be searched in the presence of the notary or advocate. If the notary or advocate cannot be present during the search, the search shall be conducted in the presence of a person substituting for the notary or another advocate providing legal services through the same law office, or if this is impossible, another notary or advocate.*

*(8) If a search is conducted, the person shall be asked to hand over the object specified in the search warrant or to show where the body is hidden or the fugitive is hiding. If the proposal is not complied with or if there is reason to believe that the person complied with the proposal only partly, a search shall be conducted.*

There have not been any cases in Estonia where a journalist would have been made to disclose their sources in the course of the last 25 years - i.e. during the new independence period.

1. **Please indicate what protections are afforded to whistleblowers in national law. *Please note that this report should focus on whistleblowing in the context of public sector and adopts the definition of a whistleblower as any person who report or disclose information of a threat or harm to the public interest in the context of their work-based relationship.***

The main legal act referring to whistleblowers is the Anti-corruption Act:

### ***§ 6.****Notification of incidents of corruption*

*(1) An official is not permitted to conceal violations of the prohibitions specified in subsection 3 (1) of this Act or any other incidents of corruption known to the official.*

*(2) If agencies performing public duties, their officials, persons exercising supervision over agencies, persons controlling declarations or bodies conducting proceedings concerning an offence are notified of an incident of corruption, the confidentiality of the fact of notification shall be ensured. Information about the fact of notification may be disclosed only with the written consent of the notifier. If the notifier is involved as a witness in the proceedings concerning the offence, the provisions of proceedings concerning the offence apply to incidents of corruption without violating the confidentiality of the fact of notification.*

*(3) If the notifier knowingly communicates incorrect information, the confidentiality of the fact of notification shall not be ensured.*

*(4) Courts shall apply shared burden of proof for the protection of the person having notified of an incident of corruption. A person having recourse to a court shall state in his or her application the facts based on which it may be presumed that he or she has been subject to unequal treatment. If the person against whom the application was filed does not prove otherwise, it is presumed that unequal treatment was caused by notification of an incident of corruption.*

*(5) The principles provided for in this section also apply in the case of notification of an incident of corruption occurred outside the performance of public duties.*

According to the Anti-Corruption Act, anonymity is guaranteed until the whistleblower gives written consent stating otherwise. If the whistleblower knowingly gives false information, his/her confidentiality is not guaranteed.

In case of criminal proceedings, a whistleblower is allowed to refuse testimony according to the Code of Criminal Procedure:

### ***§ 72.****Refusal to give testimony due to professional or other activities*

*(1) The following persons have the right to refuse to give testimony as witnesses concerning the circumstances which have become known to them in their professional or other activities:**1) the ministers of religion of the religious organisations registered in Estonia;**2) counsels and notaries unless otherwise provided by law;*

*3) health care professionals and pharmacists regarding circumstances concerning the descent, artificial insemination, family or health of a person;*

*31) persons processing information for journalistic purposes regarding information which enables identification of the person who provided the information, except in the case taking of the evidence by other procedural acts is precluded or especially complicated and the object of the criminal proceeding is a criminal offence for which at least up to eight years' imprisonment is prescribed as punishment, there is predominant public interest for giving testimony and the person is required to give testimony at the request of a prosecutor's office based on a ruling of a preliminary investigation judge or court ruling;**4) persons on whom the obligation to maintain a professional secret has been imposed by law.*

*(2) The professional support staff of the persons specified in clauses (1) 1) to 3) of this section also have the right to refuse to give testimony.*

*(21) In the case provided for in clause (1) 31) of this section, the persons who in their professional activities come across the circumstances which may identity the person who provided information to the person processing the information for journalistic purposes has the right to refuse to give testimony.*

*(3) The persons specified in subsection (1) of this section and their professional support staff and the persons specified in subsection (21) do not have the right to refuse to give testimony if their testimony is requested by a suspect or accused.*

*(4) If the court is convinced on the basis of a procedural act that the refusal of a person specified in subsection (1) or (2) of this section to give testimony is not related to his or her professional activities, the court may require the person to give testimony.*

In case of criminal proceedings, where a whistleblower is required to testify in a hearing, Witness Protection Act applies.

In case of civil procedure, the right to refuse testimony for a whistleblower is regulated in the Code of Civil Procedure:

*§ 257.**Right of witness to refuse to give testimony*

*(1) The following persons have the right to refuse to give testimony as witnesses:**1) the descendants and ascendants of the plaintiff or defendant;**2) a sister, stepsister, brother or stepbrother of the plaintiff or defendant, or a person who is or has been married to a sister, stepsister, brother or stepbrother of the plaintiff or defendant;**3) a step parent or foster parent or a step child or foster child of the plaintiff or defendant;**4) an adoptive parent or an adopted child of the plaintiff or defendant;**5) the spouse of or a person permanently living together with the plaintiff or defendant, and the parents of the spouse or person, even if the marriage or permanent cohabitation has ended.*

*(2) A witness may refuse to give testimony also if the testimony may lay blame on him or her or a person specified in subsection (1) of this section for the commission of a criminal offence or a misdemeanour.*

*(3) A witness has the right to refuse to give testimony concerning the fact to which the State Secrets and Classified Information of Foreign States Act applies.*

*(4) A person processing information for journalistic purposes has the right to refuse to give testimony concerning the fact which enables to identify the person who has provided the information.*

*(5) A person who comes professionally into contact with the facts that may identify the person who has provided information to the person processing information for journalistic purposes has the right to refuse to give testimony in the case provided in subsection (4) of this section.*

*§ 260.**Safeguarding of hearing witness*

*(1) Every witness is heard individually. Witnesses who have not been heard shall not be present in the courtroom during the hearing of the matter. A witness who has been heard stays in the courtroom until the end of the hearing of the matter unless the court gives the witness permission to leave earlier.*

*(2) If a court has reason to believe that a witness is afraid or has other reason not to speak the truth before the court in the presence of a participant in the proceeding or if a participant in a proceeding leads the testimony of a witness by interference or in any other manner, the court may remove such participant in the proceeding from the courtroom for the time the witness is heard.*

*(3) After the return of such participant in the proceeding, the testimony of the witness is read to the participant in the proceeding and the participant in the proceeding has the right to question the witness.*

To protect the whistleblower, the court will apply a reversed burden of proof, stated in both the Anti-corruption Act and Equal Treatment Act. When a person who has notified of a corruption incident has been subject to unequal treatment, the court will presume it has taken place because of the notification and the opposite side has to prove otherwise.

In case of public sector, additional legal regulation is provided by Civil Service Act that specifies public official's right to demand damages from his employer if he has been punished or released from office illegally:

### ***§ 105.****Right of claim upon unlawful release from service*

*(1) An official who is unlawfully released from service has the right to demand that the administrative act on his or her release from service be declared unlawful and to demand amendment of the basis for the release from service and compensation in the amount of the three months' average salary of the official. The court may amend the amount of compensation taking account of the circumstances of the termination of the service relationship and considering mutual interests.*

*(2) An official who is pregnant, who has the right to pregnancy and maternity leave, is raising a child under seven years of age or who has been elected a representative of officials, is entitled to demand that the administrative act on his or her release from service be declared unlawful upon unlawful release from service, demand amendment of the basis for the release from service and compensation in the amount of the six months' average salary of the official. The court may amend the amount of compensation, taking account of the circumstances for the termination of the service relationship and considering mutual interests.*

*(3) The limit to the compensation specified in subsection (1) of this section or in subsection (2) of this section shall not apply if an official was released from service violating the principle of equal treatment specified in § 13 of this Act.*

*(4) An official who is pregnant during the release from service, who has the right to pregnancy and maternity leave or who is raising a child under seven years of age, is entitled to demand, upon the unlawful release from service, the cancellation of the administrative act on his or her release from service, the reinstatement of himself or herself into service and remuneration for the period of forced absence from the service.*

*(5) The following may be subtracted from the remuneration specified in subsection (4) of this section:**1) the compensation paid to the official due to the unlawful release from service;**2) outstanding remuneration due for the period of forced absence from service to the extent which is caused by the wrongful behaviour of the official due to the procedural rights abuse, including the reason that the official has evaded the proceeding concerning the illegality of his or her release from service;*

*3) the remuneration received from another employer or the income earned from business during the period of forced absence from the service in the amount which was due to the unlawful release from service.*