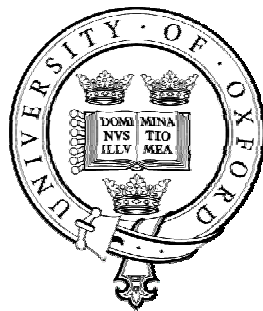


MINORITY-LANGUAGE RELATED BROADCASTING AND LEGISLATION IN THE OSCE



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The information and opinions expressed in this report are those of the relevant authors and editors and do not in any way express the views of the Organization for Security and Cooperation in Europe or the High Commissioner on National Minorities. Every effort has been made to ensure that the information provided was accurate as of Spring 2003. Please inform the editors as soon as possible of any errors.

Overview

1 Introduction

There are a large number of language-related regulations (both prescriptive and proscriptive) that affect the shape of the broadcasting media and therefore have an impact on the life of persons belonging to minorities. Of course, language has been and remains an important instrument in State-building and maintenance. In this context, requirements have also been put in place to accommodate national minorities. In some settings, there is legislation to assure availability of programming in minority languages.¹ Language rules have also been manipulated for restrictive, sometimes punitive ends. A language can become or be made a focus of loyalty for a minority community that thinks itself suppressed, persecuted, or subjected to discrimination. Regulations relating to broadcasting may make language a target for attack or suppression if the authorities associate it with what they consider a disaffected or secessionist group or even just a culturally inferior one. In light of such concerns, a cross-country study was necessary to establish and analyse the existing practice of language regulations used by States to advance or restrict certain groups, as well as for the identification and possible development of best practices in language regulation in the broadcast media.

This study reports on the basic regulations of minority-language related broadcasting of the 55 participating States of the OSCE. Specifically, the study surveys State practice with regard to: (1) whether there are any stipulated quotas on the use of language as a vehicle of broadcasting (both for publicly- and privately-owned and run broadcasters); and (2) whether there is any accommodation (such as, specifically allotted time, bands, financial support) for minority-language broadcasting. The OSCE High Commissioner on National Minorities (HCNM) commissioned this study because of his realisation that a) a key marker of identity is language and b) how States affect or regulate the use of language or languages has significant implications for the exercise of rights. States, through regulation, can strengthen or weaken languages and thereby, at times, strengthen or weaken the position of national minorities. In the information age, a major theatre where this takes place is in the structure of media in various societies and that is the focus of this study. Thus, the present exercise seeks to identify broad trends and indicate the different approaches for each of these.

2 Methodology

The nature of the information collected and presented in this study documents a wide variety of policies and practices in the States surveyed. As such, it does not lend itself easily to statistical compression or rigid categorisation. Thus, the present overview seeks to identify broad trends and point out the different approaches that appear to have been pursued for the achievement of similar aims. Another reason for seeking to avoid an approach of strict categorisation or statistical analysis – methods which are better suited to other subject matter – is the feeling that the precision of the information collected could be compromised by such condensing. Problems also arise in using similar terminology across national contexts. ‘Network’, ‘station’, ‘channel’ and ‘programme’ can have overlapping meanings. Traditionally, a distinction has been drawn between public service broadcasters (PSBs) and

¹ For a definition of minority languages, see Article 1 of the European Charter for Regional or Minority Languages, ETS 148, 1992, entered into force 1 March 1998.

private broadcasters. This distinction is not necessarily the same or so sharply etched in all of the countries surveyed. Furthermore, elements that are very important in one State may be of less significance in others, thereby making comparisons and calculations not just difficult, but potentially misleading.

To obtain the data for this study, we sought out correspondents in most of the OSCE participating States, asking them to prepare a draft report which described the linguistic topography of the relevant country (relying on information from censuses and any other reliable, preferably official, sources) and also to provide a general description of the broadcasting system in the country, with particular emphasis on the position of minority languages. We sought a brief description of government policies on broadcasting and minorities. To provide a legal context, we sought a listing of constitutional provisions on freedom of expression, broadcasting, minority rights, and (official/State) language(s). The reports contain descriptions of legislation, broadly construed, that dealt with language protection and promotion including, especially, facilitative or affirmative measures relating to minorities' access to broadcasting in their own languages. Every possible effort has been made to ensure the information provided in each of the country reports was accurate and up to date as of Spring 2003.

We sought particularly to identify measures that might indirectly affect diversity of language use, including minority establishment, ownership and editorial control of broadcasting outlets; access (in the broadest sense of the term and at the national, regional and local levels); slots on public broadcasting services (application of qualitative and quantitative criteria), including quotas for programmes in minority languages; origin-of-production requirements; favourable financing and tax regimes; structured training for journalists and other staff through the medium of minority languages, etc.

Reports are sensitive to prohibitive measures relating to minorities' access to broadcasting in their own languages. Such measures could include: prohibitions on certain languages; restrictions on programmes in certain languages; restrictions/prohibitions on programmes broadcast in foreign languages from abroad; restrictions/prohibitions on ownership (by foreign nationals or by persons belonging to minorities); and diverse forms of indirect discrimination (unfavourable tax regimes, the application of excessive administrative/licensing provisions specifically to minority-language broadcasters). Where applicable, we sought information about multilateral arrangements or treaties that would affect language usage in broadcasting. We requested correspondents to report divergences between legislation on paper and legislation in practice and to note systems of control or other factors which could affect minority groups' use of their own languages generally (and thereby impact indirectly on the broadcasting sector as well).

3 International norms

Our report is not an account of the international normative framework that applies to the use of language, nor does it seek to evaluate reported practices in terms of their compatibility with international standards. Yet it is worthwhile to provide some idea of the normative context. It remains implicit in this survey that any analysis of language regulation of broadcasting must be seen in the context of certain international principles and instruments. Language regulation in the surveyed States is informed *inter alia* by the provisions of Article 19 of the International Covenant on Civil and Political Rights (hereinafter, the ICCPR) and Article 10 of the (European) Convention for the Protection of Human Rights and

Fundamental Freedoms (hereinafter, the European Convention on Human Rights, ECHR), which guarantee the right to the freedom of expression, encompassing not only the right to receive and impart information regardless of frontiers, but the various ways in which information or opinions can be conveyed. This right may be restricted only on certain grounds as are prescribed by international law and articulated in the standards.² Article 10(1) of the ECHR authorises States to require the licensing of broadcasting enterprises.³ Any State control may, however, only be exercised within certain limits and must be in accordance with the principle of non-discrimination as enshrined in Article 2 of the ICCPR and Article 14 of the ECHR.⁴ OSCE standards reiterate the participating States' commitment to respect the right to freedom of expression, including the right to communication,⁵ and the right of persons belonging to minorities to enjoy this right (and others) without discrimination and in full equality before the law.⁶

Language usages have an impact on equitable access to the media and on the individual right to receive information. There is also the international norm, derived from a variety of sources, to protect and promote diversity⁷ and ensure the representation of existing pluralities within society.⁸ Law here is not simple, and does not support a mathematical approach to the regulation of languages. Nor is it easy to determine when the adjustment of language uses can, automatically, be categorised not as an encouragement, but as a proscription i.e. a restriction to be evaluated as such. The right to equitable access, in conjunction with the principle of non-discrimination, demands an examination of all aspects of each public context. Under these standards, the choice of language employed cannot *per se* be a legitimate basis for any governmental restriction on communication.⁹ Minority language

² See ECHR Article 10(2):

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

ICCPR Article 19(3) reads as follows:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;
 (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”

³ While ICCPR Article 19 lacks a similar proviso, licensing for the orderly control of the broadcasting frequencies could be considered to fall under the permissible restriction aimed at the protection of public order in Article 19(3).

⁴ The general non-discrimination Article 26 of the ICCPR and – after its entry into force - Protocol No. 12 to the ECHR may also be applicable in any regulation of language use in the media.

⁵ See, for example, the 1990 Conference on Security and Cooperation in Europe (CSCE, now OSCE) Document of the Copenhagen Meeting of the Conference on the Human Dimension (the Copenhagen Document), para. 9.1., available at: <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>.

⁶ *Ibid.*, para. 31.

⁷ See, for example, the UNESCO Universal Declaration on Cultural Diversity, November 2001 (in particular, Article 6); the Council of Europe Committee of Ministers' Declaration on cultural diversity, 7 December 2000; OSCE 1991 Cracow Symposium on Cultural Heritage, para. 6.2.

⁸ See, for example, the Council of Europe Committee of Ministers' Declaration on the freedom of expression and information, 29 April 1982 and the Council of Europe Committee of Ministers' Recommendation No. R(99)1 on measures to promote media pluralism, 19 January 1999.

⁹ See, for example, Chapter VII of the 1991 Conference on Security and Cooperation in Europe (CSCE, now OSCE) Meeting of Experts on National Minorities in Geneva, where participating States affirmed that they would not discriminate against anyone in access to the media based on linguistic grounds.

newspapers, radio and television broadcasts, and, increasingly, electronic fora (e.g. worldwide websites) are all possible avenues for communication. These media are especially important when minorities are scattered across large geographic regions.

International standards dealing specifically with access to the media for minorities are somewhat limited in nature. As regards the 1995 Framework Convention for the Protection of National Minorities (hereinafter, the Framework Convention), Article 9 is the operative provision, under which States undertake to ensure that persons belonging to minorities are not discriminated against in their access to the media.¹⁰ Moreover, they are required to ensure that persons belonging to minorities are granted the possibility to create and use their own media,¹¹ though subject to two limitations – (a) that States may provide that such use be undertaken within the legal framework of their broadcasting laws; and (b) that States ensure this opportunity “as far as possible” – a stipulation which alludes to a factual calculation of resource availability, not the whim of the legislator.¹² In addition to the positive obligation to ensure the possibility of access, it has been advanced by a number of independent experts that any access should not discriminate among languages and thus not restrict the enjoyment of minority rights.¹³

As stated in the OSCE HCNM’s 1999 Report on the Linguistic Rights of Persons Belonging to National Minorities in the OSCE Area (hereinafter, HCNM’s Linguistics Report):¹⁴

[...] any distinctions among programming for different languages should be based on objective factors such as demand and technical limitations, and not prejudice against a linguistic group. It would also imply that governments should not restrict or censor the content of minority programming except to the limited extent permissible for the media generally (e.g., incitement to racial hatred, obscenity, etc.).¹⁵

The Framework Convention does not address public funding of media, either through access to state radio or television or government grants to minority media. The Oslo Recommendations, however, suggest that minorities should have access to broadcast time on publicly funded media and not merely the right to establish private stations. At the same time, the Recommendations recognize that access must be commensurate with the size and concentration of the group.¹⁶

¹⁰ ETS. No. 157, entered into force 1 February 1998, Article 9(1). See also Article 4, whereby States Parties undertake to prohibit any discrimination based on belonging to a national minority and to “adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.”

¹¹ The Framework Convention, *ibid.*, Article 9(2).

¹² See the Explanatory Report to the Framework Convention, para. 65 (referring to Article 10(2)), clarifying that contracting States should make every effort to apply the principles therein. The wording “as far as possible” indicates only that, in doing so, various factors – in particular the financial resources of the Party concerned – may be taken into consideration.

¹³ The Oslo Recommendations Regarding the Linguistic Rights of National Minorities, February 1998, para. 8. Available at: <http://www.osce.org/hcnm/documents/recommendations/oslo/index.php3>. The Oslo Recommendations are reproduced, together with some scholarly analysis of the related subject matter, in a special issue of the *International Journal on Minority and Group Rights*, Vol. 6, No. 3, 1999.

¹⁴ Report on Linguistic Rights of Persons Belonging to National Minorities in the OSCE Area (The Hague: OSCE, March 1999), p. 32.

¹⁵ The Oslo Recommendations, *op. cit.*, para 10.

¹⁶ *Ibid.*, para. 9.

The Framework Convention also does not directly address access by minority groups to broadcasts from other states in the minority language. Paragraph 32.4 of the Copenhagen Document and Article 17(1) of the Framework Convention require states to respect the rights of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers. It may be especially important for the maintenance and development of identity for such persons to have access to the usually more developed and fuller programming available from the kin state. In any event, consistent with the principle of non-discrimination, such access should not be denied based solely upon the language of the communication, a principle also reflected in the Oslo Recommendations.”¹⁷

Also of relevance for minority language broadcasting is the 1992 European Charter for Regional or Minority Languages (hereinafter, European Language Charter), which protects the use of minority languages in a variety of ways, including in the broadcast media (Article 11). Article 7 sets out the objectives and principles of the Charter, including the promotion of mutual understanding, respect and tolerance in relation to minority languages, which the Parties undertake to encourage the mass media to pursue. In Article 11, in the graduated approach which typifies the Charter, a number of options for realising broadcasting in regional or minority languages are proposed. With regard to public service broadcasting, for example, parties undertake to ensure the creation of at least one radio station and one television channel in the regional or minority languages; *or* to encourage and/or facilitate the creation of at least one radio station and one television channel in the regional or minority languages; *or* to make adequate provision so that broadcasters offer programmes in the regional or minority languages.

It is also worth mentioning Article 15 of the International Covenant on Economic, Social and Cultural Rights,¹⁸ which stipulates the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications. Thus, it would provide grounds for protection of the use of language in the broadcast media insofar as the broadcast media contributes an application of scientific progress with relevance to, or affecting, participation in cultural life. Contiguous arguments could be advanced on the basis of Article 27 of the ICCPR, guaranteeing the rights of persons belonging to minorities “to enjoy their own culture” and “to use their own language”.¹⁹

¹⁷ *Ibid.*, para. 11.

¹⁸ Article 15, ICESCR:

“1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;
 (b) To enjoy the benefits of scientific progress and its applications;
 (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.”

¹⁹ Article 27 of the ICCPR provides in full: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” See also, General Comment No. 23, The rights of minorities (Article 27), of the UN Human Rights Committee, 8 April 1994 (esp. paras. 7, 9).

Our study does not, except in a few cases, try to describe the articulated goals or discovered intent of a State's measures in prescribing quotas or otherwise restricting the use of minority languages in the broadcast media, and then to examine their practical effect. Rather, the study suggests elements, patterns and criteria against which an assessment (including of proportionality) can take place on a case-by-case basis.

A formal study, such as the one we have conducted, does not consider the reasons or justifications given for specific regulations (even though the margin of appreciation for such restrictions may turn, in part, on the nature and validity of the justification). Such justifications were beyond our scope of analysis; besides, States generally have difficulty articulating grounds upon which language quotas are imposed and, therefore, they often seem arbitrary. A more elaborate legal analysis would require more than the formal aspects of language regulation that we have provided and more, even, than a basic understanding of the demographics in which the regulation or encouragement of broadcasting practices exists. While these formal markers can be indicative, they cannot provide information on the actual impact of such rules, how they are perceived by elements of the population, what demands exist, nor what range of enforcement exists and the extent to which programme funding, necessary to accomplish public purposes, is available or forthcoming.

Under the international norms, restrictions usually require specific justifications. Broadcasting duties, for example, relating to language may be part of a legitimate effort to fulfil a positive obligation to ensure access to information, imposing the least restrictive steps in order to fulfil this obligation. A standard might include recognition of rules that guarantee everyone access to information in a language he or she understands. Language regulation may be deemed to be positive where States act to protect and promote freedom of expression (i.e. in the interests of diversity and plurality). Because of its focus on formal regulations, the study does not seek to distinguish affirmative language support from those cases where the authorities appear to go beyond a legitimate public interest. In many cases, the very complexity of a State's involvement is to assure satisfaction of a number of compatible language-related goals.

Given the content of Article 10 of the ECHR and Article 19 of the ICCPR, some States might invoke "national security" as a permissible justification for legislation restricting language usage in broadcasting. More likely to be relied on is the margin of appreciation for action by States (according to the ECHR) under the third sentence of Article 10(1) which provides leeway in licensing regimes. In this connection, the European Court of Human Rights in the *Lentia* case has broadened the object and purpose of the third sentence of Article 10(1) so that "other considerations" apart from the solely technical aspects might provide the legitimate basis for the grant or refusal of a licence. These include such matters as: "the nature and objectives of a proposed station, its potential audience at national, regional or local level, the rights and needs of a specific audience the obligations deriving from international legal instruments".²⁰ Furthermore, the Court has stated that States may regulate through licensing on grounds other than those public interest provisions listed in Article 10(2), provided that they fulfil the "other requirements" of being "prescribed by law" and "necessary in a democratic society".²¹

²⁰ *Informationsverein Lentia & Others v. Austria*, Judgment of the European Court of Human Rights of 24 November 1993, Series A, no. 276, para. 32.

²¹ *Ibid.*

Irrespective of the justifications invoked, they must be accompanied by some degree of proportionality or appropriateness. Language restrictions might be suitable or not suitable depending on the range and function of the broadcasting services available as well as social, positive political and geographical factors. Language regulation should consider the function of the PSB, the general availability of material in a variety of the relevant languages, and the sense of satisfaction among the communities affected. According to the decision of the European Commission of Human Rights in *Verein Alternatives Lokalradio v. Switzerland*, “particular political criteria” might be relevant, such as “cultural and linguistic pluralism”, “balance” between (low-lying and mountainous) regions and a “balanced federalist policy”.²²

Regulations requiring the sole use of the State language at the national level may not be acceptable, even where minority language programming is available at regional level. Nor is it sufficient if there is a “kin-State” re-broadcasting to meet minority language needs. Some needs (but not essential ones) are met if the only path to language broadcasting is through re-broadcasting. This, however, encourages minorities to look to another State for their information, which may reinforce divisions among communities. A local station broadcasting in a minority language, but whose airtime is devoted mainly to music, might not be considered to fill adequately the news and educational needs of a local minority-language speaking population.

Also relevant is whether there are incentives that generally promote plurality (e.g. subsidies or tax regimes to promote minority broadcasting). It is important that if there is attention to minority languages, the regulation be implemented so as to fulfil aspects of minority protection. This could include attention to educational needs of minorities, and access for that part of the population that may otherwise be deprived of information.

As we shall see, one of the most important questions has to do with the distribution of regulatory power for language-related needs across public service broadcasting and private broadcasters. One view is that States should rely on public service broadcasting in order to promote plurality, social cohesion and language rights, thus relieving the need for the regulation, in this respect, of the private sector. But, our study underscores the variety of national broadcasting structures, and in many States language needs are not so met. In some cases it is because the private sector is stronger than the public. In some States, it is only through the active participation of the private broadcasters that such functions as minority language broadcasting are performed. The question then arises as to whether a State may legitimately regulate the private sector in order to fulfil its own plurality/access obligations (including minority language broadcasting) where the PSB either does not exist or is failing.

4 States and languages: trends and patterns

Across the sweep of OSCE States, there are extraordinary differences—with respect to language and society—among them. There are States, like Belgium, where the architecture of society and the architecture of language are intermeshed. There are States, like the United Kingdom, where the relationship between languages and broadcasting has matured in the last decade. There are States, as in the Caucasus and elsewhere, where the Post-Soviet reality has meant dramatic reorientation of dominance in one language versus another – sometimes

²² *Verein Alternatives Lokalradio v. Switzerland*, Application No. 10746/84, Decision of the European Commission of Human Rights of 16 October 1986, DR 49, at pp.126-7.

inverting the (official) linguistic hierarchy (although not always reflected in the facts on the ground). All of these have broadcasting consequences.

There are various trends we note. First, there is the arrival of the satellite, coupled, in many OSCE countries with multi-channel cable systems for terrestrial distribution and the declining cost of dishes for home-signal receipt. One consequence has been the proliferation of diasporic channels, often in the first-language of the target community. Increasingly, there is aggressive subsidisation of these channels from the “home country”, as a way of building loyalties, extending culture, and strengthening language use. The “bouquet” of channels received by the average home in many OSCE contexts has now changed substantially, and more work needs to be done on the language-related consequences of this transformation. OSCE participating States with large diasporic populations, including guest-workers, are important sites for these changes.

Second, there is, and not only in the most developed of the OSCE States, a greater abundance of privately-licensed radio and television stations. And even if furtherance of language diversity is not a criterion for the award of such licences, it is often a result. The proliferation of Spanish-language stations in the United States is an example of this essentially unplanned phenomenon.

Third, the forceful arrival of new technologies—not only cable and satellite, but also the Internet—upsets the balance of language uses that were often carefully implemented during what might be called the “classic” period of radio and television. In States like Belgium, where language policy, media policy and the very structure of the State are intertwined, a fall-off in control (caused by the entry of so many new media) pose a distinct challenge. In the Netherlands, the transformation of technology had its impact on the “pillarisation” ideal of supporting cultural, religious and other identity-related segments within Dutch society. But the impact is felt within the language fold as well.

A fourth pattern characterises the world of what has been called the Newly Independent States (NIS) of the former Soviet Union. Media regulation tracks the complex process of formation of new polities. Given a history of assumed Russification from Ukraine through to the Caucasus and beyond, the successor States have engaged in some processes of de-Russification. There have been a variety of techniques to privilege preferred official languages or to demote the primacy of Russian language broadcasting. Sometimes this has been through refashioning the State or PSB, including sometimes through subtle (or not so subtle) manipulation of the licensing process. The status of Russian programming—often programming originating from Russia—has been the subject of negotiation between the government of Russia and many NIS.

Another trend, observable in the United Kingdom and Spain, as examples, involves the increasing federal tendencies, where sub-political groups have a language as well as political and geographical identity. Here, broadcasting policy has tracked political change and PSBs and private licensing regimes have altered to reflect new political needs and language sensitivities. There is another side to this coin: States have used legislative restrictions to preclude programming that would reinforce the identities of autonomous, sometimes significantly contentious groups where language and political formation are interlinked. Turkey is an example where the use of the Kurdish language has been a matter of ongoing

contention and has been an issue at the international level, as exemplified by the recent negotiations as part of the accession process to the European Union.²³

5 Official recognition of specific languages

One of our early expectations was that there would be significant distinctions between official or State languages and “minority” languages. While this may be true in some cases, the standard preconception about the linguistic make-up of States is not supported by this study. Rather, our report suggests, a simple State/minority language(s) dichotomy is more the exception than the rule. This study attests to the diversity of language constructs that exist in States and to the versatility of constitutional and legislative systems for governing language issues. Several (official/State/national) languages can co-exist in a State (e.g. Belgium, Canada, Finland, Ireland, Switzerland) and varying levels of official recognition apply to the languages in use (e.g. Ireland, Kazakhstan, Kyrgyzstan). In some States with an official language, official status can also extend to another language in a defined geographical area (e.g. Georgia/Abkhazia).

If a State has more than one official/national language, one or more of those languages may be *de facto* a “minority” language (e.g. Irish in Ireland). Linguistic equality may be guaranteed for a number of languages by constitutional, legislative or other (administrative) means (e.g. Switzerland). These languages may or may not be individually enumerated. On the one hand, in countries like Slovenia, the Hungarian and Italian languages enjoy official status in the areas which are densely populated by these communities. On the other hand, some States, instead of stipulating which languages are entitled to legal recognition, set out a criterion which has to be met in order for a language to be entitled to such recognition. This is the case, for example, in Macedonia and Slovakia, where the threshold for a given language to be recognised is that it be spoken by 20% of the general population or of the population of a given municipality, respectively.

In larger States or States with federal structures (e.g. Germany and Switzerland), there is a noticeable tendency for language policy and regulation to be carried out at the regional level. In Spain, six of the 17 Autonomous Communities have declared languages spoken within their territories to be “co-official” alongside Castilian, which is recognised by the Spanish Constitution as the official language of State. In addition, two other Autonomous Communities have committed themselves to the protection of their own dialects.

In some States, a distinction is made between the official language and a different so-called language of inter-ethnic communication which can also enjoy varying degrees of formal protection and/or promotion (e.g. Kazakhstan, Kyrgyzstan, Tajikistan). It is possible for an official language to be regulated in a certain way, but for (specified) minority languages to be expressly equated with that language in certain circumstances (e.g. Slovenia). Some States designate a national or official language and also provide for the use, and/or preservation, protection or development of “other languages” as well (e.g. Malta, Ukraine).

The designation of a language as the official or national language of a State need not necessarily enjoy constitutional underpinning: in Germany and Italy, for example, the official State language is determined by statute. On occasion, there is no express legal provision conferring official status on the State language at all. For instance, in the United Kingdom,

²³ For a detailed discussion, see the country report on Turkey, *infra*.

English is the *de facto* language of State, whereas there are varying degrees of explicit legal protection for certain other languages (Welsh, Gaelic, Irish, Cornish – in hierarchical order of protection). In Iceland, the absence of an authoritative declaration recognising Icelandic as the official language has not prevented the growth of legislation premised on this general assumption. A comparable situation also exists in the Czech Republic. In the United States, there is no regulation of language whatever at the federal level. By way of contrast, the Constitutions of some States mention particular scripts/alphabets when describing their official languages (e.g. Bosnia and Herzegovina, Macedonia, Croatia, Serbia and Montenegro).

6 Mechanisms for the regulation of languages in broadcasting

In light of the differences among States, among legal traditions, among needs of societies, our purpose in assembling these reports was to discover significant differences and similarities among the approaches of States, looking, for example, at requirements and prohibitions, at specific quotas, and/or at obligations to promote official/State/national language(s) or for the correct usage of the State or “minority” languages. We sought to ascertain whether language choices were an important, though perhaps not transparent, part of the licensing process. We were particularly attentive to the different uses of public service broadcasting and private broadcasters in the service of linguistic communities.

Given that a prescription favouring one language is potentially a restriction on others,²⁴ an adjacent question is that of how States approach the recognition and regulation of languages. Some States broach the issue from the perspective of ordinary principles of civic/social/societal equality; one of the tenets underpinning participatory democracy. Most tend to perceive relevant issues in terms of the rights of minorities or of “communities” (e.g. Macedonia, following the terminology of the Ohrid Framework Agreement, 2001). One variant on this terminology is “foreign” languages. For example, this is the case in Estonia and France (where the term is taken to refer to languages such as Arabic and Portuguese, as distinct from Breton, Basque, etc., which are known as “regional” languages). In Canada, the two official languages are English and French and either of these can be classed as a minority language (depending on the linguistic make-up of a province). Languages other than English and French are known as non-official languages and they do not enjoy the same benefits or protections as the official languages. Third languages are languages other than English, French or a language of the Aboriginal peoples of Canada (which are also known as First Nations languages or Native languages).

7 Broadcasting in general (public and private)

7.1 Promotion of official/State language(s)

7.1.1 Mandatory use

There are States in which the broadcasting sector generally – public and private - is under an obligation to use and promote the official/State language. These include: Albania, Andorra (where the provision applies equally to programming and advertising), Armenia, Azerbaijan,

²⁴ There comes a point when the former inevitably runs the risk of becoming the latter. It is not the purpose of this overview to try to identify that cut-off point as such a task is a highly subjective exercise and one which is contingent on an array of factors, which are of direct and indirect influence.

Bulgaria, Croatia (in the standard Croatian language), Cyprus, Denmark, Estonia, France, Georgia, Greece, Iceland (promote), Latvia, Lithuania, the Netherlands, Portugal (promote), Russia (where the programmes of national television and radio must be broadcast in the Russian language, but in the regional mass media, the State languages of the republics, as well as other languages of the peoples living on their territories may also be used; advertising must, however, take place in Russian), Slovenia, Slovakia, Spain, Sweden, Tajikistan, Turkey, Turkmenistan (“development and active use”) and Ukraine (where the national broadcasting council adopted a decision in June 2002 obliging television and radio companies to ensure that their own programmes are totally in Ukrainian within one year).

7.1.2 Exceptions

In most of the States where provision is made for the mandatory use/promotion of the official/State language, limited exceptions are countenanced by relevant legislation. Most commonly, these exceptions tend to include programmes intended for national minorities and specific types of programming, for example, educational or foreign-language (teaching) programmes, musical works. The meeting of certain translation requirements can also constitute grounds for exception.

The following countries make express exception for programmes intended for national minorities: Albania, Armenia (broadcasts in the languages of recognised national minorities), Bulgaria (when programme schedules or individual programmes are directed at Bulgarians whose mother tongue is not Bulgarian or at listeners or viewers from abroad); Croatia (in Croatian dialects and the languages of national minorities if this is foreseen by the programme orientation); Georgia (Abkhazian is the language of the media in Abkhazia and the State must secure for every national minority the right to receive and impart information in their own language); Lithuania; Slovenia (when programming is intended for other language groups). Turkey (minority-language broadcasting, but it is limited to the PSB and then to further temporal restrictions – see *infra*).

Provision for such an exception can also be achieved by relying on criteria such as geographical relevance and demographic factors. In Russia, for instance, for ordinary programming in the regional mass media, the State languages of the republics, as well as other languages of the peoples living on their territories may be used. In Ukraine, an exception is made for regions which are densely populated by national minorities, where the relevant minority languages may also be used. In Ukraine, exception is also made for broadcasts to foreign audiences, which shall be in Ukrainian or in the corresponding foreign language. Also in this connection, it should be noted that sometimes the exemption can apply to a type of broadcaster, rather than just specific programming. Albania, provides such an example, where programmes of local radio/television broadcasters are licensed to broadcast in minority languages (although at the time of writing, no broadcasters had yet been licenced specifically for this purpose).

Specific types of programmes can, as mentioned above, also be the focus of exemptions. Two countries where domestic legislation recognises educational programming as relevant exemptions are Bulgaria (programme schedules or individual programmes) and Lithuania. A more specific type of educational programming, i.e., foreign-language teaching programming is recognised as an exemption in both Albania and Slovenia.

Musical works (i.e., with lyrics in a foreign language) are exempted in Albania and Lithuania.

Similarly, films broadcast in their original (language) version have exempted status in Albania (when dubbed or subtitled in Albanian) and in France.

Exceptions are made for foreign-language programmes when certain translation requirements are met in: Armenia, Estonia, Lithuania, Slovenia and Tajikistan (see further, *infra*).

A number of other, miscellaneous, exemptions have also been noted. In Andorra, exceptions from the general requirement to broadcast in Catalan are predicated on fulfilment of requirements set out in a Regulation, but at the time of writing, no such Regulation had been adopted. In Lithuania, special occasion, special and retransmitted foreign broadcasts or programmes also constitute permitted exceptions. In Russia, there is a general requirement that Russian be used for advertising and it is only at the discretion of the advertiser that the official languages of the republics and native languages of the peoples of the Russian Federation may be used as well. Further exceptions to this general rule for advertising include radio and television broadcasts exclusively in either of the latter-named groups of languages. In Slovenia, if the immediacy, live or authentic nature of programming would be affected, this can also constitute grounds for an exception.

Of course, a number of exceptions can simultaneously exist in some countries, as can be seen from the foregoing. Conversely, the study reveals a few examples of countries where no exceptions are allowed to the requirement that broadcasting activities be carried out in the official/State language. At the time of compilation of this study, recently-enacted legislation in Azerbaijan insisted on all broadcasting taking place in the State language.²⁵ In Turkey, a prohibition on broadcasting in languages other than Turkish was lifted in 2002.

7.1.3 General prescriptions

Aside from legislation insisting upon the mandatory use of an official/State language, other less far-reaching legislative measures designed to protect or promote the official/State language also exist. General prescriptions can, for example, require a “reasonable”, “significant” or “main part” or “considerable proportion” of programmes to be in a given language. As regards broadcasters in general, such legislative provisions can be found in the following States: Belgium, Denmark, Malta, Romania, Slovenia and Sweden.

In Belgium, in the Flemish Community, private radios must broadcast in Dutch, although exceptions can be approved by the regulatory authority. Cable operators are subject to certain must-carry provisions concerning the Dutch language and may-carry provisions which allow for foreign-language broadcasting opportunities. In the French Community, private radio stations must broadcast in French, but again, exceptions can be approved by the regulatory authority. The promotion of the German language is provided for by law in respect of the German-speaking community.

In Denmark, independent television broadcasters must ensure that a significant element of their programming (outside of one hour per day of locally produced news and current affairs programming) is in the Danish language or is produced for a Danish[-speaking] public. In Malta, the Broadcasting Authority must ensure that in broadcasting services in the country, the “proper proportions of the recorded and other matter included in the programmes are in the Maltese language and reflect the Maltese cultural identity”.

²⁵ See, however, the post-editorial note at the very end of the country report on Azerbaijan, *infra*.

A “significant proportion” of the annual transmission time (excluding advertising and telesales) of every television station in Slovenia must comprise Slovenian audiovisual works (i.e., works produced originally in Slovene or intended for the Hungarian and Italian communities in the language thereof). As a general rule, television and radio broadcasts in Sweden must contain “a considerable proportion of programmes” in the Swedish language (unless there are “special reasons to the contrary”).

7.1.4 Specific prescriptions: language quotas

The language-related prescriptions binding on broadcasters in general can be framed in specific terms of time, either as percentages of daily, weekly, monthly or annual broadcasting output, or as stated lengths of time in any of these periods. These may function either by stipulating a percentage of broadcasting time which must be in the State/Official language (thus in effect limiting the amount of broadcasting time available for other languages) or by imposing a specific prescription for the maximum amount of broadcasting in non-State/Official languages. Specific legislative prescriptions are found in a number of States: Armenia, Canada, Denmark, Latvia, Moldova, the Netherlands, Spain and the United Kingdom.

In Armenia, domestic television/radio productions must account for at least 65% of the total airtime of each television or radio channel. This objective is to be reached progressively: for 2003, the target is 45% and for 2004, 55%. Concerning the translation requirement, programmes in foreign languages may be broadcast for up to six hours per day in 2003 and up to three hours per day in 2004. In Belgium, the Flemish Government may impose quotas to ensure greater use of Dutch-language European productions, but has not yet opted to do so.

In Greece, the PSB and private television stations are required by law to reserve more than 25% of their transmission time (excluding news, sports events, games, advertising and teletext services) for original works in the Greek language; providers of pay-radio and television services are under the same obligation. There are provisions for subtitling of foreign-language content on pay-radio and television services (30% in first year of operation, rising by 5% per annum to 50%).

In Kazakhstan, legislation sets out that the total volume of programming in other languages should not exceed the volume of programming in the State language. Since 1 January 2003, the transmission of foreign broadcasts may not exceed 20% of the total volume of programmes on radio or television channels. This restriction does not extend to satellite and cable television. Within this legislative framework, it is possible to broadcast in any of the languages of the peoples of Kazakhstan.

In Moldova, at least 65% of public and private broadcasters’ programming must be in the State language (with limited exceptions, such as programmes transmitted by satellite and cable television, the programmes of foreign stations and of stations broadcasting in territories densely populated by minorities); financial sanctions can result from breach of provisions of relevance to language regulation.

The quotas cited above are applicable nation-wide, but language use may also be prescribed at the regional level. This is the case in the Spanish Autonomous Community of Catalonia, where 50% of programming must be in Catalan.

While the foregoing discussion concerns language-regulation that applies to all kinds of broadcasting (i.e. public and private, with all of their respective variations), in some States, different regulations govern private and public broadcasting and some prescriptions are specific to private broadcasters. By way of illustration: for private broadcasters in Latvia, the percentage of the total daily broadcasting time that can be allocated to broadcasts in the languages of the State's ethnic minorities is limited to 25% (this percentage includes films subtitled in Latvian).²⁶ Breaches of this stipulation can lead to cautions, fines and suspensions of licences. In the Netherlands, there is a prescription that 40% of material broadcast by private television broadcasters must be in the Dutch or Frisian languages. For relevant provisions in Belgium, see the previous section, 'General prescriptions'.

7.1.5 Quotas on particular types of programmes

Language quotas can govern certain specific *types* of broadcasting output. This is the case, in particular, for own, original or European productions; for foreign-language programmes and music programmes. Examples of quotas of this sort are frequent in the survey.

In Canada, French-language radio broadcasters have to broadcast 55%-65% (depending on the nature of the station) of their vocal music output in the French language. In Estonia, foreign-language news programmes and live foreign-language programmes are exempted from translation requirements but must not exceed 10% of the volume of weekly original production. In France, a 40% quota of French-language music applies to music broadcast by radio between 6.30am and 10.30pm, including 20% of new artists or new releases. The regulatory authority has some discretion which allows it to apply the quotas in a more flexible manner to specialised radio stations.

In Slovenia, a "significant proportion" of the annual transmission time (excluding advertising and telesales) of every television station must comprise Slovenian audiovisual works (i.e., works produced originally in Slovene or intended for the Hungarian and Italian communities in the language thereof). Moreover, at least 10% of daily transmission time of any radio station (except for those serving the Hungarian and Italian ethnic communities) must comprise Slovenian music. In Spain, besides the requirement that in the Autonomous Community of Catalonia, 50% of programming must be in Catalan and for radios, an extra quota of 25% of songs must be in Catalan.

7.1.6 Translation requirements

The prescription of certain languages for the broadcasting sector can also require the translation of foreign-language programmes (either in total or in part) into the State or (less often) into minority language(s). Translation requirements can, of course, be subject to exceptions. Flexibility can also attach to the manner of their implementation. For example, the relevant law may allow for a choice between subtitling, dubbing and other techniques (e.g. Iceland, Latvia, Romania). Translation requirements should not necessarily be regarded as restrictive. It has been observed, for example that the practice of subtitling programmes in other languages (as opposed to dubbing them) on Finnish television (public service as well as commercial), when used in conjunction with modern technology, facilitates their simultaneous reception in several languages.²⁷

²⁶ This compared to the 20% of the annual broadcasting time which may be allocated to broadcasts in the languages of the State's ethnic minorities on the public service second distribution network (all broadcasting on the first network must be in the official language).

²⁷ Indeed, the Advisory Committee of the Framework Convention has noted that it is often advisable and fully in the spirit of the Convention to accompany minority language broadcasting with sub-titles in the State language,

Translation requirements exist for broadcasters generally in: Andorra, Armenia, Bulgaria, Estonia, Latvia, Lithuania, Macedonia, Romania, Russia, Slovenia, and Tajikistan. Exceptions may be made for certain *types* of programming, including, as is the case in Armenia, those in the languages of recognised national minorities or, in Slovenia, those which target specified (Hungarian or Italian) alternative language audiences. Slovene law also makes an exception to translation requirements for the purposes of directly and immediately informing the public. Events and programmes that are dedicated to minorities may also be exempt, as is the case in Lithuania. Other specified exceptions include: live broadcasts (Latvia, Romania) or those for immediate retransmission (Estonia); transmissions received from other States (Lithuania); broadcasts *to* foreign countries (Latvia) or directed at foreign-language audiences (Estonia – which identifies the languages of national minorities as “foreign”); language instruction broadcasts (Estonia, Latvia, Macedonia); certain kinds of musical programming (Greece, Iceland, Lithuania, Macedonia, Romania); as well as news (Latvia), educational and specialised gala events and programmes (Lithuania).

To be more precise, in Andorra, for example, when some participants in a programme express themselves in a language other than Catalan, the broadcasters may translate or subtitle their interventions, but ensuring fair and equal treatment for all of them. In Armenia, those television/radio programmes, feature films, documentary films, and cartoons that are in a foreign language, as well as those fragments of Armenian programmes that include foreign speech, shall be broadcast with simultaneous Armenian translation; either oral or written. This requirement does not apply to broadcasts in the languages of recognised national minorities. Foreign television/radio programmes may be aired by the licensed local television/radio companies as long as they are accompanied by an Armenian-language translation.

In Estonia, both public and private broadcasting are governed by the requirement that foreign-language texts in audiovisual works (including programmes and advertisements) must be accompanied by adequate translations into Estonian. Such translations are not necessary in certain cases, such as the immediate retransmission of programmes or language-learning programmes. Radio programmes directed at foreign-language audiences are another exception. As noted above, the volume of foreign-language news programmes and live foreign-language programmes without translations into Estonian may not exceed 10% of the volume of weekly original production (or conversely there must be provided 90% broadcasting volume in the Estonian language).

In Greece, provisions for the subtitling or dubbing of audiovisual content broadcast in languages other than Greek by pay-radio and television services take the form of percentages to be achieved progressively: 30% of the total transmission time in the first year of operation, rising by 5% per annum to 50%. Programmes that are exclusively musical in character are exempt from this requirement.

In Iceland, televised programme material in a foreign language must be accompanied by Icelandic voice-over or subtitles, except for the lyrics of foreign songs or certain live transmissions (in the case of live broadcasts of current affairs-related material, the television broadcaster shall endeavour to provide a summary in Icelandic).

providing that they do not serve to hamper the efforts of persons belonging to national minorities to create their own media: Advisory Committee Opinion on Estonia, adopted on 14 September 2001, ACFC/INF/OP/I(2002)005, para. 38.

In Latvia, legislation stipulates that broadcasts (or fragments thereof) other than those in the official language are to be translated (by dubbing, voice-over or subtitling). Exceptions to this are language-instruction broadcasts and performances of musical works. The relevant legislation prescribes certain forms of translation for certain types of programming. Films must be dubbed in Latvian or if they use the original sound-track, Latvian subtitles should be used. Dubbing or voice-over techniques are prescribed for children's films, however. Latvian subtitles are required for television broadcasts in foreign languages (apart from live broadcasts); retransmissions, broadcasts to foreign countries, news and language instruction broadcasts.

According to legislation, audiovisual programmes and films publicly shown in Lithuania should be translated into the State language or shown with subtitles. However, this restriction is not applicable to educational, specialised, gala events and programmes, to the events and programmes dedicated to minorities, to television and radio programmes created in other States and transmitted in Lithuania, or to the texts of musical pieces.

In Macedonia, foreign programmes or parts of foreign programmes must be translated into the Macedonian language, as well as into the language of the nationalities in the programmes that are broadcast for them. Exceptions to this include: musical, theatrical and religious events, educational programmes for learning foreign languages and programmes intended for foreigners.

The system of compulsory translation into the official language in Romania expressly provides for a variety of techniques by which this requirement can be met: subtitling, dubbing or simultaneous translation. Exceptions to the requirement include live programmes in a language other than Romanian, the translation of which might affect their continuity (such programmes should be retransmitted with subtitles whenever they are not broadcast live); musical videos and parts of lessons of foreign languages.

In Slovenia, broadcast programmes must be in Slovene, or translated into Slovene in an appropriate manner, unless they target audiences with alternative linguistic composition. Programming can exceptionally be disseminated in a foreign language "for reasons of the immediacy, directness, and authenticity of informing the public, or because of unavoidable time or technical obstacles or other unforeseen obstacles", but clear graphic, visual or acoustic symbols in Slovene must be used in order to reflect its character.

On occasion, the requirement to translate broadcast material into the official/State language may only apply to certain types of broadcasts, e.g. films. In Albania, films broadcast in their original version on national channels are to be accompanied by subtitles or dubbing in the Albanian language; an obligation which also applies to local television stations one year after being awarded a licence. There is a legislative provision in Tajikistan for "films, TV films, video films and other pieces of art" in the State language to be translated into other languages, and vice versa, as appropriate.

A distinction is made in the Russian Federation's regulatory approaches to ordinary programming and advertising: in translation and dubbing for cinema and video production, Russian, the State languages of the republics and the native languages of the peoples of the Russian Federation may be used, taking into account the interests of the population. Advertising must, however, take place in Russian. At the discretion of the advertiser,

advertising may also be carried out in the official languages of the republics and native languages of the peoples of the Russian Federation. Exceptions to this general rule include radio and television broadcasts exclusively in either of the latter-named groups of languages. In Kyrgyzstan, advertisements and other visual information must be given in the State and official languages (i.e., Kyrgyz and Russian). However, at the discretion of the advertiser, advertising may also be carried out in the languages of the peoples living in the Republic.

Qualitative criteria can also sometimes apply to translation requirements. In France, the use of French is compulsory in all programmes and advertisements, with the exception of motion pictures and productions in their original language version. Whenever programmes are accompanied by translations in a foreign language, the presentation in French must be as “legible, audible and intelligible” as the presentation in the foreign language. As already mentioned, in Slovenia, the use of “clear graphic, visual or acoustic symbols in Slovene” is required as an accompaniment to programming in foreign languages.

7.2 Accommodation/promotion of minority languages

It should be explained at the outset that the comparative brevity of this section can partly be explained by relevant references having already been made in the official/State language section: provisions for the use of minority languages in broadcasting are often the obverse of provisions for official/State languages. Having said that, legislation in a number of States does require broadcasters in general to provide for minority-language broadcasting (or at least for certain minorities (as defined by law), e.g. Canada, Ireland, Romania, Serbia and Montenegro-Serbia and Ukraine. Even where obligations do not exist to ensure minority-language broadcasting, alternative broadcasting commitments are often in place. These do not directly or explicitly turn on language but focus on the cultures of minorities. These, too, can provide a basis for minority-related broadcasting in their own languages. In Spain, for instance, private broadcasters are required to provide regional material (but not necessarily in the languages of the targeted minorities).

In some cases, legislative provisions for the accommodation/promotion of minority languages apply only to designated broadcasters or only at certain levels (in order to meet local population needs, for example) rather than being imposed across the board. In Canada, ethnic radio stations are generally to devote at least 60% of a broadcast week to ethnic programmes and 50% to third-language programmes; similar provisions govern ethnic television stations. Other provisions exist for non-ethnic stations and community stations. Denmark is a country where local television stations are required, *inter alia*, to broadcast an hour of locally-produced news and current affairs or community-oriented programmes daily. In Romania, in localities where a national minority comprises more than 20% of the population, programme service suppliers are required by legislation to provide certain re/transmission services in the language of the relevant minority.

Sometimes relevant legislative provisions serve to affirm opportunities rather than stipulate prescriptions in concrete terms. For example, in Macedonia, commercial broadcasting companies, besides broadcasting programmes in the Macedonian language, *may* also broadcast programmes in the languages of the nationalities. In Russia, in the regional mass media, Russian, the State languages of the republics, as well as other languages of the peoples living on their territories *may* be used. Relevant legislation in Tajikistan and Uzbekistan provides for broadcasting in the State language, but *also* in other languages.²⁸

²⁸ Emphasis added throughout this paragraph.

8 Special role of public service broadcasting

In a number of States, the role of protecting/promoting the official/State language(s) or minority languages is assigned expressly to the PSB. The purpose of this section is therefore to examine the special role of public service broadcasting as regards the use or advancement of languages when it is not governed by the more general regulatory scheme for languages in broadcasting (as discussed in the previous section).

The extensive traditional rationales for public service broadcasting have been elaborated authoritatively by many commentators elsewhere.²⁹ For present purposes, it is worth noting that six basic features of public service broadcasting have been identified and are widely endorsed: general geographical availability; concern for national identity and culture; independence from both the State and commercial interests; impartiality of programmes; range and variety of programmes and substantial financing by a general charge on users.³⁰ In more detailed recipes for public service broadcasting, other characteristics can be found: “universal access or availability; mixed programming or universality of genres; high quality programming in each genre, including innovation, originality and risk-taking; a mission to inform, educate and entertain; programming to support social integration and national identity; diverse programming catering to minorities and special interest groups, to foster belonging and counteract segregation and discrimination; programming reflecting regional identities; provision of independent and impartial news and fora for public debate and plurality of opinion; commitment to national and regional production, and to local talent; a mission to complement other broadcasters to enrich the broadcasting ecology; affordability; and limited, if any, advertising.”³¹

Analytical difficulties arising from conceptual and terminological differences between States have already been adverted to and could usefully be recalled at this juncture. In States where the media regime is generally restrictive, the concept of a State broadcaster does not embrace principles that are central to the notion of PSB in other States. In such instances, the descriptive terms “public service broadcaster” or even “public broadcaster” could legitimately be considered to be misnomers. On the other hand, what is described as a State broadcaster in some countries could actually, by virtue of its broad remit and pluralistic activities, just as easily be styled as a PSB (as understood here).

8.1 Promotion of official/State language(s)

8.1.1 General prescriptions

Certain responsibilities (i.e., distinct from the regulations governing broadcasters generally) regarding the use or promotion of the official/State language(s) are assigned to the PSB in a number of States. For the most part, these responsibilities involve the use or (active) promotion of the national culture and language (e.g. Bulgaria, Croatia, Denmark, Estonia, Latvia, Macedonia, Poland, Romania, Russia, Switzerland and Uzbekistan). In Luxembourg, there is a requirement that the programming of the PSB be “essentially” in the Lëtzebuergesch language. On occasion, the PSB in various States can be charged with the

²⁹ See, for example, E. Barendt, *Broadcasting Law: A Comparative Study* (Oxford, Clarendon Press, 1993), Chapter III ‘Public Broadcasting’, pp. 50-74 and T. Mendel, *Public Service Broadcasting: A Comparative Legal Survey* (UNESCO, Malaysia, 2000).

³⁰ Barendt, *op. cit.*, p. 52.

³¹ G. Born & T. Prosser, “Culture and Consumerism: Citizenship, Public Service Broadcasting and the BBC’s Fair Trading Obligations”, 64 *The Modern Law Review* (Issue No. 5, September 2001), pp. 657-687, at p. 671.

task of disseminating knowledge of the official/State language. This is the case, for example, in Greece and Poland. In Switzerland, the PSB is obliged by statute to transmit custom-made radio programmes for each of the national languages of Switzerland (French, German, Italian and Rhaeto-Romansh). It must do the same with television programmes for each of the official languages of the Confederation (French, German and Italian). In some cases, while promoting the State/Official language(s), broadcasters are simultaneously required to meet the needs of other linguistic groups within the State. In Croatia, for example, the State/PSB, is required to broadcast in Croatian, and to promote creativity in the dialects of the Croatian language, but this does not apply to programmes directed at national minorities and ethnic communities.³² Likewise, in Bulgaria, public broadcasters are given the task not only of promoting Bulgarian language and culture, but other languages as well. In Macedonia, minority-language broadcasting is a statutory obligation of the PSB. (See further, Section 8.2.1, “Accommodation/promotion of minority languages”, “General prescriptions”, below.)

8.1.2 Specific prescriptions

In Ireland, the responsibilities are somewhat more specific. The PSB, RTÉ, for instance, is obliged to provide a comprehensive range of programmes in the Irish and English languages, including particular types of programmes (e.g. news, current affairs, programmes that entertain, inform and educate). The RTÉ Authority must also show deference to the “national aims of restoring the Irish language and preserving and developing the national culture and shall endeavour to promote the attainment of those aims”. The designated Irish-language broadcaster (which is still part of the public service broadcasting structures) has additional responsibilities such as the making and acquisition (*inter alia* through commissioning) of programmes).

In Belgium, Flemish television productions and co-productions must amount to at least 50% of PSB’s total programming between 18.00 and 23.00. In the French-speaking community, the cultural objectives of the PSB include the requirement that its radio stations must broadcast at least 40% of non-classical music in French, except for its two thematic channels which must broadcast at least 15% of non-classical music in French (annual averages). At least 33% of the television broadcasting time (excluding news, advertising, sports, etc.) of the French Community’s PSB should be carried out by French-speaking professionals. There is a progressive goal of 33% for own productions in French and 30% of music broadcast should be in French, of which 15% is to originate in the French Community.

The Latvian PSB is required to produce all programmes for its first distribution network as national programmes in the official language. Programmes produced for the second distribution network must be primarily in Latvian too, but up to 20% of the annual broadcasting time may be allocated to broadcasts in the languages of the State’s ethnic minorities (this percentage of broadcasting time is to include films subtitled in the official language).

Other States likewise place a specific limit on the amount of broadcasting in minority languages. In Armenia, legislation allows public service broadcasting airtime for programmes in languages of minorities (not obligatory), but limits them to one hour per week (television) and one hour per day (radio). In Turkey, radio and television broadcasts were compulsorily in the Turkish language until recent legislative reforms. It is now permissible to broadcast in the

³² Other exceptions include: films and other audiovisual works broadcast in their original form; musical pieces with the text partly or totally in a foreign language or script; programmes geared towards the study of a foreign language or script;).

different languages and dialects used by Turkish citizens in their daily lives. However, such broadcasting is limited to the State broadcaster, and then to two hours per week on television (with subtitles in Turkish throughout) and four hours per week on radio (where each programme has to be followed by the translation into Turkish of the entire programme).

8.2 Accommodation/promotion of minority languages

Those States in which special legislative provisions exist for the PSB (i.e. where the PSB does not fall under relevant regulations governing the entire broadcasting sector) *vis-à-vis* minority languages include: Armenia, Austria, Bulgaria, Cyprus, France, Hungary, Ireland, Italy, Latvia, Macedonia, Moldova, the Netherlands, Serbia and Montenegro, Slovakia, Spain, Sweden, Switzerland, Tajikistan, Turkey, the United Kingdom and Uzbekistan. In the United States, funding is provided within the public service broadcasting framework for the promotion of broadcasting in languages other than English, but such financing owes its origins to policy rather than statute.

8.2.1 General prescriptions

In Albania, the services provided by the PSB, ART, are expected to “inform, educate and entertain” all groups in Albanian society, including national minorities. ART is also responsible for the “provision of information for national minorities”. Programmes intended specifically for national minorities are exempt from the general requirement that programming be in the Albanian language. The PSB is bound by a comparable obligation to satisfy the information needs of all societal groups, including national minorities, in a number of countries such as: Bulgaria, Denmark (where the obligation is expressly coupled with the goal of promoting the integration of the target ethnic minorities), Estonia (where one public service radio station also has integrationist aims and broadcasts predominantly in Russian), Lithuania, and Poland (where the responsibility only involves having “regard to the needs of ethnic groups and minorities”).

In other countries, the PSB is under a general duty to guarantee broadcasts in the languages of minorities, with little further specification as to the quantity or quality of such broadcasts: Croatia (where it is required to “produce and/or broadcast” programmes aiming to inform members of national minorities); Macedonia (where the duty similarly encompasses the “production and broadcast” of programmes in minority languages); Moldova (where the State is required by law to ensure the organisation of programmes in minority languages on State radio and television); Romania (where the obligation is to promote the values of the authentic cultural creation of national minorities); Serbia and Montenegro-Montenegro (where it must produce and broadcast programmes for all sections of society, including minority ethnic communities, and in the languages of national and ethnic groups in areas inhabited by them); Serbia and Montenegro-Serbia (where the State must ensure, via the offices of PSBs, that news, cultural and educational programmes are provided in the languages of ethnic minorities);³³ Slovakia (where the public service television and radio broadcasters must provide some output in the mother tongues of the nationalities and ethnic groups living in the country) and Sweden (where the broadcasting licences of the public service broadcasting companies set out that they are obliged to pay attention to the interests of linguistic minorities).

³³ Legislation in Serbia and Montenegro-Serbia also sets out that the State “may” also establish special radio and television stations for the purpose of broadcasting in minority languages.

In Austria, the PSB, ORF, must guarantee “reasonable programme shares” in the languages of recognised national minorities (various forms of collaboration are possible in this connection). In tandem to this, the ORF is required by law to reserve a reasonable proportion of its funds for the activities of its nine regional studios. One nationwide public radio station is dedicated to (predominantly) foreign-language broadcasting – this arrangement is also provided for by relevant legislation. In Bulgaria, the PSB is to help to develop and popularise the culture and languages of citizens according to their ethnic belonging.

Broadcasting policy in Canada is sensitive to the specificities of both of the country’s main linguistic communities, but it is also attentive to the need to adapt relevant policies at the regional and community level in the interests of providing optimal services to audiences. A central principle of Canadian broadcasting is that it should reflect the “linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society”.

The Finnish PSB, Yleisradio Oy, is required by law to treat in its broadcasting Finnish and Swedish speaking citizens equally and to produce services in the Sámi and Romany languages and in sign-language as well as, “where applicable”, for other language groups in the country. In pursuing these goals, it relies *inter alia* on its regional structures and the practice of dividing its channels on a regional basis for part of the day. Reliance on regional and decentralised programming policies are also prominent in France. One of the public service television channels, France 3, is responsible for contributing to the expression of regional languages spoken on metropolitan French territory and it broadcasts weekly programming in regional languages (for up to two hours). Public service radio has adopted a similar practice. Broadcasting for the French Overseas Territories is the responsibility of a nationalised programming company, which is charged with promoting the French language as well as regional languages and cultures.

In Switzerland, aside from the exhaustive legislative provisions adopted by the individual Cantons concerning minorities and language-usage, the Confederation subsidises schemes aiming to preserve and promote the Italian and Romansh languages and cultures. While the relevant legislation does not impose quotas on broadcasters, more specific obligations may be negotiated on a case-by-case basis in the licences granted to individual broadcasters. Regional and local broadcasters are obliged to ensure the suitability of their programming to the specificities of the communities they serve; thereby reflecting the requisite *couleur locale* to an appropriate degree and promoting regional or local cultural activities. As mentioned *supra*, the PSB is only obliged to broadcast television programmes in the three official languages of the Swiss Confederation. As far as television programmes in Romansh are concerned, the relevant requirements and underlying principles for such broadcasting must first be determined by the Federal Council.

8.2.2 Specific prescriptions: language quotas

The prescriptions relating to the use of minority languages binding on the PSB can be framed in specific terms, either as percentages of daily, weekly, monthly or annual broadcasting output, or as stated lengths of time in any of these periods. Such legislative prescriptions can be found in a host of States. In Bulgaria, the PSB is required to provide programmes in the languages of citizens whose mother tongue is not Bulgarian with the amount and nature of such programming decided by the boards of directors of public service television and radio. At present, the public service broadcasting slots devoted to languages other than Bulgarian are reported to be negligible.

The Cyprus Broadcasting Corporation is required by legislation to provide broadcasting services in the Greek, Turkish and English languages and in any other languages at its discretion (while ensuring fairness in the allocation of broadcasting time, etc. between these languages). It is also required – unusually by a constitutional provision – to ordinarily ensure that the volume of broadcasting targeting the Turkish Cypriot Community does not drop below 75 hours per week and is spread over all days of the week during normal periods of transmission.

Hungary's broadcasting legislation outlines not only the PSB's remit with regard to meeting the needs of minorities, but also the methods by which this may be realised. According to the legislation, the duration of national minority programmes on a national or regional aggregate for each national minority may not be less than at the time of entry into force of the law. The PSB's responsibility to foster the culture and native languages of national and ethnic minorities living in Hungary and to provide information in the native languages of such groups on a regular basis can be fulfilled, according to the law, through national broadcasting, or depending on the geographical concentrations of the minority groups in question, at the regional or local level. Further, the law expressly mentions subtitling and multilingual broadcasting as ways of carrying out this responsibility.

In Ireland, there are special public service broadcasting obligations for the Irish language; general and dedicated channels exist. In Italy, there is a statutory provision for the PSB to reserve airtime (5% for television, 3% for radio, separately for national and local programming) for a variety of groups, including ethnic and linguistic groups. Another measure has been conceived in order to enhance the implementation of this provision: the Convention between the Ministry of Communications and the PSB (television) and the related contract of service must ensure proper conditions for protection of minority languages in relevant regions; this includes the transmission of programming in protected languages. Collaboration between the PSB and the regions, e.g. the possibility of concluding agreements on various topics, can take place within this framework.

Besides the usual obligations on PSBs (diverse programme offer, portrayal of society in a balanced way, development of cultural diversity, etc.), in the Netherlands, there is the additional requirement that at least half of their television airtime must be in Dutch or in Frisian. One particular PSB, the Netherlands Programme Service, is required by law to devote 20% of television airtime and 25% of radio airtime to ethnic and cultural minorities.

In Serbia and Montenegro-Serbia - in Kosovo - the PSB is obliged by its constitutive regulation to provide primetime news coverage, of which not less than 15% must be in the languages of minority communities within Kosovo. It must also give voice to all communities by, among other things, establishing a programming services office to support these communities and dedicating to them not less than 15% of RTK's television and radio programming, including primetime news coverage.

In Spain, the national PSB must respect linguistic pluralism by providing (some) programming in co-official languages. Where PSBs exist in Autonomous Communities with co-official languages, most (if not all) of the programming is in the co-official language. In the United Kingdom, the digital terrestrial television provider is required to ensure at least 30 minutes of Gaelic programming during peak times throughout Scotland.

9 Observations concerning licensing

States generally use licensing as a tool for regulating the broadcasting media and subject to the fulfilment of certain conditions (see *supra*). Such practice is permissible under international (human rights) law. Given that in many countries, the national regulatory/licensing authority for broadcasting is responsible for upholding freedom of expression, pluralism, the public interest and other key values in the broadcasting sector, the principles and practice of licensing could be expected to show due deference to these values. Such a role can be assigned to a national authority and be stated in a variety of ways, including implicitly (e.g. in Canada, where broadcasting policy should reflect the “linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society”). It can also be stated in very explicit terms, as is the case in France, Poland and Romania. In Italy, the protection of minority languages in the mass media is specifically stated by legislation to fall under the competences of the Communications Authority. In a similar vein, the National Radio and Television Council in Bulgaria has held that one of the guiding principles for the licensing process is that it should stimulate programming for minorities.

By way of contrast, under the Icelandic licensing regime, private broadcasters are expected to strive for, *inter alia*, the strengthening of the Icelandic language, and the issue of licences for broadcasting in other languages is exceptional.

Responsiveness to the needs and interests of the target community is a factor commonly considered in the allocation of licences, as is the case in Austria and Georgia, for example. In Norway, the licensing process for local public service television services gives special consideration to the intended engagement of applicants with local organisations for the development of programmes. In Azerbaijan, the licensing process for broadcasters sets out as one of the application requirements the provision of diverse programmes which take into consideration the interests of the regions and of national minorities in Azerbaijan. Significantly for present purposes, a tail-piece to this particular requirement states that it must be met while ensuring the use of the State language in the programmes that are broadcast. The Danish Radio and Television Board, when awarding local broadcasting licences, *may* give support to single programmes and series of programmes which satisfy the needs of minority groups or groups which are under-represented in the media.

The likely impact on existing diversity in the target area is another criterion considered in some countries in the licensing procedure. In the Czech Republic, the likely benefits for the development of the cultures of ethnic and other minorities are also considered in this connection). In the Netherlands, the award of formal recognition to PSBs is conditional on the likelihood that they will make a contribution to existing diversity in the programme offer of the public service broadcasting system.

The choice of language in broadcasting can have a major impact on the requirement that a broadcaster serve community interests or enhance existing diversity in broadcasting in its target area. However, it need not be linked to these goals, but can stand freely on its own merits as well. Based on the information gathered for this study, the criterion of language, when it affects the process of licensing broadcasters, does so in two main ways.

First, it can be set out in advance as a specification for a public tender. In such a case, it is more specific than the requirement that broadcasters have due regard for the impact of their

schedule on the needs and interests of the locality or community to be served or the requirement to ensure participation by individuals and organisations belonging to the locality or community. This approach is adopted, for example, in Ireland, where there is a general statutory requirement for the Broadcasting Commission of Ireland, while considering applications for broadcasting licences, to have regard to “the quantity, quality, range, and type of programmes in the Irish language [...] to be provided”. When a licence is due to cover an area officially designated as Irish-speaking, the Commission “shall have particular regard to the preservation as a spoken language of the Irish language” when considering applications. This also applies in Macedonia (where the Broadcasting Council proposes to the Government some concessions specifically for broadcasting in minority languages), Serbia and Montenegro-Montenegro and Switzerland.

Otherwise, it is not uncommon for linguistic commitments to be agreed upon in an individualised manner. Applications for broadcasting licences can or must state the intended language(s) to be used by the proposed broadcasting service (and even the extent to which the language(s) in question will be used). In the event of an application being accepted, the broadcasters are then bound by their proposals. In the alternative, linguistic commitments can be negotiated bilaterally with the licensing authority and then become binding. Albania, Estonia, Ireland (notwithstanding statutory provisions on licensing, the programming requirements of independent broadcasters are regulated by means of individual contracts with the Broadcasting Commission), Italy (the PSB), Luxembourg, Norway, Switzerland and Ukraine are all examples of States in which this approach is adopted.

In some countries it is necessary to notify the licensing authority of the intended language of broadcasting services without this having any bearing on the award of licences. In other words, such notification is purely for informative purposes. This is the case in Russia and Tajikistan, for example.

When a licensing system is in theory open to any applicant fulfilling the necessary technological, infrastructural, financial and other criteria, minority(-language) broadcasters can nevertheless experience difficulties meeting these criteria, particularly in the absence of legislative provisions for State funding, which might help them to acquire the necessary technology, etc. Difficulties such as these have been specifically reported in Greece, but undoubtedly exist in a number of other States as well.

10 Transfrontier dimension

The principle of cross-border broadcasting – an important aspect of the right to freedom of expression - is enshrined, *inter alia*, in the very heart of the European Convention on Transfrontier Television and the EC “Television without Frontiers” Directive. Independently of the obligations on States under these international instruments, it is frequent practice for neighbouring States to conclude bilateral treaties which contain specific provisions on the rights of minorities residing on their respective territories (e.g. Belarus, Croatia, the Czech Republic, Germany, Hungary, Italy, Moldova, Slovakia, Slovenia, Ukraine, United Kingdom, Uzbekistan). Such provisions can be formulated with varying degrees of precision, and can, for example, provide extra safeguards for upholding the cultural and linguistic rights of minorities, and also their access to broadcasting services (in their own languages). The latter tends to pivot on issues such as the right to access and disseminate information in minorities’ own languages and the right to establish mass media in their own language; Kazakhstan and

Kyrgyzstan are examples of countries which have concluded bilateral treaties with another State (the Russian Federation, in this instance) specifically on broadcasting.

In some States, foreign broadcasting services are only allowed when they have been given certain legal recognition. In Armenia, for example, the programmes of foreign television/radio broadcasting companies may be transmitted in their entirety when there is a corresponding international treaty that provides for it. A similar legal situation prevails in Tajikistan, where the only other possibility for foreign broadcasting is through direct agreements between companies. However, according to licensing regulations introduced by the relevant national authority after the adoption of the law in question, only the Authority itself may conclude direct agreements to this effect with foreign broadcasters. The Ministry for Communications has an agreement with Russian State television station RTR, whereby the station broadcasts throughout most of Tajikistan. The retransmission of foreign broadcasts can be subject to restrictive regimes, as is the case in Turkmenistan.

Aside from legal recognition, various other conditions can also affect the possibilities for reception of foreign broadcasting in a State. For example, as mentioned above, the transmission of foreign mass media in Kazakhstan should not exceed 20% of the total volume of programmes on television and radio channels. However, this restriction does not extend to cable and satellite television; a fact which is not without significance as cable and satellite equipment is used in virtually every State surveyed in order to receive broadcasts from abroad. Technology thus plays a determinative role in facilitating cross-border broadcasting. In Albania, the PSB has installed repeater facilities in order to relay programmes from its Greek counterpart to viewers in Tirana. In Finland, a State-supported initiative to ensure that certain programming from the Swedish PSB, SVT (-Europe), would be received in parts of Finland has been realised over a terrestrial network. There is a reciprocal dimension to this arrangement as Finnish programming is similarly distributed through some parts of Sweden.

Other examples of cross-border collaboration are numerous. Cooperation between PSBs in the Nordic countries has resulted in benefits for the Sami community, not least of which is the news service provided in the Sami language. A French-German treaty signed in 1990 led to the foundation of ARTE, a television station which originally broadcast in French and German, but now includes programming in other languages.

11 Temporal and qualitative considerations

In order for access to minority-language broadcasting to be meaningful, it must be available at a reasonable time of day. Broadcasting slots allocated specifically to certain languages are not always determined solely on the basis of quantitative criteria. On occasion, temporal/qualitative considerations can also be stipulated: programmes in a given language may have to be aired at a particular time. This approach can be found, *inter alia*, in Belgium (in the Flemish Community, Flemish television productions and co-productions must amount to at least 50% of the PSB's total broadcasting between 6.00pm and 11.00pm); and the United Kingdom (Welsh: the Welsh Broadcasting Authority must ensure that evening programmes of the designated channel must be "mainly" in Welsh and of a high general standard; Gaelic: the digital terrestrial television provider is required to ensure at least 30 minutes of Gaelic programming during peak times throughout Scotland). Another qualitative variant on the topic of the timing of broadcasts in various languages can be found in Cyprus, where the PSB is required to operate "broadcasting services in the Greek, Turkish and English languages and any other languages at its discretion and shall at all times keep a fair

balance in the allocation of broadcasting hours and other matters between these languages”. In France, the legislative quota mechanism requiring 40% of the music played by radio stations to be in the French language, only applies between the hours of 6.30am and 10.30pm.

12 Safeguarding and strengthening language forms

It could be argued that the protection and promotion of a language has as its corollary some monitoring of the correct usage of that language, and the upholding of standards in that language. Based on the information collected for this study, any obligations on broadcasters to these ends are more likely to govern the official or State language than a minority or other language. Indeed, out of all the countries surveyed, only Romania placed any kind of obligation on broadcasters to safeguard linguistic standards as far as minority languages are concerned (this duty also applies to the State language: the National Audiovisual Council is charged with “the monitoring of the correct expression in the Romanian language and in the languages of national minorities”).

On the other hand, in quite a number of countries, broadcasters are required to observe linguistic precision as far as the State/official language is concerned. In Albania, broadcasting activities are to reflect “a linguistic culture that conforms to the accepted national literary language norm” and in Andorra, all media companies are required to use Catalan correctly.

There is a prohibition in Belarus on “the distortion of the recognised norms of the used language” by the media, although this provision is not frequently relied upon any more. As regards Cyprus, broadcasting must “preserve the quality of the language”. The relevant provisions in Greece are somewhat detailed: broadcasters “are obliged to take all appropriate measures (employment of scientific personnel, text correctors, organisation of seminars), aiming at the correct use of the Greek language by journalists, makers of informative or educational programmes, with the formulation of the texts during the presentation of entertainment programmes and with the dubbing or subtitling of programmes”.

Icelandic legislation sets out that broadcasters should strive to ensure that “voice-overs and subtitles [requirements for broadcasts that are not in Icelandic] are always in correct Icelandic”. The Broadcasting Authority in Malta has expressed concern for “bad use of idioms and literal translation of foreign idioms” in the Maltese language, “the mixture of Maltese and English (or words originating from other languages) in the same sentence” and “the literal translation of foreign sentences, structures and reports”. In Serbia and Montenegro-Montenegro, broadcasters are obliged to “observe”, “respect” or “promote” “linguistic standards”. In Turkey, broadcasts must “use the Turkish language in its spoken form without destroying its characteristics and rules”.

As is evident from the foregoing, attempts to realise broadly similar goals as regards the upholding of linguistic standards can take several forms. The first and most common of the approaches outlined is a statutory obligation (Albania, Andorra, Belarus, Cyprus, Greece, Serbia and Montenegro-Montenegro). In some States, the relevant provisions expressly provide that financial sanctions can result from breaches of these norms (e.g. Andorra, Moldova). In Malta, the issue has (to date) only been treated in the form of a consultative document on the use of the Maltese language in the broadcasting media issued by the Broadcasting Authority. Another possibility is that these obligations could take the form of (non-binding) guidelines for broadcasters.

13 Sanctions

The nature, extent and manner of application of sanctions resulting from breaches of language-related broadcasting obligations also merit attention. Whereas the relevant regulatory/licensing authorities in some States have not yet taken any measures against individual broadcasters for failing to honour their language-related commitments (e.g. Ireland), action has recently been taken by the authorities in other countries (e.g. Austria – when a private radio broadcaster failed to dedicate reasonable programme shares to the languages of the ethnic groups in the Burgenland; Latvia – several cases arising out of language quotas).³⁴ The National Radio and Television Council of Latvia, for example, monitors compliance by broadcasters with the broadcasting legislation. Whenever a broadcaster violates the legislative restriction of minority-language broadcasting to 25% of a private broadcaster's total output, the Council is entitled to suspend the broadcasts of the broadcaster in question for one to seven days. It is also entitled to bring a court action against broadcasters which regularly violate the law, with a view to terminating their licences.

In Moldova, general legislation dealing with language rights could have an impact on the broadcasting sphere: acts characterised by contempt for the language of any nationality, the creation of obstacles for the functioning of State and other languages used in Moldova and the infringement of human rights on language grounds, can all lead to fines to the tune of “five minimum salaries”. Furthermore, failure by the heads of State entities, public administrative bodies, NGOs, enterprises, institutions and organisations to comply with operative language legislation, can lead to fines of up to “ten minimum salaries”. In Tajikistan, legislative provision is made for the prosecution of anyone promoting adversity to any national language, any act of defamation or degradation motivated by language usage or of setting obstacles and limits to free language usage or of restricting citizens' constitutional rights and freedoms as well as any breach of equality as regards language.

14 Facilitative measures for the encouragement/promotion of minority language broadcasting

14.1 Infrastructure

A number of States offer or promote various kinds of niche-broadcasting opportunities for minorities. This is the case in Germany (open channels), Belgium (when recognised as a target group or theme television, i.e. when the social goal is limited to the broadcasting of programmes for a specific social group or set up around one theme) and Liechtenstein (where local non-profit groups and communities are to be enabled by municipality-owned television stations to promote cultural, informative and other activities). In the same vein, the notion of “social broadcaster” exists in some countries. In Poland, a “social broadcaster” is exempt from the payment of fees for the award or alteration of a broadcasting licence. To qualify as a “social broadcaster”, certain (largely non-profit, societal) criteria must be fulfilled; thus rendering it possible for at least some minorities to avail of this provision. Until its recent replacement by a new law, a piece of Romanian legislation provided for a practice of “hosting”. This involved already-licensed broadcasters hosting socio-cultural organisations in their productions in order to guarantee pluralism and equality of treatment and freedom of expression for relevant parties. In Canada, there is a background of distinct licensing policies for different types of broadcasters, including a category known as “exempted native radio

³⁴ See section 1.3 of the country report on Latvia, *infra*.

stations” (this means that they are exempt from licensing requirements and certain regulations that would ordinarily apply to other broadcasters; the purpose of these exemptions is to make it easier for these broadcasters to comply with the administrative procedures set out by the licensing authority). A policy of frequency-sharing by ethnic groups is pursued by the relevant authorities in order to maximise the effect of limited resources.

14.2 Consultation and representation

The involvement of representatives of minority groups in broadcasting policy formulation is practised in a number of States and this can be of crucial importance for the promotion of the interests of non-dominant linguistic communities. Sometimes regulatory authorities for broadcasting are pro-active in this regard. The Irish and Polish broadcasting authorities are examples of national authorities which actively consult with minorities about relevant broadcasting policies and practice. The Broadcasting Commission of Ireland has a full-time Irish-language officer charged with *inter alia* increasing the output of Irish-language programming in the independent broadcasting sector in Ireland. This is in keeping with the Commission’s general policy of encouraging Irish-language programming as a constitutive part of normal programming.

In other countries, cooperation between broadcasting regulatory authorities, various State bodies, representative bodies of minority organisations and broadcasting entities (especially public service broadcasting organisations) is how consultation and representation with minority (language) groups are ensured. As regards public service broadcasting in Austria, the amount of programme time for national minorities is laid down in the annual broadcasting schedule after consultation with the Public Audience Council. The Public Audience Council (a specially constituted body to safeguard the interests of viewers and listeners) is constituted also according to proposals of the Advisory Minority Councils (bodies established for the representation of the recognised national minorities and which act as advisory boards for the Federal Government).

In Croatia, representation of minorities in programmes elaborated by the PSB is generally determined not so much by a quota system as by a consideration of factors such as the numerical strength of a given minority; the intensity of its activities; the level of development of its institutions and cultural structures and also professional editorial criteria. Furthermore, the (national) Advisory Board for national minorities is entitled to give opinions and make proposals concerning the programme schedule of public service radio and television stations which is directed at national minorities, as well as the treatment of minority issues in all sections of the media.

Provision is made in Hungary for the national self-governmental bodies of national and ethnic minorities (or in the absence of the such, the relevant national organisations of these groups) to decide independently on the principles of utilising the broadcasting time allocated to such groups by PSBs. The latter must take the decisions of such bodies into account, but these decisions may not affect the content of the programmes in question or the editing of broadcasts.

As mentioned *supra*, in Italy, collaboration between the PSB and the regions, e.g. the possibility of concluding agreements on various topics, can take place within the framework of the Convention between the Ministry of Communications and the public service television broadcaster. More generally in Italy, a Technical Committee must be consulted over the financing of projects concerning the protection of linguistic minorities.

Consultation and representation can also be achieved within the structures and operational strategies of individual broadcasting entities. Some regional stations of the Czech public service radio broadcaster have language departments corresponding to proportionally large minority groups residing in their catchment areas. The Greek and Turkish Advisory Committees of the Cyprus Broadcasting Corporation were created pursuant to relevant legislation and their primary function is to advise on matters concerning broadcasts in their respective languages. The German-speaking minority in South Jutland, Denmark, enjoys representation on the programming councils of the regional public service television and radio broadcasters. In the Netherlands, the programme councils of regional or local broadcasters are ultimately responsible for decisions concerning the material broadcast and these bodies must be representative of the groups living in the target province or municipality. In Spain, the PSB has an Advisory Committee in each of the Autonomous Communities.

Consultation and representation can also be safeguarded in other ways as well: in Serbia and Montenegro-Serbia - in Kosovo - for instance, the Constitutional Framework guarantees all communities access to, and representation in, public broadcast media, as well as programming in relevant languages.

At the opposite end of the spectrum to broad principles of inclusiveness in the broadcasting sector, there is a State-monopoly of the mass media in Turkmenistan; a broadcasting regime under which regional studios were closed down in the early 1990s and under which there are no editorial offices in minority languages.

14.3 Financing

Particular, advantageous financial provisions can also be of enormous benefit to broadcasters using minority languages. This can be illustrated by the example of Austria, where the growth of minority-language radio broadcasting activities ceased when specific government funding ceased. The Netherlands has an array of financial structures and other measures aimed at supporting minority broadcasting. The National Broadcasting Council of Poland, when allocating the income from licence fees among the relevant public radio programme services, gives consideration *inter alia* to whether these programme services transmit programmes for minorities. In Hungary, although programmes within public service broadcasting structures are generally restricted to pro-rata shares of specific (State-designated) budgets, sponsorship is allowed for minority-language programmes, thus affording these programmes the possibility of obtaining additional, non-State funding. By virtue of a bilateral treaty between Croatia and Hungary, programmes of Hungarian origin are exempt from customs' duty and other forms of taxation in Croatia.

Some States have committed themselves to financing minority broadcasting to the extent that existing resources may allow: for example, in Croatia, insofar as possible, local and regional units of self-government are expected to finance cultural and other organisations promoting the interests of minorities. Relevant legislation encourages the financing of broadcasting in the languages of minorities, from State, local and regional self-governmental budgets, as well as the involvement of representative bodies of the minorities in decision-making procedures relating to relevant programming, etc. The State is required by law to, *inter alia*, provide material support for the production and broadcast of radio and television programmes in the language and script of ethnic and national communities or minorities. In Ukraine, the State is under a statutory obligation to support the mass media which consistently promote the

development of minority languages and culture. Pursuant to this law, the “support” in question is fixed by a separate line in the budget. A similar situation exists in the Czech Republic. Relevant statutory law in Serbia and Montenegro-Montenegro obliges the Government to provide part of the funding for programming in Albanian and the languages of other national and ethnic groups. In Canada, there is a legislative commitment to extend the broadcasting services currently provided to the country’s various linguistic communities, subject to the availability of resources for that purpose. In Ireland, the most recent piece of broadcasting legislation makes provision for ministerial intervention to occasionally pay the Irish-language public service television broadcaster an amount determined to be “reasonable for the purposes of defraying the expenses incurred” by the station in performing its functions. The subtext here is that any such payments would be in addition to the station’s regular sources of funding.

15 Conclusion

The Office of the OSCE HCNM was established a decade ago to identify and seek early resolution of ethnic tensions that might endanger peace, stability or friendly relations between OSCE Participating States.³⁵ From the beginning, the HCNM has recognised that linguistic rights for persons belonging to national minorities are vital for them, largely because of the centrality to the identity of many persons belonging to national minorities of their ability to use their own language freely, both in private and in public in all areas of life. For most minorities, language, as much as if not more than any other attribute of identity (such as common religion or history), serves as a means of unity of the group and a source of self-identification for the individual. In the information age, the link between language and media is critical. It has thus, rightly, been the focus of HCNM concern.

Law and regulation mediates the enjoyment and preservation of the minority culture; and the freedom to transmit ideas, customs, and other indicia of culture in the original language of minorities is fundamental to preservation. The significance of language usage and the role of law were the motivating purposes of this study. And yet, as stated in the HCNM’s 1999 Linguistics Report: “Each state within the OSCE faces a different set of issues concerning linguistic rights, and no two states have adopted the exact same set of policies”.³⁶ The dramatic variety among the OSCE States appears not to have altered, at least not in the field of broadcasting media. As our study shows, there remains a variety in demographic contexts, in the political uses and abuses of language, in governmental approaches, and, indeed, in the rule of law itself. The array of legislative and regulatory regimes for language usage in broadcasting is as spectacularly heterogeneous as the OSCE itself. It is possible to conclude from this study, however, that language use in the broadcast media is: 1) typically regulated; 2) rarely prohibited; and 3) often facilitated.

Just as governments within the OSCE have recognised in a number of ways the importance of linguistic rights for the persons belonging to minorities, they have fashioned differentiated

³⁵ For a substantial account of the role and work of the HCNM through early 2001, see W. Kemp, Ed., *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities* (The Hague, Kluwer Law International, 2001). See also: S. Holt, “The Activities of the OSCE High Commissioner on National Minorities January 2001 – May 2002”, in *European Yearbook of Minority Issues*, Vol. 1, 2001/2, (United Kingdom, Kluwer Law International, 2003), pp. 563-589; and M. Draper, “The Activities of the OSCE High Commissioner on National Minorities June 2002 – April 2003” in in *European Yearbook of Minority Issues*, Vol. 2, 2002/3 (forthcoming).

³⁶ *Op. cit.*, p. 1.

legal schemes for affirming or channelling that right. We have noted the elaborate and special measures some States have taken to protect and promote minority languages used in their territories. We have also noted those examples where restrictions or other policies have sought to limit the possibility of persons belonging to minorities to use their own language.

One of the conclusions of the 1999 Report (which included a section on access to the media) was that with respect to such access, “states should consider all available options for increasing the amount of programming in minority languages to match the needs of the minority population. New technologies, allowing minorities to produce their own broadcasts, the broadcasting of foreign programs, and other methods can be used to expand the hours devoted to minority programming.”³⁷ The Country Reports that are part of this Study offer some examples of “best practices” to achieve this goal. In the startling variety of approaches presented by this Study—approaches which allow precious little categorisation—what remains significant is the search by almost all the OSCE participating States for patterns by which law and regulation can assist in serving minority needs in a context of building a cohesive society. As such, State practice across the OSCE essentially affirms the rights of persons belonging to minorities to use their languages in the broadcast media and supports the contention that there are a variety of ways in which this can be, and is being, achieved. Practices to the contrary would seem to invite scrutiny as to their specific explanations, which might be viewed comparatively in light of the practice of other States and, of course, against applicable international standards.

³⁷ *Ibid.*, at p. 39. Emphasis in original.

Suggested further reading

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Summary of international and national provisions

Country	European Convention on Human Rights	Framework Convention	Regional or Minority Languages Charter	European Convention on Transfrontier Television	Protocol Amending Convention on Transfrontier Television	International Covenant on Civil and Political Rights	International Covenant on Economic, Social & Cultural Rights	Constitution	Legislation	Comments
Albania	02-10-1996	28-09-1999		02-07-1999 (S)		04-10-1991	04-10-1991	Arts. 22 (FoE/B); 18 (GE); 3, 20 (M); 14 (L)	Law No. 8410 of 1998 "On Public and Private Radio and Television in the Republic of Albania," as amended (Arts. 20, 37, 66, 68)	<ul style="list-style-type: none"> - Regional public broadcasting slots in minority languages - PSB required to cater for national minorities (but not necessarily in their own languages) - No formal access restrictions - Programming in Albanian, save for limited exceptions, including when specifically targeting national minorities and licensed accordingly - To date, no broadcasters licensed to broadcast specifically in minority languages
Andorra	22-01-1996					05-08-2002 (S)		Arts. 12 (FoE); 36 (B); 6 (M); 2(1) (L)	Act on the Use of the Official Language of 1999 (Arts. 6, 7, 25-27, 36); Act on the public service of radio and television and on the creation of the public company <i>Ràdio i Televisió d'Andorra</i> (RTVA), S.A., of 2000 (Art. 2f)	<ul style="list-style-type: none"> - Policies of linguistic integration; protection and promotion of Catalan - Prescription of Catalan for all media; broadcasts in other languages permitted in accordance with Regulation (not yet adopted); broadcasters liable to sanctions for breach of this - PSB must promote Catalan - Formal licensing regime for private broadcasting pending
Armenia	26-04-2002	20-07-1998	25-01-2002			23-06-1993	13-09-1993	Arts. 24 (FoE); 15, 37 (M); 12 (L)	Law on Language, 1993 (Arts. 1, 2, 4); Law on Television and Radio, 2000 (Arts. 5, 17, 28)	<ul style="list-style-type: none"> - Language of programming is Armenian - Broadcasts in foreign languages must be simultaneously translated into Armenian (oral/written), but not for broadcasts in languages of recognised national minorities - Legislation allows PSB airtime for programmes in languages of minorities (not obligatory) and limited to one hour per week (television) and one hour per day (radio) - Restrictions on diffusion of programming of foreign broadcasters; accompanying Armenian translation necessary
Austria	03-09-1958	31-03-1998	28-06-2001	07-08-1998	01-10-2000 (T)	10-09-1978	10-09-1978	Art. 13 of Basic Law, Art. 10 of ECHR (constitutional)	Minorities Act, 1976 (as amended, 2002); ORF Act, 1984 (amended 2001) (ss. 1(3), 4(1)&(5), 5, 10, 28, 30); Private	<ul style="list-style-type: none"> - PSB must guarantee "reasonable programme shares" in the languages of recognised national minorities - Various forms of collaboration are possible in this connection

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								status), Art. I of Federal Constitutional Law on Protection of Independence of Broadcasting, 1974 (FoE/B); Art. 7 of Federal Constitution, 1929 (GE); Arts. 62-68, Treaty of St. Germain, 1919 (M); Art. 8 of Federal Constitution (L)	Radio Act, 2001 (s. 6.1); Private Television Act, 2001 (ss. 4(2)&(3), 7, 8)	<ul style="list-style-type: none"> - One nationwide public radio station dedicated to foreign-language broadcasting - Audience Councils must consult representatives of national minorities about the allocation of programme shares to minorities -Recent discontinuation of Government subsidies for minority-language radio programmes has led to their demise
Azerbaijan	15-04-2002	26-06-2000a	21-12-2001 (S)			13-08-1992	13-08-1992	Arts. 47, 50 (FoE/B); 25, 44, 45 (M); 21 (L)	Law “On the State Language in the Azerbaijan Republic” of 2002 (Art. 6); Law “On Mass Media” of 1999 (as amended) (Arts. 6, 14); Presidential Decree “On the Protection of the Rights and Freedoms and on State Support for the Promotion of the Languages and Cultures of National Minorities, Numerically Small Peoples and Ethnic Groups Living in the Republic of Azerbaijan” of 1992	<ul style="list-style-type: none"> - Statutory provision for use of State language by mass media - (Permissible to use other languages as well) - All citizens have right to found own media outlet - Draft legislation on public broadcasting, if enacted, would require public broadcasting programmes to be in Azerbaijani and foreign language broadcasts to be translated; it would also allow programmes in the languages of national minorities to be considered “public broadcasting” programmes
Belarus					12-11-1973	12-11-1973		Arts. 33, 34 (FoE/B); 14, 15, 50 (M); 17 (L)	Law On Press and Other Mass Media of 1995 (as amended in 1999)	<ul style="list-style-type: none"> - Absence of statutory measures relating to minority-language broadcasting - Some transfrontier broadcasting permitted, mainly in the Russian language - Russian dominates various levels of broadcasting - “the distortion of the recognised norms of the used language” by the media is not allowed - Proposed new Law “On Press and Other Mass Media” under discussion
Belgium	14-06-1955	31-07-2001				21-04-1983	21-04-1983	Arts. 19, 25	Flemish Media Decree, 1995	<ul style="list-style-type: none"> - Existence of three linguistic communities, with own

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		(S)						(FoE); 127, 130 (B); 10 (GE); 11, 131, 43, 191 (M); 1-4, 30 (L)	(Arts. 2, 8, 23, 31, 38, 51, 52, 53, 59, 61, 99, 102, 103, 112, 113); Decree concerning the Statute of RTBF, 1997 (Arts. 3, 7, 8, 21); Decree on Audiovisual Matters, 1987 (Arts. 2, 3, 4, 15, 16, 19, 20, 22, 23, 24, 26); Decree concerning CSA and Private Radio Services of French Community, 1997 (Arts. 38, 39); Mediendekret, 1999 (Arts. 5, 19, 22, 24, 40); Executive Agreement between VRT and the Flemish Community (2002-2006) (Arts. 1, 2, 4); Executive Agreement between RTBF and the French Community, 2001 (Arts. 1, 12, 13, 17, 20, 26, 27, 30, 31)	official languages and administrative organs - In Flemish Community, private radios must broadcast in Dutch, but exceptions can be approved by the regulatory authority - Various provisions exist for niche-broadcasting which could be used for minority languages - Flemish Government may impose quotas to ensure greater use of Dutch-language European productions, but has yet to do so - Cable operators are subject to certain must-carry provisions concerning the Dutch language and may-carry provisions which allow for foreign-language broadcasting opportunities - Flemish television productions and co-productions must amount to at least 50% of PSB's total programming between 18.00 and 23.00 - In French-speaking Community, cultural objectives of PSB include the requirement that its radio stations must broadcast at least 40% of non-classical music in French, except for its two thematic channels, which must broadcast at least 15% of non-classical music in French (annual averages) - At least 33% of its television broadcasting time (excluding news, advertising, sports, etc.) should be carried out by French-speaking professionals - Progressive goal of 33% for own productions in French - Private radio stations must broadcast in French, but exceptions can be approved by the regulatory authority - 30% of music broadcast should be in French, of which 15% originates in the French Community - In the German-speaking Community, the promotion of the German language is provided for by law
Bosnia & Herzegovina	12-07-2002	24-02-2000a				01-09-1993	03-03-1992	BiH Constitution, Art. II, Ss. (1), (2), (3)(g) and (3)(h), (4), (8); Art. III(2)(c); Annex I. FBiH	No laws regarding broadcasting in minority languages.	- PSB broadcasts news in official languages; limited broadcasting in languages of minorities - Overlapping jurisdictions as regards broadcasting - No legislation or other administrative measures as yet dealing specifically with broadcasting in minority languages

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								Constitution, Art. I, S. (1); Art. III, S. (4)(i); Art. V, S. (2); Art. VI, Ss. (1)-(3). RS Constitution, Arts. 1, 5, 7, 10, 25, 26, 33, 34.		
Bulgaria	07-09-1992	07-05-1999		03-03-1999	15-03-2000	21-09-1970	21-09-1970	Arts. 39, 41 (FoE); 40 (B); 6, 54 (M); 3, 36 (L)	Radio and Television Law of 1998 (as amended in 2000) (Arts. 6, 7, 11, 12, 33, 49)	<ul style="list-style-type: none"> - Radio and television broadcasts must be in the Bulgarian language, except when the programmes have an educational objective, target Bulgarians whose mother tongue is another language or listeners/viewers from abroad, or when foreign programmes are retransmitted - PSB required to help develop Bulgarian culture and language - PSB also required to provide programmes in languages of citizens whose mother tongue is not Bulgarian (amount and nature of such programming decided by boards of directors of PSB television and radio) - Some regional commercial broadcasts in minority languages - Negligible public broadcasting slots
Canada						19-05-1976	19-05-1976	Ss. 2(b) (FoE); (23), (25), (35) (M); 16, (17-20) (L)	Official Languages Act of 1988 (s. 2(a)); Canadian Multiculturalism Act of 1985 (ss. 3, 5); Broadcasting Act of 1991 (Part I, s. 3; Part II, s. 5); Radio Regulations of 1986 (Part I, ss. 5, 10, 13, 14; s. 7); Television Broadcasting Regulations of 1987 (ss. 4(9), 4(10), 9)	<ul style="list-style-type: none"> - Broadcasting generally has to serve the needs and interests of the linguistic duality and multicultural and multiracial nature of the country - There are clearly delineated regulations for broadcasting stations registered as “minority-language” (i.e. English or French) stations, native/aboriginal stations or ethnic stations - French-language radio broadcasters have to broadcast 55%-65% (depending on the nature of the station) of their vocal music output in the French language - Ethnic radio stations are generally to broadcast up to 40% of a broadcast week to third language programmes - Similar provisions govern ethnic television stations

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Croatia	05-11-1997	11-10-1997	05-11-1997	12-12-2001	12-12-2001	12-10-1992	08-10-1991	Arts. 38 (FoE/B); 14, 15, 82 (M); 12 (L)	Constitutional Law on the Rights of National Minorities of 2002 (Arts. 1, 7, 15-18, 31, 35); Law on the Use of the Language and Letter of National Minorities in the Republic of Croatia of 2000 (Art. 20); Law on Public Information of 1996 (as amended) (Art. 7); Law on Telecommunications of 1999 (as amended) (Art. 78); Law on Croatian Radio-Television of 2001 (Arts. 5, 9, 16, 17)	<ul style="list-style-type: none"> - Legislation encourages all levels of administrative authorities to provide financing for broadcasting in the languages of minorities insofar as possible - Radio and television broadcasters must use the Croatian language, but are also required to promote understanding of national minorities and raise awareness of various aspects of their lives; the participation of national minorities in making of these programmes is encouraged by law - State is required by law to provide material support for production and transmission of programmes in the languages of national minorities - Broadcasting can be in Croatian dialects or in languages of national minorities when expressly provided for in specific programmes - PSB must broadcast in Croatian, except for films and other audiovisual works broadcast in their original languages; musical pieces in foreign languages; educational programmes teaching foreign languages and programmes geared at national minorities and ethnic communities
Cyprus	06-10-1962	04-06-1996	26-08-2002	10-10-1991	24-02-2000	02-04-1969	02-04-1969	Arts. 19 (FoE); 171 (B); 28 (GE); 2 (M); 3 (L)	Broadcasting Law 7 (I) of 1998 (as amended) (Arts. 19-21, 26(1), 30, 31)	<ul style="list-style-type: none"> - One of the goals of broadcasting is to preserve “the quality of the language”, as well as the national identity and cultural heritage of the people of Cyprus - PSB is required to broadcast in the Greek, Turkish and English languages and in other languages at its discretion, while maintaining a balance between these languages
Czech Republic	18-03-1992	18-12-1997	09-11-2000 (S)	07-05-1999 (S)		22-02-1993	01-01-1993	Art. 17 of the Charter of Fundamental Rights and Freedoms (FoE); Arts. 24, 25, <i>ibid.</i> , Art. 6 of the Constitutional Act (M); Arts. 3, 10, <i>ibid.</i> (O)	Act No. 483/1991 on Czech Television (as amended by Act No. 39/2001); Act No. 484/1991 on Czech Radio; Act No. 231/2001 on the Operation of Radio and Television Broadcasting (Arts. 3, 17, 31(4), 32); Act No. 273/2001 on Rights of Members of National Minorities and Amendment of Some Acts (Arts. 2, 12, 13)	<ul style="list-style-type: none"> - Obligations of balanced and diverse output apply to the PSB and include the development of the cultural identity of the country, including that of national and ethnic minorities - PSB programme schedule must also have regard for the ethnic or national background or national identity of all sections of the population - A stated consideration in the licensing of broadcasters is the likely contribution the proposed programme offer will make to the existing diversity in broadcasting available on the territory to be covered and the likely benefits for the development of the culture of ethnic and other minorities - Broadcasting in minority languages on PSB appears

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										to be quite limited in practice; public service radio (particularly in its regional stations) transmits more programming in minority languages than its television counterpart
Denmark	13-04-1953	22-09-1997	08-09-2000			06-01-1972	06-01-1972	Ss. 77 (FoE); 70, 82, 87 (GE/M)	Radio and Television Broadcasting (Consolidation) Act, No. 701, 2001 (ss. 6, 21, 43-45, 50); Executive Order on Regulation for DR, No. 1345, 2000 (ss. 4(1) – (7), (11)); Executive Order on Regulation for TV2, No. 1346, 2000 (ss. 4(5)&(11)); Executive Order on Local Radio and Television Activities, No. 1349, 2000 (ss. 6(4), 30(2))	<ul style="list-style-type: none"> - PSB shall place particular emphasis on Danish language and culture - PSB under general, broad obligation to provide versatile offer of Danish and multicultural programmes and information services to aid integration of ethnic minorities; no specific references to minority-language broadcasting - Licensing policies may take into consideration needs of minority groups or other groups under-represented in the media - Representation of German-speaking community on PSB programming councils in South Jutland and some PSB programmes are provided in German to cater for this minority - Local television stations are required to broadcast an hour of locally-produced news and current affairs or community-oriented programmes daily, and a “significant element” of the other programmes in the Danish language or produced for a Danish public
Estonia	16-04-1996	06-01-1997		24-01-2000	24-01-2000	21-10-1991	21-10-1991	Arts. 45 (FoE/B); 9, 12 (GE); 49-52 (M); 6 (L)	Law on Cultural Autonomy for National Minorities, 1993 (Arts. 1 - 4); Language Act, 1995 (Arts. 1, 2, 25); Broadcasting Act, 1994 (as amended) (Arts. 7, 25, 26)	<ul style="list-style-type: none"> - No legislative provisions for obligations to broadcast in minority languages - Foreign-language texts in broadcasting (incl. programmes and advertisements) must, as a rule, be translated into Estonian (exceptions incl. programmes retransmitted immediately, language-learning programmes, foreign-language news programmes, live foreign-language programmes and radio programmes targeting a foreign-language audience) - Foreign-language news programmes and live foreign-language programmes exempted from translation requirement must not exceed 10% of the volume of weekly original production - PSB’s programmes and services must facilitate the preservation and development of the Estonian language - State television broadcaster’s development plan envisages a progressive increase in its Russian-language programming

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Finland	10-05-1990	03-10-1997	09-11-1994	18-08-1994	01-10-2000 (T)	19-08-1975	19-08-1975	Ss. 12 (FoE); 6 (GE); 17 (L)	Language Act (N:o 148/1922); Act on Television and Radio Operations (N:o 744/1998) (s. 7); Act on the State Television and Radio Fund (N:o 745/1998); Act on Yleisradio Oy (the Finnish Broadcasting Company) (N:o 1380/1993) (s. 7); Act on Broadcasting on the Åland Islands (N:o 117/1993); Act on Broadcasting and Cable Transmission on the Åland Islands (N:o 8/1994)	- PSB under statutory obligation to treat Finnish- and Swedish-speaking citizens equally in its broadcasting - PSB obligation to provide services in the Sámi and Romany languages; sign language and where applicable, for other language groups in the country - These obligations are largely reflected in practice - Transnational cooperation helps to ensure the provision of broadcasting services in the Sami language - The autonomous Åland Islands have their own broadcasting regime
France	03-05-1974		07-05-1999 (S)	21-10-1994	05-02-2002	04-11-1980	04-11-1980	Art. 11, Declaration of the Rights of Man and of the Citizen, 1789 (FoE); Art. 1, Constitution of the Fifth Republic, 1958 (GE/M); Art. 2, <i>ibid.</i> (L)	<i>Toubon</i> Law, No. 94-665 of 1994; “ <i>Pelchar</i> ” Amendment to the Law relating to freedom of communication (the “ <i>Léotard</i> ” Law) of 1986 (Art. 28(2) <i>bis</i>); <i>Haby</i> Law, No. 75-620 of 1975 (Art. 12); <i>Deixonne</i> Law, No. 51-46 of 1951 (Art. 1); Law No. 82-652 of 1982; Law No. 86-1067 of 1986 (Arts. 1, 13, 42, 44); Law No. 82-652 of 1982; Franco-German Treaty of 1990	- Traditional reluctance to formally/legally recognise minority rights/languages - Legislation requiring use of French language for all radio and television programmes (save for films and audiovisual works in their original versions) - Legislation requiring that 40% of all music broadcast be in the French language; the regulatory authority has discretion to apply some flexibility to the application of this quota to specialised radio stations - PSB’s decentralised programming policy provides for up to two hours of weekly programming in regional languages - Superior Council of Broadcasting required to uphold freedom and plurality of expression and in practice, licenses numerous specialised radio and television stations, incl. those using minority languages - Broadcasting for French Overseas Territories is the responsibility of a nationalised programming company
Georgia	20-05-1999	21-01-2000 (S)				03-05-1994	03-05-1994	Arts. 19, 24 (FoE); 38 (GE/M); 8 (L)	Law on the Press and Media, 1991 (Arts. 3, 6); Law on Post and Telecommunications, 1999; Law On Georgian Citizenship, 1993 (Art. 4)	- Legislative provision that the State language is the language of broadcasting; but also that minorities have the right to receive and impart information in their own languages - Draft Law on State Language (if adopted) could allow 10% of total broadcasting time to be in another language
Germany	05-12-1952	10-09-1997	16-09-1998	22-07-1994	01-10-2000 (T)	17-12-1973	17-12-1973	Arts. 5 (FoE), 2 (O) of the <i>Grundgesetz</i> (Federal	Interstate Agreement on Broadcasting, as last amended, 2001 (Art. 25); Interstate Agreement on the Second	- Federal, Interstate and State legislation of relevance, as well as a transfrontier dimension in cases of some minority languages - Provisions at Interstate level for safeguarding of

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								Constitution); Arts. 25 (FoE), 19 (B), Constitution of Brandenburg; Arts. 18 (M), 16(2) (L), Constitution of Mecklenburg-Vorpommern; Arts. 5(2), 6, (37(1)) (M), 20 (B), Constitution of Freistaat Sachsen; Arts. 5 (FoE), 9 (L), Constitution of Schleswig-Holstein	German Broadcaster – ZDF, 1998 (Arts. 5(2), 22(1)); Interstate Agreement on the North German Broadcaster – NDR, 1992 (Arts. 3(3), 5(2), 7(2)); Law on ORB, 2001 (Arts. 4(2), 5(2)); Law implementing the State Agreement on mdr, 1991 (Art. 6(3)); Law on the Rights of Sorbs in the Free State of Sachsen, 1999 (Art. 14); Landesrundfunkgesetze (State broadcasting laws) of certain individual States	pluralism, etc., but promotion of minority languages (in broadcasting) is mainly secured at State level - Use of <i>Offene Kanäle</i> (open channels) for minority-language broadcasting where minorities do not own/run/have ready access to broadcasting facilities
Greece	28-11-1974	22-09-1997 (S)		12-03-1990		05-05-1997	16-05-1985	Arts. 14 (FoE); 15 (B); 4 (GE)	Law N. 2328 on the Legal Status of Private Television and Local Radio, the Regulation of the Radiotelevision Market and Other Provisions, 1995 (Arts. 1, 2, 3(18), 3(19), 6); Law N. 2644/1998 (Art. 10(3)); Code of Ethics for news and information radio and television programmes (yet to enter into force)	- No legislative provisions for minority media or facilitating minority access to the media, although pluralism is safeguarded by the law - PSB and private television stations required by law to reserve more than 25% of their transmission time (excl. news, sports events, games, advertising and teletext services) for original works in the Greek language - Providers of pay-radio and television services are under the same obligation - Provisions for subtitling of foreign-language content provided by pay-radio and television services (30% in first year of operation, rising by 5% per year to 50%) - PSB, private television and radio broadcasters required by law to transmit programmes promoting the Greek language and its instruction to foreigners, but does not broadcast corresponding programmes for other languages - PSB, private television stations and local radio stations must ensure correct usage of Greek language - Absence of provisions for the State subsidisation of independent minority media or minority use of PSB

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										infrastructure leaves minorities experiencing difficulties meeting technical and other standards on which the award of licences depends - One exception is a PSB radio station which broadcasts news and cultural programmes in up to 12 languages
The Holy See				07-01-1993	01-10-2000 (T)			Art. 2, Patti Lateranensi (FoE); Article 16, Apostolic Constitution (L)	-	- No legal measures for the protection of minority languages - Issue of the use of minority languages has yet to be addressed in State broadcasting policies
Hungary	05-11-1992	25-09-1995	26-04-1995	02-09-1996	01-10-2000 (T)	17-01-1974	17-01-1974	Arts. 61 (FoE/B); 68 (M)	Act No. LXXVII on Rights of National and Ethnic Minorities, 1993 (Arts. 1, 13-16, 18, 42, 51-54, 61); Act No. I on Radio and Television Broadcasting, 1996 (Arts. 19, 23, 25, 26, 34); Act No. CXXVII on the National News Agency, 1996	- Statutory obligation on PSB (i) to ensure that national and ethnic minority programmes are broadcast on a regular basis; (ii) to foster the culture and native languages of such groups (through national, regional or local broadcasting by programming addressing the needs of minorities, subtitling or multilingual broadcasting); (iii) to ensure that the aggregate national or regional broadcasting for minorities does not fall below its volume when the relevant legislation was enacted - National self-governing minority bodies determine principles for utilisation of broadcasting time allocated to minorities and PSB must take these decisions into account - Existence of “not-for-profit” broadcasters which serve cultural aims of (<i>inter alia</i>) minorities – special provisions can apply - Promotion of reception of broadcast programmes from kin states in territories inhabited by minorities - Disproportionately little access to broadcasting time and facilities for Roma - Parliamentary Ombudsman for Rights of National and Ethnic Minorities may investigate alleged infringements of their rights (incl. in respect of broadcasting)
Iceland	29-06-1953	01-02-1995 (S)	07-05-1999 (S)			22-08-1979	22-11-1979	Arts. 73 (FoE); 65 (GE)	Icelandic National Broadcasting Service Act, No. 122 of 2000 (Article 3); Broadcasting Act, No. 53 of 2000 (Articles 6, 7)	- Aim of broadcasting to promote and cultivate Icelandic culture and language - No provisions for programming for ethnic minority groups - Permissible, but unusual, to grant broadcasting licence for other languages

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Ireland	25-02-1953	07-05-1999				08-12-1989	08-12-1989	Arts. 3, 8, 40.1, 40.3.1, 40.6.1	Broadcasting Act, 2001 (ss. 11, 28(2), 42 et seq., 45(8), 47, 48); Broadcasting Authority Act, 1960 (s. 17); Radio and Television Act, 1988 (ss. 6(2) & (3))	<ul style="list-style-type: none"> - Special PSB obligations for Irish language: general and dedicated channels - Duties of Broadcasting Commission of Ireland (BCI) regarding language and licensing and programming - BCI language officer for policy formulation and implementation - Various non-legislative initiatives for the promotion of the Irish language
Italy	26-10-1955	03-11-1997	27-06-2000 (S)	12-02-1992	10-10-2000 (T)	15-09-1978	15-09-1978	Arts. 21 (FoE); 6 (M)	Minority Languages Act, No. 482/99 of 1999 (Arts. 2, 3, 9, 12, 19); Public Radio and Television Broadcasting Service Act, No. 103/75 of 1975 (Art. 6); Communications Act No. 249/97 of 1997 (Art. 1); Regulation No. 345 of 2001 (Art. 11)	<ul style="list-style-type: none"> - The protection of minority languages in the media sector falls under the competences of the Communications Authority - Statutory provision for PSB to reserve airtime (5% for television, 3% for radio) for various groups, incl. ethnic and linguistic groups - Convention between Ministry of Communications and PSB (television) and related contract of service must ensure proper conditions for protection of minority languages in relevant regions; this includes transmission of programming in protected languages
Kazakhstan								Arts. 20 (FoE); 14, 18, 19 (M); 7 (L)	Law "On Languages in the Republic of Kazakhstan", N. 151-1 of 1997 (Arts. 6, 7, 18); Law "On Mass Media", N. 451-1 of 1999 (as amended) (Art. 3)	<ul style="list-style-type: none"> - Statutory provision that the cumulative volume of programming in other languages on television and radio channels should not exceed programming in the State language (since 1 January 2003, this should not exceed 20% of the total volume of programming); this restriction does not extend to cable and satellite television - Retransmissions of television and radio programmes of foreign broadcasters are allowed, subject to certain (non-language-related) restrictions - Bilateral treaties refer to the use of languages in broadcasting - Government's 10-year programme for the development and use of languages includes provisions on broadcasting in the State, Russian and ethnic community languages
Kyrgyzstan						07-10-1994	07-10-1994	Arts. 16(2) (FoE/B); 36(1)&(2) (B); 15(3)&(5) (M); 5 (L); 17(7), 38 (O)	Law "On the State Language" of 1989 (Arts. 1, 4, 6, 25, 32); Law "On the Official Language of Kyrgyzstan" of 2000 (Art. 1); Law "On Culture" of 1992 (Art. 5); Law "On Mass Media" (Arts. 5, 22, 23); Law "On	<ul style="list-style-type: none"> - No specific normative provisions dealing with minority-language broadcasting: only general PSB obligations and provisions for equality of access to electricity and electronic communications - Licensing agreements tend to include non-discrimination clauses - Practice of requiring broadcasters (in licensing

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									Guarantees and Freedom of Access to Information” of 1997 (Art. 10); Law “On Advertising” of 1998 (Art. 5(3)); Standing Order “On the State Broadcasting Agency of Kyrgyzstan” of 1998 (Pt. 4); Law “On Electric and Mail Communications” of 1998 (Art. 8); Standing Order “On the State Communication Agency under the Government of Kyrgyz Republic” of 1998 (Pt. 4)	agreements) to provide certain percentages of programming in State language has been discontinued
Latvia	27-06-1997	11-05-1995 (S)		26-06-1998	01-10-2000 (T)	14-04-1992	14-04-1992	Arts. 100 (FoE); 91 (GE); 114 (M); 4 (L); 116 (O)	Law on Unrestricted Development of National and Ethnic Groups of Latvia and the Rights to Cultural Autonomy of 1991 (Art. 5); State Language Law of 1999 (Arts. 1, 2, 16); Radio and Television Law of 1995 (Arts. 19, 62); Code on Administrative Misdemeanours of 1984	<ul style="list-style-type: none"> - Robust legislative provisions for protection and promotion of official language, Latvian - PSB required by law to produce all programmes for the first distribution network in the official language - Programming for the PSB’s second distribution network must also be primarily in Latvian, but up to 20% of annual airtime can be allocated to broadcasts in the languages of the State’s ethnic minorities (this percentage includes films subtitled in Latvian) - For private broadcasters, the limit is 25% of the total daily broadcasting time; breaches of which can lead to cautions, fines and suspensions of licences - Legislative provisions for widespread dubbing, subtitling and voice-overs when the language of the broadcast is not Latvian
Liechtenstein	08-09-1982	18-11-1997	18-11-1997	12-07-1999	12-07-1999	10-12-1998	10-12-1998	Arts. 40 (FoE); 6 (L)	Broadcasting Act (& Implementing Ordinance), 1978; Implementing Ordinance to the Broadcasting Act, 1992 (Arts. 18.2, 19.1, 20.2, 25.1)	<ul style="list-style-type: none"> - No provisions in broadcasting legislation on minority languages - Strong influence on broadcasting by surrounding German-speaking countries - Legislation creates scope for involvement of “local groups and communities” in broadcasting for promotion of own aims and interests
Lithuania	20-06-1995	23-03-2000		27-09-2000	27-09-2000	20-11-1991	20-11-1991	Arts. 25 (FoE); 44 (B); 28, 29 (GE); 37, 45 (M); 14 (L); 18, 26, 35 (O)	Law “On the State Language”, 1995 (Arts. 10, 13); Law “On Provision of Information to the Public” , 1996 (as amended) (Arts. 23(2-6), 31(6-7), 34); Law “On Lithuanian National	<ul style="list-style-type: none"> - As a rule, public information must be produced and disseminated in the State language - Broadcasts in other languages must be translated or subtitled, with limited exceptions (eg. programmes for national minorities) - PSB must cater for needs and interests of all sectors

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									Radio and Television”, 2000 (Art. 4)	of society, incl. people of various nationalities, but there are no corresponding specific requirements to broadcast in the languages of people of various nationalities - Radio & Television Commission considers needs of minorities in determination of licence conditions for given areas
Luxembourg	03-09-1953	20-07-1995 (S)	05-11-1992 (S)	05-05-1989 (S)		18-08-1983	18-08-1983	Arts. 24 (FoE); 10bis (GE); 29 (L)	Languages Act, 1984 (Arts. 1-4); Electronic Media Act, 1991	- No specific legal recognition for linguistic or cultural minorities; nor does broadcasting legislation contain any provisions on (use of) minority languages - Detailed operating conditions for broadcasters set out in individual <i>cahiers des charges</i> ; these can and often do contain provisions on languages used by broadcaster (eg. RTL, Radio Latina)
FYRM	10-04-1997	10-04-1997	25-07-1996 (S)	30-05-2001 (S)		18-01-1994	18-01-1994	Art. 16 (FoE) N.B. See Amendments arising from ‘Ohrid’ Framework Agreement: 8, 10, 12 (M); 5 (L)	Law on Pursuit of Broadcasting Activity, 1997 (Arts. 41, 45, 46); Law on the Establishment of the Public Enterprise Macedonian Radio-Television, 1998 (Arts. 5, 6)	- PSB has the statutory obligation to produce and broadcast radio and television programmes in Macedonian and in the languages of minorities - Broadcasting generally takes place in Macedonian or in the languages of minorities - Foreign programmes or sections thereof must be translated into Macedonian or the languages of minorities towards whom they are directed (exceptions incl. the transmission of musical, theatrical and religious events, educational programmes for learning foreign languages and programmes intended for foreigners) - National broadcasting authority proposes a number of concessions specifically for broadcasting in minority languages
Malta	23-01-1967	10-02-1998	05-11-1992 (S)	21-01-1993	01-10-2000 (T)	13-09-1990	13-09-1990	Arts. 41 (FoE); 118, 119 (B); 14, 45 (GE); 5 (L)	Broadcasting Act, 1991 (Arts. 11, 13)	- No general legislation on minorities or multiculturalism; nor does broadcasting legislation contain any provisions on (use of) minority languages - Policy and legislative concern for Maltese language as an expression of cultural identity and (increasingly) for its correct usage in the media
Moldova	12-09-1997	20-11-1996	11-07-2002 (S)	03-11-1999 (S)				Arts. 32 (FoE); 34 (B); 16 (GE); 13 (L); 4 (O)	Law on Functioning of Languages in the Territory of Moldavian SSR, 1989 (Introduction, Art. 2); Law on the Rights of National Minorities and the Legal Status of their Organisations, 2001	- At least 65% of public and private broadcasters’ programming must be in the State language (with limited exceptions, such as programmes transmitted by satellite and cable television, the programmes of foreign stations and of stations broadcasting in territories densely populated by minorities) - Financial sanctions can result from breach of

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									(Arts. 6, 13); Code on Administrative Transgressions, 2001 (Arts. 200/3, 200/4); Law on TV and Radio, 1995 (Art. 13(3)); Law on the Approval of the Charter of Company 'TeleRadio-Moldova', 1996 (Art. 22)	provisions of relevance to language regulation - State required by law to ensure that the PSB provides programmes in minority languages - Charter of PSB commits it to promote, <i>inter alia</i> , the culture of minorities living in the Republic
Monaco						28-08-1997	28-08-1997	Arts. 23 (FoE); 17, 32 (GE); 8 (L)	Act no. 928 of 1972 concerning private radio-electric stations; Ordinance no. 5356 of 1974 regulating the private radio-electric stations (Art. 8); Act no. 1122 of 1988 concerning the distribution of radio and television programmes	- No specific provisions on minority-language broadcasting (emphasis in existing legislation is largely on technical and tax-related matters) - Unhindered availability of foreign broadcasts from neighbouring States - General compliance with French and Italian broadcasting regulations - Currently in the process of acceding to the European Convention on Transfrontier Television
Netherlands	31-08-1954	01-02-1995 (S)	02-05-1996	05-05-1989 (S)		11-12-1978	11-12-1978	Arts. 7 (FoE/B); 1 (GE); 6 (M)	Media Law (Articles 13c, 15, 30, 51b, 51e, 51f, 54a, 71g; Media Decree (Articles 15, 521)	- Prescription that certain amounts of output be in the Dutch or Frisian languages (40% of material broadcast by private television broadcasters; 50% of airtime for PSB television) - Provisions for constituent parts of PSB system to devote 20% of television airtime and 25% of radio airtime to ethnic and cultural minorities - Obligation for PSB programme services to reflect all diversity of society applies to national, regional and local PSBs (distinct provisions for each level) - Financial and other non-legislative measures supporting minority (language) broadcasting
Norway	15-01-1952	17-03-1999	10-11-1993	30-07-1993	01-10-2000 (T)	13-09-1972	13-09-1972	Arts. 100 (FoE); 110a (M)	Broadcasting Act of 1992; Regulations relating to Broadcasting of 1997 (ss. 7.5 - 7.7); Sami Act of 1987 (Arts. 1-1, 1-5, Chap. 3)	- No specific provisions on use of Sami or other minority languages in broadcasting; however this could come under general PSB obligations - Sami Radio, sub-company of PSB, does broadcast in Sami language in Sami area and for use on national channels - Licence terms of private broadcasters can impose requirements to broadcast in (eg.) Sami language – see TV2's current licence - The licensing process for local public service television services gives special consideration to the intended engagement of applicants with local organisations for the development of programmes

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Poland	19-01-1993	20-12-2000		07-09-1990	01-10-2000 (T)	18-03-1977	18-03-1977	Arts. 14, 54 (FoE); 213-215 (B); 30, 32 (GE); 35 (M); 27 (L)	Broadcasting Act of 1992 (as amended) (Arts. 4, 21, 39b)	<ul style="list-style-type: none"> - Obligation on PSB to have regard for needs of ethnic groups and minorities - Obligation on PSB to disseminate knowledge of the Polish language - Minority groups may qualify as “social broadcasters” and thereby be exempt from fees for awarding or altering their broadcasting licence - National Broadcasting Council (NBC) considers minorities’ interests in allocation of licences - NBC receptive to communications from minorities and liaises with them in different ways
Portugal	09-11-1978	07-05-2002		30-05-2002		15-06-1978	31-07-1978	Arts. 37, 38 (FoE/B); 39, 40 (B); 13 (GE); 11 (L)	Television Law, No. 31-A/98 of 14 July (Article 8,1,d); Radio Law, No. 4/2001 of 23 February (Article 9, d).	<ul style="list-style-type: none"> - No legislative provisions for use of minority languages in broadcasting - Obligations on broadcasters to promote Portuguese language, culture and values expressing national identity - Only one single weekly programme in a minority language (Mirandês) is broadcast by a local radio station
Romania	20-06-1994	11-05-1995	17-07-1995 (S)	18-03-1997 (S)		09-12-1974	09-12-1974	Arts. 30 (FoE); 31 (B); 4, 6, 59 (M); 16 (GE); 13, 32, 127 (L)	Law no. 41/1994, regarding the setting up of the National Romanian Radio and Television Companies (Art. 4); Law on Radio and Television Broadcasting, 2002 (Arts. 3, 10); Decisions of the National Audiovisual Council; Ministerial Order no. 309/1997 regarding the authorising of Radio and Television Stations; Law no. 33/1995 on the Ratification by the Romanian Parliament of the Convention Regarding the Protection of National Minorities (Arts. 6, 7, 9; Appendix)	<ul style="list-style-type: none"> - National and local public broadcasting slots for minority languages exist - Obligation on PSB to promote the values of the Romanian language as well as the values of authentic cultural creation of national minorities - National regulatory authority must ensure the protection of the Romanian culture and language, as well as the cultures and languages of ethnic minorities - Decision-making powers arise out of its monitoring role of the correct usage of all of these languages - Compulsory translation of broadcasts in other languages into Romanian by way of subtitles, dubbing or simultaneous translation (exceptions to this rule include musical video clips, programmes for the teaching of foreign languages and live broadcasts in foreign languages) - In localities where a national minority comprises more than 20% of the population, programme service suppliers are required by legislation to provide certain re/transmission services in the language of the relevant minority - Bilateral treaties contain relevant provisions
Russia	05-05-1998	21-08-1998	10-05-2001			16-10-1973	16-10-1973	Arts. 29 (FoE);	Law on the Guarantees of the	- Programmes of national PSB must be in Russian

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			(S)					19, 26, 69 (M); 68 (L)	Rights of Numerically Small Indigenous Peoples of the Russian Federation, 1999 (Arts. 5, 10); Law on the Languages of the Peoples of the Russian Federation, 1991 (Arts. 3, 20); Law on Mass Media, 1991 (Arts. 10, 11); Law on Advertising, 1995 (Art. 5)	language - At regional level, State languages of the Republics and other languages of people in the territories are used as well - Translation and dubbing for cinema and video production can be in Russian, the State languages of the Republics or the native languages of the peoples of the Federation, in accordance with the interests of the population - Advertising must be in Russian, and at the discretion of advertisers, may also be in the official languages of the Republics or the native languages of the peoples of the Federation (the exception to this general rule is when broadcasts are exclusively in either of the latter-named groups of languages) - Absence of facilitative provisions/measures for the promotion of broadcasting in minority languages
San Marino	22-03-1989	05-12-1996		31-01-1990	01-10-2000 (T)	18-10-1985	18-10-1985	Art. 6 (FoE)	Broadcasting Act, 1989 (Arts. 2, 13, 15, 16, 17); Telecommunications Act, 1988; Decree no. 50, 1990 (Art. 2)	- No (recognised) minority languages - PSB obliged to promote cultural heritage of country - Institutionalised cooperation with Italy in the broadcasting sector
Serbia and Montenegro - Montenegro		11-05-2001a				12-03-2001	12-03-2001	Arts. 34-38 (FoE); 67-76 (M); 9 (L)	Media Law, 2002 (Art. 3); Broadcasting Law, 2002 (Arts. 56, 95); Law on Public Broadcasting Services 'Radio of Montenegro' and 'Television of Montenegro', 2002 (Arts. 7, 8)	- Government required by law to provide part of the funding for programming in Albanian and the languages of other national and ethnic groups - Public tenders for licences shall include the declaration and consideration of the section of the proposed programme offer that would be in minority languages - Broadcasters are required by law to observe "linguistic standards" - PSB must produce and broadcast programmes for all sections of society, incl. minority ethnic communities, and in the languages of national and ethnic groups in areas inhabited by them

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Serbia and Montenegro - Serbia	Serbia		11-05-2001a				12-03-2001	12-03-2001	Arts. 45 (FoE); 46 (B); 8 (L)	Protection of the Rights and Freedoms of Ethnic Minorities Act, 2002 (Arts. 1, 3, 5, 10, 17); Broadcasting Act, 2002 (Arts. 23, 72, 73, 78)	<ul style="list-style-type: none"> - Legislation safeguards minorities' right to be informed in their native languages, as well as use their native languages in broadcasting generally and to establish broadcasting outlets in their native languages - Legislation promotes broadcasting in the languages of national or ethnic minorities, incl. by the PSB - State is obliged by law to ensure (via the PSB) that news, cultural and educational programmes are provided in the languages of ethnic minorities - State may also establish special radio and television stations for minority-language broadcasting - Non-legislative measures supporting minority-language broadcasting in existence
	Kosovo								UNMIK Regulation 2001/9 on the Constitutional Framework for Provisional Self-Government in Kosovo, Chap. 3 (FoE); Chap. 5.4 (B); Chap. 4 (M); Chap. 9 (L)	UNMIK Regulation 2000/36 on the Licensing and Regulation of the Broadcast Media in Kosovo; Broadcast Code of Conduct.	<ul style="list-style-type: none"> - Some minority-language broadcasting by independent sector - PSB is obliged to dedicate not less than 15% of its television and radio programming to (minority) communities - PSB is obliged to ensure that 15% of its primetime news coverage is in the languages of the minority communities within Kosovo - Broadcasting Code of Conduct requires broadcasters to refrain from prohibiting or censoring expression on the grounds that it is in a particular language, especially the language of an ethnic minority
Slovakia		18-03-1992	14-09-1995	05-09-2001	20-01-1997	01-10-2000 (T)	28-05-1993	28-05-1993	Arts. 26 (FoE); 12, 34 (M); 47 (GE); 6 (L)	Law on the Use of Minority Languages, 1999 (ss. 1-9); Slovak Radio Act, No. 255/1991 Coll. (ss. 5(2), 6(d)); Slovak Television Act, No. 254/1991 Coll. (ss. 3(3), 6(j))	<ul style="list-style-type: none"> - Only national minorities constituting at least 20% of the inhabitants of a municipality enjoy official recognition - Programming generally should contribute to the support/development of the cultures of national minorities - PSB must contribute to the promotion of national culture and the cultures of minorities - PSB is obliged to provide broadcasts in the mother tongues of national minorities and ethnic groups
Slovenia		28-06-1994	25-03-1998	04-10-2000	20-07-1999	29-07-1999	06-07-1992	06-07-1992	Arts. 39 (FoE); 5, 61, 62, 64, 65 (M); 14 (GE); 11 (L); 8 (O)	Mass Media Act, 2001 (Arts. 4, 5, 7, 19, 51, 63, 68, 78, 86, 87)	<ul style="list-style-type: none"> - Programming (and also advertising) must be in Slovene (except when it concerns foreign-language teaching, or a live foreign-language broadcast, or other exceptional circumstances apply, in which cases the broadcasts will be distinct from ordinary fare and indicated by clear graphic, visual or acoustic symbols)

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										<p>in Slovene); further, programming and advertising directed at the Hungarian and Italian ethnic communities are exempt from this requirement</p> <ul style="list-style-type: none"> - Broadcasting legislation equates linguistic competence in Hungarian or Italian with competence in Slovene, where appropriate (this has implications for individuals wishing to work in editorial capacities) - A “significant proportion” of the annual transmission time (excluding advertising and telesales) of every television station must comprise Slovenian audiovisual works (i.e., works produced originally in Slovene or intended for the Hungarian and Italian communities in the language thereof) - At least 10% of daily transmission time of any radio station (except for those serving the Hungarian and Italian ethnic communities) must comprise Slovenian music
Spain	04-10-1979	01-09-1995	09-04-2001	19-02-1998	01-10-2000 (T)	27-04-1977	27-04-1977	Arts. 20 (FoE); 137, 148, 149 (B); 2, 9.2, 14 (GE); 3 (L)	<p>Act 4/1980 on Radio and Television (Arts. 4, 13); Act 25/1994 on the Incorporation into Spanish Law of the EC ‘Television without Frontiers’ Directive (Art. 2.5); Act 41/1995 on Local Terrestrial Television; Decree 313/1996 of Navarra (Arts. 6(h), 18); Decree 360/1996 of Catalonia; Catalan Act 1/1998 on linguistic policy; Act 42/1995 on Cable Telecommunications; Act 21/1997 on the Broadcasting of Listed Events (Art. 4.5)</p>	<ul style="list-style-type: none"> - 6/17 Autonomous Communities (ACs) have own co-official languages (alongside Castilian, the official State language) - ACs in question devise and implement own broadcasting legislation and policies; in Catalonia, 50% of programming must be in Catalan and for radios, an extra quota of 25% of songs must be in Catalan - National PSB must respect linguistic pluralism; provide (some) programming in co-official languages - PSB has advisory committee in each AC - Where PSBs exist in ACs with co-official languages, most (if not all) of the programming is in the co-official language - Private broadcasters usually required to provide local programme material (but not necessarily in co-official languages)
Sweden	04-02-1952	09-02-2000	09-02-2000	05-05-1989 (S)		06-12-1971	06-12-1971	Instrument of Government, 1974 (esp. Art. 4); Freedom of the Press Act, 1949; Fundamental Law on	<p>Government Bill on National Minorities in Sweden, 1999; Minority Acts, 1999; Radio & Television Act, 1996 (Arts. 6:1, 6:8); Government Bill on Public Service Broadcasting, 2000</p>	<ul style="list-style-type: none"> - As a general rule, television and radio broadcasts must contain “a considerable proportion of programmes” in the Swedish language - PSB must pay attention to the interests of linguistic minorities - Government is examining issue of according Romani Chib same status in programming as that currently enjoyed by Saami, Finnish and Meänkieli

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								Freedom of Expression, 1991 (esp. Arts. 1-3); Act of Succession, 1810 (All FoE); Instrument of Government (Art. 2.4) (M)		<ul style="list-style-type: none"> - Government favours increased efforts by PSB to cater for linguistic and ethnic minorities - PSB also caters for immigrant languages - Action Plan on Swedish Language recommends increasing the number of radio and television programmes in minority and immigrant languages and more extensive subtitling of Swedish programmes in minority and immigrant languages - Action Plan also recommends State support for local broadcasting which targets national minorities and immigrants
Switzerland	28-11-1974	21-10-1998	23-12-1997	09-10-1991	01-10-2000 (T)	18-06-1992	18-06-1992	Arts. 16, 17, 18 (FoE); 93 (B); 4, 70 (L)	Federal Radio & Television Act, 1991 (Arts. 3, 21, 23, 26, 27, 28, 33, 42)	<ul style="list-style-type: none"> - All television and radio broadcasting must take account of national (and by extension, (inter-)regional) diversity - No quotas, as such, but detailed licensing provisions determined on an individual basis - Domestically-produced content must be attuned to specificities of target area - PSB must broadcast programmes in three official languages (DE, FR, IT) and provision should then be made for programming in Rhaeto-Romansch
Tajikistan						04-01-1999	04-01-1999	Arts. 30 (FoE/B); 17 (M/GE); 2, 65, 88 (L)	Law on Language, 1989 (Arts. 1-3, 28, 32, 35); Resolution No. 459, 'Programme of the Government of the Republic of Tajikistan on Development of the State Language and of Other Languages in the Territory of the Republic of Tajikistan', 1997; Law on Television and Radio, 1996 (Arts. 19, 33); Regulations on Licensing, 2001 (Arts. 5, 11); Law on the Press and Other Mass Media, 1990 (as amended) (Art. 3)	<ul style="list-style-type: none"> - Deliberate Government efforts to promote the Tajik language (incl. target-setting for its use by State bodies); Russian used as language for communication between nationalities - Absence of specific (legal, administrative or financial) provisions on minority-language broadcasting - Broadcasting is in Tajik and in other languages - State must ensure the production of films, television and video films in Tajik, with "follow-up" translations into other languages; conversely, it must also ensure translations from such languages into Tajik - Government Resolution promotes the use of Tajik in broadcasts and films, in particular for educational purposes - Government Resolution also recommends the creation of favourable conditions for broadcasting in Russian and Uzbek, and for slots to be allocated for use of these languages in broadcasting - Restrictions on retransmission possibilities: direct agreements may only be concluded between the

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										relevant State authority and foreign broadcasters
Turkey	18-05-1954			21-01-1994	01-10-2000 (T)	15-08-2000 (S)	15-08-2000 (S)	Preamble, s. 5; Arts. 2, 13, 14, 26, 27, 28 (FoE); 133 (B); 3 (L)	Law concerning the Founding and Broadcasts of Television and Radio, No. 3984 of 1994 (as amended by Law No. 4771 of 2002) (Arts. 4, 25); Penal Code (Arts. 159, 311, 312); Law to Fight Terrorism, No. 3713 of 1991 (Art. 8); Political Parties Law, No. 2820 of 1982 (Art. 81); Law concerning Fundamental Provisions on Elections and Voter Registries, No. 298 of 1961 (Art. 58)	<ul style="list-style-type: none"> - Radio and television broadcasts were compulsorily in Turkish until recent legislative reforms - It is now permissible to broadcast in the different languages and dialects used by Turkish citizens in their daily lives - Such broadcasting is limited to the State broadcaster, and then to: two hours per week on television (with subtitles in Turkish throughout) and four hours per week on radio (where each programme has to be followed by the translation into Turkish of the entire programme)
Turkmenistan						01-05-1997	01-05-1997	Arts. 3, 10 (FoE); 17 (M/GE); 13 (L)	Law of the Turkmen SSR on Language, 1990 (Art. 1)	<ul style="list-style-type: none"> - State monopoly on all mass media, incl. the electronic media - No measures in place for encouraging minority-language broadcasting - No editorial offices in minority languages - Only programmes designated specifically for minority-language groups are short news programmes in Russian - Restricted retransmissions of Russian television do take place - Privately-owned satellite equipment allows some people to receive broadcasts from abroad (Russian and Turkey in particular)
Ukraine	11-09-1997	26-01-1998	02-05-1996 (S)	14-06-1996 (S)		12-11-1973	12-11-1973	Arts. 34 (FoE); 85, 106 (B); 11 (M); 10 (L)	Law on Minorities in Ukraine, 1992 (Art. 8); Law on Television and Radio Broadcasting, 1994 (Arts. 9, 13); Law on State Support to Mass Media, 1996 (Art. 3(4))	<ul style="list-style-type: none"> - Television and radio broadcasting must be in Ukrainian, except in regions densely populated by national minorities, where the relevant minority languages may also be used - When broadcasting targets a foreign audience, the language used shall be Ukrainian or the corresponding foreign language - In practice, most broadcasting is done in Russian - Obligation on State to support the mass media which consistently promote minority languages and cultures (this is usually budgetary in nature) - Proposed percentage of broadcasting time in Ukrainian and other languages must be stated in licence applications, and become binding on broadcasters whose applications are accepted

Country	European Convention on Human Rights	Framework Convention	Regional or Minority Languages Charter	European Convention on Transfrontier Television	Protocol Amending Convention on Transfrontier Television	International Covenant on Civil and Political Rights	International Covenant on Economic, Social & Cultural Rights	Constitution	Legislation	Comments
										<ul style="list-style-type: none"> - Decision of National Broadcasting Council of June 2002 obliges all television and radio companies to ensure that their own programmes are totally in Ukrainian within one year - Foreign ownership stakes in broadcasting companies restricted to a maximum of 30% - Bilateral treaties contain provisions of relevance to minority-language broadcasting
United Kingdom	08-03-1951	15-01-1998	27-03-2001	09-10-1991	01-10-2000 (T)	20-05-1976	20-05-1976	No written Constitution	Broadcasting Act, 1990 (ss. 14, 24, 26, 27, 56-65, 183, 184; Schedules 1, 6); Broadcasting Act, 1996 (ss. 29, 32, 80-84, 95); Independent Television Commission Notes; Welsh Language Act, 1993	<ul style="list-style-type: none"> - Welsh [broadcasting] Authority must ensure that evening programmes of designated channel must be “mainly” in Welsh and of a high general standard - PSB obligations to provide programming for Welsh-language channel - Legislative provision for financing of Gaelic-language radio and television programmes - Digital terrestrial television provider required to ensure at least 30 minutes of Gaelic programming during peak times throughout Scotland - Governmental commitments to Irish-language broadcasting in the Belfast Agreement and the White Paper, ‘A New Future for Communications’ - UK regulatory authority has specific policies for broadcasting in Welsh and Gaelic and also for ethnic minorities - Non-legislative measures promoting minority-language broadcasting
United States						08-06-1992	05-10-1977 (S)	First Amendment to the US Constitution (FoE); Declaration of Independence (s. 2) (GE)	Misc. Federal Communications Commission rules	<ul style="list-style-type: none"> - No prohibitions on broadcasting in languages other than English and no compulsions for broadcasting in other languages either - Boom in cable and satellite technology has increased the possibilities for multiple language broadcasting - New programme services are unregulated and can be owned by foreign interests - There have been PSB initiatives to expand opportunities for non-English broadcasting, esp. in Spanish
Uzbekistan						28-09-1995	28-09-1995	Arts. 29, 67 (FoE/B); 8, 18, 21, 34, 57 (M); 4 (L); 13, 15, 16, 48, 20 (O)	Law on State Language, 1989 (as amended) (Arts. 1, 2, 16, 17); Various bilateral treaties	<ul style="list-style-type: none"> - PSB television: first two channels – almost exclusively in Uzbek; third channel (more limited geographical availability) – up to 50% in Russian; fourth channel – mostly in minority languages - Uzbek and Russian are the languages of most private television broadcasters

Country	European Convention on Human Rights	Framework Convention	Regional or Minority Languages Charter	European Convention on Transfrontier Television	Protocol Amending Convention on Transfrontier Television	International Covenant on Civil and Political Rights	International Covenant on Economic, Social & Cultural Rights	Constitution	Legislation	Comments
										<ul style="list-style-type: none"> - State radio has one multilingual station and in the private sector, Uzbek and Russian are to the fore - No express restrictions on or quotas governing minority-language broadcasting - Bilateral treaties contain relevant provisions which promote the culture and language of minorities

* All information about the European Union's regulatory framework for the audiovisual sector and States' involvement therein is available at: http://europa.eu.int/comm/avpolicy/index_en.htm. The state of implementation of the Television without Frontiers Directive in each of the EU Member States is examined at: http://www.europa.eu.int/comm/avpolicy/regul/twf/implement/natimply_en.htm. Information about the 'Culture and Audiovisual' component to the process of accession to the European Union is available at: <http://europa.eu.int/comm/enlargement/negotiations/chapters/chap20/index.htm>. See also: http://europa.eu.int/comm/avpolicy/extern/enlar_en.htm.

* Except where otherwise indicated, all dates appearing in Columns 2-8 are the dates of ratification of the international instruments in question. For example, 'S', which occasionally appears in the second and third columns means "signed" (as opposed to ratified). 'T' means "tacit acceptance" and 'a' means "accession". The information provided in these columns is available at <http://conventions.coe.int/> and <http://www.unhcr.ch/pdf/report.pdf>.

* Note on Abbreviations:

- 'PSB', which appears in the final column can mean (depending on the context) either Public Service Broadcasting or (the) Public Service Broadcaster.

- The abbreviations used in Column 9 essentially correspond to the sub-divisions in the 'Constitution' section of the actual country reports:

'FoE' = Freedom of expression
'B' = Broadcasting
'M' = Minority rights
'L' = (Official/State) language
'GE' = General equality provisions
'O' = Other

Albania

While private radio and television broadcasting activities have been pursued in Albania since 1995, the first licences for such broadcasting were only awarded by the regulatory/supervisory authority for broadcasting in 2000. To date, no broadcasters have been licensed to broadcast specifically in minority languages. Furthermore, the legislation regulating broadcasting in the country does not have any provisions dealing specifically with minorities as its provisions apply to nationals and non-nationals alike. Legislation also sets out that Albanian shall be the language of all radio and television programmes, except when programmes specifically target national minorities or when local broadcasters are licensed to transmit programmes in the language of minorities. It is clearly stated in the mandate of the public service broadcaster that it must inform, educate and entertain all sections of society, including national minorities. Repeater facilities are used, especially in the south of the country, to relay and amplify programmes transmitted by Greek and other foreign (television) broadcasters.

1 Introduction

1.1 Linguistic topography

There are five groups of minorities living in Albania: Greek, Macedonian, Montenegrin, Roma and Aromanian. The Greek, Macedonian and Montenegrin minorities are national minorities, whereas the Roma and the Aromanians (commonly known as Vlachs) are linguistic minorities.¹ According to the most recent Census information on minorities (1989),² the Greek minority is the largest national minority in the country (1.846%),³ followed by the Macedonian (0.148%) and Montenegrin national minorities (0.003%).⁴ Of the linguistic minorities, the Roma is the largest.⁵ In the forms used in the 1989 census, there

¹ In Albania, “national minorities” are those minorities that have their own motherlands with whose population they share common characteristics such as the spiritual constitution, language, culture, customs and traditions, religious beliefs, etc. See “Brief historical view on national minorities living in Albania” at p.7 of the “Report Submitted by Albania Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities” (Received on 26 July 2001), Council of Europe Doc. ACFC/SR (2001) 5, available at: <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/StateReports/2001/albania/Albania.htm>.

² The most recent national Census taken in Albania is the census of 1 April 2001. Currently, the Institute of Statistics (INSTAT), which is the authorised state institution for providing statistical information (see: <http://www.instat.gov.al/english/>), is in the process of elaborating the data collected. However, the elaboration of these data is not expected to provide any information in connection with the nationality or the mother tongue of the population since the forms/questionnaires used in this census did not include any questions regarding these topics.

³ Recently, the number of Greeks living in Albania has decreased. Following the opening of the borders in the early 1990s and the economic difficulties of the transition period, a considerable part of the population living near the border with Greece has emigrated there. In terms of emigration, the most privileged have been the Greek minorities, who can receive Greek visas quite easily.

⁴ According to the 1989 Census, the overall population of Albania is 3,182,417, of which 3,117,601 are of Albanian nationality; 58,758 are of Greek nationality; 4,697 of Macedonian nationality; 100 of Montenegrin and Serbian nationality; 782 of Romanian, Bulgarian and Czechoslovakian nationality and the remaining 479 are of Jewish, Italian, Russian or other nationality.

⁵ The Census of 1989 did not indicate the number of people belonging to the Roma or Aromanian minorities, but according to a report from September 2000 issued by the Albanian Helsinki Committee (an Albanian human rights non-governmental organisation) after a one-year survey it had undertaken, it is estimated that about 30,000 Roma live in Albania. The last census with data on the Aromanian minority is the census of 1955, according to which the number of Aromanians living in Albania at that time was 4,249.

were no questions about the mother tongue of the population. However, it may be reasonable to expect that people belonging to a certain minority group speak the relevant minority language.

1.2 Broadcasting

Albanian Radio and Television (ART)⁶ remains the sole public broadcaster in the country, reaching 80% of the population with its transmissions. The headquarters of ART are in Tirana. ART also includes regional radio and television centres throughout the territory of Albania. In October 2000, the National Council of Radio and Television (NCRT),⁷ the body charged by law with the regulation and supervision of broadcasting in the country, awarded the first broadcasting licences to private television and radio operators. Private radio and television stations had begun broadcasting for the first time by the end of 1995, although a law for regulating their activity had not yet been issued. Currently, there are two national television operators, 54 local television operators, one satellite television operator, five cable television operators, one national radio operator and 32 local radio operators licensed to broadcast in Albania.⁸

There are no private radio or television operators licensed specifically for broadcasting in minority languages. However, there are some local public radio stations, affiliates of ART, that broadcast programmes intended specifically for national minorities. Thus, *Radio Gjirokastra*, located in southern Albania,⁹ broadcasts a 45-minute daily news and entertainment programme in Greek. *Radio Tirana*, located in central Albania, broadcasts a programme in Greek for 30 minutes daily. *Radio Korca*, located in south-eastern Albania,¹⁰ broadcasts a 40-minute news bulletin in Macedonian three times a week.

In addition, organs of the local authorities in the southern part of the country have installed more than 20 repeaters to amplify the signals of several Greek television stations. The NCRT is currently in the process of licensing them. ART has also installed a repeater on Mount Dajti for the signal of the Greek public television station, ERT, for the viewers in Tirana.

2 Constitution

The new Constitution of the Republic of Albania entered into force on 28 November 1998.¹¹

2.1 Freedom of expression

The 1998 Constitution guarantees freedom of expression and freedom of broadcasting in Part II, which is devoted to fundamental human rights and freedoms.

Article 22:

⁶ The first radio station in Albania began broadcasting in 1938, whereas Albanian Television transmitted for the first time in 1960, which also marks the founding of Albanian Radio-Television.

⁷ The NCRT is a seven-member body elected by the Parliament, with three candidates proposed by the parliamentary majority; three by the opposition and one by the President of the Republic.

⁸ See *Mediat elektronike 2001- nje realitet me probleme* ("Electronic Media 2001 - A Reality with Problems"), para. 2, at p. 1 of the "Annual Report for the Parliament", (approved by Decision No. 78 of 8 February 2002 of the NCRT) available at: http://www.kkrt.gov.al/informacion/raport_2002.htm.

⁹ This is where most of the Greek minority lives.

¹⁰ This is where the Macedonian minority lives.

¹¹ An English-language version of the text of the Constitution is available at: <http://oncampus.richmond.edu/~jjones/confinder/Alb-oct21.htm>.

1. Freedom of expression is guaranteed.
2. Freedom of the press, radio and television is guaranteed.
3. Prior censorship of means of communication is prohibited.
4. The law may require authorization to be granted for the operation of radio or television stations.

2.2 Minority rights

The Constitution does contain specific mention of minorities. Under Article 3,¹² the coexistence with, and understanding of [ethnic] Albanians for, minorities are among the bases of the Albanian State, which has the duty to respect and protect them. In addition, Article 20 provides:

1. Persons who belong to national minorities exercise the human rights and freedoms in full equality before the law.
2. They have the right freely to express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging. They have the right to preserve and develop them, to study and to be taught in their mother tongue, and to unite in organizations and associations for the protection of their interests and identity.

Clearly, this Article is quite general and does not grant much that is not guaranteed by other Articles.¹³ Only the right to education in the mother tongue gives additional protection.

2.3 (Official/State) language(s)

Article 14(1):

The official language in the Republic of Albania is Albanian.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Albania signed the Framework Convention for the Protection of National Minorities (hereinafter “the Framework Convention”) on 29 June 1995. The Albanian Parliament ratified it on 28 September 1999, and it took effect in Albania from 1 January 2000. This Convention has become part of the internal legal system of Albania, as provided by Article

¹² Article 3: “The independence of the state and the integrity of its territory, the dignity of the person, his rights and freedoms, social justice, the constitutional order, pluralism, national identity and inheritance, religious coexistence, and coexistence with, and understanding of Albanians for, minorities are the bases of this state, which has the duty of respecting and protecting them.”

¹³ It should be noted that Article 18 enshrines the principle of equality. It reads:

“1. All are equal before the law. / 2. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry. / 3. No one may be discriminated against for reasons mentioned in paragraph 2 if reasonable and objective legal grounds do not exist.”

122(1) of the Constitution.¹⁴ However, the Framework Convention is not self-executing; it leaves the States concerned a measure of discretion in the implementation of its provisions.¹⁵ With respect to radio and television programmes, the Framework Convention has already been given direct legal effect by Article 36 of Law No. 8410 of 30 September 1998, “On Public and Private Radio and Television in the Republic of Albania”, which provides that public and private radio and television programmes shall respect, *inter alia*, the Albanian language and culture, but also “the constitutional and human rights of citizens of national minorities in conformity with international conventions signed by the Republic of Albania [...]”.

No separate law on minority languages or minorities in general has been enacted in Albania. There is only secondary legislation¹⁶ regulating the right of people belonging to national minorities to study and be taught in their mother tongue.¹⁷

3.2 Broadcasting legislation

LAW ON PUBLIC AND PRIVATE RADIO AND TELEVISION IN THE REPUBLIC OF ALBANIA OF 1998

Law No. 8410 of 30 September 1998 “On Public and Private Radio and Television in the Republic of Albania”, as amended, is the law that regulates broadcasting in Albania (hereinafter the “Electronic Media Law”).¹⁸ As its title indicates, this law regulates the activity of both public and private broadcasters.

The Electronic Media Law does not contain any special provisions on minorities. The licensing provisions of the Law are equally applicable to all people of Albanian nationality, as well as to those of other nationalities; there are not any additional licensing provisions for minority-language broadcasters. The broadcasting fee regime also is equally applicable to regular broadcasters and to those licensed to broadcast in minority languages.

The Law also does not contain any restriction on the nationality of the owners of broadcasting enterprises. It only requires that applicants for national broadcasting licences be registered as Albanian joint stock companies, and that no person, foreign or national, holds more than 40% of the total capital of the company (Article 20(2) & (3)). Applicants for local broadcasting licences can be natural persons or legal persons registered in Albania for the sole purpose of radio and television activity (Article 20(6)). There are no restrictions on the nationality of the holder of a local licence.

¹⁴ Article 122(1): “Any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal of the Republic of Albania. It is directly applicable, except when it is not self-executing and its application requires the adoption of a law. The amendment and repeal of laws approved by a majority of all members of the Assembly is done by the same majority for the purposes of ratification of an international agreement.”

¹⁵ See the Explanatory Report (for State reports), Council of Europe, para. 11, available at: <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/Explanatory%20report/explreport.htm>.

¹⁶ Decision No. 396 of 22 August 1994 of the Council of Ministers “On the Elementary Education of Minorities in their Native Languages”; Decision No. 548 of 26 August 1996 “On the Teaching in Greek Language in Some High Schools” and Instruction No. 14 of 3 September 1994 of the Ministry of Education.

¹⁷ A provision regarding this right is also found in Law 7952 of 21 June 1995 “On the Pre-university Education System”; Article 10, item 1 provides: “Opportunities shall be created for persons belonging to national minorities to study and be taught in their mother tongue, to learn about their history and culture within the framework of the school curriculum.”

¹⁸ See further, C.M. Burri, “Albania: Law on Public and Private Radio and Television”, *IRIS – Legal Observations of the European Audiovisual Observatory*, 1999-2: 11.

With regard to the language of “radio-television” programmes,¹⁹ the general rule provided by Article 37(1) is that the use of the Albanian language is obligatory for all programmes, save for a number of exceptions which are set out at Article 37(1). These exceptions include “[...] programs intended specifically for national minorities, and programs of local radio-television subjects licensed to broadcast in the language of minorities”, thus allowing for minorities’ access to broadcasting in their own languages.

Article 37

The use of the Albanian language is obligatory for all programs, except musical works with lyrics in a foreign language, foreign language teaching programs, programs intended specifically for national minorities, and programs of local radio-television subjects licensed to broadcast in the language of minorities.

Films in the original version are broadcast on national channels accompanied by subtitles or dubbing in the Albanian language. For local radio-television stations this obligation comes into effect one year after licensing.

Public and private radio-television reflects in its activity a linguistic culture that conforms to the accepted national literary language norm.

Radio-television subjects otherwise licensed are exempted from this obligation.

The Electronic Media Law also contains provisions which deal specifically with public broadcasting, including Articles 66 and 68:²⁰

Article 66

As a broadcaster dedicated to the highest ideals of broadcasting of national public service, ART conducts high quality radio-television services to inform, educate and entertain the public, serving the nation, all the groups of society, including national minorities.

ART is committed to impartial coverage of national and international news.

ART creates programming that is to reflect the diversity of Albanian life for listeners and viewers of all ages. ART prepares high quality programs with values that enrich the mental and spiritual world of people.

Article 68

The program of ART in broadcasts by the central and regional studios ensures:

- a diversity of political, social and cultural information and entertainment from the country and the world
- the provision of information from the whole territory of the Republic of Albania
- *the provision of information for national minorities*

¹⁹ According to Article 35 of the Electronic Media Law, the term “radio-television program” refers to the all of the programmes broadcast by a given station.

²⁰ Emphasis has been added to the most relevant sections of the Articles cited.

- the provision of information for the public outside the country.

4 Application of legislation and other measures affecting language

So far, there have been no disputes in Albania in connection with minorities' access to broadcasting in their own languages. Currently, as mentioned above, there are no private radio or television stations licensed specifically for broadcasting in the language(s) of minorities. However, people at NCRT explain this is because they have not received any application for minority-language broadcasting licences.

5 Current developments

In 2000, the Office of National Minorities was established at the Ministry of Foreign Affairs. Among other duties, this office has to establish and conduct an official dialogue with the national minorities' communities, their organisations and representatives, and present their concrete problems and complaints to the Government. In addition, it is the duty of this Office to encourage and support minorities' activities that aim at preserving and further developing their linguistic, cultural, religious and national identities, and to assist in providing the proper climate for better inter-ethnic understanding.

Currently, the Office of National Minorities is in the process of collaborating with the Albanian Government for better legislative protection of minorities' rights. However, for the moment it is unclear whether this will be done through the drafting of new laws or through amendments to the existing ones, and whether the changes will affect minorities' access to broadcasting in their own languages.

Andorra

Catalan is the official language of the country, but Spanish and/or French are spoken by practically all citizens. Affirmative measures favouring the use of Catalan are extensive and can largely be found under one legislative umbrella designed for that purpose against background fears for the continued survival of the language, given its precarious position *vis-à-vis* Spanish and French.

As regards the broadcast media, Catalan must be used in programmes and advertising alike, save when participants in a programme express themselves in another language and subtitling or some such measure is adopted by the responsible broadcaster. Public authorities are also required to promote the use of Catalan in the public media. All media companies are obliged to use Catalan correctly. Broadcasters are liable to face sanctions for breach of any of these statutory obligations, although in practice, given that the relevant Act only began to be implemented last year, the public service broadcaster has yet to be sanctioned in this regard. The necessary structures to allow for the licensing of private broadcasting concerns have yet to be put in place by Parliament (this is envisaged by the relevant Act), with the result that in the interim, pre-existing radio and television channels have been allowed to continue to operate, pending the adoption of these implementation measures.

1 Introduction

1.1 Linguistic topography

Catalan (català) is the official language of Andorra. It is spoken by the country's 70,000 inhabitants which live in its 500 km².

There are no other official languages in Andorra; nor are there any minority languages as such, although it is important to stress that nearly all of the citizens of Andorra speak Spanish and/or French, languages which part of the population tends to favour. This situation has prompted the public authorities of Andorra to approve affirmative measures, the aim of which is to protect and promote the use of Catalan.

1.2 Broadcasting

As regards the regulation of the audiovisual media, it is also necessary to take into account that there is officially only one broadcaster in Andorra, the public company *Ràdio i Televisió d'Andorra* (RTVA). Leaving RTVA aside, there are only some small private radio operators, which are temporarily allowed to continue providing their services until the government finally regulates the provision of broadcasting services by private companies. In any case, Andorra is obviously a very small market, and its citizens are able to receive French and Spanish channels (including channels in Catalan), so there is not much room for additional competition.

As a general rule, the public broadcaster, RTVA, shall use Catalan, both in programmes and in advertising spots (although some exceptions to this rule are possible). Moreover, RTVA shall promote the use of Catalan.

2 Constitution

The Constitution of Andorra was approved in 1993.¹

2.1 Freedom of expression

Article 12

Freedoms of expression, of communication and of information are guaranteed. The law shall regulate the right of reply, the right of correction and professional secrecy. Preliminary censorship or any other means of ideological control on the part of the public authorities shall be prohibited.

2.2 Broadcasting

Article 36

The state may create media of social communication. In accordance with the principles of participation and pluralism, a law will regulate their organisation and control by the Consul General [Parliament].

2.3 Minority rights

In the Constitution of Andorra there is no specific mention of minorities, as there are no groups recognised as such in this very small country.

Article 6

1. All persons are equal before the law. No one may be discriminated against on grounds of birth, race, sex, origin, religion, opinions or any other personal or social condition.
2. Public authorities shall create the conditions such that the equality and the liberty of the individuals may be real and effective.

2.4 (Official/State) language(s)

Article 2

- (1) The official language of the state is Catalan.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

ACT ON THE USE OF THE OFFICIAL LANGUAGE

The Act on the Use of the Official Language (*Llei d'ordenació d'ús de la llengua oficial*) was approved on 16 December 1999.² The third paragraph of the Preamble to this Act stresses

¹ See the full text of the Constitution of Andorra of 1993 (*Constitució del Principat d'Andorra*, of 28 March 1993) in Catalan at <http://micg.ad/constitcat.htm> and in English at <http://micg.ad/constitutk.htm>.

² See the Act on the Use of the Official Language (*Llei d'ordenació d'ús de la llengua oficial*) of 16 December 1999, available at: <http://catala.andorra.ad/CatalaAnd/Llei.htm>.

that the use of Catalan in Andorra is endangered by the widespread use of Spanish and French in this country. In this context, it is understood that the state has to promote the use of the official language. In order to achieve this goal, the Act makes it a right and a duty for citizens of Andorra to use Catalan in their dealings with public administration, in schools, in certain kinds of business, etc.

In the Act, there are no specific references to minority languages, as there are none in Andorra, but it must be noted that:

(i) The Andorran version of Catalan shall be studied and protected (Article 7);

(ii) As regards those persons living in Andorra who are not able to speak Catalan, Article 6 of the Act on the Use of the Official Language provides that the Government shall take all the necessary measures to ensure the enforcement of the right and the duty to ensure the linguistic integration of those who are not able to speak Catalan and who are permanently established in the country.

Articles 25 to 27 of this Act deal with the use of the official language in the Andorran media. Article 25 provides that Catalan is the language that shall be used in all of the Andorran media. This obligation affects both programming and advertising. However, the media may broadcast programmes in a language other than Catalan, provided they fulfil the requirements which shall be established by the legislator by means of a Regulation. At the time of writing, such a Regulation had not been approved and no legal or administrative implementing measures relating to this had been adopted. When some of the participants in a programme express themselves in a language other than Catalan, the broadcasters may translate or subtitle their interventions, but ensuring fair and equal treatment for all of them. Article 26 of this Act states that the public authorities shall promote the use of Catalan in the public media. As regards Article 27, it asks all media companies to use Catalan correctly.

Articles 25 and 27 of this Act are listed by Article 36 as being among those whose infringement may be sanctioned by the authorities. According to Article 36, a breach of Article 27 shall be considered a minor infringement, punishable with a fine of up to 120 Euros, while a breach of Article 25 would constitute a serious infringement, punishable with a fine of up to 1,200 Euros. Several serious infringements could be considered to amount to a very serious infringement, which could result in a fine of up to 3,000 Euros.³

3.2 Broadcasting legislation

ACT ON THE PUBLIC SERVICE OF RADIO AND TELEVISION

Broadcasting has been declared an essential public service by the Act on the public service of radio and television and on the creation of the public company *Ràdio i Televisió d'Andorra* (RTVA), S.A., of 13 April 2000.⁴

³ At the time of writing, none of the outlined sanctions had yet been imposed.

⁴ See the Act on the public service of radio and television and on the creation of the public company *Ràdio i Televisió d'Andorra*, S.A. (*Llei de la radiodifusió i televisió pública i de creació de la societat pública Ràdio i Televisió d'Andorra*, S.A.), of 13 April 2000. For more information about RTVA, see its website: <http://www.rtvassa.ad/>.

In principle, only the public broadcaster, RTVA, is entitled to provide these kinds of service,⁵ although the Act expressly states that private companies shall be able to provide them too, provided they are awarded a concession by the Parliament (*Consell General*) (which has yet to approve the necessary implementation measures).⁶ In the meantime, those radio and television stations which were operating before the approval of this Act have been temporarily allowed to continue broadcasting.⁷

As regards RTVA, the Government is its only shareholder and it appoints RTVA's Director General, although it can only remove him/her in certain circumstances.⁸ The activities of RTVA shall be supervised by a Commission of Members of the Parliament⁹ and by an advisory body, the Andorran Audiovisual Council (*Consell Andorrà de l'Audiovisual*).¹⁰

According to this Act on the creation of RTVA, the public services of radio and television have to comply with several principles, one of them being the promotion of the official language (Article 2.f). Moreover, RTVA has also to comply with the general legislation on linguistic policy (in particular, Articles 25 to 27 of the Act on the Use of the Official Language of 1999).

⁵ See the Fourth Recital of the Preamble to the Act of 13 April 2000, as well as its Article 4.

⁶ See the Fourth Recital of the Preamble and Article 5 of the Act of 13 April 2000.

⁷ See the Fourth Transitional Provision of the Act of 13 April 2000.

⁸ See Article 12 of the Act of 13 April 2000.

⁹ See Article 10 of the Act of 13 April 2000.

¹⁰ See Articles 6 to 8 of the Act of 13 April 2000.

Armenia

The state language of Armenia is Armenian and there is a general requirement, subject to exceptions for national minorities, that programming either be broadcast in Armenian or be otherwise broadcast with a simultaneous Armenian translation. Legislation recognises the existence of national minorities, their cultural needs, their right to apply for broadcasting licences and places a limited obligation on broadcasters, especially the state broadcaster, to meet their needs. Relevant legislation does, however, impose limitations on the volume of the state broadcaster's minority-language output: in total, it should not exceed one hour per week on public television and one hour per day on public radio. Foreign programmes may be broadcast in their entirety whenever this is provided for by an international treaty and they may also be broadcast by licensed local television/radio companies in accordance with the law, but must be accompanied by Armenian-language translations. As regards the licensing of private-sector broadcasters, the number of television/radio frequencies allocated to foreign broadcasters shall not exceed one-third of available frequencies in each band. The broadcasting of domestic productions on a channel must also meet certain percentages of its total airtime, which are scheduled to increase progressively.

1 Introduction

1.1 Linguistic topography

Armenian is the national language of the Republic of Armenia (RA). According to official sources, Armenians make up 97% of the country's population. National minorities form a total of 2.8%. There are over 20 national minorities in Armenia. The minorities with the largest percentage of population are: Russians, Kurds, Yezidis, Greeks, Assyrians, and Boshas (Gypsies). Although these minorities have their own languages, they all speak Armenian. Most of them are fluent in spoken Armenian. According to the State Inspection of Language, Armenia is a 100% Armenian-speaking country.¹

1.2 Broadcasting

Both state and private television and radio broadcasting is available in the country. The law provides for at least one public television/radio company. Today, one public television and one public radio company with nationwide coverage exist. One more public television station called "Shirak" and a public radio station called "Asparez" exist in Gyumri (the second-largest city in the RA); they provide local coverage.

Three forms of private broadcasting exist in Armenia: aired, cable, and satellite. The number of operating television/radio stations in Yerevan is 25. Another 38 companies operate in the *marzes* (regions). These data refer to actually working television/radio companies. Founders of private media can be both legal and physical entities.

Currently, the public radio of Armenia broadcasts daily programmes in the languages of national minorities. For example, the 30-minute "Hayq" programme in Russian is broadcast

¹ The ethnic breakdown in Armenia in 1989, as reported by the CIA World Factbook was as follows: Armenian 93%, Azeri 3%, Russian 2%, other (mostly Yezidi Kurds) 2%. Note: as of the end of 1993, virtually all Azeris had emigrated from Armenia. The Factbook reports the language breakdown as follows: Armenian, 96%; Russian, 2%; other, 2%.

every day at 9.30am. Another 30-minute “Programme for Yezidis” is broadcast daily; a 10-minute programme in Georgian is broadcast every day except for Sunday and a programme in Kurdish is broadcast daily at 6.45 –7.15pm, etc.

Of the minority languages, public television only broadcasts programmes in Russian, including the Russian version of the “Hye Loor” daily news programme at 1.00am. The private television/radio stations, “Prometevs”, “Armenia”, “Shant” TVs, “Radio Van”, “Radio Ardzaganq” and others, broadcast programmes in Russian. In addition to private broadcasters, the Russian ORT (public television), RTR (based on the intergovernmental agreements), and NTV are also available in Armenia. “Shant TV” (a private Armenian television station), for instance, rebroadcasts programmes of REN TV (a private Russian television station). Occasionally, programmes are broadcast in other national minority languages on private television/radio channels.

1.3 Government policies on broadcasting and minorities

Article 28 of the RA Law on Television and Radio, 2000 (*see infra*), directly obliges media to provide programmes addressing national interests of the national minorities. The Article states that the public television/radio company may allocate up to one hour per week on public television and one hour per day on public radio for broadcasting special programmes in the languages of national minorities of the RA.

Current legislation guarantees the independence of the mass media from political and economic authorities. The State is only responsible for regulating media, in particular in the sphere of television/radio broadcasting. The National Committee established pursuant to the Law is responsible for licensing private companies, providing airing frequencies, etc. The Council of the Public Television/Radio Company regulates the activities of the public media.

The governmental standpoint is that all national minorities are lawful citizens of the country. RA guarantees economic, social, political and cultural rights, as well as freedoms of national minority representatives.

It should be noted, that at the time of writing there is no special government body or structure that deals with national minorities issues in the RA. At present those issues are coordinated by the RA President’s adviser on NGOs and national minority affairs. Also, there is no law on national minorities.

The State provides that national minorities shall not be discriminated against in access to the mass media. National minorities have the opportunity to establish their own mass media.² The State has taken the responsibility to undertake appropriate measures to facilitate access to mass media for minorities, encourage tolerance, and provide cultural plurality. While the issue of access is part of State policy, it is not yet fully regulated by legislation (*see infra*).

² These ideas follow from Constitutional provisions, in particular Articles 15 and 37 (*see infra*).

2 Constitution³

2.1 Freedom of expression

Article 24

Everyone is entitled to assert his or her opinion. No one shall be forced to retract or change his or her opinion.

Everyone is entitled to freedom of speech, including the freedom to seek, receive and disseminate information and ideas through any medium of information, regardless of state borders.

2.2 Broadcasting

The Constitution of the RA has no provision regarding television/radio broadcasting.

2.3 Minority rights

Article 15

Citizens, regardless of national origin, race, sex, language, creed, political or other persuasion, social origin, wealth or other status, are entitled to all the rights and freedoms, and subject to the duties determined by the Constitution and the laws.

Article 37

Citizens belonging to national minorities are entitled to the preservation of their traditions and the development of their language and culture.

2.4 (Official/State) language(s)

Article 12

The state language of the Republic of Armenia is the Armenian. [sic]

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

Armenian is the only official language in Armenia.

LAW ON LANGUAGE, 1993⁴

Article 1 of the Law on Language stipulates: “the RA vouches free usage of the national minorities languages”.

LAW ON NON-GOVERNMENTAL ORGANISATIONS, 2001⁵

³ The Constitution of the RA was adopted by nationwide referendum on 5 July 1995, available at: <http://www.president.am/eng/?folder=lib&sub=constitution&chapter=0>.

⁴ Available (in Armenian) at: <http://www.parliament.am>.

⁵ Adopted on 4 December 2001; an unofficial English-language translation of this Law is available at: http://www.worldlearning.am/legal/docs/ngo_law_eng.doc.

The RA Law On Non-governmental Organisations (December 2001) enables national minorities to form and freely propagate their national values (language, religion, traditions, custom), and establish relations with relative communities outside the RA. Almost all of the national minority communities have NGOs (about 30 NGOs).

3.2 Broadcasting legislation

3.2.1 Facilitative provisions

LAW OF THE RA ON TELEVISION AND RADIO, 2000⁶

Article 5 of the Law of the RA on Television and Radio (adopted in 2000) states: “[I]n the territory of the Republic of Armenia the broadcast TVR programs shall be in Armenian language”. It is also mentioned that those television/radio programmes, feature films, documentary films, and cartoons that are in foreign language, as well as those fragments of Armenian programmes that include foreign speech, shall be broadcast with simultaneous Armenian translation; either oral or written. This requirement does not apply to broadcasts in the languages of recognised national minorities.

Article 28 of the Law directly obliges the public television/radio company to broadcast regular and other programmes that address interests of Armenian regions and national minorities in the Republic of Armenia. Although this Article is positive, it does not ensure full access to the mass media for national minorities so that they can also produce their own programmes in their native languages and get airtime to broadcast programmes. The Article states that the public television/radio company can provide airtime for broadcasts in languages of RA National Minorities, but it also places limitations on such airtime (see *infra*) and it does not require media to provide programming for national minorities.

National minorities have the same rights as other RA citizens as regards establishing mass media in their native languages and applying for broadcasting licences. The guarantee for this lies in Article 17 of the same law, which suggests that founders of television/radio companies can also be persons and legal entities representing national minorities (for example, the Article forbids religious organisations or political parties from becoming founders).

Likewise, the law does not prohibit foreigners from acquiring a licence for broadcasting. The only limitation is that the share of foreign capital should not exceed the size of the decisional share when the broadcasting concern is being established.

3.2.2 Restrictive provisions

LAW OF THE RA ON TELEVISION AND RADIO, 2000

Article 28 of RA Law On Television and Radio limits public television/radio airtime for national minorities. It stipulates that the total airtime for broadcasts in the languages of national minorities should not exceed one hour per week on public television and one hour per day on public radio.

Programmes of foreign television/radio companies may be broadcast in their entirety in the Republic of Armenia, if there is a corresponding international treaty that provides for it. The number of television/radio frequencies allocated to foreign television/radio companies for

⁶ An unofficial English-language translation of this Law is available on the website of Internews Armenia: <http://www.internews.am/legislation/index.asp>.

broadcasting in the Republic of Armenia shall not exceed one-third of available television/radio frequencies in each band (very high frequency, ultra-high frequency, high frequency, super-high frequency, etc). Also foreign television/radio programmes may be aired by the licensed local television/radio companies in accordance with the law. In such cases, foreign programmes should be accompanied by an Armenian-language translation.

Another requirement is that domestic television/radio productions on one television or radio channel may not broadcast for less than 65% of the total airtime. Taking into account the difficulty - or impossibility even - for local television/radio channels to meet these requirements at present, the law also includes temporary Articles stipulating that until 2004, the stations may broadcast their domestic productions in the following order: in 2002, the total length of domestic television/radio productions may broadcast for 35% of the total airtime; in 2003, 45% and in 2004, 55%. Concerning the translation requirement, the Law states that in 2002, programmes in foreign languages may be broadcast for up to nine hours a day; in 2003, six hours a day, and in 2004, three hours a day.

4 Current developments

At present, changes are being proposed in two draft versions of the Constitution.⁷ The current Constitution only guarantees the rights of national minorities to preserve their custom and language, develop their culture. Article 41 of the Presidential draft adds: “[P]ersons belonging to national minorities have the right to *preserve their custom[s]; to express, preserve and develop their ethnic, language, cultural and religious identity*”.⁸

The other draft of the Constitution also has supplementary guarantees compared to the present one. For example, Article 35 of the draft stipulates that persons belonging to national minorities have the right to preserve and develop their customs, religion, language, and culture.

The final version of the draft Law on National Minorities in Armenia has not yet been elaborated. Although different national minority organisations have presented draft laws since 1998, none of these have been passed or accepted.

⁷ One of the drafts of the Constitution was proposed by six political parties from the National Parliament and the other by the President of the Republic of Armenia. The one proposed by the political parties was twice published in the *Aravot* daily. It was also circulated to all interested parties, and a series of discussions and seminars was organised. The draft proposed by the President’s Office was not published officially. Instead, an official commentary on the draft was published in the *Republic of Armenia* daily. In addition, conferences and seminars were held on the topic, and a series of discussions was organised during television news programmes and television shows aimed at presenting the draft to the general public.

⁸ Emphasis added to indicate the wording added in the draft.

Austria

Six ethnic groups are officially recognised in Austria: (Burgenland-)Croats, Czechs, Hungarians, Roma, Slovaks and Slovenes. Until 1994 the public service broadcaster had the exclusive right to broadcast in Austria. Recently-revised legislation sets out the mandate of the public service broadcaster and this includes guaranteeing that “reasonable programme shares” are provided in the languages of the recognised national minorities. The Austrian Broadcasting Corporation, however, may also partly comply with this provision by broadcasting such programmes using the transmission capacities allocated to broadcasters in areas of autochthonous minorities or “participate in the creation and production of programmes by other broadcasters which distribute a separate programme geared to the needs of the national minorities”. Such broadcasts count towards the programme shares of the ORF itself. Furthermore, one of the three nationwide public radio stations must feature its verbal content primarily in foreign languages. The amount of programme time for national minorities is laid down in the annual broadcasting schedule after consultation with the Public Audience Council. The Public Audience Council (a specially constituted body to safeguard the interests of viewers and listeners) is constituted also according to proposals of the Advisory Minority Councils (bodies established for the representation of the recognised national minorities and which act as advisory boards for the Federal Government).

In practice, the public service broadcaster in particular transmits a daily radio programme in Slovenian as well as a weekly television programme. One Croatian radio programme and one Croatian television programme are transmitted by the public service broadcaster each week. Broadcasts in the Hungarian language take place several times a year.

Private-sector broadcasting has only been permitted in Austria since 1994, when the state monopoly was abolished. At the licensing level, when a number of applicants fulfil the legal requirements for obtaining an analogue television or radio broadcasting licence, preference must be given to the applicant guaranteeing the greatest diversity of opinion and responsiveness to the various needs and interests of people in the relevant service or catchment area. In the first allocation procedure, applicants with mixed programme offers were considered to be more appropriate for meeting the standards laid down in the Private Radio Act. From 1998 to 2000, the Federal Chancellery granted approximately 2.91 million Euros for the promotion of minority radio activities. The last portion of approximately 730,000 Euros was paid out in 2000. According to the Country Report by Austria concerning the Framework Convention for the Protection of National Minorities, the Federal Government, in this context, takes the view that the amendment of the Austrian Broadcasting Corporation Act will bring about cooperation between the public service broadcaster and private broadcasters and will thus open new financing possibilities for private radio. This assumption, however, has yet not proven to be true. Minority-language private radio programmes which depended on the state funding today face severe financial difficulties.

1 Introduction

1.1 Linguistic topography

With the break-up of the Austro-Hungarian Monarchy in 1918, the former empire, which united many different nations, fell apart into several smaller states and new borders were

created. The new State of Austria united mainly the people of German extraction, but as the settlements of the different nations during the monarchy overlapped in some regions, minorities within the new borders remained. The recognition of national minorities was first governed in 1976 by the Ethnic Groups Act. The recognition of an ethnic group as a so-called “Volksgruppe” presupposes that the very ethnic group lives and has traditionally had its home in parts of the territory of the Republic of Austria and that it is composed of Austrian citizens with non-German mother tongue and with its own ethnic culture. To date six ethnic groups have been recognised as a “*Volksgruppe*” (“ethnic group”)¹ by the Federal Government with benefits such as representation by so-called “Minority Advisory Councils” and specific State subsidies: Burgenland-Croats, Slovaks, Slovenes, Roma, Czechs and Hungarians.

The settlement-areas of the six recognised minorities may be described as follows:

- The settlements of the (Burgenland-)Croats are mainly in the eastern province of Burgenland; in six of the seven political districts of this province, there are members of the Croatian ethnic group, whereas there is no real compact Croatian territory.
- The Czech ethnic group lives in the eastern parts of Lower Austria and the city of Vienna.
- The Hungarians are located mainly in Burgenland.
- The primary settlements of the Roma are in the Austrian provinces of Burgenland, Vienna and Lower Austria.
- A quarter of the Slovak population lives in the eastern districts of Lower Austria; three quarters in Vienna.

Sources: STATISTIK AUSTRIA, results of the 1991 and 2001 Censuses, available at: <http://www.oestat.gv.at>; legislation and material from the office of the Federal Chancellor, e.g. the ORF-Act 2001, available at: <http://www.bka.gv.at/bka/medien/orfg-eng.pdf> and the Report by the Republic of Austria pursuant to Article 25 paragraph 1 of the Framework Convention for the Protection of National Minorities, 2000, available at: <http://www.bka.gv.at/bka/volksgruppen>; *Volksgruppenreport 2001, Zur Lage der ethnischen Minderheiten in der Republik Österreich*, Österreichisches Volksgruppenzentrum (Hrsg); *Das Österreichische Volksgruppenzentrum/Gesellschaft für bedrohte Völker, Der Report des Österreichischen Volksgruppenzentrums an die drei EU-Weisen*, available at: <http://www.ines.org/apm-gfbv/3dossier/oevz/oevzindex.html>; *Klagenfurter Erklärung zur österreichischen Sprachenpolitik*, Centre of Intercultural Studies, available at: <http://www.demokratiezentrum.org>; *Die Sprachen der neuen und autochthonen Minderheiten im österreichischen Bildungssystem*, Centre of International Studies, available at: <http://www.cis.uni-klu.ac.at>; Protection of Ethnic Minorities, Report 2001 of the International Helsinki Federation for Human Rights on Austria, available at: <http://www.ihf.hr.org>; Cornelia Kogoj, *Minderheiten und Medien in Österreich – Beschreibung eines kommunikativen Missverhältnisses*, available at the Online-Datenbank des Ludwig Boltzmann Instituts für Menschenrechte, Wien, <http://www.humanrights.at/humanrights.htm>; informative material from the ORF, <http://www.minderheiten.orf.at>, <http://www.minorities.orf.at>, <http://www.volksgruppen.orf.at>; Theo Öhlinger, *Verfassungsrecht*, 1997; Walter/Mayer, *Bundesverfassungsrecht* (1996); Dieter Kolonovits, *Sprachenrecht in Österreich*, 1999; all provisions, including those of constitutional standing, can be available at: <http://www.ris.bka.gv.at>.

¹ “*Volksgruppe*” is a legal expression which was introduced by the *Volksgruppengesetz* (Ethnic Minority Act) 1976 and may simply be translated as “ethnic group”. Ethnic groups within the meaning of the Ethnic Minority Act 1976 are “groups of Austrian citizens living and being domiciled within the Federal Territory with non-German mother tongue and own national characteristics”. *Volksgruppen* enjoy special protection by law. The acknowledgement of an ethnic minority as a *Volksgruppe* is by virtue of an Ordinance of the Federal Government. The benefits of such an acknowledgement are the establishment of a “minority advisory council” at the seat of the Federal Government, the receipt of specific promotions by the Federal Government (subsidies, etc.), the right to use the ethnic language before State authorities within the settlement area of the specific *Volksgruppe* and the erection of topographical signposts in the settlement areas of the specific *Volksgruppe* in their mother tongue.

- The settlements of the Slovenes are mainly in the southern Austrian province of Carinthia, but also in the province of Styria.

The Censuses conducted throughout the last century indicate a strong assimilation process, whereas the estimates of the several independent ethnic organisations generally show higher figures for minorities. The Federal Government explains the discrepancy between the figures of the Censuses and the estimates of the ethnic organisations mainly by referring to the right of every person to choose whether s/he wishes to be regarded as member of an ethnic group or not, pursuant to Article 1(3) of the Ethnic Groups Act.²

Table 1: Census Data 1910, 1951, 1991

	1910	1951	1991
Croats	44,243	35,181	29,596
Slovaks	...	301	1,015
Czechs	119,447	3,817	9,822
Slovenians	74,210	42,413	20,191
Hungarians	26,570	8,408	19,638

In the Censuses prior to 2001, the Roma and the Poles were not recognised as separate “ethnic groups” by the Federal Government. The Roma were finally recognised as a *Volksgruppe* in 1993. As regards the Polish minority, the Federal Government has come to the conclusion that the term, “having their home”, in the Ethnic Groups Act 1976 does not apply to this minority. Therefore, the recognition of a Polish minority is not an issue for the Federal Government at the moment. According to the estimates of several ethnic representative organisations, there are about 10,000 – 20,000 Roma and about 30,000 Poles living in Austria today. In the 1991 Census, however, only 122 persons declared that they speak Romany in “everyday life”.

According to the recently published Census of 2001, 95.5% of the Austrian population uses German as sole language in everyday life; 1.1% of the Austrian population - in total 82,500 people - declared that they use a language of the recognised ethnic minorities; 3.4 % of Austrians stated that they use another language besides German and besides one of the other official languages of Austria.³

1.2 Broadcasting

Overview of the current participation of minorities:

The Slovenes in Carinthia: The public service broadcaster (Austrian Broadcasting Corporation, ORF) broadcasts a daily radio programme in Slovene and every Sunday around lunchtime, a regional television programme in Slovene as well. Slovene radio programmes have been broadcast since 1946 and Slovene television programmes since 1989.

Since 1998, there have been two private radio stations as well: *Radio Korotan* broadcasts mainly in Slovene; *Radio Agora* uses German, Slovene and the other languages of the

² *Volksgruppengesetz* 1976, BGBl 396/1976. Note that the acronym BGBl stands for *Bundesgesetzblatt* (‘Federal Law Gazette’).

³ Page 19 of the Census, available at: <ftp://www.statistik.at/pub/neuerscheinungen/vzaustriaweb.pdf>.

Alpine-Adria-region instead. In addition, the programmes broadcast by *RTV Slovenija*, which is situated in Slovenia, can be received in some parts of Carinthia.

The Croats in Burgenland: Every Sunday, the ORF, broadcasts a regional ethnic programme, “Dobar dan, Hrvati”, and additionally around 48 minutes of radio programming in the Croatian language, both of which are produced by Croatian editors. The Croatian radio programme has been on air since 1979; the television programme since 1989.

In April 1999, the private local radio station, *Antenne 4*, also started to transmit newscasts in the languages of the Croats, Hungarians and Roma; in the evenings, several hours of programming were transmitted in those languages as well. However, since August 2000, this ethnic broadcaster temporarily ceased because of the discontinuation of State subsidies.

The Hungarians: The ORF broadcasts a television programme in the Hungarian language four times a year and a regional radio programme of about 20 minutes’ duration every Sunday. These programmes are elaborated by Hungarian-speaking personnel in the Croatian editor’s office. Hungarian radio programmes have been broadcast since 1984; Hungarian television programmes since 1989.

Since August 2000, the local private radio-station, *Antenne 4*, has temporarily ceased its Hungarian-language programmes.

The Roma: *Antenne 4* broadcast in Romany from March 1997 until August 2000 as well; furthermore, the ORF used to broadcast a radio programme in Romany lasting half an hour twice a month.

The Czechs and the Slovaks: There is no specific broadcasting in the languages of these minorities.

However, in addition to these regionally-limited radio and television programmes, every Sunday, the ORF transmits a nationwide television programme called ‘Heimat, fremde Heimat’ (‘Home, alien Home’) focusing not only on the autochthonous ethnic groups mentioned above, but also on immigrants and immigration in general.

Proportions of State subsidies for the private radio stations with ethnic elements in 1999:

<i>Antenne 4</i>	350,000 Euros
<i>Radio Agora</i>	370,000 Euros
<i>Radio Korotan</i>	370,000 Euros
Total	1,090,000 Euros

The establishment of private radio stations catering for the interests of ethnic minorities was only made possible in 1998 and 1999 by these subsidies and they now enjoy wide popularity among the ethnic groups concerned. In the following years, however, there were massive cuts with negative influences on these stations. The Austrian Government, which came to power in January 2000, is of the opinion that the subsidies were only intended as help in the initial start-up period.

In 2001, the subsidies for private broadcasting were stopped totally. The argument of the Federal Government for these cuts is based on the new ORF-Act 2002. Henceforth, the ORF

is obliged to ensure reasonable programme shares in the languages of the recognised national minorities. Therefore, according to Section 5 of the ORF-Act, the ORF is allowed to cooperate with other broadcasters, especially with those located in areas where ethnic groups are concentrated. The expectations of the Federal Government are that the private ethnic broadcasters will benefit from such cooperative ventures from now on. How this new legal regulation (which only entered into force in January 2002) will work in practice remains to be seen.

1.3 Government policies on broadcasting and minorities

In its Programme of Government of February 2000 and the preceding Declaration of 3 February 2000, the Austrian Government “acknowledges its special responsibility as regards the respectful treatment of ethnic and religious minorities”.

2 Constitution

2.1 Freedom of expression and broadcasting

BASIC LAW OF 21 DECEMBER 1867 ON THE GENERAL RIGHTS OF NATIONALS IN THE KINGDOMS AND *LÄNDER* REPRESENTED IN THE *REICHSRAT*⁴

Article 13

Everyone has the right within the limits of the law to freely express his opinion by word of mouth and in writing, print, or pictorial representation.
[...]

RESOLUTION OF THE PROVISIONAL NATIONAL ASSEMBLY OF 30 OCTOBER 1918⁵

1. All censorship is abolished as illegal as contrary to the basic rights of the citizen.

CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (AS AMENDED BY PROTOCOL NO. 11), 1950⁶

Article 10 – Freedom of Expression

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

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or

⁴ *RGBl* 1867/142 modified by *BGBI* 1988/684. Authors’ own translation.

⁵ *StBBl* 1918/3 modified by *BGBI* 1920/1.

⁶ Ratified by the Austrian Parliament and announced in *BGBI* 1958/210 last modified by *BGBI* III 1998/30; raised to constitutional status by *BGBI* 1964/59.

crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

It should be noted that the European Convention on Human Rights (ECHR) has constitutional standing in Austria and that a remedy against an alleged violation of the rights set out therein lies directly with the Constitutional Court (*Verfassungsgerichtshof*).

FEDERAL CONSTITUTIONAL LAW OF 10 JULY 1974 ON THE PROTECTION OF THE INDEPENDENCE OF BROADCASTING⁷

Article I

(1) Broadcasting is the dissemination of all kinds of items in the form of words, sounds or images, intended for the general public and communicated by means of electrical oscillations without recourse to connecting circuits, or alternatively through or via a conductor, and also the operation of technical facilities serving this end.

(2) More detailed provisions concerning broadcasting and its organisation shall be determined by a Federal Act of Parliament. Such an Act of Parliament shall in particular contain provisions to ensure the objectivity and impartiality of news coverage, respect for diversity of opinion, the presentation of a balanced viewpoint in the programmes and the independence of those persons and organs into whose care the responsibilities specified in Sect. 1 are entrusted.

(3) Broadcasting pursuant to Sect. 1. is public responsibility.

2.2 Minority rights

BASIC LAW OF 21 DECEMBER 1867 ON THE GENERAL RIGHTS OF NATIONALS IN THE KINGDOMS AND *LÄNDER* REPRESENTED IN THE *REICHSRAT*

Article 19

All nations of the state have equal rights and every nation has the invulnerable right of protection and cultivation of its nationality and language.

The equality of all customary languages in school, administration and public life is acknowledged [...]⁸

TREATY OF ST. GERMAIN, 1919⁹

Part III, Section V Protection of Minorities

Article 62

Austria undertakes that the stipulations contained in this Section shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or

⁷ BGBl 1974/396.

⁸ Abrogated.

⁹ 10 September 1919, *StGBI.* No. 303/1920.

interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

Article 63

Austria undertakes to assure full and complete protection of life and liberty to all inhabitants of Austria without distinction of birth, nationality, language, race or religion.

All inhabitants of Austria shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practise are not inconsistent with public order or public morals.

Article 66

All Austrian nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

Differences of religion, creed or confession shall not prejudice any Austrian national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries.

[...]

Article 67

Austrian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Austrian nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

THE FEDERAL CONSTITUTION, 1929¹⁰

Article 7

(1) All Federal nationals are equal before the law. Privileges based upon birth, sex, estates, class or religion are excluded.

STATE TREATY FOR THE RE-ESTABLISHMENT OF AN INDEPENDENT AND DEMOCRATIC AUSTRIA, 1955¹¹

Article 7 - Rights of the Slovene and Croat Minorities

(1) Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall enjoy the same rights on equal terms as all other Austrian nationals, including the right to their own organizations, meetings and press in their own language.

¹⁰ As revised in 1929, *BGBI* 1930/1, last modified by *BGBI* I 2001/121.

¹¹ *BGBI* 1955/25.

[...]

(4) Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall participate in the cultural, administrative and judicial systems in these territories on equal terms with other Austrian nationals.

(5) The activity of organizations whose aim is to deprive the Croat or Slovene population of their minority character or rights shall be prohibited.

CONSTITUTIONAL FEDERAL LAW OF 3 JULY 1973, ON THE IMPLEMENTATION OF THE INTERNATIONAL TREATY ON THE ELIMINATION OF ANY KINDS OF RACIAL DISCRIMINATION, 1973¹²

Article I

(1) Any kind of racial discrimination is – as not already forbidden by Article 7 of the Federal Constitutional Law of 1929 and Article 14 of the ECHR – forbidden. Legislation and administration both have to abstain from any distinction based on the only reason of race, colour of skin, extraction or national as well as ethnic origin.

(2) [...]

2.3 Minority rights and broadcasting

TREATY OF ST. GERMAIN, 1919

Article 66

[...]

No restriction shall be imposed on the free use by any Austrian national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

[...]

2.4 (Official/State) language(s)

THE FEDERAL CONSTITUTION, 1929

Article 8

(1) German is the official language of the Republic without prejudice to the rights provided by Federal law for linguistic minorities.

(2) The republic (Bund, Länder and Gemeinden) is committed to its linguistic and cultural variety, which has evolved in the course of time and finds its expression in the autochthonous ethnic groups. The language and culture, continued existence and protection of these ethnic groups are to be respected, safeguarded and promoted. (inserted in the year 2000; BGBl I 2000/68)

STATE TREATY FOR THE RE-ESTABLISHMENT OF AN INDEPENDENT AND DEMOCRATIC AUSTRIA, 1955

Article 7 - Rights of the Slovene and Croat Minorities

¹² BGBl 1973/390.

(3) In the administrative and judicial districts of Carinthia, Burgenland and Styria, where there are Slovene, Croat or mixed populations, the Slovene or Croat language shall be accepted as an official language in addition to German. In such districts topographical terminology and inscriptions shall be in the Slovene and Croat language as well as in German.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

- *Volksgruppengesetz* (Minorities Act) (*BGBI* 396/1976 modified by *BGBI* I 2002/35)
- Minorities School Act for Carinthia (*BGBI* 1959/101 modified by *BGBI* I 2001/76)
- Minorities School Act for Burgenland (*BGBI* 1994/641 modified by *BGBI* I 1998/136)

3.2 Broadcasting legislation

Until 1994, there only existed one public service broadcaster, the ORF, which was established pursuant to the *Rundfunkgesetz* (Broadcasting Act); the monopoly was then abolished in the course of proceedings before the European Court of Human Rights in anticipation of a finding that the Austrian broadcasting monopoly was incompatible with Article 10, ECHR, guaranteeing freedom of expression. Having said that, it should be noted that the legal basis on which the ORF operated already provided for the involvement of minorities in broadcasting.

The *Bundesverfassungsgesetz vom 10. Juli 1974 über die Sicherung der Unabhängigkeit des Rundfunks* (Constitutional Law on the safeguarding of the independence of broadcasting of 10 July 1974) lays down that “broadcasting has to guarantee objectiveness and impartiality of reporting, the consideration of the diversity of opinions, a well-balanced programme [schedule] as well as the independence of persons and organs”. Finally it lays down that broadcasting is a “public duty” (Article I).

Based on these constitutional provisions, different pieces of legislation were passed, one governing public broadcasting (*Bundesgesetz über den Österreichischen Rundfunk*, *BGBI* 1984/379 modified by *BGBI* I 2001/83, “the ORF Act”); the other creating a basis for the commencement of private broadcasting (*Bundesgesetz, mit dem Bestimmungen für privaten Hörfunk erlassen werden* (*Privatradiogesetz*), *BGBI* I 2001/20, “the Private Radio Act”; *Bundesgesetz, mit dem Bestimmungen für privates Fernsehen erlassen* (*Privatfernsehgesetz*) *BGBI* I 2001/84, “the Private Television Act”).

The amended ORF Act became fully effective on 1 January 2002. With this partially new provision, the former public body was turned into a “public foundation”. Section 1, para. 3 of the ORF Act lays down that the ORF has to consider the principles of the Austrian Constitution and especially has to ensure objectiveness and impartiality of reporting and the consideration of the diversity of opinions. Section 4, para. 1 of the ORF Act further lays down that the programme offer of the ORF (on the whole) has to supply comprehensive information to the public about all important political, social, economic, cultural and sporting questions and furthermore has to promote the understanding of all questions of a democratic

social life. Moreover, Section 4, para. 5, lays down that the ORF has to accommodate the reproduction and exchange of all comments, standpoints and critical opinions with importance for the public under reasonable consideration for all opinions represented in public life.

ORF ACT, 2001¹³

Section 5: Special mandates

(1) In the framework of those programmes distributed under Section 3, reasonable programme shares must be provided in the languages of those national minorities which are represented by a National Minority Council. The scope of the programme share shall be laid down in the annual programme broadcasting plan following a consultation with the Audience Council.

(2) The Austrian Broadcasting Corporation may also partly comply with its mandate under paragraph 1 in that it emits programmes under paragraph 1 following a contractual agreement with other broadcasters in the areas of autochthonous minorities in Austria (paragraph 1) by using the transmission capacities allocated to these broadcasters. The scope of programmes broadcast in such manner shall be counted towards the programme shares listed under paragraph 1 as decided by the Board of Trustees at the proposal of the Director General following the consultation of the Audience Council. Similarly, the Austrian Broadcasting Corporation may participate in the creation and production of programmes by other broadcasters which distribute a separate programme geared to the needs of the national minorities. [...]

(4) The verbal content of the third nation-wide radio programme shall predominantly be in foreign languages.

(5) Beyond its service provision mandate, the Austrian Broadcasting Corporation may also cooperate with other public-law broadcasters or establish joint ventures for the production of broadcasts and programmes.

(6) The Austrian Broadcasting Corporation shall reserve a reasonable proportion of its funds for the activities of the nine regional studios.

Section 28: Audience Council

(1) In order to safeguard the interests of the listeners and viewers, an Audience Council shall be established in the headquarters of the Austrian Broadcasting Corporation. The Audience Council shall consist of 35 members.

[...]

(4) For the appointment of further members, the Federal Chancellor shall solicit proposals from institutions or organisations which are representative of the following sectors or groups: academia, education, arts, sports, youth, students, the elderly, handicapped persons, parents and the family, national minorities, tourism, motorists, consumers, and environmental protection.

¹³ BGBl 83/2001.

Section 30: Functions of the Audience Council

(1) The Listeners' and Viewers' Advisory Board shall [...]

5. submit proposals for compliance with the mandate relating to the cases laid down in this law, and comment on the allocation of programme shares to national minorities. For that purpose, the Audience Council may hear representatives of the national minority advisory councils;

Moreover, Section 10 of the ORF Act lays down the general principles of programming. Accordingly, all programmes of the ORF must "respect the human dignity and fundamental rights of others with regard to presentation and content" (para. 1). According to the Act, it is important that the "diversity of opinions held in public life shall appropriately be taken into account, the human dignity, personal rights and privacy of the individual shall be respected" (para. 6).

In the course of the abolition of the state monopoly on broadcasting in 1994, the Private Broadcasting Acts were passed. In view of the limited number of frequencies, the operative law lays down the selection criteria to be applied to the multitude of applicants.

Accordingly, preference shall be given to those applicants who, among other requirements, can provide for greater consideration for diversity of opinion. Pursuant to Sections 7 and 8 of the Private Television Act, if several candidates who fulfil the general legal requirements (Section 4, paras. 2 and 3 of the Private Television Act) apply for a nationwide or non-nationwide licence for analogue terrestrial television, the regulatory authority has to give preference to the applicant who seems to best guarantee the aims of this Act, in particular a greater diversity of opinions and an autonomous programme offer, considering the interests of people in the service area (see also the corresponding Section 6, para. 1(1) of the Private Radio Act), and from whom [...] the inclusion of Austria-related programmes, which for instance cover the presentation of the cultural, artistic, political and social life, Austrian sports or other elements portraying Austrian characteristics can be expected to a greater extent.

In the first allocation procedure, no "purely-ethnic" applicant was selected; applicants with mixed programme offers were considered to be more appropriate for meeting the standards laid down in the Private Radio Act.

The principles of programming are comparable to those laid down in the ORF Act, although an explicit provision similar to Section 5 of the ORF Act is missing. Sections 30 and 31 of the Private Television Act lay down that all programmes have to be in accordance with the principles of objectiveness and diversity of opinions. In particular, the public, cultural and economic life in the service area shall be presented appropriately and essential social groups and organisations in this area have to be given the opportunity to present their opinions. Furthermore, all programmes have to respect human dignity and the basic rights of the others and must not provoke hatred because of race, sex, age, handicap, religion or nationality (corresponding: Section 16 of the Private Radio Act).

3.3 Transfrontier dimension

GENERAL BI- AND MULTILATERAL TREATIES

Austria has concluded bilateral agreements with all of its neighbouring countries from which the Austrian national minorities may draw benefits in a variety of areas on account of the cultural exchange subsidies provided for therein and the cooperation in the fields of culture (including cooperation in the field of broadcasting), science or education (eg. Slovakia, *BGBI* III 2000/170; the Czech Republic, *BGBI* 1978/586, as modified by *BGBI* III 1997/123; Hungary, *BGBI* 1977/519; Croatia, *BGBI* 1996/474).

One such Agreement, which was negotiated by the governments of the Republic of Austria and of the Republic of Slovenia with a view to establishing cooperation in the field of culture (including broadcasting: Article 9), education and science, was signed by the Foreign Ministers of the two countries on 30 April 2001. It was specifically noted in Articles 14, 15 and 16 of this Agreement that each of the programmes of the Mixed Commission and, where applicable, in the joint working programmes of Ministries of the two countries also have to include topics raised by the Slovenian minority in Austria, by members of the German-speaking minority in Slovenia, and by Slovenian speakers outside the territory of the Slovenian minority (eg. projects in the fields of language teaching, monument protection, scholarships, etc.).

Austria is party to, *inter alia*, the European Cultural Convention,¹⁴ the European Charter for Regional or Minority Languages¹⁵ and the Framework Convention for the Protection of National Minorities.¹⁶ The importance of various programmes within the European Union should also be mentioned.

4 Current developments

The Advisory Committee on the Framework Convention for the Protection of National minorities published its Opinion on Austria on 7 November 2002. The Committee considers that: “[...] Austria has made particularly commendable efforts in respect of the Slovenes and Croats living in the *Länder* of Carinthia and Burgenland, notably as regards their status in such fields as media and education”.¹⁷ The recently-adopted legal guarantees of constitutional and sub-constitutional standing are of particular significance for the Hungarians, the Czechs, the Slovaks and the Roma.¹⁸ The Committee holds that there remains a need for “considerably more determined measures” to help the Slovenian minority of Styria to preserve its identity, notably in the field of media.¹⁹ Concerning the creation and development of radio and television programmes for the Czech, Slovak and Hungarian minorities, there is “scope for improvement”.²⁰

The programme schedule of the ORF for 2003 provides an extension of broadcasts in the languages of the recognised national minorities. Since January 2003, the ORF has been broadcasting, in particular, a multilingual regional radio programme in Romany, Hungarian

¹⁴ *BGBI* 1958/80.

¹⁵ *BGBI* III 2001/216.

¹⁶ *BGBI* III 120/1998.

¹⁷ Para. 103, *ibid.*

¹⁸ Para. 103, *ibid.*

¹⁹ Para. 104, *ibid.*

²⁰ Para. 105, *ibid.*

and Croatian on a weekly basis and - on mid-frequency channel 1476 - in the Czech and Slovak languages, twice a month. Furthermore, Romany has been included in a multilingual (Hungarian, Croatian and German language) television programme, which is broadcast four times a year. The regional Hungarian television programme mentioned is broadcast six times a year.

A cooperation agreement between the ORF and the private radio programmes in Slovenian has not been extended. The continued existence of these programmes seems seriously endangered. Pursuant to a finding²¹ of the Austrian Communications Authority, *KommAustria*,²² the licensee formally known as *Antenne 4* has ceased to broadcast a programme according to the Private Radio Act and the licence in particular because it did not dedicate reasonable programme shares to the languages of the ethnic groups in the Burgenland.

²¹ KOA 1.200/02-39 (not final).

²² For further information on the *Kommunikationsbehörde Austria* “*KommAustria*” see its website: <http://www.rtr.at/web.nsf/deutsch/Ueber+Uns~KommAustria>.

Azerbaijan

Azerbaijani is the official language of the Republic of Azerbaijan, but the Constitution also provides for the free use and development of other languages spoken by the population. New legislation which recently entered into force requires the mass media to use the state language, but in practice, it is reported that the *status quo ante* has largely prevailed. Prior to the enactment of the new legislation, citizens of the Republic also enjoyed the right to produce and broadcast mass information in other languages spoken by the population, as well as in foreign languages spoken in other countries. Azerbaijan State Radio tended to broadcast programmes in the languages of the main national minorities such as Lezghins, Talishes, Kurds, Georgians, and Armenians. To an extent, local radio and television broadcasters also tended to use minority languages. The Parliament is currently discussing a draft law “On Public Broadcasting” which, if adopted, would require the use of Azerbaijani for public broadcasting, with certain exceptions and/or provisions for translation into Azerbaijani.

1 Introduction

1.1 Linguistic topography

According to the Census of the population in the Azerbaijan Republic of the year 1999, the total population of the Azerbaijan Republic was 7,953,400. The Azerbaijanis constitute 90.6% of the population. 9.4% or 747,900 people belong to national minorities.¹

Table 1 lays out the percentages of ethnic/national minorities living in Azerbaijan, according to the official information provided by the State Statistics Committee.

Table 1: Ethnic-national Minorities in Azerbaijan

National-minority group	Number of people	Location
The Lezghins	178,000 (2.23%)	Northern Azerbaijan: Khachmaz-Gusar region and in big cities as Baku and Sumgait
The Russians	141,700 (1.78%)	Mostly in big cities: Baku, Sumgait
The Ukrainians	29,000 (0.36%)	
The Armenians	120,700 (1.51%)	Mostly territories under Armenian rule
The Talishes	76,800 (0.97%)	South-Eastern Azerbaijan, along the Iranian border
The Avars	50,900 (0.64%)	North-Western Azerbaijan, along the Russian border
The Sakhurs	15,900 (0.19%)	
The Meskhetian-Turks	43,400 (0.55%)	Mid-lowland region of Azerbaijan
The Georgians	14,000 (0.18%)	North Western part of Azerbaijan, along the Georgian border

¹ “Census of the population in the Azerbaijan Republic of the year 1999”, Part IV, State Statistics Committee of the Azerbaijan Republic, Baku 2000, available at: <http://www.statcom.baku-az.com>.

The Kurds	13,100 (0.16%)	Lachin-Kalbajar region being under the Armenian occupation
The Udis	4,700 (0.0059%)	Northern Azerbaijan-Gabala region
The Jews	8,900 (0.11%)	Baku, Guba
The Tatars	30,000 (0.38%)	
The Tats	10,900 (0.14%)	

1.2 Broadcasting

After Azerbaijan achieved independence in 1991, a Presidential Decree “On the state assistance for the protection of rights and freedoms, development of languages and cultures of national minorities and ethnic groups living in the Azerbaijan Republic” (1992) was issued. About five months later, on 1 January 1993, Azerbaijan State Radio started broadcasting programmes in the languages of the main national minorities such as Lezghins, Talishes, Kurds, Georgians, and Armenians. There are no programmes in the languages of national minorities on State Television.

Table 2: Airtime dedicated by the Azerbaijan State Radio to programmes in minority languages

Minority language	Number of programmes per week	Airtime per programme (minutes)
Lazghinian	2	15
Talish	2	15
Kurdish	2	15
Georgian	3	15
Armenian	2	20

In addition, several local radio and television stations broadcast in minority languages. The local radio station in the Belokan district organises broadcasts in the Avar language, while in the Khachmas district, they broadcast in the Lezgin and Tat languages. Local television broadcast in the Lezgin language in the Gusar and Khachmas districts until 2001. These broadcasts were cancelled for unknown reasons. The local private television company “Janub” broadcasts in the Talish language in the Lankaran, Lerik, Astara districts. In the city of Baku there are daily radio and television broadcasts in Russian. The Russian programmes of ORT, RTR, and NTV (though the broadcasting of NTV was cancelled recently) are rebroadcast in full.

2 Constitution

The Constitution of the Azerbaijan Republic of 12 November 1995² declares the Azerbaijani language as the state language in Azerbaijan (Article 21). According to the Constitutional provision, apart from ensuring the development of the Azerbaijani language, Azerbaijan guarantees the free use and development of other languages spoken by the population as well. A special Article of the Constitution is dedicated to everybody’s right to preserve his/her national affiliation (Article 44). The following constitutional provision (Article 45) sets forth

² The Constitution of the Azerbaijan Republic, see further: <http://www.constitutional-court-az.org>.

everybody's right to use his/her mother tongue, obtain education, and engage in creative activity in any language s/he desires.

2.1 Freedom of expression

Article 47. Freedom of thought and speech

- I. Everyone may enjoy freedom of thought and speech.
- II. Nobody should be forced to reveal his/her thoughts and convictions or to renounce his/her thoughts and convictions.
- III. Propaganda provoking racial, national, religious and social discord and animosity is prohibited.

Article 50. Freedom of information

- I. Everyone is free to look for, acquire, transfer, prepare and disseminate information.
- II. Freedom of the mass media is guaranteed. State censorship in mass media, including press is prohibited.

2.2 Minority rights

Article 25. Right for equality

- I. All people are equal with respect to the law and law court.
- II. Men and women possess equal rights and freedoms.
- III. The state guarantees equality of rights and freedoms of everyone, irrespective of race, nationality, religion, language, sex, origin, financial position, occupation, convictions, membership in political parties, trade unions and other public organizations. Rights and freedoms of a person, citizen cannot be restricted due to race, nationality, religion, language, sex, origin, conviction, political and social belonging.

Article 44. Right for nationality

- I. Everyone has the right to preserve his/her national belonging.
- II. Nobody may be forced to change his/her nationality.

Article 45. Right to use mother tongue

- I. Everyone has the right to use his/her mother tongue. Everyone has the right to be educated, carry out creative activity in any language, as desired.
- II. Nobody may be deprived of the right to use his/her mother tongue.

2.3 (Official/State) language(s)

Article 21. Official/State language

- I. The Azerbaijani language is the official language of the Azerbaijan Republic. The Azerbaijan Republic provides for the development of the Azerbaijani language.
- II. The Azerbaijan Republic ensures free use and development of other languages spoken by the population.

3 Legislation

3.1 Broadcasting legislation

Many issues regarding broadcasting in general, let alone minority languages related broadcasting have been left open so far. Existing pieces of legislation, including the Law on Mass Media provide only general rules for regulation of broadcasting. On 25 June 2002, the draft Law of the Azerbaijan Republic “On Television and Radio Broadcasting” passed the third reading in the Azerbaijani Parliament and has now entered into force. According to the Law, television/radio broadcasting within the territory of the Azerbaijan Republic shall be carried out on the basis of a licence which is to be valid for up to six years. Licences for broadcasting shall be granted on a competitive basis. Applicants for participation in the tender for obtaining a licence must pay a fee, the amount of which is to be determined by the relevant governmental executive body. The Law contains requirements to be met while preparing the programmes. These requirements include the provision of diverse programmes which take into consideration the interests of the regions and of national minorities in Azerbaijan, ensuring use of the state language in the programmes that are broadcast. A draft law on public broadcasting is currently before the *Milli Majlis* (Parliament of the Azerbaijan Republic).

The following are the relevant excerpts from the Law on State Language, the Law on Mass Media, and the Presidential Decree on the protection of the rights and freedoms and on state support for the promotion of the languages and cultures of national minorities, numerically small peoples and ethnic groups living in the Republic of Azerbaijan.

LAW OF THE AZERBAIJAN REPUBLIC “ON THE STATE LANGUAGE IN THE AZERBAIJAN REPUBLIC” OF 30 SEPTEMBER 2002³

Article 6

6.1. All television and radio broadcasting, established and operating on the territory of Azerbaijan Republic, regardless of the form of ownership, is carried out in the official state language.

LAW OF THE AZERBAIJAN REPUBLIC “ON MASS MEDIA” OF 7 DECEMBER 1999 (AS AMENDED)

Article 6. The language of the Mass Media

In the Azerbaijan Republic the mass media use the state language.

Citizens of the Azerbaijan Republic enjoy the right to use in producing and broadcasting mass information other languages spoken by the population of the Azerbaijan Republic as well as languages widely spread around the world.⁴

³ This Law entered into force on 4 January 2003 and has been causing many problems for broadcasters. As was the practice prior to the entry into force of this Law, the state radio continues to broadcast programmes in rural languages and commercial television and radio stations also continue to broadcast programmes in Russian and in English.

⁴ Note: Article 6 of the Law of the Azerbaijan Republic “On Mass Media” of 7 December 1999 (as amended) appears to be in conflict with Article 6.1 of the Law of the Azerbaijan Republic “On the state language in the Azerbaijan Republic” of 30 September 2002. However, according to the Constitution of Azerbaijan, if there is

Article 14

Any citizen of the Republic of Azerbaijan has the right to establish a media outlet.

PRESIDENTIAL DECREE “ON THE PROTECTION OF THE RIGHTS AND FREEDOMS AND ON STATE SUPPORT FOR THE PROMOTION OF THE LANGUAGES AND CULTURES OF NATIONAL MINORITIES, NUMERICALLY SMALL PEOPLES AND ETHNIC GROUPS LIVING IN THE REPUBLIC OF AZERBAIJAN”, 16 SEPTEMBER 1992

This Decree established the following goals:

- the maintenance and development of the distinctive cultures, languages and religions of national minorities, numerically small peoples and ethnic groups; [...]

The Decree also contains an assignment to create conditions and to adopt relevant legal measures to guarantee the rights of persons belonging to national minorities to organise their cultural and religious societies and its activities. At the same time, it was deemed purposeful to provide such kinds of societies and associations with state assistance, including providing them with premises, material resources, and financial allocations.

3.2 Transfrontier dimension

Under the Law of the Azerbaijan Republic of 16 June 2000,⁵ Azerbaijan acceded to the Council of Europe’s Framework Convention for the Protection of National Minorities. The Republic of Azerbaijan signed the European Charter for Regional or Minority Languages on 21 December 2001.

4 Current developments

The draft Law “On Public Broadcasting” has been passed by the Parliament of Azerbaijan on its second reading. In order to become law, it should also be approved at its third reading. With regard to the minority language related broadcasting, Article 16 establishes the following:

16.1 Public broadcasting programs are carried out in the Azerbaijani language.

16.2 Speeches in the languages of other nations are accompanied with translation into Azerbaijani.

16.3 Broadcasting of foreign documentary, feature films, and animated cartoons etc. without translation into the Azerbaijani language is prohibited.

16.4 Public broadcasting programs may include programs in the languages of national minorities living in the Azerbaijan Republic.

any contradiction between two laws, the provision of the most recent law takes precedence. Thus, in the instant case, the operative provision of the Law on the state language takes precedence.

⁵ Date of ratification by the Azerbaijan Parliament.

Note: Since this report was compiled/edited, Azerbaijan's National Council for Television and Radio adopted on 25 June 2003 regulations on the use of the state language in television and radio broadcasts according to which a minimum of 75 per cent of all programmes, announcements, and advertisements on both state-controlled and privately owned television and radio stations must be in the Azerbaijani language. It is also stipulated that announcers and moderators must speak fluent and well-articulated Azerbaijani.

Belarus

The two state languages of the Republic of Belarus are Belarussian and Russian. Formal legislation recognises the needs of minority populations and in practice, broadcasts take place in both Belarussian and Russian, but predominantly in the latter. Existing broadcasting legislation does not contain any facilitative or prohibitive measures relating to minorities' access to broadcasting in their own languages. While legislative provisions designed to ensure the correct usage of language do exist, they are not frequently relied upon any more. A new law on the press and other mass media is currently being drafted.

1 Introduction

1.1 Linguistic topography

According to the results of the census of the Republic of Belarus in 1999 the population of the country is 10,045,000 people. Belarussians make up 81.2% of the population. Russians make up 11.4% of the population; Poles, 3.8%; Ukrainians, 2.4%, and Jews, 0.3%. There are also small communities of other nationalities: Tartars, Roma, Lithuanians, Azerbaijanians, Germans, Moldavians, Georgians, etc.¹

1.2 Broadcasting

There is one national television channel ("first national television channel"), which broadcasts to more than 90% of the Republic. The Russian channels ORT and RTR are also received. Some regions receive NTV, "Culture" and TV-6 from Russia. Western regions of Belarussia receive the programmes of Polish television. In regional centres and some district cities, state and private regional television stations broadcast programmes. According to the Presidential Decree of the Republic of Belarus #101 of 15 February 2002, the "second national television channel", ZAO, is being created in Belarussia. According to the plans, this channel will partially broadcast on ORT frequencies. However, the channel has not yet started to broadcast.

Broadcasting on the "first national television channel" is predominately done in Russian. News and some programmes are transmitted in the Belarussian language. There are no minority programmes on the first national television channel. Regional stations broadcast mainly in Russian. Some programmes are transmitted in Belarussian. Minorities do not participate in broadcasting by regional stations.

2 Constitution

The Constitution of the Republic of Belarus was adopted by the republican referendum of 24 November 1996.²

2.1 Freedom of expression

Article 33.

¹ Statistical Yearbook of the Ministry of Statistics and Analysis (in Russian), 2001, p.70.

² Available at: <http://president.gov.by/eng/map/const.shtml>.

Everyone is guaranteed freedom of thoughts and beliefs and their free expression. No one shall be forced to express one's beliefs or to deny them. No monopolization of the mass media by the State, public associations or individual citizens and no censorship shall be permitted.

Article 34.

Citizens of the Republic of Belarus shall be guaranteed the right to receive, store and disseminate complete, reliable and timely information of the activities of state bodies and public associations, on political, economic, cultural and international life, and on the state of the environment.

State bodies, public associations and officials shall afford citizens of the Republic of Belarus an opportunity to familiarize themselves with material that affects their rights and legitimate interests.

The use of information may be restricted by legislation with the purpose to safeguard the honour, dignity, personal and family life of the citizens and the full implementation of their rights.

2.2 Broadcasting

The Constitution of the Republic of Belarus does not regulate broadcasting issues.

2.3 Minority rights

Each person has the right to use his/her native language, and to choose the language of communication. According to the law, the State guarantees freedom of choice for the language of upbringing and education.

Article 14.

The State shall regulate relations among social, ethnic and other communities on the basis of the principles of equality before the law and respect of their rights and interests.

The relations in the social sphere and in labour between the organs of state management, associations of employers and trade unions shall be exercised on the principles of social partnership and interaction of parties.

Article 15.

The State shall bear responsibility for preserving the historic, cultural and spiritual heritage, and the free development of the cultures of all the ethnic communities that live in the Republic of Belarus.

Article 50.

Everyone shall have the right to preserve one's ethnic affiliation, and equally, no one may be compelled to define or indicate one's ethnic affiliation.

Insults to ethnic dignity shall be prosecuted by law.

Everyone shall have the right to use one's native language and to choose the language of communication. In accordance with the law, the State shall guarantee the freedom to choose the language of education and teaching.

2.4 (Official/State) language(s)

Article 17.

The Belarusian and Russian languages shall be the official languages of the Republic of Belarus.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

LAW OF THE REPUBLIC OF BELARUS “ON NATIONAL MINORITIES”, 1992³

(1) Advisory bodies consisting of the representative of national minorities can be set up and act under the Councils of People’s Deputies. The respectful Councils of Peoples’ Deputies determine the order of the formation of such bodies.

(2) According to the legislation the Republic of Belarus promotes the creation of material conditions for the development of national minority education and culture by allocating necessary means from the budget.

(3) Cultural societies (unions) of national minorities have the right to do business according to the legislation of the Republic of Belarus.

(4) Public and cultural organizations of national minorities may create cultural educational institutions on their own means.

3.2 Broadcasting legislation

3.2.1 General measures

According to the 1995 Law of the Republic of Belarus On Press and Other Mass Media (amended by the Law of the Republic of Belarus N 337-3 of 13 December 1999), “the distortion of the recognised norms of the used language” is not allowed. The State Committee on the Press of the Republic of Belarus (now the Ministry of Information of the Republic of Belarus) used this to warn the mass media that used the pre-reform version of the Belarussian language.⁴ The High Court of Commerce, which reviewed the lawsuit of a newspaper on the recognition of the warning as unlawful, decided that the legislation does not establish what is to be “the recognised norms of the language used”. After that, the State Committee of the Republic of Belarus and later the Ministry of Information of the Republic of Belarus did not issue warnings on the basis of this Article, and, in fact, it was not used.

3.2.2 Facilitative/affirmative measures

Broadcasting legislation does not envisage any facilitative/affirmative measures relating to minorities’ access to broadcasting in their own languages. Nor are any such measures taken in practice.

3.2.3 Prohibitive measures

Broadcasting legislation does not contain any prohibitive/restrictive measures relating to minorities’ access to broadcasting in their own languages.

³ Law of Republic of Belarus, dated 11 November 1992, # 1926-XII Â “On National Minorities in Republic of BelarusÂ”, published in *Vedomosti* of the Supreme Council of the Republic of Belarus, 1992, N 35, p. 550.

⁴ In 1939 there was the reform of the Belarussian language, which was made close to the Russian language. This remains important today as some (ultranationalist) media still use pre-reform rules.

3.3 Transfrontier dimension

AGREEMENT “ON COOPERATION IN PROVIDING MINORITY MEMBERS WITH RIGHTS” BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BELARUS AND THE GOVERNMENT OF MOLDOVA, 1997

Article 4

In order to preserve the ethnic originality of the citizens of the Republic of Moldova of Belarussian nationality and the citizens of the Republic of Belarus of Moldavian nationality, the Parties promote the preservation and research of their cultural heritage, the development of crafts, preservation of their historical and cultural monuments, the creation of the necessary conditions for studying their native language, and history and geography of the state, to which these minorities belong by nationality, as well as their traditions and culture.

Article 5

The Parties recognize the citizens belonging to the Belarussian people and Moldavian people, the right to use their national names and surnames including official documents, according to the rules of transliteration, to establish mass media in congruence of the legislation of the Parties.

AGREEMENT BETWEEN THE REPUBLIC OF BELARUS AND UKRAINE “ON COOPERATION IN PROVIDING MINORITY MEMBERS’ RIGHTS”, 1999

Article 7

Each Party recognizes the minority members’ right to use his/her native language in private and public life within the limits established by the Parties’ legislation on languages.

Each Party recognizes minority members’ rights to national surname, name and patronymic.

Article 8

Each Party recognizes minority members’ rights to have the access to information in his/her own language, to disseminate freely such information including the right to establish mass media in their own language.

4 Current developments

Currently, a new Law of the Republic of Belarus On Press and other Mass Media is being drafted. In one of the drafts there is no provision such as the one mentioned above on the distortion of the recognised norms of the used language, and in the other it exists in the same form. At the time of writing the law had not yet been adopted.

On 9 July 2002, 17 Belarusian NGO’s petitioned UNESCO’s General Assembly with respect to the use of Belarussian in national media. The petition stated that programming in Belarussian was quickly giving way to programming in Russian.

The document stated:

For example, on 25 June 2002, Nationwide TV was launched, which uses pure Russian language in its programmes. A situation has emerged in which 97 per cent of TV broadcasting is conducted in Russian, whereas the titled national language is hardly voiced on the air. [...] Conditions are emerging where the young generation do not hear the native language on the air; less than 30 per cent of children use it, which leads to the disappearance of the Belarusian language.

The authors presented their appeal to UNESCO Director-General Koichiro Matsuura who was visiting Minsk and requested that the Assembly address the linguistic situation in Belarus at its next session. They asked the international community to help protect and preserve Belarusian and assist in the development of languages of all ethnic minorities.⁵

⁵ Source: Belapan news agency, Minsk, in Belarusian, 1255 gmt, 9 July 2002.

Belgium

Belgium has one of the most complicated and finely tuned arrangements to ensure language policies that reflect demographic and political realities. The very structure of society is designed with communities and their linguistic needs in mind. Deliberative bodies, broadcasting authorities, cultural and community services are defined by group and language. In a sense, national policy and linguistic policy is one and the same. Belgium is composed of three communities and three regions, each with its own competences. The official languages of the three communities are Dutch, French and German; the three regions are the Flemish, Walloon and Brussels Capital Region. In each case, there are specific linguistic policies that reflect dominant and minority groups within the community or region. May-carry, must-carry and putative quotas are among the tools used within, particularly, the Flemish community to encourage language and identity related programming. While incentives have been provided in the past for other minorities to have language-specific programming, policies with respect to them is more occasional and irregular.

In the Flemish Community, private radio stations must broadcast in Dutch, but exceptions can be approved by the regulatory authority. The Flemish Government may impose quotas to ensure greater use of Dutch-language European productions, but has yet to do so. Cable operators are subject to certain must-carry provisions concerning the Dutch language and may-carry provisions which allow foreign-language broadcasting opportunities. Flemish television productions and co-productions must amount to at least 50% of the public service broadcaster's total programming between 18.00 and 23.00. In the French-speaking Community, the cultural objectives of the public service broadcaster include the requirement that its radio stations broadcast at least 40% of non-classical music in French, except for its two thematic channels, which must broadcast 15% of non-classical music in French (annual averages). At least 33% of its television broadcasting time (excluding news, advertising, sports, etc.) should be carried out by French-speaking professionals. A progressive goal of 33% for own productions in French has been fixed. Private radio stations must broadcast in French, but exceptions can be approved by the regulatory authority. 30% of music broadcast should be in French, of which 15% originates in the French Community. In the German-speaking Community, the promotion of the German language is provided for by law.

1 Introduction

1.1 Linguistic topography

Article 1 of the Belgian Constitution states: "Belgium is a federal state which consists of communities and regions".¹ Besides the Federal Government and Parliament, there are three communities and three regions, which have their own competences. The distribution followed two broad lines: an economic and a cultural-linguistic one. The first resulted in three regions: the Flemish Region, the Walloon Region and the Brussels Capital Region. The Brussels Capital Region is bilingual: Dutch and French are the official languages. The latter gave birth to three communities, based on language: the Flemish Community, the French Community and the German-speaking Community.

¹ See also *infra*.

The Federal State retained important areas of competence like foreign affairs, defence, justice, finances, social security, etc. Regions are responsible for economics, environment, employment, agriculture, etc. The competences of the three communities are culture, education, media, social welfare, tourism, etc. The “laws” which are promulgated by the community or regional parliaments are “decrees”. However, these decrees have an equal status to the federal law, albeit only within the proper region or community.

In 2002, 57.9% of the population lived in the Dutch-speaking region; 31.9% in the French-speaking region and 9.5% in the Brussels bilingual region. Only 71,287 people (0.7%) live in the German-speaking region.²

In 2002, Belgium had 10,309,725 inhabitants, of which 846,734 (8.4%) were foreigners. Most of them lived in the Walloon region (311,471). 260,040 foreigners were resident in the Brussels Capital Region. The Flemish region had relatively the lowest number of foreigners: 275,223.³

1.2 Broadcasting

1.2.1 Flemish Community

Broadcasting in Belgium is a competence of the communities who have their own regulations in this domain. In the Flemish Community, media law is coordinated by the Decree of 25 January 1995.⁴ The Decree recognises seven different categories of television broadcasting companies:

1. The public broadcasting company *Vlaamse Radio en Televisieomroep* (VRT, Flemish Radio and Television Broadcasting Organisation) which has two channels (*TV 1* and *Canvas/Ketnet*). The VRT is mainly financed by public funding from the Flemish Community.
2. Private broadcasting companies for the whole of the Flemish Community: the most important commercial station is the *Vlaamse Media Maatschappij* (VMM, Flemish Media Company) with three channels (*VTM*, *Kanaal 2* and *JIM TV*). Since 1 March 2002, the former British commercial broadcasting station *VT4* (part of the SBS-group) has been operating under a Flemish broadcasting licence. Mainly targeting smaller or specific audiences, there is also *Event TV* (Liberty TV.com), *Kanaal Z* (Belgian business television) and *Vitaya* (Media ad Infinitum NV), a lifestyle television station.
3. Regional stations: there are 10 regional stations, mainly relying on advertising and sponsorship for finances.
4. Target groups and theme-television: this could be television that is programming only one specific kind of programmes or that aims at certain minority groups, such as, for instance, minority-language groups. Until now, however, such target groups and theme-television have not become operational, or rather took the option of obtaining a licence as a general broadcaster, such as the travel station (*Event TV- Liberty TV.Com*), the business channel (*Kanaal Z*) or the lifestyle station (*Vitaya*).
5. Pay-television: *Canal+* is the only pay-TV network in Flanders.

² See:

<http://www.belgium.be/eportal/application?origin=navigationBanner.jsp&event=bea.portal.framework.internal.refresh&pageid=indexPage&navId=6182>.

³ See: http://statbel.fgov.be/figures/d21_nl.asp.

⁴ Available at: <http://www2.vlaanderen.be/ned/sites/media/gecoördineerde%20decreten2003.pdf>.

6. Television services: television station, which targets a public with “different sort of services” (not operational yet).

Teleshopping television stations (*H.O.T. Thuis Winkelen*, Home Shopping Europe Belgium).

As for radio, the Decree also recognises different sorts of stations. First of all there are hundreds of local radios. They broadcast in a city, a part of a city, a municipality or a limited number of neighbouring municipalities or for a specified audience. A Decree of 1998 opened the possibility for private radio for the whole of the Flemish Community (‘national radio’). In September 2001, two commercial radio stations obtained a radio broadcasting licence: *Q-music* (part of VMM) and *4FM*. The Decree of 25 October 2002⁵ also developed a legal framework for regional radio, which is allowed to broadcast for a maximum of one province. A last category of private radio is cable radio, which is transmitted via cable (Flanders has high cable penetration) to the whole of the Flemish Community.

The public service broadcaster has six radio channels: five of them are for the whole of the Flemish Community (*Radio 1*, *Radio 2*, *Klara*, *Studio Brussel* and *Donna*. *Radio Vlaanderen Internationaal* (Radio Flanders International) is the VRT world service radio.⁶

1.2.2 French Community

The broadcasting legislation of the French community is not coordinated by one decree. The Decree of 14 July 1997 regulates the public service broadcaster, the RTBF.⁷ This station has two television channels, *La Une* and *La Deux*, and six radio channels (*La Première*, *fréquence Wallonie*, *Musique 3*, *Radio 21* and the world service *RTBF international*). It is also a member of *TV5*, a satellite television chain for the French-speaking population all over the world.

The rest of the Walloon audiovisual landscape is regulated by the Decree of 17 July 1987.⁸ As in Flanders, there are different categories:

1. Local and communal television (in practice, there is no difference between the two): twelve of them are licensed by the French Community.
2. Private television for the French Community: there are two commercial television channels, *RTL TVI* and *Club RTL*, both mainly in hands of the RTL-group.
3. Pay-television: as in Flanders, *Canal +* is the only station that offers several paying channels.
4. Other services: the Government can allow the RTBF and the other broadcasting organisations to use the cable for other services than television or radio programmes.

Private radio is regulated by the Decree of 24 July 1997.⁹ It makes a distinction between independent radios and radios belonging to a network or chain (eg. the Bel RTL network, the NRJ network, etc.).

⁵ *Decreet van 25 oktober 2002 houdende wijziging van sommige bepalingen van de decreten betreffende de radio-omroep en de televisie gecoördineerd op 25 januari 1995* (Decree of 25 October 2002 modifying some provisions of the Broadcasting Act 1995), *Le Moniteur belge/Het Belgisch Staatsblad*, 14 December 2002, available at: <http://www.moniteur.be>.

⁶ See further: <http://www.vrt.be>.

⁷ Available at: <http://www.csa.cfwb.be/pdf/Décret%20RTBF.pdf>.

⁸ Unofficially coordinated on 31 October 2000, available at: <http://www.csa.cfwb.be/pdf/Décret%20audiovisuel.pdf>.

⁹ Available at: <http://www.csa.cfwb.be/pdf/Décret%20CSA.pdf>.

1.2.3 German-speaking Community

In the German-speaking Community, there is also a public service broadcaster, the *BRF (Belgische Rundfunk- und Fernsehzentrum der Deutschsprachigen Gemeinschaft)*. Since it is a rather small community, the television service from the BRF is limited to a daily news programme. The radio station broadcasts 24 hours a day. The Media Decree of 26 April 1999 provides for local radio.

1.3 Government policies

1.3.1 Broadcasting

Policy Note “Media 2002” of the Flemish Minister for the Media addresses new media and Information and Communication Technologies (ICT) developments. The public broadcaster is encouraged to take part in this evolution by launching digital television and developing e-services and an e-platform (“E-VRT”).

No measures have been taken yet against the increasing concentration of media ownership, although one of the goals of the Policy Note is to ensure fair competition in the Flemish media landscape.

Policy Note “Media 2003” again emphasises the need for a media landscape without excessive concentration and monopolies.¹⁰ Therefore, a ‘flashing light’-model will be developed. The present media authorities will also be reformed.

Only recently, the Decree had been adapted so that private radio for the whole of the Flemish Community is made possible. In 2001, the *Vlaams Commissariaat voor de Media*¹¹ awarded two licences for such radio stations. Since 1998, several commercial television broadcasters were also given the opportunity to obtain a licence (cf. *supra*).

In the Flemish Community and in the French Community, the public service broadcasters work via an agreement concerning management or what is called “an executive agreement”. The public broadcasters have to meet some performance criteria, but they can work more or less on an independent basis and their financing is secured by Decree.

The French Community attaches great importance to the defence and promotion of French and its own culture. For example, there is a minimum quota concerning the number of musical productions in French (see further, s. 3.3 *infra*).

The actual Executive Agreement between the *VRT* and the Flemish Government emphasises the “mission statement” of the *VRT*, as formulated in the Flemish Broadcasting Act (Article 8), with explicit reference to the Resolutions of Prague (1994) and Cracow (2000) on the role of public broadcasting in democratic society. The *VRT* has to provide a reference point for all members of the public and be a vector for social cohesion and the integration of all individuals by being attentive to the needs of minority groups and developing pluralistic, innovative and varied programming which meets high quality standards.

¹⁰ Available at: http://www2.vlaanderen.be/ned/sites/beleidsbrieven/Van_Mechelen/Media_2003.pdf.

¹¹ The Flemish Broadcasting Commission, the media authority with responsibility for licensing.

1.3.2 Minorities

The policy on minorities is also under the competence of the Communities. The main Decree in Flanders is the *Minderhedendecreet* (Minorities Decree) of 14 July 1998.¹² The main purpose of the Flemish policy is to give to those who are legally settled in Belgium the opportunities and possibilities to be a valuable member of society. For those who stay in the country temporarily, it creates the conditions so that they can be granted the full respect of their basic human rights.

In the French Community, the *Division de l'Action Sociale et des Immigrés* (Department for social action and for immigrants) supports several actions and services aimed at the social integration of foreigners (eg. literacy courses, socio-professional integration).

1.3.3 Broadcasting and minorities

There is no substantial or explicit policy on broadcasting and minorities, but relevant legislation is instructive in this regard (see *infra*). Until now, however, no coherent framework has been elaborated for a policy towards the access of linguistic minorities to broadcasting or for a specific broadcasting channel for minorities (apart from the German-speaking minority, this being institutionalised within the Belgian federal state). There are, however, some possibilities for minorities to create programmes in their own language. It is argued that for financial reasons, these opportunities often cannot be developed in a sufficient way.

From 1992 until 1995, a prize was awarded for a medium (written or audiovisual) that promoted a multicultural society. It was awarded by the Royal Commissioner for Policy on Immigrants, Paula D'Hondt. There has not been a similar initiative since then.

Special broadcasting programmes for immigrant workers or for ethnic and cultural minorities have been decreasing in the past few years. Programmes such as *Babel* and *Couleur Locale* on the Flemish public broadcasting channels have been discontinued. On several occasions, the Centre for Equality of Chances and the Struggle against Racism has requested a more active media policy with regard to the representation of the multicultural society.¹³

On 19 April 2002 the Flemish Government rejected a proposal of the Flemish Minister for Welfare and Equality of Chances to start up a television channel specifically for minorities and immigrants (especially service programmes for Turks and Moroccans).¹⁴ According to the Flemish Government, such a television channel with only programmes for minorities would be dysfunctional for the social and cultural integration of minority groups. According to some sources they feared that this might lead to "apartheid television" or "ghetto broadcasting".¹⁵ The Flemish Government has now instructed the Flemish Minister for the Media to take steps to elaborate a plan for a better implementation of the obligations of the

¹² Available directly at <http://www.vmc.be/main/mainc04.htm> or else at <http://www.vmc.be> (by clicking on *Beleid* and then on *decreten & uitvoeringsbesluiten*).

¹³ For more information see <http://www.antiracisme.be>. See also L. d'HAENENS and F. SAEYS (eds.), *Media & Multiculturalisme in Vlaanderen* (Gent, Academia Press, 1996) and E. SCHELFHOUT and H. VERSTRAETEN (eds.), *De rol van de media in de multiculturele samenleving* (Brussel, VUBpress, 1998). See also <http://www.minderhedenforum.be> en http://www.kbs-frb.be/code/page.cfm?id_page=125&ID=136

¹⁴ Service programmes are programmes for a specific audience (in this case thus Turks and Moroccans). Its programmes are adjusted to the needs of that audience. Examples of such service programmes are programmes concerning education and training, information to put them wise in the government administration, information concerning integration (e.g. organisations), cultural information, job information.

¹⁵ *De Standaard*, 19 April 2002; *De Standaard*, 20 April 2002.

public broadcasting organisation *VRT* under Article 8 of the Flemish Broadcasting Decree and under the Executive Agreement 2002-2006 between the *VRT* and the Flemish Government according to which the *VRT* must be developed as a factor for social cohesion and integration of all individuals, being attentive to the needs of minority groups. The Minister for the Media has requested the *VRT* to work out a project and programme proposals in order to fulfil more substantially this part of its mission as a public service broadcaster.¹⁶

In the evaluation of its activities in 2001, the *VRT* announced an action plan about the mission and task of the *VRT* in a multicultural society. In April 2003, the public broadcaster will therefore present a ‘charter of diversity’. The intention is that immigrants will participate in different ways in the programmes and that they will be better represented in the staff of the *VRT*. Currently, only 1% is of foreign origin. People from ethnic-cultural minorities will also more frequently feature in programmes as citizens or experts.

The *VRT* already organised a project week for allochthonous final-year students of secondary education, which enabled 21 young people from Moroccan, Turkish, Chinese, Pakistani, Polish and Portuguese backgrounds to become acquainted with different jobs in a media concern.

2 Constitution

The Belgian Constitution contains several provisions concerning freedom of expression, broadcasting, minority rights and languages. In the following, we give an overview of the most relevant articles of the Belgian Constitution relating to one of those issues.¹⁷

2.1 Freedom of expression

Art. 19 Freedom of worship, public practice of the latter, as well as freedom to demonstrate one’s opinions on all matters, are guaranteed, except for the repression of offences committed when using this freedom.

Art. 25 The press is free; censorship can never be established; security from authors, publishers or printers cannot be demanded.

When the author is known and resident in Belgium, neither the publisher, nor the printer, nor the distributor can be prosecuted.

2.2 Broadcasting

Art. 127 § 1. The French and Dutch Community Councils, respectively, establish by decree:

1° cultural issues;

[...]

§ 2. These decrees have force of law in French-language and in Dutch-language regions respectively, as well as in those institutions established in the bilingual Brussels Capital Region, which, on account of their activities, must be considered as belonging exclusively to one community or the other.

¹⁶ Decision of the Flemish Government of 19 April 2002, press releases.

¹⁷ Available in English at: http://www.oefre.unibe.ch/law/icl/be00000_.html; in Dutch at http://www.senate.be/doc/const_nl.html; in French at http://www.senate.be/doc/const_fr.html and in German at http://www.senate.be/doc/const_de.html.

Art. 130 § 1. The German Community Council rules by decree on:
1° cultural issues;
[...]
§ 2. These decrees have force of law in the German-language region.

2.3 Minority rights

Art. 10 There are no class distinctions in the State.

Belgians are equal before the law; they are the only ones eligible for civil and military service, but for the exceptions that could be made by law for special cases.

The equality between women and men is guaranteed.

Art. 11 Enjoyment of the rights and freedoms recognized for Belgians should be ensured without discrimination. To this end, laws and decrees guarantee notably the rights and freedoms of ideological and philosophical minorities.

Art. 131 The law determines measures designed to prevent all forms of discrimination for ideological or philosophical reasons.

Art. 43 [Linguistic Groups].

(1) For cases determined by the Constitution, the elected members of each House are divided into a French linguistic group and a Dutch linguistic group, in the manner determined by law.

(2) The senators referred to in Article 67 (1)(2,4 and 7) make up the French linguistic group of the Senate. The Senators referred to in Article 67 (1)(1,3 and 6), make up the Dutch linguistic group of the Senate.

Art. 191 All foreigners on Belgian soil benefit from that protection provided to persons and property, save for those exceptions provided for by law.

2.4 (Official/State) language(s)

For purposes of understanding the question of an official language in Belgium we have included the articles that refer to Belgium's regional and community set-up.

Art. 1 Belgium is a Federal State made up of communities and regions.

Art. 2 Belgium is made up of three communities: The French Community, the Flemish Community and the German Community.

Art. 3 Belgium is made up of three regions: The Walloon region, the Flemish region and the Brussels region.

Art. 4 Belgium has four linguistic regions: The French-speaking region, the Dutch-speaking region, the bilingual region of Brussels Capital and the German-speaking region. Each «commune» (county borough) of the Kingdom is part of one of these linguistic regions.

The limits of the four linguistic regions can only be changed or modified by a law adopted by majority vote in each linguistic group in each Chamber, on the condition that the majority of the members of each group are gathered together and from the moment that the total of affirmative votes given by the two linguistic groups is equal to at least two-thirds of the votes expressed.

Art. 30 The use of languages current in Belgium is optional; only the law can rule on this matter, and only for acts of the public authorities and for legal matters.

3 Legislation

3.1 Hierarchy

There are three official languages in Belgium: Dutch, French and German. There is no hierarchy between these languages, but as stated in Article 30 of the Constitution, everybody is free to speak the language of his/her preference. This provision is only applicable for private affairs, and not for public affairs or in court. The administration and the judiciary operate in each community in their own language, while Brussels Capital has a bilingual status and while especially in some Flemish villages close to the French Community facilities are provided for French-speaking citizens.

3.2 Minority rights

The main protection of minority rights is laid down in the Constitution, in federal anti-discrimination legislation and in the Community Decrees on minority rights and integration policy.

3.3 Broadcasting legislation

In the following, we give a systematic overview of the provisions in media law concerning minorities and languages. Where necessary, extra information and, if possible, examples are provided (denoted by the signal: \Rightarrow).¹⁸

FLEMISH MEDIA DECREE OF 25 JANUARY 1995¹⁹

Art. 2 [...]

13° Dutch European productions: productions as meant in 12°, ²⁰ but in the Dutch language;

Art. 8 §1 The VRT carries out the public service task for the Flemish Community, as described in this article. As public service broadcaster, the VRT has the duty to reach as many viewers and listeners as possible with a diversity of programmes which attract the attention of the viewers and listeners and satisfy them.

§2 [...] The programming must be adapted so that it aims at certain sections of the population and age groups, especially at children and youth.

¹⁸ The translations of the decrees and management agreements are the authors' own unofficial translations of the same.

¹⁹ Available at: <http://www2.vlaanderen.be/ned/sites/media/gecoördineerde%20decreten2001.pdf>.

²⁰ Article 2, 12° describes what European productions are. See also Article 102-103 on the European productions quota in Flemish Broadcasting.

§3 The programmes have to contribute to the further development of the identity and diversity of the Flemish culture and of a democratic and tolerant society. The VRT has to contribute through its programmes to form an independent, objective and pluralistic opinion in Flanders. Therefore she has to aim for a leading role in information and culture.

§4 To realise the involvement of as many Flemish people as possible and to secure the credibility of the public service broadcaster, a sufficient number of programmes has to be directed at a large and general public. Besides these general programmes, other programmes will meet specific interests of viewers and listeners. The aimed target group must be large enough and they have to be reached by the programmes concerned [...].

Art. 23 In the programmes, every form of discrimination is excluded on the basis of the Universal Declaration of Human Rights. Programming may not cause discrimination between ideological and philosophical convictions.
[...]

Art. 31 §1 Private radios have to broadcast in Dutch. Derogations can be allowed by the Vlaams Commissariaat voor de Media.

⇒ Until now, only a few private radios have applied for this provision. In Antwerp, there is a multi-ethnic radio, *Radio Multipop*, which broadcasts in different languages. In the province of Limburg (where a lot of – especially Italian – immigrants live who have worked in the mines), *Radio Internazionale* has done this also. In Brussels *FM BSSL* has requested such a permission. This radio station is also subsidised by the Flemish Minister for Brussels Affairs. It is, however, only allowed to broadcast 5% of its total broadcasting time in languages other than Dutch. *FM BSSL* broadcasts French, Italian and Arabic programmes. These are all very small initiatives on a local basis. There are no listenership ratings available concerning these stations.

§2 Private radios have the task of broadcasting a diversity of programmes. These programmes must be made on the responsibility of the private radios. Every form of discrimination is averted in the programme content and broadcasting scheme.

Section 2 – national radios

Art. 38 §1. 4° A Dutch music offer must be secured in the programming.

Section 3 – regional radios

Art. 38^{quater} Regional radios have the task of broadcasting a diversity of programmes, especially concerning regional information, cultural, sports and other events from the region and recreation, with the purpose of improving communication among citizens in their area of broadcasting and contributing to the common social and cultural development of the region.
[...]

Section 4 – local radios

Art. 38^{octies} Local radios have the task of broadcasting a diversity of programmes, especially concerning information from their broadcasting area and recreation, with the

purpose of improving communication in their area of broadcasting among citizens or target audience.

Art. 51 The regional broadcasting company has the duty to provide regional information with the purpose of improving communication among the population of their broadcasting area, that is granted by the Vlaams Commissariaat voor de Media following Art. 52, and to contribute to the overall social and cultural development of the region.

[...]

Within the framework of the job description of the regional broadcasting company as described in the first part, the regional broadcasting company can place broadcasting time at disposal of regional actors, but remains responsible for the broadcast.

⇒ When a linguistic minority is a relevant actor in a broadcasting area, this provision can be applied. No such projects in application of this provision have been developed as far as we know. The regional television stations will be invited however by the Minister of the Media to report on this issue and to consider future initiatives.

Art. 52 §1 The Vlaams Commissariaat voor de Media can recognise eleven regional broadcasting companies for the Flemish Community, evenly spread over the provinces. The bilingual Brussels Capital Region is a special broadcasting area. By defining the broadcasting areas, the Flemish Government shall take sociological specifications and the technical possibilities into account. Within one broadcasting area, the Vlaams Commissariaat voor de Media will grant a licence to only one regional broadcaster [...].

Art. 53 To be recognised and to stay recognised, regional broadcasting companies have to meet the following basic conditions:

6° regional broadcasting companies have to broadcast in Dutch, subject to derogations, which have to be allowed by the Flemish Government;

7° regional broadcasting companies have to broadcast own programmes. In their own programmes they strive for the development of the possibilities of expression of the local population and to encourage their participation.

[...]

Art. 59 Every regional broadcasting company sets up an advisory body. The advisory body guards the independent and pluralistic character of the regional broadcasting company.

While the advisory body is composed, the regional broadcasting company strives for a political, sociological, cultural, philosophical, ethnical and geographical representativeness. The advisory body advises the regional broadcasting company on its discretion about all aspects concerning the programme content and the broadcasting scheme.

Once a year, the advisory body draws up an evaluation report that is sent to the board of directors of the regional broadcasting company and to the Vlaams Commissariaat voor de Media.

At least once a year, the meeting of the advisory body is open for every member of the population who lives within the broadcasting area of the regional broadcasting company.

Art. 61 To be recognised as a target group or theme-television, the social goal must be limited to the broadcasting of programmes for a specific target group or set up around one theme.

⇒ This could be used for broadcasting in other languages, aimed at a linguistic minority. The legislator does not mention a language requirement. The same applies for pay television (Art. 64*bis*) and television services (Art. 70).

Art. 99 The television companies of, or recognised by, the Flemish Community report every year before 31 March to the Vlaams Commissariaat voor de Media on all the broadcasting programmes or services of third parties they transmit [...].

⇒ Again, this could be a possibility for broadcasting programmes of linguistic minorities. Permission to broadcast these programmes is not required. The television company that transmits such a programme only has an obligation to report this to the Vlaams Commissariaat voor de Media. No other content or programme obligations are applicable with regard to these “windows” offered to third parties.

Art. 102 The television company of the Flemish Community and the television companies recognised by the Flemish Community on the basis of Article 41, 1°, 3°, 4° and 5°, strive to spend the biggest part of their broadcasting time that is not spent on news, sports, games, advertising, teletext and teleshopping, on European productions.

An important part of it must be spent on Dutch-language European productions.

The Flemish Government can impose quotas for this purpose.

⇒ Until now, the Flemish Government has not imposed quotas on this topic.

Art. 103 The television company of the Flemish Community and the television companies recognised by the Flemish Community on the basis of article 41, 1°, 3°, 4° and 5°, strive to spend at least 10% of their broadcasting time that is not spent on news, sports, games, advertising, teletext and teleshopping, on European productions made by production companies that are independent from television companies.

[...]

Sufficient space has to be made for recent Dutch-language European productions.

The Flemish government can impose quotas for this purpose.

⇒ Until now, the Flemish Government has not imposed quotas on this topic.

Art. 112 §1 Cable operators *must*²¹ simultaneously and in their whole transmit the following broadcasting programmes via the cable network:

1° All radio and television programmes of the public broadcasting company of the Flemish Community intended for the viewers and listeners in the exploitation area of the cable network as far as the programmes are, among other things, in Dutch;

²¹ Emphasis added.

2° Television broadcasting programmes of the private broadcasting companies for the whole Flemish Community and recognised by the Flemish Community, to the extent that the programmes are, among other things, in Dutch;

3° Television broadcasting programmes of the regional broadcasting companies recognised by the Flemish Community, as far as the programmes are, among other things, in Dutch and taking into account their broadcasting area;

The cable operators who operate a cable network within the area of a regional broadcasting company recognised by the Flemish Community; are obliged to transmit the programmes of the regional broadcasting company free of charges, simultaneously and unabridged, on a proper channel via the head stations who are situated within the broadcasting area and via the head stations who were assigned by virtue of Art. 52, §2. The free character refers to the supply and the transmission of the broadcasting programme.

4° 2 radio and 2 television broadcasting programmes of the public broadcasting company of the French Community and the radio broadcasting programme of the German-speaking Community;

5° 2 radio broadcasting programmes and the television broadcasting programmes of the Dutch public broadcasting company.

§2 Without prejudice to the provisions in §1, the cable operator *may*²² transmit the following broadcasting programmes:

1° Television broadcasting programmes of private broadcasting companies recognised by the Flemish Community which are not applicable under §1;

2° Broadcasting programmes of the private radios recognised by the Flemish Community, taking into account the provisions of the licence, *in casu* the exploitation area;

3° Radio and television broadcasting programmes of the public broadcasting companies of the French and German-speaking communities for the whole Community in question and which are not applicable under §1;

4° Television broadcasting programmes of private television companies of the French and German-speaking communities for the whole Community in question;

Television broadcasting programmes of private pay television companies of those Communities, as far as the Vlaams Commissariaat voor de Media records that in those Communities the private pay television companies of the Flemish Community are transmitted via the cable networks.

5° Radio and television broadcasting programmes that are under the jurisdiction of another member of the European Union;

6° On condition that permission is given by the Vlaams Commissariaat voor de Media, who can impose conditions in this connection, the radio and television broadcasting programmes

²² Emphasis added.

of the broadcasting companies who are under the jurisdiction of a country that is not a member of the European Community;
[...]

8° Cable radio broadcasting programmes which broadcast for the whole Flemish Community;

9° Broadcasting programmes of the private radio for the whole of the Flemish Community.
[...]

⇒ These so-called “may-carry” rules for cable transmission have offered the possibility for cable operators to offer several foreign television programmes such as Italian (RAI), Spanish (TVE) and Turkish (TRT) public broadcasting channels, channels that are rather popular within the respective Italian, Spanish and especially Turkish communities. The cable operators also transmit Dutch (NOS), British (BBC), German (ARD and ZDF), French and Luxembourgish television channels, apart from music channels (MTV and TMF), the National Geographic channel, Arte, CNN and some other international, general or specific broadcasting channels.

§3 The Vlaams Commissariaat voor de Media can, when it is of the opinion that the broadcasting programmes of its own recognised television companies are important, and taking into account the financial, technical and organisational conditions for the use of the network, oblige the cable operator to transmit those broadcasting programmes or can prescribe the conditions under which the broadcasting programmes will be transmitted.

Art. 113 Subject to permission given by the Vlaams Commissariaat voor de Media, who can attach conditions to it, a cable operator may not transmit broadcasting programmes or television services via the cable network other than those from which it is permitted by virtue of this title.
[...]

EXECUTIVE AGREEMENT BETWEEN THE VRT AND THE FLEMISH COMMUNITY (2002 –2006)²³

Art. 1 Task of the VRT

§1. The VRT carries out the public service mission of the Flemish Community and has the task to reach as many media users as possible with a diversity of programmes that arouse interest and meet it. The public service task is fleshed out according to the principles as formulated in the Resolutions of Prague of 8 December 1994 and of Krakow of 16 June 2000 of the Council of Europe.

The institution ensures a qualitative, principled offer in the information, culture, education and entertainment sectors. The institution has to prioritise the broadcasting of informative and cultural programmes that are directed at the viewer and listener.
[...]

²³ *Beheersovereenkomst tussen de VRT en de Vlaamse Gemeenschap 2002-2006* (Executive Agreement between the VRT and the Flemish Community (2002-2006)), 7 June 2001, available at: <http://www.vrt.be/doc/bo0206.doc>. See further, D. Voorhoof, “BE – New Executive Agreement 2002-2006 between VRT and Flemish Government”, *IRIS – Legal Observations of the European Audiovisual Observatory* 2001-9: 7.

§3. The VRT has to fulfil an important role in the further development of the identity and diversity of the Flemish culture and of a democratic and tolerant society, in accordance with Article 8, §3 of the coordinated Media Decrees. With that an appeal can be made to the expertise, creativity and the offer that exists with the different cultural actors in society. This applies for the diverse expressions of art and culture. The VRT will take into account the specific cultural policy objectives and assignments pursued by the Flemish Community, as well as with the policy objectives and assignments pursued by the Flemish Community in the surface of equal opportunities and the minorities policy, without prejudice to the provisions of Art. 1, §§ 1 to 5 of this Agreement.
[...]

Art. 2 Audiovisual quality

§2. Definitions of the aspects of audiovisual quality

One can talk of “*public*” *quality* when the broadcaster meets the assignments as formulated by the governments. These assignments are not only formulated in the coordinated Media Decrees and this Executive Agreement, but are also clearly set out in the Resolutions of Prague and Krakow of the Council of Europe.

In these [documents], the independence of the public broadcasters was confirmed, it was pointed out that they have an important role for the social cohesion of society and that they have a role as developer of pluralistic, innovative, varied and original productions for a large public, taking into account minority groups.
[...]

Ethical quality formulates the moral and ethical demands made on audiovisual programmes. This implies that every form of discrimination is excluded from the programmes, based on the Universal Declaration of Human Rights. The broadcasting corporation has to be a factor for social bonding and stimulate the integration of all individuals, groups and communities.

⇒ The strategic objectives are always translated in performance criteria.

Strategic objective: The institution takes care of a qualitative principled offer in the information, culture, education and entertainment sectors. The content and the combination have to reach as many Flemish people (“Vlamingen”) as possible with a diversity of programmes that arouse interest and satisfy that interest.

This objective is translated into different criteria. One of them is that “the share of Flemish television productions and co-productions will amount to at least 50% of the total programming broadcast between 6.00 pm. and 11.00 pm.”

Art. 4 Performance of radio

§1. Projects for the future

[...]
Radio Vlaanderen Internationaal [Rvi] occupies a specific place. The objective is double: information and service for the Flemish abroad and the promotion of Flanders in the world.
[...]

Rvi will free itself of its exclusive radio-task and present itself as an entrance to information about Flanders via Internet technology. RVi becomes – or integrates itself in – a multimedia, multilingual portal to Flanders with information (sound, images, text) and a well-selected offer of what interests the Flemish abroad or what could interest foreigners.

DECREE OF 14 JULY 1997 CONCERNING THE STATUTE OF THE RTBF²⁴

Art. 3. The public service mission is by priority assured by an offer to the public, especially to the French-speaking people of Belgium, of radio and television programmes, via Hertzian waves, cable, satellite or any other similar technical means which secures access, on conditions respecting the principle of equality between the users, to all generalist and specific programmes of the corporation in accordance with its public service mission.

The corporation defines its offer according to a programme schedule assuring the diversity of programmes, especially including programmes with general, international, European, federal, communal, regional news, programmes aimed at cultural development, permanent education and entertainment, and programmes directed at youth. In the framework of this programme offer, it will schedule in particular works of authors, producers, distributors, composers and artist-performers of the French Community.

The corporation, while defining its programme offer, takes care that the quality and diversity of the programmes permit to secure the largest possible audiences, to be a factor of social cohesion meeting the expectations of socio-cultural minorities, and permit to reflect the different opinions in society, without discrimination, particularly cultural, racial, sexual, ideological, philosophical or religious and without social distinction. These programmes are aimed at stimulating debate and clarifying the democratic stakes, contributing to the reinforcement of social values, especially by ethics based on respect for the human being and the citizen, favouring the integration and reception of foreigners who live in the French Community.

The corporation ensures that it will make a significant creative effort, by favouring the realisation of original productions, and the appreciation of the heritage of the French Community and its regional specificities. It composes its selection of programmes in the first place on the basis of its own productions. The corporation applies itself to the promotion of exchanges and the joint production of programmes with radio and television corporations—preferably public corporations—of European countries and of countries belonging to the Francophony, and to create and to maintain synergies with all the actors of the communication and cultural sectors of the French Community.

[...]

Art. 8 §2. The executive agreement specifies the general principles which regulate the different tasks assured by the corporation, with a view to realising its public service mission, and any event, the requirements which have to be met:

3° to ensure the cultural development, especially by exploiting and promoting the cultural activities of the French Community, his heritage in the Walloon Region, in Brussels and abroad, as well as the appropriate appreciation of regional specificities.

[...]

²⁴ *Décret du 14 juillet 1997 portant statut de la Radio-Télévision belge de la Communauté française (RTBF)*, available at: <http://www.csa.cfwb.be/pdf/Décret%20RTBF.pdf>

Art. 21 §1. In every regional production centre, a regional commission is installed whose task it is to give advice concerning the functioning and the production of regional production centres. Every year, a report is given to the board of directors.

§2. The regional commissions are made up of 12 members appointed by the board of directors from persons representing the political, economic, social, cultural world and the district of the regional production centre in question. More than half of the members may not hold public mandates or be representatives of the public authority or of public services. The appointment of the persons from the political world takes place on the basis of the system of proportional representation of political movements recognised by the French Community.
[...]

EXECUTIVE AGREEMENT BETWEEN THE RTBF AND THE FRENCH COMMUNITY, 2001²⁵

Introduction

The RadioTélévision belge de la Communauté française Wallonie-Bruxelles (RTBF), autonomous public corporation with a cultural character, is the public service broadcaster of the Belgian French Community, and of all those who are connected with it by language or culture. It aims to reach a public as large as possible, by affirming its specificity through programming, based on the following principles:
[...]

- The corporation engages itself in particular to:
 - a) produce, co-produce, acquire, programme and broadcast federative television and radio programmes, both for a large audience and for a specific audience, without discrimination, especially cultural, racial, sexual, ideological, philosophical or religious and without social distinction related in particular to age or spending power. It undertakes to privilege the production and co-production of these programmes;
[...]
 - c) Contribute to the reinforcement of social and civil values, particularly by an ethics based on respect for every human being;
[...]
 - i) Favour the realisation of original productions, in particular those which promote the heritage of the Walloon-Brussels Community and illustrate its regional specificities;
 - j) Broadcast programmes which seek to stimulate the harmonious integration and the reception of foreigners who live in the Walloon-Brussels Community;
 - k) subscribe to the logic of European construction and international Francophony.

Art. 1 The corporation broadcasts:

1. on radio:

a maximum of five stations which offer, separately or cumulatively, generalist, regional and thematic programmes, besides an international station;

²⁵ *Contrat de gestion R.T.B.F.*, 11 October 2001, available at: http://www.millercabinet.org/contrat_gestion.htm.

[...]

Art. 12 The corporation broadcasts, in a volume and according to the programming as determined by the board of directors, promotional, awareness-raising and cultural information programmes. Within this framework, it broadcasts shows as well as programmes about the heritage, the different ways of expressing and creation and about all artistic disciplines: literature, cinema, music, performing arts, expressive arts and fine arts.

The broadcasting of these programmes will as a priority take into account the right to cultural information for a very large audience; without ignoring the rights of specific audiences, especially those with an interest in programmes in local dialects.

Art 13. The corporation broadcasts in particular :

1. On television:

- a) Every year, at least 50 operas, musical spectacles and dance theatre, of which at least 12 are produced in Walloon-Brussels Community. Within this framework, the corporation provides for the *captation* of at least four new shows every year.²⁶
- b) Every year, at least 12 plays which are produced in the Walloon-Brussels Community, of which at least 10 have to be theatrical works. Within this framework, the corporation provides for the *captation* of at least four new plays every year. It pays special attention to theatre in local dialects.

2. On radio :

- a) Programmes reserved for old, classical and contemporary music. Special attention will be paid to programmes about the musical heritage of the Walloon-Brussels Community and about world music.
- b) Every year at least 300 music concerts and operas, of which at least 200 are produced in the Walloon-Brussels Community.
- c) An annual average, for all the musical programmes of its radio stations, except for the two stations with thematic programmes, of at least 40% of non-classical music in French.
- d) An annual average, for all the programming of a station with thematic programmes, of at least 15% of non-classical music in French.
- e) An annual average, for all the musical programmes of the radio stations, except for the two stations with thematic programmes, of at least 10% of all music of musicians, performers or producers who have their domicile, plant or social seat in the Francophone region or the bilingual Brussels Capital Region. In this framework, the corporation broadcasts non-classical music that is subsidised by the Walloon-Brussels Community.

[...]

Art. 17 In accordance with Article 8, 5° of the Decree of 14 July 1997 concerning the statute of the RTBF, the corporation broadcasts quality entertainment programmes.

²⁶ Captation is the French word for the registration of a spectacle or a play, the picking-up or reception of [programmes or signals].

In this framework, the corporation produces and broadcasts at least 20 light entertainment programmes every year, in which it devotes a significant place to French-language songs and the presentation and promotion of artists of the Walloon-Brussels Community.

Art. 20 §1. The corporation broadcasts quality cinematographic and televisual works. It also takes care to put forward every time when possible authors, producers, performers and distributors of the Walloon-Brussels Community who have their domicile, plant or registered office in the Francophone region or the bilingual Brussels Capital Region.
[...]

§2. The corporation undertakes to broadcast, on average for the duration of this agreement, at least 50% of European productions out of its total fiction programming: long and short films, series and television movies.
[...]

Art. 26 In accordance with the modalities determined by it, the board of directors can assign programmes, both on radio and television, to representative associations who are recognised for this goal by the Government. The broadcasting of these programmes is ensured free-of-charge by the corporation.

Art. 27 Insofar as possible, the corporation can, under its authority and in accordance with the modalities it states, place the installation, staff and the necessary materials at the disposal of the representative associations for the programmes that are assigned to them.

Art. 30 In application of Article 24*bis*, §1 of the Decree of 17 July 1997 about the audiovisual and respecting Article 6 of Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as modified, the corporation must ensure, in the whole of its programming, to spend 51% of its broadcasting time, (excluding time spent on news, sporting events, games, advertising, teletext services, and test card) on European works, in which are included original works by authors from the Walloon-Brussels Community.

Art. 31 On television, the corporation ensures in the whole of its programming, to spend at least 33% of its broadcasting time (excluding time spent on news, sporting events, games, advertising, teletext services, and test card) on works, the making, realisation or production of which is carried out by French-speaking professionals.

DECREE OF 17 JULY 1987 ON AUDIOVISUAL MATTERS²⁷

Art. 2 The Government can grant a permit for the creation and functioning of local and community television stations.

Art. 3 In principle, it is only possible for one permit to be granted for a single local and communal television station that can be distributed in the same administrative district.

The Government can derogate from this principle, taking into consideration the area of the arrondissement, its population, audience possibilities and the conveyance of programmes to

²⁷ Available at: <http://www.csa.cfwb.be/pdf/Décret%20audiovisuel.pdf>.

head cable network stations by defining the authorised zones of one or more head cable network stations in a same administrative district.

The Government can grant a permit to exceed the strict limits of the administrative district in accordance with the cultural characteristics common to the population of one or two adjoining districts, provided that no other local and communal television station covers the district in question.

Art. 4 To be granted a permit, a local and communal television station has to:
[...]

2° target in its programming, local news and entertainment programmes, cultural development and permanent education.

Own productions have to account for at least one third of the total broadcasting time, excluding rebroadcasts.

The co-productions managed and controlled by a local or community television station can be assimilated in whole or in part in own production according to the conditions fixed by the Government.

Art. 15 The Government can grant a permit for the creation and functioning of private television stations with a community audience – [to be] named private television stations of the French Community – of which the objective is to broadcast programmes for the whole of the French Community.

Art. 16 To be granted a permit, a private television station has to:
[...]

3° Ensure in its programming at least 20% of own production. The Government can determine a higher percentage;

4° Promote in its programming the cultural heritage of the French Community, in particular the different regional aspects;

5° In accordance with the modalities stated by the Government, conclude for at least 5% of its programming co-production agreements in French or make contracts for external performances with physical or legal persons established in the French-language region, in the bilingual Brussels Capital Region or anywhere else in the European Community. The Government can determine a higher percentage.

In accordance with other modalities stated by the Government, conclude for at least 2% of its programming co-production agreements or make contracts for external performances with physical or legal persons settled in the French-language region, in the bilingual Brussels Capital Region or anywhere else in the European Community. The Government can determine a higher percentage.

[...]

Art. 19 §1. In conformity with Article 4*bis*, §1 of the Decree of 12 December 1997 concerning the statute of la Radio-Télévision belge de la Communauté française (RTBF), the RTBF can only ensure activities of which the objective is the provision of paying television services, as well as associating itself with private partners and, when it arises, with public

partners, with a view to participating in the establishment of companies, or to take a share in the capital of existing companies of which the objective is the provision of such services.

§ 2. The companies in §1 have to:

1° ensure in their programming a portion of at least 5% of own production. This minimum percentage can be increased by the Government, following advice from the Conseil Supérieur de l'Audiovisuel,²⁸ for all bodies concerned.

[...]

Art. 19quinquies Under the conditions and in accordance with the modalities it determines, the Government can authorise the RTBF and the broadcasting organisations of the French Community:

1° to interrupt the broadcasting of their programmes, with a view to broadcasting on the same frequency or channel, whole or parts of television programmes from any other broadcasting organisation recognised by the French Community or by the state where it has its registered office.

2° To insert or accept the insertion of the whole or part of their television programmes, in the whole or part of the television programmes from any other broadcasting organisation recognised by the French Community or by the state where it has its social seat.

The broadcasting organisations concerned determine, in agreement, the conditions on which the whole or part of their television programmes can be broadcast on same frequency or the same channel, and they inform the Government about this.

The programmes or parts of programmes provided by the RTBF or broadcasting organisations of the French Community come solely within the area of responsibility of those organisations.

Art. 20

[...]

§3 The permit can only be granted to legal persons whose registered office and plant is in the French-language region or in the bilingual Brussels Capital Region.

[...]

Art. 22 §1 The operator who has got the authorisation to use a teledistribution network has to transmit at the time of their broadcasting and in their entirety:

- All programmes of the public service broadcaster of the Community;
- The programmes of the local and communal television stations corresponding to the reception areas marked out in agreement with the Government;
- The programmes of the international broadcasting organisations designated by the Government, in which the public service broadcaster of the Community participates;
- The programmes of private television stations of the French Community as defined in Chapter IV of this Decree;
- Two television programmes of the public service broadcaster of the Flemish Community;
- One or more television programmes of the public service broadcaster of the German-speaking Community to the extent that the cable operators who are authorised by this

²⁸ The media authority for the French Community.

Community are obliged to transmit one or more television programmes of the public service broadcaster of the French Community;

- The programmes of the pay television channels as defined in Chapter V of this Decree.
- All the programmes of the broadcasting organisations of the European Community designated by the Government, and who have concluded—after the present disposition came into effect—an agreement with it regarding the promotion of the cultural production in the French Community and in the European Union, providing in particular a direct financial contribution to this. The obligation is limited to the duration of the agreement that has to contain settlement between the broadcasting organisation and the cable operators about the payment of copyright [royalties].
- Other sorts of services as meant in Article 19^{quater}, designated by the government and produced or broadcast by organisations who have concluded an agreement with it regarding the promotion of the cultural production in the French Community and in the European Union, providing in particular a direct financial contribution to this. The obligation is limited to the duration of the agreement.

§1^{bis} The cable operator may transmit at the time of their broadcasting and in their entirety:

- The television programmes of every broadcasting organisation that is established in a Member State of the European Union;
- The television programmes of every broadcasting organisation that is not established in a member State of the European Union but uses a frequency or satellite capacity granted by a Member State of the European Union or an upward link to a satellite that is situated in a Member State of the European Union.

[...]

Art. 23 The operator which is authorised to exploit a radio broadcasting network has the obligation to transmit at the time of their broadcasting and in their entirety, sound programmes from stations of the public service broadcaster of the Community, broadcast in frequency modulation, as well as two radio programmes of the public service broadcaster of the Flemish Community.

It may also transmit at the moment of their broadcasting and in their entirety every Belgian or foreign sound programme, broadcasted by a broadcasting organisation authorised in the State in which it has its social seat. The operator has to reserve at least three channels for private radios to be designated by the Government according to the conditions determined by itself.

Art. 24^{bis} §1 The Radio-Télévision belge de la Communauté française (RTBF) and the other television broadcasting organisations have to ensure to spend, in principle, in their programming a majority proportion of their broadcasting time, except for the time spent on news, sports events, games, advertising, self-promotion, teleshopping or teletext, on European works, in which are included original works from authors of the French Community.

This proportion can never be less than the proportion of works broadcast in 1988, taking into account the broadcasting time of these organisations, except for the time spent on news, sports events, games, advertising, self-promotion, teleshopping or teletext during the same year.

[...]

§3 The proportions envisaged in §1 and §2 will be achieved progressively on the basis of the criteria determined by the Government, after advice from the television organisations concerned and from the Conseil supérieur de l'audiovisuel.

[...]

§5 According to the modalities determined, after advice from the Conseil supérieur de l'audiovisuel, the Government ensures that, for the broadcasting organisations as in §1, the share of original works in French progressively reaches one-third of the broadcasting time as defined in §1.

§6 The present article does not apply to the television broadcasting organisations targeting a local public and which are not part of a national network. It neither applies to television broadcasting organisations that use only a language other than the official languages or those recognised by the States of the European Union and of which the programmes are exclusively meant for *captation* outside the European Union and which are not received directly or indirectly by audiences of one or more Member States.

Art. 26

[...]

§2 The broadcasting organisations meeting the conditions which are determined by the Government by virtue of Article 22, §2, may broadcast commercial advertisements that are more particularly aimed at viewers from the French Community, provided there is an explicit and prior authorisation by the Government.

§3 The Government determines the conditions under which the Radio-Télévision belge de la Communauté française (RTBF) and the broadcasting organisations as meant in §§1 and 2, may insert commercial advertisements in their programmes.

These conditions contain, in particular, the mechanisms according to which these broadcasting organisations must participate in the promotion of the audiovisual cultural production of the French Community and of the Member States of the European Union, in the maintenance and development of the audiovisual pluralism of stations of the French Community and in the maintenance and development of the pluralism in the written press—either opinion or general information—in the French Community.

DECREE OF 24 JULY 1997 CONCERNING THE CONSEIL SUPÉRIEUR DE L'AUDIOVISUEL AND THE PRIVATE RADIO SERVICES OF THE FRENCH COMMUNITY²⁹

Art. 38

[...]

2. The putting out to tender for the attribution of the network authorisation contains in any case, without prejudice to the dispositions expressed in Articles 34 and 35:

1° concerning information:

[...]

²⁹ Available at <http://www.csa.cfwb.be/pdf/Décret%20CSA.pdf> and at http://www.millercabinet.org/decret_24_07_97.htm.

c) The obligation to attend to the cultural promotion, in particular by the free presentation of the main cultural and socio-cultural activities in the service area of the programme;
[...]

2° concerning the programmes:

[...]

b) The obligation to broadcast in French, except for derogations granted by the Government on the advice of the Authorisation and Control Board.³⁰

⇒ This is the same provision as in Flanders and like in Flanders, only a few radio stations have used this possibility. There are, for example, a few radio stations in Brussels that broadcast in languages other than French. *Radio Panik*,³¹ for instance, has broadcasts in Greek, Turkish and Albanian. *Radio Campus*³² has a bilingual (French – Dutch) programme, produced in corporation with *FM BSSL*. It also has programmes in Spanish and Portuguese. However, as in Flanders, these are again very small initiatives with a limited audience.

c) The obligation to broadcast at least 30% of French-language music, of which 15% are musical works of composers, performers and producers of the French Community;

3. The putting out to tender for the attribution of the authorisation and frequencies for independent radios contains in any case, without prejudice to the dispositions expressed in Articles 34 and 35:

1° concerning the programmes:

[...]

b) The obligation to attend to the cultural promotion, in particular by the free presentation of the main cultural and socio-cultural activities in the service area of the programme;

c) The obligation to broadcast in French, except for derogations granted by the Government on the advice of the Authorisation and Control Board.

d) The obligation to broadcast at least 30% of French-language music, of which 15% are musical works of composers, performers and producers of the French Community;

Art. 39 1. Those who responded to the putting out to tender submit a dossier in which they specify the way they intend to fulfil the obligations that are determined in the putting out to tender.

In case of multiple authorisation and attribution applications for identical frequencies or for a same network of frequencies, the Authorisation and Control Board draws up a hierarchy in accordance with the criteria of 2 and 3 in Article 38 and specified in the putting out to tender, and the manner in which the applicant commits itself to meeting the criteria as well as the financial plans as meant in Article 35, 2, 6° and 3, 5°.

2. While drawing up this hierarchy, it will strive to ensure a diversity in the radio landscape and an equilibrium between the different sorts of radio, through the offer of music, culture and information and to give priority to independent radios with a cultural purpose.

³⁰ Collège d'autorisation et de contrôle: this is an organ of the Conseil supérieur de l'audiovisuel.

³¹ See further: <http://www.radiopanik.org>.

³² See further: <http://radiocampus.ulb.ac.be>.

It will take into account the originality and the innovative character of every application and the importance of production that is decentralised in the French Community. It also undertakes to ensure that the whole radio landscape can satisfy the aspirations and demands of all social groups, age groups or other target groups of the French Community. It will also take into account the experience acquired by the radio stations and their possible franchisees as well as their local and regional roots.

*MEDIENDEKRET OF 26 APRIL 1999*³³

Art. 5 The television organisations guarantee in their television programmes:

1. The protection and revaluation of the German language, this among other things, if a relevant proportion of the programmes is broadcast in German;
2. The revaluation the German-language Community, this among other things, if in part programmes and commentaries are broadcast about the German-speaking Community.

The Government determines the proportion of the programmes meant in Part 1, Number 1 and 2 and determines also the additional implementing modalities.

Art. 19 The Government can grant legal persons the permit to transmit other broadcasting services, radio as well as television programmes. These services can be transmitted entirely or partly coded. The reception can be liable to laws.

Art. 22 §1. The cable operators can, as far as they received in accordance with the Law of 30 June 1994 concerning copyrights and neighbouring rights the necessary permissions from the persons entitled:

1. freely transmit the programmes of television organisations from a member state of the European Union or from any other State which is a party to the agreement concerning the European Economic Area, or recognised by a competent Belgian authority.
2. transmit the programmes of television stations recognised by a non-member state of the European Union that are outside the scope of competences of a member state of the European Union or from any other state, which is a party to the agreement concerning the European Economic Area, provided they inform the Government in advance. The Government has 60 days to oppose the transmission of the programmes if these measures seem necessary for the safety of the State, territorial integrity or public safety, the maintenance of order and the prevention of indictable offences, the protection of health and morality, the maintenance of the good reputation and rights of third parties, to prevent the spread of confidential information or to guarantee the authority and impartiality of the judiciary or when there is a charge of violation of the provisions as stated in Article 15.

§2 The cable operators may transmit radio programmes as well as other services like the transmission of programmes from television and radio organisations, provided they inform the government in advance. The Government has 60 days to oppose if these measures seem necessary for the safety of the State, territorial integrity or public safety, the maintenance of order and the prevention of indictable offences, the protection of health and morality, the

³³ This Decree can be found via the website of the Belgian Bulletin of Acts (Moniteur Belge / Belgisch Staatsblad). A link to this site can be found on the website of the Ministry of Justice: <http://just.fgov.be>.

maintenance of the good reputation and rights of third parties, to prevent the spread of confidential information or to guarantee the authority and impartiality of the judiciary or when there is a charge of violation of the provisions as stated in Article 15.

Art. 24 §1 Without prejudice to the provisions of Article 22, the cable operators have to transmit the programmes at the time of their broadcasting and in their entirety:

1. The programmes of the Belgischen Rundfunk- und Fernsehentrums der Deutschsprachigen Gemeinschaft as well as those of the companies with whom the Zentrum has come to a joint venture agreement or in which it participates directly or indirectly;
2. The radio programmes from regional stations that are recognised by the government and those from the television stations recognised by the government;
3. The radio and television programmes from the public service broadcasters from the French Community and the Flemish Community;
4. The programme of the public stations.

§2 In harmony with the cable operators, the government can oblige those to transmit other radio and television stations recognised by the government as well as services recognised by the government like offering the transmission of programmes from television and radio organisations. The sum of the stations to be transmitted in accordance with §1 and §2, part 1 may not be more than half of the available places on the basis of technical capacity.

Art 40 To be granted a permit, private broadcasters have to meet the following conditions:
[...]

4. to guard to reevaluate in the programmes and in accordance with the conditions determined by the government, the culture and artists from the German-speaking Community and neighbouring regions; [...]

Bosnia and Herzegovina

Language policies in broadcasting in Bosnia and Herzegovina are a function of the detailed political arrangements that follow the Dayton Accords. The existence of two Entities and the recognition of three major communities have yielded separate broadcasting policies with an effort at a state-wide plural public entity. Attention to the needs of the major communities may, however, have resulted in less recognition of small linguistic minorities in terms of positive actions. No provisions of existing broadcasting legislation deal directly with the issue of broadcasting in the languages of national minorities, as such.

1 Introduction

Bosnia and Herzegovina (BiH) has an extremely complex legal framework. The distribution of constitutional and governmental power is strongly influenced by nationality. BiH consists of two Entities: The Federation of Bosnia and Herzegovina (FBiH), dominated by Bosniacs and Croats, and the Republic of Srpska (RS), dominated by Serbs.¹ FBiH is divided into 10 federal units called Cantons. BiH is governed by a bicameral Parliamentary Assembly or Skupstina. It consists of the National House of Representatives or *Predstavnicki Dom* (42 seats - 14 Serb, 14 Croat, and 14 Bosniac; members elected by popular vote to serve four-year terms) and the House of Peoples or *Dom Naroda* (15 seats - 5 Bosniac, 5 Croat, 5 Serb; members elected by the Bosniac/Croat Federation's House of Representatives and the Republika Srpska's National Assembly to serve four-year terms).²

1.1 Linguistic topography

The last census was conducted in 1991 by the former Yugoslavia. These data are unreliable, especially considering the major demographic changes—including ethnic cleansing and war migration—that led to the complete transformation of the demographic structure in BiH. Unofficial estimates say that BiH has approximately 3,650,000 citizens.

Table 1: Breakdown of Nationalities • The Federation of Bosnia and Herzegovina
(Total: 2,600,000)

Nationality	Number	Percentage of total
Bosniac	1,900,000	73%
Croat	430,000	16.5%
Serb	200,000	7.6%
Other	70,000	2.7%

Table 2: Breakdown of Nationalities • Republic of Srpska
(Total 1,050,000)

Nationality	Number	Percentage of total
Serb	850,000	80.9%
Bosniac	100,000	9.5%
Croat	50,000	4.8%

¹ Thus a BiH citizen of a particular nationality may be a member of a constituent nationality or a minority depending on where within the territory of the State s/he resides.

² Source: CIA World Factbook 2002.

Other	50,000	4.8%
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These are unofficial estimates³ based on data from the last census, databases of births and deaths, and the UNHCR database of displaced persons and refugees. The next census in BiH will not be held before 2004. As for national minorities, other than Bosniacs, Croats and Serbs, they are not concentrated in one location, but are present in most BiH municipalities, making ethnic language broadcasting more difficult.

1.2 Broadcasting

BiH has three broadcasters that are designed as public broadcasting services. *Radio Televizija Federacije BiH* (RTV FBiH) broadcasts its television programme offer on two channels, and the radio programme offer is broadcast on one frequency. Radio Television Republic of Srpska (RTRS) broadcasts its television programme offer on one channel while the radio programme offer is broadcast on one frequency. A news programme of the Public Broadcasting Service of Bosnia and Herzegovina (PBS) has recently been launched under the name of “BHTV1” and at the moment is broadcasting via the Entities’ frequencies. The news programme is edited in the three languages officially used in BiH. Public radio is in a similar situation. The three networks are *BH Radio 1*, *Radio RS*, and *Radio FBiH*. Unlike PBS, *BH Radio 1* has its own frequency, and has been functional since May 2001.

In addition to these public broadcasting stations, there are dozens of public cantonal, public municipal and private television and radio stations broadcasting in BiH. The majority of these stations do not broadcast in languages of BiH minorities. *Radio Vitez* (founded by the Vitez municipality) has a one-hour show in Roma, and there is also one radio station in the Kotor Varos region that broadcasts children’s programmes in Roma. In 1989, eight of BiH’s 56 radio stations broadcast programmes in Ukrainian, Slovak, Russian, Czech and Roma. State radio and television also carried programmes in the Roma language.

FBiH television and radio broadcast their programming in the Bosnian and Croat languages. The majority of the staff is of Bosnian or Croat nationality. Programmes about minorities appear very rarely—reports about the Roma and Jews are mostly related to their holidays.

1.3 Government policy

RTV FBiH and *RTRS* have been licensed by the Communications Regulatory Agency, while *PBS* broadcasts on Channel 42. Hence the position of minorities is still regulated on the State level with the commitment of the Entities to abide by the highest standards of human rights protection.

2 Constitution⁵

The Constitution requires both BiH and the Entities to protect human rights and freedoms consistently with international standards, and provides enforcement mechanisms for those rights.⁶ It should be noted that, pursuant to Article II(2) of the Constitution, the European

³ The CIA World Factbook offers the following estimates for the ethnic breakdown of Bosnia and Herzegovina for the year 2000: Bosniac, 48%; Serb, 37.1%; Croat, 14.3%; other, 0.5%.

⁴ See further: <http://www.pbsbih.ba>.

⁵ The Constitution of FBiH, adopted on 24 June 1994, is available at: http://www.ohr.int/const/bih-fed/default.asp?content_id=5907. The Constitution of RS is available at: http://www.ohr.int/const/bih-fed/default.asp?content_id=5908.

⁶ BiH Constitution, Articles II and III and Annex I.

Convention for the Protection of Human Rights and Fundamental Freedoms is directly applicable in BiH and has priority over all other law. In addition, Annex I to the Constitution stipulates other international human rights agreements to be applied in BiH, in particular the European Charter for Regional or Minority Languages (1992) and the Framework Convention for the Protection of National Minorities (1994).

2.1 Freedom of expression

BiH CONSTITUTION

Article II: Human Rights and Fundamental Freedoms

3. Enumeration of Rights. All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:

[...]

g) Freedom of thought, conscience, and religion.

h) Freedom of expression.

i) Freedom of peaceful assembly and freedom of association with others. [...]

FBiH Constitution

II. Human Rights and Fundamental Freedoms

A. General

Article 2

The Federation will ensure the application of the highest level of internationally recognized rights and freedoms provided in the documents listed in the Annex to the Constitution. In particular:

All persons within the territory of the Federation shall enjoy the rights:

[...]

(l) To fundamental freedoms: free speech and press; freedom of thought, conscience, and belief; freedom of religion, including private and public worship; freedom of assembly; freedom of association, including to form and belong to and labor unions and the freedom not to associate; and freedom to work; [...]⁷

RS Constitution

Article 25

Freedom of thought and orientation, conscience and conviction, as well as of public expression of opinion shall be guaranteed.

2.2 Broadcasting

The FBiH Constitution delegates broadcasting regulation to the Cantons.

FBiH CONSTITUTION

⁷ Italics in original text.

Article III. Division of Responsibilities between the Federation Government and the Cantons

- (4) The Cantons shall have all responsibility not expressly granted to the Federation Government. They shall have, in particular, responsibility for:
- (i) Making policy concerning radio and television facilities, including decisions concerning regulation and provision thereof.

Article V

- (2) Each Canton may delegate functions concerning education, culture, tourism, local business and charitable activities, and radio and television to a municipality or city in its territory, and is obliged to do so if the majority of population in the municipality or city is other than that of the Canton as a whole.

RS CONSTITUTION

Article 26

Freedom of press and other media of communication shall be guaranteed.
Free establishment of newspaper and publishing houses, publishing of newspapers and public information by other media in accordance with law shall be guaranteed.
Censorship of press and other public information media shall be forbidden.
Public information media shall be obliged to inform the public on time, truthfully and impartially.
The right to correction of incorrect information shall be guaranteed to anyone whose right or legally determined interest has been violated, as well as the right to a compensation for damage arising therefrom.

2.3 Minority rights

BiH CONSTITUTION

Article II (Human Rights and Fundamental Freedoms)

[...]
(4) Non-Discrimination. The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
[...]

FBiH CONSTITUTION

Article I

- (1) Bosniacs and Croats as constituent peoples, along with Others, and citizens of Bosnia and Herzegovina from the territories of the Federation of Bosnia and Herzegovina, in the exercise of their sovereign rights, transform the internal structure of the Federation territories, which has been defined by Annex II to the General

Framework Agreement, so the Federation of Bosnia and Herzegovina is now composed of federal units with equal rights and responsibilities.

II. Human Rights and Fundamental Freedoms

A. General

Article 2

The Federation will ensure the application of the highest level of internationally recognized rights and freedoms provided in the documents listed in the Annex to the Constitution. In particular:

All persons within the territory of the Federation shall enjoy the rights:

[...]

(r) To protection of minorities and vulnerable groups.⁸

RS CONSTITUTION

Article 1

Republika Srpska shall be the State of Serb people and of all its citizens

Article 5

The constitutional arrangement of the Republic shall be based upon the following:

- guarantee and protection of human freedoms and rights in accordance with international standards;
- assurance of national equality;
- social justice;
- market economy;
- multi-party political system;
- parliamentary democracy and division of authority;
- free elections;
- local self-government;
- protection of the rights of ethnic groups and other minorities.

Article 10

Citizens of the Republic shall be equal in their freedoms, rights and duties; they shall be equal before the law and they shall enjoy equal legal protection irrespective of their race, sex, language, national origin, religion, social origin, birth, education, property status, political and other beliefs, social status and other personal attributes.

Article 33

Citizens shall have the right to take part in the conduct of public affairs and have access to public service under equal conditions.

Article 34

⁸ Italics in original text.

Citizens shall be guaranteed freedom of profession of national affiliation and culture and the right to use their language and alphabet.
No one shall be obliged to declare national affiliation.

2.4 (Official/State) language(s)

According to the Constitution of FBiH, the official languages are Bosnian and Croatian, with Latin script as the official alphabet.

FBiH CONSTITUTION

Article 6

- (1) The official languages of the Federation shall be the Bosniac language and the Croatian language. The official script will be the Latin alphabet.
- (2) Other languages may be used as means of communication and instruction.
- (3) Additional languages may be designated as official by a majority vote of each House of the Legislature, including in the House of Peoples a majority of the Bosniac Delegates and a majority of the Croat Delegates.

In RS, the official language is Serb and the script Cyrillic, while other languages may be official in areas inhabited by minorities.

RS CONSTITUTION

Article 7

The Serbian language of iekavian and ekavian dialect and the Cyrillic alphabet shall be in official use in the Republic, while the Latin alphabet shall be used as specified by the law.

In regions inhabited by groups speaking other languages, their languages and alphabet shall also be in official use, as specified by law.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

The protection of the human rights and fundamental freedoms of ethnic minorities is generally under the Entities' authority, and somewhat under the Cantons' authority in FBiH. A small number of laws that address minority rights exist, mostly relating to the use of language in education and legal and administrative proceedings.

RS recently adopted a Law on the Official Use of Language and Script, which regulates, among other things, the use of language in the public media. This law contains a number of restrictions on minorities' rights to use their language and alphabet. For example, Article 4 of the Law states that parties who are in the publishing business can use both the "ijekavica" and "ekavica" pronunciations, but are obligated to use Cyrillic script. Religious communities and

national cultural and education associations are allowed to use both pronunciations and scripts, but they are not authorised to use their own language.

3.2 Broadcasting legislation and minority rights

After many attempts to reconstruct the public broadcasting in BiH, the High Representative has recently imposed a set of laws regulating the field. These include, *inter alia*:

- Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina of 23 May 2002⁹
- Law on the Radio-Television of the Federation of Bosnia and Herzegovina of 24 May 2002¹⁰
- Law on Radio Television of Republika Srpska of 24 May 2002¹¹

As for broadcasting laws, there are no rules that directly support, stimulate or affirm the right of minorities to broadcast in their own language, either through financial exemptions or through tax policies or staff-training. At the same time, there are no rules that directly forbid the exercise of this right.

Due to the lack of provisions in either the FBiH or RS Constitutions on how to regulate media (see *supra*), the Independent Media Commission (IMC) and then the Communications Regulatory Agency (CRA)¹² were established through the Office of the High Representative (OHR),¹³ the lead international civilian institution in BiH responsible for implementing the Dayton Peace Agreement. The CRA combines the competences of the Independent Media Commission and the Telecommunications Regulatory Agency. In this way, the State is empowered to deal with the regulation of telecommunications, broadcasting and spectrum allocation.

The CRA, however, does not focus specifically on minority-language broadcasting and representation in either its structure or Mission Statement, and in general, it does not push for minority languages in broadcasting. For example, the Decision establishing the CRA specifies that a certain number of members of each of these bodies be nationals of Bosnia and Herzegovina, but does not address minority representation. Its structure is set out in that Decision as follows:

DECISION COMBINING THE COMPETENCIES OF THE INDEPENDENT MEDIA COMMISSION AND THE TELECOMMUNICATIONS REGULATORY AGENCY, 2001¹⁴

2.3 The CRA shall have a Council comprised of seven members. The Council shall guide the CRA with regard to strategic issues of policy implementation and will confer with and receive reports from the Chief Executive. The Council shall adopt

⁹ See also the Decision Imposing the Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina of 23 May 2002.

¹⁰ See also the Decision Imposing the Law on Radio-Television of the Federation of Bosnia and Herzegovina of 24 May 2002

¹¹ See also the Decision Imposing the Law on Radio-Television of Republika Srpska of 24 May 2002. All above-mentioned laws and decisions are available on the website of the Office of the High Representative: <http://www.ohr.int>.

¹² See further: <http://www.cra.ba>.

¹³ See further: <http://www.ohr.int>.

¹⁴ 2 March 2001, available at: http://www.ohr.int/decisions/mediadec/default.asp?content_id=75.

codes of practice and rules for broadcasting and telecommunications and shall adopt internal procedural rules. Additionally, the Council shall serve as an appellate body for CRA decisions. All seven members of the Council shall be appointed by the High Representative. There shall be appointed four nationals of Bosnia and Herzegovina and three internationals. [...]

2.4 The CRA shall have an Enforcement Panel comprised of seven members, four nationals of Bosnia and Herzegovina and three internationals, appointed by the High Representative. [...]

COMMUNICATIONS REGULATORY AGENCY MISSION STATEMENT, 2002¹⁵

The Mission Statement does not mention minority-language broadcasting at all.

The Communications Regulatory Agency is fully independent in decision making. It conducts its work at the state level and in accordance with the principles of legality, objectivity, transparency and non-discrimination.

The Communications Regulatory Agency:

- *Promotes* the development of the information society in Bosnia and Herzegovina;
- *Encourages* the development of a market-orientated and competitive communications sector for the benefit of all citizens of Bosnia and Herzegovina;
- *Stimulates* conditions for the development of media freedom, and in so doing helps establish an open society;
- *Enhances* citizens' participation in contribution to the promotion of a professional and responsible media landscape;
- *Protects* the interests of all users and operators of telecommunication services in Bosnia and Herzegovina in terms of non-discriminatory access, quality and prices of services;
- *Encourages* the introduction of new technologies and services according to customer needs;
- *Issues broadcasting and telecommunications licences* in an open and fair manner, promoting the highest level of professionalism and business viability of the broadcasting and telecommunications community in Bosnia and Herzegovina.¹⁶

4 Current developments

The Constitutional Court of BiH recently abolished certain discriminatory regulations from the Entities' Constitutions, including those dealing with language and script, and ordered the Entities to harmonise their Constitutions with the BiH Constitution. This is an ongoing process.

The House of Peoples within the Parliament of BiH has adopted a law on the rights of ethnic minorities in BiH. This law has yet to take effect as it has not been adopted in identical form by the second House. At the same time, the Council of Ministers of BiH made its own proposal for the protection of ethnic minorities. Both texts anticipate the use of minority languages. In addition, one of the conditions that BiH has to fulfil as a result of joining the

¹⁵ 16 July 2002, available at: <http://www.cra.ba/en/about/?cid=659>.

¹⁶ Italics in original text.

Council of Europe is to sign, ratify and fully implement the Framework Convention for the Protection of National Minorities.

In May 2002, the High Representative issued a decision to liquidate *RTV BiH* and transfer its assets, rights and liabilities to Public Broadcasting Service of Bosnia and Herzegovina (*PBS BiH*) or the Radio and Television of the Federation of Bosnia and Herzegovina (*RTV FBiH*).¹⁷

On 21 October 2002, the High Representative passed the Decision (1) Regulating various matters of a transitional nature arising out of previous Decisions of the High Representative and (2) Enacting the Law on Communications of Bosnia and Herzegovina.¹⁸ The Law on Communications was published in the BiH Official Gazette (No 33/02) on 12 November 2002, and has been in force as of 20 November 2002.

¹⁷ See the High Representative's Decision on the Liquidation Procedure to be Applied in the Winding-Up of the Public Enterprise Radio and Television of Bosnia and Herzegovina of 24 May 2002, available at: http://www.ohr.int/decisions/mediadec/default.asp?content_id=8362.

¹⁸ Available at: <http://www.cra.ba/en/legal/?cid=2427>.

Bulgaria

Bulgarian is the official language of the country and its use is promoted by the relevant broadcasting legislation. There are a number of exceptions to the general requirement that the programming of broadcasting operators must be in Bulgarian: when the programmes have educational objectives; when their target-audiences are Bulgarian citizens whose mother tongue is not Bulgarian or listeners/viewers from abroad, or when they amount to retranslations of foreign radio and television programmes. The regulatory scheme is not, however, explicitly restrictive in terms of the extent to which a broader programming approach could be adopted.

Public broadcasters must, through their programme policy, serve the cultural and educational interests of all citizens, regardless of their ethnicity. Further, they are given the task of promoting Bulgarian language and culture, as well as the languages of citizens who are not ethnic Bulgarians. There is also an obligation on public broadcasters to create national and regional programmes and programmes for abroad, including in languages other than Bulgarian. Overall, limited programming directed at linguistic minorities is provided.

1 Introduction

According to the results of the last survey of the Bulgarian population in 2001, 83.6% of the people define themselves as ethnic Bulgarians; 9.5% as Turks; 4.6% as Roma and 1.5% as others (Armenians, Jews, etc.). Thus, less than 15% of the population of Bulgaria has a “mother tongue” other than Bulgarian.¹ There are no legal obstacles to the free use of minorities’ mother tongues in the mass media. However, national broadcasts in non-Bulgarian languages are few in number due to the limited audience and the lack of economic interest from radio and television operators. At present there is only one news broadcast in Turkish on Bulgarian National Television. At the regional level, “Roma TV” has been broadcasting in Roma from the town of Vidin since 1998² and “TV Rodopi” broadcasts evening news in Turkish from the town of Kurdzhali.

¹ According to Decision No. 2/1998 of the Constitutional Court of the Republic of Bulgaria, (the verdicts of this Court are compulsory for all State institutions, legal entities, and citizens), the terms “minority language” and the term “mother tongue” in Article 36(2) of the Constitution do not precisely overlap (see further: <http://www.infotel.bg/juen/resh/summaries98.htm>). According to the Constitution of the Republic of Bulgaria, the term “mother tongue” can be applied to “all persons for whom the Bulgarian language is not their mother tongue.” The minority need not be defined for the use of a mother tongue. It is enough that the mother tongue of the person in question is not Bulgarian. This means that the Constitutional term “mother tongue” has a broader meaning than “minority language” in the sense of the Framework Convention for the Protection of National Minorities. However, in the absence of a legally defined term for “national minority” every comparison will be to some extent hypothetical. Bulgarian legislation does not provide legal definitions for the terms “national minority” and “minority language.” In current Bulgarian law, the term “national minority” is incorporated via Article 14 of the European Convention on Human Rights.

² Founded by the owners of Roma TV, the first Roma radio station (covering Vidin and its surrounding area) was scheduled to start broadcasting on 20 December 2002. News on the hour in both Roma and Bulgarian was planned, along with (at a later stage) special features and programmes in Roma. Because licensing in radio has been suspended until the adoption of a National Radio and TV Operation Strategy, owners often decide to start broadcasting without a licence.

2 Constitution

In the post-totalitarian Constitution of the Republic of Bulgaria of 1991, the leading principle is respect for personal rights and a person's dignity and security (Preamble to the Constitution).³

2.1 Freedom of expression

Article 39

[Expression]

(1) Everyone is entitled to express an opinion or to publicize it through words, written or oral, sound, or image, or in any other way.

(2) This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone.

Article 41

[Information]

(1) Everyone is entitled to seek, obtain, and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health, and morality.

(2) Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others.

2.2 Broadcasting

Article 40

[Press, Media]

(1) The press and the other mass information media are free and shall not be subjected to censorship.

[...]

2.3 Minority rights

The Constitution also guarantees the right of all citizens to develop their own culture according to their beliefs, consistent with the constitutional principle of equality.

Article 54

[Culture, creativity]

(1) Everyone shall have the right to avail himself of the national and universal human cultural values and to develop his own culture in accordance with his ethnic self-identification, which shall be recognized and guaranteed by the law.

Article 6

[Human Dignity, Freedom, Equality]

³ Available at: <http://www.infotel.bg/juen/resh/konbg-en.htm> (EN).

1. All persons are born free and equal in dignity and rights.
2. All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status, or property status.

2.4 (Official/State) language(s)

Article 3
[Language]

Bulgarian is the official language of the Republic of Bulgaria.

Article 36
[Language]

- (1) The study and use of the Bulgarian language is a right and obligation of every Bulgarian citizen.
- (2) Citizens whose mother tongue is not Bulgarian shall have the right to study and use their own language alongside the compulsory study of the Bulgarian language.
- (3) The situations in which only the official language shall be used shall be established by law.

3 Legislation

3.1 General provisions on broadcasting and minority languages

The Radio and Television Law passed in 1998⁴ regulates radio and television broadcasting in Bulgaria. The law elaborates on the constitutional provisions with regard to freedom of speech and the use of languages other than Bulgarian by the mass media. Its provisions reflect the country's international commitments in this field. The law does not restrict the right to broadcast radio and television programmes in languages other than Bulgarian.

RADIO AND TELEVISION LAW OF 1998 (AS AMENDED)

Article 11

- (1) Every opinion can be expressed freely in radio and television broadcasts.
 - (2) The journalists and the creative workers who have concluded contracts with radio and television operators shall not receive instructions and directives for their activity from persons and/or groups other than the bodies of management of the radio and television operators.
- [...]

3.2 Public broadcasting

Radio and Television Law of 1998 (as amended)⁵

⁴ Promulgated: State Gazette No. 138/24.11.1998; Amended - SG No. 60/1999, 81/1999, 79/2000. English-language excerpts from this Law are available at:

http://www.riga.lv/minelres/NationalLegislation/Bulgaria/Bulgaria_RadioTV_excerpts_English.htm.

⁵ Emphasis has been added to some of the provisions of this Law which are quoted *infra*.

Radio and television operators in the Republic of Bulgaria are either public or commercial (Article 4 of the Radio and Television Law). As the main purpose of the commercial outlets is profit, they have greater freedom with regard to the conception of the radio and television programmes they broadcast. The main aim of the public radio and television operators is to satisfy the constitutional right to information. They have the obligation, via their programming, to protect, *inter alia*, the education and culture of all Bulgarian citizens, regardless of their ethnicity. (Article 6(3)(3)).

Article 6

(1) (suppl., SG 79/00) The public radio and television operators are individuals, sole entrepreneurs and corporate bodies with license for radio and television activity whose main purpose is to contribute to the realization of the basic constitutional right to information.

(2) The public radio and television operators are [subject of] the public or private law.

(3) The public radio and television operators shall:

1. submit for broadcasting political, economic, cultural, scientific, educational and other socially important information;
2. provide access to the national and global cultural values and popularize scientific and technical achievements through broadcasting Bulgarian and foreign educational and cultural programs for all age groups;
3. *provide, through their program policy, protection of the national interest, of the all-human cultural values, of national science, and of education and culture for all Bulgarian citizens regardless of their ethnic belonging;*
4. encourage the creation of works by Bulgarian authors;
5. promote the Bulgarian performing arts.

This provision, however, should be viewed in light of Article 12:

Article 12

(1) The programmes of the radio and television operators shall be broadcast in the official language according to the Constitution of the Republic of Bulgaria.

(2) (Amend., SG 79/00) The programmes or individual broadcasts of the radio and television operators can be in other languages when:

1. they are broadcast with an educational purpose;
2. they are designated for Bulgarian citizens whose mother tongue is not Bulgarian;
3. they are designated for listeners or viewers from abroad;
4. foreign radio and television programmes are retranslated;

The Radio and Television Law also has special provisions for Bulgarian National Radio (BNR) and Bulgarian National Television (BNT). They are obliged to provide programmes for all the citizens of Bulgaria, to support the development of, and to raise awareness of, Bulgarian culture and the Bulgarian language, as well as the languages used by citizens whose ethnicity is not Bulgarian (Article 7).

Article 7

The Bulgarian National Radio (BNR) and the Bulgarian National Television (BNT) are national public radio operator and, respectively, national public television operator who:

1. provide programs for all citizens of the Republic of Bulgaria;
2. *assist the development and popularization of Bulgarian culture and Bulgarian language, as well as of the culture and the language of the citizens according to their ethnic belonging;*
3. provide through their programs access to the national and European cultural heritage;
4. include in their programs broadcasts that inform, educate and entertain;
5. apply the new information technologies;
6. (Amend., SG 96/01) relate the various ideas and convictions of the society by plural points of view in each and every news and current events broadcasts on political and economic subjects;
7. contribute to mutual understanding and tolerance in the relations between people;
8. provide the opportunity for citizens to acquire information regarding the official position of the state on important issues of public life.

Article 49 from the section, “Programmes for BNT and BNR”, provides for the creation of national and regional programmes by BNT and BNR intended for audiences abroad, as well as programmes in other languages intended for Bulgarian citizens whose mother tongue is not Bulgarian. The boards of directors of BNT and BNR, respectively, are obliged to define the direction, development, volume and structure of the programmes, including programmes in languages other than Bulgarian.

Article 49

(1) Bulgarian National Radio and the Bulgarian National Television shall create national and regional programs; programs for abroad, including for the Bulgarians abroad for whom the Bulgarian language is not their mother tongue, including in their language.

(2) (amend., SG 79/00) The regional programs shall report events of local importance. They shall be created by regional radio and television centres and shall be designated for both the population of the respective region and for participation in the national radio and television programs.

(3) The territory of the regions, the regional program schemes and the participation of the radio and television centres with their own programs in the creation of the national radio and television programs shall be approved by the management boards of BNR and BNT.

Since BNT and BNR are the national public television and radio operators, their financing, including the financing of programmes designed for minority ethnic groups, comes from the “Radio and Television” Fund, subsidies from the state budget, funds from advertising and sponsorship, as well as funds from additional activity in the field of radio and television (Article 70).

4 Application of legislation

Radio and Television Law of 1998 (as amended)

The Electronic Media Council, established as a result of the last amendment of the Radio and Television Law in 2001, replaced the National Radio and Television Council (NRTC). The Electronic Media Council monitors radio and television operators' compliance with the basic principles of the Law, as well as the guidelines set out by Article 6(3) and Article 7. The Council is an independent, specialised regulatory body. It is governed by Article 33 of the Radio and Television Law.

Article 33

The Council for electronic media shall supervise the activities of the radio and television operators regarding only:

1. (suppl., SG 79/00) the observance of the principles under Article 10, Paragraph 1 and the ratio under Article 10, Paragraphs 2 and 3;
2. the observance of the requirements under Article 6, Paragraph 3 and Article 7;
3. the reporting of the elections for state bodies and bodies of local independent government;
4. (suppl., SG 79/00) the compliance with the requirements regarding commercials and the radio and TV market in the broadcasts of the radio and television operators;
5. the observance of the norms regarding charitable activities and sponsorship;
6. the preservation of secrets stipulated by the law in radio and television activity;
7. (amend., SG 79/00) the observance of the requirements for broadcasts directed to the underage and minors;
8. the information regarding decisions of [the jurisdiction] and the other state bodies in cases stipulated by the law;
9. the protection of the rights of the consumers;
10. the technical quality of the broadcasts and programs;
11. (amend., SG 79/00) the observance of the restrictions stipulated by law, by the licenses and by enacted international agreements to which the Republic of Bulgaria is a party.
12. (New, SG 96/01) compliance with the conditions of the licenses for radio and television activity.

Before being replaced by the Electronic Media Council (as the national regulatory authority for broadcasting), the National Radio and Television Council (NRTC) ruled in May 2000 that the process for licensing radio and television operators should attempt to stimulate programming for minorities.

So far, the only programme broadcast by BNT in a language other than Bulgarian has been a ten-minute Turkish newscast on weekdays. The programme started on 2 October 2000. BNR does not have a programme of this type yet, although a programme in Turkish is under development. "Rodopi" TV (Kurdzhali) and "Roma" TV (Vidin) are commercial television operators with regional programming. "Rodopi" TV broadcasts a five-minute daily news programme in Turkish, financed by the Open Society Foundation. "Roma" TV started broadcasting in 1998 and is targeted entirely at the Roma population in the town of Vidin. "Roma" TV programming airs for nine hours, 30% of which is in the Roma language. Apart from the news broadcasts, there are entertainment, current (affairs) events, and children's programmes. The owner invests the profits from other activities in the television programme. The funds from advertising and sponsorship are close to zero. The programme has been developed and implemented by a Roma team, trained by the IREX ProMedia – Sofia experts. There is another training course planned, reflecting the increased programme volume and the

addition of new team members. “Roma” TV plans first to cover the north-western region of the country, and later stage achieve national coverage.

5 Current developments

The replacement of the NRTC by the Electronic Media Council, discussed above, was followed by various controversies which, although not directly related to the programmes designed for different ethnic groups, nevertheless affected the development of the national public media. Both BNT and BNR experienced a slowdown in the implementation of new programme schemes/schedules and the starting of new programmes, including programmes aimed at different ethnic groups.

The changes introduced to the Radio and Television Law by the parliamentary majority of the National Movement Simeon II in December 2001 led to confusion and a lack of clarity regarding the implementation of the law.

Existing trends point towards the development of regional radio and television programmes in the future, especially in areas with concentrated ethnic populations. The provision of such programmes will require financial and logistical support for the radio or television outlets. At present, such support is provided only by non-governmental organisations.

Canada

The constitutional protection accorded English and French as official languages of Canada is reinforced by national legislation on official languages. Additional national legislation promoting multiculturalism seeks the preservation of languages other than English and French. Canada's struggle to ensure linguistic equality between English- and French-speaking populations has led to the development of two official national broadcasting systems that reflect the goal of providing equality of access to information to both linguistic groups. Furthermore, First Nations' policies have led to approaches that approximate official language status and create special broadcasting opportunities for the aboriginal peoples of Canada. In addition, a policy of providing "ethnic stations" on radio and television is being pursued in order to meet the many linguistic and ethnic group needs within Canada. The national regulatory authority for broadcasting has elaborated clearly delineated regulations for broadcasting stations that are registered as minority-language (i.e., English or French) stations, native/aboriginal stations or ethnic stations. Each set of regulations has its own particular characteristics.

1 Introduction

1.1 Linguistic topography

Canada has two official languages—English and French. However, many other languages are spoken in Canada, reflecting the multicultural nature of the country. According to the 1996 Census of Population¹ conducted by Statistics Canada, the Canadian population of 28,528,135 broke down into linguistic 'mother tongue' groupings as follows: English—16,890,615; French—6,636,660 and other non-official languages—4,598,285. The 1996 Census indicates that Anglophones represent a clear majority in all provinces and territories except for the province of Quebec, where Francophones enjoy a majority presence. Francophones represent a significantly minor presence, according to population figures, in all other provinces and territories. In Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, the Yukon and the Northwest Territories, the population of Allophones (those speaking a language other than English or French)² outnumber Francophones. In the province of Quebec, Allophones outnumber the Anglophone population. The largest populations of Allophones are located in the three largest city centres in Canada: Toronto (Ontario), Montreal (Quebec) and Vancouver (British Columbia).

1.2 Broadcasting

The Canadian Radio-television and Telecommunications Commission (CRTC)³ regulates broadcasting in Canada. The Canadian Broadcasting Corporation (CBC)⁴ is the national

¹ See further: <http://www.statcan.ca/english/census96/dec2/mother.pdf>.

² Statistics Canada provides statistical data on the various non-official language groups in Canada in its 1996 Census. Under the section heading of 'population by mother tongue', there is a listing of 'non-official language' responses by province available in table format. Briefly, the non-official languages that are listed, in decreasing population numbers, are: Chinese, Italian, German, Polish, Spanish, Portuguese, Punjabi, Ukrainian, Arabic, Dutch, Tagalog (Pilipino), Greek, Vietnamese, Cree, Inuktitut (Eskimo) and other non-official languages. See further: <http://www.statcan.ca/english/Pgdb/demo18a.htm>.

³ See further: <http://www.crtc.gc.ca>.

⁴ See further: <http://www.cbc.ca>.

English-language broadcaster for radio and television, and Radio-Canada⁵ is the French-language equivalent. There are also many regional, municipal and university/college broadcasters. The Broadcasting Act (1991),⁶ the Radio Regulations (1986)⁷ and the Television Broadcasting Regulations (1987)⁸ of the CRTC all contain specific references to minority-language broadcasting. This Act and the associated Regulations refer to situations where English or French is a minority language in particular regions of Canada and also refer to standards for First Nations broadcasting and also ethnic broadcasting. The CRTC has clearly delineated regulations for broadcasting stations that are registered as minority-language (i.e., English/French) stations, native stations or ethnic stations. The regulations are intended to promote and protect the language(s) that is (are) being broadcast by ensuring, for example, that a certain percentage of the material broadcast is in the target language.

First Nations broadcasting refers to broadcasting that is conducted by persons belonging to the grouping of Canadian aboriginal peoples. An alternative term in use is 'Native broadcasting'. The CRTC specifically references the aboriginal peoples in the Broadcasting Act. The Act states:

3. (1) It is hereby declared as the broadcasting policy for Canada that
 - (d) the Canadian broadcasting system should
 - (iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and

The CRTC has special application forms, for licensing purposes, for Native radio stations and also for what it refers to as 'exempted native radio stations'. Briefly stated, exempted native radio stations are exempt from licensing requirements and certain of the radio regulations as per a CRTC Order. The purpose of the Order is to avoid unduly burdening certain native radio stations that have limited resources with the necessity of meeting and maintaining certain administrative procedures set out by the CRTC.⁹

2 Constitution

2.1 Freedom of expression

Freedom of expression is guaranteed by the Constitution Act (1982)¹⁰ in Part I, Section 2(b). This Section on fundamental freedoms states:

2. Everyone has the following fundamental freedoms:
[...]

⁵ See further: <http://radio-canada.ca>.

⁶ Available at: <http://www.crtc.gc.ca/eng/LEGAL/BROAD.htm>.

⁷ Available at: <http://www.crtc.gc.ca/eng/LEGAL/Radioreg.htm>.

⁸ Available at: <http://www.crtc.gc.ca/eng/LEGAL/TVREGS.HTM>.

⁹ See Appendix I for an example of an Exemption Order respecting certain native radio and television undertakings.

¹⁰ The Constitution Act, 1982, available at: <http://laws.justice.gc.ca/en/const/index.html>.

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
[...]

Part I (also known as the Canadian Charter of Rights and Freedoms), Section 1 of the Constitution Act delimits the guarantee of the rights and freedoms prescribed in this document by stating that:

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2.2 Broadcasting

There is no mention of broadcasting in the Constitution Act of 1982.

2.3 Minority rights

The Constitution Act also states certain rights that are afforded to minority groups. The groups noted in the Act are French or English linguistic minority groups and the aboriginal peoples of Canada. Part I, Section 23 addresses minority language educational rights. Briefly, the section indicates that a child born of linguistic minority parents is entitled, as far as local resources are available, to be educated in the language of her/his parents.

Part I, Section 25 addresses the rights afforded to the aboriginal peoples of Canada. Briefly, this section states that nothing in the Constitution Act should be seen as a derogation of the rights afforded to the aboriginal peoples in previous treaties and agreements.

Part II of the Constitution Act deals exclusively with the rights of the aboriginal peoples of Canada. Briefly, Part II, Section 35 reaffirms the existing treaty rights of the aboriginal peoples.

2.4 (Official/State) language(s)

Part I of the Constitution Act addresses the issue of the official languages of Canada. Sections 16-20 indicate the nature of equality between these two official languages. These Sections also serve to illustrate the various ways in which Canada functions as an officially bilingual country, both in the ways in which the government and judicial systems are run and in the manner in which government services are made available to the public.

Part I, Sections 16-20. Official Languages of Canada

Official languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.
[...]

Advancement of status and use

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.
[...]

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

THE OFFICIAL LANGUAGES ACT OF 1988

The 1988 Official Languages Act¹¹ both reflects and implements the language rights recognised by the Constitution and the Canadian Charter of Rights and Freedoms. The Official Languages Act states that it is the purpose of the Act to:

[2. (a)] ensure respect for English and French as the official languages of Canada [...]

THE CANADIAN MULTICULTURALISM ACT OF 1985

The 1985 Canadian Multiculturalism Act¹² contains a number of references to linguistic rights and related matters. As stated in the Preamble to the Act:

[...]
AND WHEREAS the Constitution of Canada and the Official Languages Act provide that English and French are the official languages of Canada and neither abrogates nor derogates from any rights or privileges acquired or enjoyed with respect to any other language;

AND WHEREAS Canada is a party to the International Convention on the Elimination of All Forms of Racial Discrimination, which Convention recognizes that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination, and to the International Covenant on Civil and Political Rights, which Covenant provides that persons belonging to ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practise their own religion or to use their own language;

[...]

It is stated in the subsection entitled, ‘Multiculturalism Policy of Canada’, that this Act is intended to:

[...]
3. (1) (i) preserve and enhance the use of languages other than English and French, while strengthening the status and use of the official languages of Canada; and
(j) advance multiculturalism throughout Canada in harmony with the national commitment to the official languages of Canada.

(2) It is further declared to be the policy of the Government of Canada that all federal institutions shall:

[...]

(e) make use, as appropriate, of the language skills and cultural understanding of individuals of all origins; and

¹¹ Available at: <http://lois.justice.gc.ca/en/O-3.01/index.html>.

¹² Available at: <http://lois.justice.gc.ca/en/C-18.7/>.

[...]

5. (1) The Minister shall take such measures as the Minister considers appropriate to implement the multiculturalism policy of Canada and, without limiting the generality of the foregoing, may

[...]

(f) facilitate the acquisition, retention and use of all languages that contribute to the multicultural heritage of Canada; [...]

In official terms, only the two official languages of Canada—English and French—can be referred to in terms of being a minority language. Minority language references in Canada refer to situations where either English or French is numerically overwhelmed by the other official language. In most of Canada, save for the province of Quebec, French is commonly referred to as the minority language. Languages other than French or English are referred to as non-official languages. They do not enjoy the benefits or protections that are afforded to the official languages where they are deemed to have minority linguistic status in a given geographic area. Thus, the Radio Regulations cited below that refer to French should not be viewed as an example that can be applied to non-official languages in Canada.

“Third languages” are defined (for broadcasting purposes) in both the Radio Regulations and the Television Regulations. They both use the same definition: “‘third language program’ means an ethnic program in a language other than English, French, or a language of the Aboriginal peoples of Canada”.

3.2 Broadcasting legislation and minority languages¹³

Broadcasting in Canada is legislated according to the Broadcasting Act of 1991. The governing body responsible for the overall administration of broadcasting in the country is the Canadian Radio-television and Telecommunications Commission (CRTC). The CRTC has instituted Radio Regulations (1986) and Television Broadcasting Regulations (1987).

THE BROADCASTING ACT OF 1991

Part I, Section 3

3. (1) It is hereby declared as the broadcasting policy for Canada that

(b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

(c) English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;

(d) the Canadian broadcasting system should

(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,

(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by

¹³ For the texts of an extensive list of broadcasting-related pieces of legislation, see: <http://www.crtc.gc.ca/eng/statutes.htm>.

offering information and analysis concerning Canada and other countries from a Canadian point of view,

(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and

(k) a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;

(m) the programming provided by the Corporation should

(i) be predominantly and distinctively Canadian,

(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,

(iii) actively contribute to the flow and exchange of cultural expression,

(iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,

(v) strive to be of equivalent quality in English and in French,

(vi) contribute to shared national consciousness and identity,

(viii) reflect the multicultural and multiracial nature of Canada;

(o) programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;

Part II, Section 5 of the Broadcasting Act addresses the issue of regulation:

5. (2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

(a) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;

THE RADIO REGULATIONS OF 1986

The Radio Regulations of 1986 specifically address issues of minority-language stations and ethnic stations. Subsections (5), (10), (13), and (14) of Part I of the Radio Regulations address the minimal target language requirement for minority language stations. When addressing minority language stations, the Radio Regulations refer specifically to French language stations as it is most often the French language that experiences minority status in Canada. These provisions are not applicable to the non-official languages in Canada.

Part I

[Canadian and Musical Content]

(5) Except as otherwise provided under a licensee's condition of licence, an A.M. or F.M. licensee licensed to operate a campus station, commercial station or community station in the French language shall, in a broadcast week, devote 65% or more of its

vocal musical selections from content category 2 to musical selections in the French language broadcast in their entirety.

(10) Except as otherwise provided under a licensee's condition of licence, an A.M. or F.M. licensee licensed to operate a commercial station in the French language shall, between 6:00 a.m. and 6:00 p.m., in any period beginning on Monday of a week and ending on Friday of the same week, devote 55% or more of its vocal musical selections from content category 2 to musical selections in the French language broadcast in their entirety.

(13) Except as otherwise provided under a licensee's condition of licence, an A.M. or F.M. licensee licensed to operate a station in the French language other than a commercial station, community station or campus station shall, in a broadcast week, devote 65% or more of its vocal musical selections from content category 2 to musical selections in the French language and schedule them in a reasonable manner throughout each broadcast day.

(14) Except as otherwise provided under a licensee's condition of licence, an A.M. or F.M. licensee licensed to operate a community station or campus station in the French language shall, in a broadcast week, devote 65% or more of its vocal musical selections from content category 2 to musical selections in the French language.

[...]

Part I, Section 7 of the Radio Regulations addresses regulations governing ethnic programmes.

[Ethnic Programs]

7. (1) The licensee of an ethnic station shall devote not less than 60 per cent of its broadcast week to ethnic programs.

(2) Except as otherwise provided under a licensee's condition of licence, an A.M. or F.M. licensee licensed to operate an ethnic station shall devote not less than 50% of a broadcast week to third language programs.

3) Except as otherwise provided under a condition of licence to devote up to 40% of a broadcast week to third language programs, and subject to subsection (4), an A.M. or F.M. licensee licensed to operate a station other than an ethnic station shall devote not more than 15% of a broadcast week to third language programs.

(4) An A.M. or F.M. licensee licensed to operate a Type A community station, or a campus station broadcasting in a market where there is no ethnic station, may devote not more than 40% of a broadcast week to third language programs.

THE TELEVISION BROADCASTING REGULATIONS OF 1987

The Television Broadcasting Regulations of 1987 also address issues of “ethnic programs”, “ethnic stations” and “third language programs”. Section 4 (9) and (10) of the Television Broadcasting Regulations address “ethnic programming periods.”

[Canadian Programs]

4. (9) Where a licensee is authorized by a condition of licence to devote less than 60 per cent of the ethnic programming period to the broadcasting of Canadian programs and does so, subsection (6) applies to that part of the broadcast year and of any six month period specified in a condition of licence during which the licensee is not broadcasting ethnic programs.

(10) Where a licensee is authorized by a condition of licence to devote less than the required percentage referred to in subsection (7) to the broadcasting of Canadian programs during the evening ethnic programming period and does so, subsection (7) applies only to that portion of the evening broadcast period during which ethnic programs are not broadcast.

Section 9. (1), (1.1), (2) and (3) all address issues concerning ethnic programmes:

9. (1) On or before January 31 of each year, the licensee of an ethnic station shall submit to the Commission, for approval, a calendar that
- (a) covers a period of 52 or 53 weeks;
 - (b) begins on the Monday of the week during which the next broadcast year begins; and
 - (c) is divided into 12 periods of four or five weeks.
- (1.1) The licensee of an ethnic station shall devote to ethnic programs not less than 60 per cent of the total number of hours devoted to broadcasting during the aggregate of the broadcast days in each of the four or five week periods in the calendar approved by the Commission and referred to in subsection (1).
- (2) Except as otherwise provided under a licensee's condition of licence, the licensee of an ethnic station shall devote to third language programs at least 50% of the total number of hours devoted to broadcasting during the aggregate of the broadcast days in each of the four or five week periods in the calendar approved by the Commission and referred to in subsection (1).
- (3) Except as otherwise provided under a licensee's condition of licence to devote up to 40% of a broadcast month to third language programs, the licensee of a station other than an ethnic station shall devote not more than 15% of its broadcast month to third language programs.

4 Application of legislation and other measures affecting language

The CRTC revised its ethnic broadcasting policy in Public Notice CRTC 1999-117.¹⁴ This revision involved consultations with the public on relevant policies.

(From the Summary, paragraph 6):

The review clearly demonstrated that there is a wide demand for ethnic programming. However, limitations on the number of radio and television frequencies available make it impossible to license separate over-the-air stations for each ethnic group. In addition, smaller groups do not have the financial resources to sustain their own services. Therefore, ethnic stations will continue to be required to serve a broad range of ethnic groups within their service area (broad service requirement). However, when setting the number of groups that each station must serve, the Commission will consider the quality of service to each group and the existing level of ethnic programming from all sources in the market. As such, in some cases individual ethnic stations may be permitted to serve fewer groups in some communities.

¹⁴ See further, 'Ethnic Broadcasting Policy', Public Notice CRTC 1999-117 of 16 July 1999, available at: <http://www.crtc.gc.ca/archive/ENG/Notices/1999/Pb99-117.htm>.

There are 13 licensed ethnic radio stations currently broadcasting in Canada¹⁵ and two over-the-air ethnic television stations. According to the CRTC Broadcasting Policy Monitoring Report for 2001:¹⁶

There are currently five Canadian ethnic specialty services offering programming in a variety of languages:

Fairchild TV, a national specialty service, offers programming predominantly in the Cantonese language, complemented by Mandarin. The service is distributed either on a stand-alone basis or as part of a package with other discretionary services, and is available to subscribers for a fee in addition to the basic monthly fee.

Talentvision, a national specialty service, provides programming predominantly in Mandarin, complemented by some programming in the Vietnamese and Korean languages. The service is distributed either on a stand-alone basis or as part of a package with other discretionary services, and is available to subscribers for a fee in addition to the basic monthly fee.

SATV, a national specialty service, serves South Asian communities in 15 South Asian languages, principally Hindi, supplemented by programming in English. The service is provided exclusively as a discretionary service.

Odyssey, a national specialty service, provides predominantly Greek language programming. The service is provided exclusively as a discretionary service.

Telelatino, a national specialty service, provides programs directed to Italian and Hispanic/Spanish audiences. The service is available on a discretionary basis for a fee in addition to the basic monthly fee.

The Commission has authorised 44 ethnic category 2 specialty and pay services in a variety of languages.

A number of the recent measures and activities of the CRTC were taken or pursued in order to further reflect the cultural diversity of Canada.¹⁷

Specifically, the CRTC:

- Renewed its ethnic broadcasting policy in Public Notice CRTC 1999-117¹⁸
- Licensed ethnic radio and television broadcasters dedicated to serving multiple ethnic audiences or cultural groups;¹⁹
- Licensed a range of services dedicated to specific communities, including five analog specialty television services and over 40 digital ethnic specialty services;

¹⁵ CRTC Broadcasting Policy Monitoring Report 2001, available at: <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2001/bpmr.htm#R12>.

¹⁶ CRTC Broadcasting Policy Monitoring Report 2001, available at: <http://www.crtc.gc.ca/eng/publications/reports/PolicyMonitoring/2001/bpmr.htm#T9>.

¹⁷ See further: http://www.crtc.gc.ca/eng/INFO_SHT/b308.htm.

¹⁸ *Op. cit.*

¹⁹ See further: <http://www.crtc.gc.ca/eng/public/lplists/ethnic.htm>.

- Called upon the Canadian Association of Broadcasters (CAB)²⁰ to prepare an action plan for the creation of a task force²¹ to examine, and find ways to improve, the representation of Canada's cultural diversity on television.
- Requires broadcasters to describe their plans and activities for equitable employment and on-air representation²² of women, visible minorities, people with disabilities and Aboriginal persons;
- Revised its Television Policy²³ to ensure that broadcasters accurately reflect the presence of ethnic, cultural and racial minorities and Aboriginal peoples in the communities they service. Broadcasters must now file corporate cultural diversity plans to the CRTC that outline their specific commitments. For examples, read licence renewal decisions for CTV²⁴ and Global.²⁵

Available technology and cost considerations are sometimes responsible for holding up the implementation of legislation concerning broadcasting. The CRTC issued a Public Notice on 10 March 2000 addressing the increasing availability of minority official language services to cable subscribers across the country.²⁶ The CRTC noted that Section 3(1)(k) of the Broadcasting Act (the Act) states: “a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available”. The CRTC noted that until recently, the ability to provide such services had been constrained due to costs associated with upgrading the channel capacity of analogue-based distribution systems. Now, however, due to the introduction of digital distribution technology, there is a greater possibility of increasing the channel capacity. Thus, new language channels can be distributed in areas that were once lacking access to programming, in one of the two official languages, due to new developments in technology and corresponding reductions in associated costs.

Qualitative figures on the number of broadcasting licences in Canada:

Radio, television, cable and satellite: number of licences by province as of 31 March 2002
Total: 4,529²⁷

Ethnic Radio & Television Stations
Total: 19 (all of Canada)²⁸

List of Native Programming Undertakings
Total: 53 (all of Canada)²⁹

²⁰ See further: <http://www.cab-acr.ca>.

²¹ ‘Representation of cultural diversity on television – Creation of an industry/community task force’, Public Notice CRTC 2001-88 of 2 August 2001, available at: <http://www.crtc.gc.ca/archive/ENG/Notices/2001/PB2001-88.htm>.

²² ‘Amendments to the Commission’s Employment Equity Policy’, Public Notice CRTC 1997-34 of 2 April 1997, available at: <http://www.crtc.gc.ca/archive/ENG/Notices/1997/Pb97-34.htm>.

²³ ‘Building on success – a policy framework for Canadian Television’, Public Notice CRTC 1999-97 of 11 June 1999, available at: <http://www.crtc.gc.ca/archive/ENG/Notices/1999/Pb99-97.htm>.

²⁴ ‘Licence renewals for the television stations controlled by CTV’, Decision CRTC 2001-457 of 2 August 2001, available at: <http://www.crtc.gc.ca/archive/ENG/Decisions/2001/DB2001-457.htm>.

²⁵ ‘Licence renewals for the television stations controlled by Global’, Decision CRTC 2001-458 of 2 August 2001, available at: <http://www.crtc.gc.ca/archive/ENG/Decisions/2001/DB2001-458.htm>.

²⁶ <http://www.crtc.gc.ca/archive/eng/Notices/2000/PB2000-38.htm>.

²⁷ See: <http://www.crtc.gc.ca/eng/GENERAL/statistics/tab2002-3.htm>.

²⁸ See: <http://www.crtc.gc.ca/eng/public/lplists/ethnic.htm>.

²⁹ See: <http://www.crtc.gc.ca/eng/public/lplists/native.htm>.

5 Current developments

The 1996 Census of Population conducted by Statistics Canada indicates, *inter alia*, linguistic trends among Canada's population. *The Daily*, a press release of Statistics Canada, published on 2 December 1997,³⁰ summarises the various linguistic developments occurring in the country according to the 1996 Census. The 1996 Census found that of approximately 28.5 million Canadians, approximately 16.9 million spoke English as their mother tongue, while around 6.6 million spoke French and roughly another 4.6 million spoke a non-official language. Anglophones thus accounted for approximately 60% of the population in 1996, whereas Francophones accounted for approximately 24% of the population in that same year.

However, Statistics Canada indicates that the multilingual nature of Canada is growing as a result of immigration. Between 1991 and 1996, there was a 15.1% increase in the number of persons who spoke a mother tongue other than English or French (Allophones). Between 1971 and 1996, the proportion of Allophones increased from 13% of the overall population to nearly 17%. The growth in the proportion of Allophones is considered to be the result of both the number of immigrants as well as the proportion of immigrants whose mother tongue was neither English nor French. This trend was noted in the 1980s and steadily continued during the 1990s. Between 1991 and 1996, almost 80% of the 1,039,000 immigrants who came to Canada reported a non-official language as their mother tongue in the 1996 Census. Statistics Canada notes that immigration has had a profound impact on languages spoken at home. In 1996, approximately 2.8 million people—almost one in every ten Canadians—spoke a language other than French or English, most often at home.

³⁰ '1996 Census: Mother tongue, home language and knowledge of language', *The Daily* (Statistics Canada) of 2 December 1997, available at: <http://www.statcan.ca/Daily/English/971202/d971202.htm>.

Appendix: Canada

PUBLIC NOTICE³¹

Ottawa, 9 July 1998

Public Notice CRTC 1998-62

Exemption Order Respecting Certain Native Radio Undertakings

1. In Public Notice CRTC 1998-4 dated 28 January 1998, and pursuant to section 9(4) of the *Broadcasting Act* (the Act), the Commission proposed to exempt from licensing requirements persons carrying on certain native radio undertakings. The Commission received submissions from four interested parties in response to its proposal: the Association for Indigenous Radio (AIR), a native broadcasting society; Television Northern Canada (TVNC), a native broadcaster; the Canadian Broadcasting Corporation (CBC); and one individual.

3. This Order exempts native radio stations in remote areas from licensing and from most sections of the *Radio Regulations, 1986* (the regulations). The Commission is satisfied that this exemption is the most efficient way to ensure that the broadcasting undertakings falling within the exempted class are able to devote the maximum amount of their limited resources to the provision of service, rather than to the fulfilment of administrative requirements.

APPENDIX A TO PUBLIC NOTICE 1998-62

Exemption Order Respecting Certain Native Radio Undertakings

The Commission, by this order made pursuant to section 9(4) of the *Broadcasting Act* (the Act), exempts those persons carrying on radio programming undertakings of the class defined below from the requirements of Part II of the Act, with the exception of the requirements set out in sections 32 and 34. Such persons shall also be subject to the requirements of sections 3, 3.1, 4 and 5 (broadcasting content) of the *Radio Regulations, 1986*, with the necessary modifications.

I. Purpose

The purpose of these radio programming undertakings is to provide radio programming that reflects the interests and needs of, and is specifically oriented to, the native communities they serve. These undertakings have a distinct role in fostering the development of aboriginal cultures and, where possible, the preservation of ancestral languages. These undertakings broadcast programming in any native Canadian language or in either or both of the two official languages, and make the greatest practicable use of Canadian creative and other resources in the creation and presentation of programming.

II. Description

1. The undertaking is owned and controlled by a not-for-profit organization whose structure provides for board membership by the native population of the region served.

2. The primary purpose of the undertaking is not to provide a religious programming service.

³¹ Available at: <http://www.crtc.gc.ca/archive/eng/Notices/1998/PB98-62.htm>.

3. No commercial AM, FM or digital radio programming undertaking or terrestrial radiocommunication distribution undertaking that distributes the programming of a commercial radio undertaking is licensed to operate in all or in any part of the undertaking's geographical area enclosed within: (a) in the case of a native AM station, the 5 millivolt-per-metre daytime official contour; or (b) in the case of a native FM station, the 500 microvolt-per-metre official contour. For greater clarity, the official contour includes the service contour marked for each transmitter on the map that pertains to that station and that is most recently published under the Department of Industry Act by the Minister of Industry.
4. The Commission would not be prohibited from licensing the undertaking by virtue of any Act of Parliament, of the Direction to the CRTC (*Ineligibility of Non-Canadians*), the Direction to the CRTC (*Ineligibility to Hold Broadcasting Licences*) or of any other direction to the Commission by the Governor in Council.
5. The undertaking's programming complies with the guidelines on gender portrayal set out in the Canadian Association of Broadcasters' (CAB) *Sex-Role Portrayal Code for Television and Radio Programming* and the provisions of the CAB's *Broadcast Code for Advertising to Children* as may be amended from time to time and approved by the Commission.
6. The undertaking meets all technical requirements of the Department of Industry and has acquired all authorizations or certificates prescribed by the Department.

Croatia

In Croatia, the Constitution provides that the Croatian language and Latin script shall have official status. However, other languages may be accepted for official usage at the local level – in accordance with conditions set out in legislation. Legislation bolsters the right of members of national minorities to use their own languages in private, public and official circles (including in the context of their access to public information and activities). Insofar as possible, local and regional units of self-government are expected to finance cultural and other organisations promoting the interests of minorities. Relevant legislation encourages the financing of broadcasting in the languages of minorities, from State, local and regional self-governmental budgets, as well as the involvement of representative bodies of the minorities in decision-making procedures relating to relevant programming, etc. The State is required by law to, *inter alia*, provide material support for the production and broadcast of radio and television programmes in the language and script of ethnic and national communities or minorities. While radio and television concessionaires are required to broadcast in the Croatian language, they are also required to promote understanding for members of national minorities raise awareness of various aspects of their lives. Members of the national minorities themselves should have input into the production of such programmes. Furthermore, broadcasting may take place in Croatian dialects and in the languages of national minorities when this is foreseen by specific programme orientations. However, private-sector broadcasters rarely transmit programmes in the languages of national minorities; this remains largely the preserve of the State/public service broadcaster, which is also required to broadcast in Croatian, save for a few exceptions: films and other audio(visual) materials broadcast in their original (language) version; musical pieces in foreign languages; educational programmes teaching foreign languages and programmes targeting members of national minorities and ethnic communities. The current Programme for Government outlines the policy objective of converting Croatian Television from a state-controlled broadcasting entity into a fully independent, public one. Croatia has also signed bilateral treaties (most notably with Hungary and Italy) which affirm the rights of certain minorities to access broadcasting facilities in their own languages.

1 Introduction

1.1 Linguistic topography

A census was conducted in Croatia in April 2001, but the results have not yet been announced. The previous census was conducted in 1991, according to which the population of Croatia was: 78.1% Croat; 12.16% Serb; 0.91% Muslim; 0.47% Hungarian; 0.47% Slovenian; 0.45% Italian; 0.27% Czech; 0.25% Albanian; 0.20% Montenegrin; 0.14% Roma; 0.13% Macedonian and 0.12% Slovak.¹

The distribution of national minorities is, as a rule, of a regional character. Thus the Serbian minority is most represented in central and eastern Croatia; the Hungarian minority in eastern Croatia; the Italian minority in western Croatia and the Roma in northern Croatia, while Czechs, Slovaks, Ruthenians and Ukrainians are most represented in central and eastern Croatia. In the 20 Croatian counties and in the capital city of Zagreb, the percentage of Croats

¹ Statistical Yearbook of Croatian Counties, State Institute for Statistics, March 1994 (*Statistički ljetopis hrvatskih županija, Državni zavod za statistiku, ožujak 1994*).

ranged from 97.93% in Krapinsko-Zagorska County and 96.48% in Varaždin County, both located in north-western Croatia, to 56.33% in Sisačko-Moslavačka County and 56.75% in Zadarsko-Kninska County, the first located in central Croatia and the second in south-eastern Croatia.

Due to war and social changes, the national, linguistic and social topography of Croatia has changed considerably in the last decade. A large number of Serbs left Croatia, while only a small number has returned from exile. A significant number of young, educated people also left Croatia, including members of national minorities. Croat refugees from Bosnia and Herzegovina settled in Croatia, often in those parts of the country that the Serbs had deserted (eastern, central and south-eastern Croatia). The total number of inhabitants decreased from 4.8 to 4.4 million.²

1.2 Broadcasting

The most important of the broadcast media in Croatia is Croatian Radio Television (*Hrvatska Radio Televizija* – HRT), a public institution that consists of Croatian Television and Croatian Radio.³ Both Croatian Television and Croatian Radio broadcast programmes in the languages of national minorities. However, they are rarely broadcast over most of the 13 private/commercial television stations or the 126 private/commercial radio stations. There are a few exceptions. For instance, *Slavonska Televizija* (Osijek) has a weekly programme in Hungarian; the television stations *Kanal Ri* (Rijeka) and *TV Nova* (Pula) have daily newscasts and other broadcasts in Italian. *Radio Daruvar* (Daruvar) broadcasts a 30-minute daily show in Czech. On Sundays, there are one-hour Czech and Hungarian programmes, alternating weekly. These programmes depend on the willingness of local authorities to finance the production and broadcasting costs and should therefore be considered occasional and irregular. Three private/commercial radio stations in Eastern Slavonia (*Radio Dunav*, Vukovar; *Radio Borovo*, Borovo and *Radio Banska Kosa*, Beli Manastir) are special cases. These stations broadcast their entire daily programme schedule exclusively in Serbian. *Radio Banska Kosa*, Beli Manastir, also broadcasts special programmes in Romany and Hungarian once a week.

Croatian Television (*Hrvatska Televizija* – HTV), in accordance with the specific programme orientation of its three channels (which is proposed, approved, monitored, evaluated and supervised by the Council of the HRT⁴) broadcasts the 55-minute weekly show “Prizma” (Prism), which features items on the work of 16 national minorities whose activities (but not the show “Prizma” itself) are co-financed by the Croatian Government. These minorities include (in alphabetical order): Albanians, Austrians, Bosnians, Czechs, Germans, Hungarians, Italians, Jews, Macedonians, Montenegrins, the Roma, Ruthenians, Serbs, Slovaks, Slovenes and Ukrainians. From time to time, the programme also includes an additional four national minorities whose activities are not co-financed by the Croatian government: Bulgarians, Poles, Roma-Bajashi and Russians. The representation of each minority is not determined by quotas, but rather by its numerical strength, the intensity of its activities and the level of development of its institutions and cultural life, as well as by

² This is the estimate of the Prime Minister. The Programme of the Government of the Republic Of Croatia for the Period 2000–2004, Reports of the Croatian Parliament Nr. 258/2000 (*Program Vlade Republike Hrvatske za razdoblje 2000-2004, Izvješća Hrvatskog sabora br. 258/2000*), available at: <http://www.vlada.hr/english/gov-program1.html> (EN).

³ Articles 1 and 4 of the Law on Croatian Radio-Television, Official Gazette Nr. 17/2001 (*Zakon o Hrvatskoj radioteleviziji, Narodne novine br.17/2001*), available at: http://www.hrt.hr/hrt/zakon010302_eng.html (EN).

⁴ Article 19 of the Law on Croatian Radio-Television, *op. cit.*

professional editorial criteria. The show “Prizma” covers a wide spectrum of topics of significance to national minorities, including political and cultural topics. The show is broadcast at lunch-time on Saturdays on the first channel of HTV (HTV 1) and there is a re-run on the second channel, HTV 2, on Monday mornings. Some of the items shown in “Prizma” are also broadcast by HTV from its eight regional studios in half-hour shows that deal with events of regional importance, but only in the Croatian language.

Croatian Radio (*Hrvatski Radio* – HR), in accordance with the specific programme orientation of its three channels (also supervised by the Council of the HRT), broadcasts a 55-minute programme every week featuring items on the work of national minorities in Croatia. As with “Prizma,” the representation of each minority is not determined exclusively by quotas, but rather by the qualitative factors mentioned above. The programme also covers a wide spectrum of topics of significance for national minorities, including politics and themes of group-specific interest such as culture and heritage, education, publishing and communications, cultural links with the minorities’ countries of origin, etc. Guests on this programme generally speak in their mother tongue. The programme is broadcast on Saturday afternoons on the first channel of HR (HR1). There is also a simultaneous satellite broadcast which ensures that the programme is broadcast throughout virtually the whole of Europe.

In the Croatian radio system there are also regional studios that broadcast regional programmes, some of which are in the languages of national minorities. Croatian Radio–Studio Osijek and Croatian Radio–Studio Vukovar both have a half-hour broadcast in Hungarian every day. During the week, the programme consists of one-third news from the agencies, one-third news of a regional character, and one-third news and information on the life and activities of the Hungarian national minority. On Sundays, the broadcast is less formal and more entertainment-oriented. Broadcasts in Italian have a similar structure. These are broadcast every day from the regional studios of Croatian Radio in Pula and Rijeka. (The studio in Rijeka does not broadcast its Italian programme on Sundays.) Both regional studios have five-minute news updates in Italian every day, Monday through Friday.

1.3 Government policies on broadcasting and minorities

The following statement from the current Programme for Government expresses government policy towards broadcasting:

The Government undertakes to honour the international standards of the freedom of speech and thought. The Government will support the processes of self-regulation and ethical behavior through the establishment of independent structures in charge of such processes; it will support editorial independence and endeavor to promote the expression of all forms of political, social and cultural diversity, and enhance the awareness of the need for tolerance and of the importance of human rights. [...]

Croatian Television must be transformed from a state-controlled to a public, independent and responsible medium which does not serve the propaganda purposes of the party in power. The management and control over Croatian Television as a public medium will be provided for by the establishment of adequate democratically elected bodies involving the public and the profession. [...]

The Government will provide for the audit and publication of the frequency scheme, and for the transparent regulation of rights to their use, so that this national resource can be used optimally at the local, regional and national level and in line with

international rules. The yardsticks and regulations related to the award of licenses for radio and TV stations will be adjusted to democratic practices and will rely exclusively on technical requirements. The establishment and development of private TV broadcasters will be supported in particular.⁵

On minorities, the Programme states:

The protection of minority rights and the promotion of their status will be one of the fundamental political tasks of the Government. [...] The Government is prepared, in cooperation with the international community, to promote the status of minorities in the Republic of Croatia in accordance with its commitments, and it expects support and assistance of the international community in the affirmation of the Croatian approach to the solution of this question.

The Government will take all the required steps to eliminate elements of inequality of Croatian citizens, members of minority communities, present in practice. The Government will also provide for the full enforcement of laws regulating the rights of minorities and assuring their liberties, equality, and preservation and recognition of their minority identity and their participation in public life.⁶

2 Constitution⁷

2.1 Freedom of expression

Article 38

Freedom of thought and expression shall be guaranteed.

Freedom of expression shall specifically include freedom of the press and other media of communication, freedom of speech and public expression, and free establishment of all institutions of public communication.

Censorship shall be forbidden. Journalists shall have the right to freedom of reporting and access to information.

[...]

2.2 Minority rights

Article 14

Everyone in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, color, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics.

All shall be equal before the law.

Article 15

⁵ “Freedom of the Media”, Section 4.1.3, The Programme of the Government of the Republic Of Croatia for the Period 2000–2004, *op. cit.*

⁶ “Minorities”, Section 4.1.4, *ibid.*

⁷ The Constitution of the Republic of Croatia, Official Gazette Nr. 41/2001 (*Ustav Republike Hrvatske, Narodne novine br. 41/2001*), available at <http://www.vlada.hr/ustav.html> (HR) and at http://www.usud.hr/html/the_constitution_of_the_republ.htm (EN).

Members of all national minorities shall have equal rights in the Republic of Croatia.

Equality and protection of the rights of national minorities shall be regulated by the Constitutional Act which shall be adopted in the procedure provided for the organic law.

Besides the general electoral right, the special right of the members of national minorities to elect their representatives into the Croatian Parliament may be provided by law.

Members of all national minorities shall be guaranteed freedom to express their nationality, freedom to use their language and script, and cultural autonomy.

Article 82

Laws (organic laws) which regulate the rights of national minorities shall be passed by the Croatian Parliament by a two-thirds majority vote of all representatives. [...]

2.3 (Official/State) language(s)

Article 12

The Croatian language and the Latin script shall be in official use in the Republic of Croatia.

In individual local units, other languages in the Cyrillic or some other script may be introduced into official use along with the Croatian language and the Latin script under conditions specified by law.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

CONSTITUTIONAL LAW ON THE RIGHTS OF NATIONAL MINORITIES, 2002

Until recently, the major law affecting national minorities and their linguistic rights in Croatia was the Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia.⁸ However, the Croatian Parliament adopted a new Constitutional Law (hereinafter: Law) on the rights of national minorities, at its session on 13 December 2002. By the date of its entry into force, the aforementioned Constitutional Law on human rights and ethnic minorities, had ceased to be effective. The new Law contains important provisions regarding the use of languages of minorities in electronic media broadcasting.

The Law, in its basic provisions (Article 1) draws upon international instruments regarding the use of languages of minorities in electronic media broadcasting, namely: the UN

⁸ The Constitutional Law on Human Rights and Freedoms and the Rights of National and Ethnic Communities or Minorities in the Republic of Croatia, Official Gazette Nr. 105/2000 (*Ustavni zakon o ljudskim pravima i slobodama i o pravima etničkih i nacionalnih zajednica ili manjina u Republici Hrvatskoj*, Narodne novine br. 105/2000).

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the European Charter for Regional or Minority Languages.

In Article 7 of the Law, the Republic of Croatia guarantees the fulfilment of special rights and freedoms of the members of national minorities which they will exercise individually or together with other persons belonging to the same national minority, and when defined by this Constitutional Law or special law, together with the members of other national minorities, and especially:

- use of their language and alphabet, privately and in public use, and official use;
- access to the means of public information and performing the activities of public information (writing and disseminating information) in the language and alphabet used (by the minority).

Under Article 15 of the Law, members of the national minorities can found organisations, trusts and foundations and institutions for performing the activities of public information, cultural, publishing, museum, archive, library and scientific activities, in order to preserve, develop, promote and express their national and cultural identity. Furthermore, the Republic of Croatia, units of local self-government and regional self-government shall, according to their possibilities, finance the activities of the above-mentioned institutions.

Article 16 of the Law, for its part, provides that: associations of the members of national minorities and councils of national minorities and representatives of national minorities can receive from the institutions of the country of the same national identity, and from the legal persons from that country, and without customs duty, newspapers, magazines, books, films, videotapes, audio-carriers, in the limited number of copies, that can be used for their needs, and those can be, without fees, distributed to the members of the national minority.

Article 17 reads:

According to the Law and regulations that regulate the activities of the public information, production and broadcasting of radio and television programmes, upbringing and education, museum, archive, and library activities, protection and preservation of cultural wealth, the conditions shall be created for introduction of all the citizens of the Republic of Croatia, especially children and youth, through the contents of educational work and obligatory and elective educational subjects, to the history, culture and religion of national minorities.

In order to fulfil the provision of Paragraph 1 of this Article, actions shall be taken that shall facilitate the access of members of the national minorities to the media.

Article 18 of the Law includes a number of provisions, including:

- Radio and television stations on the national, regional and local level have the task of promoting understanding towards the members of national minorities, to produce and/or broadcast programming intended to inform the members of the national minorities on the languages of the national minorities, to produce and broadcast programming that incites and improves preservation, development and expression of cultural, religious and other identity of the national minorities, preservation and protection of their cultural goods and tradition, and production and broadcast of the program that will introduce the members of the national minorities in their area with the work and tasks of their national minority

council and representatives of the national minorities. Legal persons that perform the activities of the public information (print, radio and television) shall enable the associations of the members of national minorities and institutions of national minorities to participate in the production of the program intended for the national minorities.

- State budget and budgets of units of local self-government and regional self-government shall provide means for co-financing of radio and television stations in their ownership intended for the national minorities, according to the possibilities and the criteria determined by the Government of the Republic of Croatia, upon the proposition of the Council for national minorities, and local and regional self-government authorities upon the proposition of the council for national minorities.
- In order to fulfil the right of the members of the national minorities to be informed through print, radio and television in the language and alphabet of the national minority, members of the national minorities, their councils of representatives of national minorities, and their associations can perform the activity of public information (publish newspapers, produce and broadcast radio and television programmes and perform activities of news agencies) [...]

Article 31 of the Law provides that Councils of national minorities in the self-government unit, among other, have the right to: give opinion and proposals upon the programme or radio and television stations at local and regional level directed to national minorities and upon the programmes that refer to minority issues.

According to Article 35: Advisory Board for national minorities, that is founded for participation of national minorities in the public life of the Republic of Croatia, and especially for the consideration and proposal of settling and resolving issues regarding the fulfilment and protection of rights and freedoms of national minorities, shall have among other things, the right to give opinions and proposals upon the programme schedule of public radio stations and public television directed at national minorities and upon the treatment of minority issues in the programmes of public radio stations and public television and other media.

LAW ON THE USE OF THE LANGUAGE AND LETTER OF NATIONAL MINORITIES IN THE REPUBLIC OF CROATIA 2000⁹

In addition, Article 20 of the Law on the Use of the Language and Letter of National Minorities in the Republic of Croatia provides that “legal persons who have public authority for performing activities for members of national minorities in mutual direct relations may use only the language and script of the national minority.” This could also apply to legal persons engaged in media.

3.2 Broadcasting legislation

LAW ON PUBLIC INFORMATION 1996 (AS AMENDED)¹⁰

⁹ The Law on the Use of the Language and Letter of National Minorities in the Republic of Croatia, Official Gazette Nr. 51/2000. i 56/2000 (*Zakon o uporabi jezika i pisma nacionalnih manjina u Republici Hrvatskoj, Narodne novine br. 51/2000. i 56/2000*).

Article 7

The State shall stimulate the diversity of the press, radio, television and other public media. [...] The State shall, in accordance with the conditions prescribed by a special law, materially help in the publishing of the press and other public media and the production and broadcast of radio and television programmes in the language and script of ethnic and national communities or minorities and ensure conditions for the issuing of public media intended for the informing of persons with special needs, as well as members of other social and cultural groups.

LAW ON TELECOMMUNICATIONS 1999 (AS AMENDED)¹¹

Article 78

The radio and television concessionaire shall broadcast its programme in the Croatian language [...] [and] promote understanding for the members of national minorities.

Radio and television concessionaire shall broadcast in the standard Croatian language. As an exception [...] the radio and television concessionaire may also broadcast not only in the standard Croatian language but also in Croatian dialects and the languages of national minorities if this is foreseen by the programme orientation.

THE LAW ON CROATIAN RADIO-TELEVISION 2001

The Law on Croatian Radio-Television requires that HRT “produce and/or broadcast programmes intended for informing the members of national minorities in the Republic of Croatia”.¹² The Government and HRT must regulate by contract their mutual rights and obligations with respect to these programmes.¹³

According to Article 9 of the Law, HRT is also responsible for the use of the Croatian language and Latin script in radio and television programmes. Furthermore, the use of the Croatian language is not compulsory in programmes dedicated to informing the members of national minorities and ethnic communities:

Article 9

- (1) HRT shall provide for the use of the Croatian language and Latin script in radio and television programmes.
- (2) HRT shall also promote creativity in the dialects of the Croatian language.
- (3) The use of the Croatian language shall not be mandatory:
 - if films and/or other audio and audiovisual works are broadcast in the original form,
 - if musical pieces with the text partly or entirely written in a foreign language or script are broadcast,

¹⁰ The Law on Public Information, Official Gazette Nr. 83/1996, 143/1998, i 96/2001 (*Zakon o javnom priopćavanju, Narodne novine br. 83/1996., 143/1998, and 96/2001*).

¹¹ The Law on Telecommunications, Official Gazette Nr. 76/1999, 128/1999, 68/2001 and 109/2001 (*Zakon o telekomunikacijama, Narodne novine br. 76/1999., 128/1999., 68/2001. i 109/2001*).

¹² Article 5.2 of the Law on Croatian Radio-Television, *op. cit.*

¹³ Article 5.3, *ibid.*

- if the programmes are partly or entirely intended for the study of foreign languages and scripts.
- (4) The use of the Croatian language shall not be mandatory in the programmes intended for informing the members of national minorities and ethnic communities.

The HRT Council (consisting of 25 members) represents and protects the interests of the television and radio public with respect to the creation and supervision of the programming.¹⁴ National minorities nominate one council member to represent all the national minorities in Croatia.¹⁵

3.3 Facilitative and prohibitive measures

Programmes from Hungary are exempt from customs' duty and taxes.¹⁶ Other than that, no supporting measures exist for minority-language broadcasting, nor is there systematic training of journalists and others who produce programmes in minority languages. However, there are also no obstacles to the independent establishment, ownership and editing of the media that broadcast in minority languages.

There are no restrictions on particular languages, nor on broadcasting from abroad. There are no restrictions on the ownership of individual media broadcasters by members of minorities or foreign citizens. Furthermore, no cases of indirect discrimination (for example, by administrative action) against minorities in the field of minority-language broadcasting have been registered. Some minority languages appear more often in programmes of the public media. As noted earlier, slots are allocated based on numerous qualitative factors rather than on the relative numerical strength of the minority.

3.4 Transfrontier dimension

Croatia is a party to several multilateral and bilateral treaties relevant to linguistic minorities. The House of Representatives of the Croatian Parliament ratified the Framework Convention for the Protection of National Minorities in September 1997.¹⁷ The House of Representatives also ratified the European Charter for Regional or Minority Languages in October 1997.¹⁸ Although not directly related to minority-language media, the European Convention on Transfrontier Television and the Protocol Amending the European Convention on Transfrontier Television, ratified by Croatian Parliament in October 2001,¹⁹ also arguably promote broadcasting in the languages of minorities.

¹⁴ Article 16, *ibid.*

¹⁵ Article 17, *ibid.*

¹⁶ Article 3 of the Law on Ratifying the Agreement Between the Republic of Croatia and the Republic of Hungary on Protection of the Hungarian Minority in the Republic of Croatia and the Croatian Minority in the Republic of Hungary, Official Gazette – International Treaties Nr. 8/1995 (*Zakon o potvrđivanju Sporazuma između Republike Hrvatske i Republike Mađarske o zaštiti mađarske manjine u Republici Hrvatskoj i hrvatske manjine u Republici Mađarskoj, Narodne novine – Međunarodni ugovori br. 8/1995*).

¹⁷ Law on the Ratifying the Framework Convention for the Protection of National Minorities, Official Gazette – International Treaties Nr. 14/1997 (*Zakon o potvrđivanju Okvirne konvencije za zaštitu nacionalnih manjina, Narodne novine – Međunarodni ugovori, br. 14/1997*).

¹⁸ Law on Ratifying the European Charter for Regional or Minority Languages Official Gazette – International Treaties Nr.18/1997 (*Zakon o potvrđivanju Europska povelje o regionalnim i manjinskim jezicima, Narodne novine – Međunarodni ugovori br. 18/1997*).

¹⁹ The Law on Ratifying the European Convention on Transfrontier Television and the Protocol Amending the European Convention on Transfrontier Television, Official Gazette – International Treaties Nr 11/2001. (*Zakon o potvrđivanju Evropske konvencije o prekograničnoj televiziji i Protokola o izmjenama i dopunama Europske konvencije o prekograničnoj televiziji, Narodne novine – Međunarodni ugovori br. 11/2001*).

As for bilateral treaties, the Law on Ratifying the Agreement Between the Republic of Croatia and the Republic of Hungary on Protection of the Hungarian Minority in the Republic of Croatia and the Croatian Minority in the Republic of Hungary states that both countries “recognize the right of both minorities to information by way of print media, radio and television in the mother tongue,” and in accordance with their internal legislation, will, among other things, “encourage the taking over and distribution of radio and television programs of the origin country”.²⁰

According to the Law on Ratifying the Treaty Between the Republic of Croatia and the Italian Republic Concerning Minority Rights, “the Republic of Croatia guarantees full freedom of movement to the members of the Italian Minority from and to the Republic of Slovenia in view of maintaining the close relations existing before 1992. The Republic of Croatia guarantees freedom of work in its territory to Slovenian citizens, members of the Italian Minority, engaged in minority-related activities, such as *Unione Italiana*, other institutions, schools, media, etc.”²¹

4 Application of legislation

There has been an increase in the length of daily broadcasts in minority languages from the regional studios of Croatian Radio. However, the number of time-slots for broadcasting in the languages of minorities remains the same.

The existence until 1990 of a special news magazine programme which used to be broadcast every second week from the regional centres of Croatian Television in the language of the minority most highly represented in any given individual part of Croatia—can be regarded as a stable feature as regards broadcasting in languages of national minorities on Croatian Television. Such a solution has not existed since the beginning of the nineties, however, nor is there the possibility of broadcasting in the languages of minorities outside of the specialised show on HRT which is dedicated to minorities (for example, in the educational, cultural, or entertainment segments of HTV’s programme offer, with subtitles in Croatian).

5 Current developments

In the autumn of 2002, HTV is planning to tape half-hour shows in each of the ten minority languages. One of these shows would be broadcast every week. HTV is also applying for membership of the European Ethnic Broadcasting Association (EEBA).²²

²⁰ Article 5 of the Law on Ratifying the Agreement Between the Republic of Croatia and the Republic of Hungary on Protection of the Hungarian Minority in the Republic of Croatia and the Croatian Minority in the Republic of Hungary, *op. cit.*

²¹ Articles 5 and 6 of the Law on Ratifying the Treaty Between the Republic of Croatia and the Italian Republic Concerning Minority Rights Official Gazette – International Treaties Nr. 15/1997 and 10/1998 (*Zakon o potvrđivanju Ugovora između Republike Hrvatske i Talijanske Republike o pravima manjina*, *Narodne novine – Međunarodni ugovori* br. 15/1997. i 10/1998).

²² The EEBA is an independent international broadcasting association representing more than 400 broadcasting operations of ethnic and national minorities in Europe. Its main *raison d’être* is the promotion of cooperation between ethnic broadcasters. For further information on the EEBA, see: http://minorities.orf.at/kaernten/de/a_z/a_i/eeba.htm (DE) and at <http://www.european-journalists.org/eeba.05.roots.htm> (EN).

A new law is expected on public information, but the draft of this law has not yet been prepared, nor has a contract been signed between the Croatian Government and HRT which would “regulate their mutual rights and obligations with regard to the programmes”²³ designated for “informing the members of national minorities in the Republic of Croatia.”²⁴

²³ Article 5.3 of the Law on Croatian Radio-Television, *op. cit.*

²⁴ Article 5.2.5, *ibid.*

Cyprus

Broadcasting legislation and the Constitution of Cyprus lay out a system where broadcasting time is strictly divided between programmes for the Turkish Cypriot Community and the Greek Community. This language policy grows out of the country's complex history in which two communities, Greek and Turkish, must be considered. Political boundaries, autonomy and separation have not resolved all linguistic issues, so that Cyprus must articulate a policy that is language-sensitive. The Constitution, legislation and the effort to integrate into Europe all are involved in the resolution of these issues.

The government-funded Cyprus Broadcasting Corporation (CYBC) was the sole broadcaster in the country until commercial stations were legally allowed to begin broadcasting in the early 1990s. The CYBC regularly broadcasts shows in Greek, Turkish, Armenian and English. The Constitution guarantees "sound and vision broadcasting" for both the Turkish (no less than 75 hours in a seven-day period) and Greek communities, with certain other provisions. All official broadcasts should be made both in Greek and Turkish. Broadcasting Law 7(I) of 1998 governs the licensing procedure and mandates the "preservation and quality of language" for commercial stations only. The CYBC is charged with conducting "the broadcasting services with impartial attention to the interests and susceptibilities of the different communities and with due regard to the interests of minority communities in the Republic". All citizens of the Republic, regardless of the community or religious group to which they belong, are allowed to apply for a broadcasting licence.

1 Introduction

The island of Cyprus lies divided into a southern and a northern part since the violent events of 1974 following the Turkish military intervention during a *coup d'état* by the Greek junta against the legal authorities of Cyprus. The internationally recognised Republic of Cyprus (RoC) in the south is currently administered by the Greek Cypriots, while the so-called Turkish Republic of Northern Cyprus ("TRNC") entity in the north is recognised only by Turkey.¹ After successive failures of UN-sponsored talks between the two communities since the late 1970s, a comprehensive solution was finally tabled last December.² This complex and detailed 286-page UN document which is available as a basis for a solution, aims at transforming the unitary state of the RoC along with the illegal TRNC into a "bi-communal" entity consisting of two component states, having full control and autonomy within their respective regions, but with enough power to be bestowed on a central federal administration to safeguard the island's unity. The catalyst for this development was the decision at the Copenhagen European Council summit also last December to give the green light to the RoC, along with nine other candidate countries, for EU membership. Although it is not a pre-requisite for accession, a solution is clearly preferred by the EU and time is running short.

¹ See further, Case of Cyprus v. Turkey, Judgment of the European Court of Human Rights of 10 May 2001; Case of Loizidou v. Turkey, Judgment of the European Court of Human Rights of 23 March 1995 and UNSC Resolutions 541/83 and 550/84 (among others). See also: <http://www.mfa.gov.cy/mfa/mfa.nsf/DOCCyQuest?OpenForm>.

² The most recently revised UN document, entitled "Basis for a Comprehensive Settlement of the Cyprus Problem" (26 February 2003), is available at: <http://www.pio.gov.cy>.

1.1 Linguistic topography

Approximately 759,100 persons live legally today on the island of Cyprus, according to the latest official census.³ Of those living in the government-controlled territory of the Republic, 647,100 (or 85% of the total) are the members of the Greek Cypriot community, including some 8,000 Maronites, Armenians and Latins⁴ who opted to join the Greek community, in accordance with Article 2 of the Constitution.⁵ The Maronites who speak an oral Arabic dialect are estimated at around 4,600 persons; the Armenians, 2,500 and the Italian-speaking Latins, 900.⁶ Around 24,200 (or 3%) who also live in the government-controlled areas are foreign residents, mostly Britons, and a multinational work force (Filipino, Sri Lanka, Romanian, etc.).⁷

The prominent Muslim Turkish Cypriot community living in the north of the island are estimated today at about 87,800 (or 12%), including a very tiny percentage of Muslim gypsies (less than 250 persons).⁸

1.2 Broadcasting

The semi-governmental,⁹ non-profit Cyprus Broadcasting Corporation was established under the Cyprus Broadcasting Corporation Act (CYCB Act or Cap. 300A), originally by the colonial administration in the early 1950s, for the purpose mainly of operating by sound or television a public broadcasting service.¹⁰ It was the sole broadcasting service in the Republic of Cyprus until the early 1990s when the first commercial stations started to broadcast legally.¹¹

Currently in the Republic of Cyprus, there are six island-wide and five local television channels; ten island-wide and 30 local radio stations and one news agency. Apart from the

³ These figures are the latest estimations of the Department of Statistics in the Ministry of Finance of the Republic. See further: <http://www.pio.gov.cy/dsr/index.html>.

⁴ As other Christian denominations, the Maronite, Armenian and Latin citizens of the Republic preferred to opt to join the Orthodox Christian Greek community. Their collective relations with the Turkish community vary. The Catholic Christian Maronites settled in Cyprus, arriving from Lebanon in the late 7th or early 8th century. The Catholic Latins are believed to be descendants of the Lusignan (Frankish) and Venetian historic period of Cyprus between 1192-1571. The Orthodox Christian Armenians probably settled on the island in the 6th century.

⁵ See *infra*.

⁶ According to the Department of Statistics of the Ministry of Finance of the Republic of Cyprus, *ibid*.

⁷ The numerical size of the work force is extremely changeable. For example, in the last decade about 8,500 persons from the former Soviet Union and its former satellite countries have settled in the government-controlled areas of the Republic, in their search for work. These figures were obtained from the Ministry of Interior.

⁸ Prior to the summer of 1974, the Turkish Cypriots were about 116,000 but almost 55,000, it is estimated, that they have emigrated to destinations abroad where they had relatives (Britain, Turkey, Australia) due to the adverse economic situation in the north. In addition, the Department of Statistics of the Cyprus Ministry of Finance estimates that there are about 115,000 Turkish settlers and 35,000 Turkish troops who have illegally settled down in the occupied areas.

⁹ In other words, a government-owned institution set up to be run with a certain autonomy, but also being funded by state resources.

¹⁰ CYBC was established by the colonial administration in 1952 as a government department and in 1959, it was re-established as a semi-government organisation. For further information about the CYBC, see: <http://www.cybc.com.cy/>.

¹¹ In the summer of 1974, one of the CYBC's two transmitting stations was taken over by the Turkish army and turned into a relay station beaming programmes originating in Turkey. The structure of the service from the north has been upgraded over the years.

public broadcasting stations, the commercial and printed media do not seem to take any visible measures in regard to the specific needs of the linguistic minorities of the island.¹²

According to the Heads of the CYBC Department for Broadcasting Programmes in the Turkish, Armenian and other languages,¹³ programmes in the Turkish language are broadcast every day between 06.00 – 17.00. During these eleven hours, a specific CYBC Radio Channel broadcasts three news bulletins, regular reviews of the Greek Press in Turkish and a wide variety of informative programmes on political affairs, economy, women's issues, culture, art, musical entertainment and lessons for learning the Greek language. A specific CYBC Television Channel broadcasts a news bulletin in the Turkish language every day and two 15-minute informative programmes also in the Turkish language every Tuesday and Friday. The semi-official Cyprus News Agency started transmitting messages in the Turkish language in 2002.¹⁴

The radio transmission in the Armenian language begins every day at 17.00 and lasts for one hour. These programmes include news bulletins three times per week, women's issues, programmes for children, literature, and Armenian music. On religious holidays, the programmes are adapted accordingly, while on 6 January, the Armenian programme is broadcast on television. From 18.00 until midnight, the radio programmes are transmitted in the English language. For the religious groups of the Maronites¹⁵ and the Latins, there are two short programmes in the Greek language every Saturday afternoon (between 15.30 and 16.00). From 27 June 1999, the CYBC has also been transmitting a special programme for Maronites, entitled "The Voice of Maronites". In addition, a special programme for the Latins started on 13 November 1999.

English-language programmes include three 10-minute news bulletins a day; a live evening magazine; musical entertainment and chat from DJ shows throughout the evening hours. During the summer season, there is an additional early-evening programme for visitors to the island broadcast live in four languages.

2 Constitution¹⁶

The constitutional structure of the Republic of Cyprus, provided by the Zurich Agreement, was based on two main principles. One consisted in the recognition of the existence of two communities, Greek and Turkish, who were given equal treatment. The other principle was aiming at assuring the participation of each community in the exercise of the functions of government and at avoiding the supremacy of the much larger Greek community assuring

¹² The mentioned statistics refer to the situation in the government-controlled territory of the Republic. The subordinate local administration of Turkey in the north has its own media-related infrastructure and legal framework, which are an amalgam of the systems emanating from mainland Turkey and the British colonial times. Especially the linguistic topography is an extension of the one in Turkey. For more information about the regime in the north, see the official website of the Ministry of Foreign Affairs of Turkey and that of the regime in the north of the island: <http://www.mfa.gov.tr/grupa/ad/add/default.htm> and <http://www.trncwashdc.org/>.

¹³ Stated in an interview with the writer.

¹⁴ See further: <http://www.cna.org.cy/>.

¹⁵ The Maronites speak an oral Arab dialect, called Aramaik.

¹⁶ The full text of the Constitution of the Republic of Cyprus and related documents can be found in the following website: <http://www.pio.gov.cy/cygov/constitution/index.htm>.

also a partial administrative autonomy of each community.¹⁷ Such principles permeate the whole constitutional structure.

2.1 Freedom of expression

Article 19, in Part II of the 1960 Cyprus Constitution, entitled “Fundamental Rights and Liberties”, safeguards the right to freedom of speech and expression and defines the legal framework for the functioning of the printed and broadcasting mass media.

Article 19:

- §1 Every person has the right to freedom of speech and expression in any form.
- §2 This right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers. [...]

Sound and vision broadcasting programmes are allotted both for the Greek and Turkish communities under the conditions and during the hours set out in Article 171 of the Constitution.

Article 171

- §1 In sound and vision broadcasting there shall be programs both for the Greek and the Turkish Communities.
- §2 The time allocated to programs for the Turkish Cypriot Community in sound broadcasting shall not be less than 75 hours in a seven-day week, spread to all days of such week in daily normal periods of transmission: Provided that if the total period of transmissions has to be reduced so that the time allotted to programs for the Greek Community should fall below 75 hours in a seven-day week, then the time allotted to programs for the Turkish Community in any such week should be reduced by the same number of hours as that by which the time allotted to programs for the Greek Community is reduced below such hours: Provided further that if the time allotted to programs for the Greek Community is increased above one hundred and forty hours in a seven-day week, then the time allotted to programs for the Turkish Community shall be increased in the ratio of three hours for the Turkish Community to every seven hours for the Greek Community.
- §3 In vision broadcasting there shall be allotted three transmission days to the programs for the Turkish Community of every ten consecutive transmission days and the total time allotted to the programs for the Turkish Community in such ten transmission days shall be in the ratio of three hours to seven hours allotted to programs for the Greek Community in such ten transmission days.
- §4 All official broadcasts in sound and vision shall be made both in Greek and Turkish and shall not be taken into account for the purposes of calculating the time under this Article.

¹⁷ Criton Tornaritis, *Cyprus and its Constitutional and Other Legal Problems*, Nicosia, 1980 and Dennis Campbell, Ed., *Introduction to Cyprus Law*, Yorkhill Law Publishing, New York, 2000, pp. 9-43.

2.2 Minority and linguistic rights¹⁸

According to the provisions of Article 2 of the Cyprus Constitution and subject to certain provisos:

§1 The Greek Community comprises all citizens of the Republic who are of Greek origin and whose mother tongue is Greek or who share the Greek cultural traditions or who are members of the Greek Orthodox Church;

§2 The Turkish Community comprises all citizens of the Republic who are of Turkish origin and whose mother tongue is Turkish or who share the Turkish cultural traditions or who are Muslims;

§3 Citizens of the Republic who do not come within the provisions of paragraph (1) or (2) of this Article shall, within three months of the date of the coming into operation of this Constitution, opt to belong to either the Greek or the Turkish Community as individuals, but, if they belong to a religious group, shall so opt as a religious group¹⁹ and upon such option they shall be deemed to be members of such Community [...].

2.3 (Official/State) language(s)

Article 3

§1 The official languages of the Republic are Greek and Turkish.

§2 Legislative, executive and administrative acts and documents shall be drawn up in both official languages and shall, where under the express provisions of this Constitution promulgation is required, be promulgated by publication in the official gazette of the Republic in both official languages.
[...]

3 Legislation

In addition to the constitutional provisions cited above, relevant press and broadcasting laws regulate the Cyprus mass media. These laws separately address public broadcasting, commercial broadcasting, and the print media. The Broadcasting Law 7(I) of 1998, amended eleven times so far since its introduction, regulates the establishment and operation of commercial radio and television stations.

3.1 Broadcasting and minority languages

Provisions related to linguistic and similar aspects can be found in Article 26 paragraph (1) (d) and (z) of the Broadcasting Law 7 (I) of 1998,²⁰ which include principles governing the programs of the licensees such as “the preservation of the quality of the language” and “the

¹⁸ See also Appendix E on the Rights of Smaller Religious Groups in Cyprus to the draft Treaty of Establishment, 1959 (Document III, Cmnd. 679).

¹⁹ Moreover, Article 109 of the Constitution states that “Each religious group which under the provisions of paragraph 3 of Article 2 has opted to belong to one of the Communities shall have the right to be represented, by elected member or members of such group, in the Communal Chamber of the Community to which such group has opted to belong as shall be provided by a relevant communal law”. Following the withdrawal of the Turkish elements from all of the constitutionally-created organs of the Republic, the religious groups are currently represented in the House of the Representatives.

²⁰ Law consolidating and amending the laws which regulate the establishment, installation and operation of radio and television stations, No. 7 of 1998.

preservation of the national identity and the cultural inheritance of the people of Cyprus”, respectively.

Regarding the preservation of the language, Article 31 of Law 7 (I) of 1998 states that:

The Minister of Education and Culture, to promote the aims of the linguistic policy, when he considers it necessary, with direction towards the [Broadcasting] Authority, can determine, in regard to specific programs or the whole of the programs of the stations, general or specific criteria to govern the quality of the used language and the conformity to the linguistic policy of the Republic.

The Broadcasting Authority is also authorised by Article 30 of Law 7 (I) of 1998 to ensure that the programmes of the stations refrain from discriminating on the basis of differences in “race, gender, religion or nationality”. This non-discrimination policy is also directed towards advertisements (Article 33, paras. (3) (b) and (c)).

3.1.1 Public service broadcasting

Regarding the services provided by the Public Broadcasting Corporation for the needs of the communities and the religious groups of the Republic of Cyprus, Article 19 of the Cyprus Broadcasting Corporation Act or Chapter 300A, states the following:

§1 The Corporation shall conduct the broadcasting services with impartial attention to the interests and susceptibilities of the different communities and with due regard to the interests of minority communities in the Republic.

§2 The Corporation shall operate the broadcasting services in the Greek, Turkish and English languages and any other languages at its discretion and shall at all times keep a fair balance in the allocation of broadcasting hours and other matters between these languages. [...]

Article 20 of the CYBC Act adds that:

§1 The Corporation shall appoint advisory committees to be known as the Greek Program Advisory Committee and the Turkish Program Advisory Committee to advise the Corporation on matters concerning the content of programs broadcast in the Greek and Turkish languages respectively.
[...]

Regarding the News Bulletins, Article 21 of the CYBC Act states:

§1 The Corporation shall include in its programs a service of basic news which shall be transmitted daily as frequently as the Corporation may determine in the Greek, Turkish and English languages, and may in its discretion include additional news bulletins in the Greek and Turkish languages devoted to the communities concerned.

3.1.2 Private sector broadcasting

The Broadcasting Law 7(I) of 1998 and its amending laws²¹ regulate commercial broadcasting without any reference to the needs of the communities or of the religious groups

²¹ These Laws are: 88(I) of 1998, 13(I) of 1999, 159(I) of 1999, 23(I) of 2000, 55(I) of 2000, 134(I) of 2000, 18(I) of 2001, 53(I) of 2001, 65(I) of 2001, 78(I) of 2001 and 126(I) of 2001.

since “every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person [...]”.²²

The law provides mainly for the establishment of the Cyprus Broadcasting Authority, which is an independent administrative body with a wide variety of executive, legislative and judiciary powers.

The Broadcasting Advisory Committee, which advises the Cyprus Broadcasting Authority on the exercise of the latter’s responsibilities, and its composition “reflects the public opinion”, is made up of representatives of 18 government and non-government organisations. It does not, however, include any representatives from the communities or the religious groups of the island. Licences can be granted to legal or natural persons, according to the provisions of the Articles 16 to 25 of Law 7 (I) of 1998. All citizens of the Republic, regardless of the community or religious group to which they belong, are allowed to apply for a broadcasting licence.

Some restrictions on ownership exist for foreign nationals. For example, Article 4 (b) of Law 78 (I) of 2001 states that “a foreign national may acquire, with the permission of the Council of Ministers, shares in a [licensed] company which cannot exceed five percent of the total shareholding of the capital”.

The ownership limit for Cypriot nationals is normally 25% and they do not need the Council of Ministers’ permission. In addition, Article 19 (e) of the Law 7 (I) of 1998 states that “the shareholding capital of a [licensed] company which may be acquired by foreign nationals cannot exceed 25 percent of the total of its shareholding capital.”

3.2 Transfrontier dimension

In their effort to adapt the Republic’s audiovisual policy to that of the European Union, the Cypriot authorities implemented Law 7(I) of 1998, amending the statute concerning the establishment, installation, and operation of radio and television stations. This law incorporated the basic provisions of relevant European Union (EU) legislation.

The public broadcaster, the CYBC, has had its provisions similarly aligned with the relevant EU legislation through amending Law 8(I) of 1998, which also came into force on 30 January of the same year.

The Republic of Cyprus and the EU signed a bilateral agreement establishing cooperation in the audiovisual field, including the Republic’s participation in the then running Media II (signed in Brussels on 9 December 1998) Programme. The Media Plus Programme was signed earlier this year (12 February 2003).

In addition, the Republic of Cyprus has ratified the European Convention on Transfrontier Television of the Council of Europe and the Protocol amending the said Convention with Laws 178 of 1991 and 29(II) of 1999 respectively.

²² See Article 28 of the Constitution.

4 Current developments

Amending Law 84 (I) of 2002 was passed by the House of Representatives in 21 June 2002, allowing EU nationals to set up print and broadcasting outlets in the Republic. The legislation of the Republic of Cyprus has been harmonised with that of the *acquis communautaire* of the EU as part of the process for the accession of Cyprus to the EU.

Czech Republic

The Constitution affirms the right to freedom of expression, the rights of minorities and the precedence of international treaties binding the Czech Republic over national law. In its obligation to provide a balanced programme offer, the public service broadcaster must have due regard for a range of considerations, including the ethnic or national identity and national or cultural identity of all sections of the population. The relevant legislation defines the provision of services to the public in terms which include the development of the cultural identity of national minorities. Adherence to these obligations is monitored by an administrative body known as the Council for Radio and Television Broadcasting. In practice, broadcasting in minority languages on the public service television channels is scant. However, public service radio stations tend to make a significantly better effort in this connection and regional and local broadcasters have a comparatively higher level of programme output tailored to the interests of their respective audiences, including minority communities.

1 Introduction

1.1 Linguistic topography

According to the State Report submitted by the Czech Republic to the Council of Europe in 1999 as one of its obligations under the Framework Convention for the Protection of National Minorities:¹

[1.] [...] After the breakup of the Czechoslovak federation (in 1993), the Czech Republic became almost homogenous as far as the ethnic structure is concerned. Although national/ethnic minorities (hereinafter referred to as national minorities) represent 5.2 percent [data taken from public census in 1991] of the demographic structure of the population, the most numerous is the newly recognized Slovak national minority which is strongly culturally and linguistically integrated. Conversely, assimilation, especially linguistic, has affected the Romany, Slovak, German, Polish and other minorities.² With the exception of numerous, but dispersed, groups of Slovaks and Romanies, no national minority occupies a prominent position in the current ethnic make up of the Czech population. [...]

According to the most recent Population and Housing Census carried out in the Czech Republic on 1 March 2001, 416,104 persons, i.e., 4 % of the population, declared a national identity other than Czech (Czech, Moravian, Silesian). The results of this voluntary and anonymous declaration of national identity are as follows. Currently, the Czech Statistical

¹ State Report submitted by the Czech Republic pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, Doc. ACFC/SR(99) 6, 1 April 1999, available at: <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/StateReports/1999/czech/czech.htm>.

² “6. After the creation of the Czechoslovak federation in 1968, the Parliament adopted a constitutional law on the status of national minorities. The list of national minorities set forth in the law included the German national minority in addition to the already included Hungarian, Polish and Ukrainian (Ruthenian) minorities. Other minorities, including the Romany minority were not recognized. According to the Constitution and the above mentioned law, Czechoslovakia comprised two nations (in the ethnic sense of the word) at that time, i.e., Czechs and Slovaks, and four ethnic groups described with a term other than nation (in Czech *narod*), that is the term ethnic group (in Czech *narodnost*). [...]”

Office is in the process of elaborating the collected data. The elaboration of the data is expected to provide new information about the mother tongue of the population.

See Table 1 for results of the 2001 Census.

Table 1: Population of the Czech Republic according to National Identity (according to the 2001 public Census).

National identity	(absolute number)	%
Czech	9 249 777	90.4
Moravian	380 474	3.7
Silesian	10 878	0.1
Slovak	193 190	1.9
Polish	51 968	0.5
German	39 106	0.4
Romany	11 746	0.1
Hungarian	14 672	0.1
Ukrainian	22 112	0.2
Russian	12 369	0.1
Ruthenian	1 106	0.0
Bulgarian	4 363	0.1
Rumanian	1 238	0.0
Greek	3 219	0.0
Vietnamese	17 462	0.2
Albanian	690	0.0
Croatian	1 585	0.0
Serbian	1 801	0.0
Other	39 477	0.4
Not identified	172 827	1.7
Total	10 230 060	100

More information available on: <http://www.czso.cz/eng/angl.htm>.

1.2 Broadcasting

As regards broadcasting, Czech Television (CT), with two channels, and Czech Radio (CR), with seven channels, remain the only two public broadcasters in the Czech Republic. In 1993 and 1994, two private television operators were awarded licences to broadcast over the whole territory of the Czech Republic. Currently, there is one national public television operator (with two channels), two private television operators, 12 regional television operators, 16 local television operators,³ 10 satellite operators and 11 cable operators.⁴

³ See further: http://www.rrtv.cz/provozovatele_en/tv.html.

⁴ See further: http://www.rrtv.cz/provozovatele_en/satelit.html.

There are no regular programmes for national minorities broadcast in their languages on CT; there is only the irregular broadcasting of documentaries (about different minorities). However, CT currently broadcasts two multicultural programmes: one documentary ('Velký vůz'), one interview-type programme ('Rozhovory' - the programme is presented by two interviewers -one is a member of Romany minority, the other is Chinese) once a fortnight. The programmes are, however, in the Czech language, not in any minority language and their aim is rather to inform the majority population about minorities (not only national minorities). In 2001, CT broadcast the television series, 'Amare Roma', which used a unique method to teach the Romany language and to give majority sections of the population an insight into the life of the Roma and Roma personalities. Until 1999, a programme, 'Romale', targeting a Roma audience, was regularly broadcast (once a fortnight). The amount and duration of the programmes for minorities aired by CT have actually decreased.

The only public radio station is CR which, with its seven channels, covers the whole territory of the Czech Republic, as well as two private operators. There are also about 65 private local radio operators⁵ and three satellite radio operators.⁶ The other operators broadcasting from the Czech Republic are Radio Free Europe-Radio Liberty and the BBC.

At present, CR broadcasts programmes intended specifically for national minorities (members of minorities actively influence the programme content by working as journalists or editors in the Slovak, Romany or other CR departments). For the Slovak minority, there is a weekly 55-minute news bulletin ('Stretnutie'), 60 minutes of entertainment programmes per month, 60 minutes of music programmes per month, as well as other news programmes; for the German and Roma minorities (alternately), 30 minutes of programming daily; in English and Slovak, 180 minutes daily; for the Roma, a weekly 30-minute news bulletin ('O Roma vakaren') and 30 minutes of news and music programmes per month.

Regional CR stations (Regina, Plzen, Ceske Budejovice, Ostrava, Olomouc, Brno, Hradec Kralove, Usti nad Labem) broadcast programmes intended specifically for minorities living in particular regions; each of them broadcasts a 15-minute programme twice a week for the Slovak minority in Slovak and for the Roma minority in Romany and Czech languages. For example, the CR in Ostrava has a Polish Department which broadcasts different programmes for the Polish minority in the Polish language for about 120 minutes daily. There is also a 15-minute programme every week which is intended alternately for the Vietnamese, Ukrainian and Hungarian minorities. The Prague Jewish Community has a 30-minute news, cultural and religious programme every other week.⁷

2 Constitution

The Constitution of the Czech Republic⁸ came into effect on 1 January 1993, after the break-up of the Czechoslovak Federation. The Constitution protects freedom of expression, broadcasting freedom and minority rights in its first part. According to Article 3 of the Constitution, the Charter of Fundamental Rights and Freedoms is an integral part of the

⁵ See further: http://www.rrtv.cz/provozovatele_en/tv.html.

⁶ See further: http://www.rrtv.cz/provozovatele_en/satelit.html.

⁷ All of the cited information was taken from the official document (*Vysilani ceskeho rozhlasu pro narodnostni mensiny – strucny prehled*), which was elaborated by the Programme Director, Josef Havel.

⁸ Constitutional Act of the Czech National Council of 16 December 1992, available at <http://www.psp.cz/docs/laws/constitution.html> (CZ) and <http://www.psp.cz/cgi-bin/eng/docs/laws/constitution.html> (EN).

constitutional system of the Czech Republic.⁹ International instruments, ratified and promulgated by the Czech Republic, also acquired a status superior to that enjoyed by domestic law, by virtue of Article 10.¹⁰

2.1 Freedom of expression

CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS

Article 17

- (1) Freedom of expression and the right to information are guaranteed.
- (2) Everybody has the right to express freely his or her opinion by word, in writing, in the press, in pictures or in any other form, as well as freely to seek, receive and disseminate ideas and information irrespective of the frontiers of the State.
- (3) Censorship is not permitted.
- (4) The freedom of expression and the right to seek and disseminate information may be limited by law in the case of measures essential in a democratic society for protecting the rights and freedoms of others, the security of the State, public security, public health, and morality.
- (5) Organs of the State and of local self-government shall provide in an appropriate manner information on their activity. The conditions and the form of implementation of this duty shall be set by law.

2.2 Minority rights

Chapter 3 (Articles 24 and 25) of the Charter of Fundamental Rights and Freedoms entitled 'Rights of National and Ethnic Minorities' and Article 6 of the Constitutional Act address minority rights.

CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS

Article 24

The national or ethnic identity of any individual shall not be used to his or her detriment.

Article 25

- (1) Citizens who constitute national or ethnic minorities are guaranteed all- round development, in particular the right to develop with other members of the minority their own culture, the right to disseminate and receive information in their language, and the right to associate in ethnic associations. Detailed provisions in this respect shall be set by law.

[...]

CONSTITUTIONAL ACT

Article 6

Political decisions shall proceed from the will of the majority, expressed by free vote. Majority decisions shall respect protection of minorities.

⁹ Available at: <http://www.psp.cz/cgi-bin/eng/docs/laws/charter.html> (EN).

¹⁰ Article 10: "Ratified and promulgated international treaties on human rights and fundamental freedoms, whereby the Czech Republic is obligated, shall be directly binding and shall have precedence over the law."

2.3 (Official/State) language(s)

The Constitution of the Czech Republic does not contain any specific mention of an official or state language. It should also be noted that no law of the Czech Republic defines the official language or the language of communication. However, the law specifically provides for the use of the Czech language in certain situations (eg. under the Defence Act and concerning registries and the judiciary).

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

ACT ON RIGHTS OF MEMBERS OF NATIONAL MINORITIES AND AMENDMENT OF SOME ACTS, 2001

The protection of the rights of national minorities in the Czech Republic is enshrined in the Constitution of the Czech Republic, most notably in the relevant provisions of the Charter of Fundamental Rights and Freedoms (see *supra*).¹¹ On 10 July 2001, the Czech Parliament adopted Act No. 273/2001 Coll., on rights of members of national minorities and amendment of some acts.¹² The definitional demarcation provided by this piece of legislation can be found in its Article 2.¹³ The Act then proceeds, *inter alia*, to safeguard the rights of members of national minorities to develop their culture and to receive and impart information in their own languages:

Article 12 - Right of the development of culture of members of national minorities

1. Members of national minorities have the right to maintain and develop their language, culture and traditions and the right to respect for them.
2. The state creates preconditions for maintaining and developing culture, traditions and languages of members of national minorities living traditionally and for a long time on the territory of the Czech Republic; it supports especially such programs which are specialized in theatres, museums, galleries, libraries, documentation and other activities of members of national minorities. For this purpose it provides grants from the Budget; conditions and the way of providing grants are determined in a government decree.

Article 13 - Right of spreading and receiving information in the language of a national minority

1. Members of national minorities have the right to spread and receive information in their language.

¹¹ The Charter accords persons belonging to minorities both collective and individual rights. It differentiates between national and ethnic minorities without defining this difference.

¹² Available at: http://wtd.vlada.cz/files/rvk/rnm/zakon/menszakon_en.pdf (EN).

¹³ Article 2 reads: “(1) A national minority is a community of citizens of the Czech Republic who live on the territory of the present Czech Republic and as a rule differ from other citizens by their common ethnic origin, language, culture, and traditions; they represent a minority of citizens and at the same time they show their will to be considered a national minority for the purpose of common efforts to preserve and develop their own identity, language and culture and at the same time express and preserve interests of their community which has been formed during history. (2) The member of a national minority is a citizen of the Czech Republic who professes other than Czech ethnic origin and wishes to be considered a member of a national minority in common with the others who profess the same ethnic origin.”

2. For the purpose of maintaining and developing culture, traditions and languages the state supports publishing periodical and non-periodical printed matter and radio and television broadcasting in the languages of national minorities living traditionally and for a long time on the territory of the Czech Republic. For this purpose it provides grants from the Budget; conditions and the way of providing grants are determined by a government decree.
3. Creating and disseminating radio and television broadcasting related to members of national minorities and implemented by legitimate operators are determined by special legal regulations.

3.2 Broadcasting legislation

Persons belonging to national minorities have freedom of access to the media in the Czech Republic. The right to impart and receive information is based on generally binding laws. At the same time, broadcasters have the right, guaranteed by law, to broadcast their programmes freely and independently and interference with these broadcasts (including those of CT and CR) is only permissible on the basis of the law and within its limits. The Czech authorities are therefore in theory unable to influence the programme content or composition of radio and television broadcasters and are unable to influence, specifically stipulate or order CR or CT to devote a greater amount of time to broadcasts for minorities.

CT is nevertheless obliged to act in accordance with Law No. 483/1991 Coll.,¹⁴ on Czech Television, as subsequently amended (in particular by Law No. 39/2001 Coll.¹⁵), which states that among the main tasks of CT is the creation and transmission of programmes and the provision of a balanced selection of programmes to all sections of the population with regard, *inter alia*, to their ethnic or national background and national identity and the development of the cultural identity of the population of the Czech Republic, including members of national and ethnic minorities. Access of national minorities to the media is similarly guaranteed by the Law on Czech Radio (Law No. 484/1991 Coll.¹⁶), which *inter alia* defines the provision of services to the public in the area of development of the cultural identity of national minorities in the Czech Republic.

Law No. 231/2001 Coll.,¹⁷ on radio and television broadcasting operation and on changes of other acts¹⁸ deals, *inter alia*, with the rights and duties concerning programme content. As well as insisting on the need for objective and balanced news and current affairs programming, it imposes additional responsibilities on the statutory broadcaster, by requiring it, in Article 31(4), to: “prepare its programme structure so as to provide, in its broadcasting, a well-balanced portfolio offered to all the population with respect to their age, gender, colour of the skin, faith, religion, political or other opinions, ethnic, national or social origin, and membership of a minority”.

The administrative body supervising the observance of legislation regulating radio and television broadcasting and thus also the composition of programmes is the Council for Radio

¹⁴ Available at: <http://www.mvcr.cz/sbirka/1991/sb093-91.pdf>.

¹⁵ Available at: <http://www.mvcr.cz/sbirka/2001/sb015-01m.pdf>.

¹⁶ Available at: <http://www.mvcr.cz/sbirka/1991/sb093-91.pdf>.

¹⁷ Available at: http://www.rrtv.cz/zakony_en/broadcasting_act2001.html.

¹⁸ Broadcasting Act 231/2001 of 17 May 2001 on radio and television broadcasting operation and on changes of other acts, available at: <http://www.mvcr.cz/sbirka/2001/sb087-01.pdf> (CZ) and at http://www.rrtv.cz/zakony_en/broadcasting_act2001.html (EN).

and Television Broadcasting.¹⁹ According to Article 17, entitled ‘Important facts for decisions on applications for licence granting’, when considering the granting of a licence, the Council shall assess a number of key criteria, including the “benefits of programme structure as proposed by the applicant for licence with regard to the existing variety in the offer of programmes of radio or television broadcasting on the territory, which should be covered by radio or television broadcasting”²⁰ and the “benefits provided by the applicant for the development of culture of ethnic and other minorities in the Czech Republic”.²¹

Czech legislation does not contain any restriction on the nationality of owners of broadcasting enterprises, apart from provisions reflecting concerns for pluralism, but these apply irrespective of nationality. Other requirements (e.g. permanent residence, the location of the seat of the licensed broadcaster or operator of retransmission, etc.) are not contingent on the question of nationality.²²

3.3 Transfrontier dimension

The rights of persons belonging to national minorities are assured by bilateral agreements between the Czech Republic and neighbouring countries, in particular the Federal Republic of Germany, Poland and Slovakia. The protection of minority rights is also guaranteed by the Framework Convention for the Protection of National Minorities, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and other international treaties. These legal standards are considered to be part of Czech law in accordance with Article 10 of the 1993 Constitution (see *supra*).

4 Application of legislation and other measures affecting language

According to the aforementioned 1999 State Report of the Czech Republic on National Minorities:

[...] the Government of the Czech Republic formulated principles of the policy concerning national minorities in the document *Concept of the Government's Approach to Issues Concerning National Minorities in the Czech Republic* (Government Resolution No. 63/1994). Although this political document is not legally binding, its importance lies in the fact that it sets forth basic starting points of the policy concerning national minorities, including principles of the status of minorities and protection of their rights [...]²³

In 1997, the Inter-ministerial Commission for Roma Community Affairs was established as a Commission of the Government of the Czech Republic. The Commission is an advisory authority which addresses problems experienced by the Roma minority. Its aim is to help in the integration of the Roma minority, to inform majority sections of the population about the Roma minority and to help the Roma minority in the field of education.²⁴

¹⁹ See Articles 4-11. For further information on the Council and its activities, see: <http://www.rtv.cz/cz/> or in English <http://www.rtv.cz/en/index.html>.

²⁰ Article 17c.

²¹ Article 17g.

²² See Article 3.

²³ *Op. cit.*, para. 9.

²⁴ See further: <http://www.vlada.cz/1250/eng/vrk/vybory/vybory.htm>.

The (Council of Europe) Advisory Committee on the Framework Convention for the Protection of National Minorities, in its Opinion on the Czech Republic, adopted on 6 April 2001,²⁵ levelled a number of criticisms at the Czech authorities and advanced recommendations on that basis. In particular, the Advisory Committee noted:

[...] the dissatisfaction expressed by the numerically small minorities represented on the Government's Council for National Minorities with regard to the times and length of programmes broadcast in minority languages on the Czech radio. The Advisory Committee suggests that this situation be reviewed in order to achieve a more equitable result, where possible through increasing the overall broadcasting time available to national minorities.²⁶

It also noted:

[...] that the time allocated on public television to programmes in minority languages was limited in 1998-1999 to twenty minutes per week, reserved for programmes on Roma culture. The Government stated in the State Report that there are no programmes reserved for other national minorities, but that the public television service broadcasts programmes about the culture of the various national minorities living in the Czech Republic. The Advisory Committee considers that the Czech authorities should review the situation in order to identify areas for improvement in consultation with those concerned.²⁷

Later in the Advisory Opinion, again in respect of Article 9 of the Framework Convention, it is stated that:

The Committee of Ministers concludes that the Government is supporting the national minorities' broadcasting media and press, and that programmes in minority languages are broadcasted on public radio and on public television. Nonetheless, considering also that the length of programmes and distribution of time among various national minorities have been criticised by persons belonging to numerically small minorities, the Committee of Ministers recommends that the Czech Republic consider the possibility of taking further measures to ensure that the principles contained in Article 9 of the Framework Convention are guaranteed with respect to all national minorities.²⁸

²⁵ Available at:

<http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/AdvisoryCommittee/Opinions/Czech%20Republic.htm>.

²⁶ Para. 53.

²⁷ Para. 54.

²⁸ Section V – Proposal for Conclusions and Recommendations by the Committee of Ministers.

Denmark

The German-speaking minority in the province of South Jutland is the principal linguistic minority in Denmark. However, neither the Danish Constitution nor Danish broadcasting legislation refer directly to the linguistic rights of minorities. The assumption is that minorities benefit from the provisions of both in the same manner as all other citizens. Commercial broadcasters are not subject to the strictures of public service broadcasting. The requirements which apply to the latter sector give pride of place to the Danish language and culture. The public broadcasters are, however, obliged to provide a versatile offer of Danish and multicultural programmes and information services directed towards ethnic minorities in order to promote their integration. Legislation provides for priority to be given to regional and/or local interests at both the licensing and programming levels. In practice, some services are provided by the public service broadcaster for the German-speaking minority in South Jutland. Some of the programming provided is in German, whereas the remainder is perceived to be in sync with the needs and interests of the regional community (including the German-speaking group).

Significant structural changes are likely to be ushered into Danish broadcasting as a result of a media agreement recently concluded by the Government. This will involve, *inter alia*, the liberalisation of the market, the creation of new stations with public service obligations (to end existing monopolies) and the facilitation of the entry of local television and radio stations into network cooperation arrangements.

1 Introduction¹

1.1 Linguistic topography

Denmark has a population of almost 5.3 million. There is little official information available concerning minorities in the country, including linguistic minorities. However, an estimated 15,000 – 20,000 German-speakers live in the province of South Jutland, which has a total population of approx. 250,000. This constitutes the largest linguistic minority in the country.

1.2 Broadcasting

In Denmark, broadcasting requires permission from the relevant authorities (see further, 'Legislation', *infra*).

At the national level, there are two stations with public service obligations. The first is *Danmarks Radio* (DR), which is a public, State-owned, institution. DR comprises three radio channels: P1, P2 and P3 (youth channel). Furthermore, a fourth radio channel (with music programmes) has been established. Broadcasting on the fourth channel and the news programmes on a fifth radio channel (still to be established)² form part of the public service activities (see *infra*, s. 6a(2) and s. 6c of the Danish Radio and Television Broadcasting (Consolidation) Act). DR TV comprises two television channels: DR1 and DR2. The second national public service broadcaster is TV2, which is partly financed by state licence fees and

¹ The author is very grateful to Elisabeth Thuesen for her assistance in identifying relevant sources of information and also for her highly instructive comments and those of Søren Sandfeld Jakobsen on a draft of this report. Nevertheless, any inaccuracies or omissions remain the sole responsibility of the author.

² The Minister for Culture is preparing an Order for the launch of a public offer for the purchase of a fifth radio channel.

partly by advertisement income and other sources. At the regional level, DR comprises nine radio stations which broadcast on the channel P4. TV2 comprises eight regional television stations. The public service channels are subject to special regulatory “public-service requirements”, i.e., content requirements in terms of quality, versatility, and diversity.

Besides the national public service channels, a few commercial radio and television stations have obtained permission to broadcast via satellite or cable distribution (which in Denmark is widely distributed, however not nationwide). In addition, a number of foreign broadcasting stations (outside Danish jurisdiction) broadcast Danish programme content into Denmark (via satellite or cable). The commercial broadcasting stations are not subject to the regulatory public-service requirements.

A number of surveys indicate that despite the increased competition from the commercial channels, primarily the foreign channels with Danish content, the “old” state-owned public service channels (radio as well as television) remain by far the most popular.

In its Opinion on Denmark, adopted on 22 September 2000, the Advisory Committee on the Framework Convention for the Protection of National Minorities recommended at para. 30 that:

[...] the implementation of [Article 9 of the Framework Convention] could well encompass creating the possibility for broadcasting some German language programmes in the framework of the (regional) public broadcasting system. It notes that the absence of such programmes is explained by the fact that no request to that effect was ever made, but points out that a formal request to that effect is not a legal precondition for considering the implementation of such a facility. [...].³

In South Jutland, *Radio Syd* (which is one of the regional radio stations subject to DR) and *TV Syd* (which is subject to TV2) are both in operation. The German-speaking minority enjoys representation on the programming councils of each.

The relationship between television and radio at the national level and at the regional and local levels is expected to undergo imminent structural changes, as a result of the recently-concluded Media Agreement (see further, ‘Current Developments’, *infra*). The introduction of some Bills to this effect is already anticipated for the coming Parliamentary session. It is the intention of the Government to increase the economic independence of the regional broadcasters in relation to DR and TV2 and to enter into an agreement with each individual regional broadcaster on its public service obligations. There will be more freedom for local television and radio stations to enter into a network cooperation. It is also intended to increase competition between commercial local television broadcasters. A working group will be established in order to consider the various aspects of future structures.

³ ACFC/INF/OP/1(2001)5. Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Denmark, adopted on 22 September 2000.

2 Constitution⁴

2.1 Freedom of expression

§77

Any person shall be at liberty to publish his ideas in print, in writing, and in speech, subject to his being held responsible in a court of law. Censorship and other preventive measures shall never again be introduced.

2.2 Minority rights

Although the rights of minorities are not expressly referred to in the Danish Constitution, the following three provisions are colourably of relevance to this question:

§70

No person shall by reason of his creed or descent be deprived of access to the full enjoyment of civic and political rights, nor shall he escape compliance with any common civic duty for such reasons.

§82

The right of municipalities to manage their own affairs independently, under State supervision, shall be laid down by statute.

§87

Citizens of Iceland who enjoy equal rights with citizens of Denmark under the Danish-Icelandic Union (Abolition), etc., Act, shall continue to enjoy the rights of Danish citizenship under the provisions of the Constitutional Act.

3 Legislation⁵

Danish broadcasting legislation makes no explicit reference to the right of minorities to broadcast in their own languages. The rights of minorities in this connection are no different to those of all other citizens. The promotion of the Danish language is actually provided for by some legislative measures. Here follow some of the legislative provisions which could, by extension, be of relevance to the questions under discussion.

While the Danish Constitution and the Broadcasting Act *do* provide for a general right to freedom of expression and information for all citizens (a right from which minorities also benefit), they lack specific provisions guaranteeing the linguistic rights of minorities in relation to broadcasting services. As demonstrated by the cited provisions (*infra*), priority is given to regional and/or local interests at both the licensing and programming levels. The potential of this prioritisation could be usefully explored and exploited by minorities. Provision is made for ministerial intervention in order to introduce greater detail into the rules and regulations governing the programme service; a factor which could – in theory at least – be in minorities' favour. Significantly, local radio and television broadcasters are expected to provide the bulk of their programming in the Danish language.

⁴ The Constitutional Act of 5 June 1953 is available at <http://www.folketinget.dk/pdf/ark12.pdf> (DK) and at <http://www.folketinget.dk/BAGGRUND/00000048/00440513.htm> (EN).

⁵ *Retsinformation* ("Legal Information") is the official on-line legal information system of the Danish State: <http://www.retsinfo.dk/>. Legislation can be accessed on this site (in Danish).

THE DANISH RADIO AND TELEVISION BROADCASTING (CONSOLIDATION) ACT⁶

Excerpts:

Chapter 3

Public service activities, etc.

6 a.-(1) All public service stations shall be under an obligation to provide, via television, radio, television, Internet or similar, the entire Danish population with a wide selection of programmes and services comprising news coverage, general information, education, art and entertainment. Quality, versatility and diversity must be aimed at in the range of programmes provided. In the planning of programmes freedom of information and of expression shall be a primary concern.

Objectivity and impartiality must be sought in the information coverage. The programming shall ensure that the general public has access to important information and debate on society. Furthermore, particular emphasis shall be placed on Danish language and culture. The programming shall cover all genres in the production of art and culture and provide programmes which reflect the diversity of cultural interests in Danish society.

(2) Public service programmes are provided by DR and TV 2. Furthermore, the programme services on the fourth radio channel and the news coverage on the fifth radio channel, cf. Sections 6 c and 6 d, form part of the general public service activities.

Public service activities of DR and TV 2

6 b.-(1) DR and TV 2 shall be under an obligation to provide public service programmes to the general public in accordance with the principles stated in Section 6 a(1).

(7) Affinities to the region shall be given priority in the planning of programmes for the regional TV 2 stations, cf. Section 21 of this Act.

Public service programmes on the fourth and fifth radio channels

6 c. The fourth radio channel shall provide varied public service classical music programmes - supplemented with the presentation of rhythmic music, jazz, and Danish music - cultural programmes and programmes of social interest and social debate, etc.

6 d. Programming for the fifth radio channel shall include public service news coverage. A licence to provide such programmes may not be granted to DR.

[...]

21.-(1) Apart from the national station, TV 2 consists of 8 regional stations with a Board of Representatives, the composition of which reflects a wide variety of aspects of the regional culture and community.

(2) The Minister for Culture may in special cases grant approval to establish new regional stations.

[...]

⁶ Consolidation Act No. 701 of 15 July 2001.

Chapter 6

Local radio and television services

Licence to provide programme services

43. The provision of programme services by way of radio equipment or cable systems within a local area is subject to a licence granted by the Board stated in Section 56 (the Local Radio and Television Board).

44.-(1) Licences may be granted to companies, associations, etc., provided that the following conditions are fulfilled:

A majority of the members of the board of the company, association or similar must reside within the area. The sole object of the company, association, or similar shall be to provide local radio or television broadcasting services. Apart from national daily and local newspapers, no commercial undertakings may have any decisive influence in the company, association or similar. For licences to be granted to companies, etc. in which national daily or local newspapers have a decisive influence, it is a precondition that the local radio or TV station functions as a forum for wide-ranging local debate.⁷

(2) The same individual may not be a member of the Board of more than 1 local radio or TV station.⁸

(3) The same individual may not be responsible for the programmes of or otherwise participate in the overall management of the programme services of more than 1 local radio or TV station.

(4) Should the company, association or similar in addition to fulfilling the conditions set out in (1)-(3) represent a wide variety of business and cultural interests in the local area, an application for a licence to broadcast television programmes by means of radio systems shall be granted provided that there is an unutilised transmission line (frequency) within the area. The licence shall comprise all transmission time on that frequency, cf. Section 50 a(1), item 3), however.

(5) The Minister for Culture shall issue rules on the use of transmission opportunities for local television companies within the City of Copenhagen, the Municipality of Frederiksberg and the County of Copenhagen. In this connection rules deviating from Section 45 may be issued.

(6) A licence under (1) may be limited to the transmission time stated in Section 50 a(1), item 3).

(7) The holder of a licence for programme services pursuant to (1) may with the approval of the local radio and television board transfer to the terms applying to licensees under (4) or (6) for the remainder of the licence period.

⁷ Note that under the Media Agreement (discussed in ‘Current Developments’, *infra*), a majority of the members of the board will no longer have to reside within the area. The decisive influence of commercial enterprises provided with a local broadcasting licence shall be allowed.

⁸ Note that under the Media Agreement (discussed in ‘Current Developments’, *infra*), the same person shall be allowed to become a member of the board of directors of more than one local station.

45. Municipalities shall be entitled to be granted a licence as mentioned in Section 43 of this Act, provided that the municipality's purpose of providing programme services is solely to make production and broadcasting facilities available to interested citizens, or to disseminate information on local government matters. The licence may be limited to the broadcasting time stated in Section 50 a (1), item 3).

Provision of Programme Services

50.-(1) The licensee shall provide an independent programme service.

(2) The programme service may not include programmes transmitted simultaneously by other radio or television broadcasters. The same applies to programmes transmitted with a small time lag. However, it may include programmes transmitted simultaneously by another holder of a licence to broadcast local programmes, if this can be specially justified by local conditions in the individual case.

(3) Irrespective of a possible time lag the programme service may not include programmes transmitted by other radio or television broadcasters pursuant to permanent cooperation on programme services, either among stations or between stations and other undertakings.

(4) The provisions set out in (2) and (3) shall not apply to local television companies which provide programme services pursuant to licences issued under Section 44(4).

(5) The provisions set out in (2) and (3) shall not apply to local radio stations with regard to news and current affairs programmes and programmes in the period between 11 p.m. and 6 a.m.

(6) The Minister for Culture may lay down more detailed rules and regulations on the aspects of the programme service covered by (4) and (5).

50 a.-(1) TV stations with broadcasting licences pursuant to Section 44(4) shall daily broadcast at least 1 hour of locally produced news and current affairs programmes or other programmes based on the local community, ensure that a significant element of the other programmes are in the Danish language or produced for a Danish public, and allocate broadcasting time to companies, etc. whose licence is covered by Section 44(6) and to municipalities whose licence is covered by Section 45.

(2) The Minister for Culture may issue detailed rules and regulations concerning the programmes stated in (1), items 1) and 2).

(3) As far as local television broadcasting services pursuant to Section 44(4) are concerned, the Minister for Culture shall lay down rules for the proportion of programmes of European origin to be included.

(4) For each programme broadcast as an element of programme services pursuant to Section 50(4) and (5) the participating licensees shall ensure that 1 licensee is responsible for compliance with the provisions set out in the Radio and Television Broadcasting Act. This licensee shall be named at the end of each programme. Any sanctions pursuant to Section 55 will be imposed on this licensee.

[...].

It can therefore be seen that according to Section 50 of the Act, licensed local broadcasters must carry out their programme activities independently (of one another). Cooperation (networking) is subject to restrictions. The Media Agreement (discussed in ‘Current Developments’, *infra*) intends to liberalise the conditions for cooperation between broadcasters.

MISCELLANEOUS EXECUTIVE ORDERS

A number of Executive Orders also constitute an important part of Danish broadcasting law. The main objectives of the Executive Orders governing public service broadcasting are closely aligned and include the provision of a programme offer that both reflects and serves the cultural diversity in Danish society; that promotes the Danish language and culture and that facilitates the integration of ethnic minorities through the provision of multicultural programmes and information services. As regards permissions for local television broadcasting, priority is given to applicants demonstrating affinity with the locality.

EXECUTIVE ORDER ON REGULATION FOR DR (DANMARKS RADIO), 2000⁹

Extracts of relevance for minorities:

Section 4, paras. 1-4: DR has to broadcast a versatile offer of programmes and has to reflect the multiplicity of cultural interests.

Section 4, paras. 5 – 6: Special regard must be had, in particular, for the Danish language and culture and for the promotion of Danish art and culture.

Section 4, para. 7: DR has to contribute to development of the Danish language as a living expression for Danish culture in interaction with other cultures.

Section 4, para. 11: DR has to provide a versatile offer of Danish and multicultural programmes and information services directed towards ethnic minorities in order to promote their integration.

EXECUTIVE ORDER ON REGULATION FOR TV2, 2000¹⁰

Extracts of relevance for minorities:

Section 4, para. 5: TV2’s broadcasting activities have to reflect the broadness of the production of art and culture and offer programmes which reflect the multiplicity of cultural interests in Danish society.

Section 4, para. 11: TV2 has to offer a versatile offer of Danish and multicultural programmes and information services directed towards ethnic minorities in order to promote their integration.

⁹ Executive Order no. 1345 of 18 December 2000 on articles of associations for DR, available at: <http://www.kum.dk/sw2370.asp> (DK).

¹⁰ Executive Order no. 1346 of 18 December 2000 on regulation for TV2, available at: <http://www.kum.dk/sw2368.asp> (DK).

Extracts of relevance for minorities:

Section 6, para. 4: If the company requesting permission for local television activities, notwithstanding the conditions in paras. 1 – 3, represents versatile economic and cultural interests within the local area, then a request for local broadcast... has to be granted, if there is a frequency in the area which is not in use.

Section 30: The Radio and TV Board may grant support to single programmes and series of programmes which:

2) satisfy the needs of minority groups or groups which are under-represented in the media.

4 Current developments

The Danish Government recently concluded a new agreement on media policy,¹² in which it revealed its intention to liberalise the regulatory regime for radio and television broadcasting. Support for the Danish language and culture by public service broadcasters is reiterated in the Agreement. Among the other envisaged changes is a legal restructuring of TV2 which will lead to its conversion to a private limited company as soon as possible. It will retain public service obligations, but these will be limited to requirements dealing with news and current affairs. Local commercial broadcasters, for their part, shall only be obliged to transmit local news for half-an-hour each day, instead of the actual requirement of a daily hour of news. Also of significance for present purposes is the proposed establishment of a fifth radio channel with public service obligations, as well as a sixth radio channel. Conceived with a view to bringing an end to the current monopoly enjoyed by DR, licences for these new channels will be offered to commercial broadcasters.¹³

¹¹ Executive Order no. 1349 of 18 December 2000 on local radio and television activities.

¹² On June 3 2002, the Danish Government and the *Dansk Folkeparti* (Danish Popular Party) concluded an Agreement on Media Policy for 2002-2006 (*Mediepolitisk aftale for 2002-2006*). The Agreement will be politically binding from 3 July 2002 until 31 December 2006. The Agreement is based on a booklet entitled "*Kvalitet, klarhed og konkurrence. Danskerne's radio og tv i fremtiden. Regeringens udspil til ny mediepolitik – maj 2002*" ("Quality, Clarity and Competition. Radio and TV for the Danes in the Future. The Government Draft for a New Media Agreement – May 2002"). The booklet was issued on 13 May 2002, by the Minister of Culture, Brian Mikkelsen.

¹³ For a detailed examination of these proposed changes to the current regulatory framework for broadcasting in Denmark, see: E. Thuesen, "DK – New Agreement on Media Policy", *IRIS – Legal Observations of the European Audiovisual Observatory*, 2002-7: 9.

Estonia

Estonian is the official language of Estonia, according to the Constitution and supporting legislation. The latter defines the language of a national minority as a foreign language (i.e. any language other than Estonian) which Estonian citizens who belong to a national minority have historically used as their mother tongue in Estonia. The state-owned television broadcaster transmits news and other programmes in Russian and has formally adopted plans to significantly increase its Russian-language output. One state-owned radio station broadcasts predominantly in Russian; its aim is to facilitate the integration of the Russian-speaking population into Estonian society by providing information about all aspects of life in the country in the Russian language (and to a minor extent also in the Ukrainian and Belarussian languages). Public service broadcasters are required to promote Estonian national culture and language and to satisfy the information needs of all sections of the population, including minorities. Both public and private broadcasting are governed by the requirement that foreign-language texts in audiovisual works (including programmes and advertisements) must be accompanied by adequate translations into Estonian. Such translations are not necessary in certain cases, such as the immediate retransmission of programmes or language-learning programmes. Radio programmes directed at foreign-language audiences are another exception. The volume of foreign-language news programmes and live foreign-language programmes without translations into Estonian may not exceed 10% of the volume of weekly original production.

1 Introduction

1.1 Linguistic topography

Estonia has a population of 1.37 million.¹ The official language of the country is Estonian. Estonian is a language belonging to the Finno-Ugric language group. It is currently spoken by approximately 1.1 million people, 950,000 of whom live in Estonia.² The main ethnic minority groups in Estonia are: Russians (351,000), Ukrainians (29,000) Belarussians (17,000) and Finns (11,000). In terms of percentages, this reads: Estonian, 65.1%; Russian, 28.1%; Ukrainian, 2.5%; Belarussian, 1.5%; Finn, 1%; other, 1.8% (1998). Russian is the main minority language.

1.2 Broadcasting

1.2.1 Television broadcasting

The state-owned ETV and two private broadcasters (*Kanal 2* and *TV3 Viasat*) make up the national audiovisual broadcasting market. One local television broadcasting licence has been granted. By 30 November 2002, 70 cable television broadcasting licences had been granted,³ the stations broadcast programmes and information of local relevance. Some broadcast almost entirely in Russian and a few broadcast programmes in Ukrainian or Georgian. Most,

¹ 2000 Population and Housing Census. III. Place of Birth and Migration, see further: <http://www.stat.ee>.

² The Estonian Institute, see further: <http://www.estonica.org>.

³ For further information concerning licensing, see the homepage of the Estonian National Communications Board: <http://www.sa.ee/atp/eng>.

however, do not have their own programmes, but merely distribute national and international channels.⁴

The state-owned *ETV* broadcasts a number of programmes and news in Russian. Programmes in Russian make up 55 hours of the weekly output. *ETV*'s recently approved development plan for 2003 - 2005 prescribes that the amount of programmes in the Russian language will be increased from 55 hours per week to 96 hours per week by 2005. *ETV* aims to attract more Russian viewers and plans to develop bilingual interactive programmes, including children's programmes. It will focus on buying Russian information and cultural programmes, as well as films from Russian producers.

The privately-owned *Kanal 2* broadcasts a popular morning programme in Russian on Saturdays and currently also a programme, "Russians in Estonia", and a portrait/features programme on Sundays. Some programmes of *Kanal 2* have Russian subtitles. *TV3*, for its part, does not produce any programmes in Russian, nor does it use Russian subtitles. Occasionally, some films or documentaries from Russia are re-broadcast.

1.2.2 Radio broadcasting

The state-owned Estonian Radio (*ER*) has four radio channels covering almost the whole country. *ER*'s station *Raadio 4* broadcasts predominantly in Russian, whereas the other three stations broadcast in Estonian. Since 1993, *Raadio 4* has been transmitted all over the country for 18 hours a day and, in Tallinn, for 24 hours a day. *Raadio 4* broadcasts news every hour and also broadcasts musical, literary, popular science and educational programmes; political analysis; information about job vacancies and legal advice. The main aim of *Raadio 4* is to integrate the Russian-speaking population into Estonian society by providing information on the country's history, culture, society, current and political affairs. While the main broadcasting language is Russian, *Raadio 4* also broadcasts 1.3 hours a week in Ukrainian and one hour a week in Belarussian.

Since the entry into force of the Broadcasting Act in 1994 (see further, *infra*), the Ministry of Culture has granted 27 local and regional radio broadcasting licences.⁵ Some of those broadcast only in Russian.

2 Constitution

The Constitution of Estonia was passed by a referendum on 28 June 1992.⁶

2.1 Freedom of expression

§ 45. Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be restricted by law to protect public order, morals, and the rights, freedoms, health, honour and good name of others. This right may also be restricted by law for state and local government civil servants, to protect a state or business secret or information received in confidence, which has become known to them by reason of their office, and the family and private life of others, as well as in the interests of justice.

⁴ The Estonian list of licences and other related information is available at: <http://www.sa.ee/SILO/loistkr.nsf/wwwKaabliload?OpenView>.

⁵ Statistics valid as of 8 July 2002.

⁶ The Constitution is available online at: <http://www.nc.ee/english/const/The%20Constitution%20of%20the%20Republic%20of%20Estonia.html>.

There is no censorship.

2.2 Broadcasting

The above-cited Article 45 is applicable to broadcasting. Otherwise, there are no special provisions on broadcasting in the Estonian Constitution.

2.3 Minority rights

§ 9. The rights, freedoms and duties of each and every person, as set out in the Constitution, shall be equal for Estonian citizens and for citizens of foreign states and stateless persons in Estonia.

The rights, freedoms and duties set out in the Constitution shall extend to legal persons in so far as this is in accordance with the general aims of legal persons and with the nature of such rights, freedoms and duties.

§ 12. Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds.

The incitement of national, racial, religious or political hatred, violence or discrimination shall, by law, be prohibited and punishable. The incitement of hatred, violence or discrimination between social strata shall, by law, also be prohibited and punishable.

§ 49. Everyone has the right to preserve his or her national identity.

§ 50. National minorities have the right, in the interests of national culture, to establish self-governing agencies under conditions and pursuant to procedure provided by the National Minorities Cultural Autonomy Act.

§ 51. Everyone has the right to address state agencies, local governments, and their officials in Estonian, and to receive responses in Estonian.

In localities where at least one-half of the permanent residents belong to a national minority, everyone has the right to also receive responses from state agencies, local governments, and their officials in the language of the national minority.

§ 52. The official language of state agencies and local governments shall be Estonian.

In localities where the language of the majority of the residents is not Estonian, local governments may, to the extent and pursuant to procedure provided by law, use the language of the majority of the permanent residents of the locality as an internal working language.

The use of foreign languages, including the languages of national minorities, in state agencies and in court and pre-trial procedures, shall be provided by law.

2.4 (Official/State) language(s)

§ 6. The official language of Estonia is Estonian.

3 Legislation⁷

3.1 General legislation affecting minorities and their linguistic rights

NATIONAL MINORITIES CULTURAL AUTONOMY ACT OF 1993⁸

As early as 1925, the Parliament passed the first Law on Cultural Autonomy for National Minorities, which affirmed that the Republic of Estonia respects the right of all ethnic groups to preserve their ethnic identity, culture and religious convictions. The new National Minorities Cultural Autonomy Act was presented to the *Riigikogu* (the Estonian Parliament) and it was passed on 26 October 1993.⁹

The new Act was grounded on the same basic ideas as the 1925 Law: the acceptance of national minorities' right to preserve their ethnic identity, culture, and language. At the same time, the Act establishes the corresponding legal guarantees and guidelines.

Article 1 of the Act defines national minorities as they are defined in the declaration made by Estonia upon its ratification of the Framework Convention for the Protection of National Minorities. The Convention was ratified by Law No. 247 of 21 November 1996 and the Framework Convention entered into force on 1 February 1998. The declaration made upon ratification reads as follows:

The Republic of Estonia understands the term “national minorities”, which is not defined in the Framework Convention for the Protection of National Minorities, as follows: are considered as “national minority” those citizens of Estonia who

- reside on the territory of Estonia;
- maintain longstanding, firm and lasting ties with Estonia;
- are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics;
- are motivated by a concern to preserve together their cultural traditions, their religion or their language, which constitute the basis of their common identity.¹⁰

Article 2.

(1) For the purposes of the present Law, cultural autonomy for national minorities is defined as the right of individuals belonging to a national minority to establish cultural autonomy in order to achieve the cultural rights given to them by the constitution.

⁷ The official website of the Government is: <http://www.riik.ee>. The electronic database for the official State Gazette is: <http://www.riigiteataja.ee>. Unofficial versions of Estonian laws in English can be found at: <http://www.legaltext.ee>.

⁸ Law on Cultural Autonomy for National Minorities, 26 October 1993, available at http://www.einst.ee/factsheets/cult_auton/ and also at http://www.riga.lv/minelres/NationalLegislation/Estonia/Estonia_KultAut_English.htm.

⁹ Committee on the Elimination of Racial Discrimination: Fourth periodic report of States parties due in 1998, Estonia. 05/07/99. CERD/C/329/Add.2. (State Party Report) sections 64 to 66.

¹⁰ Declaration contained in the instrument of ratification, deposited on 6 January 1997. See further: <http://conventions.coe.int>.

(2) National minority cultural autonomy may be established by persons belonging to German, Russian, Swedish and Jewish minorities and persons belonging to national minorities with a membership of more than 3000.

Article 3.

(1) Every member of a national minority has the right to preserve his or her ethnic identity, cultural traditions, native language and religious beliefs.

(2) It is prohibited to ridicule and to obstruct the practice of ethnic cultural traditions and religious practices and to engage in any activity which is aimed at the forcible assimilation of national minorities.

Article 4.

Members of a national minority have the right:

1. to form and support cultural and educational institutions and religious congregations
2. to form ethnic organisations
3. to practise cultural traditions and religious customs if this does not endanger public order, health and morals
4. to use their mother tongue in dealings within the limits established by the Language Law
5. to publish ethnic language publications
6. to conclude agreements of cooperation between ethnic, cultural and educational institutions and religious congregations
7. to circulate and exchange information in their mother tongue

LANGUAGE ACT OF 1995¹¹

1. Status of Estonian language

(1) The official language of Estonia is Estonian.

(2) For the purposes of this Act, the basis for the official use of Estonian is the Estonian Literary Standard pursuant to the procedure established by the Government of the Republic.

2. Foreign language

(1) For the purposes of this Act, any language other than Estonian is a foreign language.

(2) A language of a national minority is a foreign language which Estonian citizens who belong to a national minority have historically used as their mother tongue in Estonia.

Article 25 of the Act is directly applicable to broadcasting. Although not clearly stated in the Act, it is to be understood as being applicable to broadcasting organisations established in Estonia.

¹¹ Passed on 21 February 1995, available at: <http://www.legaltext.ee/indexen.htm>.

25. Translation of foreign language text of audiovisual works, television and radio programmes and advertisements

1. Upon broadcasting (including transmission by television stations or cable networks) of audiovisual works (including programmes and advertisements), foreign language text shall be accompanied by an adequate translation into Estonian.
2. A translation into Estonian is not required for programmes which are immediately retransmitted or language learning programmes or in the case of the newsreader's text of originally produced foreign language news programmes and of originally produced live foreign language programmes.
3. A translation into Estonian is not required in the case of radio programmes, which are aimed at a foreign language audience.
4. The volume of foreign language news programmes and live foreign language programmes without translations into Estonian specified in subsection (2) of this section shall not exceed 10 per cent of the volume of weekly original production.

3.2 Broadcasting legislation

BROADCASTING ACT OF 1994 (AS AMENDED)¹²

The Broadcasting Act was passed on 19 May 1994. It has been amended several times. The general principles of broadcasting activities prescribed by the Broadcasting Act apply to all radio and television broadcasters established in Estonia. These include freedom of activity, political balance, protection of sources of information, guarantee of morals and legality, and protection of copyright. In addition, special rules apply to the public service television and radio broadcasters, *ETV* and *ER*. According to Article 25 of the Broadcasting Act, the functions of are *ETV* and *ER* to:

- 1) advance and promote Estonian national culture, and record, preserve and introduce its greatest achievements;
- 2) present the greatest achievements of world culture to the public;
- 3) create and transmit multifaceted and balanced programme services at high journalistic, artistic and technical levels;
- 4) satisfy the information needs of all sections of the population, including minorities;
- 5) create primarily informational, cultural, educational and entertainment programmes.

According to Article 26(1) of the Act, the programmes and programme services of *ETV* and *ER* shall facilitate:

- 1) the preservation and development of the Estonian nation, language and culture;
- 2) the strengthening of the Estonian statehood;
- 3) the advancement of Estonia's international reputation.

According to Article 26(2), the programmes and programme services of *ETV* and *ER* shall encourage respect for human dignity and observance of laws, considering the moral, political and religious beliefs of different sections of the population.

¹² Consolidated text of July 2002, available at: <http://www.legaltext.ee/indexen.htm>.

The Act contains no provisions on minorities' access to broadcasting in their own language, or any other restrictions on the form of establishment, ownership, editorial control or other factors that would restrict minorities' access to providing or receiving broadcasting services. However, certain restrictions arise out of Article 25 of the Language Act (cited *supra*).

There are no obligations to broadcast in minority languages deriving from the Act. However, in practice such obligation can be made part of the broadcasting licence, if the licence applicant him/herself decides to take such an initiative.

3.3 Transfrontier dimension

Regarding restrictions/prohibitions on programmes broadcast in foreign languages from abroad, the Act lays down the principle of freedom of reception and retransmission. Such freedom can only be limited under exceptional circumstances specified by the Act.

Article 7.1. Freedom of reception and retransmission:

(1) Reception and retransmission of radio and television programmes and programme services originating from foreign states shall not be restricted.

(2) By way of derogation from subsection 1 of this section, temporary restrictions may be imposed in accordance with the requirements of international agreements ratified by the *Riigikogu*, if a television programme or programme service originating from a foreign state:

- 1) manifestly and gravely infringes the generally recognised moral and ethical broadcasting principles to the extent which is likely to impair the physical, mental or moral development of minors;
- 2) is likely to incite hatred on grounds of race, sex, religion or nationality;
- 3) involves pornography or gratuitous violence.

(3) Restrictions may be imposed with regard to television programmes originating from the members states of the European Union or a states party to the European Convention on Transfrontier Television only if:

- 1) during the year preceding the potential imposition of restrictions, the television broadcaster has infringed the requirements specified in this Article on at least two prior occasions;
- 2) a competent Estonian body has notified the television broadcaster and a competent body of the European Union of the infringements and of the measures it intends to take should any such infringement occur again;
- 3) consultations with a competent Estonian body and a competent body of the European Union have not produced an amicable settlement within 15 days of the notification provided for in clause 2 of this section, and the alleged infringement persists.

(4) The provisions of this section extend to all television programmes and programme services which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission of such programmes or programme services will not be able to receive them.

(5) In addition to the specifications of subsection (4) of this section, it shall be ensured that when such programmes are transmitted in unencoded form, they are preceded by a corresponding acoustic warning or clearly identifiable visual symbol.

Finland

Apart from Finnish, a number of other languages are recognised in Finland: Swedish (accorded the status of national language along with Finnish by the Constitution), Sami, Romanes and Russian. Minority rights, including linguistic rights, are protected by extensive legislation. As far as broadcasting is concerned, the legislation governing the private sector is bereft of any specific provisions on minority-language broadcasting. Such provisions are the preserve of the legislation regulating the activities of the public broadcaster, which is required to treat Finnish and Swedish speakers equally in its programme (offer) and furthermore to produce programmes in the Sami and Romany languages, as well as in sign language. The operative provision also alludes to the need to serve other language groups, where applicable. The two television stations (nationwide networks, in point of fact) operated by the public broadcaster broadcast around 1,000 hours of Swedish-language programming per annum and recently launched a new full digital television service in Swedish (approx. 2,000 hours per year).

Two of the public radio stations also broadcast fully in Swedish. Relay technology and cable and satellite ensure the reception of Swedish-language programmes from Sweden. There is little Swedish-language broadcasting in the commercial broadcasting sector. The public service broadcaster provides approx. 2,000 hours of radio programming in the Sami language per annum; the product (in part) of a cooperative venture with the Sami radio stations in Norway and Sweden. Since January 2002, television news broadcasts in the Sami language have also been transmitted by the public service broadcaster. These news broadcasts are available nationwide on the digital news service. In the other outlined cases, the Sami-language programming is available mainly in Northern Finland, although throughout an area larger than the Sami homeland. The public service broadcaster also caters to a limited extent for speakers of Russian and Romany.

1 Introduction

1.1 Linguistic topography

The total population in Finland was 5.2 million at the end of 2001. Of this population, 92.3% speaks Finnish as their mother tongue. The second-largest language group speaks Swedish: 290,000 people or 5.6% of the population (Table 1). Swedish is not a minority language in Finland, as Finnish and Swedish are both national languages according to the Constitution.

Table 1: Finnish population by language, 2001 (total population: 5,194,900)¹

Language	Percentage
Finnish:	92.27%
Swedish:	5.60%
Sámi:	0.03%
Russian:	0.60%

** The author is grateful to Ms. Marina Österlund-Karinkanta and Mr. Klas Weckman for their helpful comments on drafts of this text, but nevertheless accepts personal responsibility for any mistakes therein.

¹ Source: Statistics Finland, Demographic statistic (<http://www.stat.fi>): http://www.tilastokeskus.fi/tk/tp/tasku/taskue_vaesto.html#structure.

Other:	1.50%
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Table 2: Foreigners in Finland²

Country of Citizenship	2001
Russia	22,724
Estonia	11,662
Sweden	7,999
Somalia	4,355
Former Yugoslavia and Federal Republic of Yugoslavia	4,240
Iraq	3,222
United Kingdom	2,352
Germany	2,327
Former Soviet Union	2,249
Iran	2,166
USA	2,110
Turkey	1,981
China	1,929
Vietnam	1,778
Bosnia and Herzegovina	1,668
Thailand	1,540
Ukraine	1,133
Others	23,142
Total	98,577

The Swedish-speaking Finns are, however, a linguistic minority. Most of them live along the southern, southeastern and eastern coasts and on the Åland Islands.

Other minority groups, as listed by the Finnish Ministry of Foreign Affairs in its first periodical report on the Framework Convention for the Protection of National Minorities³ are the Sámi, the Roma, the Yiddish, the Tatars and the Old Russians.⁴

The Sámi are an indigenous people. Most of the Sámi, some 4,000 persons, live in the Sámi Homeland in northern Lapland and about 2,400 of them live in other parts of the country. According to estimates, about half of the Sámi speak a Sámi language as their mother tongue.

² Source: Statistics Finland, Demographic statistic: <http://www.stat.fi>.

³ See the Report of Finland of the Application of the Framework convention on the Protection of National Minorities [sic], available at <http://194.89.197.19/doc/fin/ihmisoik/puitesop.html> or alternatively, the Report Submitted by Finland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, 16 February 1999, ACFC/SR(1999)003, available at: [http://www.coe.int/T/e/next_dgii/Minorities/2._FRAMEWORK_CONVENTION_\(MONITORING\)/2._Monitoring_mechanism/3._State_reports/ACFC_SR\(1999\)003%20%20E%20state%20report%20Finland.asp#TopOfPage](http://www.coe.int/T/e/next_dgii/Minorities/2._FRAMEWORK_CONVENTION_(MONITORING)/2._Monitoring_mechanism/3._State_reports/ACFC_SR(1999)003%20%20E%20state%20report%20Finland.asp#TopOfPage).

⁴ When ratifying the Framework Convention for the Protection of National Minorities (COE), Finland did not define what was meant by “national minorities” in Finland. In practice, Finland has included in reports submitted to UN Treaty Bodies information on the Sami, the Roma, the Jews, the Tatars, Old Russians and Swedish-speaking Finns. See the Report of Finland of the Application of the Framework convention on the Protection of National Minorities [sic], *op. cit.*

The Old Russians are descendants of Russian immigrants who moved to Finland in the late 19th Century and early 20th Century. During the last few decades, the number of Russian-speaking people has increased as a result of immigration. At the moment, there are somewhat more than 31,000 Russian-speaking persons living in Finland, of which some 5,000 are Old Russians. The Roma live in all parts of Finland, although most of them live in the biggest cities in southern Finland. There are about 10,000 Roma in Finland. The Jewish community in Finland consists of about 1,300 persons, most of whom live in Helsinki, Turku and Tampere. The Tatars are a Turkish-related Islamic minority. There are some 900 Tatars living in Finland, mostly in the capital district. There are no reliable data available on the size of the populations speaking these languages as their mother tongue.

1.2 Broadcasting

A comprehensive overview is provided in the ‘Broadcasting Legislation’ and ‘Application of legislation and other measures affecting language’ sections, *infra*.

1.3 Government policies on broadcasting and minorities

The main vehicle for the state in dealing with broadcasting for minorities is the State-owned Finnish Broadcasting Company, YLE. The highest decision-making body of YLE is the Administrative Council elected by Parliament.⁵

2 Constitution

The Constitution of Finland was adopted on 11 June 1999 and it entered into force on 1 March 2000.⁶

2.1 Freedom of expression

Section 12 - Freedom of expression and right of access to information

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.⁷

2.2 Minority rights

Section 6 - Equality

⁵ See further, Sections 4-6, Act on Yleisradio Oy (The Finnish Broadcasting Company), Act N:o 1380/1993, 22 December 1993 and amendments (Appendix 1).

⁶ The text of the Constitution of Finland is available at <http://www.om.fi/perustuslaki/index.htm> (FI) and at <http://www.om.fi/constitution/3340.htm> (EN).

⁷ It should further be noted that according to Section 1 of the Act on Freedom of Press, “[E]very Finnish citizen shall have the right to publish printed writings, without the public authorities being allowed to set any obstacles to this in advance, as long as the provisions of this Act are observed”. This legislative provision complements the constitutional guarantee of freedom of expression, but does not fall strictly within the scope of the ‘Broadcasting Legislation’ section, *infra*.

Everyone is equal before the law.

No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.

Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.

Equality of the sexes is promoted in societal activity and working life, especially in the determination of pay and the other terms of employment, as provided in more detail by an Act.

2.3 (Official/State) language(s)

Section 17 - Right to one's language and culture

The national languages of Finland are Finnish and Swedish.

The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.

The Sámi, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture. Provisions on the right of the Sámi to use the Sámi language before the authorities are laid down by an Act. The rights of persons using sign language and of persons in need of interpretation or translation aid owing to disability shall be guaranteed by an Act.

3 Legislation⁸

3.1 General legislation affecting minorities and their linguistic rights

As listed by the Finnish Ministry of Foreign Affairs in their first reports on the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages:

- Act on the Sámi Parliament (N:o 974/1995)
- Act on the Freedom of Religion (N:o 267/1922)
- Associations Act (N:o 503/1989)
- Act on the Freedom of the Press (N:o 1/1919)
- Names Act (N:o 694/1985)
- Language Act (N:o 148/1922)
- Decree on the Implementation of the Language Act (N:o 311/1922)

⁸ Virtually all Finnish legislation is available at: <http://www.finlex.fi>.

- Act on the Use of the Sami Language before Authorities (N:o 516/1991)
- Act on Television and Radio Operations (N:o 744/1998)
- Act on the Autonomy of the Åland Islands (N:o 71/1991)
- Constitutional Laws of Finland (Oy Edita AB, Helsinki 1996)

With regard to the Åland Islands, it should be noted that the Act on the Autonomy of the Åland Islands provides, *inter alia*, for the status of Swedish as the only official language in Åland.

When ratifying the European Charter for Regional or Minority Languages, Finland declared that it would apply 65 of the provisions under Part III of the Charter to the Swedish language and 59 to the Sámi language. Furthermore, Finland declared that it would undertake to apply, *mutatis mutandis*, the principles listed in Part II of the Charter to the Roma language and other non-territorial languages.⁹

3.2 Broadcasting legislation

The basic provisions for public broadcasting in Finland are legislated in three Acts:

1. Act on Television and Radio Operations (N:o 744/1998)
2. Act on the State Television and Radio Fund (N:o 745/1998)
3. Act on Yleisradio Oy (The Finnish Broadcasting Company) (N:o 1380/1993)¹⁰

The Act on Television and Radio Operations (Para. 7) states that it is compulsory to seek a permission from the government in order to operate television or radio broadcasting on radio waves. For other types of television and radio transmission (for example, cable television), such permission is not required. The Finnish Broadcasting Company (*Yleisradio*, YLE) is allowed to broadcast on wave-lengths reserved for the Company without a separate permission.

The Act on the State Television and Radio Fund contains obligations for owners of television sets to pay a television fee, and for commercial broadcast operators to pay an operating licence fee for the right to operate broadcasts.

The Act on Television and Radio Operations contains no separate provisions for minority-language broadcasting. Such provisions are the task of the State-owned and publicly-financed public service broadcasting company, YLE. The Act on Yleisradio Oy defines the public service provisions of the company. The provisions for services to linguistic minorities are stated in Section 7(4) as follows:

[...] to treat in its broadcasting Finnish and Swedish speaking citizens on equal grounds and to produce services in the Sámi and Romany languages and in sign language as well as, where applicable, also for other language groups in the country;

⁹ See: List of declarations made with respect to treaty no. 148, European Charter for Regional or Minority Languages, available at: <http://conventions.coe.int/treaty/EN/DeclareList.asp?NT=148&CM=1&DF=>.

¹⁰ The Act on Yleisradio Oy is quoted in full in Appendix 1.

4 Application of legislation and other measures affecting language

4.1 General

YLE operates two television channels, TV1 and TV2.¹¹ YLE also operates three nationwide Finnish radio channels (one of which is divided regionally for part of the day) and two semi-nationwide Swedish radio channels (one of which is also divided regionally for part of the day). In addition, YLE provides other broadcasting services in the capital area (amongst others, Capital FM, which broadcasts mainly in English) and the Sami radio in the North. On digital television, YLE operates one culture channel, one news channel and one Swedish channel in addition to its analogue channels. On digital radio (DAB), YLE operates a talk radio and a radio targeted at a younger adult audience. The latter is available in the capital region as an analogue broadcast. YLE also has a foreign service, etc., on other wave-bands, but they do not form part of its domestic services.

4.2 Swedish programmes

YLE provides Swedish programmes on its two domestic television channels (ca. 1,000 hours per year), as well as a new digital full-service television service in Swedish (ca. 2,000 hours per year).¹² YLE also operates two radio channels, both broadcasting fully in Swedish, covering the coastal areas where most of the Swedish speakers live (a mix of the two channels is broadcast over the main parts of inland Finland). The radio channels together provide a full programme service, one being targeted at a younger audience and the other at an older demography, containing also regional programmes on niche slots.

Another major policy that was originally initiated with the support of the State is the relay-broadcast of SVT Europe from Sweden (a mix of the domestically-produced programmes of the public service television company, SVT) over a terrestrial network covering the coastal areas of southern Finland (this is a reciprocal arrangement involving a relay-broadcast of domestically-produced Finnish television programmes in some parts of Sweden). In the Åland Islands and on two stations in Ostrobothnia (on the west coast), the full programme supply of Swedish Television (SVT) Channels 1 and 2 is retransmitted. The commercial channel TV4 is available on cable.

The autonomous Åland Islands have a different broadcasting arrangement of their own. The Autonomy Act for Åland (1991) gave the Åland Islands the right to grant operating licences for broadcasting on the Åland Islands. The Provincial Act on Broadcasting on the Åland Islands (Act N:o 117/1993) gave Åland the right to levy their own licence fees. Another Act that is particularly relevant for the Åland Islands is the Act on Broadcasting and Cable Transmission on the Åland Islands (Act N:o 8/1994).

The public service broadcaster in the Åland Islands is *Ålands Radio och TV Ab*. This company operates a public service radio channel and produces some television programmes as well. It also provides for the re-transmission of television channels. Three television channels are retransmitted: SVT1 and SVT2 from Sweden and *Finlands TV*, which is a mix

¹¹ In Finland, one refers to “channels” instead of “stations”, the preferred term in some other countries. In Finland, these channels are actually nationwide networks.

¹² This channel, which can only be viewed with a digital decoder and as yet, only in certain parts of the country, began to operate in August 2001.

of YLE TV1 and YLE TV2 (mainly the Swedish-language programming).¹³ Some radio programmes from Finland and Sweden are also retransmitted.

Commercial programming in Swedish is sparse. There are no commercial television broadcasts in Swedish. One radio station in the Åland Islands broadcasts entirely in Swedish (*Radio Väst*). Some commercial radio stations in Ostrobothnia broadcast parts of their programmes in Swedish.

There are some cable-television operators, mainly in Ostrobothnia, but also in southwest and southeast Finland, distributing some own television programme production in Swedish in addition to relaying other channels.

In addition, there are two minor over-the-air regional television operations, broadcasting in Swedish, När-tv r.f. and KRS-TV r.f., two non-commercial, small-scale Swedish-language stations on the west coast.

4.3 Sámi programmes

In northern Finland, YLE operates a radio channel broadcasting in Sámi (40 hours weekly, ca. 2,000 hours per year). These broadcasts are partly produced in cooperation with the Sámi radios in Norway and Sweden.

Since January 2002, Sámi-language news is also broadcast on television (10 minutes each day, five days per week, Monday through Friday: 6.00-6.10pm). This broadcast can be seen in Northern Finland (covering an area somewhat larger than the Sámi Homeland). The broadcast is available nationwide on the digital 24-hour news service (at 8.15pm and 11.10pm). The news broadcast is the result of a joint Nordic cooperation between the public service companies in Norway, Sweden and Finland.

4.4 Programmes in other languages

The broadcasts in other languages are limited to the radio. YLE broadcasts three minutes of news in Russian on its main news channel (*Radio Suomi*). In addition, YLE broadcasts in Russian for 50 minutes per day on the FM band in southern and eastern Finland, consisting mainly of talk programmes, and relays the BBC's news in Russian. There is also 90 minutes daily broadcast on the AM band covering the southern parts of Finland. On its digital service, YLE broadcasts - for another five hours per day - Russian-language programmes from the Russian Voice (*Golos rossii*) and the BBC's service in Russian.

Since 1999, a private, commercially-financed radio network, *Radio Sputnik*, has existed. With its six transmitters, it covers the southern coastal area from the Russian border to Helsinki and parts of eastern Finland. It broadcasts in Russian.

YLE broadcasts 10 minutes weekly in the Roma language. There are no other broadcast services in this language.

4.5 Other features

Non-commercial community radio has not developed in Finland.

¹³ Source: Österlund-Karinkanta, Marina: 'Finland' in *Euromedia Handbook of Media Systems* (Sage, London (forthcoming)).

A special feature of Finnish television (public service as well as commercial) is that programmes (except for some children's programmes) are subtitled in other languages, not dubbed. This allows for simultaneous reception in several languages. Swedish-language broadcasts by YLE are regularly subtitled in Finnish. The news in Sámi on digital television is also subtitled in Finnish.

The University of Helsinki offers journalism training in Swedish as a main subject at its Swedish School of Social Science (Bachelors degree in Journalism, with the possibility of continuing to a Masters degree in Communications). The Åbo Akademi university offers journalism as a side subject at its unit in Vasa. There is no journalistic education in Sámi or in any other languages in Finland.

5 Current developments

The effects of technological developments (digitalisation of television, factual availability of digital broadcasts and the effects of digitalisation on transfrontier transmission) are currently being debated. There has also been a fear that transfrontier viewing in the Åland Islands and Ostrobothnia in the digital era may be endangered due to technical and copyright related matters. These matters are currently the subject of discussions between the Finnish and Swedish authorities.

The Acts relating to the right of free expression and publicity are currently being replaced with a new law on freedom of expression in the media. The new law will cover all types of media (for example, print, radio, television and Internet), establishing the same principles of responsibility and freedom of expression for all media irrespective of form of production and distribution. This proposition for a new Act is currently being deliberated on in Parliament. The Language Act from 1922 is also being replaced.

These amendments have no direct bearing on broadcasting for linguistic minorities as such, but there may be some indirect effects as the new Language Act requires heightened awareness to public service in Swedish in practice.

Appendix: Finland

ACT ON YLEISRADIO OY (THE FINNISH BROADCASTING COMPANY)

Act No. 1380/1993 adopted on 22 December 1993

and amendments

Act No. 340/1995 adopted on 17 March 1995

Act No. 746/1998 adopted on 9 October 1998

Act No. 37/2000 adopted on 21 January 2000

In accordance with the decision of Parliament, the following is enacted:

Chapter 1

General provisions

1 § Status of the company

Yleisradio Oy shall be a limited company operating in the administrative sector of the Ministry of Transport and Communications and engaged in public service broadcasting in accordance with section 7. --The Company may also engage in other activities in accordance with its Articles of Association or the license granted to it. (Amended by Act No. 746/1998)

The right of the company to operate public service broadcasting shall be governed by separate provisions. The technical equipment required for its activities shall be governed by the provisions of the Radio Act (1988/517) and the Telecommunications Markets Act (396/1997). (Amended by Act No. 746/1998)

The provisions of the Companies Act (Amended by Act No. 1978/734) shall be applied to the company with exceptions provided for in this Act.

2 § Ownership

The State shall own and control the share capital of the company to an extent which corresponds to at least 70 per cent of all the shares in the company and of the votes generated by all the shares in the company.

3 § Operating requirements of the company

In developing other broadcasting activities, the Ministry of Transport and Communications shall take into account the operating requirements of public service broadcasting referred to in section 7.

Chapter 2

Administration

4 § Administrative Organs

The administrative organs of the company shall consist of an Administrative Council, a Board of Directors, and a Director General acting as managing director.

5 § Administrative Council

The company shall have an Administrative Council which shall have 21 members.

The members of the Administrative Council shall be elected by Parliament in its first session of the term. Their term of office shall begin as soon as the election has been completed, and it shall continue until the election of the new members of the Administrative Council. The members of the Administrative Council shall include representatives from the fields of science, art, education, business and economics, as well as representatives of different social and language groups. (Amended by Act No. 340/1995 and Act No. 37/2000)

The members of the Administrative Council shall elect a chairman and a vice chairman from among themselves.

Paragraph 4 repealed by Act No. 746/1998 adopted on 9 October 1998.

6 § Duties of the Administrative Council

The duties of the Administrative Council shall be:

- 1) to engage and to dismiss the company's Director General, whose term of office shall be five years, and to assess his salary and other conditions concerning the office;
- 2) to elect the Board of Directors of the company so that it represents both language groups and sufficient expertise in the handling of the public service duties in accordance with section 7 of this Act; (Amended by Act No. 746/1998)
- 3) to decide on issues concerning significant restriction or expansion of the activities or material changes in the organization of the company; (Amended by Act No. 746/1998)
- 4) to control that tasks involving public service programme activities in particular shall be carried out;
- 5) to decide the budget for the following year;
- 6) to give authorization to sign for the company;
- 7) to review and to approve the annual report of the Board of Directors;
- 8) to supervise the administration of the company and to issue its statement on the financial statement and the auditors' report to the Ordinary General Meeting of the Shareholders; (Amended by Act. No. 746/1998)
- 9) to control that the decisions of the annual general meeting are implemented; and
- 10) to summon the annual general meeting and to prepare the items of the agenda.

The Administrative Council may also make decisions concerning other matters referred to it by the Board of Directors.

The Administrative Council shall be summoned within one month to deal with issues referred to it by one third of its members in a written request addressed to the chairman.

Chapter 3

The duties of the company

7 § Public Service

The company shall be responsible for the provision of comprehensive broadcasting services for all citizens under equal conditions.

As special duties involving public service, the company shall:

- 1) support democracy by providing a wide variety of information, opinions and debates on social issues, also for minorities and special groups;
- 2) support, produce and develop Finnish culture and make the products thereof available for all citizens;
- 3) promote the educational nature of programmes, support the citizens' study activities, and offer devotional programmes;
- 4) to treat in its broadcasting Finnish and Swedish speaking citizens on equal grounds and to produce services in the Sámi and Romany languages and in sign language as well as, where applicable, also for other language groups in the country; (Amended by Act No. 746/1998)
- 5) broadcast official announcements, further provisions for which shall be issued in statutory order, and make provision for broadcasting in exceptional circumstances; and
- 6) make, produce and broadcast Finnish programmes and transmit news and programmes between Finland and foreign countries.

8 § Other Duties

The annual general meeting may decide to amend the articles of association in such manner, that the company can engage in other activities than public service broadcasting. In accounting, these activities shall be kept separate from public service broadcasting.

Chapter 4

Repealed by Act No.746/1998 issued on 9 October 1998.

Chapter 5

Miscellaneous provisions

12 § Prohibition on advertising

The company may not broadcast television or radio advertising in connection with its programmes. The Council of State shall, however, have the right to grant the company, for a

special reason, a programme-specific right to broadcast such advertising. (Amended by Act No. 746/1998)

The company may not produce sponsored programmes. (Amended by Act No. 746/1998)

Chapter 6

13 § Entry into force

This Act shall enter into force on 1 January 1994.

Measures to implement this Act may be undertaken prior to its enactment.

14 § Repealed provisions

This Act shall repeal the following:

1) the Act on the right of the Council of State to Transfer to a Limited Company State Property Acquired for the Purpose of Public Broadcasting (216/34), adopted on 18 May 1934, including later amendments, and

2) paragraph 1 of section 6 of the Telecommunications Act adopted on 20 February 1987.

15 § Transition provision

The operating licence for broadcasting issued by the Council of State to Oy Yleisradio Ab shall expire on the entry into force of this Act.

The Administrative Council elected for Oy Yleisradio Ab on 16 April 1991 shall continue in office after the entry into force of this Act as an Administrative Council in the meaning of this Act until the close of its present term of office. Decisions concerning the transition period shall be made by the Administrative Council as regards the management appointed for the five-year term beginning on 1 January 1990. The transition period shall close by the end of the year 1994.

France

France has consistently held a particular position with regard to the protection of minority rights. The French authorities have traditionally been reluctant to give express recognition to minority languages because such recognition seems to be contrary to the principles of equality for all citizens and (communitarian and territorial) indivisibility central to the republican ideal. The promotion of regional or minority languages in France is not necessarily contingent on express legal recognition. For present purposes, an important piece of legislation has been drafted to counter the increasingly pervasive influence of the English language. It insists upon, *inter alia*, the exclusive use of the French language on all radio and television programmes, with the exception of films and audiovisual works in their original languages. Another piece of legislation establishes a quota mechanism for music played on the radio: a 40% quota of French-language music (“d’expression française”), including 20% of new artists or new releases between 6.30am and 10.30pm. The regulatory authority has, however, some discretion which allows it to apply the quotas in a more flexible manner to specialised radio stations.

Since the ending of the public service monopoly on broadcasting in 1982, one of the surviving public service television channels, France 3, has been handed responsibility for contributing to the expression of regional languages spoken on metropolitan French territory. In practice, this is achieved by decentralised programming policies and the broadcasting of weekly programmes in regional languages (for up to two hours). Public service radio has adopted a similar practice. Broadcasting for the French Overseas Territories is the responsibility of a nationalised programming company, which is charged with promoting the French language as well as regional languages and cultures. The primary objective of the Superior Council of Broadcasting is to ensure a pluralist expression of opinion and since the advent of private sector broadcasting, it has presided over the establishment of myriad specialised television and radio stations, including, in 2001, a private television station broadcasting in the Breton language.

1 Introduction

1.1 Linguistic topography

No official statistics exist in regard to the number of languages spoken in France and the expression “minority languages” cannot be found in French political or legal vocabularies. The expression most commonly used is that of “regional languages” usually reserved for Breton, for example. The term “foreign languages” is most commonly used for languages of cultural minorities (eg. Arabic, Portuguese).

In the absence of official statistics on the number of regional language speakers, Bernard Cerquiglini’s 1999 report on languages, *Les langues de la France*, may be useful.¹ This report states that there are 51 regional languages spoken in the Provinces of the Overseas Territories and in the Overseas Territories (Polynesian, Melanesian and Creole languages), and 24 in metropolitan France (with Alsatian, Basque, Breton, Catalan and Corsican being the most widely used).

¹ Bernard Cerquiglini is Director of the National Institute of the French Language. The report was released by the Department of Education and the Department of Culture & Communication in April 1999.

The CIA World Factbook of 2001 reports that French is spoken by 100% of the population and that there are several “rapidly declining regional dialects and languages”. These include Provençal, Breton, Alsatian, Corsican, Catalan, Basque and Flemish. Ethnic groups include: Celtic and Latin with Teutonic, Slavic, North African, Indochinese and Basque minorities.

1.2 Government policies on broadcasting and minorities

Speakers of “regional languages” are not able, in France, to claim the status of a “linguistic minority” because in principle all French nationals speak the official language. Moreover, from a formal and legal perspective, there are no “minorities” in France. Indeed, since 1789 the Republic has always envisioned the unity of its citizens as “without distinction of origin, race or religion.” Consequently, the legislator has always refused to recognise rights for groups that are formed on the basis of a community of common origin, belief, culture, and language. In France, there is but one abstract community, that of its citizens.

Traditionally, the dominant conception in France, which is interpreted by its legal position, emphasises that the use of regional languages must be confined to the private domain. French is the only language of the Republic and of its public authorities. This is based on the institution of the royal prescription of *Villers-Cotterêt* in 1539, making the French language the sole judicial language.² The French Revolution and the *loi du 2 thermidor de l’an II* (Law of 2 Thermidor in the year II of the French Republican calendar) is the eminent symbol, which reinforces the monopoly on the usage of French for official acts.

Since 1789, the interpretation of the principle of equality has opposed preferential treatment based on origin, social status, religion or language. Therefore, representing minorities or “linguistic minorities” is not specifically part of broadcasting policy. However, public channels and stations have traditionally had the responsibility to assure the promotion of regional languages and cultures by programming a certain allotted time of broadcasting. Since the enactment of Law n°82-652 of 29 July 1982 pertaining to broadcast communication,³ the preservation of a pluralist characteristic in the expression of ideas, trends, and public opinions has gained in importance.⁴

The repeal of the public authority and its monopoly on broadcast programming, by the law of 29 July 1982 symbolises, for all intents and purposes, the assurance of the highest possible level of linguistic pluralism. In a formulation which evokes the law of 29 July 1881 on freedom of the press, the first line of Article 1 of the Law of 29 July 1982 states: “Broadcast communication is unrestricted.” By a wide definition of broadcast communication, the legislation covers all media, from radio and television to telecommunications.

1.3 Broadcasting

At the broadcasting level, besides the hertzian public channels (France 2, France 3 and France 5) and the Franco-German public channel (Arte), *Canal+* commenced broadcasting on 1 November 1984. TF1, the most popular television channel, was privatised in 1987. In addition, several new, private channels, exclusively financed by commercial spots, have been founded (notably M6). A regulatory authority was established, called the *Conseil supérieur*

² This enactment is still in force: see the Council of State, 22 November 1985, Rec. 333 (concl. Latournerie).

³ See: <http://www.legifrance.gouv.fr/WAspad/Visu?cid=6289&indice=1&table=CONSOLIDE&ligneDeb=1>.

⁴ See Decision n°88-248 D.C., Rec. 18, of the Constitutional Council of 17 January 1989, available at: <http://www.conseil-constitutionnel.fr/decision/1988/88248dc.htm>

de l'audiovisuel (CSA or, Superior Council of Broadcasting). Its primary mission is to ensure a pluralist expression of opinion.

Over 1,100 local radio stations are licensed by the CSA. A few of them broadcast in regional languages or in Arabic, in the Paris area in particular.⁵

In general, every national terrestrial channel as part of its remit must defend and promote the French language, for example, M6 (*Métropole Télévision*), TF1 (*Société Télévision Française*) and *France Télévision 2, 3 and 5*.

However, *France 3*, which is one of the three public service television channels of France Television, is the main provider of regional programmes. The latest figures show that out of a total of 17,500 hours broadcast in 1999, 10,500 hours were regional programmes—mainly news and current affairs—with a substantial proportion of these (how much exactly is not known) in seven regional languages (Breton, Alsatian, Occitan and Corsican in particular). These programmes were broadcast during daily opt-outs between 12.00pm and 2.00pm and between 7.00pm and 7.30pm. *France 3* has 24 newsrooms across the country and 13 regional broadcasting centres. With the launching of digital terrestrial television in 2003, *France 3* is considering applying for the permission to operate eight fully regional television channels.

In September 2001, a Breton cable and satellite channel was launched and promoted by Patrick Le Lay Director General of TFI. *TV Breizh* focuses on original programming in Breton. It is the first bilingual channel in France (Breton and French). This digital channel is available on cable and satellite.⁶

Additionally, there are nine local terrestrial television stations licensed by the CSA alongside 50-odd local cable television channels whose output is less than two hours of programmes daily. Some of their programmes are broadcast in regional languages, particularly in Strasbourg, Bayonne and Brest, but such programming is in general minimal.

2 Constitution

The Constitution of the Fifth Republic of 4 October 1958, in accordance with republican tradition, voluntarily omits any recognition of “minorities”, and opposes any and all communitarian ideals. The Constitution does not make a distinction between individuals for reasons of presumed affiliation to a group that defines itself by its cultural origin, ethnic, religious, or linguistic adherence. From a constitutional point of view the French people are composed “of all citizens without distinction of origin, race or religion” (Article 1 of the Constitution). The principles of unity and indivisibility of the Republic and the principle of equality of all citizens before the law (Article 1 of the Constitution) thereby oppose, for example, that the Corsican people could be considered as a constituent of the French people.⁷

2.1 Freedom of expression

According to Article 11 of the Declaration of the Rights of Man and of the Citizen of 26 August 1789, freedom of expression is recognised for all: “The freedom to communicate

⁵ More information can be obtained on the website of the CSA: <http://www.csa.fr>.

⁶ See further: <http://www.tv-breizh.com>.

⁷ See Decision n°91-290 D.C., Rec. 50, of the Constitutional Council of 9 May 1991, available at: <http://www.conseil-constitutionnel.fr/decision/1991/91290dc.htm>.

one's thoughts and opinions is one of the most precious of rights of man: each citizen can thus speak, write, print freely, except to answer to an abuse of this freedom in cases to be determined by the law". As regards public institutions, this right only refers to expression in French.

2.2 (Official/State) language(s)

The French language received its constitutional status by a constitutional amendment of 25 June 1992. Until then, the usage of French was never questioned insofar as numerous legislative texts protect the use of the French language. Nonetheless, after the signing of the Maastricht Treaty, and the fear that certain essential factors of the nation would come under scrutiny, an additional line was added to Article 2 of the Constitution. It states, "the language of the Republic shall be French."⁸

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

Legislation concerning regional languages is relatively recent in the history of France; it essentially affects education. During contemporary times, three laws deserve close examination: the "*Deixonne*" Law of 1951, the "*Haby*" Law of 1975 and the "*Toubon*" Law of 1994. The so-called "*Pelchat*" Amendment to the Law relating to freedom of communication (the "*Léotard*" Law) of 1986 could also be discussed at this juncture.

Law n°51-46 of 11 January 1951 relating to the teaching of local languages and dialects (the so-called "*Deixonne*" Law)⁹ declared for the first time that "local" languages were officially recognised as having the right of existence (Article 1). Law n°75-620 of 11 July 1975¹⁰ is also important insofar as it allowed official recognition to be given to "regional languages" for the first time, even if its ratification is limited to education.

3.2 Broadcasting legislation

The "*Toubon*" Law n°94-665 of 4 August 1994 (Law relating to the use of the French language)¹¹ regulates government speech and most aspects of public speech in order to counter the influence of the English language. It requires the use of the French language for product advertising, announcements posted in public places, and all radio and television programmes.¹² Nevertheless, the law does not prohibit the use of regional languages for these

⁸ See R. Debbasch, "La reconnaissance constitutionnelle de la langue française," *Revue française de droit constitutionnel*, 1992, p. 468.

⁹ Legislation available at: <http://www.culture.fr/culture/dglf/lang-reg/lang-reg4.htm>.

¹⁰ Legislation available at: http://fcpe66.org/dossiers/ais/loi_75-620.pdf.

¹¹ Legislation available at: <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=MCCX9400007L>. For an English-language version, see: <http://www.culture.fr/culture/dglf/lois/loi-gb.htm>.

¹² A new Article 20-1 has been inserted before Chapter 1 of Section II of law n°86-1067 of 30 September 1986 relative to the freedom of communication (<http://www.legifrance.gouv.fr/texteconsolide/PCEAJ.htm>): "The use of French is compulsory in all the programmes and advertising messages of radio and television broadcasting organisations and services, whatever their mode of dissemination or distribution, with the exception of motion picture and radio and television productions in their original language version [...]. Where the broadcasts or advertising messages referred to in the first paragraph of the present Article are accompanied by translations in a foreign language, the presentation in French must be as legible, audible and intelligible as the presentation in the foreign language."

purposes. Despite wide criticism abroad,¹³ the Toubon law aimed not to forbid the use of English by private persons, but to preserve the use of French. Articles 4, 7 and 11 of the Law provide that it is only compulsory to translate into French and not to express oneself in French. In addition, it must be said that the scope of the legislation was limited by the Constitutional Council, which mainly ruled that two provisions were not in conformity with Article 11 of the Declaration of 1789: the obligation for private bodies and the broadcasting sector to follow “official terminology” when the use of French is compulsory; the obligation for scholars to publish or translate their research in(to) French in order to be eligible for public funds.¹⁴

The “*Pelchat*” Amendment to the “*Léotard*” Law¹⁵ establishes a quota mechanism for music played on the radio: a 40% quota of French-language music (“d’expression française”), including 20% of new artists or new releases between 6.30am and 10.30pm. This provision was introduced as Article 28(2)*bis* of the “*Léotard*” Law.¹⁶ The Council of State found that the quota mechanism introduced by the “*Pelchat*” Amendment was not in violation of the EC Treaty (free movement of goods).¹⁷ However, faced with some difficulties of implementation, the legislator decided to introduce greater flexibility into the 40% quota mechanism: the *Conseil supérieur de l’audiovisuel* is now allowed to offer a different solution to certain specialised radio stations.¹⁸ Article 28(2)*bis* now reads:

The substantial proportion of musical works in the French language or performed in a regional language being used in France, which has to reach a minimum of 40% of French-language songs, with half of which at least coming from new talents or new productions, broadcast during significant listening times by all radio broadcasting services licensed by the *Conseil supérieur de l’audiovisuel*, for the share of its programmes comprising musical entertainment.

By way of derogation, the *Conseil supérieur de l’audiovisuel* may authorise the following proportions for specific formats:

- for radios specialising in the promotion of musical heritage: 60% of French-language titles, with a percentage of new productions of up to 10% of the total, with a minimum average of one title per hour;
- for radios specialising in the promotion of young talent: 35% of French-language titles, with at least 25% of the total coming from new talents.¹⁹

¹³ Leslie S. Wexler, “Official English, Nationalism and Linguistic Terror: A French Lesson,” 71 *Washington Law Review* 285, 341-47 (1996). For a more qualified analysis, see eg. G. Carcassonne, “La protection de la langue française et le respect des libertés”, *Commentaire*, Été 1995 (70), p. 331.

¹⁴ Decision n°94-345 D.C., Rec. 106, of the Constitutional Council of 29 July 1994, available at: <http://www.conseil-constitutionnel.fr/decision/1994/94345dc.htm>.

¹⁵ Loi relative à la liberté de communication (Loi Léotard), Loi no. 86-1067 du 30 septembre 1986 (modifié), available at :

<http://www.legifrance.gouv.fr/WAspad/Visu?cid=6343&indice=1&table=CONSOLIDE&ligneDeb=1>.

¹⁶ Introduced by Law no. 94-88 of 1 February 1994.

¹⁷ Decision of the *Conseil d’Etat* of 8 April 1998, Case of Société Serc Fun Radio, No. 161411, available at: <http://www.legifrance.gouv.fr/WAspad/Visu?cid=152603&indice=1&table=JADE&ligneDeb=1>.

¹⁸ This amendment to the Léotard Law was introduced by Law no. 2000-719 of 1 August 2000.

¹⁹ Editors’ translation. The original Article 28(2)*bis* reads: « La proportion substantielle d’œuvres musicales d’expression française ou interprétées dans une langue régionale en usage en France, qui doit atteindre un minimum de 40 % de chansons d’expression française, dont la moitié au moins provenant de nouveaux talents ou de nouvelles productions, diffusées aux heures d’écoute significative par chacun des services de radiodiffusion sonore autorisées par le *Conseil supérieur de l’audiovisuel*, pour la part de ses programmes

3.3 Implementation of broadcasting legislation

The CSA is currently assessing applications by over 60 groups for the 31 channels that will be made available on digital terrestrial television (DTT) multiplexes. The licences will be awarded in 2003. DTT is generally considered to promise greater room for regional and local expression. The promise is that regional and language interests will be developed and promoted through digital terrestrial television.

Prior to the end of the public monopoly in 1982, the promotion of regional languages on broadcasting was assured by a few hours of broadcast programming. Since Law n°82-652 of 29 July 1982 pertaining to broadcast communication was passed, only public television channels (France 2 and France 3) support the expression of regional languages and cultures. More precisely, the specifications of *France 3* require the channel to contribute to “the expression of regional languages spoken on metropolitan French territory.”²⁰ In practice, *France 3* assures, by its decentralised programming in each region, weekly programmes in the regional language (for a maximum of two hours, in general).

In compliance with the Executive Order of 13 November 1987, the company Radio-France promised to contribute to providing access and information to cultural communities, and ensures that local stations contribute to the expression of regional languages.²¹ There also exists a nationalised company of programming called *Réseau France Outre-mer* that is in charge of creating and producing television and radio programmes to be aired in France’s overseas provinces. This company must assure “the promotion of the French language as well as regional languages and cultures.”²²

The legislator has allowed certain regions—Corsica and overseas regions—to take action in the broadcasting sector. To that end, for example, Law n°91-48 pertaining to the status of Corsica states, in Article 55, that the public community of Corsica may conclude with public companies in the broadcasting sector, agreements that particularly pertain to promoting the television and radio productions whose goals are to develop the Corsican language and culture, and to broadcast them on Corsican territory.

In general it is the responsibility of the CSA to ensure the “‘pluralist nature’ of the expression of ideas and opinions” (Article 1 of the Law of 30 September 1986). Article 13 of that law also states that the CSA must ensure that the expression of a plurality of ideas and opinions is respected by national companies—particularly for political programmes. In the case of an apparent violation by television or radio broadcasters of their obligation to promote regional languages the National Council of Regional Languages and Cultures may refer its concerns to the CSA.²³

composée de musique de variétés./ Par dérogation, le Conseil supérieur de l’audiovisuel peut autoriser, pour des formats spécifiques, les proportions suivantes : / - soit pour les radios spécialisées dans la mise en valeur du patrimoine musical : 60 % de titres francophones, dont un pourcentage de nouvelles productions pouvant aller jusqu’à 10 % du total, avec au minimum un titre par heure en moyenne ; / - soit pour les radios spécialisées dans la promotion de jeunes talents : 35 % de titres francophones, dont 25 % au moins du total provenant de nouveaux talents ; »

²⁰ “Décret” n°87-717 of the Prime Minister of 28 September 1987, Article 20 of the Specifications (*cahier des charges*).

²¹ See Article 6 of the Specifications.

²² See Article 44 of the Law of 30 September 1986.

²³ Article 42 of the Law of 30 September 1986.

3.4 Transfrontier dimension

FRANCO-GERMAN TREATY OF 2 OCTOBER 1990

The Treaty between France and Germany of 1990 established *Arte*, a Franco-German channel that is terrestrial.²⁴ *Arte* has increasingly begun to include programming other than German and French. It does not broadcast in minority languages, but rather attests to a willingness to be open to the use of other languages.

EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

In May 1999, France signed the European Charter for Regional or Minority Languages. In June 1999, the Constitutional Council ruled that some of the general provisions contained in the Charter were contrary to certain fundamental principles enshrined in the French Constitution.²⁵ The Constitutional Council had always firmly abided by the principle that the French constitutional order is based on the equality of citizens before the law, which is construed as contrary to the recognition of minority groups. According to this case-law, the Constitutional Council found the notion of rights conferred on “groups” of regional and minority language speakers exercisable within specific parts of the French territory, and the notion of a right to use a language other than French in public life (Article 7 and Preamble to the Charter), to be contrary to the principles of the indivisibility of the Republic, equality before the law and unity of the French people enshrined in the French Constitution, as well as to the Article of the Constitution stating that the language of the Republic is French.

Ratification of the Charter would therefore require a Constitutional amendment. However, the President of the Republic, Jacques Chirac, has explicitly said that he would veto any amendment, which could cause a breach of the “fundamental principles of the Republic”.²⁶ Nevertheless, when France signed the Charter, it indicated a list of paragraphs (see Part III of the Charter), which it intended to apply to a certain number of minority languages to be specified upon ratification. In its ruling of 15 June 1999, the Constitutional Council specifically said that these paragraphs were not unconstitutional. The French authorities have therefore confirmed that, even without ratifying the Charter, France will apply, or in some cases already is applying, these paragraphs in practice.

²⁴ See further: <http://www.arte-tv.com/artefinfo/ftext/general/chronik.html> or http://www.csa.fr/infos/operateurs/operateurs_television_publicques.php.

²⁵ Decision n°99-412 D.C., Rec. 71, of 15 June 1999, available at: <http://www.conseil-constitutionnel.fr/decision/1999/99412dc.htm>. For a comprehensive analysis, see F. Melin-Soucramanien, “La République contre Babel”, *Revue du droit public*, 1999, p. 985.

²⁶ For a critical appraisal of the presidential declaration of 23 June 1999, see the interesting report of the *Conseil international de la langue française*, available at: <http://www.cilf.org/pub/charte.fr.htm>. For a comprehensive legal analysis, see F. Benoit-Rohmer, “Les langues officielles en France”, *Revue française de droit constitutionnel*, 2001, p. 3.

In general, it can be considered that in spite of the absence of constitutional recognition of “linguistic minorities”, the legislation assures the protection of regional languages and cultures. This is particularly visible in the domain of education, and to a lesser degree, in the domain of the media.

Georgia

The Georgian Constitution prescribes the Georgian language as the state language, and also Abkhazian in Abkhazia. Existing legislation states that the language of the media is the state language, while at the same time guaranteeing for every national minority the right to receive and impart information in their own languages. Draft legislation currently under consideration would, if adopted, introduce a new provision whereby broadcasting would have to take place in the state language, except in cases “of necessity”, in which 10% of the total broadcasting time could be in another language. A limited degree of multilingual broadcasting does exist in Georgia and this is supplemented in border regions by broadcasts from neighbouring countries. Non-negligible financial and technical-cum-geographical difficulties continue to stymie the development of broadcasting in non-state languages.

1 Introduction

1.1 Linguistic topography

The latest census for which information is available was conducted in 1989. A new census was taken in 2002, but the new figures will not be announced until the end of the year. According to the data for the year 1989, the population comprises [ethnic] Georgians and 15 ethnic minorities, who speak their own native languages.

Out of the total population in Georgia (5,400,841), about 71% (3,787,393) speaks Georgian. Below is the percentage of the total for each minority, as well as the percentage that speaks a minority language.

Table 1: Ethnic and Language Percentages

National Minorities (Georgian, 70.1%)	Language Percentages (Georgian, 71%)
<ul style="list-style-type: none"> • Russian, 6.3 %; • Azerbaijanian, 5.7% • Armenian, 8.1% • Abkhaz, 1.8% • Ossetian, 3% • Jewish, 0.19% • Georgian Jewish, 0.27% • Greek, 1.85% • Kurdish, 0.62% • Turkish, 0.025% • Estonian, 0.043% • Avarian, 0.078% • Gypsies, 0.032% • Assyrians, 0.11% • Germans, 0.029% 	<ul style="list-style-type: none"> • Russian, 9% • Azeri, 6% • Armenian, 7% • Other, 7%

1.2 Broadcasting

At present, the state-owned TV–First Channel broadcasts two Russian-language daily news programmes. These are *Vestnik* (which broadcasts in Russian for 20 minutes daily) and *Vesti*.

In cooperation with Caucasus States television companies, the Georgian private television company *Rustavi-2* provides broadcasting in Russian which covers Georgia, Azerbaijan and Armenia. There are eight independent broadcasting companies in Tbilisi and about 45 regional television stations and several radio stations including a state radio broadcasting company. Lack of finances causes most of them to depend on state funding. There is no public service broadcasting in Georgia.

Ajara TV of the Autonomous Republic of Ajara has been broadcasting news in three foreign languages – Russian, English, and French.

In the regions densely populated with ethnic minorities, particularly in border zones such as Akhaltsikhe (bordering Armenia) and Marneuli (bordering Azerbaijan) the majority of the population does not speak Georgian and thus they watch Armenian and Azerbaijan television channels. Local cable television in Georgian regions mostly covers local news and events.

The state radio company broadcasts programmes in the Azeri language (half an hour per day), in Armenian (one hour per day) and Kurdish (a quarter of an hour per day). Recently the station had to change its transmitting frequency, due to a state budget deficit. The new frequency is inaccessible (without additional equipment) to the regions where high majorities of these minorities live. Thus, the station covers Azerbaijan and Armenia but does not reach the minorities living in the regions of Georgia.

There are two private television channels in Samtskhe Javakheti (South Georgia) region (densely populated by Armenian ethnic minorities). There is one in Akhaltsikhe – *ATV-12*, which broadcasts in the Russian, Georgian and Armenian languages. The second is *TV Parvana* (in Ninotsminda) - it broadcasts in the Russian, Georgian and Armenian languages. Neither broadcast regularly.

The Tbilisi-based Georgian radio broadcasting company, *Green Wave*, established its station in South Ossetia. This station broadcasts 24 hours in the Ossetian language.

The region of Kvemo Kartli is mainly populated by Azerbaijanis. *Vestnik* is the only programme that they can receive. There are no other programmes in Russian or in Azerbaijani. They appealed to the state television channel to allocate some time to broadcasting in Azerbaijani, but the administration of the state television rejected their application.

1.3 Government policies on broadcasting and minorities

State policy related to broadcasting is based on freedom of expression principles and is reflected in the Georgian Constitution. Institutions such as minority language schools, radio, and Russian, Armenian, or Kurdish television, which serve ethnic minority groups on a large scale are financed from the state budget. All other remaining issues concerning ethnic minorities in Georgia are regulated by the Constitution of Georgia and the Law on Citizenship. There is no special law on broadcasting in minority languages, though there are some draft laws.

2 Constitution

The Constitution of Georgia was adopted on 24 August 1995.¹

2.1 Freedom of expression

Article 19

1. Every individual has the right to freedom of speech, thought, conscience, religion and belief.
2. The persecution of an individual for his thoughts, beliefs or religion is prohibited, as is compulsion to express opinions about them.
3. These rights may not be restricted unless the exercise of these rights infringes upon the rights of other individuals.

Article 24

1. Every individual has right to freely receive and disseminate information, to express and disseminate his opinion orally, in writing or in any other form.
2. The mass media is free. Censorship is prohibited
3. Monopolisation of the mass media or the means of dissemination of information by the state or natural persons is prohibited.
4. Clauses 1 and 2 of this Article can be restricted by law when conditions make it necessary in a democratic society for the guarantee of state and public security, territorial integrity, prevention of crime, and the defence of rights and dignities of others, to avoid the revelation of confidentially received information or to guarantee the independence and impartiality of justice in a democratic society.²

2.2 Equality/minority rights

Article 38

1. Citizens of Georgia are equal in social, economic, cultural and political life regardless of national, ethnic, religious or language origin. According to universally recognised principles and norms of international law all have the right to develop their culture freely without any discrimination and interference. They may use their language in private and public life.
2. In accordance with universally recognised principles of international law, the exercise of minority rights should not oppose the sovereignty, integrity and political independence of Georgia.

2.3 (Official/State) language(s)

Article 8

The state language of Georgia is Georgian; in Abkhazia, Abkhazian is also the state language.

¹ Available at: http://www.parliament.ge/LEGAL_ACTS/CONSTITUTION/consten.html.

² Editors' note: the text of Article 24.4 differs slightly from that provided at the above URL; the difference can be explained purely by translation/editorial considerations.

3 Legislation

There are no expressly prohibitive provisions restricting minorities' access to broadcasting in their own language.

GEORGIAN LAW ON THE PRESS AND MEDIA, 1991

The Georgian Law on the Press and Media contains several provisions regarding the language of media and the protection and promotion of minority rights.

Article 3

1. The language of the press and media is the state language of Georgia – Georgian, in Abkhazia – also Abkhazian.
2. The State of Georgia secures for every national minority the right to receive and impart information in their own language.

Under the Article 6 of the law, governmental institutions, political parties, civil society organisations, public movements, creative associations and other unions which are established and registered pursuant to the existing law, as well as citizens who have reached the age of 18, have the right to found media facilities. Media monopolies are prohibited under Article 6.1. The share of each founder should not be more than 25%.

LAW ON POST AND TELECOMMUNICATIONS, 1999³

The Law on Post and Telecommunications (LPT) regulates licensing for broadcasting stations. The Georgian National Post and Telecommunications Regulatory Commission (hereinafter the Commission) is the independent state organ that grants broadcasting licences, in compliance with community principles. The Commission, when selecting applications, considers technical and financial criteria and programming, including the quantity of local production. The LPT includes no restrictions concerning linguistic minorities.

LAW ON GEORGIAN CITIZENSHIP, 1993⁴

For present purposes, Georgian law contains one more provision worth noting. Article 4 of the organic law On Georgian Citizenship provides that “[C]itizens of Georgia are equal before the law regardless of race, skin colour, language, sex, religion, political and other beliefs, national, ethnic and social origin, properly and title of nobility or place of residence”.

4 Current developments

At the beginning of 2002 active discussions began on the draft law on state language. Article 11 of the draft law requires that all citizens of Georgia know the state language: Georgian or Abkhazian in Abkhazia. Critics claim that if the proposed policy were enforced many members of national minorities would lose their citizenship by virtue of their inability to speak the state languages.

Article 32 of the draft law requires that newspapers and magazines be published in the state language. This standard would also apply to television and radio broadcasting. In case of necessity, this draft law would allow 10% of total broadcasting time to be conducted in

³ 23 July 1999, available on the website of the Georgian National Communications Commission: <http://www.gncc.ge/enghome.htm>.

⁴ 25 March 1993.

another language (this would apply to official broadcasting facilities, but not to cable television).

A draft Law on Public Service Broadcasting is being discussed at present. According to the plan, the law will provide for broadcasting that takes the interests of every social and minority group into consideration, regardless of language.

One of the non-governmental organisations called *Multilingual Georgia*, which currently runs a multilingual monthly newspaper for minorities prepared a project on establishing a private multilingual radio for minorities, but the project did not win the interest of either local or international donors.

Some of the non-governmental organisations working on minority issues and participating in elaborating draft laws have now proposed changes to the legislative acts related to the status of minority languages. They have proposed to give minority languages the status of “non-state language” instead of “foreign language”. There is also discussion about whether or not it is necessary to adopt a special law on ethnic minorities living in Georgia.

Germany

There are five recognised minority languages in Germany: Danish, Frisian, Low German, Romany and Sorbian. With the exception of Romany, these languages are geographically concentrated, which partly explains why individual *Länder* tend to have competence for their regulation and promotion. Public service broadcasting in Germany is guided by a number of structural and content-related requirements of relevance to minorities (e.g. adequate representation on programming councils and the safeguarding of linguistic pluralism, respectively). Private sector broadcasting must also abide by national laws and individual State supervision; an arrangement which subjects it to representative and pluralistic criteria. Whether minority groups will operate their own broadcasting facilities depends largely on the internal dynamics and energies of each community, as well as the finances at its disposal. In any event, most States provide minority groups with the opportunity of broadcasting over so-called “open channels”, programme transmission facilities that are open to everyone who does not own or operate their own broadcasting stations.

German law in general (and broadcasting law in particular) is defined by its dualism; its division of competences between the Federal and State levels. The Federal Constitution provides for freedom of expression and the safeguarding of minority rights. At the state level, those States with the highest percentage of minorities also tend to provide them with corresponding constitutional protection. For present purposes, Brandenburg, Mecklenburg-Vorpommern, Freistaat Sachsen and Schleswig-Holstein are of particular interest. Of these, only Brandenburg and Freistaat Sachsen have constitutional provisions dealing specifically with broadcasting (the Federal Constitution applies to all States). Interstate legislation on broadcasting exists and its aim is to harmonise crucial aspects of broadcasting law between the different States. This legislation does not refer specifically to minorities or to minority languages, but it does impose general obligations as to programme quality and presentational balance on private broadcasters. Provisions relating to public service broadcasting are generally to be found in state-specific legislation or other interstate legislation. At the State level, provisions favouring minority-language broadcasting follow similar patterns: programmes designed to satisfy the needs and interests of minority groups; programmes in the relevant minority languages (with priority attaching to news programmes); the use by minority associations of the aforementioned open canals; reliance on transborder broadcasts; various financing schemes, or combinations of the above.

1 Introduction

1.1 Linguistic topography

The population of Germany is approx. 82,480,000 inhabitants and there are five recognised minority languages in the country: Danish, Frisian, Sorbian, Romany and Niederdeutsch. Each language group could be divided into smaller sub-groups. However, for the sake of a clearer overview, this report uses the classification of the five main groups. Generally, minority languages are (roughly) related to a particular geographic territory, with the exception of Romany.

1.1.1 Danish

Danish is the minority language of the parts of the population with Danish links, living in the north of Germany, in Schleswig-Holstein, close to the Danish border. According to official

sources, the Danish community numbers approx. 50,000 persons. In some parts of Schleswig-Holstein, the Danish minority lives in great density, for example in Flensburg, where 20% of the citizens belong to the Danish majority.

1.1.2 Frisian

Frisian is the second minority language spoken in the north of Germany (in Schleswig-Holstein and in Niedersachsen). This language is related to Old-English or Old-Danish, rather than to Dutch. Germany counts approx. 50,000–60,000 Frisians (in some regions of both States, the Frisians form around one-third of the local population). Of the 50,000–60,000 Frisians in Germany, approx. 10,000 actively speak and write the language, whereas an additional 20,000 have declared that they are able to understand Frisian. The relatively low number of active users of Frisian stands somewhat in contrast to the commitment and the success of a rich collection of e.g. Frisian literature (old and contemporary).

1.1.3 Sorbian

Sorbian is a Slavic language, that is foremost present in the east of Germany: in Sachsen (two-thirds) and in Brandenburg (one-third). Today, approx. 60,000 persons belong to the Sorbian group and in some districts, the Sorbian population is highly concentrated and represents up to 90% of the local population. It is estimated that approx. 20,000 Sorbs actively speak and write Sorbian.

1.1.4 Romany

Romany is the language of the Roma and Sinti who live in Germany—an independent language that is related to Sanskrit. It differs from other forms of Romany, spoken by the Roma and Sinti in Eastern European countries especially. Presently, there are about 60,000 Romany-speakers and 10,000 Sinti-speakers living in Germany. Romany cannot be easily attributed to one particular region, as the Roma and Sinti live throughout the whole of Germany, mostly in bigger cities, such as Hamburg, Berlin, Düsseldorf, Köln and the Rhein/Main and Rhein/Neckar areas. For historical and other reasons, the use of Romany is largely the preserve of the private sphere.

1.1.5 Niederdeutsch

Niederdeutsch (also *Plattdeutsch* or Low German) was for a long time the common (spoken and written) language of the northern part of Germany (the Hanseatic region), before it mutated more and more into a minority language and a language of the lower classes of society. *Niederdeutsch* is currently experiencing a renaissance—it is again increasingly popular among the inhabitants of seven German States (Brandenburg, Freie Hansestadt Bremen, Freie Hansestadt Hamburg, Mecklenburg-Vorpommern, Niedersachsen, Sachsen-Anhalt, Schleswig-Holstein), particularly among writers, musicians, the media and the church (mostly in the northern and central regions of Germany). Nowadays, *Niederdeutsch* is spoken, or at least understood, by approx. eight million Germans.

All minority languages co-exist with German, which is the official language of Germany. The use of minority languages in the country is mostly restricted to the private sphere, but they are also used in literature, music, religion and the media.

1.2 Broadcasting

Germany is characterised by a dualism between public and private broadcasting. As far as public broadcasting is concerned, specific programme boards that are composed of representatives of the important social groups—including minorities—safeguard (linguistic) pluralism in public broadcasting. Private broadcasting is equally bound to the national

broadcasting laws and subject to supervision by the *Landesmedienanstalten*, which are, *inter alia*, responsible for safeguarding pluralism in broadcasting, including the representation of minorities. In some States, representatives of minorities are members of the supervisory boards of both public and private broadcasters. In both public and private broadcasting, contributions (radio/television) of/for language minorities are offered. Whether minorities operate their own broadcasting services, depends not least on the degree of their commitment and their financial potential. Otherwise, most states offer the possibility to transmit own contributions via the so-called “Offene Kanäle”, i.e., programme transmission facilities that are open to all those who do not operate their own broadcasting stations.

1.3 Government policies on broadcasting/minorities

Germany signed the European Charter for Regional or Minority Languages on 5 November 1992. It signed the Council of Europe Framework Convention for the Protection of National Minorities on 10 September 1997.

The protection and promotion of minority rights is foremost a task for the States (*Bundesländer*).¹ Most of the governments of the States concerned have formed specialised mandates or departments to accomplish this task.

The German States promote minority languages on several levels, also in order to fulfil Germany’s international obligations. This can be at the legislative level, by specific legislation for the protection of minorities, or in more practical initiatives. Such initiatives can take place in various sectors and fields of daily life, such as language education at school and in universities, the use of minority languages before public institutions (courts, administrative bodies, etc.), the promotion of minority broadcasting and representation in other media, the use of minority languages in arts and social life and transborder cultural exchange. Promotional and protectionist initiatives can be of financial, logistical or other natures.

2 Constitution

In German constitutional law, a distinction must be made between the Federal and the State levels. Both the *Bund* (Federal Republic) and the *Länder* (States) have their own constitutions. The State Constitutions follow the Federal Constitution. The State Constitutions, however, can also determine their own constitutional values and conditions; the promotion of minority rights is one example. Principally, it can be said that the *Grundgesetz* (Basic law – GG) stands above all general laws and State Constitutions and that it governs all public power, both at the Federal and State levels.

2.1 Freedom of expression

FEDERAL LEVEL: BASIC LAW - *GRUNDGESETZ* (GG)²

Article 5 [Freedom of Expression]

1. Everyone has the right to freely express and disseminate his opinion in speech, writing, and pictures and to freely inform himself from generally accessible sources.

¹ Germany is a federal country.

² The German Federal Constitution is available at <http://jurcom5.juris.de/bundesrecht/gg/index.html> (DE) and at http://www.uni-wuerzburg.de/law/gm__indx.html (EN).

Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There will be no censorship.

2. These rights are subject to limitations in the provisions of general statutes, in statutory provisions for the protection of the youth, and in the right to personal honour.

[...]

4. Art and science, research and teaching are free. The freedom of teaching does not release from allegiance to the constitution.

2.2 (Official/State) language(s)

The official State language is defined in Article 23 (1) of the *Verwaltungsverfahrensgesetz* (Law on Administrative Procedure): “The official language is German.”³

2.3 Minority rights

FEDERAL LEVEL: BASIC LAW - *GRUNDGESETZ* (GG)

Article 2 [Liberty]

(1) Everyone has the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or against morality.

Four States provide relevant guarantees for minorities in their Constitutions (i.e., those states with a high percentage of members of minority groups):

CONSTITUTION OF BRANDENBURG

Article 25

(1) The Sorbian population is guaranteed the protection, promotion and cultivation of its identity and its accustomed settlement area. The state, the local municipalities and communities promote the realisation of these rights, in particular the cultural independence and the effective political participation of the Sorbians.

(2) The state protects the Sorbian cultural autonomy beyond the state’s borders.

(3) The Sorbians enjoy the right of cultivation and promotion of the Sorbian language and culture in all sectors of public life, as well as teaching of it in school and kindergarten.

(4) The Sorbian language must be considered when designing public sign posts. [...]

CONSTITUTION OF MECKLENBURG-VORPOMMERN

Article 16 (2)

The state protects and promotes the Low German language

Article 18

The state protects the cultural autonomy of ethnic and national minorities and ethnic groups with German nationalities.

CONSTITUTION OF FREISTAAT SACHSEN

Article 5 (2)

³ “Die Amtssprache ist deutsch.” In this context, “deutsch” refers to “hochdeutsch”.

The state guarantees and protects the identity of national and ethnic minorities of German nationality, as well as the cultivation of their language, their religion, culture and tradition.

Article 6

(1) All citizens with Sorbian identity that live in the state [Sachsen] are considered as having equal rights as all Germans.

Article 37 (1) of Sachsen-Anhalt

The state and the local municipalities protect the cultural autonomy and political participation of ethnic minorities.

CONSTITUTION OF SCHLESWIG-HOLSTEIN

Article 5

(1) Everybody is free to declare its belonging to a national minority; this does not dispense from general citizen's duties.

(2) The state, the local municipalities and communities protect the cultural autonomy and political participation of national minorities and ethnic groups. The national Danish minorities and Frisian ethnic groups are entitled to protection and promotion.

Article 9

(2) The state protects and promotes the Low German language.

2.4 Broadcasting

Of these States, only two have introduced specific guarantees with respect to broadcasting freedom into their constitutions (the GG is obligatory for all States).

CONSTITUTION OF BRANDENBURG

Article 19

(1) Everybody is entitled to freely impart information and opinions in any form and to inform himself from publicly available, or other legitimately accessible sources. ...

(2) The freedom of press, broadcasting, films and other mass media is guaranteed. It is the task of the regulator to ensure by means of procedural rules that the press and broadcasting media reflect the plurality of opinions in the society.

(3) ...

(4) It is the task of radio and television broadcasting to contribute to the public opinion making process by providing a choice of programs. ... A maximum of plurality must be guaranteed.

[...]

CONSTITUTION OF FREISTAAT SACHSEN

Article 20

(1) Everyone has the right to freely express and disseminate his opinion in speech, writing, and pictures and to freely inform himself from publicly accessible sources. ... Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There will be no censorship.

(2) ...

(3) These rights are subject to limitations in the provisions of general statutes, in statutory provisions for the protection of the youth, and in the right to personal honour.

3 Legislation

The following description of the relevant legislation distinguishes between legislative initiatives for the individual minority languages, as each language falls under the responsibility of one or more States that has/have adopted State-specific legislation.

3.1 Danish and Frisian

3.1.1 General legislation

Apart from the status of German as the official state language, there is no hierarchisation of languages in Schleswig-Holstein. Besides its constitutional guarantees, the state focuses in the first place on active, non-legal initiatives to promote the Danish and Frisian languages, such as financial support for Danish/Frisian cultural production, self-organisation, the organisation of congresses, etc. The legal basis for the financial support granted to minority languages is, for example, the State's budget plans, as well as sector-specific laws for the relevant fields benefiting from the promotion (e.g., education, culture, etc.). However, no legal provisions focusing expressly on the Danish or Frisian language exist. To the extent that legal provisions do exist, they tend to address minority languages in general. This is also true for broadcasting regulation. Legislative initiatives that focus on one particular language are rather the exception.⁴ It is worth mentioning that both the Danish and Frisian languages receive particular attention in the organisation of the school-system⁵ and that Frisian is recognised in official proceedings before the courts or administrative bodies.⁶

3.1.2 Broadcasting legislation

Article 5(1) of the German Constitution is a *Jedermannsrecht*, i.e., everybody has the right to exercise rights such as freedom of information, the right to receive information from publicly available sources (e.g. broadcasting), etc. Furthermore, Article 3(1) prohibits discrimination, for instance, in questions of access to the media. Consequently, minorities enjoy the same rights of access to the media as the majority.

Further details are laid down in the broadcasting laws of the individual States, as the organisation of broadcasting itself falls under the responsibility of the States themselves.

The core of the broadcasting legislation of the States is the *Rundfunkstaatsvertrag* (Interstate Agreement on Broadcasting, as amended by the 5th Interstate Agreement on the Amendment of the Broadcasting Agreement of 1 January 2001). The *Rundfunkstaatsvertrag* has been agreed upon, and ratified by all 15 State Parliaments. The aim of the *Rundfunkstaatsvertrag* is to harmonise crucial aspects of the broadcasting laws of the individual States. Besides the *Rundfunkstaatsvertrag*, the individual broadcasting laws of the States (*Landesmediengesetze*) and a number of further interstate agreements, in particular the agreements on the public broadcasters, which lay down relevant aspects for the provision of the respective public broadcasting programmes, such as the *Staatsvertrag über das Zweite Deutsche Fernsehen* (Interstate Agreement on the Second German Broadcaster – ZDF) and the *Staatsvertrag über den Norddeutschen Rundfunk* (Interstate Agreement on the North German Broadcaster – NDR), together form the legal basis for the provision of broadcasting.

⁴ See, for instance, the explanation under 3.2.1 – Sorbian language or Article 16 (2) of the Constitution of Mecklenburg-Vorpommern.

⁵ See the regional school laws.

⁶ See Article 82 a (2) of the *Landesverwaltungsverfahrensgesetz*.

The *Landesmediengesetze* may repeat single aspects of the *Rundfunkstaatsvertrag*, or add further, State-specific aspects, including specific legal provisions on the protection and promotion of minority rights: some States included explicit provisions with the goal of promoting minority languages (e.g. Schleswig-Holstein and Niedersachsen). In general, the broadcasting laws of the *Länder* reflect the values enshrined in the Constitution (Federal and State Constitutions). One consequence of this is that minority groups are, in principle, treated equally, insofar as their access to, and representation in broadcasting are concerned (compared to the German-speaking parts of the population). This also explains (a) the relatively small number of explicit facilitative or affirmative measures concerning minority access to broadcasting—although most minorities enjoy active promotion either by legislative means or practical initiatives—and (b) the lack of prohibitive measures relating to minorities access to broadcasting in their own languages. The relevant (with respect to minority rights), albeit rather general, provision of the *Rundfunkstaatsvertrag* will be mentioned *infra*. Subsequently, an overview is given of the, often more elaborate, State-specific policies and provisions. For more clarity, the description distinguishes between the different minority languages and their legal treatment under the law(s) of the State(s) in which they are spoken/used. In this context, the most relevant State regulations shall be described and briefly commented upon.

ARTICLE 25 OF THE *RUNDFUNKSTAATSVERTRAG*

Article 25 [Plurality of opinion, regional windows]

(1) The content of private broadcasting must generally indicate a plurality of opinion. Important political, ideological and social groups shall be given adequate opportunity to express themselves in the full programme services; minority views shall be taken into account. It shall remain possible to offer specialised programmes.

(2) A single programme shall not influence public opinion in a largely imbalanced way.

(3) During the licensing procedure the supervisory authorities for private broadcasters shall seek to ensure that interested parties providing cultural contributions to programmes are able to acquire an interest in the broadcaster. No legal right to acquire such interest exists.

(4) Full television programmes which are transmitted nationwide by terrestrial means shall include window programmes in accordance with the provisions of state law. The broadcaster shall guarantee the organisation and financing of the window programmes. The supervisory authorities for private broadcasters shall coordinate the scheduling and technical organisation of the window programmes taking into account the interests of the broadcasters affected.

The *Rundfunkstaatsvertrag* stipulates in more general terms that the programmes of the private, commercial broadcasters should take into account the different groups and opinions that are present in society and represent them in an adequate, well-balanced manner. This also implicitly refers to minorities and their languages and interests (Article 25(1)). Article 25 of the *Rundfunkstaatsvertrag* neither refers to particular minorities or languages, nor does it guarantee particular rights. Instead, it provides more general guidelines for the content and quality of the commercial broadcasting offer. It is not the least task of the responsible regulatory bodies (the *Landesmedienanstalten*) to ensure the fulfilment of the aims and provisions of the *Rundfunkstaatsvertrag*. Furthermore, the broadcasting laws of the individual States may provide for more detailed and specific provisions (see *infra*). As far as public broadcasting is concerned, the relevant provisions concerning minorities and their languages can be found in the relevant interstate agreements, which will also be examined *infra*.

3.1.3 Broadcasting legislation and practice

Schleswig-Holstein is one of the States that has included explicit provisions with the aim of promoting minority languages (Article 24 (3) of the *Landesrundfunkgesetz*, see *infra*). The Frisian and Danish minorities have the same rights of access to the media as other social groups. Apart from that, Schleswig-Holstein maintains two *Offene Kanäle* for radio broadcasting that are also open to members of the Danish community.

In Schleswig-Holstein, both the public broadcaster (*Norddeutscher Rundfunk - NDR*) and the private broadcasters are obliged to promote minorities, including the Danish/Frisian community. The public broadcasting entities *ZDF* and *NDR*, in particular, are active in providing and producing programming (news reporting on cultural, social and political events that are of relevance for the Danish minority; daily news in Danish on *Radio Schleswig-Holstein*; specific broadcasting programmes that are directed at the Danish minority or that report on the Danish minority). As a result of a Danish-German cooperation, the broadcasting programme 'Hier Her' reports bilingually on current affairs. *Radio Frijson* targets the Frisian minority.

LANDESRUNDFUNKGESETZ OF SCHLESWIG-HOLSTEIN (13 OCTOBER 1999)

The Broadcasting Law of Schleswig-Holstein sets the goals for the organisation of broadcasting in Schleswig-Holstein in its Article 24(3), which states that broadcasting programmes shall promote unity and cultural exchange in Germany, ... contribute to the promotion of minorities ...

Article 53 (2) of the same law provides that the *Landesmedienanstalt* is authorised to grant financial support to non-profit making organisations in the audiovisual sector, in particular those that are dedicated to the promotion of culture and film. This provision provides the basis for the granting of financial support for films and similar productions in the Danish/Frisian language and/or for the Danish/Frisian minority.

NDR-Staatsvertrag (1 MARCH 1992)

Article 3(3)

The programmes of the broadcasting stations shall reflect the public life, political developments as well as the cultural and social life in each of the states.

Article 5(2), 1st sentence of the same law

The *NDR* provides viewers with an objective and concise overview on the international, national and regional developments in all important sectors of daily life.

Article 7(2), 3rd sentence

The program of the *NDR* shall promote the unity in the united Germany as well as the international exchange of opinions, peace and the protection of minorities, ...

The *NDR-Staatvertrags* lays down the provisions for the public broadcaster *NDR* that is active in this region. According to Articles 3(3), 5(2) of the *NDR-Staatsvertrag*, *NDR* must reflect, *inter alia*, cultural and social life in the relevant region, including the promotion of the local minorities. In other words, when devising its programme schedule, the *NDR* must take minority languages into account and ensure that sufficient programming is available that would satisfy this need. The promotion of minority languages is therefore first and foremost a responsibility of public broadcasters; private broadcasters, on the other hand, are generally

more reluctant to transmit programmes in a language/for a minority that attracts only a small part of the covered audience.

ZDF-Staatsvertrag (26 JANUARY 1998)

Article 5(2)

The programmes of the *ZDF* document the developments and cultural pluralism in the States.

Article 22(1)

Private broadcasting programmes must reflect the plurality of opinions. The significant political, ideological and social groups must have adequate opportunities to participate in the broadcasting programming, the opinions of minorities must be respected.

The *ZDF-Staatsvertrag* is the equivalent of the *NDR-Staatsvertrag* and lays down the rules for the second German public broadcaster, the (over-regional) *ZDF*. As with the *NDR*, the *ZDF* must promote plurality of opinions and, in this framework, offer a platform for all relevant social groups in Germany, including minorities.

3.1.4 Transfrontier dimension

Germany has concluded both the *Bonn-Copenhagen Erklärungen* of 1955 and the *Kieler Erklärung über die Rechte der Minderheiten* of 1949 (Kiel Declaration on the protection of national minorities) with Denmark. Both declarations oblige Germany and Denmark to promote the Danish minority in Germany. Also, Germany and the Netherlands have mutually recognised the Frisian language as a minority language in the framework of the European Charter for Regional or Minority Languages (the Netherlands in 1996; Germany in 1998). When ratifying the Charter, Germany also elected to apply the Charter to Danish. The Danish community is able to receive Danish television programming, due to the vicinity of Denmark. Furthermore, the *Landesmedienanstalt* of Schleswig-Holstein is also committed to the financial promotion of audiovisual projects of the Danish/Frisian minority. When distributing frequencies, the *Landesmedienanstalt* is bound to the principle of non-discrimination.

3.2 Sorbian

3.2.1 General legislation⁷

Two laws that are of particular relevance in the context of minority languages are:

- (i) Gesetz zum Staatsvertrag über die Errichtung der Stiftung für das sorbische Volk (9 December 1998), together with the Staatsvertrag zwischen dem Land Brandenburg und dem Freistaat Sachsen über die Errichtung der “Stiftung für das sorbische Volk”;
- (ii) Gesetz über die Rechte der Sorben im Freistaat Sachsen (31 March 1999).

The former lays the basis for the Foundation of the Sorbian people (*Stiftung für das sorbische Volk*). The goal of the Foundation is to protect and promote the Sorbian language and culture. Sachsen recognises the Foundation as being representative of the Sorbian people and grants it annual financial support.

The *Gesetz über die Rechte der Sorben im Freistaat Sachsen* (Law on the protection of the rights of the Sorbians in Sachsen) recognises the Sorbian minority and declares that they

⁷ Legislation of relevance for the legal position of Sorbs is available at:
http://www.smwk.de/sorben/gesetze_sorbisch.pdf.

enjoy equal rights to the majority population of Sachsen. Sachsen is therefore one of the few German States that has adopted general legislation on the protection of minority languages (Sorbian). The law grants, *inter alia*, a right to protection and promotion of the Sorbian culture and identity. This includes the right to freely use the Sorbian language in daily life, and also to use it before courts and administrative bodies. Freistaat Sachsen is obliged to promote science and education (e.g. the Centre for Sorabistik at the University of Leipzig) in the Sorbian language and culture.

3.2.2 Broadcasting legislation

The public broadcasters of Brandenburg (*Ostdeutscher Rundfunk Brandenburg – ORB*) and Sachsen (*Mitteldeutscher Rundfunk – mdr*) provide, *inter alia*, broadcasting (mostly radio broadcasting) in the Sorbian language. The *ORB*, in particular, is active in scheduling programmes that either inform about the Sorbian culture, target topics of particular interest for the Sorbs or translate common programmes into the Sorbian language (e.g. children's programmes). Programmes also include productions of the broadcasting organisations themselves.

Both the *ORB* and the *mdr* actively promote Sorbian artists, e.g. through the organisation of concerts; the transmission of works by radio; technical support and research. Apart from that, the *ORB* is legally obliged to maintain a broadcasting station in the region of the Sorbian minority, which facilitates the participation of the Sorbs in local broadcasting.

GESETZ ÜBER DIE RECHTE DER SORBEN IM FREISTAAT SACHSEN (31 MARCH 1999)

Article 14

Sachsen strives to promote the Sorbian language and culture, particularly contributions in the Sorbian language in broadcasting and other media.

This is a general declaration that Sachsen intends to promote the Sorbian minority. The text of the declaration speaks for itself. The principle has found further specification in the broadcasting laws of Sachsen (see *infra*).

GESETZ ÜBER DEN OSTDEUTSCHEN RUNDFUNK BRANDENBURG (9 JULY 2001)

Article 4(2)

It [the *ORB*] has to take into account the regional structure and the cultural plurality in the state of Brandenburg, including the Sorbian culture and language.

The provision orders the *ORB* (public broadcaster) to actively promote and introduce in its programming contributions that are dedicated to the Sorbian language and culture.

Article 5(2)

The *ORB* is obliged to accept services of private service providers, to the extent that this is economically and editorially feasible, when fulfilling its programming mission. While so doing, it shall take into account producers in the state Brandenburg, in order to promote culture and media that belong to Brandenburg.

In other words, the *ORB* is obliged to outsource substantial parts of the programme production to local producers. The Sorbian minority, among others, benefits from this clause as it gives them the chance to participate in the regular programme production.

Article 6 (3)

The broadcasting programmes of the *mdr* have to take into account the needs of all groups of the population, including the minorities.⁸

Finally, according to Article 29(1) of the *Gesetz über den privaten Rundfunk und neue Medien in Sachsen* (Law on private broadcasting and new media in Sachsen, 18 January 1996), the Advisory Committee of the *Landesmedienanstalt* for Sachsen-Anhalt must have one representative of the Sorbian minority.

3.2.3 Transfrontier dimension

It is first and foremost the *Stiftung für das sorbische Volk* that promotes the cultural exchange with the neighbouring Slavic States of Poland and the Czech Republic.

In addition, Sachsen and Brandenburg are obliged to transmit programming from the neighbouring States whose languages are related to the Sorbian language (e.g. Polish, Czech). As a result, it is possible to receive programming from Poland and the Czech Republic in both States.

3.3 Romany

As mentioned above, the official associations of the Roma and Sinti are reluctant to accept State involvement with respect to Romany. State initiatives to promote this minority language are limited. Generally, the Roma and Sinti speak both Romany and German—Romany is reserved for use in the private sphere and the language is promoted in the first place through the Roma and Sinti communities themselves. Generally, the associations that represent the interests and culture of the Roma and Sinti receive financial support from the State.

3.3.1 General legislation

The relevant constitutional guarantees are outlined *supra* and there are no specific laws on the Romany language (again, see *supra*).

3.3.2 Broadcasting legislation

For Romany, essentially the same principles and guarantees, such as equal access to the media and promotion of the minority language, apply as to all other majority/minority languages in Germany. However, so far, the Roma and Sinti communities have not taken the opportunity to exercise these rights or to express their interest to receive programming in their language, i.e., to help to bring Romany beyond the private sphere. This is also the reason why, so far, no specific programming for this group exists.

As the Roma are spread over the whole of Germany, one cannot simply refer to one particular regional law in this connection. Some of the relevant State provisions have been examined *supra* and may serve as an indication of how the protection of minorities is organised in these and other German States. Romany is one of the recognised minority languages and therefore falls under the scope of the general provisions that address the legal protection of these languages (see *supra*). There are no specific provisions that are aimed particularly at the Romany language.

⁸ In this context, “minorities” refers to the Sorbs.

3.3.3 Transfrontier dimension

There exist some forms of (private, i.e., State-independent) cooperation between Roma and Sinti associations in Germany and Austria, that is also meant to promote culture and language of these minorities.

3.4 Niederdeutsch/Low German

3.4.1 General legislation

General legislation for the protection and promotion of Low German can be found, for instance, in the state school/university laws and budget plans of the regional communities. Compared to the other minority languages, Low German can be studied at a considerable number of universities, including Hamburg, Bremen, Rostock, Göttingen, Kiel, etc.

Further promotion takes mostly place in the frame of the general cultural policy of those States, where Low German is actively spoken. A specific legal framework for the Low German language is not known. Sachsen-Anhalt would appear to be the only State that has issued a decision that is specifically geared towards the promotion of Low German, in language, culture, etc. (*Beschluss des Landtages von Sachsen-Anhalt* No. 1/24/908 B of 19 November 1991).

Private initiatives are a driving factor behind the promotion of this language. Examples are the *Volkskulturinstitut Mecklenburg und Vorpommern* that maintains a specialised library with a huge collection of books, journals, theatre-plays, music, etc., in Low German and that organises events in this language. Another institution is the *Institut für niederdeutsch Sprache* (INS) in Bremen. Some initiatives receive financial support from the State.

Some State administrative laws allow (or at least do not expressly prohibit) the use of Low German in the course of administrative procedures (e.g. Article 23 of the *Landesverwaltungsverfahrensgesetz* of *Mecklenburg-Vorpommern* or Article 82a(2) of the *Landesverwaltungsverfahrensgesetz*).

3.4.2 Broadcasting legislation

In most of the States where Low German is spoken, the Low German-speaking minority can receive (radio or television) programming in Low German, mostly upon the initiative of the public broadcasting services. Compared to the situation of the other minority languages, the Low German language enjoys the biggest media presence. This might also have something to do with the fact that (a) the language is relatively widespread and –spoken and (b) that those, who master Low German are particularly active in presenting their language in the media. One example is the comparably active use that is made of the *Offene Kanäle* in order to transmit Low German programming made by individual parties.

As for the legal basis, reference can be made to a number of laws, discussed *supra* (e.g. Articles 3(3) and 5(2) of the *NDR Staatsvertrag*; Article 5(2) of the *ORB Staatsvertrag*; Articles 5(2) and 22(1) of the *ZDF Staatsvertrag*; Articles 24(3) and 53(2) of the *Landesrundfunkgesetz Schleswig-Holstein*, etc.). These provisions could also give an impression of how other States organise the promotion of minority languages such as Low German. However, there are no known legal provisions that focus specifically on Low German in broadcasting.

3.4.3 Transfrontier dimension

One basis for transborder cultural exchange is the *Neue Hanse Interregio* (NHI), founded in 1991 by the State Ministers of Niedersachsen and Bremen, as well as Drenthe (NL), Fryslân (NL), Groningen (NL) and Overijssel (NL). The aim of the NHI is to create a platform for cross-regional cooperation in a number of sectors, including the cultural sector.

Greece

Greece is generally monolingual in its policies and hellenising in its state-building function. The only minority group officially recognised in Greece is religious in character: the Muslims of Thrace (by virtue of the Treaty of Lausanne of 1923). Nevertheless, a number of minority languages are spoken in the country. Broadcasting in these languages is generally limited and in the case of private Turkish-language radio stations, newscasts are prohibited. The non-implementation of the formal licensing system for private radios leaves the Greek authorities open to accusations of subjectivity in prosecutions arising out of unlicensed broadcasting. Legislation governing broadcasting does not contain any provisions favouring minority use of, or access to, the broadcast media. The law requires television and radio broadcasters, *inter alia*, to safeguard pluralism. There are no specific policies to promote diversity or minority interests in the broadcast media. While the licensing system is open to anyone who fulfils the necessary criteria, minority groups have found it difficult to meet these requirements, particularly in the absence of State subsidies for the establishment of independent minority media or the allocation of public service broadcasting facilities and equipment for the production of independent minority programmes. The public broadcaster transmits programmes promoting the Greek language, its correct use and its instruction to foreigners. However, it does not broadcast any corresponding programmes for other languages. Nevertheless, in the past few years, State radio has been known to broadcast occasional programmes in languages other than Greek (mostly the languages of immigrants).

1 Introduction¹

1.1 Linguistic topography

The last census to catalogue the population by national or ethnic origin was conducted in 1951. According to the present-day Greek government, there are no ethnic divisions in Greece. Due to this, the following percentages are reported in the CIA World Factbook: Greek 98%; other 2%. The minority languages spoken in Greece are: Turkish, Macedonian, Albanian, Vlach (Aromanian), Bulgarian (among the Pomaks) and Romani. In 1923, the Muslim minority numbered close to 110,000. Today, the number is close to 100,000. The total population of Greece is approximately 10.9 million people.

According to the Greek Helsinki Monitor, the following ethnic minorities exist in Greece: the ethnonational minorities of Turks and Macedonians and ethnolinguistic ones of Roma, Aromanians, Arvanites and Pomaks. For its part, the European Bureau for Lesser-Used Languages has identified the main minority languages in Greece as: Albanian, Aroumanian, Bulgarian, Macedonian, Pomak and Turkish.²

¹ The editors are grateful to Sabina Gorini, Institute for Information Law (IViR), University of Amsterdam, Maria Kostopoulou, Media Law Expert, Greece, and Theodoros Alexandridis, Minority Law Expert, Greece, for their assistance in obtaining access to relevant legislation and other information. This report also drew *inter alia* on: "Minorities and Media in Greece" (text prepared for *Mercator Media Forum* by Greek Helsinki Monitor (GHM)/Minority Rights Group – Greece (MRG-G) in January 2002).

² See further: <http://www.eblul.org/wow/stad.asp?stad=Gr%E8ce&Bl=Go%21&yezh=saozneg>, <http://www.eblul.org/pajenn.asp?ID=91&yezh=saozneg> and <http://www.eurolang.net/state/greece.htm>.

1.2 Broadcasting and minorities

It is estimated that there are currently between 140 and 160 private television channels operating in Greece.³ The corresponding estimates for radio stations (most of which are local and regional) range from 1,400 to over 1,600.⁴

As regards minority access to the broadcast media: in February 2000, *Friendship* - a Greek radio station that is part of the public service broadcasting network - launched a half-hour programme in 12 non-Greek languages (mostly immigrants' languages and not including Macedonian, Romani, Arvanite or Aromanian), usually produced by persons belonging to the respective linguistic groups.⁵ It thereby aims to help the creation of a reciprocal feeling of solidarity and friendship between immigrants and the established Greek population. Moreover, it has been running Turkish-language programmes for three years in its regional outlet in Thrace, again using a minority journalist. While in Komotini, the daily "Paratiritis" introduced Turkish- and Russian-language weekly supplements (Russian is commonly spoken by refugees of Greek origin - "Pontics" - from former Soviet countries) in late 1999, these later turned into daily supplements. The local radio with the same name also introduced news bulletins in the same languages.

State radio programmes in Turkish are of cultural content and the newscasts are exact translations of the Greek newscasts. Private Turkish-language radio stations are not allowed to have newscasts.

There are six Turkish-language radio stations in Thrace. Like all private radio stations, they operate without a licence as the licence system installed in 1989 has never been implemented. Due to their lack of a licence, minority radio stations have occasionally been the subject of legal action while other majority (and also unlicensed) radio stations have reportedly not been.⁶ Turkish-language programmes are widely received by satellite in Thrace.

1.3 Government policies on broadcasting and minorities

There is no policy to promote diversity and minority cultures; nor are there any substantial subsidies granted to minority associations.

With the exception of those producing the state radio and local Thrace newspaper and radio programmes, there are hardly any ethnonational minority members employed in majority media. One may find members of religious minorities employed, but not to deal with minority issues. There are no laws or regulations either facilitating or hindering the recruitment of minority members in the media.

The licensing system is open to anyone who fulfils the necessary standards: technological infrastructure, financial viability, experience and special knowledge of the media-flow managers, quality of the programme, respect for the journalistic code of ethics.

³ See <http://www.mfa.gr/english/greece/today/media/tv.html> and <http://www.ejc.nl/jr/emland/greece.html> respectively.

⁴ See <http://www.mfa.gr/english/greece/today/media/radio.html> and <http://www.ejc.nl/jr/emland/greece.html> respectively.

⁵ See further: Anna Triandafyllidou, 'Greece', in Jessica ter Wal (Ed.), *Racism and cultural diversity in the mass media* (Vienna, EUMC/ERCOMER, 2002), pp. 149-170, at 164.

⁶ See, for example, 'Greece: Human Rights Developments', Human Rights Watch World Report, 1998, available at: http://www.hrw.org/worldreport/Helsinki-14.htm#P696_169425.

However, minority groups have found it very difficult to fulfil these requirements. Greek media law has no provision for partial state subsidisation of independent minority media and use of the public broadcasting infrastructure for the production of independent minority programmes. This makes it very difficult for minority groups to participate in the Greek media.

2 Constitution⁷

2.1 Freedom of expression

Article 14

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.
- [...]

2.2 Broadcasting

Article 15

- [...]
2. Radio and television shall be under the direct control of the State. The control and imposition of administrative sanctions are under the exclusive competence of the National Radiotelevision Council, which is an independent authority, as specified by law. The direct control of the State, which also takes the form of the prior permission status, shall aim at the objective transmission, on equal terms, of information and news reports, as well as of works of literature and art, at ensuring the quality level of programs in consideration of the social mission of radio and television and of the cultural development of the Country, and at the respect of the value of the human being and the protection of childhood and youth.
- [...]

2.3 Minority rights

There are no provisions on minority rights in the Greek Constitution. Article 4 guarantees the equality of all Greek citizens.

Article 4

1. All Greeks are equal before the law.
2. Greek men and women have equal rights and equal obligations.
3. All persons possessing the qualifications for citizenship as specified by law are Greek citizens. [...]

⁷ Entry into force: 1975, available at <http://www.ministryofjustice.gr/eu2003/constitution.pdf> or at <http://www.hri.org/docs/syntagma/syntagma.html>.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

Greek legislation acknowledges the existence of one religious minority: Muslims of Thrace whose rights have been guaranteed by the 1923 Treaty of Lausanne.⁸ No other minority is acknowledged. Greece is committed to the application of the principles of equality before the law (“isonomia”) and equality of civil rights (“isopolitia”) for all the Greek citizens of Thrace. This was done without disregarding existing provisions and advantages regarding the special status of the Muslim minority of Thrace.

Turkish is formally admitted in court, as guaranteed by the Treaty of Lausanne. However, it is hardly ever used and there is no other use of minority languages in official communications or administrative proceedings.

3.2 Broadcasting legislation

Article 10(3) of Law 2644/1998 applicable to pay radio and television services includes the following provisions concerning broadcasting content in the Greek language (there are no corresponding provisions for other languages):

- Licensee providers of pay radio and television services shall reserve at least 25% of their total monthly transmission time for works originally produced in the Greek language.
- Licensee providers of pay radio and television services shall ensure in the first year of their function the subtitling or dubbing in the Greek language of audiovisual content produced in another language up to at least 30% of the total transmission time dedicated to programmes originally produced in another language. This percentage is increased by 5% per year up to 50%. In the above percentage are not included exclusively musical programmes.

LAW N. 2328 ON THE LEGAL STATUS OF PRIVATE TELEVISION AND LOCAL RADIO, THE REGULATION OF THE RADIOTELEVISION MARKET AND OTHER PROVISIONS, 1995⁹

Like previous laws on relevant topics, Law N. 2328/1995 makes no express provision for minority media or access of minorities to the media. Articles 1 and 2 of the Law are applicable to private television stations and lay down the conditions for granting licences to private television operators. Article 1(1)(b) states that:

The [television] stations, which will be given licences, will also have the obligation to take care of the quality of the programme, the objective information, the securing of pluralism as well as the promotion of culture through the emission of programmes which will be dedicated to art.

Provision is made in this Law for the protection and correct usage of the Greek language. There are no similar provisions for languages other than Greek (the only other relevant

⁸ The Lausanne Treaty was signed on 24 July 1923 by the British Empire, France, Italy, Japan, Greece, Romania and the "Serbo-Croat-Slovene" State on one side and Turkey on the other; available at: <http://www.hri.org/docs/lausanne/>.

⁹ In “The Official Gazette of the Hellenic Republic”, first issue, number 156, 3 August 1995: 1, 16.

special provisions concern deaf people). Of greatest relevance here are Article 3, paras. (18) and (19), which are applicable to free-to-air radio and television services.

Article 3(18) provides that:

ERT-S.A. [the public service broadcaster], private television stations and local radio stations are obliged to take all appropriate measures (employment of scientific personnel, text correctors, organisation of seminars), aiming at the correct use of the Greek language by journalists, makers of informative or educational programmes, with the formulation of the texts during the presentation of entertainment programmes and with the dubbing or subtitling of programmes.

ERT-S.A. and private television stations shall reserve more than 25% of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services, for works originally produced in the Greek language.

Article 3(19) of the Law states that:

ERT-S.A. [the public broadcaster] as well as privately owned radio and television stations shall, every six months, transmit a series of programmes (of at least 15 episodes and of a minimum duration of 30 minutes each) aiming at the promotion of the correct use of the Greek language or for its instruction to foreigners or illiterate people.

Article 6(2) reads:

Licensing [for local radio stations] is granted on the basis of the principle of common public interest and constitutes public function. The stations, which will be given licences, will have to take care of the quality of the programme, the objective information, the securing of pluralism as well as the promotion of culture through the emission of programmes which will be dedicated to art.

4 Current developments

A new code of ethics applicable to news and information radio and television programmes (which has yet to enter into force) states that special care is required for minority groups (national or religious) and vulnerable sections of society.

The Holy See

The tiny size and population of this State mean that the importance of minority rights—and in particular the protection of minority languages—is often downplayed. The official language of the Holy See is Latin, whereas the official language of Vatican City is Italian. Of the 890 inhabitants of the State, it is the Swiss Guards who most recognisably speak other languages among one another. Nevertheless, no legal measures have been taken to ensure protection for minority languages. In practice, owing to the objectives of the Roman Curia, versions of official documents (written in Latin) are also often available in English, French, German, Italian, Portuguese and Spanish. The Pontifical Council for Social Communications has not been active in the promotion or protection of minority languages.

1 Introduction

The Holy See/Vatican City is the smallest State in the world, covering an area of only 0.4 km² and having only 890 inhabitants.¹ It is also a relatively young state, founded in 1929, when a series of disputes between the Pope and the newly united Kingdom of Italy (1870) were settled by three Lateran Treaties. The Treaties between Italy and the Holy See (*Concordato*) were signed on 11 February 1929² and they granted autonomous international status to the Vatican City, as a state independent from Italy. The territory of the Holy See covers the Vatican City, 13 buildings around Rome and Castel Gandolfo, which is the summer residence of the Pope. At the same time, the Holy See continues to represent the highest board of the Catholic Church. More precisely, the Holy See and the Vatican City are two separate international entities, where the latter is part of the former, which is also the subject which acts as a contracting party in international treaties. There is a personal union between the two states as the Pope is the head of both.

1.1 Minority policies

Due to the small dimension of the state there are, at least apparently, no minority languages to protect. Even though the traditional Swiss Guard³ often speak other languages, no measures have ever been adopted in order to protect them.

The official language of the Holy See is Latin; on the other hand, the official language of the Vatican is Italian.⁴ Despite the presence of the two languages, there has never been a specific policy in order to protect the languages themselves. Given its ecumenical spirit, the Church has always been searching for a universal language in order to communicate all over the world. The Holy See has been an Observer to the Committee of Ministers of the Council of Europe since 7 March 1970, but at the time of writing was not in the formal process of ratifying the Framework Convention.

¹ Further information on the Holy See is available at:
<http://www.cia.gov/cia/publications/factbook/geos/vt.html>.

² Act (of Italy) of 27 May 1929, n. 810, *Esecuzione del Trattato, dei quattro allegati annesse del Concordato, sottoscritti in Roma, fra la Santa Sede e l'Italia, l'11 febbraio 1929*, available at:
<http://www.filodiritto.com/diritto/pubblico/ecclesiastico/concordato.htm>.

³ For information on the history of the Swiss Guard, see:
http://www.vatican.va/roman_curia/swiss_guard/index.htm.

⁴ See: http://www.ethnologue.com/show_country.asp?name=Vatican%20State.

1.2 Broadcasting

The aim of reaching a maximum number of people in order to contribute to spreading the universal message of the Gospel has justified the increasing interest of the Church in radio and television broadcasting. The Vatican Television Centre (*Centro Televisivo Vaticano - CTV*) was created in 1983. In November 1996, it was officially recognised as an organisation fully associated with the Holy See. In consequence, transmissions are provided in as many languages as possible, especially when radio (*Radio Vaticana*) is concerned.⁵

Apart from its own television channel, the Holy See has been actively involved over the past 50 years in the debate concerning audiovisual content through a specific “Pontifical Council for Social Communication” (*Pontificio Consiglio delle Comunicazioni Sociali*).⁶ To date, the Council has tended to focus on content-related matters rather than linguistic matters *per se*.⁷

2 Constitution

The Vatican adopted a new fundamental law on 26 January 2000 (*La nuova legge fondamentale dello Stato della Città del Vaticano*)⁸ which replaced the former Act of 1929, which had been introduced by Pope Pius IX. The nature of the Vatican as an elective and absolute monarchy is confirmed by this new Act and the Pope is entrusted with the fundamental powers (Article 1). The exercise of these powers is carried out in practice by a Commission (*Commissione*) composed of Cardinals nominated by the Pope (Article 3).

2.1 Freedom of expression

The explicit acknowledgment of the right to express freely one’s thoughts and opinions may be found in the Treaties signed between the Holy See and Italy in 1984 (*Patti Lateranensi*)⁹ amending the Treaties of 1929. Article 2 grants Catholics and their associations the right to express their thoughts by any means.

PATTI LATERANENSI

Article 2

The Italian Republic recognises for the Catholic Church complete freedom to carry out its pastoral, educational, and charitable mission of evangelisation and sanctification. In particular, the Catholic Church is ensured freedom of organisation, of public exercise of the cult, of spiritual mastery and of jurisdiction on ecclesiastical matters.

⁵ On ordinary radio waves there is a variety of transmission languages, as listed at:

http://www.vatican.va/news_services/radio/multimedia/onderadio_en.html. For more information on the Vatican Radio, see: <http://www.radiovaticana.org/>.

⁶ See:

http://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_pro_14101999_en.html.

⁷ It has, for instance, published several documents stating the position of the Holy See on different issues, such as ‘Pornography and violence in the communications media: a pastoral response’ (7 May 1989), ‘Ethics in advertising’ (22 February 1997), ‘Ethics in Communications’ (2 June 2000) and most recently, ‘Ethics in Internet’ and ‘The Church and Internet’ (both 28 February 2002). All of these documents are available at: http://www.vatican.va/roman_curia/pontifical_councils/pccs/index.htm.

⁸ Available at: http://www.vatican.va/vatican_city_state/legislation/documents/scv_doc_20001126_legge-fondamentale-scv_it.html.

⁹ Act (of Italy) of 25 March 1984, n. 121, *Ratifica ed esecuzione dell'Accordo, con protocollo addizionale, firmato a Roma il 18 febbraio 1984, che apporta modifiche al Concordato lateranense dell'11 febbraio 1929, tra la Repubblica italiana e la Santa Sede*, available at: http://www.amicus.it/leggi/Patti_Lateranensi/.

Mutual freedom of communication and correspondence is ensured between the Holy See, the Italian Episcopal Conference, the regional Episcopal Conferences, the Bishops, the clergy and the faithful, and also the freedom to publish and diffuse acts and documents related to the mission of the Church.

Catholics and their associations are granted complete freedom of assembly and expression of thoughts by speech, writing and any other means of diffusion.
[...]

2.2 (Official/State) language(s)

As the Holy See represents the Church of which Latin has always been the official language, on 28 June 1988, Holy Father John Paul II explicitly affirmed the status of Latin in an Apostolic Constitution (*Costituzione apostolica Pastor Bonus*)¹⁰ defining the rules of the Holy See. Article 16 states that it is possible to apply to the Roman Curia in the official Latin language, but also in any other major language and a specific translation centre is available to facilitate such communications. All official documents are written in Latin, but versions in Latin, English, French, German, Spanish and Portuguese are often provided.

APOSTOLIC CONSTITUTION (COSTITUZIONE APOSTOLICA PASTOR BONUS)

Article 16

It is allowed to address the Roman Curia in Latin but also in all other main recognised languages.

For the convenience of all dicasteries a common translation centre may be used in order to translate documents into other languages.

3 Legislation

There is actually no specific legislation concerning television broadcasting in the Holy See, but the Vatican State has regularly obtained frequencies from the International Telecommunication Union (ITU) both for television and radio broadcasting. The frequencies are managed directly by the *Centro televisivo vaticano (direzione generale radio vaticana)* and are currently being reorganised.

¹⁰ Available at: http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/hf_jp-ii_apc_19886028_pastor-bonus_it.html.

Hungary

The rights in general and linguistic rights in particular of minority groups living in Hungary enjoy constitutional and legislative protection. Six of the country's thirteen minority languages are granted specific legal protection. Broadcasting legislation provides for input by representative groups of national and ethnic minorities into the principles of utilising broadcasting time made available for such groups. Furthermore, there is also statutory provision for the sponsorship of minority-language programmes in public service broadcasting, thus giving the makers of such programmes the possibility to seek finances other than those provided by the State. At present, the public Hungarian television service produces programmes for 12 nationalities and its radio counterpart, 13. Fortnightly television broadcasts of programmes in the mother tongues of minorities complement the minority news programmes in Hungarian. Romanes is one exception to all of this, as the Roma population is under-represented in all sectors of the media. However, one recent development which may serve to counteract this trend is the emergence of a Budapest-based Roma radio station.

1 Introduction

1.1 Linguistic topography

The following table is based on the results of the Census held in February 2001 (which included questions pertaining to people's native language and ethnicity).¹

Number						
National minorities	Declared as a mother tongue		Declared as a nationality		Binding to the tradition and culture of the nationality	Using the language in family and social circles
Year						
	1990	2001	1990	2001	1990	2001
Bulgarian	1370	1299	...	1358	1693	1118
Roma	48072	48685	142683	190046	129259	53323
Greek	1640	1921	...	2509	6140	1974
Croatian	17577	14345	13570	15620	19715	14788
Polish	3788	2580	...	2962	3983	2659
German	37511	33792	30824	62233	88416	53040
Armenian	37	294	...	620	836	300
Romanian	8730	8482	10740	7995	9162	8215
Serbian	2953	3388	2905	3816	5279	4186
Slovakian	12745	11816	10459	17692	26631	18056
Slovenian	2627	3187	1930	3040	3442	3119
Rutenian	674	1113	...	1098	1292	1068
Ukranian		4885	...	5070	4779	4519

¹ See further the website of the Hungarian Central Statistical Office: <http://www.ksh.hu>.

Statutory recognition has been given to 13 “ethnic groups native of Hungary”: Bulgarian, Gypsy, Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovakian, Slovenian and Ukrainian. However, only six of the 13 minority languages have been granted the status of protected language (see further, *infra*).

1.2 Broadcasting

The Hungarian Constitution guarantees the right to freedom of speech and the Hungarian Republic recognises and protects freedom of the press. The legal regime for broadcasting includes specific provisions on minority rights (see *infra*).

Currently, the public Hungarian Television produces programmes for twelve nationalities, while the Hungarian Radio has been broadcasting programmes for thirteen nationalities since 1998. The fortnightly television broadcasting of minority programmes in the minorities’ mother tongue complements the minority news magazines in Hungarian. The national self-governments of the minorities make sovereign decisions about the principles underlying use of their broadcasting time on public television. The broadcasters are required by law to follow these principles.

2 Constitution

The Constitution of the Hungarian Republic, established by Act XX of 1949 and as amended, is the primary law of the Hungarian Republic.²

2.1 Freedom of expression

Article 61

(1) In the Republic of Hungary everyone has the right to freedom of expression, and furthermore to receive and impart information of public interest.

2.2 Broadcasting

Article 61 also governs broadcasting:

(2) The Republic of Hungary recognizes and protects the freedom of the press.

(3) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the statute on the public access to information of public interest and the statute on the freedom of the press.

(4) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the statute on the supervision of public radio, television and the public news agency, as well as the appointment of the directors thereof, on the licensing of commercial radio and television, and on the prevention of information monopolies.

2.3 Minority rights

Article 68

² Available at: http://www.uni-wuerzburg.de/law/hu000000_.html.

- (1) The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent factor of the state.
- (2) The Republic of Hungary shall provide for the protection of national and ethnic minorities. It shall ensure their collective participation in public affairs, the fostering of their cultures, the use of their own languages, education in their own languages and the use of names in their own languages.
- (3) The laws of the Republic of Hungary shall ensure representation of the national and ethnic minorities living within the country.
- (4) National and ethnic minorities shall have the right to form local and national self-governments.
- (5) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the statute on the rights of national and ethnic minorities.

2.4 (Official/State) language(s)

The Constitution does not otherwise refer to official or State languages.

3 Legislation

3.1 General legislation affecting minorities and their rights

ACT LXXVII OF 1993 ON THE RIGHTS OF NATIONAL AND ETHNIC MINORITIES

National and ethnic groups that have lived on the territory of the Hungarian Republic for at least one hundred years are citizens of the State, according to Act LXXVII of 1993 on the Rights of National and Ethnic Minorities:³

Article 1

- (1) This Act applies to all persons of Hungarian citizenship living in the Republic of Hungary who consider themselves members of any national or ethnic minority and to the communities of these people.
- (2) For the purposes of the present Act a national or ethnic minority (hereinafter 'minority') is any ethnic group with a history of at least one century of living in the Republic of Hungary, which represents a numerical minority among the citizens of the state, the members of which are Hungarian citizens, and are distinguished from the rest of the citizens by their own language, culture and traditions, and at the same time demonstrate a sense of belonging together, which is aimed at the preservation of all these, and the expression and protection of the interests of their communities, which have been formed in the course of history.

Crucial to the understanding of this Article is:

Article 61

- (1) In accordance with this Act the following ethnic groups qualify as ethnic groups native of Hungary: Bulgarian, Gypsy, Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovakian, Slovenian and Ukrainian.

³ Available at: <http://www.meh.hu/nekh/Angol/93LXXVIIkistv.htm>. This Act is sometimes referred to, *infra*, as the Minority Act.

(2) If a minority other than those listed in par (1) wishes to prove that they meet the requirements specified in this Act, they may submit a petition related to this subject to the Speaker of the National Assembly if supported by at least 1,000 voters who declare themselves members of this minority. In the course of this procedure the provisions of Act XVII of 1989 on Referendums and Petitions shall apply.
[...]

According to Articles 13 and 16 of the Act, minorities are guaranteed the right to “learn, foster, enrich and pass on their mother tongue” and to “cultivate and develop their historical traditions and language”, respectively. Articles 51 *et seq.*⁴ consolidate and develop this right. Article 51(1), for instance, reads: “In the Republic of Hungary everybody may freely use his/her mother tongue wherever and whenever s/he wishes to do so. The conditions of the language use of minorities—in cases provided for by a separate law—must be guaranteed by the state.” The languages accorded protection under the Act are also clearly enumerated:

Article 42

In accordance with this Act the following languages are deemed languages used by minorities: Bulgarian, Gypsy ('Romani' and 'Beash'), Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovakian, Slovenian and Ukrainian.

The Hungarian Parliament ratified the European Charter for Regional or Minority Languages in April 1995 and it entered into force in March 1999.⁵ Six of the 13 minority languages were granted the status of protected language under the Charter: Croatian, German, Romanian, Serbian, Slovakian, and Slovenian. The ‘Romani’ and ‘Beash’ languages were thus not included, even though after German, the Romany language has the second-largest number of speakers in Hungary.

According to the Minority Act, there is no difference between the various minorities: all have equal rights. Yet, in ratifying the Charter, the Hungarian authorities singled out six of the 13 minorities as those to which Part III of the Charter would apply.⁶ This had the effect of conferring a special status on the six languages which were in fact those languages that already received institutionalised support and protection. The support of non-protected languages is not regulated by Part III of the Charter, so it was not necessary to take concrete steps to improve the situation of the seven non-protected languages.

Since the adoption of the Minority Act in 1993, a number of new laws, as well as some modifications of existing laws have been passed (particularly concerning education).

⁴ The subsequent provisions of the Act deal with various instances in which particular importance attaches to the ability to use one's mother tongue (Article 51(2) – civil or criminal proceedings or administrative procedures; Article 52 – National Assembly and municipal government; Article 53 – minority self-governance; Article 54 – employment of persons by local authorities).

⁵ Act XL of 1999 on the promulgation of the European Charter for Regional or Minority Languages, done in Strasbourg on 5 November 1992. See also, for a related development: Act XXXIV of 1999 on the promulgation of the Framework Convention of the Council of Europe on the Protection of National Minorities, 1 February 1995, Strasbourg.

⁶ See, in particular, Article 2, European Charter for Regional or Minority Languages, 1992, ETS No. 148.

3.2 Broadcasting legislation

ACT LXXVII OF 1993 ON THE RIGHTS OF NATIONAL AND ETHNIC MINORITIES

The Act on the Rights of National and Ethnic Minorities also contains provisions which are of relevance to broadcasting:

Article 18

(1) Public service television and radio stations—as provided for in a separate Act—will ensure that national and ethnic minority programmes are produced and broadcast on a regular basis.

(2) On territories inhabited by minorities, the government—through international contracts—will promote the reception of radio and television programmes from the kin state.

[...]

ACT I OF 1996 ON RADIO AND TELEVISION BROADCASTING

The major legal framework for broadcasting in Hungary is Act I of 1996 on Radio and Television Broadcasting,⁷ which requires public broadcasting institutions to support the preservation of the language and culture of national and ethnic minorities in Hungary, and to regularly provide information in minority languages:

Section 26

(1) Public service broadcasters shall foster the culture and native languages of national and ethnic minorities living in Hungary, and provide information in the native languages of such groups on a regular basis. This responsibility shall be fulfilled through national broadcasting or, with regard to the geographical location of the minority, through regional or local broadcasting, by broadcasting programs satisfying the needs of the minority, by providing subtitles in television programming as required, or by multi-lingual broadcasting. The duration of national minority programs on a national or regional aggregate for each national minority may not be less than at the date when this Act enters into force.

(2) The national self government bodies of national and ethnic minorities, or in the absence thereof, national organizations of the above, shall decide independently upon the principles of utilizing the broadcasting time made available for such groups by public service broadcasters. Public service broadcasters shall take into account the decisions of such bodies, but these decisions may not affect the contents of the program and the editing of broadcasts.

Other relevant provisions include the definitional section dealing with public service and not-for-profit broadcasters:

19. *Public service program*: a program which serves the informational, cultural, civic and lifestyle needs of the (national, regional, local) listeners and viewers who live in the reception area of the broadcaster, thus in particular:

⁷ Excerpts of which are available in English at: <http://www.meh.hu/nekh/Angol/6-7.htm>.

a) artistic works or information on universal culture, Hungarian culture and the culture of the national and ethnic minorities in Hungary, the life of such national and ethnic minorities, and their viewpoints,

[...]

34. *Not-for-profit broadcaster*: a broadcaster which agrees to serve the cultural aims of national, ethnic or other minorities and to serve a disadvantaged group, or intends to serve as a public affairs forum for a community, provided that it applies the profits generated by such broadcasting, as recorded separately, exclusively for the continuation and development of such broadcasting.

(2) Broadcasters shall respect the constitutional order of the Republic of Hungary. Their activities may not violate human rights and may not be suitable for inciting hatred against individuals, genders, peoples, nations, or national, ethnic, linguistic and other minorities, or any church or religious groups.

(3) Broadcasting may not aim, openly or covertly, at insulting or excluding any minority or majority group, or at presenting and discriminating against such on the basis of racial considerations.

The basic principles and regulations governing public service broadcasting and public broadcasting are also set out in the Act:

Section 23

(1) Public service broadcasters, and public broadcasters in particular, shall respect the dignity and essential interests of the nation and of national, ethnic, linguistic and other minorities, and may not offend the dignity of other nations.

(2) On a regular basis public service broadcasters and public broadcasters shall provide information on domestic and foreign events which interest the public, on events with a significant impact on the lives of the population in the reception area, on interconnections, disputed issues, and the characteristic opinions formed regarding such events, including different opinions, in a comprehensive, objective, authentic and accurate manner. In the course of fulfilling these responsibilities, they shall provide for announcements or news briefs which are in the public interest and are not specified in Section 137.

(3) Public service broadcasters and public broadcasters shall ensure multi-faceted programs and views, and the presentation of the viewpoints of minorities, and through the variety of programs shall attend to satisfying the needs of a wide range of viewers, and as many groups as possible, at a high standard of quality.

(4) Public service broadcasters and public broadcasters shall pay special attention to the following:

a) fostering the values of universal and national cultural heritage, ensuring presentation of various aspects of culture,

b) showing programs promoting the physical, mental and moral development and interests of minors, and enriching their knowledge,

c) presenting religious and church values, and the values of national, ethnic and other minority cultures,

d) providing important information for groups in a seriously disadvantaged or underprivileged position due to their age, physical, mental and psychological state or social circumstances, with special consideration of the presentation of information on children's rights and related services during prime-time broadcasting,

e) presenting programs on the social, economic and cultural life of the various parts of the country.

Provision is also made for the sponsorship of minority-language programmes, thus providing a useful opportunity for financing such programmes through any available additional resources. In other words, such programmes are not restricted to pro-rata shares of specific (state-designated) budgets.

Section 25

Only the following programs may be sponsored in public service broadcasting and public broadcasting:

- a) programs with religious and church contents,
- b) programs presenting or broadcasting artistic and cultural events,
- c) programs presented in the native languages of national and ethnic minorities, and presenting the life and culture of national and ethnic minorities,
- d) programs for groups in a seriously disadvantaged position due to their age, physical, moral and psychological state or social circumstances.

A final piece of legislation meriting reference at this juncture is Act CXXVII of 1996 on the National News Agency, which requires the Hungarian News Agency to publish information on national and ethnic minorities.

4 Application of legislation and other measures affecting language

The Parliamentary Ombudsman for the Rights of National and Ethnic Minorities ('the Ombudsman') also has a certain relevance for broadcasting in minority languages. In principle, the Ombudsman may investigate whether minority rights based on the Constitution prevail in broadcasting and may also advise the National Radio and Television Board (*Országos Rádió és Televízió Testület*, ORTT) or any media entity to uphold the rights of minorities. The Office of the Ombudsman was created by Article 32B of the Constitution:

[...]

(2) The Parliamentary Ombudsman for the Rights of National and Ethnic Minorities is responsible for investigating or initiating the investigation of cases involving the infringement of the rights of national or ethnic minorities which come to his attention and initiating general or specific measures for their remedy.

(3) Everyone has the right to initiate proceedings by the Parliamentary Ombudsmen in the cases specified by law.

[...]

(6) The Parliamentary Ombudsmen shall present the Parliament with an annual report on their activities.

While the Minority Act does not differentiate between the 13 minorities in Hungary, the situation of the Roma is so strikingly different from that of the other minorities that it is necessary to set them apart from the other minorities for purposes of research. Hungary's Roma population, estimated to number roughly half a million, is hardly represented in the media at all. Roma editors, television presenters, and reporters can be counted on the fingers of one hand. A recent development in this connection is the emergence of a Budapest-based

Roma radio station, Radio ©, which broadcasts in Romany and in Hungarian. The training of media professionals from the Roma Community has been recommended in international fora.⁸

Over the past few years, Hungary has been criticised in international fora on a number of occasions for the uneven allocation of resources to different minorities (in particular as regards sound broadcasting time).⁹ The Roma, for instance, have disproportionately little access to broadcasting time and facilities. Disadvantageous time-slots for minority programming has also been a recurrent subject of complaint. In its Opinion on Hungary, 2000, the Advisory Committee on the Framework Convention for the Protection of National Minorities proposed that the Committee of Ministers make, *inter alia*, the following recommendations:

[...]

The Committee of Ministers *concludes* that the current situation, where the largest minority, the Roma, has broadcasting time amounting to less than a quarter of that of some of the other minorities, is disproportionate. It *recommends* that this situation be reviewed in order to achieve a more equitable result, where possible through increasing the overall broadcasting time available to minorities.

The Committee of Ministers *concludes* for both sound radio and television broadcasting that the hours of the day at which minority programmes are broadcast are not such as to reach the greatest number of the target audience. It *recommends* that this matter be reviewed.

The Committee of Ministers *concludes* that there is reason for concern about complaints regarding local radio stations not respecting their license obligations in respect of minority broadcasting not having been investigated. It *recommends* that the competent authorities do so.

[...]

A number of other international reports on Hungary, dealing with various aspects of human rights protection, touch on media- and minority-related issues and together help to form a more complete picture of relevant developments in the country.¹⁰

⁸ See, for example, the Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Mr. Abid Hussain, Report of the mission to Hungary, E/CN.4/1999/64/Add.2, 29 January 1999, available at:

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/790d45d3f5b830e78025674b00595f44?Opendocument>

⁹ *Ibid.* See also: Paras. 29-31 and Recommendations on Article 9, Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Hungary, adopted on 22 September 2000, available at:

<http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/AdvisoryCommittee/Opinions/Hungary.htm>

¹⁰ See, for example: Report submitted by Hungary pursuant to Article 25 Paragraph 1 of the Framework Convention for the Protection of National Minorities (received on 21 May 1999), available at: <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/StateReports/1999/hungary/hungarian.htm>; Remarks of the Government of the Republic of Hungary on the evaluation of the Advisory Committee for the Council of Europe Framework Convention for the Protection of National Minorities, available at: <http://www.meh.hu/nekh/Angol/4-6.htm>; Council Of Europe Committee Of Ministers Recommendation RecChL(2001)4 on the application of the European Charter for Regional or Minority Languages by Hungary (Adopted by the Committee of Ministers on 4 October 2001 at the 766th meeting of the Ministers' Deputies), available at: <http://www.meh.hu/nekh/Angol/4-8-2.htm>; European Charter for Regional or Minority Languages: Comments of the Government of the Republic of Hungary concerning the Report of the Committee of Experts, available at: <http://www.meh.hu/nekh/Angol/4-8-1.htm> (see, in particular, points 64-65); Fourth periodic report

of the Government of the Republic of Hungary on the implementation of the International Covenant on Civil and Political Rights, CCPR/C/HUN/2000/4, 13 March 2001, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.HUN.2000.4.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.HUN.2000.4.En?Opendocument); Concluding observations of the Human Rights Committee on the State Report submitted by Hungary, CCPR/CO/74/HUN, 19 April 2002, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.74.HUN.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.74.HUN.En?Opendocument).

Iceland

Icelandic is the only language to enjoy official recognition in Iceland. Apart from general equality provisions, there are no references to the protection or promotion of minority rights in the constitutional or legislative orders. Under the current broadcasting legislation, broadcasters are required to promote Icelandic culture and language. No measures have been introduced with a view to creating airtime for minority languages on public service broadcasting channels. Indeed, relevant legislation makes few references to the use in broadcasting of languages other than Icelandic. It is permissible, but unusual to grant broadcasting licences for other languages than Icelandic.

1 Introduction

1.1 Linguistic topography

According to figures from the state-governed statistics bureau, Statistics Iceland,¹ the population of Iceland was 286,575 on 31 December 2001. Of these, 276,725 were Icelandic citizens. Iceland is a very linguistically homogeneous country. 97-98% of the population speaks Icelandic, which is the official language.² No other language is recognised as having legal status in the country.

1.2 Broadcasting

At present, Iceland has 27 radio stations and eight television stations (four of which have national coverage and four of which have local coverage). Two radio stations and one television station fall under the umbrella of the state-governed Icelandic National Broadcasting Service (RUV). In the programmes on offer from all of these broadcasting outlets, no provision is made to cater for the needs of any ethnic group other than Icelandic nationals.

1.3 Government policies on broadcasting and minorities

There are two pieces of legislation that cover the broadcasting sector in Iceland. On the one hand, there is the Icelandic National Broadcasting Service Act (Law no. 122, 2000). On the other hand, there is the Broadcasting Act (Law no. 53, 2000), which is directed towards radio and television stations in private ownership. In both cases, the law stresses that the private and public sectors' main aim is to promote and cultivate Icelandic culture and language. Programme material in a foreign language shall in general be accompanied by dubbing, voice-over or subtitles in Icelandic, as appropriate. No reference is made to the need to direct programming towards any ethnic minority group.

There are neither government policies nor legislation concerning the existence of minorities in Iceland. However, there is the Foreigners Act (Law no. 45, 1965). This law focuses mainly on the legal status of foreign individuals *vis-à-vis* the immigration system, employment and possible refugee status.

No legislation or government policies address the issue of broadcasting and minorities.

¹ See: <http://www.hagstofa.is>.

² While there is no specific legislation stating that Icelandic is the official language, some laws do exist which have the function of maintaining the "official" status of Icelandic as the *de facto* official language.

2 Constitution³

2.1 Freedom of expression

Article 73

Every person has the right to express his thoughts in print; nevertheless, he shall be responsible for them before the Courts. Censorship and other restrictions on the freedom of expression in print must never be enacted.

2.2 Broadcasting

There is no provision in the Constitution that addresses broadcasting.

2.3 Minority rights

There is no provision in the Constitution that addresses the rights of minorities, other than general references to the equality of all Icelandic citizens.

Article 65

Everyone shall be equal before the law and enjoy human rights regardless of gender, religion, opinions, ethnic origin, race, colour, economic status, heredity, or any other status. Women and men shall enjoy equal rights in all aspects.

2.4 (Official/State) language(s)

No provision of the Constitution addresses the status of language *per se*.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

There is no provision in Icelandic legislation that addresses the status of minority groups in the country or the status of linguistic rights.

3.2 Broadcasting legislation

No measures addressing minorities' access to broadcasting in their own languages have been adopted. Article 3 of the Icelandic National Broadcasting Service Act No. 122 of 30 June 2000⁴ and Article 7 of the Broadcasting Act No. 53 of 17 May 2000⁵ both stress that broadcasting outlets should promote general cultural advancement and strive to strengthen the Icelandic language.

NATIONAL BROADCASTING SERVICE ACT NO. 122 OF 30 JUNE 2000

Article 3

³ The Icelandic Constitution, Law no. 33, 1944, available at: <http://www.althingi.is/lagas/127a/1944033.html> (IS).

⁴ The Icelandic National Broadcasting Service Act, No. 122 of 30 June 2000, available at: <http://www.althingi.is/lagas/127a/2000122.html> (IS).

⁵ The Broadcasting Act, No. 53 of 17 May 2000, available at: <http://www.althingi.is/lagas/127a/2000053.html> (IS) and at <http://menntamalaraduneyti.is/mrn/mrn-eng.nsf/pages/acts> or <http://www.raduneyti.is/mrn/mrn-eng.nsf/75088b6a62cc20e9002568f5003ab625/aeb41d16df77b38700256a99003cc5bb?OpenDocument> (EN).

The Icelandic National Broadcasting Service (RÚV) shall strive to cultivate the Icelandic language, history and cultural heritage.

The Icelandic National Broadcasting Service shall honour democratic principles and the principles of human rights and freedom of speech. It shall observe strict impartiality in its reporting, interpretation and programming.

The Icelandic National Broadcasting Service shall provide a general news service and be a venue for a variety of opinions in current affairs or of public interest. It shall broadcast diverse entertainment programmes suitable for people of all ages. Special attention must be given to the needs of children in this respect, both in radio and television. The Icelandic National Broadcasting Service shall transmit a variety of material in the field of art, literature, science and history as well as music. It shall provide general educational material and produce separate programmes dealing with Iceland or Icelanders specifically.

Programme material shall take into account the diversity of the Icelandic society. All service technically available must be provided for the benefit of the nation.

Programme material in a foreign language, which is shown in the television programming of the Icelandic National Broadcasting Service, shall be in general accompanied by dialogue or subtitles in Icelandic, as appropriate. This shall not apply, however, to the lyrics of foreign songs or when news or current affairs programmes dealing mostly with events as they take place are distributed without interruption via satellite and rebroadcast by a receiving station. In such cases the Icelandic National Broadcasting Service shall, whenever possible, provide a recapitulation or presentation in Icelandic of the events taking place. Emphasis shall be placed on ensuring that all dialogue and subtitles be in correct Icelandic.

BROADCASTING ACT NO. 53 OF 17 MAY 2000

Article 7

Broadcasters shall strive for general cultural advancement and strengthen the Icelandic language. Nevertheless, licenses to broadcast in other languages than Icelandic may be granted in special cases.

Television broadcasters shall make every effort to ensure that the greater part of their transmission time is reserved for Icelandic and other European material. 'Transmission time' in this context refers to the total transmission time of television broadcasters with the exception of time devoted to news, sports events, games, advertising, text television services and teleshopping.

A more detailed definition of European programme material shall be laid down in a regulation.

According to Article 6 of the Broadcasting Act, any resident of the European Economic Area can apply to the Broadcasting Licensing Committee for a licence to operate a broadcasting outlet. However, any such operation would have to abide by the language requirements of Article 7.

According to Article 7 of the Broadcasting Act, television stations shall strive to have the majority of their programme output (i.e., broadcasting time) of Icelandic origin, as well as from the European Economic Area. This legislation applies to the privately-owned broadcasting sector. In the legislation for the publicly-owned system, the Icelandic National Broadcasting Service Act, no specific guidelines are to be found. However, it is evident from Article 3 of that Act (quoted *supra*) that the role of the public system is to promote general cultural advancement and to strive to strengthen the Icelandic language.

No measures have been put forth regarding slots for minorities or minority languages on the public broadcasting service. There are no provisions to be found in Icelandic legislation promoting favourable financing or tax regimes for minority language groups.

In sum, broadcasting outlets in Iceland have the obligation to promote and further Icelandic language and culture. There are no legislative references to the status of other languages. However, there are exceptions to this general rule, for instance in the case of live transmissions from abroad, where it is impossible or impractical to translate or offer subtitling. The general requirement that programme material be ordinarily accompanied by dubbing, voice-over or subtitles in Icelandic, as appropriate, is set out in Article 8 of the Broadcasting Act.

BROADCASTING ACT NO. 53 OF 17 MAY 2000

Article 8

Televised programme material in a foreign language shall always be accompanied by Icelandic voice-over or subtitles, as appropriate. However, this shall not apply to the lyrics of foreign songs or to live transmissions via satellite and a receiving station of news and current affairs programmes dealing principally with events as they take place. In such case the television broadcaster shall, whenever possible, provide a recapitulation or presentation in Icelandic of the events taking place. Every effort shall be made to ensure that the voice-over and subtitles are always in correct Icelandic.

The provisions of this article shall not apply to the retransmission from foreign television stations in the case of direct, full-length and unaltered retransmission of the entire programming of television stations. Further, these provisions shall not apply where radio broadcasters have been granted license to broadcast in other languages than Icelandic pursuant to Article 7, first paragraph.

4 Current developments

There are no current developments taking place in Icelandic that relate to the status of minority language rights or access of minority language groups *vis-à-vis* broadcasting.

Ireland

The Irish language, *de jure* the first official national language, is *de facto* a minority language. Existing broadcasting legislation is sprinkled with general references to the promotion of the language (and associated facets of culture). One Irish-language television station and one Irish-language radio station broadcast nationwide. Both are public service stations and maintain a steady, if minority, audience, drawn to a large extent from the Irish-language speaking areas. Their services complement the offer of Irish-language programming on the mainstream national public service broadcasting channels. In the independent broadcasting sector, some degree of Irish-language programming is provided by most radio stations, but the volume of such programming varies considerably from station to station. Various non-legal initiatives are afoot to promote the use of the Irish language in broadcasting. These include inter-agency campaigns and the recent creation of the post of Irish Language Officer by the Broadcasting Commission of Ireland (the statutory body with responsibility for the licensing, monitoring and development of independent broadcasting services in Ireland). Irish-language broadcasting does not suffer from any recognisable discrimination, apart from those dictated by audience levels and a shortage of funding that appears to be commensurate to that being experienced by the main public service broadcaster. As regards other languages, these have not yet been used in a prevalent manner. However, the main public service radio station has, over the past couple of years, catered for the needs and interests of the so-called “new” minorities by broadcasting a nightly programme which also includes items in foreign (minority) languages.

1 Introduction¹

1.1 Linguistic topography

The safeguarding of linguistic pluralism is of the utmost importance for freedom of expression in Ireland, given that it is a bilingual country. The Irish language is the first official national language (by virtue of Article 8 of the Constitution of Ireland), even though it is spoken regularly by a minority of the population. According to the results of the 2002 Census, only 42.8% of the country’s total population of 3.9 million persons² consider themselves able to speak Irish and the age-group with the highest proportion of persons able to speak Irish is the school-going population (i.e., aged between 10 and 19 years).³ The linguistic contours drawn by Article 8 of the Constitution—to loosely paraphrase the Irish playwright Brian Friel—no longer match the landscape of fact.⁴ Article 8 is the expression of a somewhat vestigial cultural nationalism; it dates from a time when the “de-anglicisation of

¹ The author is extremely grateful to Celene Craig of the Broadcasting Commission of Ireland for her advice concerning the preparation of certain sections of this report. Michelle Hocht, RTÉ Radio Publicist, and Mairéad Ní Nuadháin, RTÉ Commissioning Editor, also provided useful information about relevant broadcasting policies of *Radio Telefís Éireann*. Nevertheless, any omissions or inaccuracies remain the sole responsibility of the author.

² The national census conducted on 28 April 2002 recorded the population of Ireland as 3,917,203 persons. See further the website of the Central Statistics Office of Ireland: <http://www.cso.ie>.

³ For further information, see the Central Statistics Office of Ireland website: <http://www.cso.ie>.

⁴ In Friel’s play, *Translations*, the character Hugh states: “it can happen that a civilization can be imprisoned in a linguistic contour which no longer matches the landscape of... fact.” B. Friel, “Translations”, in *Brian Friel: Plays 1* (Faber & Faber, London, 1996), pp. 377-451, at p. 419.

Ireland”⁵ was the guiding principle of Ireland’s attempts at self-definition and self-assertion in the earlier stages of the post-independence period.

1.2 Broadcasting

Notwithstanding the highlighted ambiguities regarding linguistic issues in Ireland, no pressing problems exist as regards freedom of expression in the medium of Irish, other than those associated with any language which is only spoken by and intelligible to a minority section of a national population. The use of the Irish language is provided for on national radio and television by *Radio Telefís Éireann* (RTÉ - the national public service broadcaster);⁶ an Irish-language radio station—*Raidió na Gaeltachta*⁷—has been broadcasting since 1972 and commands 26% of the adult listenership within the *Gaeltacht* regions;⁸ an Irish-language television station—*TG4*⁹—has been in operation since 1996 and since its inception, it has benefited enormously from RTÉ in terms of personnel, expertise, technology, and financing. In particular, it should be noted that despite the financial difficulties it is currently experiencing,¹⁰ RTÉ accounts for 365 hours of original output on TG4,¹¹ including “its entire news service and a comprehensive range of other programmes.”¹² It is the short-term ambition of TG4 to increase original Irish-language output to six hours per day.¹³ According to RTÉ’s Annual Report for the year 2000, TG4 was the channel with the “greatest audience growth rate”¹⁴ in Ireland in that year. By the end of 2000, it had achieved an audience share of 2.4% and an average daily reach of 730,000 people. However, it should also be noted that complaints have been articulated concerning the linguistic standards of TG4.¹⁵

⁵ This phrase is generally attributed to Douglas Hyde, the first President of Ireland.

⁶ See: <http://www.rte.ie>. It should be noted that the RTÉ Programme-Makers’ Guidelines (2002) contain a section entitled ‘Irish Language’ (p. 20). This section deals with broadcasting in Irish by RTÉ, and also communications in Irish with the public service broadcaster.

⁷ See: <http://www.rnag.ie>. *Raidió na Gaeltachta* operates under the aegis of RTÉ.

⁸ Gaeltacht areas are those officially designated as Irish-speaking. See further, M. Kelly & W. Truetschler, “Ireland”, in B. S. Ostergaard, Ed., *The Media in Western Europe – The Euromedia Handbook* (2nd Edition), pp. 110 – 125, at p. 120. The combined total population of the Gaeltacht areas, according to the 1991 Census, is 79,563, of whom 56,469 or 71% are Irish-speaking. See further, “Report submitted by Ireland pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities” (Received on 13 November 2001), Council of Europe Doc. ACFC/SR (2001) 6, available at: <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/StateReports/Toc.htm>.

⁹ See: <http://www.tg4.ie>. TG4 also operates (for the moment) under the aegis of RTÉ. See further *infra*.

¹⁰ RTÉ is now reporting a Net Deficit of 71 million Euros for 2001 - Submission to the Forum on Broadcasting, Radio Telefís Éireann, 2002, p. 23, available at: <http://www.rte.ie/about/organisation/forum/index.html>. See also in this connection: M. McGonagle, “IE – Digital Broadcasting”, *IRIS – Legal Observations of the European Audiovisual Observatory*, 2001-8: 11.

¹¹ This is actually a statutory obligation, by virtue of s. 47 of the Broadcasting Act, 2001. See further, *infra*.

¹² Submission to the Forum on Broadcasting, Radio Telefís Éireann, 2002, *op. cit.*, p. 28.

¹³ As noted in the Report of the Forum on Broadcasting, August 2002 (see further *infra*), p. 44.

¹⁴ Annual Report/Tuairisc Bhliantúil Radio Telefís Éireann 2000, p. 59, available at: <http://www.rte.ie/about/organisation/annualreport/index.html>.

¹⁵ See, for example, the Final Report of *Coimisiún na Gaeltachta*, 2002, p. 19, Section 8 ‘Summary of Issues Raised at Public Meetings’, para. 7: “In general the Gaeltacht community is satisfied with Raidió na Gaeltachta, both with the quality of service and the Irish language ethos of the station. Young people in the main felt that there should be an additional service (RnaG2) available to meet their own particular needs, while not interfering with Raidió na Gaeltachta as it currently exists. The Gaeltacht community welcomed TG4 and it is generally agreed that the station has performed remarkably well with limited resources. The community did feel, however, that TG4 does not relate to the Gaeltacht to the extent that it should. It is evident that ordinary Irish speakers in the Gaeltacht, especially in those areas where the language is strongest, are unhappy with the poor standard of Irish on certain TG4 programmes.” The Report is available at: <http://www.pobail.ie/en/AnGhaeltacht/TuarascailChoimisiunnaGaeltachta/d5248.en.v1.0.t4.PDF>.

The national public service broadcaster also caters to a limited extent for the needs of the new minorities in Ireland. A weekly half-hour television show with the aim of providing the general public a more comprehensive and multidimensional portrayal of new minorities has been broadcast for the past two years. ‘Mono’, as it is called, is a magazine-type show in the English language.¹⁶ A multicultural radio service, ‘Radio One World’, has also been provided by RTÉ over the past couple of years. It sometimes includes items in the languages of immigrants and refugees and targets this audience specifically.¹⁷ In 2002, these television and radio initiatives won national “media and multicultural” awards.¹⁸

2 Constitution

Bunreacht na hÉireann (the Constitution of Ireland), 1937,¹⁹ the fundamental source of law in Ireland, is antecedent to the United Nations and European human rights instruments. In consequence, the chapter entitled ‘Fundamental Rights’ is not entirely co-extensive with the rights and freedoms elaborated by these international instruments.

2.1 Freedom of expression

Article 40.6.1

The state guarantees liberty for the exercise of the following rights subject to public order and morality:-

- (i) The right of the citizens to express freely their convictions and opinions.

The education of the public opinion being, however, a matter of such grave import to the common good, the state shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of government policy, shall not be used to undermine public order or morality or the authority of the state.

The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

2.2 Broadcasting

The regulation of broadcasting in Ireland has taken a predominantly statutory form; thus, the passing constitutional reference to the “organs of public opinion” is developed in greater detail by way of legislation.

2.3 Minority rights

The Constitution contains no specific mention of minorities. General references to the equality of all citizens do, however, exist and the protection of minorities could—to an extent—be extrapolated therefrom:

¹⁶ See further: <http://www.rte.ie/tv/mono/index.html>.

¹⁷ See further: <http://www.rte.ie/radio/radiooneworld/>.

¹⁸ See further: “RTÉ’s Mono and Radio One World winners at MAMA 2002”, RTÉ News Release of 3 May 2002, available at: <http://www.radio1.ie/infocenter/programmenews/mama2002.html>.

¹⁹ Available at: <http://www.taoiseach.gov.ie/upload/static/256.pdf>.

Article 3

It is the firm will of the Irish Nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions [...]

Article 40.1

All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the state shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

Article 40.3.1

The state guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2.4 (Official/State) language(s)

Article 8

1. The Irish language as the national language is the first official language.
2. The English language is recognised as a second official language.
3. Provision may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the state or in any part thereof.

3 Legislation

THE BROADCASTING ACT, 2001

The Broadcasting Act, 2001, constitutes the most recent statutory bulwark for the practice of Irish-language broadcasting.²⁰ Section 28(2)(a) of the Act, for instance, obliges the public broadcaster to “provide a comprehensive range of programmes in the Irish and English languages that reflect the cultural diversity of the whole island of Ireland and include, both on television and radio [...] programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of the community generally as well as members of the community with special or minority interests and which, in every case, respect human dignity.” Section 28(2)(b) then requires the public broadcaster to “provide programmes of news and current affairs in the Irish and English languages, including programmes that provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament”. This represents a wider and more clearly-defined range of responsibilities than the “general duty” of the national broadcaster “with respect to national aims” as set out in Section 17 of the Broadcasting Authority Act, 1960.²¹ According to that Act, “In performing its functions, the Authority shall bear constantly in mind the national aims of restoring the Irish language and preserving and developing the national culture and shall endeavour to promote the attainment of those aims.”

²⁰ Available at: <http://www.gov.ie/bills28/acts/2001/a401.pdf>.

²¹ Available at: <http://193.120.124.98/front.html>.

Sections 42 *et seq.* of the 2001 Act establish *Teilifís na Gaeilge* (now known as TG4) as a body corporate with the responsibility of providing a national, public service, free-to-air broadcasting service. It is the intention of the newly-elected coalition government of Ireland to “establish TG4 as a separate statutory body”, in line with existing legislation on the matter.²² Section 45 of the Act requires TG4 to “commission the making of programme material, originate programme material and [...] acquire programme material from such sources as it thinks appropriate so as to ensure that the programme schedules [...]”:

- (a) provide a comprehensive range of programmes, primarily in the Irish language, that reflect the cultural diversity of the whole island of Ireland and include programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of those of all age groups in the community whose preferred spoken language is Irish or who otherwise have an interest in Irish,
- (b) provide programmes, primarily in the Irish language, of news and current affairs,
- (c) provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament, and
- (d) facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting.

The sphere of TG4’s activities is not restricted to broadcasting, as traditionally defined. It is free to embrace other forms of electronic communications in its activities (s. 45(8)(c)) and, in more general terms, it enjoys much operational latitude (see s. 45(8) generally). The Act also provides for the possibility of TG4 becoming involved in pursuits that could be considered ancillary to its primary task of broadcasting (e.g. subscription to news services (s. 45(8)(e)), educational, musical and dramatic bodies, international associations (s. 45(8)(f)); organisation and subsidisation of entertainment events (s. 45(8)(h)); publication and distribution of printed and audiovisual material which is relevant to its functions (ss. 45(8)(i) & (j)).

The broadcasting services provided by TG4 are explicitly “public” in character. Section 46, for example, states that in performing its functions, TG4:

- (a) shall use its best endeavours to commission the making of, procure, adapt or originate programme material for the purposes of the broadcasting service referred to in *section 45(1)* that is responsive to the interests and concerns of the whole community,
- (b) shall—
 - (i) be mindful of the need for understanding and peace within the whole island of Ireland, and
 - (ii) ensure that the programme material aforesaid reflects the varied elements which make up the culture of the whole island of Ireland and have special regard for the elements which distinguish that culture, and, in particular, the Gaeltachtaí,
- (c) shall uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, and

²² “We will continue to support the development of Irish language broadcasting. In line with legislation which we have already enacted, we will establish TG4 as a separate statutory body.”, p. 33, ‘Culture and Heritage’ Section, *An Agreed Programme for Government between Fianna Fáil and the Progressive Democrats*, June 2002, available at: <http://www.taoiseach.gov.ie/upload/publications/1480.pdf>.

(d) shall have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of the Member States of the European Union.

Furthermore, the station benefits from a statutory obligation on RTÉ to provide it with the equivalent of one hour's programme material each day (s. 47). The total number of hours per year of broadcasting provided by TG4 is decided by the station and approved by the Minister for Arts, Heritage, Gaeltacht and the Islands (s. 48.). For present purposes, one final crucial provision is s. 51, which empowers the aforementioned Minister, with the consent of the Minister for Finance, "from time to time [to] pay to Teilifís na Gaeilge such an amount as he or she determines to be reasonable for the purposes of defraying the expenses incurred by Teilifís na Gaeilge in performing its functions."

In addition to the statutory provisions governing broadcasting organisations, the relevant legislation also contains provisions concerning the Broadcasting Commission of Ireland (BCI), the statutory body with responsibility for the licensing, monitoring and development of independent broadcasting services in Ireland. The operative part of Section 11 of the Broadcasting Act, 2001, reads:

(2) In performing the function conferred on it by this section or the functions conferred on it by the Act of 1988, the Commission shall endeavour to ensure that the number and categories of broadcasting services made available in the state by virtue of this Act or the Act of 1988 best serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical, and cultural diversity.

RADIO AND TELEVISION ACT, 1988

Furthermore, under Section 6(2) of the Radio and Television Act, 1988, the Broadcasting Commission of Ireland (BCI) must have due regard to a number of concerns when considering applications for sound broadcasting contracts.

In practice, the BCI's relationship with independent broadcasters is regulated, based on legislation, by way of individual contracts with each broadcaster. The terms of such contracts are set by the Commission and include a range of programming requirements, *inter alia*, in respect of programmes in the Irish language. The BCI, however, has yet to invoke these clauses to any undue extent. Each contractor is bound by its individual programme policy statement and programme schedule which contain commitments to provide certain levels of Irish-language programming. Any changes to these documents must be duly communicated to the BCI. So far, the BCI has not sought any additional programming from any contractor; an approach which could be explained by the level of Irish-language programming and services provided by public service broadcasting.²³

Section 6.— Determination of applications for award of sound broadcasting contracts.

(1) The Commission shall, in accordance with the provisions of this Act, consider every application for a sound broadcasting contract received by it pursuant to a notice under *section 5 (5)* for the purpose of determining the most suitable applicant, if any, to be awarded a sound broadcasting contract.

²³ The bulk of the information provided in this paragraph was gleaned from correspondence with C. Craig, BCI.

(2) In the consideration of applications received by it and in determining the most suitable applicant to be awarded a sound broadcasting contract, the Commission shall have regard to—

[...]

(d) the quantity, quality, range, and type of programmes in the Irish language and the extent of programmes relating to Irish culture proposed to be provided;

(e) the extent to which the applicant will create within the proposed sound broadcasting service new opportunities for Irish talent in music, drama and entertainment;

(f) the desirability of having a diversity of services in the area specified in the notice under section 5 (5) catering for a wide range of tastes including those of minority interests;

[...]

(i) the extent to which the service proposed:

(i) serves recognisably local communities and is supported by the various interests in the Community, or

(ii) serves communities of interest, and

[...]

(3) In considering the suitability of any applicant for the award of a sound broadcasting contract to provide a sound broadcasting service in respect of an area which includes a Gaeltacht area, the Commission shall have particular regard to the preservation as a spoken language of the Irish language.

4 Application of legislation and other measures affecting language

The Broadcasting Act, 2001, was signed into law on 14 March 2001.²⁴ The application of the Act throughout its brief existence has been smooth and has yet to give rise to any issues of note in respect of either Irish-language broadcasting in general or the operation of TG4 in particular.

The BCI has formulated a Policy Statement on the Irish language. It reads:

The IRTC²⁵ respects the unique place the Irish language holds for people on this island as a language of communication and as a cultural and linguistic expression of their identity.

In order to recognise the status of the Irish language, the first official language of the state, the IRTC encourages the use of Irish language programming as part of normal programming. In accordance with each individual station's style of broadcasting, the IRTC envisages that this programming could take many forms and have a multiplicity of purpose. The IRTC will seek to promote and develop the use of the Irish language

²⁴ See further, M. McGonagle, "Broadcasting Bill Becomes Law", *IRIS - Legal Observations of the European Audiovisual Observatory*, 2001-4: 9).

²⁵ Prior to the enactment of the Broadcasting Act, 2001, the Broadcasting Commission of Ireland was known as the Independent Radio and Television Commission (IRTC).

in natural and relevant ways and is committed to increasing the proportion of Irish spoken on-air.²⁶

A survey of the then-existing 21 commercial radio stations and 10 “community and community of interest” stations was undertaken by the Commission in November 1998,²⁷ with a view to determining the extent of Irish-language usage in programming on local radio stations. This survey revealed varying levels of Irish-language use among stations; with lower-than-expected levels overall. “The lack of, and the difficulty in sourcing, Irish language speakers with the relevant radio/broadcasting skills were identified” by the survey “as the major hindrances” for initiatives aimed at increasing programming output in the Irish language.²⁸ The current situation is that all independent radio services carry some Irish-language programming, although levels remain generally quite low. Irish-language programming tends to be broadcast at off-peak times. Given the difficulties which stations encounter in sourcing Irish-language contributors to programmes, it is quite common for Irish-language programmes to adopt music-centred or bilingual (i.e., Irish and English) formats in order to honour their Irish-language programming commitments.

In May 1999, the Independent Radio and Television Commission (IRTC), with the participation of *Bord na Gaeilge/Foras na Gaeilge*,²⁹ set up an Advisory Committee on Irish-language programming. The focus of this (ongoing) initiative is exclusively on broadcasting in the independent sector. Membership of the Advisory Committee comprises representatives of the aforementioned organisations, *Gael Linn*³⁰ and five independent (radio) stations.³¹ Its main objectives are to:

1. Examine the types and level of usage of Irish language programming in the independent sector.
2. Identify factors that inhibit and support the production of Irish language programming.
3. Make recommendations to encourage more Irish language usage on-air by independent radio and television stations.

The Advisory Committee concluded a survey on “the views of all independent stations on the potential for Irish language programming” in July 1999.³² The findings of this survey, coupled with further market research indicating a favourable disposition towards Irish-language programmes among a certain section of the Irish population,³³ has prompted a

²⁶ *Irish Language Programming in the Independent Broadcasting Sector*, The Independent Radio and Television Commission/Foras na Gaeilge, 6 December 2000, p. 2.

²⁷ The BCI currently licenses one national television programme service (TV3); one national radio broadcasting service (Today FM); 24 broad-based local commercial radio services; three special interest services (commercial and non-commercial) and 13 community and community of interest radio services, including one Irish-language programme service, *Raidió na Life*, which operates in Dublin City and County.

²⁸ *Ibid.*, p. 2.

²⁹ “Foras na Gaeilge is the new body responsible for the promotion of the Irish language throughout the whole island of Ireland”, see further: http://www.bnag.ie/about_fnag.htm.

³⁰ *Gael Linn* is a cultural organisation which aims to strengthen and spread the Irish language and Irish heritage. See further: <http://www.gael-linn.ie/>.

³¹ *Raidió na Life*, Radio Kilkenny, Radio Kerry, Lite FM and NEAR FM.

³² Details of this survey are available in *Irish Language Programming in the Independent Broadcasting Sector*, *op. cit.*, pp. 3-4.

³³ “The results of a survey conducted by Irish Marketing Surveys Limited in January 2000, on behalf of Bord na Gaeilge/Foras na Gaeilge, revealed that 20% of the population like listening to Irish language programming, a figure perhaps higher than would be expected.” – *op. cit.*, p. 4.

number of pertinent recommendations.³⁴ The BCI recently appointed its first-ever, full-time Irish Language Officer, who took up her position at the beginning of July 2002. The key objectives of the post are cited as being to “coordinate the implementation of the recommendations of the Advisory Committee on Irish Language Programming and to increase the use of the Irish language across the range of broadcast output in the independent sector nation wide.”³⁵ The principal duties of the Coordinator also include: liaising with station managers and Irish language organisations on matters of relevant concern; assisting the independent sector in marketing Irish language programmes; encouraging businesses to sponsor Irish-language programming in the independent sector; undertaking (market) research on relevant matters and having some input into the (linguistic) training of programme presenters and producers.³⁶

5 Current developments

In April 2002, the Irish Government published its long-awaited *Bille na dTeangacha Oifigiúla (Comhionannas)* (Official Languages (Equality) Bill), 2002.³⁷ The primary objectives of the Bill include the promotion of respect for Irish and English as the official languages of the state; the promotion of equality of status and equal rights and privileges as to their use, especially in parliamentary proceedings, legislation, the administration of justice, in communicating with or providing services to the public and in discharging the functions of public bodies. For the purposes of the Bill, RTÉ, Raidió na Gaeltachta and TG4 all qualify as public bodies.

When enacted,³⁸ the greatest impact of the Bill on the aforementioned public service broadcasters will concern RTÉ, as the other two routinely conduct their business through the medium of the Irish language anyway. Its impact will, however, be mainly in administrative terms, as broadcasting in the Irish language by RTÉ is the subject of specific provisions in the Broadcasting Act, 2001 (see *supra*). The Bill focuses on measures aimed at increasing the use of the official languages in the day-to-day operations of public bodies, for example by making certain documents of public interest (e.g. policy proposals or annual reports) available simultaneously in both languages (Section 11). It also envisages a duty for public bodies to ensure that members of the public can communicate with them and receive services from them in either of the official languages (Section 9).

In its recently published Programme for Government, the Irish Government pledged that “[A] comprehensive study of the current status of the language in the Irish media will be undertaken.”³⁹ No further details of this proposed study have been disclosed yet, but if it is indeed to be pursued, this will most likely take place in tandem with the examination of the

³⁴ These Recommendations are set out in full in Appendix II.

³⁵ Job Description: Irish Language Co-ordinator, Broadcasting Commission of Ireland, 2002.

³⁶ *Ibid.*

³⁷ *Bille na dTeangacha Oifigiúla (Comhionannas), 2002* (Official Languages (Equality) Bill, 2002), No. 24 of 2002, April 2002, available at: <http://www.gov.ie/bills28/bills/2002/2402/default.htm>. See further, T. McGonagle, “IE – Effect of New Languages Bill on Public Service Broadcasters”, *IRIS – Legal Observations of the European Audiovisual Observatory*, 2002-5: 14.

³⁸ A general election was held in Ireland on 17 May. However, the future of the Bill would not appear to be in jeopardy as a result of this election as the new Government comprises the same coalition parties (i.e., Fianna Fáil and the Progressive Democrats) as when the Bill was first published. The new Programme for Government, *op. cit.*, includes an undertaking to enact the Official Languages Bill (p. 33).

³⁹ *Op. cit.*, p. 34.

relevant conclusions of the recently established Forum on Broadcasting.⁴⁰ The Forum was established on 22 March 2002 by the Minister for Arts, Heritage, Gaeltacht and the Islands to consider, *inter alia*, the roles of public and commercial/independent broadcasters in Ireland today.⁴¹ In particular, the Forum was asked to consider, “having regard to the present level of provision of sound and television broadcasting services in the Irish language, what responsibilities broadcasters should have for the development and broadcasting of programme content in the Irish language”. The responsibilities of different broadcasters for “development and broadcasting of cultural content” also figures among the terms of reference of the Forum. The Programme for Government also contains an undertaking to “consider with urgency the recommendations” of the Forum.⁴²

In its Submission to the Forum on Broadcasting, the BCI made the following recommendation:

The Commission considers that the current approach to Irish language programming on the RTE services is satisfactory and should be maintained. The Commission is also satisfied that the joint approach with Foras na Gaeilge to improving the levels of usage and increasing awareness on independent broadcasting services is appropriate and should be continued.⁴³

RTÉ’s Submission to the Forum gives important recognition to the centrality of Raidió na Gaeltachta and TG4 to its own public service remit. It is observed that their output plays a crucial role in addressing the needs of the audience for programmes in Irish, which “is as diverse in interests, age range, geographical spread and viewing habits as that for programmes in English—the stress on diversity is crucial.”⁴⁴ It also states:

The Broadcasting Act, 2001 provides for statutory independence for TG4 at an unspecified future date. RTÉ’s view is that the well-being and continued development of the channel will be best served in the medium-term by its remaining under the aegis of the RTÉ Authority. With so much uncertainty in the broadcasting economy for the foreseeable future, a change to the existing relationship between RTÉ and TG4 is undesirable now and likely to disadvantage TG4.⁴⁵

The Forum on Broadcasting’s Final Report contained four main recommendations under the heading, ‘Broadcasting and the Irish language’:

- The level of additional public funding required for the establishment of TG4 as a separate statutory entity should be clearly identified prior to its establishment.

⁴⁰ See further: <http://www.forumonbroadcasting.ie/>. See also: C. van Strien-Reney, “IE – Establishment of Forum on Broadcasting”, *IRIS – Legal Observations of the European Audiovisual Observatory*, 2002-7: 13.

⁴¹ For the Terms of Reference of the Forum on Broadcasting, see: <http://www.forumonbroadcasting.ie/terms.html>.

⁴² *Op. cit.*, p. 33.

⁴³ Submission to the Forum on Broadcasting from the Broadcasting Commission of Ireland, 15 May 2002, available at: <http://www.irtc.ie/forum.htm>.

⁴⁴ Submission to the Forum on Broadcasting, Radio Telefís Éireann, 2002, p. 28, *op. cit.*

⁴⁵ *Ibid.*

- The fulfilment by RTÉ of its obligations to Irish language broadcasting should be a key element of the Charter.⁴⁶ This could include, for instance, more programmes of a bilingual character.
- Programmes aimed at learners of Irish, both adults and children, should be available at a variety of levels either on RTÉ or TG4.
- The BAI⁴⁷ should continue the work of the BCI in exploring new ways of enhancing and incentivising Irish language broadcasting in the commercial sector.⁴⁸

The Department of Communications, Marine and Natural Resources subsequently prepared a report for the Minister, outlining its response to the Report of the Forum on Broadcasting. As far as the Irish language is concerned, it proposed the following action:

- (i) Proposals on how to proceed in relation to the commitment in the Programme for Government in relation to the separate establishment of TG4 will be brought forward shortly to Government after consultation with relevant Ministers.
- (ii) The Charter to be published by RTÉ will include specific proposals in relation to bilingual programming and Irish language broadcasting.
- (iii) The issue of programmes aimed at learners of Irish will also be addressed as part of the public service broadcasting remit and will be included in the relevant business plans.
- (iv) [...] ⁴⁹

One final matter to be considered concerns digital television: of the envisaged six multiplexes to serve the Irish market, a half of one multiplex has been set aside for TG4 by statute (see Section 9 of the Broadcasting Act, 2001). However, at the time of writing, no multiplex operator had been licensed pursuant to the 2001 Act.

⁴⁶ Editor's note: The Forum recommended that "[t]he Minister for Communications, Marine and Natural Resources should agree with RTÉ a Charter for the exercise of its public service remit, and rolling business planning for the delivery of agreed objectives" (Recommendation No. 12).

⁴⁷ Editor's note: The Forum recommended the establishment within three years of a new single regulator for broadcasting in Ireland to be called the Broadcasting Authority of Ireland ("BAI"), to assume the existing regulatory functions of the BCI and the RTÉ Authority (Recommendation No. 8).

⁴⁸ Recommendation Nos. 32-35, 'Forum on Broadcasting Report to the Minister For Communications Marine and National Resources Dermot Ahern TD', August 2002, available at: <http://www.dcmnr.gov.ie/files/BroadcastingFinal.doc>. See further, M. McGonagle, "IE – Broadcasting Forum Report", *IRIS – Legal Observations of the European Audiovisual Observatory*, 2002-10: 10.

⁴⁹ Report of the Forum on Broadcasting – Department's Report to the Minister, November 2002, pp. 29-30, available at: <http://www.dcmnr.gov.ie>.

Appendix: Ireland

EXTRACTS FROM THE BROADCASTING ACT, 2001:⁵⁰

45. [...]

(4) Without prejudice to the generality of *subsection (1)*, Teilifís na Gaeilge shall commission the making of programme material, originate programme material and, subject to, and in accordance with, *subsection (5)*, acquire programme material from such sources as it thinks appropriate so as to ensure that the programme schedules of the broadcasting service referred to in *subsection (1)* (and also, where appropriate, any means of transmission referred to in *subsection (8)(c)*)—

(a) provide a comprehensive range of programmes, primarily in the Irish language, that reflect the cultural diversity of the whole island of Ireland and include programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of those of all age groups in the community whose preferred spoken language is Irish or who otherwise have an interest in Irish,

(b) provide programmes, primarily in the Irish language, of news and current affairs,

(c) provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament, and

(d) facilitate or assist contemporary cultural expression and encourage or promote innovation and experimentation in broadcasting.

(5) Teilifís na Gaeilge may, for the purpose of complementing the programme material it broadcasts in the Irish language, acquire programme material in other languages; in acquiring such material, Teilifís na Gaeilge shall have regard to the need to maintain the distinctive character of the broadcasting service referred to in *subsection (1)* and to cater for the expectations of audiences who are not generally catered for by other broadcasting services.

(6) Each amount paid to Teilifís na Gaeilge under *section 51* shall be used by it solely for the purposes of performing its function under *subsection (1)* and exercising the powers conferred on it by this Act with respect to that function.

(7) Teilifís na Gaeilge may use moneys it obtains from any source, other than under *section 51*, in whole or in part for the purposes referred to in *subsection (5)*.

(8) Without prejudice to the generality of the preceding provisions of this section, Teilifís na Gaeilge shall have the following powers—

(a) to make contracts, agreements and arrangements incidental or conducive to the functions of Teilifís na Gaeilge,

(b) to provide, in addition to the broadcasting service referred to in *subsection (1)*, broadcasting services which are of a special interest to only certain members of the community or which are made available on a subscription or pay-per-view basis,

(c) to transmit by any electronic means (other than by means of broadcasting) such of the programme schedules of the broadcasting services referred to in *subsection (1)* or *paragraph (b)*, with such alterations or adaptations as are appropriate, as it thinks fit,

⁵⁰ Available at: <http://www.gov.ie/bills28/acts/2001/a401.pdf>.

- (d) to acquire and make use of copyrights, patents, licences, privileges and concessions,
- (e) to collect news and information and to subscribe to news services and such other services as may be conducive to the functions of Teilifís na Gaeilge,
- (f) to subscribe to such international associations and to such educational, musical and dramatic bodies and such other bodies promoting entertainment or culture as may be conducive to the functions of Teilifís na Gaeilge,
- (g) to arrange with other broadcasters for the distribution, receipt, exchange and relay of programme material (whether live or recorded),
- (h) to organise, provide and subsidise concerts and other entertainments in connection with the broadcasting service referred to in *subsection (1)* or for any purpose incidental thereto and, in relation to any such concert or entertainment, to provide or procure accommodation, and, if desired, to make charges for admission,
- (i) to prepare, publish and distribute, with or without charge, such magazines, books, papers and other printed matter as may seem to Teilifís na Gaeilge to be conducive or incidental to its functions,
- (j) to compile, publish, distribute, sell and exchange recorded aural and visual material in whatsoever form contained (including any form of electronic storage developed after the establishment day).

46.—In performing its functions, Teilifís na Gaeilge—

- (a) shall use its best endeavours to commission the making of, procure, adapt or originate programme material for the purposes of the broadcasting service referred to in *section 45(1)* that is responsive to the interests and concerns of the whole community,
- (b) shall—
 - (i) be mindful of the need for understanding and peace within the whole island of Ireland, and
 - (ii) ensure that the programme material aforesaid reflects the varied elements which make up the culture of the whole island of Ireland and have special regard for the elements which distinguish that culture, and, in particular, the Gaeltachtaí,
- (c) shall uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, and
- (d) shall have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of the Member States of the European Union.

47.—The Authority shall provide to Teilifís na Gaeilge programme material in the Irish language of such amounts and at such times as may be agreed between them, being such amounts and such times as, in their opinion, will result in the equivalent of one hour of such programme material being provided daily by the Authority to Teilifís na Gaeilge.

48.—The total number of hours per year of broadcasting by Teilifís na Gaeilge in providing the television broadcasting service referred to in *section 45(1)* shall neither exceed a maximum nor be less than a minimum fixed by Teilifís na Gaeilge, with the approval of the Minister, for that service.

[...]

51.—The Minister, with the consent of the Minister for Finance, may from time to time pay to Teilifís na Gaeilge such an amount as he or she determines to be reasonable for the purposes of defraying the expenses incurred by Teilifís na Gaeilge in performing its functions.

IRISH LANGUAGE PROGRAMMING IN THE INDEPENDENT BROADCASTING SECTOR

Section 4: Recommendations and Implementation

Recommendation:

1. A consultation process should be initiated with the programme controllers in each station prior to the commencement of any programme initiatives to ensure the programming is of relevance to the listeners.

Action Required:

Workshops targeting programme controllers should be organised to facilitate this consultation phase.

Recommendation:

2. A person to co-ordinate the implementation of the recommendations should be appointed.

Action Required:

This person would be partly financed by Bord na Gaeilge/Foras na Gaeilge and partly by the IRTC. The Irish Language Co-ordinator would operate from the offices of the IRTC and would oversee the implementation phase in conjunction with the Advisory Group.

Recommendation:

3. Information database to be created, which would include names of Irish speakers, various organisations with whom stations could link, musicians, projects being undertaken, etc.

Action Required:

The compilation of the information for this database is to be undertaken by Fionnuala MacAodha, current member of the Irish Language Advisory Group. A person will be required to maintain and up-date the information. The distribution of advertisements for Irish language speakers initiated by this advisory committee and conducted through AdSat should be continued.

Recommendation:

4. Sponsorship/funding should be sought for programme production and an award category established for Irish programming initiatives under the IRTC's New Adventures in Broadcasting scheme.

Action Required:

The IRTC has created an award category for the 'best' Irish language programme funded under its Scheme 2000/01.

Recommendation:

5. Increase awareness of advertising in Irish among advertisers and marketing departments.

Action Required:

An information leaflet should be produced for distribution, which would outline the benefits of advertising in Irish, list a few facts concerning the potential market, the public's attitude to the Irish language, the cost benefits, etc. A body such as Bord na Gaeilge/Foras na Gaeilge could produce such an information leaflet.

Recommendation:

6. Investigate the possibility of producing programming centrally, e.g., news bulletin by INN, and linking stations that have similar programmes.

Action Required:

This will require consultation with INN personnel and station programme controllers. A news bulletin in Irish would require the appointment of a person within INN to read the news in Irish on a daily basis. This could be a

full-time journalist who is recruited with this extra duty in mind or could be a person employed on a part-time basis.

Recommendation:

7. Training should be organised and a series of workshops scheduled to run around the country, which would concentrate on ways of integrating the use of Irish in programmes and programme schedules.

Action Required:

These should be given by skilled and nationally recognised presenters and producers and should be hosted in and by stations. The IRTC will incorporate Irish language programming in its training policy. The Commission's Development Officer will assist in the organising of the training workshops. Gael-linn/Comhar na Múinteoirí Gaeilge and other interested parties should be approached with a view to providing Irish language teaching programmes.

Recommendation:

8. A glossary of terms should be compiled.⁵¹

Action Required:

Proinsias Ó Donncha will compile the glossary, which on completion will be distributed by the IRTC.

Recommendation:

9. The programmes with an Irish language content that the Committee would envisage would include;
- Programmes through Irish only.
 - Bilingual programmes; sports, music, news, lifestyle.
 - Irish to cater for student interest at all levels.
 - Short information type features.
 - Magazine style programmes and pre-recorded programmes of general interest/documentaries, these could be bi-lingual or through Irish only.
 - Competitions/cash giveaways.
 - Pre-recorded vignettes/phrases in Irish for presenters.

Action Required:

It is envisaged that the Co-ordinator would facilitate the development of such programming with stations on an individual basis.

⁵¹ Note: This glossary has since been compiled: *Nathanna Cainte don Raidió/Irish Phrases for Radio*, Foras na Gaeilge/Broadcasting Commission of Ireland, 30 April 2002.

Italy

There are 12 legally-recognised languages in this country and the status of Italian as the official state language is determined by statute, not by the Constitution. Since 1975, the protection of minorities has been within the responsibilities of the public service broadcaster, but only upon request by the minorities themselves. The legislation which entered into force in that year provides, *inter alia*, for the reservation of programme slots for linguistic minorities. The unsatisfactory application of this provision over the years led ultimately to its modification. The public service broadcaster, in conjunction with the Ministry for Communications, must ensure that favourable conditions exist for minority-language broadcasting in relevant regions. This is in keeping with the public service mandate to develop cultural identities, especially in regions with minority language communities. The relationship between the public broadcaster and these regions is largely established by way of specific regional conventions. The Communications Authority has responsibility for upholding the protection of minority languages in the various mass media.

1 Introduction

1.1 Linguistic topography

The protection of minority languages in Italy is closely connected with the existence of a huge variety of linguistic traditions throughout the territory. Apart from the quantity of dialects deriving from the foreign dominations that have characterised the history of Italy during the past centuries, a number of historical linguistic minorities form the common cultural background of significant groups of citizens in different provinces. A linguistic breakdown of Italy may show up to 33 different languages, but only 12 of these enjoy legal protection.

Italy covers an area of 301,230 km² and has a population of 57,679,825 inhabitants (July 2001 estimate).¹ The main concentrations of linguistic minorities are to be found near the borders of the country (Valle d'Aosta, Friuli-Venezia Giulia, Trentino-Alto Adige) or on the islands (Sicilia, Sardegna). These regions benefit from a particular constitutional status and certain legislative autonomy. Their status allows them to adopt regional laws on issues that have been established by constitutional acts according to Article 116 of the Constitution (as recently amended by Constitutional Act no. 3/2001²); on the other hand, the exclusive competences of the State are fixed by Article 117.

Due to their particular status, special attention has always been paid in the three border regions to the protection of the existing French, German, Slovene and Ladino linguistic minorities. These areas technically received constitutional protection in 1948, as Article 6 states that the Republic shall adopt specific provisions to protect minority languages, but no policy action had ever been carried out before the adoption of the Minority Languages Act in 1999 (see *infra*).

¹ For further information on Italy, see: <http://www.cia.gov/cia/publications/factbook/geos/it.html>.

² Legge costituzionale of 18 October 2001, no. 3 “Modifiche al titolo V della parte seconda della Costituzione (Gazzetta ufficiale n. 248 of 24 October 2001), available at: <http://www.camera.it/parlam/leggi/01003lc.htm> (IT).

1.2 Broadcasting

As far as broadcasting is concerned, the public service concessionaire, RAI, currently broadcasts radio and television programmes in French, German and Ladino in the mentioned regions on the basis of periodical conventions concluded with the Italian government. This obligation dates back to 1975, when the Public Broadcasting Act (Act no. 103/75)³ qualified as a public service the transmission of programmes in German and Ladino in the province of Bolzano in the region of Trentino-Alto Adige; in French in the region of Valle d'Aosta and in Slovene in Friuli-Venezia Giulia. Other affirmative measures were adopted in the publishing sector in order to finance newspapers using minority languages.

No obligations to broadcast specific programming aimed at the protection of minority languages have ever bound other broadcasters.

1.3 Government policies on broadcasting and minorities

Italy's policy in this sector over the past number of years has been strongly influenced by the activities of the Council of Europe expressed, *inter alia*, in the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. It was on the basis of these documents that the Minority Languages Act was finally adopted in 1999 (see *infra*).

2 Constitution

Italy's Constitution⁴ entered into force in 1948.

2.1 Freedom of expression

Article 21

(1) Everyone has the right to express his thoughts freely by speech, in writing and by any other means of communication.

(2) The press shall not be subjected to any authorisation or censorship.

(3) Seizure shall be permitted only by order of the judiciary, for which the reason must be stated, in the case of offences for which the law governing the press expressly provides, or in the case of violation of such provisions as the said law may prescribe for identifying the persons in charge.

[...]

(6) Printed publications, performances, and all other exhibits offensive to public morality shall be forbidden. The law shall lay down proper provisions for preventing and repressing all violations.

2.2 Broadcasting

Article 21 has been interpreted by the Constitutional Court⁵ to apply broadly to include radio and television broadcasting, which share with publishing the point-to-multipoint nature of other mass media.⁶

³ Available at: <http://www.aeranti.it/altrepag/normativa/legge140475.htm> (IT).

⁴ Costituzione della Repubblica Italiana (Gazzetta Ufficiale 27 dicembre 1947, n. 298), available at: <http://www.cortecostituzionale.it/ita/testinormativi/costituzionedellarepubblica/costituzione.asp> (IT) and at http://www.uni-wuerzburg.de/law/it00t_.html (EN).

2.3 Minority rights

Article 6 safeguards the rights of linguistic minorities. However, as it is directly dependent on the adoption of executive measures, Article 6 only became effective in 1999, after the adoption of the Minority Languages Act (Act no. 482/99).

Article 6

The Republic shall safeguard linguistic minorities by means of special provisions.

2.4 (Official/State) language(s)

There is no constitutional provision stating that Italy's official language is Italian: such a provision can be found in the Minority Languages Act no. 482/99.

MINORITY LANGUAGES ACT NO. 482/99

Article 1

1. The official language of the Republic is Italian.
2. The Republic promotes the linguistic and cultural heritage of the Italian language and values the languages and the cultures protected by the present act.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

MINORITY LANGUAGES ACT NO. 482/99

On 15 December 1999, the Italian Parliament adopted the Minority Languages Act (Act no. 482/99) (*Norme in materia di tutela delle minoranze linguistiche storiche*, *Gazzetta Ufficiale* n. 297 of 20 December 1999),⁷ thereby giving effect to Article 6 of the Constitution.

This Act selects only 12 minority languages of groups qualified as historical minorities; dialects, even if not comprehensible by people who do not speak them, do not receive any protection.⁸ The officially-recognised minority languages are: Albanian, Catalan, German, Greek, Slovenian, Croatian, French, Franco-provenzale, Friulano, Ladino, Occitano and Sardinian, pursuant to Article 2 of the Act. Any Italian province with minority-language communities is invited by Article 3 to define the relevant geographical area to be recognised

⁵ The Constitutional Court pronounces on the compatibility of existing legislation with the provisions laid down in the Constitution or in constitutional laws (Acts having the same force as the Constitution due to the particular procedure foreseen for their adoption). See: <http://www.cortecostituzionale.it/> (IT).

⁶ See Judgments no. 59 of 22 June 1960, no. 225 of 29 May 1974, no. 148 of 29 April 1981, no. 826 of 7 June 1988, all available at <http://www.cortecostituzionale.it/ita/attivitaacorte/pronunceemassime/massime/filtro.asp> (IT).

⁷ Available at: <http://www.camera.it/parlam/leggi/994821.htm> (IT).

⁸ For a description of the nature of the languages and their geographical concentration see: http://www.ethnologue.com/show_country.asp?name=Italy.

as such in order to benefit from any affirmative provisions to be adopted at the national or local levels.⁹

In order to strengthen the protection of the recognised minority languages, Italy will promote conventions and reciprocity agreements with the states where those languages are developed in order to strengthen the relations with their home country (Article 19). Similar protection will also be granted to Italian-language communities in other countries.

According to Article 9, approx. five million Euros will be managed each year by a specific Fund (*Fondo nazionale per la tutela delle minoranze linguistiche*) created for the promotion of minority languages in accordance with the Act; regions and provinces may provide for further financing.

It is worth signalling at least the existence of legislation concerning specific languages, for example the Slovene language. The Italian Parliament adopted an Act specifically on the Slovene language on 23 February 2001, no. 38 (*Norme per la tutela della minoranza linguistica slovena della regione Friuli-Venezia Giulia*, *Gazzetta Ufficiale* no. 56 of 8 March 2001).¹⁰ The Government introduced further rules on the Slovene language in the region of Friuli-Venezia Giulia, adopting a legislative decree on 12 September 2002, no. 223 (*Norme di attuazione dello statuto speciale della regione Friuli-Venezia Giulia per il trasferimento di funzioni in materia di tutela della lingua e della cultura delle minoranze linguistiche storiche nella regione*, *Gazzetta Ufficiale* no. 240 of 12 October 2002)¹¹ The two parliamentary Acts were executed by Regulation no. 345, adopted by Presidential Decree of 2 May 2001 (*Regolamento di attuazione della legge 15 dicembre 1999, n. 482, recante norme di tutela delle minoranze linguistiche storiche*, *Gazzetta Ufficiale* no. 213 of 13 September 2001, hereinafter “the Regulation”),¹² introducing more detailed provisions on the use of minority languages in schools, universities and public administrations.

A Technical Committee (*Comitato tecnico consultivo*), created on 17 March 2000, must be consulted during the procedure for financing projects concerning the protection of linguistic minorities. The Committee has given priority to projects of central public administrations aiming at ensuring translation services and the staffing of offices with suitably qualified personnel during the initial period of application of the Act.

The public service concessionaire has been involved in the protection of linguistic minorities since 1975 but only on specific request by the minorities themselves. Article 6 of the Public Radio and Television Broadcasting Service Act of 14 April 1975, no. 103 (*Nuove norme in materia di diffusione radiofonica e televisiva*, *Gazzetta Ufficiale* no. 102 of 17 April 1975)¹³

⁹ It should be mentioned in passing that Article 4 concerns education and recognises the right to be taught in the minority language at school, alongside Italian, according to the regulations to be adopted by each school in complete autonomy. National and local projects may benefit from public financing as determined by the Ministry of Education pursuant to Article 5. Similar arrangements are envisaged for universities under Article 6. Public institutions are directly concerned in the use of minority languages in the exercise of official functions. Article 7 allows members of municipal councils to use the protected minority languages in their council-related activities: in such cases, translation into Italian has to be provided if one or more of the members of a council state that they do not know the language in question.

¹⁰ Available at: <http://www.camera.it/parlam/leggi/010381.htm> (IT).

¹¹ Available at: <http://www.camera.it/parlam/leggi/deleghe/testi/02223dl.htm>.

¹² Available at: <http://gazzette.comune.jesi.an.it/2001/213/1.htm> (IT).

¹³ Available at: <http://www.aeranti.it/altrepag/normativa/legge140475.htm> (IT).

explicitly states that programming slots have to be reserved, *inter alia*, for linguistic minorities.

3.2 Minorities and broadcasting

Article 6 of the Public Radio and Television Broadcasting Service Act of 14 April 1975 states that a certain percentage of television and radio broadcasting time must be reserved for, *inter alia*, ethnic and linguistic groups.

PUBLIC RADIO AND TELEVISION BROADCASTING SERVICE ACT NO. 103/75

Article 6

1. The concessionaire has to reserve at least 5% of the total amount of television broadcasting transmission time and at least 3% of the total amount of radio broadcasting transmission time, separately for national and local programming, for parties and groups represented in the Parliament, for associations which represent local autonomies, trade-unions, religious cults, political and cultural movements, cooperative organisations, ethnic and linguistic groups and other relevant social interest groups which request it.

[...]

Given the lack of concrete results deriving from the application of this provision, which proved ineffective in practice and in order to ensure the diffusion of minority languages through broadcasting, Article 12 of Act no. 482/99 states that the Public Service Contract between the public service concessionaire and the Ministry of Communications upholds the conditions for the protection of minority languages in their respective areas: affected regions may conclude conventions with the public service broadcaster for the transmission of programmes in the protected language as part of the broadcaster's regional programming.

MINORITY LANGUAGES ACT NO. 482/99

Article 12

1. The convention concluded between the Ministry of Communications and the concessionaire for the public service television broadcasting service and the related contract of service have to ensure proper conditions for the protection of minority languages in the regions to which they belong.

2. Interested regions may also conclude conventions with the public concessionaire for the transmission of journalistic programmes or of specific programming in the protected language, within the regional palimpsest of the concessionaire; regions may conclude agreements with local broadcasters for the same purpose.

3. The protection of minority languages in the mass media sector falls under the competences of the Communications Authority (*Autorità per le garanzie nelle comunicazioni*) pursuant to Act no. 249 of 31 July 1997 with the exception of the competences of the Commission for the public radio and television broadcasting service (*Commissione parlamentare per l'indirizzo generale e la vigilanza dei servizi radiotelevisivi*).

Article 11 of the Regulation adopted by Presidential Decree of 2 May 2001, no. 345 (*Regolamento di attuazione della legge 15 dicembre 1999, n. 482, recante norme di tutela delle minoranze linguistiche storiche*) states that the Contract has to establish the minimum content of the protection and that the existing contract has to be modified according to the Minority Languages Act.

REGULATION NO. 345, ADOPTED BY PRESIDENTIAL DECREE OF 2 MAY 2001

Article 11

1. Pursuant to Article 11 of the Act (Act no. 482/99), the convention between the Ministry of Communications and the concessionaire for the public radio and television broadcasting service, and the following contract of service, identify, preferably within the territory to which the minority belongs, the seat of company that will be designated for the protection activity of the minority, and the minimum content of the protection through the provisions defined by Article 11, para. 1, lit. a), of the European Charter for Regional or Minority Languages.
2. The convention and the contract of service will be adapted according to what is foreseen by para. 1.

The new Contract covering the years 2000-2002 was signed on 6 November 2000 and approved by Presidential Decree on 8 February 2001¹⁴ and states that the activities of the public service concessionaire are essentially to enrich the development of cultural identities. Article 11 lays down initiatives promoting local cultures referring in particular to linguistic minorities that will benefit from dedicated programming related to the cultural identity of specific regions.

NEW CONTRACT OF SERVICE, SIGNED ON 6 NOVEMBER 2000 AND APPROVED BY PRESIDENTIAL DECREE ON 8 FEBRUARY 2001

Article 11

[...]

4. The concessionaire, on behalf of the Presidency of the Council of Ministers and on the basis of specific conventions, provides services for minority languages, as foreseen by Act no. 103 of 14 April 1975 and ensures programming that respects the rights of minority languages in the areas they inhabit. With reference to the application of Act no. 482 of 15 December 1999, the parties will modify the convention and the contract of service.
5. The concessionaire, pursuant to Article 3, para. 9, of Act no. 249 of 31 July 1997 provides for specific solutions for the regions of Valle d'Aosta, Friuli Venezia Giulia and the autonomous provinces of Trento and Bolzano, having consulted the autonomous regions and provinces, in order to protect linguistic minorities promoting a transfrontier cooperation.
2. The convention and the contract of service will be adapted according to what is foreseen by para. 1.

¹⁴ *Approvazione del contratto di servizio* tra il Ministero delle comunicazioni e la RAI – Radiotelevisione Italiana S.p.A. per il triennio 2000/2002, in Gazzetta Ufficiale no. 93 of 21 April 2001, available at: <http://www.aeranti.it/altrepag/normativa/approv080201.htm> (IT).

Regional conventions between RAI and regions with minority language communities were already signed in 1997: with the province of Bolzano for programmes in German and Ladino; with the region of Valle d'Aosta for programmes in French and with the region of Friuli-Venezia Giulia for programmes in Slovenian and Italian (the latter was updated in 2000).

The protection of minority languages in the different branches of the mass media also comes under the responsibilities of the Communications Authority (*Autorità per le garanzie nelle comunicazioni*) according to Article 1 (6), lit. b), n. 7 of Communications Act no. 249/97 and Article 12(2) of the Minority Languages Act.

4 Application of legislation and other measures affecting language

In order to be concretely applied, the Minority Languages Act requires the geographical areas to protect to be identified by the competent provinces. At the beginning of April 2002, the areas with communities to protect were almost 500. None of these has received financing yet, due to the fact that annual funding has to be distributed among the different areas according to an evaluation of the projects that is presented at the beginning of each year. Presumably, the first application of the Act will take place in 2003.

Kazakhstan

The Constitution of the Republic of Kazakhstan designates the Kazakh language as the state language, but also states that Russian is officially used on a par with the Kazakh language. It also entrusts the creation of conditions for the development of the other languages of the people of Kazakhstan. The freedom to choose one's language of communication is also enshrined in both the Constitution and legislation. Government policy particularly encourages the use of the Kazakh language since in many spheres of society, the Russian language prevails. Wide berth is given to the broadcasting of the Russian language and the retransmission of foreign broadcasts, but attention is also paid to the fostering of various linguistic groups. Legislation sets out that the total volume of programming in other languages should not exceed the volume of programming in the state language. Since 1 January 2003, the transmission of foreign broadcasts may not exceed 20% of the total volume of programmes on radio or television channels. This restriction does not extend to satellite and cable television. Within this legislative framework, it is possible to broadcast in any of the languages of the peoples of Kazakhstan. The State is party to a number of bilateral treaties which make further reference to the use of languages in broadcasting. The Government has adopted a ten-year programme for the development and use of languages and this includes provisions on broadcasting in the state, Russian and ethnic community languages.

1 Introduction

1.1 Linguistic topography

According to the Census of 1999, the population of the Republic of Kazakhstan is 14,953,100 people, representing 120 nationalities. These include: 7,985,000 Kazakhs (53.4%); 4,479,600 Russians (30.0%); 547,100 Ukrainians (3.7%); 370,700 Uzbeks (2.5%); 353,400 Germans (2.4%); 249,000 Tartars (1.7%); 210,400 Uigurs (1.4%); 111,900 Belarussians (0.75%) and other nationalities.

- 9,631,300 people or 64.4% of the total population speak the state language (Kazakh) and 12,673,400 people or 84.8% of the total population speak Russian.
- 7,933,600 Kazakhs and 1,697,700 people of other nationalities speak Kazakh.
- 4,479,500 Russians and 8,193,900 people of other nationalities speak Russian.
- 13,483,000 people or 90.2% speak the language of their nationality.

1.2 Broadcasting

According to the data of the Ministry of Cultural Affairs, Information and Public Concord for 1 February 2002, 70 television companies and about 30 radio companies operate in Kazakhstan.

The main volume of broadcasting is done in Kazakh and Russian. A certain volume of broadcasting by Kazakhstan companies consists of the retransmission of foreign mass media, mostly Russian television and radio companies. Government policy is focused on encouraging the use of the Kazakh language since in many spheres of society, the Russian language prevails.

2 Constitution

The Constitution of the Republic of Kazakhstan of 30 August 1995¹ declares that the citizens of the Republic of Kazakhstan have the right to use their native language and culture, and have the right to the free choice of language for creative activity. The Constitution secures the norms which allow persons belonging to minorities to be equal citizens of their State.

2.1 Freedom of expression

Article 20

1. The freedom of speech and creative activity is guaranteed. Censorship is banned.
2. Each person has the right to get and to disseminate information freely in any manner not banned by the law. The law determines the list of information constituting the state secrets of the Republic of Kazakhstan.
3. Propaganda and agitation for the forcible change of the Constitutional order, violation of the integrity of the Republic, undermining national security, war, social, racial national, religious, class and clan supremacy and the cult of cruelty and violence are forbidden.

2.2 Minority (and linguistic) rights

Article 14

1. All people are equal before the law and the court.
2. No one can be the subject of any discrimination on the ground of origin, social and property status, gender, race, nationality, language, religious beliefs, place of residence or on the ground of other circumstances.

Article 18

1. Each person has the right to a private life, personal and family secrets, and the protection of honour and dignity.
2. Each person has the right to the secrecy of personal deposits and savings, correspondence, telephone conversations, mail, telegraph and other notices. This right is allowed to be restricted only in cases and in the order established by the law.
3. The governmental bodies, NGOs, officials, and mass media are obliged to guarantee every citizen an opportunity to get acquainted with documents, decisions, and sources of information concerning his/her rights.

Article 19

1. Each person has the right to determine and to state or not to state his/her nationality, party, and religion membership.
2. Each person has the right to use his/her native language and culture, to the free choice of the language of communication, up bringing, education, and creative activity.

¹ The following excerpts from the Constitution have been unofficially translated. Other alternative unofficial translations of the Constitution are available at <http://www.ecostan.org/laws/kaz/kazakhconst.html> and (excerpts) at <http://www.unhcr.bg/cis/n33.pdf>.

2.3 (Official/State) language(s)

Article 7

1. The state language of the Republic of Kazakhstan is the Kazakh language.
 2. The Russian language is officially used on a par with the Kazakh language.
- The state takes care of the creation of conditions for the study and development of the people of Kazakhstan's languages.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

LAW ON LANGUAGES IN THE REPUBLIC OF KAZAKHSTAN, 1997

The Law of the Republic of Kazakhstan On Languages in the Republic of Kazakhstan, N 151-1, was adopted on 11 July 1997. This law establishes the legal framework for the use of languages in the Republic of Kazakhstan, the obligations of the State in the creation of conditions for their study and development. This law guarantees equal respect for all the languages used in the Republic of Kazakhstan.

Article 6

Each citizen of the Republic of Kazakhstan has the right to use his/her native language, to the free choice of the language of communication, up-bringing, and creative activity.

The state provides conditions for the study and development of the languages of the peoples of Kazakhstan.

In the places where a large number of a specific national minority live their languages may be used for the conduct of different events and functions.

In reference to minorities, the law uses the concept of diaspora and not minority. Diaspora is to be understood as the part of the people (ethnic community) living out of the country of their historical origin.

Article 7 stipulates that in the Republic of Kazakhstan, citizens' rights cannot be infringed on the grounds of their language. Officials are liable under Kazakh law for actions which hinder the use and study of the state and other languages represented in Kazakhstan.

Personnel, logistic, financial, and methodical support of the implementation of these provisions are entrusted to the Government and other public bodies of the Republic of Kazakhstan.

3.2 Broadcasting legislation

The main premise of linguistic provisions relating to broadcasting is contained in the Law On Languages, where Article 18 states that the total volume of programming in other languages should not exceed programming in the state language.

Article 18

The Republic of Kazakhstan ensures functioning of the state and other languages in print editions and mass media.

In order to create the necessary linguistic environment the volume of programmes on television and radio broadcasting channels irrespective of their forms of property in the state language should be greater than the cumulative volume of programmes in other languages.

Similar provisions are contained in the Law “On Mass Media”, but neither law contains other linguistic requirements for broadcasting.

LAW OF THE REPUBLIC OF KAZAKHSTAN ON MASS MEDIA, 1999²

Article 3. The language of Mass Media

Mass media is disseminated in the state and other languages.

The total volume of programmes on television and radio channels regardless of their form in the state language should not be less than the cumulative volume of programmes in other languages time-wise.

At the same time, the Law On Mass Media provides for the opportunity for Kazakhstan television and radio stations to retransmit television and radio programmes of foreign mass media. There are restrictions on this retransmission which do not deal directly with the language of broadcasting, but nevertheless affect it.

Under Article 14, para. 3-1 of the Law, the transmission of foreign mass media should not exceed 50% of the total volume of programmes on television or radio channels since 1 January 2002 or 20% of that total since 1 January 2003. This restriction does not extend to cable and satellite television.

In accordance with these laws, broadcasting in both the state language and other languages of the peoples of Kazakhstan is allowed. However, no specific requirements or quotas on broadcasting in minority languages are indicated. These laws only mention that broadcasting in the state language should amount to 50% of total broadcasting of any television or radio channel. The remaining 50% of broadcasting may be done in minority languages.

The Law On Mass Media prohibits foreign natural persons and legal entities and persons without citizenship from owning directly or indirectly, using, disposing of and (or) managing more than 20% of stocks (shares) of the legal entity—the owner of mass media in the Republic of Kazakhstan or of the person engaged in this sphere. This norm somewhat limits foreign investment in mass media establishments, thus limiting foreign investment in minority broadcasting.

² 23 July 1999, N 451-1 (with the amendments introduced by Law of the Republic of Kazakhstan of 3 May 2001, N181-II), available at: <http://212.154.147.200/eng/law/law/law0100.htm>.

3.3 Transfrontier dimension

Kazakhstan is party to several international treaties, which specify certain linguistic requirements in the activity of mass media in minority languages.

KAZAKHSTAN AND RUSSIA, 1996

The treaty between the Government of the Russian Federation and the Government of Kazakhstan of 25 November 1996 “On the order and conditions of the dissemination of the programmes of Russian television and radio broadcasting in the territory of the Republic of Kazakhstan and television and radio broadcasting programmes of the Kazakhstan television in the territory of the Russian Federation” envisages the use of Russian and Kazakh during the transmission of Russian television and radio programmes and Kazakh television and radio programmes. The total volume of broadcasting, television and radio programmes transmitted, the conditions of broadcasting advertising materials, forms of payments and mutual settlements are all subject to be defined during the conclusion of agreements between Russian and Kazakhstan television and radio broadcasting organisations.

KAZAKHSTAN AND GERMANY, 1996

The treaty between the Government of the Republic of Kazakhstan and the Government of the German Federal Republic on the cooperation and support of the citizens of the Republic of Kazakhstan of German nationality (Alma-Aty, 31 May 1996) provides that the citizens of German nationality have equal rights including personal rights:

- to use their native language in private and social life, to disseminate and to exchange information in it, and to have access to it,
- to provide an opportunity to the German citizens of the Republic of Kazakhstan to use the German language in the places of their compact residence,
- to promote the use of radio and television for the study and the advancement of the German language,
- to promote the further development of mass media in German including television and radio broadcasting in order to create conditions for the free exchange of information.

ON THE APPROVAL OF THE STATEMENT “ON TEN SIMPLE STEPS TO BRING THE GOVERNMENT CLOSER TO THE PEOPLE”, 1998

This is a decision of the Interstate Council of the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation of 28 April 1998 (N 25). It addresses the creation of favourable conditions for the dissemination of television and radio programmes of the four States in each other’s territories.

AGREEMENT ON THE CREATION OF FAVOURABLE CONDITIONS FOR THE DISSEMINATION OF TELEVISION AND RADIO PROGRAMMES IN THE TERRITORY OF THE MEMBER STATES OF THE TREATY ON STRENGTHENING THE INTEGRATION IN ECONOMIC AND HUMANITARIAN AREA, 1996³

The Government approved this Agreement on 11 May 1999. It has been enacted since the date of its issuance. Article 3 of the Agreement reads that the parties will promote the issuance and dissemination of television and radio programmes in the languages of the

³ 29 March 1996, N 562.

peoples of the States Parties to the Treaty, bearing in mind the historically developed specificities of the peoples living in the territories of the Parties.

Although the Law On Mass Media was passed after the Agreement, it does not contain the norms present in the Agreement. The Law On Mass Media also does not include a mechanism for the implementation of its provisions.

As for the status of these documents, according to Article 4 of the Law On Mass Media, if an international treaty ratified by the Republic of Kazakhstan establishes rules that are different to those contained in that law, then the international treaty rules would prevail. However, the question of implementation remains. There is no mechanism in the international treaties for their implementation and the legislation of the Republic of Kazakhstan does not mention their implementation either.

4 Current developments

A final document that affects minority language broadcasting is the Decree of the President of the Republic of Kazakhstan On the State Programme for the Functioning and Development of Languages for 2001-2010.⁴

In this document, attention is focused on development of the state language, as before. Most likely, this assistance will acquire more specific forms in the future. These may include:⁵ broadcasting in minority languages in places which are densely populated by minorities; giving airtime quotas on state television and radio channels; introduction of certain tax relief for television and radio channels broadcasting in minority languages, the widening of opportunities for attracting foreign investment, the mechanisms of the international treaties norms implementation.

The Programme identifies five priority directions:

Priority 1: Normative legal support.

Priority 2: The development of the state language in the sphere of public administration, legislation, court procedure, documents proceeding in the Military Forces and law and order bodies, international activity.

Priority 3: Language development in the area of education and teaching languages.

Priority 4: Scientific support of linguistic development.

Priority 5: Linguistic development in the sphere of culture and mass media as well as in the sphere of public health and public services

ON THE STATE PROGRAMME FOR THE FUNCTIONING AND DEVELOPMENT OF LANGUAGES FOR 2001-2010

⁴ 7 February 2001, N 550.

⁵ Opinion of author, based on existing legislation in the Republic of Kazakhstan.

Certain positive results in the development of the state language have been attained in the area of culture and mass media. Positive steps toward the increase of the volume of television programmes in Kazakh have been made. In particular, the new specialised television channel broadcasting in the state language can be noted. However the proportions of broadcasting time established by legal acts are still not observed in most cases.

The goals and objectives of the state programme of language development are as follows:

In its turn, the enlargement and strengthening of the socio-communicative functions of the state language requires the solution of the following tasks:

[...]

- ensuring functioning of the state language in the area of culture and mass media.
- establishing the system of measures for the issuance and release (broadcasting on television channels) of cinema and video products in the state language including animated films (also of foreign production).

In order to achieve the goal of preserving the Russian language it is necessary to solve the following tasks:

[...]

- to ensure the functioning of the Russian language in the area of culture and mass media.

In order to achieve the goals of the development of minority languages it is necessary to implement the following tasks:

[...]

- promote the use of ethnic community languages in mass media.

EXPECTED RESULTS OF THE PROGRAMME'S IMPLEMENTATION

The implementation of the Programme for the Development and Use of Languages assumes the creation of a sociolinguistic environment in the country which will be determined by the necessary functional proportion of languages used in the territory of Kazakhstan. It involves the following:

- the practical implementation of the state status of the Kazakh language, implementation of its legally secured social functions all over the territory of the republic in all the spheres of public relations;
- keeping the main functions of the Russian language granted to it by the Constitution of the Republic of Kazakhstan. It remains the language officially used at governmental organisations and local self-government bodies, its functioning in the area of education, science, culture and other socially significant spheres is ensured;

- creating conditions for the study and development of the languages of the peoples of Kazakhstan and the implementation of the constitutional right of every citizen to the free choice of the language of communication, up-bringing, education, and creative activity.

Kyrgyzstan¹

According to its Constitution and also relevant legislation, Kyrgystan has a state language (Kyrgyz) and an official language (Russian). Constitutional and legislative guarantees also exist for the freedom to preserve and develop the languages of other nationalities residing within the Kyrgyz Republic. State radio and television broadcast in Kyrgyz and Russian in more or less equal measure. The overall broadcasting system in Kyrgyzstan – public and private together - gives attention and assistance to the linguistic needs of a number of minorities. Although there is no legislation dealing specifically with minority issues, other legislation provides, for example, for equality of access to electronic means of communication and for non-discriminatory approaches to licensing and media ownership. Private television broadcasters, however, experience difficulties with the frequencies available to them and have furthermore been known to have been required to broadcast after the end of the main programmes on other television channels, i.e., late at night. Minority-language broadcasting faces general financial, technical and geographical problems, but attention has been drawn in particular to the perceived inadequacy of Uzbek-language programming on domestic stations in some areas. Broadcasts from abroad can be received without legal restriction and in practice, such broadcasts frequently command steady audiences. The same is true of retransmissions of foreign programmes by domestic broadcasters. Also of relevance to broadcasting in Kyrgyzstan are legislative requirements that advertisements and other visual information be given in the state and official languages. Advertisements may additionally be disseminated in the languages of the peoples living in the Kyrgyz Republic, but this is at the discretion of the advertisers themselves.

1 Introduction

1.1 Linguistic topography

According to the National report on human development for 2001, in 2000, the total population was 4,900,000 people. More than 80 nationalities live in Kyrgyzstan. The population can be broken down by percentage in the following way:

Kyrgyz – 65.7%
Russian – 11.7%
Uzbek – 13.9%
Ukranian – 0.9%
Tartar – 0.9%
Dungan – 1.1%
Uigur – 1%
Turk – 0.7%
Korean – 0.4 %
German – 0.4%
Other nationalities – 3.3%

¹ In preparing this report, the author used parts of a report by the Bureau on Human Rights, Bishkek, Kyrgyzstan titled “Alternative Report on the State of Adherence of Kyrgyzstan to the International Covenant on Civil and Political Rights”, for distribution at the 69th session of the Committee on Human Rights of the United Nations in June, 2000.

The biggest minorities are the Russians and the Uzbeks. The Russians live mostly in the north, and the Uzbeks in the south. The majority of the population speaks Russian well, especially in towns (despite the exodus of “Russian-speakers” from the country). In the south of the country, the population speaks the Uzbek language quite well. Kyrgyz-speakers live mostly in the rural areas and Kyrgyz is the main language there.

It is necessary to note that Kyrgyz has been more actively used since it became the state language in 1989 (for example in legal, technical document processing, etc.) in comparison with the Soviet era. Russian is still used as the main language and was recognised as the official language of Kyrgyzstan.

1.2 Broadcasting

According to official data of the Kyrgyz Ministry of Justice, by 1 November 2001, 463 mass media outlets were registered, including electronic 68 mass media (19 television/radio companies; 12 television companies; five television studios; two teleagencies; one television channel; five radio companies; 13 radio stations, five - radios, one radio agency; three television/radio broadcasting, two programmes). According to some estimates, a quarter of all mass media are state-owned; the rest are subject to other ownership arrangements.

In spite of a high number of private broadcasting mass media, the biggest television and radio broadcasting company is KRT (the State Television Radio Broadcasting Corporation). The President of Kyrgyzstan appoints the President of the State Broadcasting Corporation. On the KRT television channel, broadcasting is 60–70% in the Kyrgyz language and 30–40% in Russian (17 hours a day). There are also programmes in the Dungan and Uigur languages.

The ratio of Kyrgyz- to Russian-language programming on state radio is the same as on state television. There are two radio channels: the first channel broadcasts for 17 hours daily, there are also programmes in Uigur, Dungan, Ukrainian, and news in German. The second channel, Radio of the 21st Century, broadcasts for 16 hours a day. The state television and radio are received all over the country.

Monthly programmes in the Dungan language have been shown on the state television channel for 10 years. Since 2001, 30-minute programmes have been shown twice a month in Russian and Dungan. For 40 years, 50-minute programmes in Dungan have been broadcast on the first channel of the state radio every week. The same radio channel also broadcasts a weekly 60-minute programme in the Uigur language. Soros-Kyrgyzstan Fund gave a grant to Polish cultural enlightening association “Odrodzenie” and the KRT (for weekly 20-minute radio programmes).

Since January 1998, the Ukrainian national cultural society “Bereginya” has been broadcasting in the Ukrainian language. Since November 2000, the programmes have also been broadcast in Kyrgyz and Russian. Soros-Kyrgyzstan Fund supports the issue of these programmes. Thus, in the period between December 2000 and December 2001, 12 programmes were broadcast in Kyrgyz; 13 in Russian and 32 in Ukrainian (with each programme lasting 30 minutes).

In the north (Chuisk region), the population can watch the Kazakh television channel *Khabar* (full broadcasting). In Kyrgyzstan, the programmes of the Uzbek television channel *Akhborot* are available (full broadcasting). In Kyrgyzstan, independent television and radio outlets

broadcasting in Uzbek (*Osh TV*, *Turan Egduzi TV*, etc.) have been registered. *Manas FM* radio, which broadcasts in Turkish, has also been registered.

Most private television mass media retransmit these programmes or other programmes from Russian channels (from 16 to 21 hours of broadcasting a day). “Independent” broadcasting takes up about 10% to 25-30% of broadcasting time (some do not have any at all). Because of this, private channels broadcast more in Russian than in Kyrgyz. For example, at the *TV KOORT* [TV Centre retransmitter], up to 20% is in Kyrgyz. This year they plan to broadcast five minutes of news in Uzbek daily. At Pyramid TV, there is a daily 10-minute news programme in Kyrgyz (3% of total programming).

Only a limited number of private broadcasting mass media can broadcast on metre frequency range, mostly long-wave frequency (which limits the possibility to watch them). They are also required to broadcast after the end of the main programmes on the channels KTR, RTR, ORT (meaning very late at night, i.e., 2-3 hours a day).

The reception of television programmes from private broadcasting mass media is mainly limited to one city, one region, the north or the south of the country (or in the north it is broadcast partially and, and in the south fully). Private radio mass media have bigger opportunities in comparison to private television mass media. Many private radio mass media can already broadcast day and night (unlike the state radio), but not all over the country.

In the south, fewer private television and radio companies are registered than in the north. A very limited circle of private television and radio companies broadcast in minority languages, excluding Russian. In the north, private television and radio broadcast mostly in Kyrgyz and Russian. The Bishkek radio station, *Manas FM*, broadcasts in Turkish and *Almaz* radio broadcasts for several hours daily in Turkish, and in Uzbek in the south.

According to the National report on human development, in 2000 there were an average of nine radio sets per 100 people (a decrease from 18 in 1992), and an average of eight television sets per 100 people (a decrease from 18 in 1992).

Finally, it is worth mentioning that in 2001 and 2002, the Soros Fund (ethnic minorities programme) allocated grants to a number of minority broadcasting outlets/initiatives.

1.3 Government policies on broadcasting and minorities

Private radio stations appeared quite some time before private television companies and enjoy greater freedom their activities. Electronic mass media must apply to the State Communication Agency for an additional licence and permit to broadcast, plus register at the Kyrgyzstan Ministry of Justice as a legal entity.

Financial and other problems restrict the establishment of private radio and television regardless of the language of broadcasting. In the south of the country three Uzbekistan channels broadcast (for 50–60 hours a day in total). The volume of Kyrgyzstan radio and television broadcasting in Uzbek is limited. There have not been Uzbek programmes on the state channels for a long time.

2 Constitution

The Constitution of the Kyrgyz Republic was enacted by the Law of the Kyrgyz Republic of 5 May 1993, N 1186-XII.

2.1 Freedom of expression

Article 16(2)

Everybody in Kyrgyz Republic has the right to:

- the free development of his/her personality;
- the freedom of religion, spiritual, and association;
- the free expression and dissemination of thoughts, ideas and opinions, the freedom of literature, art, scientific and technical creative activity; [...]

2.2 Broadcasting

Article 16(2)

Everybody in Kyrgyz Republic has the right to: [...] freedom of press, broadcasting and dissemination of information; [...]

Article 36(1)

Culture, art, literature, science and mass media are free.

Article 36(2)

The state protects historical monuments, takes care and creates all the necessary conditions for the development of literature, art, science, mass media and sport.

2.3 Minority rights

Article 15(3)

In the Kyrgyz Republic all the people are equal in the law and the court. Nobody can be the subject of any discrimination, infringing the rights and freedoms on the ground of origin, sex, race, nationality, language, religion, political and religious beliefs, or on any other conditions and circumstances of private or public nature.

Article 15(5)

In the Kyrgyz Republic, national traditions not contradicting human rights and freedoms are supported by the state.

Article 17(7)

In the Kyrgyz Republic, laws annulling or infringing human rights and freedoms may not be passed.

Article 38

1. Full, unconditional, prompt protection of citizens' rights and freedoms, suppression of wrong-doing in this area, and the restoration of the disturbed situation is the obligation of the state, all its bodies and officials.
2. The Kyrgyz Republic guarantees the judicial protection of all civil rights and freedoms secured by the Constitution.

2.4 (Official/State) language(s)

Article 5²

1. The state language in the Kyrgyz Republic is Kyrgyz.
2. In the Kyrgyz Republic, Russian is used as the official language.
3. In the Kyrgyz Republic, all the nationalities constituting the people of Kyrgyzstan have the right to the preservation of their native language, the creation of the conditions for its study and development.
4. The infringement of citizens' rights and freedoms on the ground of not knowing the state or the official language is not allowed.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

There is no separate law on minorities. There is a draft law but its passing was postponed many times. However, Article 2 of the Criminal Code of the Kyrgyz Republic reads that “the international treaties ratified by Kyrgyz Republic prevail over this Code and applied directly”. This includes the provisions of such international treaties concerning minority rights.

According to Article 1 of the Law of the Kyrgyz Republic On the State Language of 23 September 1989 (in accordance with the Constitution of Kyrgyzstan), the Kyrgyz language is the state language in Kyrgyzstan.

On 29 May 2000, the President of Kyrgyzstan signed the Law On the Official Language of Kyrgyzstan. According to Article 1 of this law, the Russian language is the official language of the state with a qualification that this Law “is not extended to the relations concerning the use of the state language, which has a special status secured by the Constitution of Kyrgyz Republic and the Law of the Kyrgyz Republic On the State Language of the Kyrgyz Republic”.

According to Article 4 of the Law of Kyrgyz Republic On the State Language of 23 September 1989, the free development of the languages of other nationalities living in the Kyrgyz Republic is assured. According to Article 6 of the same law, each citizen has the right to the free choice of the language of communication.

Local self-government bodies in the territories densely populated by ethnic groups (Uzbeks, Tadjiks, Dungans, Uigurs and others) have the right to use their native language along with the state language. Those people who do not know these languages are guaranteed translation (Article 25 of the Law On the State Language of the Kyrgyz Republic).

² The Law of Kyrgyz Republic On Amendments to Article 5 of the Constitution of Kyrgyz Republic regarding the official status of the Russian language was adopted on 24 December 2001.

According to Article 5 of the Law of the Kyrgyz Republic On Culture of 5 May 1992, “state interference with cultural activity is limited to the prohibition of the propaganda of war, violence and cruelty, race, national and religious discord [...]”

3.2 Broadcasting legislation

Broadcasting mass media operate according to the Law On Mass Media of 2 June 1992, which protects the principle of the freedom of speech in general. They are also regulated by other normative acts (sometimes limiting the field of application of the main law on the mass media).

According to Article 23 of the Law On Mass Media, the “propaganda of national and religious supremacy and intolerance of other peoples and nations; the distribution of materials violating the norms of civil and national ethics is prohibited” (it is also prohibited by Article 10 of the law of the Kyrgyz Republic On Guarantees and Freedom of the Access to Information of 5 December 1997), as well as “the abuse of the civil honour of the peoples”.

According to Article 32 of the Law On the State Language, “signs, advertisements, advertising, price lists and other visual information are written in the State and Russian languages. Oral information is first given in the State and then in the Russian language”. According to Article 5(3) of the Law of the Kyrgyz Republic On Advertising of 24 December 1998, “advertising in the territory of the Kyrgyz Republic is disseminated in the Kyrgyz and Russian languages and, at the discretion of advertisers additionally, in the languages of the peoples living in the Kyrgyz Republic”.

According to Point 4 of the Standing Order On the State Broadcasting Corporation of Kyrgyzstan (approved by the Decree of the President of the Kyrgyz Republic of 16 May 1998), the main goals of the Corporation are: “to satisfy the educational and spiritual needs of the population of the Republic, to develop and to promote mutual understanding between the cultures, languages and traditions of the ethnic groups living in Kyrgyz Republic”.

According to Point 4 of the Standing Order On the State Communication Agency under the Government of the Kyrgyz Republic (approved by the Order of the Government of the Kyrgyz Republic of 16 May 1998), the Agency “provides equal access of all the users to the electric supply lines and public services of electric communication the basis of the qualitative supply of electric communication services”. This provision is supported by Article 8 of the Law On electric and mail communications of 2 April 1998.

According to Point 8 of Chapter 36 of “Specifics of licensing activity in the area of electric and mail communication” and the Standing Orders On Licensing Certain Types of Entrepreneurial Activity (approved by Governmental Order of 31 May 2001), licensing agreements should contain “the obligation of the licensee to render services to all the users on a non-discriminatory basis”.

3.2.1 Prohibitive measures

There is no direct prohibition on language usage (in broadcasting) since there are no normative legal acts prohibiting certain languages. There are problems with broadcasting in Uzbek, and some facts can be interpreted as restrictions. The problems of broadcasting in minority languages are related to financial, technical and similar problems. There are no

restrictions or prohibitions on programmes broadcast in foreign languages from abroad. Radio Freedom, German Wave and BBC radio all broadcast in the country. In addition, Russian radio channels such as “Europe Plus” broadcast in Kyrgyzstan. The Uzbek television channels, *Akhborot*, *Kazakh Khabar TV*; the Russian channels, ORT and RTR, are all broadcast, though not in full.

There are no restrictions/prohibitions for minorities as regards the ownership of mass media outlets. According to Article 5 of the Law On Mass Media, the right to establish mass media outlets belongs to the state bodies, public organisations, labour teams and the citizens of the Republic of Kyrgyzstan.

At first, the State Agency required media outlets to indicate the percentage of broadcasting in the state language in the licence agreement. This practice was later cancelled.

3.3 Transfrontier dimension

According to Article 22 of the Law On Mass Media, foreign mass media have the right to accredit their correspondents in the territory of Kyrgyzstan, to open correspondence points “with the agreement of the public power bodies of Kyrgyzstan”.

According to Article 1 of the Law On Mass Media, agreements between the Government of the Russian Federation and the Government of Kyrgyzstan “On the order and conditions of the dissemination of programmes of Russian broadcasting organisations in the territory of the Kyrgyz Republic” of 28 March 1996:

the parties will develop cooperation on the creation of favourable legal, organisational and economic conditions in order to ensure transmission and dissemination of the programmes of Russian broadcasting organisations in the territory of Kyrgyz Republic for the purpose of satisfying citizens’ cultural information needs, further strengthening traditional links between the two countries. The parties agree that the retransmission of the programmes of Russian broadcasting organisations is done in Russian.

Kyrgyzstan acceded to the Agreement “On international legal guarantees of unimpeded and independent activity of “Mir” interstate broadcasting company” of 24 December 1993 (ratified by the Law of the Kyrgyz Republic of 26 July 1996). In 2001, Soros Kyrgyzstan Fund provided financial support to the interstate broadcasting company “Mir” (Bishkek) and public fund “Serdar” to create a series of weekly radio programmes in Turkmen, Russian and Kyrgyz about the Turkmen culture and way of living. In 2002, it also provided funding for the creation of the series of programmes on minority life in Krigizia by the interstate broadcasting company “Mir”.

Latvia

The only official language of the country is Latvian and any other languages spoken by citizens or residents of Latvia as their mother tongue are classed as foreign and are subject to restrictive regulation (this includes Russian, which is the first language of around 36% of the population). The relevant broadcasting legislation also gives pride of place to the Latvian language. This legislation sets out the broad circumstances in which Latvian must be used by the broadcaster, either as the language of the broadcast, by the use of dubbing or voice-over techniques or sub-titling. The public service broadcaster is required to produce all programmes for the first distribution network as national programmes in the official language. Programmes produced for the second distribution network must be primarily in Latvian too, but up to 20% of the annual broadcasting time may be allocated to broadcasts in the languages of the State's ethnic minorities (this percentage of broadcasting time is to include films subtitled in the official language). The use of foreign languages in programmes produced by private sector broadcasting entities must not exceed 25% of the total amount of daily (i.e., 24-hour) broadcasting time. This legislative provision has been challenged—so far unsuccessfully—in the courts on the grounds of its alleged unconstitutionality. Broadcasters are liable to be subjected to financial sanctions in the event of breach of the above provisions. Russian television channels, increasingly available for modest fees on cable, appear to be growing in popularity recently.

1 Introduction

1.1 Linguistic topography

On 31 March 2000, the population of Latvia stood at 2,375,000, according to the preliminary data of the Population Census 2000, conducted by the Central Statistical Bureau of Latvia.¹ According to the Constitution, Latvian is the only official language in the country.² Any other language, spoken by citizens or residents of Latvia as their first language, including Russian (but excepting Liv), are defined as 'foreign' in Article 5 of the State Language Law³ and their usage in a number of spheres is subject to restrictive regulation. Ethnic non-Latvians constitute around 42% of the population, dominated by Russians (29.61%) and including Belarussians (4.%), Ukrainians (2.6%), and smaller groups of Poles, Lithuanians, Jews and Roma.⁴ However, group identities are defined along linguistic, rather than ethnic lines: approximately 62% are Latvian-speakers and 36.1% speak Russian as their native language.⁵

¹ See: <http://www.csb.lv/Satr/atsk2.htm>.

² See: <http://www.satv.tiesa.gov.lv/Eng/satversme.htm>.

³ See: http://www.riga.lv/minelres/NationalLegislation/Latvia/Latvia_Language_English.htm. The Liv language is a small Finno-Ugric language of the autochthonous ethnic group of Livs. There are only some hundred Livs in Latvia; a very small number of them speak Liv. There is no consensual opinion about the Latgalian language (even though it is classed as a historically-established variant of the Latvian language by Article 3(4) of the State Language Law). The majority of Latvian linguists consider it to be a local dialect of the Latvian language (mixed with Lithuanian, Polish, Belarussian and Russian). In fact, the Latgalian language is not officially recognised.

⁴ See: <http://www.np.gov.lv/en/fakti/index.htm>.

⁵ Central Statistical Bureau of Latvia, "Provisional Results of the 2000 Population Census", Riga, 2001. See further: <http://www.csb.lv/avidus.cfm>.

1.2 Broadcasting

There are two public broadcasters—*Latvijas Televīzija* (Latvian Television) and *Latvijas Radio* (Latvian Radio). Latvian Television operates two national television channels—*LTV1* and *LTV2*. *LTV1* must broadcast only in the state language, while *LTV2* can allocate up to 20% of its airtime for other languages.⁶ It should be mentioned that only the Russian language is used for public television broadcasting in foreign languages. At the moment, there are four public radio channels—Latvia Radio Station 1, Latvia Radio Station 2, Radio *KLASIKA*, and the Integration Channel (*Doma laukums*).⁷ The same language restrictions of 20% of airtime for other languages exist also for the public radio.⁸ Although the great majority of this time is given to Russian-language productions, half-hour radio broadcasts prepared by representatives of other minorities (Armenian, Azeri, Belarusian, Estonian, Georgian, German, Greek, Jewish, Lithuanian, Polish, Tatar and Ukrainian) are aired almost every day.⁹ The National Radio and Television Council has granted 30 licences to commercial radio broadcasters and 26 licences to commercial television broadcasters. At the same time 34 licences were issued to cable television and cable radio broadcasters.

1.3 Government policies

The mandate of the regulatory authority, the National Radio and Television Council (NRTC),¹⁰ is set out in the 1995 Radio and Television Law.¹¹ The NRTC develops governmental strategies related to electronic media, issues licences, monitors compliance of private broadcasters with the law and imposes sanctions. The Radio and Television Law establishes that “the members of the Council shall be elected by the *Saeima* (Parliament) in accordance with the procedures of the Rules of Order of the *Saeima*”.¹² The nine members of the NRTC shall be chosen from among persons known to the public. Opposition factions representing minority interests in Parliament have repeatedly proposed prominent minority activists as members to NRTC. However, these proposals have been refused every time, since the ruling coalition parties stick to their own official agreement which stipulates that any proposals from opposition parties should not be accepted at the legislative level. As a result of such a policy, no member of the Russian-speaking minority has ever been elected to this Council.

The percentage of private radio and television broadcasts allowed in minority languages is restricted to 25% of the total. Private radio and television stations are often fined and warned by the authorities for exceeding the language quota prescribed by the law. According to Article 40(2) of the Radio and Television Law, the NRTC is entitled to suspend the broadcasts of a television or radio channel (for 1-7 days) for violations of the Law. The Council is also entitled to bring an action before a court against a television or radio channel aimed at terminating its broadcasting for regular violations of the law. Since 1997, the NRTC has imposed 38 sanctions for non-compliance with the 25% language restriction.¹³

⁶ Article 62(3) of the Radio and Television Law, see *infra*.

⁷ See further: <http://www.nrtv.lv/en/raidorg.php>.

⁸ Article 62(3) of the Radio and Television Law, see *infra*.

⁹ N. Muiznieks, “Minorities and media in Latvia”, contribution to a Europe-wide research project organised by ARTICLE 19, Global Campaign for Free Expression and Minority Rights Group, 1999, p.5.

¹⁰ See further: <http://www.nrtv.lv/en/>.

¹¹ See Chapter VI ‘National Radio and Television Council’, Sections 41 *et seq.*, available at: <http://www.nrtv.lv/en/Law.doc>.

¹² Article 42(3) of the Radio and Television Law, see *infra*.

¹³ S. Martisune, “Electronic mass media and integration of society”, Research Paper, Soros Foundation Latvia (forthcoming).

TV Riga, for example, a private company whose Russian-language programmes had exceeded the permitted time, was temporarily suspended four times in 1998-1999, sued and ordered by the court in October 2000 to observe the 25% limitation. Among others also affected by the restrictive legislation were: *LNT (Latvijas Neatkarīga Televīzija)*, *Radio Pik*, *Radio Bizness & Baltija*, *SIA Daugavpils Televizijas Studija*, *SIA Televizijas Studija 'Ezerzeme'* and *SIA Daugavpils publishers, 'Latgales Reklāma'*.

It also has to be said that the authorities sometimes turn a blind eye to regular violations of this rule by local broadcasters in the eastern part of Latvia, Latgale, as strict adherence to these regulations in towns with predominantly Russian-speaking populations would soon lead to the bankruptcy of the local broadcasters concerned.

More generally, the National Programme, 'The Integration of Society in Latvia', was approved by the Cabinet of Ministers on 6 February 2001.¹⁴ Minority activists have criticised the National Programme because of its inconsistency over the notion of 'integration' in the Integration of Society across different chapters of the Programme. The chapter devoted to the mass media does not contain any substantive or concrete ideas on how to enhance the integrationalist potential of the media.

2 Constitution (*Satversme*)¹⁵

2.1 Freedom of expression

Article 100 of the Constitution guarantees free speech and outlaws censorship. At the same time, however, Article 116 of the Constitution states that Article 100 (along with certain other Articles) "[...] may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. On the basis of the conditions set forth in this Article, restrictions may also be imposed on the expression of religious beliefs."

Article 100

Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express their views. Censorship is prohibited.

2.2 Minority rights

The principle of non-discrimination is included in Article 91 of the Constitution: "All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind". The only Article of the Constitution which directly concerns persons belonging to national minorities is Article 114: "Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity."

¹⁴ Available at: <http://www.np.gov.lv/en/fjas/integracija.htm>.

¹⁵ The Constitution of the Republic of Latvia is available at: http://www.saeima.lv/LapasEnglish/Constitution_Saturs.htm.

2.3 (Official/State) language(s)

Article 4

The Latvian language is the official language in the Republic of Latvia. [...]

3 Legislation

3.1 General legislation concerning minorities and language

There is no definition of national minority in the laws of the Republic of Latvia, although the Constitution and legislation do contain provisions on the protection of national minorities.

LAW ON UNRESTRICTED DEVELOPMENT OF NATIONAL AND ETHNIC GROUPS OF LATVIA AND THE RIGHTS TO CULTURAL AUTONOMY 1991

The Law On Unrestricted Development of National and Ethnic Groups of Latvia and the Rights to Cultural Autonomy was adopted by the Supreme Council (Latvia's Parliament before 1993) on 19 March 1991. The Law does not provide concrete mechanisms for the implementation of the principles and goals it sets out. No subsequent secondary legislation was ever adopted to this end. For example, Article 5 declares: "[A]ll Republic of Latvia permanent residents are guaranteed the right to establish their own national societies, associations and organizations. The government's responsibility is to promote their activity and material provisions". However, no legal provisions specify how and to what extent such support should be given or which state institutions are designated as having the relevant responsibilities.

Taking into consideration the above-mentioned drawbacks of the law, the Ministry of Justice proposed to draw up a new piece of legislation to replace the old law on cultural autonomy. Between early 1999 and February 2000, a Working Group of experts (consisting of government officials, academics, MPs and NGO representatives) elaborated a new draft law, 'On the Rights of National Minorities', based on the principles enshrined in the Framework Convention. However, the Ministry of Justice did not publicise its attitude towards the draft, and it was not submitted to the Parliament.¹⁶

STATE LANGUAGE LAW, 1999

The State Language Law was adopted by the *Saeima* on 9 December 1999.¹⁷ The Law acknowledges the right of minorities to use their native or other languages (Article 1.4).

Article 1

The purpose of this Law shall be to ensure:

- 1) the preservation, protection and development of the Latvian language;
- 2) the preservation of the cultural and historical heritage of the Latvian nation;
- 3) the right to use the Latvian language freely in any sphere of life in the whole territory of Latvia;
- 4) the integration of national minorities into Latvian society while respecting their right to use their mother tongue or any other language;

¹⁶ Personal communication with Mr N. Muizhnieks, Director of the Latvian Center for Human Rights and Ethnic Studies.

¹⁷ Available at: http://www.riga.lv/minelres/NationalLegislation/Latvia/Latvia_Language_English.htm.

5) the increase of the influence of the Latvian language in the cultural environment of Latvia by promoting a faster integration of society.

However, the use of minority languages in private is not unlimited. State intervention in the private sphere to regulate language use is envisaged to a degree determined by a “legitimate public interest”, e.g. in matters affecting public health, public safety and public order, taking into account the principle of proportionality (Article 2.2).

Article 2

(1) This Law shall regulate the use and protection of the state language at state and municipal institutions, courts and agencies belonging to the judicial system, as well as at other agencies, organisations and enterprises (or companies), in education and other spheres.

(2) The use of language in private institutions, organisations and enterprises (or companies) and the use of language with regard to self-employed persons shall be regulated in cases when their activities concern legitimate public interests (public safety, health, morals, health care, protection of consumer rights and labour rights, workplace safety and public administrative supervision) (hereafter also: legitimate public interests) and shall be regulated to the extent that the restriction applied to ensure legitimate public interests is balanced with the rights and interests of private institutions, organisations, companies (enterprises).

(3) The Law shall not regulate the use of language in the unofficial communication of the residents of Latvia, the internal communication of national and ethnic groups, the language used during worship services, ceremonies, rites and any other kind of religious activities of religious organisations.

As regards the use of languages in the media, Article 16 of the State Language Law provides that “[T]he language of mass media broadcasts shall be determined by the Radio and Television Law.”

3.2 Broadcasting legislation

RADIO AND TELEVISION LAW, 1995

The Radio and Television Law was adopted by the *Saeima* on 24 August 1995.¹⁸ Article 62 of the Law regulates the use of foreign languages on public channels.

Article 62

[...] (2) Latvian Radio and Latvian Television shall produce their programmes for the first distribution network as national programmes in the official language.

(3) Latvian Radio and Latvian Television programmes on the second distribution network shall be primarily in the official language. Of the annual broadcasting time, 20 per cent may be allocated to broadcasts in the languages of the state ethnic minorities, including in such broadcasting time also films and theatrical performances sub-titled in the official language.

¹⁸ The full text of the Radio and Television Law, 1995, is available on the website of the National Broadcasting Council of Latvia at: <http://www.nrtp.lv/en/Law.doc>.

(4) It is permissible to fill up to 30 per cent of the broadcasting time of Latvian Radio and Latvian Television programmes with broadcasts produced by other broadcasting organisations or independent producers.

(5) The managers of the editorial broadcast departments concerning socio-political programmes and broadcast anchorpersons of such on Latvian Radio and Latvian Television shall be politically neutral.

On 29 October 1998, the *Saeima* amended the provisions of the Law governing private radio and television broadcasting, thereby reducing the total permitted air-time in non-Latvian languages from 30 to 25% (Article 19(5)).

Article 19

(1) Each broadcast shall take place in one language — the language of the broadcast. Fragments of a broadcast, which are in other languages, shall be provided with a translation (by dubbing, voice-over or sub-titling). This provision is not applicable to language instruction broadcasts or performances of musical works.

(2) The language of the broadcast is determined according to the sound accompanying the broadcast concerned or by the language in which the broadcast has been dubbed or the voice-over has been made. The language of the broadcast, if it is not the Official language, shall be indicated in the broadcast schedule listings (in programmes of broadcasts).

(3) Films demonstrated shall be dubbed in the official language, or also with the original soundtrack and sub-titles in the Latvian language, but films intended for children shall be dubbed or with voice-over in the Latvian language.¹⁹

(4) Television broadcasts in foreign languages, except live broadcasts, re-transmissions, broadcasts to foreign countries, news and language instruction broadcasts, shall have sub-titles in the Latvian language.

(5) The amount of broadcasting time in foreign languages in programmes produced by broadcasting organisations shall not exceed 25 per cent of the total volume of the broadcasting time in a twenty-four period. This provision is not applicable to Latvian Television, Latvian Radio, cable television, cable radio, satellite television, and satellite radio.²⁰

CODE ON ADMINISTRATIVE MISDEMEANOURS, 1984

The Code provides the opportunity to fine a broadcasting organisation for violations of the rules. The fine can be up to LVL 1,500 (approx. 2,500 Euros); if the same organisation violates the law for a second time within one year, the sum of the fine can rise to LVL 2,500 (approx. 4,160 Euros) (Section 201(5), paras. 2 and 3).²¹

3.3 Transfrontier dimension

In October 2000, Latvia ratified the Protocol to the Council of Europe Convention on Transfrontier Television, to which it was already a party.

Latvia signed the Framework Convention for the Protection of National Minorities in 1995, but has yet to ratify it. The draft law on ratification of the Framework Convention submitted

¹⁹ Amendment of 30 October 1997.

²⁰ Amendments of 30 October 1997 and 29 October 1998.

²¹ At the time of writing, the rate of exchange was approx. \$1 = 0.6Ls.

by parliamentary opposition was rejected several times – in May 2000, March 2001 and September 2002. In January 2001, the Parliamentary Assembly of the Council of Europe adopted Resolution 1236 (2001), ‘Honouring of obligations and commitments by Latvia’.²² This document recommends that Latvia ratify the Framework Convention as a matter of priority and that it amend and implement legislation in conformity with the provisions and the spirit of the Framework Convention.

4 Current developments

The quota restricting the amount of airtime in minority languages in the private broadcast media to 25% of the total broadcasting time (as provided in Article 19(5) of the Radio and Television Law) has been challenged in the Courts.²³ The outcome of a case brought before the Constitutional Court of Latvia by Parliamentary opposition in December 2002 is awaited (*).

A trend amongst Russian speakers to turn towards modestly priced cable access, offering numerous television programmes from Russia,²⁴ was revealed by a survey ‘On the Way to a Civic Society’, conducted in 2000.²⁵ Compared to 1997, the audience of Russian television channels has increased among both citizens and, especially, non-citizens,²⁶ this can be explained by the fact that these channels are widely available through cable television.²⁷ Data suggests that Russian-speakers (many of whom are non-citizens) favour Russian TV channels over LTV1 (which broadcasts in Latvian) as compared with citizens.²⁸ Since 1999, the number of Russian-speakers watching programmes in Latvian has decreased by 6% and listening to radio programmes in Latvian by 7%.²⁹

²² Available at: <http://assembly.coe.int/Documents/AdoptedText/ta01/ERES1236.htm>.

²³ See further: <http://racoon.riga.lv/minelres/archive//10012001-10:02:57-29006.html>.

²⁴ EU Accession Monitoring Programme, *Monitoring the EU Accession Process: Minority Protection 2001*, “Latvia”, Open Society Institute, Budapest, p. 294.

²⁵ “On the Way to a Civic Society: Survey of Latvian inhabitants”, Baltic Institute of Social Sciences, March 2001. The Baltic Institute of Social Sciences is a non-profit, limited-liability company. The survey was sponsored by United Nations Development Programme (UNDP), the Soros Foundation – Latvia, OSCE Mission to Latvia and others. It is available at: <http://www.np.gov.lv/en/info/owcs2k.htm>.

²⁶ Latvian non-citizens are persons belonging to national minorities and constitute about 0.5 million of the total population.

²⁷ “On the way to a Civic Society”, *op. cit.*, pp. 42-43.

²⁸ See further: <http://www.np.gov.lv/fakti/index.htm>.

²⁹ See further: http://www.politika.lv/polit_real/files/lv/valoda_2001-02.pdf.

(*) Note: Since this report was compiled/edited, the Constitutional Court of Latvia has declared the language quotas for private electronic media as enshrined in Article 19(5) of the Law on Radio and Television to be unconstitutional. In its Judgment of 5 June 2003 (in case No. 2003-02-0106),³⁰ the Court found this provision to be in conflict with Article 100 of the Constitution of Latvia guaranteeing freedom of expression.

³⁰ Judgment available at: [http://www.satv.tiesa.gov.lv/Eng/Spriedumi/02-0106\(03\).htm](http://www.satv.tiesa.gov.lv/Eng/Spriedumi/02-0106(03).htm).

Liechtenstein

German is the official language of the country and given that it is a small country surrounded by other German-speaking countries, the issue of minority languages has never been to the fore. This explains in part why there is no official recognition for minority languages in the country and why the broadcasting legislation contains no mention (either implicit or explicit) of the linguistic rights of minorities. The issue remains unregulated, so much so that Government-issued broadcasting licences lack provisions regarding language and in particular, minority languages. The only legislative provisions of potential relevance to minority-language broadcasting are general provisions relating to pluralism, the priority of relevant content for local audiences, etc.

1 Introduction

1.1 Linguistic topography

Due to its small territorial size (160 km²) and population, in conjunction with the fact that the country itself is only bordered by other German-speaking countries, there is a historical lack of presence of any language-minorities in Liechtenstein and, consequently, language has not been a social or political issue in the past and seems very unlikely to become one in the foreseeable future. This is true despite the fact that, by the end of the year 2000, 34.5% of the country's 32,863 inhabitants were foreigners.¹ The latest available data from the 1990 general census shows that 90% of the total population speaks German; 2.5%, Italian; 0.6%, French and 6.9%, other languages.²

1.2 Broadcasting

The national broadcasting landscape in Liechtenstein is limited and highly influenced by the cross-border reception of programmes from neighbouring Switzerland, Austria and Germany. There is one (privately-owned) terrestrial radio station, *Radio L*, which broadcasts programmes in German, namely in the local Allemanic dialect, only.³ It has recently acquired the status of "national" broadcaster and is currently in the process of expanding its coverage area in the region. The current government is taking a more pro-active stance in this regard and is supporting *Radio L* in its endeavours. *Radio L* is likely to receive some state funding for programming of national interest under Article 4(1) of the *Medienförderungsgesetz* (Law on the promotion of the media).⁴

¹ *Statistisches Jahrbuch 2001 / Fürstentum Liechtenstein* (Statistical Yearbook 2001), published by the Office for National Economy of the Principality of Liechtenstein (*Amt für Volkswirtschaft des Fürstentums Liechtenstein*), Vaduz, December 2001. All referenced data is as of 31 December 2000, unless otherwise specified.

² The source of the latest available statistical data is Statistical Yearbook 2001. No further break-down into different languages is available. Statistical data from the last general census of the year 2000 will only be available at the end of 2002.

³ The Allemanic dialect is the local German dialect spoken in Liechtenstein. It is similar to Swiss-German and the German spoken in parts of neighbouring Austria. The dialect has to be contrasted with what is called "High German" or "written German". The latter is only used in writing and is the official language of the country, whereas the former is spoken only, but is widely used.

⁴ *Gesetz vom 25. November 1999 über die Förderung und Abgeltung von Leistungen der Medien* (*Medienförderungsgesetz, MFG*), Liechtenstein Legal Gazette LGBL 2000 No. 14, LR 440.1.

XML holds a broadcasting licence for the distribution of its television programming in the CATV networks only. Due to financial problems it was forced to stop its own partial programming and has reduced its operation to a pure revolving static text and picture broadcast. *XML* broadcasts in German only.

In 1999, the government issued a satellite television broadcasting licence for a specialised entertainment and gaming station to *IBC*. Despite two years of start-up preparation, *IBC* failed to actually commence broadcasting and filed for bankruptcy in 2001. The relevant licence has not been revoked as of this date. Programming was originally planned in a variety of languages to suit its pan-European satellite footprint.

In 2001, a television broadcasting licence was issued to *Cablecom*, a subsidiary of the Swiss CATV company of same name, to realise a digital play-out centre in Liechtenstein. The licence has not been exercised to date.

1.3 Government policies on broadcasting and minorities

In none of the above cases were any minorities involved. There is neither a clear government policy with regard to broadcasting nor with regard to minorities in particular.

2 Constitution

Liechtenstein has a monistic legal system, i.e., public international law (conventions, treaties, etc.) become part of the Liechtenstein body of law upon formal ratification and do not need any further act of adoption or implementation.⁵ Fundamental freedoms and human rights are guaranteed on two overlapping levels: by the Constitution of the Principality of Liechtenstein of 5 October 1921⁶ and by the European Convention for the Protection of Human Rights and Fundamental Freedoms which was ratified by Liechtenstein in 1982.⁷

There is currently a fierce constitutional debate under way over several important amendments to be introduced pertaining mainly to the division of powers between the Ruling Prince, Parliament, Government, and the Constitutional Court. None of this has any bearing, however, on the questions of minorities, languages, or broadcasting.

2.1 Freedom of expression

Article 40

Everyone has the right to express in word, writing, printing or figurative representation within the barriers of the law and the morality their opinion freely and to communicate their thoughts; censorship may take place only in relation to public performances and expositions.

⁵ For further details regarding fundamental freedoms and human rights in Liechtenstein see: Wolfram Höfling, 'Die Liechtensteinische Grundrechtsordnung', *Liechtensteinsche Akademische Gesellschaft*, Vol. 20, Vaduz, 1994. The question of whether public international law takes precedence over national (Constitution and statutes) is still a disputed one. It only seems clear that it has at least the rank of a statute.

⁶ *Verfassung des Fürstentums Liechtenstein vom 5. Oktober 1921*, LGBl. 1921 No. 15, LR 101.

⁷ *Konvention vom 4. November 1950 zum Schutze der Menschenrechte und Grundfreiheiten (EMRK)*, LGBl. 1982 No. 60/1, LR 0.101.

2.2 Broadcasting

The Constitution does not contain any explicit reference to broadcasting. Legislation and regulation in this field are on a statutory level and are further specified in ordinances and individual licences.

2.3 Minority rights

The Constitution contains no specific mention of minorities. Article 31.1 stipulates, however, in its first sentence that “[A]ll citizens are equal before the law.”⁸

2.4 (Official/State) language(s)

Article 6

The German Language is the state and official language.⁹

3 Legislation¹⁰

3.1 General legislation affecting minorities and their linguistic rights

Apart from the general declaration by Article 6 of the Constitution of German as the official language of the state and especially in all dealings with its institutions, there is no other legislation negatively affecting minorities or their linguistic rights. There are no officially recognised minorities in Liechtenstein, nor are there, as a consequence, any hierarchies of languages or minority groups.

3.2 Broadcasting legislation

Liechtenstein’s broadcasting legislation consists of the *Radio- und Fernsehgesetz*¹¹ (Broadcasting Act) of 1978, and of an Implementing Ordinance¹² of the same year, as well as another¹³ of the year 1992. The Broadcasting Act was for the most part a copy of the Swiss Act in force at the time (or at least the parts of relevance for Liechtenstein). Although the Swiss broadcasting legislation has undergone major changes and amendments since, the Broadcasting Act in Liechtenstein remains virtually unchanged to this day. There is general agreement, though, that the Act is outdated and long overdue a complete renewal.¹⁴

The Broadcasting Act, as well as the two Implementing Ordinances, contains no implicit or explicit mention of minorities, their access to broadcasting in their own language or other linguistic rights. The issue remains completely unregulated in both a positive and a negative sense. Furthermore, the individual broadcasting licences issued by the government to date—

⁸ Article 31.1(1): “Alle Landesangehörigen sind vor dem Gesetze gleich.”

⁹ Article 6: “Die deutsche Sprache ist die Staats- und Amtssprache.”

¹⁰ A complete systematic collection of Liechtenstein legislation in the German language can be found at: <http://www.gesetze.li>.

¹¹ *Gesetz vom 15. November 1978 über Radio und Fernsehen (RFG)*, LGBI. 1978 No. 42, LR 784.40.

¹² *Verordnung vom 20. Dezember 1978 zum Gesetz über Radio und Fernsehen (Konzessionsordnung)*, LGBI. 1978 No. 45, LR 784.401.1.

¹³ *Verordnung vom 10. Dezember 1991 zum Gesetz über Radio und Fernsehen*, LGBI. 1992 No. 2, LR 784.401.2.

¹⁴ In fact, Articles 18.1 and 20.1 of the 1992 Ordinance referenced above already foresee the promulgation of a new Broadcasting Act and provide for an interim regime in specific areas.

varying greatly in length and regulatory detail—show a complete lack of any provisions regarding language and other minority issues.¹⁵

1992 IMPLEMENTING ORDINANCE

Only singular, indirect provisions possibly facilitating minorities' access to broadcasting in their own language can be found in the 1992 Implementing Ordinance of the Broadcasting Act with regard to CATV programmes broadcast by local municipalities:

Article 20.2

Local groups and communities are to be enabled by the municipality-owned television programmes to promote social, religious, cultural and other activities and to contribute to the forming of an opinion pertaining to questions regarding the respective local events. Only non-profit purposes may be pursued.

Article 25.1

The municipalities must state in their television regulations, how the general programming principles of equal treatment, balance, relation to the municipality and the country as well as of pluralism of opinions are observed.

There are also provisions limited to national radio broadcasting in the 1992 Ordinance that might be of prohibitive effect to minorities, especially in the case of requiring domination of the broadcaster by Liechtenstein citizens:

Article 18.2

The broadcasters have to consider the peculiarities of the country and the municipalities in their programmes primarily.

Article 19.1

The broadcaster must be Liechtenstein controlled. A licence can only be granted if a qualified Liechtenstein majority stake is ensured and the majority of persons involved (editorial staff, management, board of directors) are Liechtenstein citizens.

4 Current developments

Following the recent adoption of a new regulatory framework for electronic communications within the EU/EEA and in light of the long overdue overhaul of the broadcasting legislation in Liechtenstein, there is currently a project for the preparation of a new converged Communications Act. The aim is to repeal the separately existing Telecommunications Act¹⁶ and the Broadcasting Act and to integrate them into one piece of legislation, thereby

¹⁵ Individual licences granted by the Government are neither published nor in the general public domain. The author of this country report has gained in-depth knowledge of the licence conditions in his previous function as Deputy Director of the Office for Communications, the telecommunications and (designated future) broadcasting regulator in Liechtenstein (1999 through February 2002).

¹⁶ *Telekommunikationsgesetz (TelG) vom 20. Juni 1996*, LGBl. 1996 No. 132, LR 784.10.

regulating all electronic communications in a coherent way and in line with the requirements of the new EU/EEA Directives.

Lithuania

In statute and in practice, Lithuania maintains a policy of language broadcasting for a variety of minorities, including the substantial minority for whom Russian, not the state language of Lithuanian, is the dominant tongue. Broadcasting directed at minorities and foreign broadcasts are exempted from the legislative requirement of translation/subtitling into the state language. The public broadcaster is required to ensure diversity in its programme offer and to cater for the interests of different groups in society, including those of different nationalities. It is obliged to produce programmes for minorities. The proposed language of broadcasting is not a relevant consideration for the allocation of broadcasting licences in the private sector; rather, the priority is accorded to the applications most likely to satisfy other qualitative criteria.

1 Introduction

1.1 Linguistic topography

According to the Census held in Lithuania in 1990, 80% of the country's residents are Lithuanian; 8.9% are Russians; 7.3% are Polish; 0.9% are Ukrainians and 0.4% are Jewish. Latvians, Gypsies and Germans make up approximately 0.1% of the population. By 2001, the data had shifted somewhat. Out of 3,610,535 people living in the republic (July 2001 est.), Lithuanians formed 80.6% of the population; Russians, 8.7%; Poles, 7%; Belarussians, 1.6% and others, 2.1%.¹

1.2 Broadcasting

In Lithuania, there are four national television channels: public Lithuanian national radio and television (*Lietuvos Radijas ir televizija* – LRT) as well as three commercial channels. These are: LNK, TV 3 and “Baltic television” Baltijos TV. Besides, in 1999, 15 local television stations, which transmit their programmes mostly via cable, were registered in the republic.² As far as radio broadcasting is concerned, in 1999, there were already four national radio stations including the public broadcasting channels LR1 and LR2. According to 1999 data, there are 20 local radio stations.³

Most of the national audiovisual mass media in Lithuania broadcast in the state language. However, programmes for minorities are broadcast on national radio and television. According to the LRT Charter, about 3% of the total 18 hours of daily broadcasting on the channel is allocated to religious programmes and programmes for minorities, which are created at LRT studios. Currently, six programmes for minorities are produced at LRT. They are grouped in two blocks. On Saturday, beginning at 8.00am, 15-minute programmes for major minorities are broadcast – “Vilnius note-book” in Belarussian, “Vilnius conversations” in Polish, and “Russian street” in Russian. After “Russian street”, there is a 15-minute programme for Orthodox Christians in Russian called “Christian word”. On Sunday, also at 8.00am, the block of ten-minute programmes for smaller minority groups includes: a journal for minorities, “Labas” (“Good afternoon”); the programme in Ukrainian, “Trembita” and the

¹ CIA World Factbook 2001, available at: <http://www.cia.gov>.

² Legal Guide to Audiovisual Media in Europe. European Audiovisual Observatory, Strasbourg 1999, p. 133.

³ *Ibid.*

programme for Lithuanian Jews, “Menorah”, which like “Labas” is made in Lithuanian. Besides, each weekday at 5.00pm, LRT broadcasts 15 minutes of news in Russian.

There are also several radio programmes for minorities on national channels. Every day, the first channel of national radio LR1 broadcasts a half-hour news programme in Russian. Daily, on LR2 there is a one-hour block for minorities called “Santara”. On Mondays, Tuesdays, Thursdays, Saturdays, and Sundays there is also a 20-minute news programme in Russian, a ten-minute news programme for Belarussians of Lithuania and a programme entitled “Half an hour in Polish”. On Wednesdays, instead of news in Russian there is a Belarussian programme, “Dla vas suaicyniki” and on Fridays, there is a programme in Ukrainian, entitled “Kalinovy hrona”. Besides, the Voice of America broadcasts in Russian each weekday from 4.40pm to 5.00pm. The Voice of America in Lithuanian and the programmes of Radio Free Europe are broadcast on the first channel of public radio.

The programmes in minority languages are broadcast on local television and radio stations. Thus, on Vilnius krai TV (Vilniaus televizija) two programmes in Russian are broadcast – “Week” and “Telephone studio”. The latter is broadcast live and each programme lasts approximately half an hour. The programme production is financed by different commercial organisations. The channel advertising service usually looks for sponsors. Until recently, there was also a Polish programme, “What’s new?” (*Co slychac?*). Its production was financed by the Lithuanian representation of Polish airlines. However, the company stopped financing the programme and it was cancelled.

Another source of programmes in minority languages is cable television. This has made it possible to receive about 100 radio and television channels in different languages. On their own initiative, the creators of cable television studios often try to ensure access to channels in the languages of the minorities living within the range of their channel broadcasting.

1.3 Government policies

Lithuanian public broadcasting is the only state broadcaster. Its work is financed by the state budget. However, the channel is not directly linked to the Government. It is managed by the Radio and Television Commission of Lithuania and subordinated to the Seim of the Lithuanian Republic, which promotes the democratisation of the channel. The production of programmes for minorities is one of the conditions necessary for the confirmation of LRT’s status as a public broadcaster, and it is strictly observed.

2 Constitution

The Constitution of the Lithuanian Republic was approved by the citizens of the Republic of Lithuania in the Referendum on 25 October 1992.⁴ Article 18 guarantees human rights and freedoms.

2.1 Freedom of expression

Article 25

Individuals shall have the right to have their own convictions and freely express them.

⁴ The Constitution is available on the website of the Seimas of the Republic of Lithuania: <http://www.lrs.lt>; see specifically: <http://www3.lrs.lt/cgi-bin/preps2?Condition1=21892&Condition2>.

Individuals must not be hindered from seeking, obtaining, or disseminating information or ideas.

Freedom to express convictions, as well as to obtain and disseminate information, may not be restricted in any way other than as established by law, when it is necessary for the safeguard of the health, honour and dignity, private life, or morals of a person, or for the protection of constitutional order.

Freedom to express convictions or impart information shall be incompatible with criminal actions - the instigation of national, racial, religious, or social hatred, violence, or discrimination, the dissemination of slander, or misinformation.

Citizens shall have the right to obtain any available information which concerns them from State agencies in the manner established by law.

Article 26

Freedom of thought, conscience, and religion shall not be restricted.

Article 35

Citizens shall be guaranteed the right to freely form societies, political parties, and associations, provided that the aims and activities thereof do not contradict the Constitution and laws. No person may be forced to belong to any society, political party, or association.

The founding and functioning of political parties and other political and public organisation shall be regulated by law.

2.2 Broadcasting

There are no provisions regulating broadcasting in the Constitution of Lithuanian Republic. Of passable relevance, however, is Article 44 of the Constitution, which reads:

Censorship of mass media shall be prohibited.

The State, political parties, political and public organisations, and other institutions or persons may not monopolise means of mass media.

2.3 Minority rights

Article 28

While exercising their rights and freedoms, persons must observe the Constitution and the laws of the Republic of Lithuania, and must not impair the rights and interests of other people.

Article 29

All people shall be equal before the law, the court, and other State institutions and officers.

A person may not have his rights restricted in any way, or be granted any privileges, on the basis of his or her sex, race, nationality, language, origin, social status, religion, convictions, or opinions.

Article 37

Citizens who belong to ethnic communities shall have the right to foster their language, culture, and customs.

Article 45

Ethnic communities of citizens shall independently administer the affairs of their ethnic culture, education, organisations, charity, and mutual assistance. The State shall support ethnic communities.

2.4 (Official/State) language(s)

Article 14

Lithuanian shall be the State language.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

LAW ON THE STATE LANGUAGE, 1995⁵

The Law On the State Language states that audiovisual programmes and films publicly shown in Lithuania should be translated into the state language or shown with subtitles (Article 13). However, this restriction is not applicable to educational, specialised, gala events and programmes, to the events and programmes dedicated to minorities, to television and radio programmes created in other States and transmitted in Lithuania, or to the texts of musical pieces.

The order of the distribution of the information in other languages (for the international needs in transport, at the customs, hotels, banks, tourist agencies, and in advertising pieces) is established by the Commission on the state language under the Seim of the Lithuanian Republic (Article 2 of the Law of the Lithuanian Republic “On the Implementation of the Law On the State Language”⁶). However, the Law does not regulate the unofficial use of minority languages (*ibid.*).

⁵ The Law On the State Language of 31 January 1995 is available on the website of the Seimas of the Republic of Lithuania: <http://www.lrs.lt>; see specifically: <http://www3.lrs.lt/c-bin/eng/preps2?Condition1=21941&Condition2>.

⁶ Adopted on 7 February 1995, Nr. I-789.

3.2 Broadcasting legislation

LAW ON PROVISION OF INFORMATION TO THE PUBLIC, 1996⁷

The main piece of legislation regulating the activities of the mass media in Lithuania is the Law On Provision of Information to the Public. It outlines the rules governing public information producers and states in its Article 23 that a political party or a political organisation cannot be the owner of a broadcasting operator. Article 34 regulates the language of broadcasts.

Article 23. Public Information Producers, Disseminators and Owners Thereof

[...]

2. Natural persons of the Republic of Lithuania and foreign states and all types of enterprises and organisations which have established an enterprise a branch thereof, in the Republic of Lithuania in accordance with the procedure established by law, with the exception of the persons stipulated in paragraphs 4, 5 and 6 of this Article and other laws, may become producers and (or) disseminators of public information.

[...]

4. A person who has been prohibited from this activity by a court decision may not be a producer or disseminator of public information.

5. A political party or political organisation may not be the owner of a broadcaster and operator.

6. State institutions (except scientific and teaching institutions) local governments and banks may not be public information producers and (or) owners thereof, but may publish non periodical information type publications intended for informing the public of its activity. The state or state institutions (except scientific and teaching institutions), local governments and banks may not possess any public information producer shares, if not otherwise specified by laws.

[...]

Article 34. Language in which Public Information is to Be Produced, and Disseminated

1. Public information shall be produced, and disseminated in the State Language or some other language pursuant to the provisions of the Law on State Language and resolutions of the State Commission on the Lithuanian Language under the Seimas of the Republic of Lithuania.

2. Radio and television broadcasts transmitted in a language other than Lithuanian, must be translated into Lithuanian or presented with Lithuanian subtitles, excepting instructional, special occasion, special and retransmitted foreign state radio and television broadcasts or programmes, as well as broadcasts produced by the broadcaster and intended for ethnic minorities of Lithuania. The Radio and Television Commission of Lithuania may establish in licensing conditions the portion of broadcast and (or) rebroadcast programmes in the languages of national minorities,

⁷ 2 July 1996, No. I-1418 (as amended 28 March 2000, No. VIII – 1595; 20 June 2002, No. IX – 972). The Law on the Provision of Information to the Public is available on the website of the Seimas of the Republic of Lithuania: <http://www.lrs.lt>; see specifically: <http://www3.lrs.lt/c-bin/eng/preps2?Condition1=101596&Condition2>. Amended version available at: <http://www3.lrs.lt/c-bin/eng/preps2?Condition1=170831&Condition2>.

within the total broadcaster's programmes, taking into account also the needs of the national minorities residing within the broadcast programme coverage zone.

The main document regulating the activity of mass media in Lithuania does not contain any restrictions on broadcasting in minority languages. There are no restrictions in licensing either. The Law On Provision of Information to the Public licenses the following activities:

Article 31(7)

The following broadcasting licenses shall be issued by way of tender:

- 1) to broadcast radio programmes with the right to establish, equip and use radio stations;
- 2) to broadcast radio programmes with the right to use transmission services provided by a third party;
- 3) to broadcast television programmes with the right to establish, equip and use television stations;
- 4) to broadcast television programmes with a right to use transmission services supplied by a third party;
- 5) for radio programmes to broadcast and rebroadcast by wire radio networks programmes which they produced by wire radio networks, with a right to establish, equip and use radio stations or use transmission services supplied by a third country;
- 6) to rebroadcast and broadcast radio and television programmes produced by themselves, through the cable television or MMTV networks with the right to establish, equip and use the cable television network or use transmission services provided by a third country;
- 7) to rebroadcast radio and television programmes through cable television or MMTV networks with the right to establish, equip and use a cable television or MMTV network or use transmission services supplied by a third party.

In the issuing of licences, the language of transmission does not matter. The law only states that "priority shall be accorded to broadcasters who assume the responsibility to produce broadcasts of original creativity of a cultural, informational and educational type, to ensure correct and unbiased presentation of information, to respect personal dignity and a right to privacy, to observe the requirements set forth by laws and other legal acts, by which one strives to protect the physical, mental and moral development of minors from a possible negative effect of the mass media, and also for the broadcasters within whose reception zone, other stations are not yet broadcasting" (Article 31(6), Law On Provision of Information to the Public). In other words, the issue of a licence depends on the quality and content of the future channel, on the size of the audience of future broadcasting stations, and their power; not (specifically) on the language of broadcasting.

LAW ON LITHUANIAN NATIONAL RADIO AND TELEVISION, 2000⁸

The rights of the peoples of different nationalities is also secured by the Law On Lithuanian National Radio and Television:

Article 4.1

⁸ Republic of Lithuania Law on Amendment of Republic of Lithuania Law on the National Radio and Television, 29 June 2000, No. VIII-1780, amended on 23 December 2000, No. IX-137, available at: <http://www.lrtv.lt/newLRTlaw.htm>. For more information about Lithuanian National Radio and Television (*Lietuvos Nacionalinis Radijas ir Televizija*) or LRT see: <http://www.lrt.lt/>.

A variety of topics and genres must be ensured in the programmes of LRT and the broadcasts must be oriented towards the various strata of society and people of different ages, various nationalities and convictions.

4 Application of legislation and other measures affecting language

The freedom to broadcast in the non-state language exists in reality as well as on paper. Lithuanian public service radio and television broadcast many programmes in minority languages. These programmes exist on a par with other programmes of the channel. Thus, for example, the news in Russian is prepared with the same equipment, at the same studios and by the same operators and cutters as the main information programme of the country, “Panorama”. For programmes in languages other than Lithuanian, work is often done in a mixture of Lithuanian, Russian, and Polish. The very process of preparing programmes shows the level of the integration of different cultures. The duration of Russian news was recently increased from ten to 15 minutes.

The only apparent problem is that programmes in minority languages are not broadcast on LRT during primetime. One reason for this is that the greatest source of income for the channel is advertising and these programmes have a smaller audience and are broadcast without advertising. According to Article 39(9) of the Law on Provision of Information to the Public, the period between two commercial slots may not be less than 20 minutes. The programmes for minorities last less than 20 minutes and therefore cannot be interrupted by commercials. The situation may change if a subscription fee is introduced.

According to the Chairman of the Radio and Television Commission of Lithuania, Martselius Martinaitis, the programmes for minorities have very low ratings. However, the channel does not plan to stop them. As Mr. Martinaitis stated in his Report to the Parliament: “[W]e must meet the demands of all the tax-payers, even if they are not too many”.⁹

⁹ The Annual Report of the Chairman of the Radio and Television Commission of Lithuania to the Seimas of the Lithuanian Republic. The Commission’s website is: <http://www.rtk.lt>.

Luxembourg

This is a multilingual country in which over one-third of the population is of foreign origin. It is set out in legislation that Lëtzebuergesch is the national language, but that legislation is passed in French and that either of these languages, or German, may be used in administrative dealings with the State. In practice, many official documents are also made available in English, Portuguese and Italian, despite the lack of any specific State recognition of linguistic or cultural minorities. *Cahiers de charge*, which form an integral part of each broadcasting licence, set out the conditions under which the broadcaster must operate. These Charters contain the greatest scope for implementing language provisions. The extent to which language provisions figure in such charters varies. *RTL Lëtzebuerg*, for instance, is required to provide a programme output “essentially” in Lëtzebuergesch. Additionally, its television service is under a specific public service duty to provide at least 30 minutes per week of transmissions targeting the main non-Luxembourgish communities. Its *cahier des charges* is unique in this regard. However, it is currently not meeting this quota and the non-intervention of the regulatory authorities is understood to flow from the presumption of its satisfaction with the rebroadcasting in French of the daily evening news. Another public station is vested with the mission of promoting Lëtzebuergesch and working towards the integration of minorities. Another radio station, this time a privately owned one, has as its primary objective the provision of content in their own mother tongues to foreigners residing in the country, thereby reflecting contemporary socio-linguistic realities in Luxembourg.

1 Introduction

1.1 Linguistic topography

Luxembourg can be described as a multilingual country where most of the population of approx. 420,000 speaks at least three languages fluently: French, German, and the local Luxembourgish language (“Lëtzebuergesch”).

Most people born in Luxembourg are able to switch from one language to the other without any problems. The most important newspapers carry a mix of articles in German and French without translations and in the newscasts, there is neither translation nor subtitling for French or German speakers.¹

Due to the fact that a large proportion of the population of Luxembourg is of foreign origin (37.3% according to the latest available figures²), French is often used as a common language and some research indicates that it may even be more commonly used than the national Lëtzebuergesch. This may explain why Luxembourg’s authorities endeavour to promote the use of the national language.

1.2 Broadcasting

Radio programmes in the Lëtzebuergesch language have existed since 1959. Luxembourg’s dominant broadcaster, RTL, today operates one specifically Lëtzebuergesch radio station and one television station in Lëtzebuergesch. The publicly-owned *Radio Socio-Culturelle* broadcasts mostly in the Lëtzebuergesch language. Several other regional broadcasters whose

¹ See further: http://www.gouvernement.lu/tout_savoir/population_langues/situling.html (FR).

² See the website of Luxembourg’s Statistical Office at: <http://www.statec.lu>.

channels do not cover the whole territory (radio programmes from *Eldorado*, *Den Neie Radio* and *Radio ARA*, or cable television programmes from *Nordlicht*, *De Kueb*, *TangoTV* and *Uelzecht-Kanal*) also broadcast almost exclusively in the Lëtzebuergesch language, as do a number of local radio stations.

Broadcasting in other languages exists mainly in the form of the privately-owned radio station, *Radio Latina*, which broadcasts mostly in Portuguese and French and also has transmissions in Italian and Spanish. *Radio Latina* can be heard in most parts of the country, but its frequency does not guarantee national coverage. There are also a few local radio broadcasters which broadcast in Portuguese (*Radio Amizade* in the city of Esch-sur-Alzette and *Radio interculturelle* in the village of Gilsdorf) and in English (*Sunshine Radio* in Luxembourg is mostly in English).

While there is some radio programming in French, Portuguese, Italian and Spanish, there is currently no local television programming in any of these languages. The main daily newscast of the RTL television channel is, however, rebroadcast one hour after its first airing with a French translation on the second audio channel. The cost of this translation (roughly 300,000 Euros per annum, according to the latest information available) is paid for by the Luxembourgish State.

2 Constitution³

2.1 Freedom of expression

Article 24

Freedom of speech in all matters and freedom of the press are guaranteed, subject to the repression of offences committed in the exercise of these freedoms. No censorship may ever be introduced. [...]

2.2 Broadcasting

In its current form, the Constitution of the Grand Duchy of Luxembourg does not deal with electronic media and broadcasting. It should be said here that the Luxembourgish Parliament is currently working on a constitutional reform project. Not many details have emerged on the work of the parliamentary commission and there has been no indication that there might be a mention of electronic media in a future version of Luxembourg's Constitution.

2.3 Minority rights

No constitutional provision deals directly with minority rights. However, Article 10bis concerns the equality of Luxembourgish citizens.

Article 10bis

1. All Luxembourgers are equal before the law.
2. They are eligible for all public, civil and military employment; the Law shall determine the eligibility of non-Luxembourgers for such employment.

³ Constitution of the Grand Duchy of Luxembourg of 17 October 1868 (as amended), available at <http://www.etat.lu/SCL/CNST0999.PDF> (FR) and (although not fully up-to-date) at http://www.uni-wuerzburg.de/law/lu00000_.html (EN).

2.4 (Official/State) language(s)

Article 29

The Law shall regulate the use of languages in administrative and judicial matters.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

LANGUAGES ACT, 1984

According to the Languages Act of 1984,⁴ Lëtzebuergesch is the national language of the Grand Duchy of Luxembourg (Article 1),⁵ but legislation is drafted in French (Article 2)⁶ and administrative services can use either French, German or Lëtzebuergesch (Articles 3, 4).⁷ Luxembourg does not specifically recognise any linguistic or cultural minorities. In practice, many official documents are, however, available not only in the three official languages, but also in English, Portuguese and Italian.

3.2 Broadcasting legislation

ELECTRONIC MEDIA ACT, 1991

Luxembourg's broadcasting law is mostly contained in the Electronic Media Act of 1991.⁸ This Act does not, however, contain any specific provisions on the use of languages or the rights of linguistic minorities.⁹

⁴ Loi du 24 février 1984 sur le régime des langues, Mém. A 1984, p. 196, available at : <http://www.tlfg.ulaval.ca/axl/europe/luxembourgloi.htm> (FR).

⁵ Article 1 National Language: "Luxembourgish is the national language of Luxembourgers." (unofficial translation). The original reads : « La langue nationale des Luxembourgeois est le Luxembourgeois ».

⁶ Article 2 Language of Legislation: "Legislative acts and their implementing regulations are drawn up in French. When legislative and regulatory acts are accompanied by a translation, only the text in French is valid. In cases where regulations not contemplated by the previous alinea are adopted by an organ of state, communes or public bodies in a language other than French, only the text in the language used by that organ will be valid. The present Article shall not derogate from the applicable provisions in relation to international conventions." (unofficial translation). The original reads: « Les actes législatifs et leurs règlements d'exécution sont rédigés en français. Lorsque les actes législatifs et réglementaires sont accompagnés d'une traduction, seul le texte français fait foi. Au cas où des règlements non visés à l'alinéa qui précède sont édictés par un organe de l'Etat, des communes ou des établissements publics dans une langue autre que la française, seul le texte dans la langue employée par cet organe fait foi. Le présent article ne déroge pas aux dispositions applicables en matière de conventions internationales. »

⁷ Article 3 Administrative and Judicial Languages: "In contentious and non-contentious administrative matters and in judicial affairs, the French, German and Luxembourgish languages may be used, without prejudice to special provisions concerning certain matters." (unofficial translation). The original reads: « En matière administrative contentieuse ou non contentieuse, et en matière judiciaire, il peut être fait usage des langues française, allemande et luxembourgeoise, sans préjudice des dispositions spéciales concernant certaines matières. » Article 4 Administrative Requests: "When a request is formulated in Luxembourgish, French or German, the administration must respond, insofar as possible, in the language chosen by the author of the request." (unofficial translation). The original reads : « Lorsqu'une requête est rédigée en luxembourgeois, en français ou en allemand, l'administration doit se servir, dans la mesure du possible, pour sa réponse de la langue choisie par le requérant. »

⁸ Loi du 27 juillet 1991 sur les médias électroniques, (Mém. A - 47 du 30 juillet 1991, p. 972; doc. parl. 3396) modifiée par la loi du 2 avril 2001 (Mém. A - 42 du 17 avril 2001, p. 924; doc. parl. 4584; dir. 89/552/CEE et 97/36/CE). See further : <http://www.etat.lu/SMA/text-sma/french/legx1.htm> (FR).

⁹ The law does however contain a provision indicating that the Charter of duties and obligations of radio broadcasters which do not target the Luxembourgish public can impose a duty to transmit news snippets in Luxembourgish: «Les cahiers des

Under the legal framework of the 1991 Act, radio and television stations can only be operated by the bearer of a licence or permission granted either by the Government or the Independent Broadcasting Commission. The detailed conditions under which the radio or television station can broadcast are laid out in a Charter (*cahier des charges*), which is an integral part of the licence or permit.

The Charters of some radio stations and the Charter of the RTL television broadcaster contain relevant provisions for this report. The permit for RTL's Luxembourgish radio and television broadcasting operations specify, for instance, that programming must be broadcast "essentially" in the Lëtzebuergesch language.

However, the RTL television broadcaster also has a specific public service duty to offer at least 30 minutes per week of transmissions for the main non-Luxembourgish communities.¹⁰ No other Charter of a television or radio broadcaster contains a comparable obligation. In fact, RTL *Tele Lëtzebuerg* does not currently fulfil this obligation as there is currently no programming in languages other than Lëtzebuergesch. The regulatory authorities seem to accept that the obligation is nevertheless fulfilled due to the fact that the daily evening news is rebroadcast with a French translation.

The only publicly owned radio station, *Radio Socioculturelle*, does not have any specific duties regarding the use of language or access for linguistic minorities. Its Charter instructs the responsible personnel to promote Lëtzebuergesch¹¹ and to aid in the integration of minorities,¹² but it does not contain any specific obligations to offer programming in other languages.

The most detailed provisions on the use of languages are to be found in the Charter of *Radio Latina*. When those responsible for this initiative applied for a permit, their project was to provide a programme offer specifically for those in Luxembourg who do not speak Lëtzebuergesch.

The Charter of *Radio Latina* states that "[T]he main objective of the project is to make a multilingual and multicultural radio frequency available to the foreign communities residing in the Grand Duchy of Luxembourg".¹³ It also states: "[T]he beneficiary of the programme has undertaken to direct its efforts towards the presentation of Luxembourgish socio-cultural realities in the mother tongues of listeners, as well as in French, which is both a common

charges relatifs à des programmes utilisant des fréquences de radiodiffusion luxembourgeoises autres que celles en modulation de fréquences, peuvent contenir l'obligation soit de transmettre de brèves émissions quotidiennes en langue luxembourgeoise pour les Luxembourgeois vivant à l'étranger, soit de rendre disponible l'émetteur pour la transmission de telles émissions» (Article 10).

¹⁰ «Le programme est composé d'informations, d'émissions de service et de divertissements s'adressant au public résident le plus large possible. Il comprend au moins les éléments suivants: (...) une ou des émission(s) d'informations d'une durée totale d'une demi-heure par semaine pour les principales communautés non-luxembourgeoises résidant au Grand-Duché, sauf pendant les vacances d'été, soit durant dix mois sur douze par année pleine» (Cahier des charges pour le programme de télévision visant un programme résident du 26 avril 1995).

¹¹ «Les programmes à finalité socio-culturelle (...) attacheront une importance particulière aux objectifs culturels suivants: (...) la promotion de la langue luxembourgeoise» (Cahier des charges du 3.6.1993, article 4).

¹² «Les programmes à finalité socio-culturelle (...) chercheront notamment à favoriser (...) l'intégration des personnes âgées, des personnes affectées par un handicap, des minorités et celle des différentes communautés ethniques et culturelles dans le respect de leurs cultures d'origine (...)» (Cahier des charges du 3.6.1993, article 4).

¹³ Unofficial translation. The original reads: «Le projet a pour objectif principal la mise à disposition des communautés étrangères résidentes au Grand-Duché de Luxembourg d'une fréquence radio multilingue et multiculturelle», Cahier des charges concernant la permission de programme de radio à réseau d'émission accordée à la Société européenne de Communication sociale sàrl, article 3.

language and the language of the French and Belgian populations. Concerning the Luxembourgers, it intends to promote and support socio-cultural expression, portraying immigrants' countries of origin.”¹⁴

The Charter specifically indicates that 47% of the programme ought to be in Portuguese; 27% in French; 10% in Italian; 6% in Spanish; 5% in Lëtzebuergesch and 5% in other languages.

4 Current developments

The Luxembourgish Government is currently working on a new law on electronic media.¹⁵ The draft has not yet been finalised and many gaps remain but it would seem that it is the government's intention to further liberalise access to electronic media, at least for those media where the number of available frequencies is not limited by technical constraints. It is generally assumed that such an opening would lead to the development of new cable broadcasting that would specifically target those sections of the Luxembourgish population which do not speak the Lëtzebuergesch language.¹⁶

A preliminary document released on 14 March 2002 confirms that the government intends to reserve large portions of the available frequencies for local programmes, including programmes in languages other than Lëtzebuergesch: “in the different blocs of terrestrial frequencies, a large section of the frequency spectrum could be set aside for the preferential transmission of Luxembourgish (or even non-Luxembourgish) radio or television programmes intended to meet the needs of the public of the Grand Duchy.”¹⁷

¹⁴ Unofficial translation. The original reads : «Le bénéficiaire du programme s'est engagé à diriger ses efforts vers la divulgation de la réalité socio-culturelle luxembourgeoise dans les langues d'origine des auditeurs ainsi qu'en français, à la fois langue commune et langue des populations française et belge. En direction des Luxembourgeois, il entend favoriser la promotion et l'appui à des manifestations socio-culturelles, mettant en évidence la réalité des pays d'origine des immigrés», Cahier des charges concernant la permission de programme de radio à réseau d'émission accordée à la Société européenne de Communication sociale sàrl, article 3.

¹⁵ See further, M. Thewes, “LU – New Policy Paper on Reform of Electronic Media Act”, *IRIS – Legal Observations of the European Audiovisual Observatory*, 2002-5: 10.

¹⁶ A similar development has taken place in the area of print media: 2001 saw the launch of two new French-language daily newspapers, *La Voix du Luxembourg* and *Le Quotidien*.

¹⁷ Unofficial translation. The original reads: «dans les différents blocs de fréquences terrestres, une large partie de la bande de fréquence pourrait être prioritairement réservée pour la diffusion de programmes de radio ou de télévision luxembourgeois (ou même non luxembourgeois) destinés à rencontrer les besoins du public au Grand-Duché».

The Former Yugoslav Republic of Macedonia

Macedonian is the official language of the country, as well as any other language spoken by at least 20% of the population. The place of minority languages or plural language use was a major part of the Ohrid Framework Agreement of 2001 which was an elaborate effort to resolve differences between the Albanian community and the Macedonian majority in Macedonia. The rights of minorities (or “communities”, to use the preferred terminology of the Agreement) have been invigorated by this Agreement. The Agreement also touched on the role of minority languages in the media and recommended that the international community increase its assistance to media, including minorities’ media.

Minority-language broadcasting is a statutory obligation of the public service broadcaster. While no third national channel for Albanian (television) broadcasting exists, its possibility has been mooted. As regards other forms of broadcasting, the national broadcasting authority proposes a number of concessions specifically for broadcasting in minority languages. To date, 36 such concessions have been awarded and this figure includes both television and radio broadcasting. Broadcasting entities using the languages of the communities have the same rights and obligations as those using the Macedonian language.

1 Introduction

1.1 Linguistic topography

The Republic of Macedonia is a multi-ethnic society with a diverse linguistic topography. According to the last available official results from the 1994 Census, 68.89% of the population declared the Macedonian language to be their first language; 22.29% declared that their first language was Albanian; 3.34% said it was Turkish; 1.81%, Romany; 1.72%, Serbian and 0.36%, Vlach.¹

1.2 Broadcasting

Broadcasters in Macedonia include commercial broadcasting companies and public television and radio stations. The commercial broadcasting organisations can broadcast only if they receive a concession from the State. The Broadcasting Council² can propose concessions for broadcasting in languages other than Macedonian, but these concessions are subject to different criteria.³ Public radio and television stations receive their concession from their founding legislation,⁴ which requires some broadcasting in minority languages. The public broadcasting service includes 29 local radio and television stations. Seven of these broadcast in a language other than Macedonian.

2 Constitution

The 1991 Constitution contains provisions on minority rights and these were reinforced by the latest constitutional amendments in 2001.⁵ Among the fundamental values of the constitutional order of the Republic of Macedonia are:

¹ See further: <http://www.stat.gov.mk>.

² See further: <http://www.srd.org.mk/en/>.

³ The Broadcasting Council sets the criteria for awarding concessions in each public tender.

⁴ See ‘Legislation’ Section, *infra*.

⁵ Constitution of the Republic of Macedonia, 1991, available at <http://www.mlrc.org.mk/law/1004.htm> (EN).

- The basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution
- The free expression of national identity
- Equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life⁶

2.1 Freedom of expression

Article 16 guarantees the right to freedom of expression and is very similar to Article 10 of the European Convention on Human Rights.

Article 16

The freedom of personal conviction, conscience, thought and public expression of thought is guaranteed.

The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed.

Free access to information and the freedom of reception and transmission of information are guaranteed.

The right of reply via the mass media is guaranteed.

The right to a correction in the mass media is guaranteed.

The right to protect a source of information in the mass media is guaranteed.

Censorship is prohibited.

2.2 Minority rights

The following constitutional provisions are of particular importance:⁷

Amendment 8 (replacing Article 48):

(1) Members of communities have a right freely to express, foster and develop their identity and community attributes, and to use their community symbols.

(2) The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of all communities.

(3) Members of communities have the right to establish institutions for culture, art, science and education, as well as scholarly and other associations for the expression, fostering and development of their identity.

(4) Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied.

Amendment 10 (Article 69, Paragraph 2):

⁶ See, in particular, Article 8 of the Constitution (as amended by the Ohrid Framework Agreement of 13 August 2001 (see *infra*)). Macedonian law uses the term “communities” rather than “minorities”, as established in the Ohrid Framework Agreement.

⁷ These amendments (nos. 8, 10, 12 and 5) are part of the so-called “Ohrid” Framework Agreement concluded between the Republic of Macedonia and the Euro-Atlantic community on 13 August 2001, available at: <http://www.president.gov.mk/eng/info/dogovor.htm>. They were incorporated into the Macedonian Constitution on 17 November 2001. The purpose of the Framework Agreement is to “promote the peaceful and harmonious development of civil society while respecting the ethnic identity and the interests of all Macedonian citizens”.

(2) For laws that directly affect culture, use of language, education, personal documentation, and the use of symbols, the Assembly makes decisions by a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who claim to belong to the communities not in the majority in the population of Macedonia. In the event of a dispute within the Assembly regarding the application of this provision, the Committee on Inter-Community Relations shall resolve the dispute.

Amendment 12 (replacing Article 78):

- (1) The Assembly shall establish a Committee for Inter-Community Relations.
- (2) The Committee consists of seven members each from the ranks of the Macedonians and Albanians within the Assembly, and five members from among the Turks, Vlachs, Romanies, and two other communities. The five members each shall be from a different community; if fewer than five other communities are represented in the Assembly, the Public Attorney, after consultation with relevant community leaders, shall propose the remaining members from outside the Assembly.
- (3) The Assembly elects the members of the Committee.
- (4) The Committee considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solution.
- (5) The Assembly is obliged to take into consideration the appraisals and proposals of the Committee and to make decisions regarding them.
- (6) In the event of a dispute among members of the Assembly regarding the application of the voting procedure specified in Article 69(2), the Committee shall decide by majority vote whether the procedure applies.

2.3 (Official/State) language(s)

The Constitution also addresses the use of the languages of the communities in official communications:

Amendment 5 (replacing Article 7)⁸:

- (1) The Macedonian language, written using its Cyrillic alphabet, is the official language throughout the Republic of Macedonia and in the international relations of the Republic of Macedonia.
- (2) Any other language spoken by at least 20 percent of the population is also an official language, written using its alphabet, as specified below.
[...]
- (5) In the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law.
- (6) In the units of local self-government where at least 20 percent of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20 percent of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies.

⁸ Emphasis added.

3 Legislation

3.1 General legislation

Laws and other regulations set out the technical and procedural mechanisms to implement the minority rights provided for in the Constitution. The approach to issues in this sphere comes from the Ohrid Framework Agreement of August 2001. In 1997, Macedonia ratified the (Council of Europe) Framework Convention on National Minorities. The Ohrid Framework Agreement will require changes to some of the laws and rules of state bodies and units of the local self-government with respect to minority languages. Excerpts from Section 6 of the Framework Agreement, entitled ‘Education and Use of Languages’, which are of potential relevance to the use of language in broadcasting read as follows:

6.4. The official language throughout Macedonia and in the international relations of Macedonia is the Macedonian language.

6.5. Any other language spoken by at least 20 percent of the population is also an official language, as set forth herein [...]

6.6. With respect to local self-government, in municipalities where a community comprises at least 20 percent of the population of the municipality, the language of that community will be used as an official language in addition to Macedonian. With respect to languages spoken by less than 20 percent of the population of the municipality, the local authorities will decide democratically on their use in public bodies.

3.2 Broadcasting legislation and practice

The Law on Pursuit of Broadcasting Activity⁹ and the Telecommunications Law¹⁰ regulate broadcasting. The former established the original regulatory framework in this area, while the latter regulates the technical aspects of the work of broadcasting organisations.

THE LAW ON PURSUIT OF BROADCASTING ACTIVITY 1997

The Law on Pursuit of Broadcasting Activity was passed in 1997, a few years after the establishment of the first private broadcasting companies in Macedonia. According to this Law, the founder of a broadcasting organisation can be any natural or legal person that is awarded the concession for the pursuit of broadcasting activity. The Broadcasting Council proposes the concessions to the government.¹¹

The Broadcasting Council proposes some concessions specifically for broadcasting in minority languages. There are 43 broadcasters that broadcast in minority languages. 33 are private and 10 are public. The division is as follows: there are 13 private Albanian television stations plus one state television channel (MTV’s 3rd channel which is mostly but not exclusively Albanian-language): there are 12 private radio stations in the Albanian language plus one State Macedonian Radio third channel (mostly but not exclusively Albanian) plus seven state-owned “local public radio stations”. For the Roma language there are only two private television stations (BTR and SHUTEL) and three private radio stations. Then the State Television and Radio 3rd channels have some Roma-language broadcasting, plus there is one local state-owned public radio which includes some Roma programming. There is no

⁹ Law on Pursuit of Broadcasting Activity, 1997, available at:

<http://www.srd.org.mk/en/default.asp?pBroj=100&stID=30> (and at <http://www.mlrc.org.mk/law/l021.htm>).

¹⁰ Available at: <http://www.srd.org.mk/en/default.asp?pBroj=100&stID=31>.

¹¹ See Articles 13, 14, 15 and 16 of the Law on Pursuit of Broadcasting Activity.

television station that broadcasts exclusively in Turkish, and although some private stations are listed by the Broadcasting Council as having Turkish programming, they either have none or have a little Turkish music. Only the State Television and Radio 3rd channels have Turkish programming, together with four state-owned local public radio stations (Struga, Tetovo, Gostivar, Debar), which have some Turkish programming.¹²

Organisations that broadcast in the languages of the communities have the same rights and obligations as organisations that broadcast in Macedonian. The Law on Pursuit of Broadcasting Activity also provides:

Article 45

The broadcasting program is broadcast by the broadcasting organizations in the Macedonian language.

The Public Broadcasting Enterprise, which broadcasts programs on the territory of the Republic of Macedonia, besides in Macedonian language, broadcasts programming contents also in the languages of the nationalities.

For areas where members of the nationalities live as a majority, respectively in a significant number, the public broadcasting enterprises that perform the activity at the local level broadcast programs also in the languages of the respective nationality. The broadcasting trade companies, besides broadcasting of programs in the Macedonian language, may broadcast programs also in the languages of the nationalities.

Article 46

Foreign programs or parts of foreign programs must be translated into the Macedonian language, as well as into the language of the nationalities in the programs that are broadcast for them.

The stipulations from Paragraph 1 of this Article do not refer to the transmission of musical, theatrical and religious events, as well as to educational programs for learning foreign languages, as well as to programs intended for foreigners.

Programs that are not translated are also announced in the Macedonian language, i.e. the languages of the nationalities, for the programs that are broadcast for them.

LAW ON THE ESTABLISHMENT OF THE PUBLIC ENTERPRISE MACEDONIAN RADIO-TELEVISION 1998

The national public broadcasting service, Macedonian Radio and Television (MRT), also broadcasts programmes in community languages. This is consistent with the role envisaged for it in its founding legislation, the Law on the Establishment of the Public Enterprise Macedonian Radio-Television.¹³

Article 5

¹² See further the website of the Broadcasting Council of the Republic of Macedonia: <http://www.srd.org.mk/en/>.

¹³ Law on the Establishment of the Public Enterprise Macedonian Radio-Television, No. 07-320/1, adopted by Parliament on 27 January 1998, available at: <http://www.srd.org.mk/en/default.asp?pBroj=100&stID=33>.

The MRT conducts its activities on the basis of programmes that contain informative, scientific and educational, cultural, sports, economy and other subject matters of interest to the life and the activities of the citizens.

Article 6

The activities of the MRT are the following:

- production and broadcast of radio and TV programmes within the guaranteed human and civil freedoms and rights of citizens, with informative, educational, cultural, scientific, sports, music, entertainment and other content, in Macedonian and in the languages of the minorities that live in Macedonia;
 - production and broadcast of individual programmes on informing about and preserving the cultural and the historical traditions and on maintaining and improving the relations with the emigrants and the other citizens of the Republic of Macedonia living in the neighbouring countries, in Europe and on other continents;
- [...]

Channel 2 of Macedonian Television now broadcasts only in the Macedonian language. Minority programming has been switched to MTV 3 (since 15 August 2002). The schedule is roughly as follows: Albanian - 66.5 hours per week; Turkish - 17.5 hours per week; Roma/Vlach/Serbian/Bosnian - every second day, 30 minutes, and once per month, 60 minutes. Within Macedonian Radio, there is also a channel that broadcasts programming content in the languages of the communities - MR3. The schedule is roughly as follows: Albanian - 69.5 hours per week; Turkish - 35 hours per week; Roma/Vlach - 30 minutes per day plus 30 minutes per week.¹⁴

Despite the existence of positive legislative and constitutional provisions for minorities, there is a lack of minority-language media. There is, for instance, no national concession for a private Albanian-language broadcaster.

4 Current developments

The Ohrid Framework Agreement will require a number of implementing provisions, including provisions that will affect the use of languages (see *supra*). In particular, in Annex C, 'Implementation and Confidence-Building Measures', it is stated that:¹⁵

[6.1.] The parties invite the international community, including the OSCE, to increase its assistance for projects in the area of media in order to further strengthen radio, TV and print media, including Albanian language and multiethnic media. The parties also invite the international community to increase professional media training programs for members of communities not in the majority in Macedonia. The parties also invite the OSCE to continue its efforts on projects designed to improve inter-ethnic relations.

¹⁴ Quotas for programmes in minority/community languages are set by decision of the Programme Councils within Macedonian Radio and Television (see further, Article 22 of the Law on the Establishment of the Public Enterprise Macedonian Radio-Television).

¹⁵ Section 6, 'Culture, Education and Use of Languages', Annex C, 'Implementation and Confidence-Building Measures', the Ohrid Framework Agreement, *op. cit.* See also Section 8, 'Laws Pertinent to the Use of Languages', Annex B, 'Legislative Modifications' of the Ohrid Framework Agreement.

In the broadcasting sphere, the Broadcasting Council recently proposed 39 new concessions. Of those, 27 were awarded by the Government on 23 July 2002 (all private): one national radio station; 17 local radio stations and nine local television stations (three local radio stations in the Albanian language; two local television stations in Albanian and one in Bosnian/Macedonian).¹⁶

There has been much speculation in Macedonia on the recent formation of a third channel of Macedonian State television, intended to be a largely Albanian-language and minorities-language channel: MTV3 has been frequently discussed during the recent conflict, and is even mentioned in the Framework Agreement as a “provision” for the Albanian community (*supra*).

¹⁶ This data has been included in Section 3.2, *supra*.

Malta

Maltese and English are the dominant languages in this country; the former being the national language of the State. The linguistic rights of minorities are not yet embedded in the constitutional or legislative terrain. General broadcasting policy is promotive of the Maltese language, culture and identity. The national Broadcasting Authority has shown itself to be very concerned about the correct use of Maltese by the broadcasting media. In practice, broadcasting takes place mainly in Maltese and to a lesser extent, in English and in Italian.

1 Introduction

1.1 Linguistic topography

The Republic of Malta is an archipelago consisting of the islands of Malta, Gozo and Comino. While its population stands at around 380,000 inhabitants, it should be noted that more than twice as many persons of Maltese descent live abroad, mainly in Australia and Canada. Malta gained its independence from Great Britain in 1964 and became a Republic in 1974. Today widely perceived as a bilingual country, the language issue is still strongly linked to the country's struggle for independence and search for its own national identity.

Throughout the country's long colonial history, the Maltese language was constantly under threat. In fact, at the end of the 19th century, Italian was the predominant language in Malta, later giving way to English. Until the mid-20th century, Italian was the language of the educated classes. To this day, most Maltese speak Italian to some degree. The importance of Italian was so great that it was the language of the Courts until around the mid-20th century. Although that has changed, Italian is still indispensable for lawyers wanting to do legal research. For a long time, the Maltese language was perceived as being inferior to Italian, and then to English. Since independence, the language issue has played an important part in the political debate and the country's two parties have had very different policies with regard to language.

While one part of the population is more comfortable speaking English than Maltese, it is mainly social and cultural factors that determine people's preference for one or the other language and language patterns differ greatly across Malta.

1.2 Broadcasting¹

Today, the vast majority of all television programmes produced in Malta are produced in Maltese. Foreign (English-language) films, however, are not dubbed or subtitled into Maltese. Most radio stations, with the exception of two, broadcast exclusively in Maltese. However, although styled and recognised as English-language broadcasters, these two radio stations have been known to provide commentary in Maltese during the summer months, apparently due to a shortage of English-language speakers.

¹ For an overview of broadcasting in Malta, see 'Broadcasting in Malta: From Monopoly to Diversity', available at: http://www.ba-malta.org/m_broadcasting.htm. See also K.J. Schmitz, "Malta" in *Legal Guide to Audiovisual Media in Europe - Recent Legal Developments in Broadcasting, Film, Telecommunications and the Global Information Society in Europe and Neighbouring States*, Strasbourg: European Audiovisual Observatory 1999, pp. 137-139.

There is only one international radio station broadcasting from Malta. *Voice of the Mediterranean* is a joint venture between Malta and Libya, operating since 1988 and producing programmes in English, Arabic, French, German, Japanese and Maltese. It should be pointed out, however, that the main *raison d'être* of this station is to broadcast from Malta, as opposed to *within* or *to* the country.

2 Constitution

The Constitution of the Republic of Malta was adopted in 1964, but has been amended since.²

2.1 Freedom of expression

Article 41 Protection of Freedom of Expression

1. Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision -

(a) that is reasonably required -

(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or

(b) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

[...]

2.2 Broadcasting

Article 118 provides for the establishment of a Broadcasting Authority for Malta, the functions of which are set out at Article 119, which reads:

(1) It shall be the function of the Broadcasting Authority to ensure that, so far as possible, in such sound and television broadcasting services as may be provided in Malta, due impartiality is preserved in respect of matters of political or industrial

² Available at: http://justice.gov.mt/DOCUMENTS/ENGLISH/LEG/vol_1/CHAPT0.pdf.

controversy or relating to current public policy and that broadcasting facilities and time are fairly apportioned between persons belonging to different political parties.

(2) The function of the Broadcasting Authority referred to in sub-article (1) of this article shall be without prejudice to such other functions and duties as may be conferred upon it by any law for the time being in force in Malta.

2.3 Minority rights

In the absence of any constitutional provisions dealing specifically with minority rights, the main provisions worth mentioning in this connection are Article 14, which guarantees equality between men and women and Article 45, which guarantees protection on the grounds of race, etc.

2.4 (Official/State) language(s)

Article 5 Language

(1) The National language of Malta is the Maltese language.

(2) The Maltese and English languages and such languages as may be prescribed by Parliament (by a law passed by no less than two-thirds of all Members of the House of Representatives) shall be the official languages of Malta and the Administration may for all official purposes use any of such languages [...]

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

There is no general legislation in Malta dealing with minorities.

3.2 Broadcasting legislation

The main piece of relevant legislation in Malta is the Broadcasting Act, 1991.³ However, the Act also lacks any direct references to minority broadcasting in general or minority-language broadcasting in particular. Nevertheless, it does contain some provisions that are of relevance for present purposes. Article 11 sets out the considerations which should guide the Broadcasting Authority (BA)⁴ for the issue of broadcasting licences. These include:

- (a) that the principles of freedom of expression and pluralism shall be the basic principles that regulate the provision of broadcasting services in Malta;
 - (b) that a diverse system of public and private stations with their own particular character, would be the best system for the realisation of the basic principles above referred to;
 - (c) that private stations shall be allowed to operate in such a way so as to ensure a distribution of programming that appeals to general as well as to specific interests, and in line with a national broadcasting plan for the allocation of various frequencies.
- [...]

According to Article 13(2):

³ The Broadcasting Act, Act XII of 1991, as amended, available at: <http://www.ba-malta.org.mt/legislation/chapt350.pdf>.

⁴ See further: <http://www.ba-malta.org.mt>.

It shall be the duty of the Authority to satisfy itself that, so far as possible, the programmes broadcast by persons providing sound or television services in Malta comply with the following requirements [...]

(d) that proper proportions of the recorded and other matter included in the programmes are in the Maltese language and reflect the Maltese cultural identity.

(e) that the programmes broadcast contain a substantial proportion of matter closely designed to appeal to the interest, tastes and outlook of the general public [...]

Article 13 also calls for, *inter alia*, balance and objectivity in current affairs and news programmes, etc.

4 Application of legislation and other measures affecting language

Today in Malta, many people mix codes freely. Although most concern is voiced over the fact that English is mixed with Maltese, the same is true vice versa. In 2001, the Government of Malta published a ‘Consultative Document on the Use of the Maltese Language in the Broadcasting Media’⁵ because it is concerned about “bad use of idioms and literal translation of foreign idioms” in the Maltese language and “the mixture of Maltese and English (or words originating from other languages) in the same sentence” and “the literal translation of foreign sentences, structures and reports”.⁶ Again, this initiative can by no means be considered as a move to promote one or the other language and there are no minority issues connected therewith either. Rather, this consultative paper should be seen as an attempt to maintain a bilingual culture in which both languages would be used correctly.

The most concrete outcome of the consultative document has certainly been a heightened level of awareness regarding the correct use of the Maltese language in broadcasting. By publishing this document, the BA has given the language debate in Malta a dimension that had been missing. Previously, the main concern had been over the use of Maltese words when speaking English.

⁵ ‘Consultative Document on the Use of the Maltese Language in the Broadcasting Media’, Advisory Committee on Quality and Ethics in Broadcasting of the Broadcasting Authority of Malta, 16 April 2001, available at: http://www.ba-malta.org/pressreleases/2001/m_pr2001.htm.

⁶ See further, K.J. Schmitz, ‘MT – Use of Maltese Language in Broadcast Media’, *IRIS – Legal Observations of the European Audiovisual Observatory*, 2001-6: 8.

Moldova

The Moldavian language is the state language of the Republic of Moldova, but the preservation, development and use of Russian and other languages existing within the territory are also safeguarded by the Constitution. Various infringements of human rights on linguistic grounds are punishable by law. All broadcasters – public and private alike – are required by law to ensure that at least 65% of their programming is in Moldavian. Exceptions to this rule include programmes retransmitted via cable and satellite networks, the programmes of foreign stations and stations broadcasting in territories which are densely populated by minorities. For their part, minorities are entitled to establish their own mass media outlets and the State must ensure that the public broadcaster transmits programmes in minority languages.

1 Introduction

1.1 Linguistic topography

The state language of the Republic of Moldova is the Moldavian language using Latin characters. The State recognises and protects the right to the preservation, development and functioning of the Russian language and other languages on the territory of the country.

The linguistic topography of the country is first of all determined by the following official data on the population of the country (1989 estimate):¹

Moldovan/Romanian - 65%
Ukrainian - 13.8%
Russian - 13.0%
Gagauz - 3.5%
Bulgarian - 2.0%
Jewish - 1.5%
Other - 1.7%

General observations based on political, statistical and legislative considerations and on the practice of broadcasting in national languages could lead one to conclude that the hierarchical structure of officially-recognised languages/groups of national minorities is the following: Russian, Ukrainian, Gagauz, Bulgarian, Hebrew and Yiddish. By way of illustration, Article 6 of the Law on Minority Rights and the Legal Status of their Organisations of 2001 guarantees the right of minorities to be educated in their mother tongue, first in Russian, and then in Ukrainian, Gagauz, Bulgarian, Hebrew and Yiddish.² Many members of minority groups do not speak their national language, but do speak Russian: the main argument of those who favour Russian being made an official language. In territories which are densely populated by Gagauzes, Gagauz (and Russian) is declared to be the second official language (see further, 'Legislation', *infra*).

¹ Southeast Europe Factbook Survey 1996-1997, Second Edition (Hellenic Resources Institute, Athens, 1997), p. 219. See also: <http://www.mldnet.com/moldova/>.

² Approved by Law N 643-XV of 15 November 2001. Article 6(1) reads: "The state guarantees the right to preschool, elementary, secondary (general and vocational), higher and post-University education in Moldavian and Russian to members of national minorities and creates conditions for the realization of their rights to education in their native language (Ukrainian, Gagauz, Bulgarian, Hebrew, Yiddish etc.)."

1.2 Broadcasting

Approximately 65% of all broadcasting is in Russian and approximately 35% is in the Romanian (Moldavian) language and other languages.

1.3 Government policies on broadcasting and minorities

Officially, the creation of audiovisual works in Moldavian is encouraged. The proportion of programmes broadcast in a certain language should correspond to the proportion of the population which speaks that language (not less than 65% in the state language). However, in practice, deviations are not punished.

Minorities may found television and radio broadcasting companies and broadcast in their native language on equal grounds, and in the territories where minorities make up the majority of the local population without any restrictions.

2 Constitution³

2.1 Freedom of expression

Article 32. Freedom of Opinion and Expression

(1) All citizens are guaranteed the freedom of opinion as well as the freedom of publicly expressing their thoughts and opinions by way of word, image or any other means possible.

[...]

2.2 Broadcasting

Article 34. The Right of Access to Information

(1) Having access to any information of public interest is everybody's right, that may not be curtailed.

(2) According with their established level of competence, public authorities shall ensure that citizens are correctly informed both on public affairs and matters of personal interest.

(3) The right of access to information may not prejudice either the measures taken to protect the citizens or the national security.

(4) The State and private media are obliged to ensure that correct information reaches public opinion.

(5) The public media shall not be submitted to censorship.

2.3 Minority rights

Article 4. Human Rights and Freedoms

(1) Constitutional provisions for human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights, and with other conventions and treaties endorsed by the Republic of Moldova.

³ Adopted on 29 July 1994, published in the *Monitorul Oficial al R. Moldova*, N1, 18 July 1994, available at: <http://www.ccrm.rol.md>.

(2) Wherever disagreements appear between conventions and treaties signed by the Republic of Moldova and her own national laws, priority shall be given to international regulations.

Article 16. Equality of Rights

- (1) It is the foremost duty of the State to respect and protect the human person.
- (2) All citizens of the Republic of Moldova are equal before the law and the public authorities, without any discrimination as to race, nationality, ethnic origin, language, religion, sex, political choice, personal property or social origin.

2.4 (Official/State) language(s)

Article 13. The National Language, Use of Other Languages

- (1) The national language of the Republic of Moldova is Moldovan, and its writing is based on the Latin alphabet
- (2) The Moldovan State acknowledges and protects the right to preserve, develop and use the Russian language and other languages spoken within the national territory of the country
- (3) The State will encourage and promote studies of foreign languages enjoying widespread international usage.
- (4) The use of languages in the territory of the Republic of Moldova will be established by organic law.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

LAW ON THE FUNCTIONING OF LANGUAGES IN THE TERRITORY OF MOLDAVIAN SOVIET SOCIALIST REPUBLIC (SSR), 1989⁴

Introduction

Giving the Moldavian language the status of the state one, Moldavian SSR ensures the protection of constitutional rights and freedoms of the people of any nationality living in the territory of Moldavian SSR regardless of the language they use under the equality of all the citizens before the law.

For the purposes of the state protection and ensuring the development of the Gagauz language, Moldavian SSR creates the necessary guarantees for the consistent enlargement of its social functions. In its territory, Moldavian SSR creates all the conditions for the use and the development of the Russian language as the language of interethnic communication as well as the languages of other nationalities living in the Republic.

⁴ Nr. 3465-XI of 1 September 1989, Vesti # 9, 1989. The quoted excerpt is an unofficial translation; another alternative unofficial translation is available at:
http://www.riga.lv/minelres/NationalLegislation/Moldova/Moldova_Language_English.htm.

Article 2

In localities where majority of residents are Gagauz the language of official life spheres is state, Gagauz or Russian.

CODE ON ADMINISTRATIVE TRANSGRESSIONS, 1985 (AS AMENDED)⁵

Article 200/3. Violation of linguistic equality

Actions pointed to the propaganda of hatred, contempt to the language of any nationality, creation of obstacles for functioning of state and other languages in the territory of the republic, as well as the infringement of human rights on the language reasons lead to a fine in the amount of five minimum salaries.⁶

Article 200/4. Nonobservance of the requirements of the Law of the Republic of Moldova On Functioning of Languages in the Territory of the Republic of Moldova

Nonobservance of the requirements of the Law of the Republic of Moldova On Functioning of Languages in the Territory of the Republic of Moldova by the heads of the state power, public administration and NGOs as well as enterprises, institutions and organizations situated in the territory of the Republic of Moldova lead to a fine in the amount of ten minimum salaries.⁷

3.2 Broadcasting legislation

3.2.1 Quotas on programming

LAW ON TV AND RADIO, 1995⁸

Article 13. –

(3) Both public and private TV organisations must broadcast not less than 65% of TV and radio programmes in the state language. This provision does not extend to TV programmes transmitted via satellite and cable networks as well as programmes of foreign stations and stations broadcasting in the territories of the compact residence of minorities.

LAW ON THE INTERPRETATION OF ARTICLE 13(3) OF THE LAW ON TV AND RADIO, 2000⁹

According to this Law, Article 13(3) of the Law on TV and Radio regarding broadcasting not less than 65% of television and radio programmes in the state language concerns exclusively locally produced programmes and does not concern the retransmission of the programmes of foreign stations by television and radio outlets operating in the territory of the Republic of Moldova.

⁵ Originally adopted on 19 March 1985; Articles 200/3 and 200/4 were both introduced on 10 July 1991. See also: N 382-XV of 19 July 2001, *Monitorul Oficial al R.Moldova*, N 107/819 of 4 September 2001.

⁶ [Art. 200/3 amended by Law of 23 February 1993] [Art. 200/3 amended by Law of 10 July 1991]

⁷ [Art. 200/4 amended by Law of 23 February 1993] [Art. 200/4 amended by Law of 10 July 1991]

⁸ Nr. 603 of 3 October 1995, *Monitorul Oficial al R.Moldova*, N 70/798 of 14 December 1995.

⁹ Nr. 1257-XIV of 29 September 2000, *Monitorul Oficial al R. Moldova*, N 133-136/951 of 26 October 2000.

The quoted excerpt is an unofficial translation; another alternative unofficial translation (which refers to the Law in question as the Audio-visual Law) is available at: http://ijc.iatp.md/en/mlu/docs/av_law.html.

3.2.2 Facilitative measures

LAW ON MINORITY RIGHTS AND THE LEGAL STATUS OF THEIR ORGANISATIONS, 2001¹⁰

Article 13

Members of minority groups and their organizations have the right to establish mass media according to the law, as well as to publish literature in minority languages.

The state ensures the organization of programs in minority languages on state radio and TV.

ON THE APPROVAL OF THE CHARTER OF COMPANY “TELERADIO-MOLDOVA”¹¹, 1996¹²

22. The company shall be obliged:
to give the objective and unbiased coverage of the realities of socio-political life in the country and abroad; to ensure citizens the right to information; to propagate the true values of national culture, the culture of minorities living in the republic and the world culture.

3.2.3 Transfrontier dimensions

On 27 December 2001, the Moldavian Parliament ratified a “friendship treaty” with Russia, establishing close economic and political ties between the two countries. The treaty provides for the use of the Russian language on a par with that of Moldavian and recognises Russia as a “guarantor of peace” in Moldova's separatist region of Transdniestria.

4 Current developments

In early 2002, the Constitutional Court unreservedly rejected an initiative to have Russian declared the second official language.¹³

¹⁰ Approved by Law N 643-XV of 15 November 2001.

¹¹ Note that Teleradio-Moldova was a State-owned company which was transformed into a public service broadcaster with the adoption of Law Nr. 1320-XV on 26 July 2002.

¹² Nr. 502 of 12 September 1996, *Monitorul Oficial al R. Moldova*, N 71/572 of 31 October 1996 (Ruling of the Government of Moldova).

¹³ Decision of the Constitutional Court of Moldova on the initiative to amend the Constitution, 4 March 2002, published in *Monitorul Oficial al R. Moldova*, Nr. 36-38 of 14 March 2002.

Monaco

French is the official language in this country, but Italian and English are also widely used. The availability of foreign broadcasts in the Principality, in particular from neighbouring states, is unhindered. Although the main pieces of legislation governing private sector broadcasting date from the 1970s, television and radio stations operating in Monaco do so in compliance with French and Italian regulations. The focus of broadcasting law in the country is largely on its technical and tax-related aspects. In light of this, there are no specific provisions on minority-language broadcasting. Monaco is currently involved in the process of formally acceding to the European Convention on Transfrontier Television.

1 Introduction¹

The Principality of Monaco is a sovereign, independent state. It is a hereditary and constitutional monarchy and has a population of some 31,842 inhabitants. While French is the official language of the country, English and Italian are also widely used and the traditional *Monégasque* language is still used by older generations and is also taught in schools. Monaco is not a Member State of the Council of Europe and it has not signed either the European Charter for Regional or Minority Languages or the Framework Convention for the Protection of National Minorities. The following ethnic groups exist in Monaco: French 47%, Monegasque 16%, Italian 16%, other 21%.²

2 Constitution³

2.1 Freedom of expression

Article 23

[...] the freedom to express opinions on all matters are guaranteed, except the repression of offences committed in the exercise of these liberties. [...]

2.2 Minority rights

No provision of the Constitution of Monaco deals specifically with the rights of persons belonging to minorities. Certain equality provisions do, however, exist.

Article 17

Monegasques are equal before the law. There are no privileges between them.

Article 32

¹ The author is grateful to Mme. Claudette Gastaud, Department of Finance and Economy, Principality of Monaco, for providing copies of relevant broadcasting legislation in Monaco.

² CIA World Factbook: <http://www.cia.gov>.

³ Constitution of the Principality of Monaco of 17 December 1962, as modified by Law No. 1.249 of 2 April 2002, available at: <http://www.monaco.gouv.mc/Dataweb/GouvMc.nsf/568e2a94439e820ec12568af005e9e1d/8eac97f956a58c44c12569d1004e6abf!OpenDocument> (FR).

Foreigners in the Principality enjoy all of the public and private rights that are not formally reserved for nationals.

2.3 (Official/State) language(s)

Article 8

The French language is the official language of the state.

Notwithstanding this constitutional statement of preference for the French language, other languages are, in practice, freely used in Monaco. Speakers of the traditional *Monégasque* language constitute a minority section of the total population.

3 Legislation

3.1 General legislation affecting minorities and their rights

There are no specific provisions in the law of Monaco concerning the rights of minorities. This has been affirmed, *inter alia*, in the State Report of the Principality of Monaco submitted to the United Nations (UN) Human Rights Committee⁴ under Article 40 of the International Covenant on Civil and Political Rights in 1999.⁵ More precisely, it is stated:

The concept of “national minority” does not exist under Monegasque law and would be difficult to apply in Monaco. Monegasque nationals number only 5,070 of the 29,972 inhabitants and are therefore a minority in their own country. Foreigners represent more than 80 per cent of the population of the Principality; there are nearly 122 different nationalities in Monaco (the French and Italian communities being the largest).⁶

3.2 Broadcasting legislation⁷

Although the UN Human Rights Committee has commented on the exercise of the right to freedom of expression in Monaco, its remarks were very general in nature.⁸ The availability of foreign broadcasts in the Principality, in particular from neighbouring states, is unhindered. Although the main pieces of legislation governing private sector broadcasting

⁴ The United Nations Human Rights Committee is the “monitoring body” of the International Covenant on Civil and Political Rights.

⁵ Initial report of the Principality of Monaco, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, United Nations Human Rights Committee, Doc. CCPR/C/MCO/99/1 of 15 May 2000, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.MCO.99.1.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.MCO.99.1.En?Opendocument). See paras. 204-207.

⁶ *Ibid.*, para. 205.

⁷ See generally, N. Helberger, “Monaco - Developments in the Audiovisual Sector” in *Legal Guide to Audiovisual Media in Europe - Recent Legal Developments in Broadcasting, Film, Telecommunications and the Global Information Society in Europe and Neighbouring States*, Strasbourg, European Audiovisual Observatory, 1999, pp. 192-193 available at: <http://www.ivir.nl/publications/helberger/Monaco.html>.

⁸ “The Committee takes note of the exceptions to freedom of expression which are provided for by the law of the state party and are justified by the protection of individual rights or the safeguarding of general interests (art. 19 of the Covenant). / The state party should take steps to ensure that these restrictions on freedom of expression are consistent with those provided for in article 19, paragraph 3, of the Covenant and, in particular, that they are strictly necessary in terms of the purpose they are intended to serve.” – para. 19, Concluding Observations of the Human Rights Committee: Monaco, Doc. CCPR/CO/72/MCO of 28 August 2001, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.72.MCO.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.72.MCO.En?Opendocument).

date from the 1970s, television and radio stations operating in Monaco do so in compliance with French and Italian regulations. Under Article 8 of Ordinance no. 5356 of 2 May 1974 regulating the private radio-electric stations, broadcasting in Monaco is supervised by a section of the State administration rather than by a specially established supervisory body for the audiovisual sector.⁹ The focus of broadcasting law in the country is largely on its technical and tax-related aspects. In light of this, there are no specific provisions on minority-language broadcasting. Three main pieces of legislation are:

- Act no. 928 of 8 December 1972 concerning private radio-electric stations
- Ordinance no. 5356 of 2 May 1974 regulating the private radio-electric stations
- Act no. 1122 of 22 December 1988 concerning the distribution of radio and television programmes

4 Current developments

In Monaco, minority rights in general and the linguistic rights of minorities in particular do not appear to feature prominently in existing broadcasting legislation or in existing governmental policies on broadcasting. Monaco is currently in the process of formally acceding to the European Convention on Transfrontier Television.

⁹ Article 8 reads: “The Monegasque administration will exercise permanent control over the conditions of use of private radio-electric stations, in accordance with the specifications set out by a Ministerial Order.”

The Netherlands

Apart from the Frisian language, no indigenous languages are recognised as such in the Netherlands. Both Frisian and the languages of various ethnic minorities are catered for by broadcasters in the Netherlands. Besides the usual obligations on public service broadcasters (diverse programme offer, portrayal of society in a balanced way, development of cultural diversity, etc.), in the Netherlands, there is the additional requirement that at least half of their television airtime must be in Dutch or in Frisian. One particular public service broadcaster, the Netherlands Programme Service, is required to devote 20% of television airtime and 25% of radio airtime to ethnic and cultural minorities. While private broadcasters are subject to less detailed content regulation, 40% of the material broadcast by them must also be in Dutch or in Frisian. A special body, the Dutch Media Authority, oversees the implementation of these and other legal provisions governing broadcasting. A number of minority broadcasting initiatives have been launched in the Netherlands (particularly in the major cities) and are financed directly by the government for their broadcasting activities and also indirectly via funds designated for the promotion of multiculturalism. An imminent redistribution of radio frequencies in the four largest cities is expected to entail the imposition of qualitative conditions on licence-holders and the reservation of a number of frequencies for minority groups.

1 Introduction

The discussion about minority languages and the media in the Netherlands is primarily focused on the so-called ethnic minority languages. Apart from the Frisian language, no indigenous language is recognised as such, let alone actively promoted. Broadcasting for and by ethnic minorities is, however, thought to play an important role in the integration of minorities in Dutch society.

As of August 2001, ethnic minorities constitute 1.7 million people from a total population of 16 million.¹ The four major groups receiving special attention from the government come from Surinam, Turkey, Morocco and the Antilles/Aruba, each speaking their own language. Together, they comprise more than one million people. About 450,000 people in the Netherlands are able to speak Frisian.² Major dialects spoken in the Netherlands are Limburgish, which is spoken by 900,000 speakers and Low-Saxon, which is spoken by 1,800,000 speakers.³ These, however, are not recognised as fully-fledged minority languages.

2 Constitution

The Dutch constitutional provisions are to be found in the *Grondwet*.⁴

2.1 Freedom of expression

Article 7

¹ *Rapportage Integratiebeleid Etnische Minderheden 2001, Kamerstukken II 2001-2002*, 28 006, nrs. 1-2.

² T. McGonagle, "Committee of Ministers urges greater use of Frisian in Dutch Audiovisual Media", *IRIS – Legal Observations of the European Audiovisual Observatory*, 2001-9: 4.

³ See: <http://www.eblul.org/wow/stad.asp?stad=Pays-Bas&B1=Go%21&yezh=saozneg>.

⁴ *Grondwet voor het Koninkrijk der Nederlanden van 24 augustus 1815*, as last amended by *Stb.* 2000, 294, available at: http://www.minbzk.nl/contents/pages/00007999/grondwet_nl_2000_11-00.pdf (NL) and http://www.minbzk.nl/contents/pages/00012485/grondwet_UK_6-02.pdf (EN).

1. No one shall require prior permission to publish thoughts or opinions through the press, without prejudice to the responsibility of every person under the law.
2. Rules concerning radio and television shall be laid down by Act of Parliament. There shall be no prior supervision of the content of a radio or television broadcast.
3. No one shall be required to submit thoughts or opinions for prior approval in order to disseminate them by means other than those mentioned in the preceding paragraphs, without prejudice to the responsibility of every person under the law. The holding of performances open to persons younger than sixteen years of age may be regulated by Act of Parliament in order to protect good morals.
4. The preceding paragraphs do not apply to commercial advertising.

2.2 Broadcasting

See previous section, 'Freedom of expression'.

2.3 Minority rights

Article 1

All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, or sex or on any other grounds whatsoever shall not be permitted.

2.4 (Official/State) language(s)

No constitutional provisions are dedicated to the protection of minority languages or to the Dutch language. A few years ago, a Proposal⁵ to amend the Constitution obliging the promotion of the use of the Dutch language was rejected.⁶ Its objective was to emphasise Dutch as the official language; safeguard it from internationalisation or 'Europeanisation' and give it firm status in the governmental sphere. No new legislative measures to that end have been proposed.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

The government publishes an annual report on the integration of minorities. The most recent annual report was sent to the Parliament on 18 September 2001.⁷ The discussion concerning minorities focuses on the integration of ethnic minorities. 'Indigenous' minorities (as opposed to minority languages) do not exist in the Netherlands.

⁵ *Kamerstukken II*, 1995-96, 24 431, nr 2.

⁶ *Handelingen II* 1995-96, nr. 25, p. 5124. From the Parliamentary discussion (*Handelingen II* 1996-1997, nr. 24, *Tweede Kamer*, p. 4846-4860, 4921-4938, 5000-5020), one can infer that a majority rejected the proposal for two reasons. On the one hand, the necessity of the amendment was not sufficiently convincing, and on the other hand, doubts remained regarding the binding power of 'social rights' such as the proposed language-right.

⁷ See footnote no. 1. Key points discussed in the report are current social, political and institutional developments, youth and education, employment, discrimination/racism and communication policy. The labour market and education are recognised as being the most important dimensions of integration policy and positive achievements regarding these goals are mentioned. The marginalisation of minority youths and the segregation of ethnic minorities, in particular, are recognised as being the most important factors inhibiting full integration (p. 17).

At least three Acts concerning minorities have been adopted. Again, these focus on the integration of allochthonous minorities; no Acts recognise indigenous minorities, as such. The *Wet overleg minderhedenbeleid* (Act regarding the consultation of minorities) encourages the government to participate in a discourse with minority groups three times a year to discuss minority-related policy.⁸ The *Wet adviesorganen minderhedenbeleid* (Act on advisory bodies for minority policy) is connected with this Act.⁹ Lastly, the *Wet samen* (Act regarding the stimulation of labour-participation of minorities) encourages the labour-participation of minorities by obliging undertakings to publish an annual report on this issue.¹⁰

Apart from the Dutch language, the Frisian language has gained legislative recognition. An Act providing for the possibility to found companies in the Frisian language has been adopted.¹¹ Furthermore, the possibility to communicate in the Frisian language with administrative bodies settled in the province of Friesland has been introduced.¹² In the judicial process, the permitted usage of the Frisian language has recently been broadened.¹³ Furthermore, a consultative body regarding the relationship between the Province of Friesland and the government has been established, in accordance with Article 7 of the European Charter for Regional or Minority Languages.¹⁴

On 5 June 2001, an administrative covenant concerning the Frisian language and culture was agreed by the Province of Friesland and the Cabinet.¹⁵ The Agreement incorporates the main provisions of the European Charter on Regional or Minority Languages, explicitly referring to specific Articles of the Charter. The Agreement does not contain any directly binding provisions, but is to be viewed more as an expression of intent towards the further promotion and recognition of Frisian as a minority language. Other minority languages have not been recognised as a language in the governmental process and no proposals to that end exist.

3.2 Broadcasting legislation

The regulation of the content of broadcasting is primarily focused on public service broadcasting. Private broadcasters are less subject to rules concerning content. Apart from the prescription that 40% of the material broadcast shall be in the Dutch or the Frisian language,

⁸ *Stb.* 1997, 335.

⁹ *Stb.* 1994, 329.

¹⁰ *Wet van 9 april 1998 tot wijziging van de Wet bevordering evenredige arbeidsdeelname allochtonen in verband met het vergroten van de effectiviteit van de wet (Wet stimulering arbeidsdeelname minderheden)*, *Stb.* 1998, 241, extended by the *Besluit van 30 oktober 2001, houdende verlenging van de Wet stimulering arbeidsdeelname minderheden*.

¹¹ *Wet van 22 november 2001, houdende invoering van de mogelijkheid om de statuten van Friese verenigingen en stichtingen in het Fries op te stellen*, *Stb.* 2001, 574.

¹² *Wet van 4 mei 1995, houdende wijziging van de Algemene wet bestuursrecht in verband met de opnemings van regels betreffende het gebruik van de taal in het bestuurlijk verkeer* (Act of 4 May 1995, amending the common administrative law in regard to the introduction of rules concerning the use of Frisian language in the administrative procedures), *Stb.* 1995, 302.

¹³ *Wet van 14 september 1995 tot wijziging van de Wet van 11 mei 1956 (Stb. 242), houdende enige regelen betreffende het gebruik van de Friese taal, in het bijzonder in het rechtsverkeer (verruiming van de mogelijkheden van het gebruik van het Fries)* (Act of 14 September 1995 amending the Act of 11 May 1956, relating to the use of the Frisian language, especially in legal procedures (broadening of the possibilities for the use of Frisian)), *Stb.* 1995, 440.

¹⁴ *Instellingsbesluit consultatief orgaan Friese Taal*, *Stcrt.* 1998, nr. 33, p. 10 as last amended 14 March 2002, *Stcrt.* 2002, nr. 62, p. 19.

¹⁵ *Bestuursafpraak Friese taal en cultuur 2001*, *Stcrt.* 2001, nr. 125, p. 8. Key points addressed in the Agreement are the relationship between the Frisian language and education, judicial and administrative bodies, the media, cultural activities, economic and social life and international exchange programmes.

no conditions concerning minorities or language are placed on private broadcasters (Article 521(1) of the Media Decree – see *infra*).

MEDIABESLUIT (MEDIA DECREE), 1987 (AS AMENDED)

Article 521

1. Commercial broadcasting establishments shall devote at least forty per cent of their television programme service to programmes originally produced in the Dutch or Frisian language.
2. Paragraph 1 shall not apply to programme services for special broadcasting purposes.¹⁶

Public service broadcasting is regulated by the *Mediawet* (Media Act)¹⁷ and the *Mediabesluit* (Media Decree).¹⁸ Public service broadcasting, as an institution, is accorded the task of providing a diverse, high-quality supply of programmes for general broadcasting on the national, regional and local levels (Section 13c(1)(a) of the Media Act). This is further emphasised by Section 13c(2) of the Act, which states that the programmes offered by the public service broadcaster shall present a balanced image of society, reflecting the current interests of citizens and their viewpoints on societal, cultural and religious matters. Such programming should be accessible to the whole population and contribute to the growth of cultural diversity in the Netherlands (Sections 13c(2)(a) and (b) of the Act).

MEDIAWET (MEDIA ACT), 1987 (AS AMENDED)

Section 13c

1. The tasks of public broadcasting shall be:
 - (a) to provide a varied and high-quality range of programme services for general broadcasting purposes at national, regional and local level in the fields of information, culture, education and entertainment and to transmit them, or cause them to be transmitted, on open networks;

[...]
2. Public broadcasting programme services shall provide a balanced picture of society and of people's current interests and views pertaining to society, culture, religion and belief, and:
 - (a) shall be accessible to the entire population in the area for which the programmes are intended;

¹⁶ Article 521(1) of the Media Decree should be read in conjunction with Section 71g of the Media Act: "[...]3. The minimum percentage of programmes originally produced in the Dutch or Frisian languages to be included in the television programme service of a commercial broadcasting establishment shall be laid down by Order in Council, and the minimum percentage of the said programmes to be subtitled for people who are hard of hearing may also be laid down. If requested, the Media Authority may, in special cases and subject to certain conditions, set the percentages referred to in the previous sentence at a lower level for a specific commercial broadcasting establishment."

¹⁷ *Mediawet*, *Stb.* 1987, 294 as last amended by the Act of 14 December 2000, *Stb.* 2000, 586, available at <http://www.cvdm.nl/pages/regelgeving.asp?m=w&> (NL) and at http://www.ivir.nl/legislation/nl/media_act.pdf (EN).

¹⁸ *Mediabesluit*, *Stb.* 1987, 573, as last amended by the *Besluit van 21 mei 2001*, *Stb.* 2001, 261, available at <http://www.cvdm.nl/documents/mediabesluit.pdf> (NL) and at <http://www.cvdm.nl/documents/mediadecree.pdf> (EN).

- (b) shall contribute to the development and dissemination of the socio-cultural diversity of the Netherlands;
[...]
- (d) shall be aimed at a broad audience and at population and age groups of varying size and composition.
[...]

In addition, all national public service broadcasters shall broadcast at least 50% of television airtime in the Dutch or Frisian language, according to Section 54a of the Media Act. This includes programmes that are accompanied by a Dutch or Frisian voice-over, but does not include dubbed programmes.¹⁹

MEDIA ACT

Section 54a

- 1. Establishments which have obtained broadcasting time shall devote at least fifty per cent of their television broadcasting time to programmes originally produced in the Dutch or Frisian language.
[...]

CONCESSIEWET (CONCESSION ACT), 2000

The *Concessiewet* (Concession Act) of 2000 accorded the *Nederlandse Omroep Stichting* (the Dutch Broadcasting Foundation, NOS) a 10-year concession for public service broadcasting, to be divided between the different public service broadcasters.²⁰ National public service broadcasters can obtain a provisional recognition ('erkenning') from the government, which can later become a permanent recognition, effectively enabling them to broadcast programmes within the public broadcasting system. A provisional recognition is given on fulfilment of several criteria, the most important one being that a new broadcaster shall add to the (already-existing) diversity in the national public service broadcasting system.²¹

On the national level, the NOS and the *Nederlandse Programma Stichting* (the Netherlands Programme Service, NPS) are the two public service broadcasters explicitly regulated by the Media Act. According to the responsible minister, the Minister for Education, Culture and Science, it is essential that the NPS expresses the multicultural nature of Dutch society.²² It must offer a programme schedule which, in combination with those of other broadcasters,

¹⁹ *Regeling van het Commissariaat voor de Media van 18 december 2001 houdende beleidsregels omtrent Europese, onafhankelijke, recente, Nederlandstalige of Friestalige programmaonderdelen*, *Stcrt.* 28 December 2001, nr. 250, p. 123 e.v.

²⁰ *Wet van 23 maart 2000 tot wijziging van de Mediawet in verband met de invoering van een vernieuwd concessiestelsel voor de landelijke publieke omroep*, *Stb.* 2000, 138.

²¹ Sections 37a jo. 32 of the Media Act. Recently, the *Raad van State* (the judicial body reviewing administrative decisions regarding broadcasting) upheld a decision refusing to grant a provisional recognition to the broadcasting organisation, *DeNieuwe Omroep*. The case concerned the application of the diversity criterion by the Minister: *DeNieuwe Omroep/Staatssecretaris Onderwijs, Cultuur & Wetenschappen, Afdeling Bestuursrechtspraak Raad van State*, 24 July 2002, LJN no. AE5780, Case no. 200201911/1, available at: http://www.rechtspraak.nl/uitspraak/show_detail.asp?ui_id=36773. See further, W. Steenbruggen, "No New Entrants in Dutch Public Broadcasting System until 2005", *IRIS – Legal Observations of the European Audiovisual Observatory*, 2002-8: 9.

²² *Concessiewet 2000, Memorie van Toelichting, Kamerstukken II*, 26 660, nr. 3, p. 22.

provides a balanced image of present societal, cultural and religious diversity in the Netherlands (Section 15(1) of the Act).

MEDIA ACT

Section 15

1. The Programme Service Foundation of the Netherlands shall provide a programme service which consists of programmes which satisfy social, cultural, religious or spiritual needs amongst the public in such a way as to ensure that this programme service, together with the programme services of the other establishments which have obtained national broadcasting time, provides a balanced reflection of the social, cultural, religious and spiritual diversity in the Netherlands.[...]

This is further developed in Article 15 of the Media Decree, which states that the NPS shall devote at least 20% of airtime on television and 25% of airtime on radio to ethnic and cultural minorities. Compliance with these rules is observed by the *Commissariaat voor de Media* (the Dutch Media Authority).²³

MEDIA DECREE

Article 15

1. The programme service of the Programme Service Foundation shall include the following programmes:

- (a) background information and commentaries on political and social developments, including developments in the economic, scientific and technological fields;
- (b) programmes for target groups within society which are not or not sufficiently served elsewhere;
- (c) consumer information; and
- (d) programmes other than those referred to at (a) to (c) and in section 51b, subsection 3 of the Media Act, which meet the social, cultural, religious or spiritual needs of the public in such a way that the programme service of the Programme Service Foundation, together with the programme services of the other establishments which have obtained national broadcasting time, provides a balanced reflection of the social, cultural, religious and spiritual diversity of the Netherlands.

2. In addition to the programmes referred to in paragraph 1, the television programme service of the Programme Service Foundation shall also include:

- (a) for at least twenty per cent, programmes for or relating to ethnic and cultural minorities; and
- (b) programmes of an educational nature aimed at young people.

3. In addition to the programmes referred to in paragraph 1, at least twenty-five per cent of the radio programme service of the Programme Service Foundation shall consist of programmes for or relating to ethnic and cultural minorities.

On the regional and local levels, only one licence per province and one licence per municipality is granted. In order to become a broadcasting corporation, one must have as a statutory goal the provision of a programme schedule focused on meeting the societal,

²³ See its website: <http://www.cvdm.nl>. Certain guidelines are used to test the compliance of broadcasters with their legal obligations, but not all of these are published. No guidelines concerning the 'minority criterion' have been published.

cultural, religious and spiritual demands present in the province or municipality (Section 30 of the Media Act). Furthermore, it must devote 50% of its programming to informative, cultural and educational programmes (Sections 51e(a) resp. 51f(1)(a) of the Act).

MEDIA ACT

Section 30

A local or regional broadcasting establishment shall satisfy the following requirements:

(a) [...]

(b) [...] The programme service shall be aimed at satisfying the social, cultural, religious or spiritual needs of the general public in a municipality or province or the area of the province served by the establishment to such an extent that it may be deemed to be serving the public interest; and

(c) pursuant to its constitution, it must have a body which determines its programme service policy. This body shall be composed in such a way as to be representative of the main social, cultural, religious and other spiritual movements within the municipality or province. The members of this body shall be appointed by the provincial executive or the municipal executive respectively, upon the recommendation of the broadcaster.

Section 51b

1. The Programme Service Foundation shall use all its broadcasting time to provide a programme service consisting of programmes which meet the social, cultural, religious or spiritual needs of the public in such a way that this programme service, together with the programme services of the other establishments which have obtained national broadcasting time, provide a balanced reflection of the social, cultural, religious and spiritual diversity in the Netherlands.

2. [...]

3. In addition to the programme referred to in subsection 2, at least forty per cent of the programme service of the Programme Service Foundation shall consist of programmes of a cultural nature, of which a part at least equal to twenty per cent of the broadcasting time allocated to the Programme Service Foundation shall consist of or relate to the arts.

Section 51e

A regional broadcasting establishment shall use its broadcasting time to provide a programme service:

(a) of which at least fifty per cent consists of programmes of an informative, cultural and educational nature which have a particular relevance to the province for which the programme service is intended; and

(b) [...]

Section 51f

1. A local broadcasting establishment shall use its broadcasting time to provide a programme service:

- (a) of which at least fifty per cent consists of programmes of an informative, cultural or educational nature which have a particular relevance to the municipality for which the programme service is intended; and
 - (b) of which a minimum percentage, to be determined by Order in Council, consists of programmes which are produced by or exclusively for that establishment.
- [...]

The assessment of what is ‘cultural’ is to be determined on a regional and local level, leaving room for *couleur locale*. The programme council of the regional or local broadcaster—the body ultimately responsible for decisions concerning the material broadcast—shall be representative of the groups living in the province or municipality. In practice, the representation of, and time devoted to, minorities are dependent on the population in the municipality or province.

4 Application of legislation and other measures affecting language

An important starting point for the regulation of minorities and broadcasting is the Notice on Media and Minorities which was drafted by the Department of Education, Culture and Science and sent to the Parliament on 9 June 1999.²⁴ This notice is the outcome of a discussion on media and minorities that started in 1996 in reaction to the growing use of satellite dishes by ethnic minorities.

The Notice aims at a representation of Dutch multi-culturalism through the supply and demand of the Dutch media. Firstly, an active self-regulatory approach towards responsible image-making concerning minorities should be taken by programme-makers.²⁵ This policy is recognised in a communication plan regarding the integration of minorities as well.²⁶ With regard to the material broadcast, diversity of output should be an important goal.²⁷ The extent to which the media should provide minorities with programmes in their own languages remains to be answered, since this may lead to the polarisation of current differences.²⁸ Demand for minority-language programming does exist, however, and national public service broadcasters have a specific responsibility to address this demand. A proposal for a national minority television broadcaster was not received with much enthusiasm in the Notice on Media and Minorities, whereas the idea for a national minority radio station was more positively received. The thinking was, apparently, that a dedicated television broadcaster would not receive much attention and would not encourage integration because of its isolated position.²⁹ However, radio would lend itself more to ‘segmentation’ and therefore the idea of a dedicated minority radio broadcaster was received more positively.³⁰ In the follow-up to the Notice, it turned out that there was no room for a dedicated national radio broadcaster for technical reasons.³¹ Lastly, the importance of the participation of ethnic journalists in the press and media is underlined.

²⁴ *Media- en minderhedenbeleid, Kamerstukken II 1998-1999*, 26 597, nr. 1.

²⁵ *Ibid.*, p. 4.

²⁶ *Communicatieplan Meedoen is winnen, Kamerstukken II*, 26 333 en 27 083, 1999-2000, nr. 15.

²⁷ *Media- en minderhedenbeleid, Kamerstukken II 1998-1999*, 26 597, nr. 1, p. 3.

²⁸ *Ibid.*, p. 4.

²⁹ *Ibid.*, p. 8.

³⁰ *Ibid.*, p. 9.

³¹ *Ibid.*, p. 2.

On the regional and local levels, two important developments can be pointed out. The *Service Organisatie Migranten Media* (SOM-Media), which was created in 1993 in reaction to the discontinuation of governmental funding for local immigrant broadcasters, increasingly became the only source for minority-content because of the undersatisfactory supply of local minority programming in three major “immigrant” cities (Rotterdam, Utrecht and Den Haag). At that time, Amsterdam was the only municipality providing minority programming of its own, largely by virtue of *Migranten Televisie* (MTV). This development eventually ended in the government-coordinated merger of SOM-Media and MTV into a new organisation, *Migranten Televisie Nederland* (MTNL), on 1 July 2001.³²

Plans for the redistribution of radio frequencies are pending. The redistribution will involve the reservation of radio frequencies for minority broadcasting in the four big cities: Amsterdam, The Hague, Rotterdam and Utrecht.³³ This should not be a simple migration of cable-broadcasting to radio, but should be accompanied by qualitative conditions in order to ensure a balanced representation of the different groups, programme-coordination, exchange and education and support for the editorial board. The redistribution has not yet been implemented because of a dispute over the preferred distribution mechanism.

MTNL will provide four major immigrant groups in the aforementioned four cities with 45 minutes of news per group per week, consisting of 15 minutes of locally-produced news.³⁴ The programmes, which started on 21 January 2002, will be broadcast in a minority language, with Dutch subtitles if necessary. A second development is the advent of the public broadcaster functioning as a so-called ‘access broadcaster’, offering airtime-slots to other interested parties. It turns out that these programmes by non-dedicated broadcasters are frequently listened to and used by minorities. In relation to this, in the follow-up to the Notice on Media and Minorities, an express provision containing must-carry obligations for the minority programming of regional and local broadcasters was not thought to be necessary.³⁵ The view was taken that a must-carry obligation for access-broadcasters already exists and that this indirectly enables other minority programmers to transmit minority programming through these channels.

In its financial planning, the Department of Education, Culture and Science has devoted 1.7 million Euros to MTNL for the period of 2002.³⁶ During the period 2002–2004, 3.6 million Euros is to be given to MTNL. Furthermore, the *Stichting Omroep Allochtonen* (Allochthonous Broadcasting Foundation, STOA) received a set amount of funding in 2002, plus a project-based budget.³⁷ This has not changed much since the last budget.³⁸ The *Organisatie van Lokale Omroepen Nederland* (Dutch Federation of Local Broadcasters,

³² See also the website: <http://www.mtnl.nl>.

³³ *Kabinetsstandpunt Frequentiebeleid, Handelingen II 1999-2000*, 24 095, nr. 43, p. 11-12.

³⁴ *Vaststelling van de begroting van de uitgaven en de ontvangsten van het Ministerie van Onderwijs, Cultuur en Wetenschappen (VIII) voor het jaar 2002, Kamerstukken II 28 000 VIII*, nr. 20, p. 13.

³⁵ *Media- en minderhedenbeleid, Kamerstukken II 1998-1999*, 26 597, nr. 6, p. 4.

³⁶ *Ibid.*

³⁷ STOA was founded by national minority organisations in 1986 with the goal of improving the supply of programmes aimed at ethnic minorities and produced by them. It is funded by the Dutch government and Europe, although it is independent from the government, minority organisations and broadcasting organisations. See its website: <http://www.stoa.nl>.

³⁸ *Vaststelling van de begroting van de uitgaven en de ontvangsten van het Ministerie van Onderwijs, Cultuur en Wetenschappen (VIII) voor het jaar 2001, Kamerstukken II 27 400 VIII*, nr. 14.

OLON) receives financial support to cater for the interests of, and provide services to, local broadcasters.³⁹

Both OLON and STOA consider minority-language broadcasting to play an important bridging function in the process of integration. This is not always the opinion of regional and local broadcasting organisations which take the view that minority-language broadcasting will promote isolation and segregation. A project running from 2000 to 2001 in 27 municipalities with relatively large immigrant communities offered the possibility to fund local broadcasters providing multicultural programming.⁴⁰ The project was organised by OLON and funded by the government. In Eindhoven, the editorial staff of the minority broadcaster was to comprise the five major resident immigrant groups, producing the programmes together. In the end, the five groups split and started broadcasting in their own languages again. In May 2000, in Enschede, a firework-disaster affected, *inter alia*, a large group of Moroccans and Turks. On that occasion, broadcasts were organised by Turks and Moroccans, addressing their own communities and this played an important role in dealing with the disaster. Both broadcasters are still functioning.

5 Current developments

A development already mentioned is the institution of MTNL. It started broadcasting on 21 January 2002, although it has not yet gained much audience share. Furthermore, access-broadcasters might play a more important role in ensuring the access of minorities to the media in the future. The low threshold for gaining access to broadcasting channels through access-broadcasters enables diverse small minority groups to be heard. The redistribution of radio frequencies reserves one frequency for minority radio in each of the four big cities, but this has not yet been implemented.

³⁹ OLON is the interest group of public service local broadcasters, having almost all 340 local broadcasters as its members. It is designated as the consultative body for the local broadcasting service by the Media Act. See its website: <http://www.olon.nl>.

⁴⁰ *Media- en minderhedenbeleid, Kamerstukken II 1998-1999*, 26 597, nr. 6, p. 4.

Norway

Despite the existence of constitutional provisions concerning minority groups such as the Sami community, as well as the existence of legislation enacted specifically to safeguard and develop their language, culture and way of life, the country's broadcasting legislation does not contain any regulatory provision on the use of the Sami language. The national broadcasting corporation has a sub-company which frequently transmits radio programmes in Sami, both in regions populated by the Sami and also for use on the national channels. It also produces television programmes on a regular basis. There is scope in the licences of private broadcasters for including content-related obligations of one kind or another. One national television station, for instance, is obliged under the terms of its licence to broadcast programmes to the Sami population. In general, these programmes must be in the Sami language. The licensing process for local public service television services gives special consideration to the intended engagement of applicants with local organisations for the development of programmes. There is no specific regulation on the use of Sami in the rules concerning local broadcasting; a sphere in which a number of actors transmit programmes only in Sami or else a mixture of Sami- and Norwegian-language programming. The use of Kvensk, on the other hand, remains unregulated.

1 Introduction

1.1 Linguistic topography¹

Norway has two written national languages, Bokmål and Nynorsk, and two minority languages, Sami and Kvensk. Almost all Norwegians speak a dialect. After 400 years as a part of Denmark, the old Norse written language had disappeared and Danish was the only written language in Norway. One important element in the nationalistic movement in the 1800's was the establishment of a new written Norwegian language, based on the spoken dialects. Alongside these developments, Danish became "Norwegianised". In 1885, the Norwegian Parliament accorded both languages equal status.

Kvensk derives from Finnish and is spoken by the descendants of people who migrated from Finland a long time ago.² The Samis are an aboriginal people.³ Three Sami languages/dialects are used in Norway: North Sami, Lule Sami and South Sami (other Sami languages/dialects are spoken elsewhere).

North, Lule and South Sami are usually regarded as one language, but this is questioned by some linguists. North Sami is by far the largest, concentrated in Finnmark County and the northern part of Troms County, as well as in Sweden and Finland. Lule Sami is spoken in Troms County, as well as in Sweden, and South Sami is spoken in Nordland and Trøndelag Counties, as well as in Sweden.

¹ See also the Report submitted by Norway pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, Council of Europe Doc. ACFC/SR (2001) 1 of 2 March 2001, available at <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/StateReports/2001/norway/Norway.htm> and also at <http://odin.dep.no/archive/krdvedlegg/01/07/europ024.pdf>.

² The situation regarding Kvensk is similar to that of Meänkeli in Sweden.

³ The website of the Sami Parliament: <http://www.samediggi.no/default.asp?menuID=8&lang=no>. See also the overview available on the webpages of the Norwegian Ministry of Foreign Affairs: <http://odin.dep.no/odinarkiv/norsk/dep/ud/1997/annet/032005-990462/index-dok000-b-n-a.html>.

Kvensk was originally Finnish, spoken by people from Finland who migrated to Norway. The language developed differently from Finnish in Finland and some linguists maintain that it has developed to become a separate language (or has not developed, and therefore become a separate language). Meänkeli has a similar story. It is spoken in the Tornedal Valley in the north of Sweden, close to the Finnish border.

There are no censuses in Norway for which people have to provide information about their ethnic background or mother tongue. Numbers of people who are Sami or Kvens are therefore estimates. The population of Norway is thought to be approaching 4.7 million people. It is estimated that around 40,000 Samis live in the country. The Kven population is, according to the authorities, presumed to be low. The Kvens are estimated to number 2,000-8,000 people. Romanes is spoken by approx. 400 persons around the Oslo area. Romani is spoken by so-called “travellers”. The estimated number of speakers of Romani is uncertain, ranging from some hundreds to some thousands. Norway’s State reports under the European Charter for Regional or Minority Languages recognise Romanes and Romani as minority languages (traditionally spoken). Neighbouring languages (Finnish, Swedish, Danish and Icelandic) are spoken, due to a traditionally common labour market.⁴

The Norwegian authorities consider the following groups of persons to be national minorities in Norway: Jews, Kven, Roma/Gypsies, the Romani people/Travellers and Skogfinn (people of Finnish descent living in southern Norway).⁵ The authorities have indicated their deference to the declaration by the *Sámediggi* (Sami Parliament) that the Sami people should be regarded as an indigenous people rather than as a minority (for the purposes of the Framework Convention for the Protection of National Minorities), a status which accords them more extensive legal and political rights than those guaranteed by the Convention.⁶ Apart from legislation concerning the Sami people, the only pieces of legislation which afford languages any kind of official status are (i) an Act on the official use of Bokmål and Nynorsk which grants the lesser-used language, Nynorsk, certain minimum rights, and (ii) a Nordic Treaty on the use of Nordic languages in the Nordic countries.

1.2 Broadcasting

The Norwegian Mass Media Authority (*Statens Medieforvaltning*), an administrative body that operates under the aegis of the Royal Ministry of Cultural and Church Affairs, “has licenced [sic] approximately 300 local radio stations. These are run by commercial companies, religious organisations, political parties, ethnic and linguistic minorities, educational institutions and various non-profit organisations. The Mass Media Authority has also issued licences for local terrestrial television in 30 areas.”⁷

2 Constitution

The Constitution of the Kingdom of Norway was adopted in 1814, but has undergone a number of amendments since.⁸

⁴ Statistical information about Norway is available at: http://www.ssb.no/english/subjects/00/minifakta_en/en/.

⁵ This statement is based on section 1.1 ‘Introductory Remarks’ (p. 3) of Norway’s State Report, cited at footnote no. 1.

⁶ See further, *ibid.*, p. 3.

⁷ Website of the Mass Media Authority, available at: <http://www.smf.no>.

⁸ Available at: <http://odin.dep.no/odin/engelsk/norway/system/032005-990424/> (EN).

2.1 Freedom of expression

Article 100

There shall be liberty of the Press. No person may be punished for any writing, whatever its contents, which he has caused to be printed or published, unless he wilfully and manifestly has either himself shown or incited others to disobedience to the laws, contempt of religion, morality or the constitutional powers, or resistance to their orders, or has made false and defamatory accusations against anyone. Everyone shall be free to speak his mind frankly on the administration of the State and on any other subject whatsoever.

This Article of the Constitution is presently under revision. Constitutional amendments have to be brought before two different Parliaments (with an election in-between).⁹ The first proposal was presented in Parliament last autumn. The next election is due in 2005. Any decision cannot be reached before 2005. The revision will probably be a more modern version of the 1814 wording.

2.2 Minority rights

Minorities are recognised due to the ratification of the Council of Europe Framework Convention on National Minorities. The Constitution contains one Article dealing with a specific minority group:

Article 110a

It is the responsibility of the authorities of the state to create conditions enabling the Sami people to preserve and develop its language, culture and way of life.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

Chapter 3 of Act No. 56 of 12 June 1987 concerning the *Sameting* (the Sami Parliament)¹⁰ and other Sami legal matters ("The Sami Act")¹¹ contains provisions regulating the use of the Sami language. These cover a range of issues, including the translation of statutes and regulations into Sami; the right to reply in Sami; the extended right to use Sami in judicial proceedings; the right to tuition in Sami, etc. Article 1-1 states: "The purpose of the Act is to make it possible for the Sami people in Norway to safeguard and develop their language, culture and way of life." Article 1-5 goes on to state that "Sami and Norwegian are languages of equal worth. They shall be accorded equal status pursuant to the provisions of Chapter 3." There are, however, no rules regarding broadcasting in the Sami Act.

3.2 Broadcasting legislation¹² and practice

Act No. 127 of 4 December 1992 relating to Broadcasting ("the Broadcasting Act")¹³ contains no provisions on the use of the Sami language or other minority languages in

⁹ See further, Article 112 of the Constitution.

¹⁰ "Sameting" is the Norwegian term for "Sámediggi", the Sami term used *supra*.

¹¹ Available at: <http://www.ub.uio.no/ujur/ulovdata/lov-19870612-056-eng.pdf>.

¹² English-language translations of various pieces of Norwegian broadcasting legislation are available at: http://odin.dep.no/kkd/engelsk/acts_regulations/index-b-n-a.html.

broadcasting. Nor is any such provision contained in Regulations No. 153 of 28 February 1997 relating to broadcasting.¹⁴ However, these Regulations do set out a number of public service obligations which could include Sami- or other minority-language broadcasting:

Section 7.5 provides, *inter alia*, that “[W]hen dealing with applications for licences to operate terrestrial local public service television services, special importance shall also be attached to whether the applicant intends to establish local public service television services and to cooperate with local organizations, etc. on developing programmes.”

Section 7.6.1 states that “[O]n local television locally produced programmes containing local material shall be broadcast on weekdays. The objective is for broadcasts to contain such programmes every day.” Agreements on retransmission must, pursuant to Section 7.6.4(e), contain provisions setting out that “weekday broadcasts shall contain locally produced programmes containing local material.”

According to Section 7-7, local radio broadcasts shall as a general rule be required to ensure that “[...] at least 75 per cent of the licensee’s daily transmission time shall consist of programmes produced by the licensee or by others connected with the licence area.”

The Norwegian Broadcasting Corporation (NRK) has a sub-company named The Sami Radio (TSR). TSR transmits regular radio broadcasts in Sami, both within the Sami area and for use on the national channels. TSR also produces television programmes on a regular basis.

In 2000, NRK Sami Radio produced 1,537 hours radio on a regular basis. It has 70 employees, head offices in Karasjok and eight local offices. The broadcasts cover Finnmark, Troms and the northern part of Nordland Counties. In addition, 147 hours of radio programming were broadcast on the national radio network. In 2000, NRK Sami Radio produced 48 hours of television. Regular television news programmes were launched on 20 August 2001.

Under the terms of the licence it was granted for the period 2003 to 2009, the private national television channel, TV 2, has been obliged to broadcast programmes to the Sami population. As a rule, those programmes shall be in the Sami language.¹⁵

TV 2 broadcast 30 hours of programmes about Sami matters in 2001 (this followed earlier criticism of the station for not broadcasting programmes in Sami, as required under its broadcasting remit). Private national radio produces three minutes of news in Sami on weekdays. Four local radio companies broadcast only in Sami.

There is no specific regulation of the use of Sami in the rules concerning local broadcasting. However, in practice, in addition to the four local broadcasters mentioned above, there are a few (other) local radio broadcasting entities which transmit in both Sami and Norwegian. As regards Kvensk, there is no regulation at all.

Apart from the Norwegian and Sami languages, NRK also broadcasts quite a lot in Swedish, partly because the language is widely understood in Norway and because Sweden is

¹³ Available at: <http://odin.dep.no/kkd/engelsk/media/018041-200005/index-dok000-b-n-a.html>.

¹⁴ Available at: http://odin.dep.no/kkd/engelsk/acts_regulations/018001-990111/index-dok000-b-n-a.html.

¹⁵ Article 3-3 no. 7 of the licence. The Norwegian-language version of the licence is available at: <http://odin.dep.no/kkd/norsk/medier/konsesjon/018041-990019/index-dok000-n-n-a.html>

geographically and culturally close. There is a programme in Finnish (approx. 12 minutes per week) in regional broadcasts targeting Troms County (this programme is supposed to cater for the Kvens, whose language status is a bone of contention, i.e. whether it is Finnish or a separate language).

Poland

Despite the fact that minorities only account for an estimated 3% of the Polish population, there is a clear consciousness of minority rights that is reflected at the constitutional and legislative levels. As far as broadcasting legislation is concerned, public service broadcasters are expressly required to have regard for the needs of ethnic groups and minorities. The interests of minority groups also inform the activities of the National Broadcasting Council. In particular, it accepts communications (complaints, motions and recommendations alike) from minority associations; it initiates and organises meetings and conferences on minorities' difficulties and their involvement in broadcasting activities and it gives due consideration to the impact applicants' programming proposals will have on minorities when deciding on the allocation of income from licence fees among public radio stations. A new feature of the broadcasting landscape in the country is the institution of social broadcaster. Such broadcasters benefit from exemption from certain fees on the strength of the social role they fulfil. It is possible for minority organisations, etc., to become a social broadcaster. The right to seek and impart information in certain mother tongues has also been set out in a number of bilateral treaties to which Poland is a party. In early 2002, draft legislation on minorities was brought before Parliament. If enacted, this Bill would have the effect of bolstering already existing commitments on the part of the public broadcaster towards minorities. Specifically, it would include among the (basic) tasks of the public service broadcaster to ensure the production and transmission of programmes in the mother tongues of minorities in Poland.

1 Introduction

1.1 Linguistic topography

The Republic of Poland covers an area of 322,577 km² and has a population of 38,654,000 people.¹ The country borders Germany, the Czech Republic, Slovakia, Ukraine, Belarus, Lithuania and Russia (the Kaliningrad District).

Poland is a country with a homogeneous population; the numerical force of Polish citizens with a nationality other than Polish can only be estimated. According to estimates made by minority associations and church sources in Poland, the number of minorities should range between 1.2 and 1.3 million, i.e., 3–4% of the entire population of Poland.² According to Government estimates, the 13 minorities living in Poland, including Germans, Ukrainians, Belarussians, Lithuanians, Slovaks, Russians, Jews, Armenians, Czechs, Roms, Tartars, Lemkos (Łemkowicie) and Karaites (Karaimi) reach 1 million, which constitutes 2–3% of the total number of the country's citizens.³ The Ministry of Internal Affairs and Administration

¹ Statistical Yearbook of the Republic of Poland 2000, Year LX, Warsaw, Chapter I Table 2, Chapter V, Table 2 (115) – figures from 31 December 1999. See: <http://www.stat.gov.pl>.

² M. Wenzel, *The Attitude to Ethnic Minorities*, Report No. 2192, Public Opinion Research Centre, 1999, available at: <http://www.cbos.pl/SPISKOM.POL/1999/KOM138/KOM138.HTM> (PL).

³ Report submitted by Poland pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, Council of Europe Doc. ACFC/SR (2002) 2 of 10 July 2002, available at <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/StateReports/2002/Poland%20state%20report.doc> (EN) and also as *Raport dla Sekretarza Generalnego Rady Europy z realizacji przez Rzeczpospolitą Polską postanowień Konwencji Ramowej Rady Europy o Ochronie Mniejszości Narodowych* (Report to the Secretary General of the Council of Europe on the realisation by the Republic of Poland of the Provisions of the Framework Convention of the Council of Europe for the Protection of National Minorities) at: http://www.ms.gov.pl/spr_oby_mn.html (PL and EN). It should be noted that in October 2002, minority

estimates that the German national minority amounts to 300-500,000 people resident mainly in the opolskie, śląskie, dolno-śląskie, warmińsko-mazurskie and kujawsko-pomorskie provinces. The Ukrainians are a national minority amounting to 200-300,000 people. Now the largest Ukrainian communities may be found in the zachodnio-pomorskie, warmińsko-mazurskie and dolnośląskie provinces. Belarussians are a minority of 200-300,000 people mostly resident in the podlaskie province. Lithuanians number 20-25,000 people and live in homogeneous communities in a few municipalities of Puńsk, Szypliszki, Krasnopol and Sejny. Slovaks amount to 10-20,000 people and live in the area of Spisz and Orawa. Russians are a minority of 10-15,000 people who are mainly domiciled in Białystok, in the Suwalskie and Mazury regions, and in the cities of Warsaw and Łódź. Jews number 8-10,000 people and are highly dispersed and live mainly in such major cities as Warsaw, Wrocław, Kraków, Łódź, Dzierżoniów, Bielsko-Biała, Częstochowa, Gdańsk and Legnica. Armenians, of whom there are 5-8,000 people, are dispersed all over Poland, mainly in the Lower Silesia region and in the city of Kraków. Czechs, of whom there are about 3,000 people, are mainly settled in the area of the Kłodzka Valley, in the Lublin region and in Zelowo. Roms, whose population in Poland is estimated at 25,000, consist of four major groups: Polska Roma, Kelderasze, Lowari and Bergitka Roma. Tartars, of whom there are about 5,000 people, live in indigenous Tartar colonies in the Białystok region (Bohoniki and Kruszyniany), as well as in such cities as Białystok, Sokółka and Dąbrowa Białostocka. Lemkos (Łemkowie) - a population of 60-70,000 people who used to live in the so-called Łemkowszczyzna region which is situated in the Lower Beskid Mountains and is part of the Beskid Sądecki Mountains. The Karaites are some 200 people dispersed in Warsaw and its vicinity, the Gdańsk/Gdynia/Sopot agglomeration, Opole, Wrocław, Szczecin and Kraków. The Karaites are a people of Turkish extraction.⁴ Other sources estimate that the main minorities in Poland can be grouped as follows: Germans (around 700,000), Ukrainians (250-300,000) and Belarussians (around 250,000), while the Slovaks (25-30,000), Lithuanians (15-20,000), Roms (around 10,000) and Jews (around 5,000) do not figure as strongly in numerical terms. The Russian, Czech and Greek populations are negligible in terms of their numbers.⁵

The figures contained in the Statistical Yearbook of the Republic of Poland for 2000 (noting only the number of members of national and ethnic associations in Poland in 1999), leads to the conclusion that Germans constitute the largest minority group, with more than 322,000 members in their national associations. The second largest minority group is the Ukrainians, with more than 8,000 associated members, followed by the Belarussians with more than 5,000 associated members and the Romanians with more than 9,000 associated members. The Jewish minority has nearly 5,000 associated members. The Lithuanians' associations group over 3,000 members, and almost the same number of members was quoted for the Slovaks' associations. Poland's ethnic group association of Kashubians has almost 5,000 members; Mazurs, more than 1,000 members and, Lemkos (Łemkowie) almost 1,000.⁶

associations operating in Poland submitted their own Report to the Secretary General of the Council of Europe on the realisation by the Republic of Poland of the Provisions of the Framework Convention of the Council of Europe for the Protection of National Minorities, in which they indicate some problems that should be resolved and suggest solutions.

⁴ More information is available on the website of the Ministry of Internal Affairs and Administration:

http://www.mswia.gov.pl/eng_mn_narod_1.html.

⁵ *Op. cit.*, footnote no. 2.

⁶ Statistical Yearbook of the Republic of Poland 2000, Year LX, Warsaw, Chapter V, Table 31 (144), page 114.

1.2 Broadcasting

According to figures provided by National Broadcasting Council, there are currently (April 2002) 188 private radio programme services in Poland, three of which are national, five regional and 180 municipal, while there are 22 public radio programme services, five of which are national and 17 regional. The total number of private television programme services is 35, of which 19 are satellite services (two constitute digital platforms), one is national, four are cross-regional and eleven are local. The total number of public television programme services is 16, three of which are national, one is satellite and 12 are local. The enlargement and diversification of programme services in recent years are reflected in the intensification of public activity in different media undertaken by minority or ethnic groups.

The public television broadcaster, *Telewizja Polska*, joint-stock company, fulfils its duties in respect of its local audiences through its 12 local television programme services, nine of which broadcast different series and individual programmes targeting national and ethnic minorities. The broadcasting areas covered by some regional programme services are inhabited by substantial numbers of national and ethnic minorities. This explains why such programme services are addressed directly to those groups of receivers. Generally, programmes targeted at minorities in the past year have been transmitted by the following local television programme services: *Białystok* for Belarussians, Ukrainians, Lithuanians, Russians and Tatars; *Katowice* for Germans; *Gdańsk* for Kashubians; *Kraków* for Ukrainians, Lemkos, Slovaks, Roms, Armenians and the Jewish minority and *Warszawa* for Ukrainians. Moreover, *Rzeszów* and *Lublin* jointly produce and transmit programmes for different national and ethnic minorities. Other local programme services also transmit certain programmes treating the culture and religion of minorities to some extent. Such programmes tend to be transmitted with varying frequency: from once a week to once a month.⁷ The number of programmes broadcast in the mother tongues of national or ethnic minorities amounted to five: ‘Sami o sobie’ (this programme consists of separate parts intended for the following minorities: Belarussians, Ukrainians, Lithuanians, Russians, the Roms and Tatars in their respective national languages); ‘Telenowyny’ (in the Ukrainian language); ‘Schlesische Journal’ and ‘Schlesische Wochenschau’ (in the German language); ‘Rodno ziemia’ (in the Kashubian and Polish languages).⁸

In 2001, the following public regional programme services produced and transmitted programmes in minorities’ mother tongues: *Radio Białystok*, joint-stock company (daily programmes in Ukrainian, Belarussian and Lithuanian); *Radio Olsztyn*, joint-stock company (a daily programme in Ukrainian and a weekly programme in German); *Radio Opole*, joint-stock company (programmes in German a few times per week); *Radio Katowice*, joint-stock company (a weekly programme in German); *Radio Rzeszów*, joint-stock company (weekly programmes in Ukrainian) and *Radio Koszalin*, joint-stock company (programmes in Ukrainian and Kashubian every two weeks). The number of radio programmes targeting minorities and transmitted in their own languages is considerable.⁹

⁷ National Broadcasting Council Annual Report, March 2002, Warsaw, available at: <http://www.krrit.gov.pl/stronykrrit/sprawozdania.htm#spr> (PL); *ibid.*, ref. 3.

⁸ *Op. cit.*, footnote no. 3.

⁹ *Op. cit.*, footnote no. 3.

2 Constitution

The Polish Constitution of 2 April 1997¹⁰ is the fundamental source of law in Poland.

2.1 Freedom of expression

Article 54

1. The freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone.
2. Preventive censorship of the means of social communication and the licensing of the press shall be forbidden. Statutes may require the receipt of a permit for the operation of a radio or television station.

Article 14

The Republic of Poland shall ensure freedom of the press and other means of social communication.

2.2 Broadcasting

Articles 213–215 of the Constitution contain separate provisions on the National Broadcasting Council (NBC). It is stated that NBC is a guarantor of freedom of speech, the right to information and the public interest in radio and television. NBC's independence is constitutionally guaranteed by the special, prescribed manner of election of its members by the *Sejm* (the Lower Chamber of the Polish Parliament), the Senate and the President of Poland. The Constitution provides that NBC Members cannot belong to political parties, trade unions or lead any form public activity contrary to dignity of their office or the functions arising from their NBC membership. For more detailed rules on the functioning of the NBC and its tasks, the Constitution refers to the Broadcasting Act of 1992 (as amended).

Article 213

1. The National Broadcasting Council shall safeguard the freedom of speech, the right to information as well as safeguard the public interest regarding radio broadcasting and television.
2. The National Broadcasting Council shall issue regulations and, in individual cases, adopt resolutions.

Article 214

1. The members of the National Broadcasting Council shall be appointed by the Sejm, the Senate and the President of the Republic.
2. A member of the National Broadcasting Council shall not belong to a political party, a trade union or perform public activities incompatible with the dignity of his function.

Article 215

¹⁰ The Constitution of the Republic of Poland, 2 April 1997, available at <http://www.sejm.gov.pl/prawo/konstytucja/kon1.htm> (PL) and at <http://www.sejm.gov.pl/english/konstytucja/kon1.htm> (EN).

The principles for and mode of work of the National Broadcasting Council, its organization and detailed principles for appointing its members, shall be specified by statute.

2.3 Minority rights

Apart from the general references to protection of human dignity and equality of all citizens contained in Article 30 §1 and in Article 32, Article 35 of the Constitution guarantees the protection of the rights of minorities.

Article 30

The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

Article 32

1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

Article 35

1. The Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture.
2. National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.

2.4 (Official/State) language(s)

Article 27

Polish shall be the official language in the Republic of Poland. This provision shall not infringe upon national minority rights resulting from ratified international agreements.

3 General legislation

The Constitution lays down the general, fundamental and the most crucial principles of Polish law, which are then supplemented by numerous international agreements and statutes. Poland has been a party to the Framework Convention for the Protection of National Minorities since 1 April 2001. It was ratified on 10 November 2000 by the Polish President, upon agreement by Parliament (27 April 2000). On 20 December 2000, the ratification document was forwarded to the Secretary General of the Council of Europe. In Poland, a ratified international agreement constitutes part of the domestic legal order and is directly applied after its publication in the *Dziennik Ustaw* (Official Journal).

3.1 Broadcasting legislation

BROADCASTING ACT OF 29 DECEMBER 1992

A turning point in establishing the legal framework for minorities' access to the electronic media was the enactment of the Broadcasting Act of 29 December 1992 (later amended several times).¹¹ Article 21 specifies the tasks and obligations of public broadcasters, which include the dissemination of knowledge of the Polish language. Article 21§2(9) imposes upon the public broadcaster the obligation to "have regard to the needs of ethnic groups and minorities." Some other provisions of Article 21 could also conceivably bear upon the use of minority languages in the media.

Article 21

1. The tasks of public radio and television shall be in particular:
 - 1) production and transmission of national and regional radio and television programme services,
 - 2) construction and operation of radio and television transmitters and relay stations,
 - 3) transmission of teletext services,
 - 4) work on new technologies of production and transmission of radio and television programme services,
 - 5) production, provision of services and carrying out commercial activities related to audiovisual production, including exports and imports,
 - 6) encouraging artistic, literary, scientific and educational activities,
 - 6a) dissemination of knowledge of Polish language,
 - 7) production of educational programmes and ensuring access by people of Polish descent and Poles living abroad to such programmes.
2. Programme services of public radio and television should:
 - 1) be guided by the sense of responsibility for the content of the message and by the need to protect the good reputation of public radio and television,
 - 2) provide reliable information about the vast diversity of events and processes taking place in Poland and abroad,
 - 3) encourage an unconstrained development of citizens' views and formation of the public opinion,
 - 4) enable citizens and their organisations to take part in public life by expressing diversified views and approaches as well as exercising the right to social supervision and criticism,
 - 5) assist the development of culture, science and education, with special emphasis on the Polish intellectual and artistic achievements,
 - 6) respect the Christian system of values, being guided by the universal principles of ethics,
 - 7) serve to strengthen the family ties,
 - 7a) advance the propagation of pro-health attitude,
 - 8) contribute to combating social pathologies,
 - 9) have regard to the needs of ethnic groups and minorities.

¹¹ The Broadcasting Act of 29 December 1992 (as amended), available at <http://www.krrit.gov.pl/stronykrrit/przepisy/ustawa.doc> (PL) and at <http://www.krrit.gov.pl/stronykrrit/angielska/1a.doc> (EN).

An amendment of 1 February 2001 introduced the notion (and indeed, institution) of “social broadcaster” (which may be, for example, a minority association), which is important from the point of view of minorities (Articles 4 and 39b). A social broadcaster is exempt from fees payable for awarding or altering the licence.

Article 4

For the purpose of the Act:

1a) “social broadcaster” shall mean a broadcaster who:

- a) propagates learning and educational activities, promotes charitable deeds, respects the Christian system of values, being guided by the universal principles of ethics, and strives to preserve national identity in the programme service,
- b) does not transmit programmes or other broadcasts referred to in Article 18 paragraph 5 within the programme service,
- c) does not transmit advertising or teleshopping, sponsored programmes or other sponsored broadcasts,
- d) does not charge any fees for transmission, retransmission or reception of the programme service.

Article 39b

1. The following may apply to the National Council to be granted the status of social broadcasters:

- 1) an association, within the framework of implementing its statutory objectives,
- 2) a foundation, within the framework of implementing its statutory objectives,
- 3) a church or a religious legal person of a given church, or a religious organisation whose status is regulated by an Act of Parliament.

2. Social broadcaster shall be exempt from fees payable for awarding or altering the licence.

3. In case of breach by a social broadcaster of requirements specified in Article 4 paragraph 1a, the licensing authority shall issue a decision revoking its status as a social broadcaster and shall impose in the said decision the obligation to pay the fees referred to in paragraph 2, along with legal interest charged as from the date of awarding or altering the broadcasting licence.

NATIONAL BROADCASTING COUNCIL

According to Article 213 §1 of the Constitution, the National Broadcasting Council shall safeguard freedom of expression, the right to information and the public interest regarding radio and television broadcasting.

The following activities undertaken by the NBC are aimed at protection of minorities:

- during the allocation of income from licence fees amongst the relevant public radio programme services, the Council takes into consideration whether these programme services transmit programmes for minorities,
- accepting motions and complaints from minorities’ associations,
- initiating and organising meetings and conferences on minorities’ problems and their presence in electronic media.

More specifically, in September 2001, the NBC organised an international conference in Czarna on the impact of regional television in the development of cross-border cooperation. Issues such as the integration of border regions were examined. In December 2001, the NBC organised an international conference in Białystok on radio and television programmes for minorities, produced in their own languages. The first stage of this conference had been organised in Białystok in November 2000. Moreover, in 2002/3, the NBC is conducting a series of training sessions for journalists nominated by minority associations.

3.2 Transfrontier dimension

The right to disseminate and exchange information in one's own mother tongue has been embodied in certain bilateral treaties on cooperation and friendship that Poland has signed, including: the Agreement between Poland and Czechoslovakia of 6 October 1991; the Treaty between Poland and the Federal Republic of Germany of 17 June 1991; the Treaty between Poland and Ukraine of 18 May 1992; the Treaty between Poland and Lithuania of 26 April 1994; the Treaty between Poland and Latvia of 1 July 1992 and the Treaty between Poland and Belarus of 23 June 1992.

4 Current developments

On 11 January 2002, the draft Act on National and Ethnic Minorities in Republic of Poland,¹² prepared by Parliamentary National and Ethnic Minorities Commission, was sent to the Speaker of the Parliament, thus initiating the legislative procedure. Its first reading took place on 27 February 2002. The draft law was subsequently submitted to the following parliamentary committees: the Administration and Internal Affairs Committee; the Education, Science and Youth Committee and the National and Ethnic Minorities Committee.

Article 19 of the draft text provides that the promotion of knowledge on the history, culture and way of living of national minorities in Poland, as well as the production and transmission of programmes in the mother tongues of minorities living in Poland, are among the tasks of public radio and television.¹³

Moreover, draft Article 18 provides that public authorities shall finance certain non-commercial activities in the sphere of minority culture(s), including running cultural institutions; the publication of books and periodicals in the mother tongues of minorities;

¹² *Komisyjny projekt ustawy o mniejszościach narodowych i etnicznych w Rzeczypospolitej Polskiej*, Druk nr. 223, available at: [http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/223/\\$file/223.pdf](http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/223/$file/223.pdf) (PL).

¹³ Draft Article 19 reads: "[T]he tasks of public radio and television shall include the promotion of knowledge on history, culture and way of living of national minorities in Poland, as well as the production and transmission of programmes in the mother tongues of minorities living on the territory of Poland." In the original Polish, it reads: "Do zadań publicznej radiofonii i telewizji należy promowanie wiedzy o historii, życiu i kulturze mniejszości narodowych zamieszkających w Polsce, jak również produkcja i emisja programów w językach ojczystych mniejszości zamieszkających w Rzeczypospolitej Polskiej."

running libraries and documentation centres, as well as the cultural education of minors aimed at preserving minorities' heritage.

Portugal

According to the Constitution of Portugal, the official language is Portuguese and the only language to be recognised by legislation is *Mirandês*, a Romance language spoken by about 7,000 people in the northeast of the country. This legal recognition for *Mirandês* dates back to 1999 and the pith of the statute in question is that it allows for the promotion and teaching of the language. Relevant broadcasting legislation does not give any specific recognition to minority-language broadcasting either: the law does not stretch beyond a statement indicating that the promotion of the Portuguese language and of the goals that are central to the Portuguese national identity are among the general objectives of radio and television broadcasting activities. On the other hand, the legislation does not in any way forbid or restrict public or private expression in minority or foreign languages.

1 Introduction

1.1 Linguistic topography

Portuguese is the official language of the country, which is spoken by the entire population of 10,355,824.¹ In the northeast of Portugal, there is a small community (around 7,000 people) which speaks Portuguese and *Mirandês*, a Romance language recently recognised by the Portuguese State.² The State is not concerned with linguistic minorities because all Portuguese citizens share the same language. In Portugal there are, however, non-Portuguese speakers, namely foreigners and immigrants, but no attention has been given to their linguistic rights.

1.2 Broadcasting

The Portuguese media express themselves in Portuguese. There is only one single weekly programme in *Mirandês* and it is broadcast by a local radio station (*Rádio Mirandum.FM*).

1.3 Government policies on broadcasting and minorities

The government is not involved in the development of any sort of minority languages policy regarding broadcasting.

2 Constitution

The Portuguese Constitution (*Constituição da República Portuguesa*³) does not specifically mention linguistic minority rights. However, constitutional rights apply equally to all Portuguese citizens.

2.1 Freedom of expression

Article 37 Freedom of expression and information

¹ This is the total Portuguese population (living in Portugal). This data is from the «Instituto Nacional de Estatística» (<http://www.ine.pt>). The last census took place in 2001.

² See further: <http://www.mirandes.no.sapo.pt>.

³ Constituição da República Portuguesa, 1976 (last revision: 1997), available at http://www.parlamento.pt/leis/index_const.html (PT) and at http://www.parlamento.pt/leis/constituicao_ingles/index_const.htm (EN).

1. Everyone has the right to express and publicise his or her thoughts freely, by words, images or other means, and the right to impart, obtain and receive information without hindrance or discrimination.
2. The exercise of these rights shall not be prevented or restricted by any kind or form of censorship.
- [...]

2.2 Broadcasting

Article 38 Freedom of the press and mass media

1. Freedom of the press is guaranteed.
2. Freedom of the press comprises:
 - a. The freedom of expression and creativity for journalists and collaborators and, as a function of the journalist, the giving of editorial direction to the relevant mass media, except where the latter are doctrinal or denominational in character;
 - b. The right of journalists to have access to information sources, to protection of their professional independence and confidentiality, and to elect editorial councils, in accordance with the law;
 - c. The right to found newspapers and other publications, without prior administrative authorisation, deposit or qualifications.
3. The law shall require, in general terms, the disclosure of the ownership, and the means of financing, of the mass media.
4. The State shall guarantee the freedom and independence of the mass media from political and economic powers; it shall impose the principle of speciality upon companies that own general information media; it shall treat and support those companies in a non-discriminatory manner and shall prevent their concentration, in particular through multiple or inter-locking financial interests.
5. The state shall guarantee the existence and operation of a public radio and television service.
6. The mass media in the public sector shall be so structured and operated as to be independent of the Government, the Public Service and other public bodies, and to guarantee opportunities for the expression of, and challenge to, different lines of opinion.
7. Radio and television stations shall operate only under a licence granted for the purpose after a public competition, in accordance with the law.

Article 39 High Authority for the Mass Media

1. The High Authority for the Mass Media shall guarantee the right to information, the freedom of the press, the independence of the mass media from political and economic powers, opportunities for expression of, and challenges to, different lines of opinion, and the exercise of the right to broadcasting time, the right of reply and the right of political argument.
2. The law shall determine all other functions and competence of the High Authority for the Mass Media and shall regulate its functioning.
3. The High Authority for the Mass Media shall be an independent body, composed, in accordance with the law, of 11 members, as follows:
 - a. One judge appointed by the Superior Council for the Judiciary, who shall preside;
 - b. 5 members elected by the Assembly of the Republic by a system of proportional representation and the Hondt highest average method;

- c. 1 member appointed by the Government;
- d. 4 members representing public opinion, the mass media and the arts.
- 4. The High Authority for the Mass Media shall participate in the procedures for licensing of radio and television channels, in accordance with the law.
- 5. The High Authority shall participate in the appointment and dismissal of directors of the public mass media, in accordance with the law.

Article 40 Right to broadcasting time, to reply and to political argument

- 1. Political parties, trade unions, professional organisations and organisations representing economic interests, as well as other nationally based social organisations, have the right to broadcasting time on publicly owned radio and television, to the extent to which they are relevant and representative and meet the objective criteria that shall be prescribed by the law.
- [...]

2.3 Minority rights

No special attention is given to minority rights. The Constitution is based on egalitarian principles.

Article 13 Principle of equality

- 1. All citizens have the same social rank and are equal before the law.
- 2. No one shall be privileged or favoured, or discriminated against, or deprived of any right or exempted from any duty, by reason of his or her ancestry, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social circumstances.

2.4 (Official/State) language(s)

Article 11 National symbols

- [...]
- 3. Portuguese is the official language.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

So far, only *Mirandês* has been legally recognised as a minority language. Spoken by merely 7,000 people in the northeast of the country,⁴ *Mirandês* was contemplated in Law n° 7/99 of 29 January.⁵ In this law, Portugal recognises the right to promote and teach *Mirandês*.

3.2 Broadcasting legislation

TELEVISION LAW (LAW N° 31-A/98 OF 14 JULY)

⁴ See further: <http://mirandes.no.sapo.pt/Lmdefinicao.html>.

⁵ *Lei n.º 7/99 de 29 de Janeiro, Reconhecimento oficial de direitos linguísticos da comunidade mirandesa*, available at: <http://mirandes.no.sapo.pt/LMPSlei.html>.

The broadcasting legislation in Portugal does not consider minority language rights. The Television Law⁶ only refers to the Portuguese language when expressing the main objectives of television broadcasting. In Article 8, 1, d) it is stated that it is a general objective of television broadcasting activity “[T]o promote the Portuguese language and the values which express the national identity”.

RADIO LAW (LAW Nº 4/2001 OF 23 FEBRUARY)

Similarly, the Radio Law⁷ states in its Article 9, d, that one of the objectives of radio broadcasting is “[T]o promote the Portuguese culture and language and the values which express the national identity”.

4 Application of legislation and other measures affecting language

Existing legislation does not have any significant relevance concerning linguistic rights. Apart from *Mirandês*, which has gained official status and may be taught in schools, the state seems particularly concerned with the protection of the Portuguese language. It should be noted that legislation does not forbid or restrict in any way, private or public expression in minority or foreign languages.

5 Current developments

The Programme of the XV Constitutional Government, approved by the Portuguese Parliament on 17 April 2002, envisages a certain reduction of public service broadcasting. Specific details of the envisaged changes have yet to emerge, although it is already clear that a restructuring of the national public service broadcaster, *Radiotelevisão Portuguesa* (RTP, S.A.), will take place.⁸

⁶ *Lei da Televisão, Lei n.º 31-A/98, de 14 de Julho*, available at:

http://www.aacs.pt/legislacao/lei_da_televisao.htm.

⁷ *Lei n.º 4/2001, de 23 de Fevereiro*, available at:

<http://www.icp.pt/template20.jsp?categoryId=2483&contentId=12657>.

⁸ Point 5 - *Comunicação Social* (Media) of Chapter III - *Investir na Qualificação dos Portugueses* (To Invest in the Qualification of the Portuguese People) of *Programa do XV Governo Constitucional* (Programme of the XV Constitutional Government), available at: <http://www.portugal.gov.pt>. See further, H. Sousa, “PT – New Government to Reduce Public Service Broadcasting”, *IRIS – Legal Observations of the European Audiovisual Observatory*, 2002-5: 7.

Romania

Romanian is the official language of the country and this is reflected by the priority status it enjoys in broadcasting law and practice. Public service broadcasting is required by law to promote the values of the Romanian language (as well as the values of the authentic cultural creation of national minorities). The public service broadcasting system devotes programming slots to the country's largest minorities, most notably, the Germans, Hungarians, Roma and Ukrainians. In its capacity as guarantor of the public interest in the audiovisual sector, the national regulatory authority must ensure the protection of the Romanian culture and language, as well as the cultures and languages of ethnic minorities. It may adopt decisions for the fulfilment of its monitoring of the correct usage of all of these languages. Television programmes in languages other than Romanian must be translated into Romanian by way of subtitles, dubbing or simultaneous translation. The only exceptions to this general rule are music videos and educational programmes for teaching foreign languages. If the statutory translation requirements are likely to affect the "continuity" of a live programme, the programme may be repeated with subtitles. In localities where a national minority comprises more than 20% of the population, programme service suppliers are required by legislation to provide certain re/transmission services in the languages of the minority in question. Romania is party to a number of bilateral treaties (eg. with Ukraine, the former Yugoslavia, Slovakia, Germany and Hungary). These treaties include provisions catering for the cultural and linguistic needs of specific minorities within the State.

1 Introduction

The population of Romania can be broken down as follows: 89.4%, Romanian; 7.1%, Hungarian; 1.7%, Roma; 0.5%, German; 0.3%, Ukrainian and 0.04%, Jewish and others.¹ The national radio system aired its first news programmes in German for the German minority in 1932 and news programmes were first broadcast in Hungarian in 1939. From 1947, the content of these productions was broadened and the time-slot increased from 40 minutes to three hours. Today, "minority" journalists of the national broadcasting company air their programmes for 60 minutes per day in German and in Hungarian. These programmes cover community activities, cultural events, social life and matters relating to the minorities' particular status. The national television company broadcasts similar daily programmes. These broadcasts have a national audience and form a bridge between the national minorities and the Romanian majority.

It has been noted elsewhere that: "[A]ccording to official data released in February 2001 Romania has 255 radio stations, 114 television stations, 856 cable television networks and 18 television stations with a licence for broadcasting via satellite. However, of these, only the publicly funded television and radio stations can effectively reach the entire population; the majority of broadcasting outlets are hampered in their operations by a lack of financial and technological capacity."²

¹ See: <http://www.cdep.ro>.

² M. Stoican, "Romania", in T. McGonagle, Ed., Report on Broadcasting in South-East Europe, ARTICLE 19, Global Campaign for Free Expression/South-East European Network of Associations of Private Broadcasters (SEENAPB), 2001, available at: <http://www.seenapb.org/legislation/htm2000/Romania.htm>.

2 Constitution

The Constitution of Romania was adopted in 1991.³

2.1 Freedom of expression

Article 30

- (1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable.
- (2) Any censorship shall be prohibited.
- (3) Freedom of the press also involves the free setting up of publications.
- (4) No publication may be suppressed.
- (5) The law may impose upon the mass media the obligation to make public their financing source.
- [...]

2.2 Broadcasting

Article 31

- (1) A person's right of access to any information of public interest cannot be restricted.
- (2) The public authorities, according to their competence, shall be bound to provide for correct information of the citizens in public affairs and matters of personal interest.
- (3) The right to information shall not be prejudicial to the protection of the young or to national security.
- (4) Public and private media shall be bound to provide correct information to the public opinion.
- (5) Public radio and television services shall be autonomous. They must guarantee for any important social and political group the exercise of the right to be on the air. The organization of these services and the Parliamentary control over their activity shall be regulated by an organic law.

2.3 Minority rights

Article 4

- [...]
- (2): Romania is the common and indivisible homeland of all its citizens, without any discrimination on account of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin.

Article 6

- (1) The State recognizes and guarantees the right of persons belonging to national minorities, to the preservation, development and expression of their ethnic, cultural, linguistic and religious identity.

³ Available at: http://www.cdep.ro/pls/dic/act_show?ida=1&idl=2 (DE – ES – EN – FR – RO).

(2) The protecting measures taken by the Romanian State for the preservation, development and expression of identity of the persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens.

Article 16

(1) Citizens are equal before the law and public authorities, without any privilege or discrimination.

[...]

Article 59

[...]

(2) Organizations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat each, under the terms of the electoral law. Citizens of a national minority are entitled to be represented by one organization only.

2.4 (Official/State) language(s)

Article 13

In Romania, the official language is Romanian.

Article 32

[...]

(3) The right of persons belonging to national minorities to learn their mother tongue, and their right to be educated in this language are guaranteed; the ways to exercise these rights shall be regulated by law.

[...]

Article 127

[...]

(2) Citizens belonging to national minorities, as well as persons who cannot understand or speak Romanian, have the right to take cognisance of all acts and files of the case, to speak before the Court and formulate conclusions, through an interpreter; in criminal trials, this right shall be ensured free of charge.

3 Legislation

3.1 General legislation affecting minorities and their rights

There is no official hierarchy of ethnic groups or national minority languages in Romania. Hungarians (7.1%) are the largest minority, followed by the Roma (1.7%), Germans (0.5%) and Ukrainians (0.3%).

Issues concerning national minorities in Romania are addressed in many legal documents: laws (Law No. 215 - Local Public Administration - Articles 17, 51, 90);⁴ at least 22 Government Decisions (*Hotarire a Guvernului*) and six Ministerial Orders. These documents have specific provisions on national minorities, including subventions from the state budget for activities carried out by ethnic associations; subventions from the state budget for magazines or other publications issued by national minorities; the creation of an Institute for the study of minority languages in Romania⁵ and the ratification of the Framework Convention for the Protection of National Minorities.

3.2 Broadcasting legislation

LAW No. 41/1994⁶

The activities of the mass media in Romania are mainly regulated by Law No. 41/1994, regarding the setting up of the National Romanian Radio and Television Companies:

Article 4

(1) The Romanian Radio Society and Romanian Television Company, as public services that have the goal to inform, educate and entertain, are committed to impartially and objective[ly] present the facts of social-politic and economic life, both internal and external, to provide correct information to the citizens over public matters, to promote [...] the values of Romanian language and the values of the authentic cultural creation, of national minorities, as well as democratic, civic, moral values [...].

⁴ Law no. 215/2001-Local Public Administration

Article 17 - The authorities of the local public administration will ensure the use of the national minorities language, too in the administrative - territorial units where the percentage of the citizens belonging to a certain national minority reach the amount of 20%. This provision will be materialized in accordance with the provisions in the Constitution, this actual law and the international conventions in which Romania is part.

Article 51 - The decisions that have the power of a law will be issued in the language of a certain national minority if the percentage of the citizens belonging to this national minority reach in that administrative - territorial unit the amount of 20% and the decisions concerning a certain individual belonging to this national minority will be communicated in his own language, too as a result of a special request from the individual.

Article 90

(2) The citizens belonging to a certain national minority can use their own language when addressing, both orally or in writing, to the authorities of the local public administration, if the percentage of these citizens reach the amount of 20% in that administrative territorial unit. They will receive the answers to their questions, both in Romanian and their language.

(3) Persons who know both Romanian and the language of the national minority (as mentioned in Align. 3) will be used in public relations positions.

(4) The authorities of the local public administration will provide both in Romanian and national minority language the writing of the names of administrative territorial units and, also, the names of the public institutions under their authority and will post the announcements of public interest.

(5) - Official papers are written down only in Romanian.

⁵ Government Ordinance no. 121/2000

Article 2

(1) The goal of the Institute for Studying of the National Minorities Matters is to provide a better knowledge of the national minorities rights, of the way national minorities groups are preserving, developing and expressing their ethnic, cultural, linguistic, religious identity [...] and to present the way these rights are guaranteed by other states.

⁶ Available in Romanian at <http://www.just.ro> and <http://www.guv.ro>, the websites of the Ministry of Justice and the Government, respectively.

LAW ON RADIO AND TELEVISION BROADCASTING, 2002⁷

This recently-enacted law annulled and replaced the Law on Radio and Television Broadcasting, No. 48/1992, which *inter alia* provided for the “hosting” by already-licensed broadcasters of socio-cultural organisations in their productions in order to guarantee plurality of opinion, equality of treatment for relevant parties and freedom of expression. The most relevant provisions of the new law for present purposes are as follows:

Article 3

(1) Political and social pluralism, cultural, linguistic and religious diversity, information, education and public entertainment are accomplished and ensured by the transmission and retransmission of programme services observing the freedoms and fundamental rights of the person.

Article 10

(3) The National Audio-Visual Council must ensure the following as the warrantor of the public interest in the field of audio-visual communications:

f) the protection of the Romanian culture and language, as well as of the culture and languages of ethnical minorities;

Article 17

(1) The Council is authorised:

[...]

d) to issue for the application of the provisions from this Law, regulatory normative decisions in order to accomplish its attributions as expressly stipulated in this Law and mainly in regard to:

[...]

- the monitoring of the correct expression in the Romanian language and in the languages of national minorities;

[...]

- non-discriminatory policies regarding race, sex, nationality, religion, political beliefs and sexual orientation;

[...]

- cultural responsibilities of radio-broadcasters;

Article 82⁸

⁷ Law No. 504 of 11 July 2002, published in the *Monitorul Oficial* (Official Journal of Romania) no. 534 of 22 July 2002, available at: <http://www.cna.ro/eng/legis.html> (EN).

⁸ This Article should be read in light of the definitions provided in Article 1, which reads: “[...] d) programme service - the assembly of radio-broadcasting and TV programmes, of shows and the other elements of a service provided by a radio-broadcaster; [...] g) service supplier - any person that creates and sets at the disposal of the public an offer for programme services on a terrestrial radio-electric way or by satellite, by any electronic means, including that by satellite, based on contractual relations with radio-broadcasters or other distributors; [...]”.

(4) In localities where a national minority is larger than 20%, the suppliers shall also ensure transmission services for the programmes free to retransmission, in the language of the respective minority.

3.3 Miscellaneous other decisions

DECISION NO. 23 OF THE NATIONAL AUDIOVISUAL COUNCIL OF MARCH 1999 REGARDING THE TRANSLATION INTO THE ROMANIAN LANGUAGE OF CERTAIN TV PROGRAMMES BROADCAST IN OTHER LANGUAGE [SIC]⁹

Article 1

TV programmes broadcast under authorisation, via satellite or radioelectric means, from the territory of Romania and received on the territory of Romania, in another language than the Romanian, shall be compulsorily translated in the Romanian language. Translation shall be provided by subtitles, dubbing or by simultaneous translation. [...]

Article 2

Programs broadcast directly in a language other than Romanian, according to the programs chart mentioned in the technical conditions of the station, whose translation in Romanian might affect their continuity, will be retransmitted with subtitles in Romanian in case they are broadcast in replay.

Article 3

Musical videos and parts of the lessons of foreign languages which by their conception do not need translations are excepted from the stipulations in Art. 1.

Public broadcasting services using national minority languages are provided by the Central Radio Studios and by local radio studios. These local radio studios are as follows: *Radio Cluj* (14 hours/day on the air, 4 hour/day in Hungarian); *Radio Iasi* (16 hours/day on the air; 15 minutes/week in Ukrainian); *Radio Targu Mures* (16 hours/day on the air in German and Hungarian and 30 minutes/week in Roman); *Radio Tmisioara* (16 hours/day on the air in German, Hungarian, Serbian, Slovakian, Bulgarian and Ukrainian).

National television programmes for national minorities on Channel 1 are as follows: *KRONIKA* political and social magazine (weekly in Hungarian), *KRONIKA* cultural magazine (weekly in Hungarian), *PANORAMA* magazine (twice weekly in German), *CONVIETUIRI* magazine for other national minorities (twice weekly).

3.4 Transfrontier dimension

Romania signed the Framework Convention for the Protection of National Minorities 1 February 1995 and ratified it on 11 May 1995 with Law no. 33/1995.

⁹ Available at: <http://www.cna.ro/eng/decisions/d02399.html>. See further, the website of the National Audiovisual Council (*Consiliul National Al Audiovizualuluicna*): http://www.cna.ro/eng/index_en.html.

The access of minority citizens to broadcasts in their own languages across borders is not restricted, and there are no restrictions with regard to particular languages. Bilateral treaties that Romania has concluded with its neighbours (Hungary, Ukraine, Bulgaria, Yugoslavia) have provisions guaranteeing these minorities free and unlimited access to broadcasting, press and electronic networks in their own languages. The following list of treaties include provisions regarding the linguistic rights and access to broadcasting of the persons belonging to national minorities in Romania.

ROMANIAN - UKRAINIAN TREATY, 1997

Article 13 - regarding the protection of cultural and linguistic national minority

(7) The parties will respect the rights of the persons belonging to a national minority to have access in their own language, to information and mass-media, and also to freely change information and to broadcast information that will not create obstacles with regard to the establishment and operation by these persons of their own mass-media outlets, in accordance with the internal legislation of each of the parties.

ROMANIAN - YUGOSLAVIAN TREATY, 1996

Article 20 - Protection of the Serb national minority, meaning the protection of their ethnic, cultural, linguistic identity.

ROMANIAN - SLOVAKIAN TREATY, 1993

Article 20 - Regarding the protection of national minorities in accordance with the Documents of the Conference for Security and Cooperation in Europe and with the generally-recognised [principles of] international law.

ROMANIAN - GERMAN TREATY, 1992

Article 15 - Regarding the protection of national minorities in accordance with the Documents of the Conference for Security and Cooperation in Europe and the Documents of Copenhagen Human Dimension Meeting.

(2) [...] persons belonging to the German minority from Romania, meaning those Romanian citizens of German descent, especially have the right, individually or together with the other members of their group, to free expression in order to maintain and develop their ethnic, cultural, linguistic and religious identity.

ROMANIAN - HUNGARIAN TREATY

Article 15

(3) Parties will respect the right of the persons belonging to the Romanian minority in Hungary and to the Hungarian minority in Romania, to use freely their mother tongue, both in private and in public, orally and in writing [...].

(4) The part[ie]s will respect the right of the persons belonging to a national minority to have access, in their own language, to information and broadcasting, electronic networks and the press, as well as the right to freely change and broadcast information. It will be possible for these persons to set up and run their own broadcasting (stations), according to the internal legislation of each of the States.

Russian Federation

The Constitution of the Russian Federation designates Russian as the state language. However, the republics have the right to establish their own state languages, which are then used on a par with Russian. Legislation does not create any hierarchy of languages. According to legislation, the programmes of national television and radio must be broadcast in the Russian language. In the regional mass media (both print and broadcasting), Russian, the state languages of the republics, as well as other languages of the peoples living on their territories may be used. As regards translation and dubbing for cinema and video production, Russian, the state languages of the republics and the native languages of the peoples of the Russian Federation may be used, taking into account the interests of the population. Advertising must, however, take place in Russian. At the discretion of the advertiser, advertising may also be carried out in the official languages of the republics and native languages of the peoples of the Russian Federation. Exceptions to this general rule include radio and television broadcasts exclusively in either of the latter-named groups of languages. Broadcasting in minority languages, while not restricted to a certain percentage is not generally encouraged through stipends, tax incentives, or any other methods that could aid the establishment of channels specifically for serving minority needs. When applying for a broadcasting licence, the applicant must state the language in which broadcasting will take place. This notification is purely informative and does not affect either the application or registration processes.

1 Introduction

In the Russian Federation (RF), the main sources of law on the issue of languages in broadcasting are the RF Constitution of 12 December 1993, as well as the norms of international law and intergovernmental treaties. Russia signed the Council of Europe Framework Convention for the Protection of National Minorities on 28 February 1996 and ratified it on 21 August 1998. It signed the European Charter for Regional or Minority Languages on 10 May 2001, but has not ratified this convention.

1.1 Linguistic topography

While Russian is definitely the dominant language and also the language of communication between all ethnic groups in the country, some other languages are widely spoken and are actively promoted in the national republics and other areas of compact habitat of the ethnic groups. They are Tatar, Bashkir, Chechen, Buryat, Udmurt, and others. Some, though, being titular languages of the Republics, are less popular than Russian, even in the respective territories.

1.2 Broadcasting

During the last five years, the Russian authorities have issued some 6,000 broadcast licences to television and radio companies. Some 3,200 television and radio companies exist in Russia at the moment. About 1,000 are independent from the State in terms of ownership.

Russian television companies can be classified according to several parameters:

- the range of their signal (national stations reach over 70% of the national territory, like Channel One, Rossia and NTV; regional networks reach up to 70% of the national territory; and regional, district and local stations cover their own areas and perhaps some outlying localities);

- their form of ownership (state, private and mixed);
- the organisation of their broadcast process (channels that broadcast their full programming schedule across the nation, like Channel One, Rossia, NTV and Kultura; networks which have from 150 to 300 regional partners, such as RenTV, TNT, CTC, TVS, TV Centre, Muz TV, AST, DTV; and specialised channels such as MTV, TV3, Shkolnik TV and 7TV); and
- the form of signal distribution (terrestrial, cable, satellite).

According to data provided by the State Statistics Committee in 2002, over 98% of the Russian population has access to at least one television channel. Television is the only segment of the media market on which the State continues to hold a dominant position (50% of television viewing, 70% of advertising revenue).

Television stations can be divided into three main groups according to ownership structure: state stations, private stations, and mixed-ownership stations (“private media with state participation”). State and quasi-state stations declare their devotion to state and public interests, but act primarily according to the logic of the market, making money on advertising while still enjoying state budgetary financing, various tax and other exemptions and long-term state loans.

The disproportion of the Russian market in favour of state channels not only distorts the economic market by restricting the development of private sector television, but also constricts the market of ideas and freedom of choice of information.

2 Constitution

The Constitution of the Russian Federation was adopted on 12 December 1993.¹ It guarantees equality regardless of nationality (Article 19). This guarantee covers non-Russian citizens living in Russia. In other words, it applies regardless of ethnicity and relates to everyone. Stating one’s nationality is absolutely voluntary, and the compulsion to it under the threat of the infringement of rights is prohibited (Article 26).

2.1 Freedom of expression

Article 29 of the Constitution contains the most important guarantees of freedom of expression and language use.

Article 29

1. Everybody is guaranteed the freedom of thought and expression.
2. Propaganda or agitation inciting social, racial, national or religious hatred and antagonism is prohibited. It is prohibited to propagate social, racial, national, religious or language supremacy.
3. Nobody can be compelled to express his/her opinions or beliefs or the rejection of beliefs.
4. Everybody has the right to look for, to receive, to transfer, to produce and to disseminate information freely and in any legal way. Federal Law defines the list of information constituting a national secret.
5. Freedom of mass communication is guaranteed. Censorship is prohibited.

¹ An English-language translation of the Constitution is available at: <http://www.constitution.ru/en/10003000-01.htm>.

2.2 Broadcasting

The provisions of the RF Constitution do not directly concern broadcasting mass media, and in general, their regulation is at the level of by-laws (see *infra*).

2.3 Minority rights

The provisions of the Articles of the Constitution are developed in other statutes. However, due to the specifics of the demographic and language situation in Russia, the law does not specifically qualify the status of minorities. Policies on minorities are based on the general principles set out in the Constitution. These policies aim at equality and do not provide special privileges for minorities.

Article 19

1. All the people are equal in front of the law and the court.
2. The state guarantees equal human and civil rights and freedoms regardless of sex, race, nationality, language, origin, property and official status, place of residence, attitude to religion, belief, membership in public organisations as well as other circumstances. All the forms of the infringement of citizens' rights on the ground of their social background, race, nationality, language and religion are prohibited.
3. Men and women enjoy equal rights and freedoms and equal opportunities for their implementation.

Article 26

- [...]
2. Everybody has the right to use his/her native language, and to the free choice of the language of communication, upbringing, education, and creative activity.

Article 69

The Russian Federation guarantees the rights of aboriginal small-numbered peoples according to the recognised principles and norms of the International Law and international treaties of the Russian Federation.

2.4 (Official/State) language(s)

Article 68

1. The state language of the Russian Federation in all its territory is Russian.
2. The republics have the right to establish their state languages. They are used equally with the state language of the Russian Federation at public power bodies, local self-government, and governmental institutions of the republics.
3. The Russian Federation shall guarantee to all of its peoples the right to preserve their native language and to create conditions for its study and development.

3 Federal legislation

3.1 General legislation affecting minorities and their linguistic rights

LAW ON THE GUARANTEES OF THE RIGHTS OF NUMERICALLY SMALL INDIGENOUS PEOPLES OF THE RUSSIAN FEDERATION OF 1999²

There is a special regime regarding aboriginal small-numbered peoples (living in communities of less than 50,000 people) and the peoples of the Far North. According to the Law On the Guarantees of the Rights of Numerically Small Indigenous Peoples of the Russian Federation, the list of such peoples is approved by the RF Government. This law guarantees the right to original social-economic and cultural development and obliges the State to provide assistance by devising the programmes of support, allocating the means, etc. The right to preserve and to develop native languages as well as to receive and disseminate information in native languages and to establish mass media is guaranteed.

Article 10. The rights of the small numbered peoples to the preservation and development of their original culture.

Members of the small-numbered peoples, the associations of the small-numbered peoples for the purposes of the preservation and development of their original culture and according to the legislation of the Russian Federation are eligible:

To preserve and to develop native languages; to set up public organizations, cultural centers and national-cultural autonomies of small-numbered peoples, the funds of the small-numbered peoples' development and the funds of the financial support to the small-numbered peoples; to create according to the RF legislation and their material and financial capacities training groups comprising the members of the small-numbered peoples in order to teach them the traditional economic activities and crafts.

LAW ON THE LANGUAGES OF THE PEOPLES OF THE RUSSIAN FEDERATION , 1991³

No normative act contains a list of "officially recognised" languages since this would be contrary to Article 19(2) of the Constitution. Therefore, languages are not rated hierarchically in the law. The order of the use of the state language and other languages in the territory of Russia is currently regulated by the RF Law On the Languages of the Russian Federation. According to the "Introduction" to this Law, the State "promotes the development of the national languages, bilingualism and multilingualism on the whole territory of the Russian Federation". The subjects of the Russian Federation have the right "to adopt laws and other normative legal acts about the protection of the citizens' rights to free choice of the language of communication, upbringing, education and creative activity" (Article 3). Article 20 deals specifically with language-use by the mass media.

Article 20. The language of mass media

² 30 April 1999 (№ 82-Φ3).

³ 25 October 1991, No. 1807-1 (as amended by the Federal Law of 24 July 1998, N.126-Φ3), unofficial English-language translation available at:
http://www.riga.lv/minelres/NationalLegislation/Russia/Russia_Languages_English.htm.

1. Publication of all-Russian newspapers and magazines, broadcasts of Russian TV and radio programmes are conducted in Russian language as the state language of the Russian Federation. All-Russian newspapers and magazines can be published also in other languages according to the will of the founders.
2. In the mass media of the subjects of the Russian Federation, the Russian language, the state languages of the republics, as well as languages of the peoples living on their territories are used.
3. In translating and dubbing cinema and video production, the state language of the Russian Federation, the state languages of republics and other languages are used, taking into account the interests of the population.
4. The order of use of the languages in mass media is determined by the legislation of the Russian Federation and subjects of the Russian Federation.

3.2 Broadcasting legislation

No normative act on broadcasting touches on the use of the languages of the peoples of the Russian Federation (including obtaining licences, elaborating the programme concept, etc.). With the exception of nationwide broadcasters (who work in the state language), broadcasters are entitled to distribute programmes in the language of the peoples of the RF subjects, whenever they constitute a significant section of a given subject. There are no legal obstacles to obtaining licences for broadcasting when the whole television or radio channel's output is to be in such a language. Such conditions may be considered on the tender-basis as the means of satisfying socially significant interests. However, the RF Ministry of Press, Television and Radio has never taken advantage of the opportunity to grant advantages to such a project (eg. to announce a competition for "national" broadcasting with a reduced licence fee).

LAW ON MASS MEDIA, 1991⁴

The RF Law On Mass Media establishes the general conditions of issuing and cancelling licences for television and radio. A number of governmental rulings (# 1359 of 7 December 1994, #698 of 26 June 1999, etc.) specify the procedures of licensing. None of the Acts mentioned in this section (due to the restrictive scope of their regulation) specify the conditions of minority participation in establishing and organising broadcasting.

The Law On Mass Media envisages that the language in which the mass medium is going to be published should be indicated during registration. It also requires registration if the language is changed. However, the choice of the language is made by the founder. Its indication is of a notifying nature and does not influence the registration process or approval. Relevant Articles include:

Article 10. The Application for Registration.

The application for the registration of a mass medium shall indicate:

1. information about the founder (co-founders) provided for by the present Law;
2. the name of a mass medium;
3. language (languages) to be used;
4. address of its editor's office;
5. a form of periodical dissemination of mass communication;

⁴ Law of the Russian Federation on Mass Media of 27 December 1991, No. 2124-1 (as amended), available at: http://www.medialaw.ru/e_pages/laws/russian/massmedia_eng/massmedia_eng.html. See alternatively: http://www.internews.ru/law/index_eng.html.

6. the supposed area of the spread of products;
7. approximate topics and (or) specialization;
8. the supposed periodicity of issue and maximum extent of a mass medium;
9. sources of financing;
10. information about the mass media in which the applicant is a founder, owner, editor-in-chief in the editorial office or distributor.

The document certifying the payment of a registration fee shall be appended to the application.

It shall be forbidden to make any other demands during the registration of mass media.

Article 11. Re-registration and Notification.

The replacement of a founder, the change of co-founders and the alteration of the name, language, and form of the periodical dissemination of mass communication, the area where the mass medium products are spread shall be allowed subject to the re-registration of this mass medium.

Mass media shall be re-registered in the same order as they are registered.

A mass medium whose activity is terminated by decision of a court of law shall not be re-registered.

If the editorial office changes its place of location, alters the periodicity of its issue and maximum size, the founder shall be obliged to notify in written form the registration body within a month.

LAW ON ADVERTISING, 1995⁵

The Law On Advertising allows the distribution of advertising in the languages of the peoples of the Russian Federation in addition to the state language (Article 5).

Article 5. General Requirements of Advertising

2. Advertising on the territory of the Russian Federation shall be disseminated in the Russian language and, at the discretion of the advertiser, additionally in the official languages of the republics and native languages of the peoples of the Russian Federation. This statute does not apply to radio broadcasts, television broadcasts or printed publications produced exclusively in the official languages of republics or in the native languages of peoples of the Russian Federation or in foreign languages, nor to registered trade marks (service marks).

⁵ Federal Act No. 108-FZ, adopted by the State Duma on 14 June 1995, signed into law by the President on 18 July 1995, available at: http://www.medialaw.ru/e_pages/laws/russian/advertising_eng/advertising_eng.html.

San Marino

The absence of minority groups and consequently of constitutional or legal provisions specifically governing the linguistic rights of minorities means that any examination of minority-language broadcasting in the context of this country is necessarily based on extrapolation from more general legislative and other provisions. There is no constitutional provision setting out a State or official language. The duties of the public service broadcaster are set out in legislation, but while these duties include the promotion of cultural heritage, the relevant legislation does not contain any explicit reference to the rights or interests of minority groups, *per se*. A common-law country surrounded by countries which espouse the civil law tradition, San Marino is heavily influenced in many matters by the policies and practice of its dominant neighbour, Italy. Broadcasting is no exception and there is even an example of institutionalised cooperation in this sector: a statute-based, common radio and television broadcaster for both countries.

1 Introduction

Despite the very small area covered by the Republic of San Marino (61.2 km²) and its small population (27,336 inhabitants in July 2001),¹ various dialects are spoken, depending on the region of origin of the inhabitants. San Marino borders on two Italian regions: in the south and west, on the *Marche* (province of Pesaro) and in the north and east, on *Emilia Romagna* (province of Rimini). Apart from the dialects,² no official recognition is given to any minority language communities.³ San Marino ratified the Framework Convention on National Minorities on 5 December 1996. San Marino's foreign policy is aligned with that of Italy. Social and political trends in the republic also closely track those of its larger neighbour.

The dialects usually correspond to the nine historical Castles (San Marino, Borgo Maggiore, Serravalle, Domagnano, Fiorentino, Acquaviva, Faetano, Montegiardino, Chiesanuova) which characterise San Marino and which also represent, through the Castle Committees, the decentralised administrative organ whose origins lie in the united Castles of the Republic of 1463. Today the Committees are present in all nine of the Castles; they are designated by popular voting every four years and are composed of 21 members for districts of more than 2,000 inhabitants and of 15 members for the others. Every Committee has its own Castle Captain who remains in power for two years.

2 Constitution

One of the main peculiarities of the law of San Marino is the fact that, despite the codification that characterises all Mediterranean countries, it is a common law country, based on ancient statutes and on the jurisprudence of the tribunals of the Republic. The Statutes (*Leges Statutae Sancti Marini*) were published around 1600 and form the kernel of the legal system of the Republic.⁴ They lay down the main provisions on legal sources and institutional

¹ For facts on San Marino, see: <http://www.cia.gov/cia/publications/factbook/geos/sm.html>.

² The Sammarinese language corresponds mainly to the Emiliano-Romagnolo dialect. See further: http://www.ethnologue.com/show_country.asp?name=San+Marino.

³ As far as ethnic groups are concerned, apart from the Sammarinese, there is also a smaller Italian group: the Sammarinese correspond to 83% of the population; the Italian to 12% and the remaining 5% to other ethnic groups, not specifically identified. See further:

<http://www.freedomhouse.org/research/freeworld/2001/countryratings/sanmarino.htm>.

⁴ There are six Statutes and they are written in Latin. A description of their content is available at:

aspects of the state and are still in force as they result after the amendments of the *reformationes*. When deciding on a case, judges have to apply, in the following order: the *statutae*; the *reformationes* and the Declaration (see *infra*); local customs and common law.⁵

On 12 July 1974 the *Capitani Reggenti* (the two presidents of the Republic) signed Act no. 59 adopted by the *Consiglio Grande e Generale* (the Parliament) containing the Declaration of the rights of the citizens and the fundamental principles of the juridical order of San Marino (hereinafter “the Declaration”) (*Dichiarazione dei diritti dei cittadini e dei principi fondamentali dell'ordinamento sammarinese*).⁶ The Declaration has recently been revised by Act no. 36/2002.

2.1 Freedom of expression

Article 6

The Republic recognises civil and political rights to everybody. In particular, it ensures the freedom of the person, domicile, dwelling and emigration, assembly and association, expression of thoughts, conscience and cult. The secrecy of communications is protected in whatever form they are provided. The law may limit the exercise of these rights only in exceptional cases for serious reasons of public order and interest. Art, science and education are free. The law guarantees citizens the right to free education without any charge.

3 Legislation⁷

3.1 Broadcasting legislation

The Telecommunications Act of 18 March 1988, no. 57 (*Disciplina dei servizi di telecomunicazioni*) and the Broadcasting Act of 27 April 1989 no. 41 (*Istituzione dell'ente di radiodiffusione sammarinese*) govern all the main aspects of broadcasting in San Marino. The broadcasting service is carried out in monopoly by the *Radiotelevisione di San Marino* (San Marino RTV),⁸ according to the conditions defined in the concession issued by the Broadcasting Body (*Ente per la radiodiffusione sammarinese*) pursuant to Article 2 of the Broadcasting Act. The channel broadcasts (in Italian) throughout the whole territory of San Marino and the signal can also be received in Italy, around Venezia and Bologna, and in the former Yugoslavia.⁹

BROADCASTING ACT NO. 41 OF 27 APRIL 1989

Article 2

http://www.omniway.sm/sanmarinoguide/aboutsanmarino/sanmarinoguide_get_par.php3?PARAM=29.

⁵ An outline of the main characteristics of the legal system of San Marino is available at:

<http://www.diritto.it/articoli/commerciale/arcangeli.html>. For further information on the Statutes, see also:

<http://www.filodiritto.com/diritto/pubblico/internazionale/nomrativasanmarino.htm>.

⁶ Act no. 59/74, available at: <http://www.consigliograndeegenerale.sm/>.

⁷ Legislative Acts of San Marino can be found under the heading “archivio leggi” at:

<http://www.consigliograndeegenerale.sm>.

⁸ A website is under construction at: <http://www.tradecenter.sm/rtv>.

⁹ See:

http://www.omniway.sm/sanmarinoguide/aboutsanmarino/sanmarinoguide_get_par.php3?PARAM=6.

The Broadcasting Body of San Marino is entrusted with:

- a) the exclusive right to carry out an autonomous broadcasting service in radio and television service;
- b) the duty to authorise the concession of the service under lit a) to a company falling under the jurisdiction of San Marino;
- c) the right to take part in the constitution of the mentioned company, with the obligation to ensure that the Company has the technical and financial suitability for a correct and balanced management of the broadcasting service.

Article 13 of the Broadcasting Act defines the main services that have to be ensured by the public service concessionaire (San Marino RTV), including, at lit. b) and c), the promotion of the cultural heritage of the Republic. Due to the fact that there are no (recognised) minority languages to protect, the concessionaire is consequently not obliged to dedicate specific programmes to this purpose.

BROADCASTING ACT NO. 41 OF 27 APRIL 1989

Article 13

The radio and television broadcasting service has to be carried out by the concessionaire in the most scrupulous observance of the principles of a complete, objective and impartial information, both on internal as on foreign affairs.

The public radio and television broadcasting service has to pursue, within the respect of the principles of public order, the laws of the Republic, the treaties stipulated with other states, international conventions signed by San Marino and in accordance with its traditional neutrality, the following aims:

- a) stimulate the democratic conscience and the active participation of the citizens, as expression of the fundamental rights of freedom, of life and the general growth of the country;
- b) diffuse information and news about the Republic, on events and activities that are developed there, by taking account of the connections with the territory in its geographical context;
- c) promote the knowledge of San Marino in Europe, at international level, by evaluating its identity and historical and cultural heritage;
- d) let San Marino take part in the cultural debate of our days, with particular reference to the education of the young persons, the promotion of human rights and peace among people, the equal dignity of States, environmental protection, international cooperation and solidarity;
- e) incentive an active participation related to European issues so as to provoke a deeper conscience about the idea of Europe;
- f) ensure the diffusion of sport events as an instrument capable of elevating human being, and recreational and amusing areas.

When elections or referenda are scheduled in San Marino, appropriate slots have to be destined to candidate parties in order to let them illustrate their programmes. The broadcasting slots have to be transmitted according to what is established by the Monitoring Commission.

The activities of San Marino RTV are monitored by a specific Monitoring Commission (*Commissione di vigilanza*), composed of seven members nominated by Parliament. It carries out its duties in accordance with Articles 15, 16 and 17 of the Broadcasting Act.

BROADCASTING ACT OF 27 APRIL 1989 NO. 41

Article 15

The Monitoring Commission has to know the main characters of the radio and television broadcasting palimpsest six months in advance. It has to define and regulate the political slots under art. 13 in order to protect freedom, pluralism and equal dignity of the lists that are candidate at the elections and to define and regulate the slots that have to be reserved to associations and bodies of San Marino in order to let them express their opinions on issues of general interest, provided that they are not in contrast with the aims of the public service and compatible with the programming of the broadcaster.

Article 16

The Monitoring Commission has to formulate precise contestations in case of violations of the law by the public concessionaire, evaluate contestations from other subjects and the reasons explained by the concessionaire.

If the Commission finds that the contestation is well founded, it orders the observance of the right to reply. In case of violation of the principles established under art. 13, the Commission has to tell the Board of the Broadcasting Body in order to let it adopt the required measures.

Article 17

In case of serious and repeated violations of the concession, the Monitoring Commission may suggest the Board to withdraw the concession, after having heard the Concessionaire.

3.2 Transfrontier dimension

With Decree no. 123 of 18 December 1989, the Republic became one of the first countries to ratify the European Convention on Transfrontier Television. Decree no. 50 of 27 April 1990 (*Ratifica dell'Accordo di collaborazione in materia radiotelevisiva fra la Repubblica di San Marino e la Repubblica italiana, firmato a Roma il 23 ottobre 1987*) defines the cooperation between San Marino and Italy through the creation of a common radio and television broadcaster that will be in charge of the distribution of programmes. This broadcasting service was designed to be a monopoly.

DECREE NO. 50/90 OF 27 APRIL 1990

Article 2

The institutional aim of the Company under Article 1 is the exclusive management of the radio and television broadcasting service in the Republic of San Marino. The Company may carry out activities in the field of production of radio and television

programmes, the organisation of shows and sports events, the development of relations with other operators in these fields, and anything else that might be useful in order to ensure the economical balance and the achievement of the aims of the Company.

The Government of the Republic of San Marino may not promote or encourage in the radio and television broadcasting sector, initiatives, inside or outside the territory, competing with the activities of the Company.

The broadcaster is based in San Marino and transmits on frequencies that will enable it to reach the Italian territory; vice versa, programmes broadcast from Italy are received in San Marino. In consequence, the European Convention on Transfrontier Television applies to these services.

Serbia and Montenegro – Montenegro

The Constitution of the Republic of Montenegro states that Serbian language of the iekavian dialect will be the official language, with the Cyrillic and Latin alphabets being deemed to be equal. It also states that in municipalities where national minorities and ethnic groups constitute a majority of the population (or a substantial section thereof), their respective languages and alphabets shall be in official use. In broader terms, the Constitution safeguards the right of members of national minorities and ethnic groups to freely use their mother tongue; to be educated in and have access to information in, their mother tongue. A process of media law reform was recently initiated in Montenegro, under the auspices of the Council of Europe and the European Agency for Reconstruction. The main pillars of the resultant new legislative edifice are media and broadcasting laws and a law regulating the activities of the public service broadcaster. Relevant statutory law obliges the Government to provide part of the funding for programming in Albanian and the languages of other national and ethnic groups. At the licensing level, public tenders shall include the declaration and consideration of the section of the proposed programme offer that would be in the languages of minorities. Broadcasters are required by law to observe “linguistic standards”. Public service broadcasters are subject to the additional requirement that they produce and broadcast programmes for all sections of society, including minority ethnic communities. Furthermore, they must produce and broadcast programmes in the native languages of national and ethnic groups in the areas inhabited by them.

1 Introduction

1.1 Linguistic topography

Montenegro is a multiethnic state with traditionally good relations between the peoples living in its territory. The only official data on its linguistic topography come from the Republic Statistics Institute. According to the last census in 1991, Montenegro had 615,035 inhabitants,¹ of which 61.86% declared themselves Montenegrins; 9.34%, Serbs; 6.6%, Albanians; 14.56%, Muslims; 0.53%, Roma; 1.01%, Croats and 4.25%, Yugoslavs. All the others make up 0.23%, including Macedonians, Austrians, Bulgarians, Czechs, Greeks, Italians, Jews, Hungarians, Germans, Poles, Romanians, Russians, Ruthenians, Slovaks, Turks, Ukrainians, Wallahs, other, unknown, undecided and those who did not declare their nationality.

These data differ considerably from the current situation on the ground. The number of displaced persons and refugees that have arrived in Montenegro since 1991, as well as the political circumstances in the recent period, considerably changed the demographic picture of the country. According to the records of the Republic Commissariat for Refugees, Montenegro accommodates more than 32,000 displaced persons from Kosovo, of whom 34.7% are Montenegrins; 24.4%, Serbs; 20.0%, Roma; 12.7%, Muslims; 3.7%, Albanians; 3.0%, Egyptians and 1.5%, others. In addition, the Republic Red Cross of Montenegro estimates that 17,000 Roma moved into Montenegro from December 1991 until the end of 2000.

¹ Statistical Yearbook for 2000 of the Republic Statistics Institute.

1.2 Broadcasting

400 media organisations are registered with the Republic Secretariat for Information of the Montenegrin Government. Many of these engage in little if any activity. The brochure issued by the NGO Development Center of Podgorica records 51 print media establishments, 32 radio stations, seven television stations, four press information agencies, 19 branch offices and five institutions and organisations (including the Association of Young Journalists, the Montenegrin Media Institute, UNEM, the Association of the Independent Print Media-Montpress, etc.).²

Radio stations broadcasting programmes in Albanian are: *Radio Ulcinj*, founded by the State, broadcasting 10 hours per day, of which 50% is in Albanian and 50% in Serbian; *Radio Bar*, founded by the State, with one hour of programming in Albanian every day; *Radio Mir*, a private radio station broadcasting 24 hours a day, 80% of which is in Albanian; and *Radio Glas Plava*, broadcasting bilingual programmes. *Radio Crne Gore*, the state radio station, also broadcasts news in Albanian.

TV Crne Gore, the state television station, broadcasts news in Albanian (a duration of 15 minutes each day) six days a week and a one-hour programme once a week. *TV Boin* has started experimental broadcasting in Albanian, and *TV Mir* also is about to start Albanian programming. Independent radio, *Antena M*, has recently started broadcasting a half-hour programme in Roma every two weeks.

2 Constitution

The Constitution of the Republic of Montenegro³ was adopted on 12 October 1992.

2.1 Freedom of expression

Article 34

FREEDOM OF MAN

Freedom of belief and conscience shall be guaranteed. Freedom of thought and public expression of opinion, freedom of confession, public or private profession of religion and freedom to express national affiliation, culture and the freedom to use one's own language and alphabet shall be guaranteed. No person shall be obliged to declare his opinion, confession and national affiliation.

Article 35

FREEDOM OF PRESS

Freedom of press and of other public information media shall be guaranteed. Citizens shall have the right to express and publish their opinion in the public information media. Publication of newspapers and public dissemination of information by other media shall be accessible to everyone without prior permission, subject to registration with the competent authority. Radio and television broadcasting organisations shall be established in accordance with law.

² Montenegro Media Address Book, Center for Development of Non-Governmental Organizations, available at: <http://www.crnvo.cg.yu>.

³ Source: Ministry of Information, available at: <http://www.rsi.cg.yu/english/regulativa/ustav.htm>.

Article 37
CENSORSHIP OF PRESS

Censorship of press and of other forms of public information media shall be prohibited.

DISTRIBUTION OF PRESS

No person shall have the right to prevent distribution of press and dissemination of other information except when the competent court of law shall find that they call for a forcible overthrow of the order established by the Constitution, violation of the territorial integrity of Montenegro and the Federal Republic of Yugoslavia, violation of guaranteed freedoms and rights or incite and foment national, racial or religious hatred and intolerance.

Article 38
FREEDOM OF SPEECH

Freedom of speech and of public appearance shall be guaranteed.

2.2 Minority rights

In the section of the Constitution entitled, “Special Rights of National and Ethnic Groups”, provision is made for members of national and ethnic groups to use and display their national symbols (Article 69); for their educational rights (Article 71). However, for the purposes of this study, the following provisions are of greater potential relevance:

Article 67
PROTECTION OF IDENTITY

The protection of the national, ethnic, cultural, linguistic and religious identity of the members of national and ethnic groups shall be guaranteed. Protection of rights of members of national and ethnic groups shall be exercised in accordance with the international protection of human and civic right.

Article 68
LANGUAGE, ALPHABET, EDUCATION AND INFORMATION

Members of national and ethnic groups shall have the right to free use of their mother tongue and alphabet, the right to education and the right to information in their mother tongue.

Article 70
ASSOCIATION

Members of national and ethnic groups shall have the right to establish educational, cultural and religious associations, with the material assistance of the state.

Article 74
CONTACTS

Members of the national and ethnic groups shall have the right to establish and maintain free contacts with citizens outside of Montenegro with whom they are having a common national and ethnic origin, cultural and historical heritage and religious beliefs, but without any detriment for Montenegro.

Article 75

EXERCISE OF RIGHTS

Special rights granted to members of the national and ethnic groups may not be exercised if they are in contradiction with the Constitution, principles of international law and principle of territorial integrity of Montenegro.

Article 76

PROTECTION COUNCIL

Republican Council for Protection of Rights of National and Ethnic Groups shall be established in Montenegro, for purpose of preservation and protection of the national, ethnic, cultural, linguistic and religious identity of national and ethnic groups and for the exercise of their rights prescribed by the Constitution. Republican Council for Protection of Rights of National and Ethnic Groups shall be headed by the President of the Republic. Composition and competencies of the Republican Council shall be prescribed by the Assembly.

2.3 (Official/State) language(s)

Article 9

LANGUAGE AND ALPHABET

In Montenegro Serbian language of the iekavian dialect will be the official language. Cyrillic and Latin alphabets shall be deemed to be equal. In the municipalities in which the majority or a substantial number of population consists of the national minorities and ethnic groups, their respective languages and alphabets shall be in the official use.

3 Legislation

3.1 General legislation

The rights of national minorities in Montenegro are governed by the FRY Constitution, the Montenegrin Constitution, and laws of the Republic governing, *inter alia*, schooling and education, the use of national symbols, broadcasting and print media.

3.2 Broadcasting legislation

In September 2002, a new legislative package regulating the media and broadcasting sector in Montenegro was adopted. The package, which replaces prior laws regulating relevant matters, comprises a new Media Law, a Broadcasting Law and a Law on Public Broadcasting Services “Radio of Montenegro” and “Television of Montenegro”. The most pertinent sections of each of these new laws are quoted *infra*.

MEDIA LAW 2002⁴

Article 3

The Republic shall provide a part of the funding for realisation of the citizens' right to be informed as granted by the Constitution and law, without any discrimination whatsoever and on the basis of programmes important for:

- science and education development;
- development of culture;
- informing people with hearing and sight impairments.

With the aim to realise the rights referred to in the previous paragraph, the Republic shall provide a part of the funding for programming in Albanian and languages of other national and ethnic groups.

The Republican Budget shall prescribe the amount of necessary funds and the manner and conditions of their allotment shall be prescribed by the act of the Republican administrative body competent for the information issues [...].

The activities of "foreign media branch offices and foreign information institutions" are regulated by Articles 36 *et seq.* of the Act.

BROADCASTING LAW 2002⁵

One of the general aims of the Broadcasting Law is to ensure, *inter alia*, the development of pluralism in broadcasting (Article 3(6)). The licensing procedure envisaged by the Law stipulates that the public tender shall include, *inter alia*, "non-discriminatory, objective and measurable criteria of decision-making (program structure, percentage of the population in the desired service zone that has to be provided with quality reception of radio and/or television programme, presence of programmes in languages of minorities, etc.)" (Article 37(8)).

Article 56

The broadcasters shall be accountable for the contents of the programme they broadcast in compliance with this Law and the Media Law.

The broadcasters are obliged:

- 1) to inform the public of the events and matters of public importance in the country and abroad in a truthful, complete, impartial and timely manner.
- 2) to contribute to the observance promotion of fundamental human rights and freedoms, democratic values and institutions, pluralism of ideas, to promote the public dialogue culture and observe the linguistic standards.
- 3) to respect the privacy and dignity of citizens.

Article 95

⁴ The Media Law (No. 01-2808/2) was adopted on 16 September 2002 at the fourth extraordinary session of the Parliament of the Republic of Montenegro and published in the Official Gazette of the Republic of Montenegro, No. 51/02.

⁵ The Broadcasting Law (No. 01-2807/2) was adopted on 16 September 2002 at the fourth extraordinary session of the Parliament of the Republic of Montenegro and published in the Official Gazette of the Republic of Montenegro, No. 51/02.

In order to realize public interest in the field of information and broadcasting, public broadcasting services shall:

[...]

3) produce and broadcast programs intended for all segments of the society, without any discrimination, especially taking into account specific social groups such as children and youth, minority ethnic communities, the disabled, the socially and medically challenged, etc.;

4) promote the culture of public communication and linguistic standards;

5) produce and broadcast the programmes expressing the cultural identity of nations, nationalities and ethnic groups;

6) produce and broadcast programmes in native languages of national and ethnic groups in the areas inhabited by them;

[...]

LAW ON PUBLIC BROADCASTING SERVICES “RADIO OF MONTENEGRO” AND “TELEVISION OF MONTENEGRO” 2002⁶

Article 7

In their programmes, RTCG⁷ shall satisfy public interests both on the national and local level and make sure that news, cultural, educational, sports and entertainment programmes are represented equally.

With the aim to achieve common interest in the field of information, RTCG shall observe the obligations prescribed by this Law, Media Law and Broadcasting Law.

RTCG shall independently, in compliance with law, decide upon the contents of its programmes, time of their broadcasting and manner of transmission.

[...]

Article 8

RTCG shall respect professional standards and programme-related rules adopted by the RTCG Council and it shall:

1) Keep the public truthfully, completely, impartially and timely informed about events and issues of public interest both in the country and abroad;

2) Contribute to the observance and promotion of basic human rights and freedoms, democratic values and institutions, pluralism of ideas, improve culture of public dialogue and respect linguistic standards;

3) Respect privacy and dignity of citizens,

4 Current developments

The objective of recent legislative reforms in media law in Montenegro was the establishment of a legal framework, in accordance with Article 10 of the European Convention on Human

⁶ The Law on Public Broadcasting Services “Radio of Montenegro” and “Television of Montenegro” (No. 01-2806/2) was adopted on 16 September 2002 at the fourth extraordinary session of the Parliament of the Republic of Montenegro and published in the Official Gazette of the Republic of Montenegro, No. 51/02.

⁷ Note that Article 2 of this Law refers to the Public Enterprise “Radio and Television of Montenegro” as RTCG.

Rights, that will assist in the implementation of European standards in this area. The Joint Initiative of the European Agency for Reconstruction⁸ and the Council of Europe to adapt the legal framework in the media field in Montenegro (“The Joint Initiative for Media Reform in Montenegro”) was launched in August 2001.⁹ The Secretariat for Information of the Montenegrin Government formed a Working Group, consisting of representatives of authorities, state and independent media and NGOs.¹⁰ The package of laws prepared by the Working Group is discussed *supra*.

⁸ The European Agency for Reconstruction is responsible for the management of the main EU assistance programmes in the Federal Republic of Yugoslavia (Republic of Serbia, Kosovo, Republic of Montenegro) and the former Yugoslav Republic of Macedonia. See further: <http://www.ear.eu.int>.

⁹ 14 August 2001, see further: <http://www.rsi.cg.yu/english/aktivnosti/ji-montenegro.htm>.

¹⁰ See further: <http://www.rsi.cg.yu>.

Serbia and Montenegro - Serbia

According to the Constitution of the Republic of Serbia, the Serbo-Croatian language and the Cyrillic alphabet shall be officially used in the country, with the Latinic alphabet being officially used in the manner prescribed by law. In regions densely populated by national minorities, their own languages and alphabets shall be officially used as well, again as prescribed by law. Broadcasting law in Serbia is in a rather inchoate state at the moment: pieces of draft legislation on telecommunications, public information and broadcasting are all under preparation. Apart from proposing ethnic minority representation on the National Broadcasting Council, the draft Broadcasting Act contains provisions which would promote the practice of broadcasting in the languages of national or ethnic minorities, *inter alia*, through public service broadcasting. This would complement already-existing practices of non-legislative, affirmative measures supporting minority-language broadcasting. Recently-enacted legislation on the rights and freedoms of ethnic minorities establishes mechanisms for the protection of special rights for minorities in the realms of education, language, information and culture. This legislation also safeguards the right of minorities to be informed in their native languages and to use their native languages in the broadcast media. It also sets out the right of members of national minorities to establish and maintain media outlets in their native languages. In addition, a number of obligations are placed on the State by this legislation: it must ensure, via the offices of public service broadcasters, that news, cultural and educational programmes are provided in the languages of ethnic minorities. The State “may” also establish special radio and television stations for the purpose of broadcasting in minority languages.

1 Introduction

1.1 Linguistic topography

Serbia has a high percentage of minorities (around 20%, excluding Kosovo) as well as a large number of minorities (more than 25). The last official Census was in 1991¹ and a new one is currently in progress,² so precise statistics on the number of minorities are not available. The demise of the former Yugoslavia and wars in Slovenia, Croatia, Bosnia and Kosovo have resulted in a huge migration process. Although sources differ, a rough estimate would be that more than 500,000 people have emigrated from Serbia since 1991, including Croats, Hungarians, Slovaks and Serbs. Some 850,000 refugees, including Roma people, Gorans and Turks emigrated to Serbia from Croatia, Bosnia and Kosovo.

¹ According to the Census of 1991, Serbia (excluding Kosovo) had a population of 7,822,795 inhabitants: 6,524,405 Serbs; 118,934 Montenegrins; 320,168 Yugoslavs; 26,830 Bulgarians; 21,434 Bunjevci People; 21,434 Vlasians; 343,942 Hungarians; 46,046 Macedonians; 346,411 Muslims (as an ethnic group); 146,237 Roma; 42,331 Romanians; 18,037 Ruthenians; 66,798 Slovaks; 900 Turks and 105,406 Croats (the rest of the people had refused to declare a nationality or belong to very small nationalities). Albanians refused to take part in the Census, so their number was estimated based on the Census of 1981 and demographic data from the ground. Source: Annual Statistic Report, Federal Institute for Statistic, Belgrade, 1988, p. 68.

² According to one of the existing estimates, made by Vigor Majic, Petnica Science Center, Valjevo, in 2000, Serbia had 7.5 million inhabitants: 6 million Serbs; 380,000 Hungarians; 160,000 Muslims (as an ethnic group); 120,000 Croats; 110,000 Montenegrins; 80,000 Albanians; 70,000 Slovaks; 55,000 Romanians; 50,000 Macedonians; 30,000 Bulgarians; 550,000 non-Serbs and not declared and 30,000 others. According to the same source, the number of Roma people is very unclear, varying (depending on the source) from under 100,000 to over 1 million.

In some communities, there is disagreement about definition of nationality. For example, some members of the Croatian and “Bunjevac” communities argue that both communities are part of the Croatian nation, while others claim that they are two nations. The same disagreement arises in the Ukrainian and Russian communities.

The majority in Serbia speaks Serbian. Before the demise of the former Yugoslavia, the name of the majority’s language was Serbo-Croatian or Croat-Serbian, and it was spoken in Serbia, Croatia, Bosnia and Montenegro. After 1991, the language was named Serbian in Serbia, Croatian in Croatia, Bosnian in Bosnia and, today, supporters of independent Montenegro speak of a Montenegrin language. According to the recognised linguistic expert Pavle Ivić,³ “the basic fact is that [Serbo-Croatian] is one language with variants considering linguistic structure and substance”, but, on the other hand, “Serbian and Croatian are two [separate but] related languages when considering their socio-linguistic aspects”.⁴

Another language that needs additional explanation is that spoken by the Roma people. The share of original words from the ancient Roma language in the modern spoken language is about 40-60%. Other words come from languages of the local communities. Thus, the language spoken by Roma from the south of Serbia is different from the language spoken by Roma from the Vojvodina Province. Often, Roma people from different parts of the country use Serbian for communication.

1.2 Broadcasting

There are more than 1,000 radio and television stations on the air in Serbia, although this number is highly unstable as new stations are frequently added and existing ones shut down mainly because of financial troubles. About 50 radio and television stations broadcast in the language of some minority. In most cases, those are stations that have Serbian as the main language and the language of the minority as the second language. Some of these bilingual or multilingual media outlets are public and some are private. On the other hand, in the parts of the country where Serbian ethnic minorities are de facto majority in the area, the Serbian language is less used than others (eg. the Slovak language in Backi Petrovec). Here we provide a summary of broadcasting in minority languages in Serbia.

Albanian

- Radio Presovo, Medvedja, Bujanovac (radio stations owned by the municipality of Presovo, Medvedja and Bujanovac, estimated potential audience: 30,000):
 - Radio programme in Albanian (together with a programme in Serbian and Roma)

Bosnian

It is sometimes very difficult to tell which language is on the air where the broadcast is in ex-Serbo-Croatian, especially in communities where the language of local population (irrespective of nationality) is the same or almost the same.⁵ For example, the area of

³ Ranko Bugarski, “Lica jezika” (“Faces of Language”), XXvek, Belgrade, 2001, p. 14.

⁴ Trying to attract audience from Serbia, Croatia and Bosnia at the same time, journalists from Free Europe had to take care not to insult anybody by calling the language Serbian, Croatian, Bosnian or Montenegrin. They solved the problem by using the phrase “South-Slavic languages”.

⁵ The only way to ascertain the broadcast language in communities where the language of the local population (irrespective of nationality) is the same is when the broadcaster announces it, as is the case with Croatian in *TV K 23* and *Radio Subotica*.

Sandzak is inhabited mostly by Muslims, and it is difficult to judge if the broadcast language is Serbian or Bosnian. One could say that radio and television stations in region of Sandzak (RTV Jedinstvo, San, etc.) broadcast in a minority language to the extent that the programmes follow the cultural codes of the local population.

Bulgarian

- Radio Nis (part of RTS, estimated potential audience: 500,000), Nis:
 - Daily news programme up to 20 minutes.
- Radio and TV Caribrod (station owned by the municipality of Dimitrovgrad, estimated potential audience: 20,000), Dimitrovgrad:
 - Short newscast of up to 4 minutes daily, but broadcast without precise programme scheduling and structure. Poor quality.

Croatian

- Radio Subotica (station owned by the municipality of Subotica and RTS, estimated potential audience: 600,000), Subotica:
 - Two hours of programmes daily, including news.
- TV K 23⁶ (part of RTS,⁷ estimated potential audience: 2,000,000), Novi Sad:
 - 30-minute-long magazine (current affairs) named “Divani” (“Talks”) produced by Z Video Group (independent production) from Subotica, twice per month.

Hungarian

- Radio 021 (privately-owned station, second channel, estimated potential audience: 700,000), Novi Sad:
 - Daily news (broadcast in mixed edition with other languages including Serbian)
 - Weekly news programme up to 60 minutes.
 - Weekly programme that surveys stories in the print media in Hungary.
 - Daily re-broadcast of the BBC World Service in Hungarian.
- Radio Impuls (privately-owned station, estimated potential audience: 150,000), Vrsac:
 - A few minutes of daily news.
- Radio Novi Sad (part of RTS, estimated potential audience: 2,000,000), Novi Sad:
 - 24 hours of broadcasting on Channel 2.
- Radio Sombor (station owned by the municipality of Sombor, estimated potential audience: 300,000), Sombor:
 - 60 minutes of programming daily, including news.

⁶ TV K 23 is the television station with the largest number of minutes in minority languages. On the other hand, according to SMMRI TV audience research from November 2001, the ratings of those programmes are fairly low – the best results were those of the daily news programme “Hirado” (News), whose rating of 1.82%, or 30,030 households, covers only around 10% of the Hungarian population. The second-best result was for the programme “Spektrum” in Slovakian, with a rating of 0.63%, or 10,435 households, which covers about 14% of the Slovakian population. The low ratings may be the consequence of bad scheduling and poor equipment, finances and human resources, which are characteristic of most of the electronic media in Serbia.

⁷ Until the 1990s, *Radio TV Novi Sad* was an independent broadcaster founded by the Parliament of the Province of Vojvodina, with equal status as a member of *Yugoslavian Radio TV* along with Belgrade, Zagreb, Sarajevo, Titograd, Skoplje, Ljubljana and Pristina. It was then incorporated into *Radio TV Serbia* by the previous regime. According to the new Broadcasting Law, RTS will be divided into two parts and divide between *TV Belgrade* and *TV Novi Sad* in the near future.

- Radio Subotica (station owned by the municipality of Subotica and RTS, estimated potential audience 600,000), Subotica:
 - 12 hours of programming daily.
- TV Novi Sad (part of RTS, estimated potential audience: 2,000,000), Novi Sad:
 - 25,000 minutes of programming per year, including several editions of daily news.
- TV Pancevo (station owned by the municipality of Pancevo, estimated potential audience: 1,000,000), Pancevo:
 - 30-minute-long magazine, twice per month.
- Also, a lot of small local Radio stations in small municipalities (Senta, Temerin, etc.) broadcast a few hours of programming in Hungarian daily.

Romanian

- Radio 021 (privately-owned station, second channel, estimated potential audience: 700,000), Novi Sad:
 - Daily news (broadcast in mixed edition with other languages including Serbian),
 - Weekly programme with surveys of stories in the print media in Romania,
 - Daily re-broadcast of the BBC World Service in Romanian.
- Radio Impuls (privately-owned station, estimated potential audience: 150,000), Vrsac:
 - A few minutes of daily news.
- Radio Novi Sad (part of RTS, estimated potential audience: 2,000,000), Novi Sad:
 - 6 hours of programming daily, including several editions of daily news.
- TV Novi Sad (part of RTS, estimated potential audience: 2,000,000), Novi Sad:
 - 9,000 minutes of programming per year, including daily news.

Romany

- Radio 021 (privately-owned station, second channel, estimated potential audience: 700,000), Novi Sad:
 - Weekly news programme up to 60 minutes,
 - Daily news (broadcast in mixed edition with other languages including Serbian),
- Radio Novi Sad (part of RTS, estimated potential audience: 2,000,000), Novi Sad:
 - 2 hours of broadcasting daily, mainly news and current affairs but also cultural and social topics.
- RTV Nisava (privately-owned radio and television station, estimated potential audience: 300,000), Nis:
 - 24 hours of radio programming,
 - Television programme - experimental.
- TV Belle Amie (privately-owned station, estimated potential audience: up to 1,000,000), Nis:
 - One-hour weekly magazine produced by NGO.
- TV Grk (privately-owned station, potential audience: around 100,000), Prokuplje:
 - Daily news programme "Foro" ("City").
- TV Novi Sad (part of RTS, estimated potential audience: 2,000,000), Novi Sad:
 - One hour of programming per week.
- Newly founded Roma TV in Zenum is currently preparing to broadcast only in the Roma language.

Russianian

- Radio 021 (privately owned station, second channel, estimated potential audience 700,000 people), Novi Sad:
 - Daily news (broadcast in mixed edition with other languages including Serbian).
- Radio Novi Sad (part of RTS, estimated potential audience: 2,000,000), Novi Sad:
 - 4 hours of programming daily, including several editions of daily news.
- TV Novi Sad (part of RTS, estimated potential audience: 2,000,000), Novi Sad:
 - 9,000 minutes of programming per year, including daily news.

Slovakian

- Radio 021 (privately owned station, second channel, estimated potential audience: 700,000), Novi Sad:
 - Daily news (broadcast in mixed edition with other languages, including Serbian).
 - Weekly programme with surveys of stories in the print media in Slovakia.
 - Daily re-broadcast of the BBC World Service in Slovakian.
- Radio Novi Sad (part of RTS, estimated potential audience 2,000,000), Novi Sad:
 - 6 hours of programming daily, including several editions of daily news.
- Radio Stara Pazova (station owned by the municipality of Stara Pazova, estimated potential audience: 50,000), Stara Pazova:
 - 12 hours of broadcasting including news, current affairs, culture and art, coverage of local stories.
- RTV Kovacica (station owned by the municipality of Kovacica, estimated potential audience: 30,000), Kovacica:
 - 18 hours of television programming, experimental.
 - 10-12 hours of radio programming per day.
- TV Novi Sad (part of RTS, estimated potential audience: 2,000,000), Novi Sad:
 - 9,000 minutes of programming per year, including daily news.
- TV Petrovec (station owned by a local farmers' association, estimated potential audience: 250,000), Backi Petrovec:
 - Between two and three hours of original programming, including news, current affairs, culture and art, coverage of local stories.
 - Re-broadcasting of programmes of TV Global, Slovakia.
- TV Pancevo (station owned by the municipality of Pancevo, estimated potential audience: 1,000,000), Pancevo:
 - 30-minute-long magazine, twice per month.

Ukrainian

- Radio Novi Sad (part of RTS, estimated potential audience: 2,000,000), Novi Sad:
 - 90 minutes of programming per week.
- TV Novi Sad (part of RTS, estimated potential audience: 2,000,000), Novi Sad:
 - One hour of programming per month.

Expected New Media Outlets in the Languages of Ethnic Minorities:

- *Maxi Media, Novi Sad*, (private news agency, experimental at the moment, expected to be running on a permanent basis from 15 April 2002).

- News from ethnic minority communities from Vojvodina Province is translated into Serbian, Hungarian, Romanian, Slovakian and Russian.⁸
- NTV Negotin (privately-owned television station), Negotin:
 - News programme in Vlasi, and also film subtitles in Vlasi. Still in preparation.
- Radio Novi Sad (part of RTS), Novi Sad:
 - Radio programme in Croatian
- Radio Subotica (station owned by the municipality of Subotica and RTS):
 - 24 hours of programming in Hungarian starting 1 May 2002.
- TV Apolo (television station owned by the municipality of Novi Sad):
 - Bilingual children's programme. Still in preparation.
- TV Grk (privately owned station), Prokuplje:
 - Weekly magazine and children's programme about human rights (depending on finances) in Roma.
- TV Kikinda, (regional television station in the process of being established, mixed ownership), Kikinda,
 - 30% of whole programme in Hungarian.
- TV Novi Sad (part of RTS), Novi Sad:
 - television programme in German.
- TV Pirot (TV station owned by the municipality of Pirot):
 - Weekly magazine in Bulgarian, up to 20 minutes.
- TV Presovo, Bujanovac (television stations owned by the municipality of Presovo, Medvedja and Bujanovac):
 - television programme in Albanian and in Roma (experimental).
- TV Subotica (television station owned by the municipality of Subotica):
 - 2 hours of programming in Hungarian.

2 Constitution⁹

The Republic of Serbia is a country in transition, which means that most laws are “under construction”, even the Constitution. The “Charter On the Future Relations Between Serbia and Montenegro”, which may become a draft for a new Constitution, is currently on the agenda of Federal Parliament and the Parliaments of both Republics. Meanwhile, the effective Federal Constitution of the Federal Republic Yugoslavia is the Constitution of 1992 (see Appendix).

2.1 Freedom of expression

CONSTITUTION OF THE REPUBLIC OF SERBIA OF 1990¹⁰

Article 45

The freedom of conscience, thought and public expression of opinion shall be guaranteed.

⁸ Available at: <http://www.maximedia.co.yu>.

⁹ Gordana Radic Popovic, Legal Adviser to Parliament of Province of Vojvodina, provided all the information on the Constitutions and the Minorities Rights Protection Act for this report.

¹⁰ Available at: <http://www.serbia-info.com/facts/constitution.html>.

2.2 Broadcasting

CONSTITUTION OF THE REPUBLIC OF SERBIA OF 1990

Article 46

The freedom of press and other public information media shall be guaranteed. Citizens shall have the right to express and make public their opinions in the public information media

Publication of newspapers and dissemination of information by other means shall be accessible to everyone without seeking permission, subject to registration with the competent agency.

Radio and television broadcasting organisations shall be established in accordance with law.

[....]

The censorship of press and other public information media shall be prohibited. No one may obstruct the distribution of the press and dissemination of other information, except when the competent court of law finds by its decision that they call for the forcible overthrow of the order established by the Constitution, violation of the territorial integrity and independence of the Republic of Serbia, violation of guaranteed freedoms and rights of man and citizen, or incite and foment national, racial or religious intolerance and hatred.

The public information media which are financed from public funds shall be bound to provide the general public with timely and impartial information.

2.3 (Official/State) language(s)

The Federal Constitution states that the official language of the Federation is Serbian, but that in the parts of country with a significant percentage of minorities, languages of the minorities are also official languages. These are to be regulated by special Acts, such as the Serbian Language and Alphabet Regulation Act of 1991, and also by Acts that regulate the use of languages on the local level.

CONSTITUTION OF THE REPUBLIC OF SERBIA OF 1990

Article 8

In the Republic of Serbia the Serbo-Croatian language and the Cyrillic alphabet shall be officially used, while the Latinic alphabet shall be officially used in the manner established by law.

In the regions of the Republic of Serbia inhabited by national minorities, their own languages and alphabets shall be officially used as well, in the manner established by law.

2.4 The Autonomous Province of Vojvodina

The Autonomous Province of Vojvodina is part of Serbia, but it was also a constitutive part of former Socialist Federated Republics of Yugoslavia (SFRY), according to Constitution of 1974. After the demise of the former SFRY, Vojvodina retained formal autonomy, but most legal powers were taken from the Parliament of Vojvodina and given to the Parliament of Serbia. In January 2002, the Parliament of Serbia returned some powers (including

information policy in the Province) to the Parliament of Vojvodina. The Parliament of Vojvodina is currently drafting a Constitutive Act for the Province, which should provide for a great improvement in relations between the majority and minorities (including in broadcasting).

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

PROTECTION OF THE RIGHTS AND FREEDOMS OF ETHNIC MINORITIES ACT, 2002

On 26 February 2002, Vojislav Kostunica, President of FRY, proclaimed the Protection of the Rights and Freedoms of Ethnic Minorities Act.¹¹ This Act implements the individual and collective rights that members of ethnic minority groups are guaranteed under the FRY Constitution and international agreements. It creates mechanisms that establish and protect the special rights of ethnic minorities in education, language use, information and culture (Article 1). The Act also allows for new Acts on the republican or provincial level that could further define the mechanisms for the protection of minority rights (Article 1).

The Act prohibits discrimination (Article 3), and guarantees freedom from ethnic appropriation, freedom of ethnic expression (Article 5), and freedom to use one's native language in private and official circumstances (Article 10). It also provides a right to information.

Article 17

Members of ethnic minorities have right to be informed in their native language, including rights of free expressions [and] ... exchange of information through printed and other media The state will provide news, culture and education programs in the language of ethnic minorities through the broadcasting of public broadcasters ... and the state may establish special radio and TV stations that would broadcast in the language of ethnic minorities Members of ethnic minorities groups have the right to establish and maintain media in their native language.

3.2 Broadcasting legislation

As for broadcasting legislation, three new Acts have recently being undergoing development in the Republic of Serbia: the Telecommunication Act, the Public Information Act and the Broadcasting Act. The Government of the Republic of Serbia adopted the Broadcasting Act in July 2002.¹²

The Broadcasting Act contains several provisions that affect ethnic minorities. First, ethnic minorities have the right to propose members of the National Broadcasting Council (Article 23). They also get special treatment in the sections that regulate broadcasting in a language of one's own (Article 72); broadcasters' own production (Article 73) and broadcasting in public service (Article 78). Space for privileged "non-profit" stations is provided for by Article 95; a provision of which minorities could avail in order to further their language interests through

¹¹ "Sluzbeni list SRJ", Belgrade, 27 February, 2002.

¹² Published in the Official State Newspaper, *Sluzbeni list*, on 19 July 2002. See further: <http://www.serbia.sr.gov.yu/news/2002-07/18/325244.html>.

broadcasting. The Broadcasting Act is consistent with the spirit of the Protection of the Rights and Freedoms of Ethnic Minorities Act.

EXTRACTS FROM THE (DRAFT) BROADCASTING ACT:¹³

Article 72 - Broadcasting in a Language of One's Own

A broadcaster shall produce and broadcast programs in the Serbian language or provide that the programs in foreign languages are translated into Serbian.

The obligation under paragraph 1 of this Article shall not apply to broadcasters producing and airing programs for ethnic minorities or to the parts of public broadcasting services' programs that satisfy the need of ethnic minorities to be informed in their own languages.

The obligation under paragraph 1 of this Article shall also not apply to broadcasting of foreign music programs, except in the cases of TV broadcasts of musicals, operas, operettas, etc.

Exceptionally, the SBC may permit broadcasters to air programs in other languages as well.

Article 73 – Broadcasters' Own Production

Broadcasters shall see to it that, out of total annual broadcasting time, programs in Serbian take 50 percent at least, out of which 50 percent at least shall be programs from their own production.

The broadcasters that produce and air programs for ethnic minorities shall see to it that, out of total annual broadcasting time in the relevant language, programs from their own production take 50 percent at least.

The total annual broadcasting time does not include reruns, live broadcasts of sports events, games, adverts and teleshopping, as well as news programs unless the latter makes a part of a broadcaster's own production.

Broadcasters' own production implies programs or shows with the share of original audio or video material and/or authorial contents of over 50 percent in the case of a TV program or 20 percent in the case of a radio program.

Broadcasters' own production also implies co-production.

Article 78

With a view to satisfying the general public interest in the sphere of broadcasting as established by this Act, special programming obligations of the broadcasters under Article 68 of this Act shall be to:

¹³ The seventh draft of the Broadcasting Act (which does not totally correspond to the text ultimately adopted) is available at: <http://www.yumediacentar.com/english/dokumenti/tranzicija/broadcast190901.asp>.

- 1) Ensure that programs to be produced and broadcast, particularly information programs, are protected against any influence on the part of authorities, political organizations and centers of economic power;
- 2) Produce and broadcast programs focused on all segments of society, without any discrimination, particularly mindful of specific social groups such as children and minors, ethnic minority communities, the disabled, the needy, the sick and the like;
- 3) Adhere to linguistic and spoken language standards of majority population and, in appropriate proportion, of ethnic minorities or ethnic groups in the areas covered by their programs;
- 4) Ensure that citizens' needs for programs reflecting cultural identities of both nations and ethnic minorities, i.e. ethnic groups are met by enabling them to watch/listen to specific programs in the areas they inhabit in their mother tongues and lettering;
- 5) Secure appropriate time slots for the programs dealing with activities of citizens' associations, non-governmental organizations and religious communities in the program coverage area;
- 6) At the time of election campaigns, secure free of charge and balanced on-air promotion of political parties, coalitions and candidates with confirmed lists for the federal, republic, provincial or local elections. They shall not broadcast a paid election campaign oriented marketing and may, pursuant to their by-laws, deny to broadcast programs or spots that are not in the service of an election campaign;
- 7) Make certain that their annual plans include airing of programs by independent production groups, selected at a public tender. The latter shall imply signing of a written contract with the selected independent producers under regular market conditions;
- 8) Upon recommendation of the SBC, enable the use of the teletext in the production of their own or that of third parties;
- 9) Provide that modern technological standards are applied and developed in the process or program production and broadcasting, and make and duly implement the plans of transition to new digital technologies;
- 10) Mutually cooperate and exchange programs of interest to citizens of Serbia.

Article 95 Radio and/or TV Stations of the Civil Sector¹⁴

Radio and TV stations of the civic sector shall be those that meet the specific interests of specific social groups or organizations of citizens.

The stations under para 1 of this Article may be founded by non-profit organizations of the civil society (NGOs and citizens' associations).

Programs broadcast by radio and/or TV stations of the civil sector shall reflect the domain of activity of the NGO or the citizens' association that have founded the station.

Radio and/or TV stations of the civil sector may be established to cover just a local community.

Radio and/or TV stations of the civil sector shall observe the same provisions applied to the Public Broadcasting Service with respect to special obligations in program production.

A radio and/or TV station of the civil sector shall be granted a broadcasting concession on the basis of a public tender called for a target service zone. A radio

¹⁴ This corresponds to Article 94 in the seventh draft (text quoted here).

and/or TV station of the civil sector shall not be charged a broadcasting concession fee.

Operations of the above-mentioned stations may be financed from donations, private contributions, sponsorships and other sources of income, pursuant to the law regulating establishment and activities of citizens' associations and NGOs. Provisions of this Act referring to public broadcasting service shall apply to financing from sponsorships and advertising.

[...]

It should also be mentioned that Article 96 of the Broadcasting Act requires the privatisation of local stations founded by a municipality, regional stations founded by two or more municipalities, regional stations founded by city councils within four years of the date of proclamation of the Act.¹⁵

4 Application of legislation and other measures affecting language

Several non-legislative affirmative measures exist to promote broadcasting in minority languages. These include: the Federal Ministry for Minorities' continual support for broadcasting in languages of minorities; the Ministry for Minorities of the Province of Vojvodina's announcement in February 2002 of a tender for applications for projects that will improve the cultural life of minorities, including in broadcasting; the activities of a large number of foreign and domestic non-governmental organisations; the Novi Sad School of Journalism's seminars and training in minority reporting; and an international festival of television programmes produced by ethnic minority television departments announced in Novi Sad for November 2002 (depending on financing).

No prohibitive measures relating to minorities' access to broadcasting in their own languages have been recorded.¹⁶ Production and broadcasting in minority languages suffer the same problems as production and broadcasting in Serbian—a lack of human resources, finances and equipment. Recent closures due to lack of funds in media were, for example, the weekly edition of the news magazine “Zurnal” in Bulgarian, RTS-Nis, and the Romanian Department in Radio Vrsac. The Serbian Government cannot find finances to cover all the needs of any media, and foreign donors often finance programmes. After a grant expires, production or broadcasting usually stops. For example, this is what happened to the programme “Multigrad” (“Multi-Town”), produced by Urbans Production Group in two languages.

5 Current developments

A Serbian Draft Law on Public Information which is currently under consideration may, if adopted, be of relevance for present purposes. In its present form, the draft would require the

¹⁵ Article 96 of the final text of the Act corresponds to Article 95 of the seventh draft of the legislation - the sentence about privatisation is a new one – an amended proposal by ANEM (Association of Independent Electronic Media) and accepted by Parliament.

¹⁶ There is one situation that could be regarded as an incident, but is more likely a result of bureaucratic slack. *NTV Nis* (a station owned by the municipality of Nis) used to broadcast a weekly magazine about Roma produced by the NGO Froli, but the programme was cancelled some ten months ago. The new manager of the station cancelled the programme temporarily, requesting an official statement about public interest in the “Froli” magazine and the financing to cover its expenses. Froli has asked the Municipality Council of Nis for the statement and the finances, but the municipality has not yet responded.

Republican administration *inter alia* to provide finances for public services in the languages of ethnic minorities.

Kosovo

The United Nations Interim Administration Mission in Kosovo (UNMIK) and the OSCE have recently presided over the reconstruction of the constitutional framework of Kosovo in a manner that is intended to be both sensitive and responsive to the needs of its numerous and diverse ethnic communities. By way of corollary to this State-building exercise, UNMIK and the OSCE have also overseen the preparations for the establishment of a new regulatory regime for broadcasting. This has, *inter alia*, entailed the institution of a Temporary Media Commissioner (TMC) with licensing and other regulatory responsibilities. The primary task of the TMC is to develop and promote independent and professional media in Kosovo, pending the establishment of an Interim Media Commission. The award of broadcasting licences in Kosovo is conditional on the willingness of applicants to abide by the Code of Conduct for the Broadcast Media, which is modelled on international human rights provisions. The Code requires broadcasters, *inter alia*, not to prohibit or censor expression on the grounds that it is in a particular language, especially the language of an ethnic minority.

The regulatory regime for broadcasting remains fledgling and does not yet include extensive provisions catering for minority-language broadcasting. However, the Constitutional Framework guarantees all communities in Kosovo access to, and representation in, public broadcast media, as well as programming in relevant languages. Furthermore, the national public service broadcaster is obliged by its constitutive regulation to provide primetime news coverage, of which not less than 15% must be in the languages of minority communities within Kosovo. It must also give voice to all communities by, among other things, establishing a programming services office to support these communities and dedicating to them not less than 15% of RTK's television and radio programming, including primetime news coverage. By and large, broadcasting entities in Kosovo remain at the mercy of the vagaries of the prevailing economic and political climate.

1 Introduction

1.1 Linguistic topography

As of this writing, there is no exact information available regarding the ethnic breakdown of the population of Kosovo. The latest official Census was carried out in 1991.¹ However, Albanians—the majority of the population—boycotted that census, so their numbers were estimated from demographic statistics. According to the 1991 Census, 79.98% of Kosovo residents were Albanian; 10.75%, Serbian (Serbs and Montenegrins); 0.52%, Turkish; 2.29%, Roma; 3.32%, Bosnian, and 1.16%, others. The 1981 Census, conducted with Albanian participation, found the population to be: 77.5% Albanian; 13.2% Serb; 3.7% Bosnian; 2.2% Roma; 1.7% Montenegrin; 0.8% Turkish and 1.1% others.² This census was also widely considered inaccurate. According to the Albanians dealing with statistics, the population in Kosovo in 1998 was about 90% Albanian; 7% Serb and 3% others.³ In 1999, the

¹ Source: FRY Institute of Statistics, see: <http://www.szs.sv.gov.yu>.

² See *Kosovo Report*, Independent International Commission on Kosovo, October 2000, p. 319, Annex 2: Kosovo – Facts and Figures, available at <http://www.kosovocommission.org> and at <http://www.sok-kosovo.org>.

³ *Ibid.*

Organization for Security and Co-operation in Europe (OSCE) conducted a new “census” that registered people older than 16, but not the entire population.⁴ No full census has been conducted since the war, and there are still a number of refugees and displaced persons out of the country.

1.2 Broadcasting

Kosovar media policy has undergone a near complete reversal from what existed before the conflict and in its immediate aftermath. The United Nations Interim Administration Mission in Kosovo (UNMIK),⁵ entrusted with the administration of the province, along with the OSCE, which was entrusted to build democratic institutions, were authorised to establish and implement media policy. They have promulgated regulations and codes of conduct to meet international standards while protecting and promoting freedom of expression.

Today, three province-wide television stations and more than 100 licensed local broadcasters exist in an environment of relatively free and open media. Programming in minority languages such as Serbian, Bosnian, and Turkish is provided by Radio Television Kosovo (RTK—the national public service broadcaster) and through independent broadcast media.⁶ RTK was established to create an independent public broadcasting service in the European tradition, produced locally for all the people of Kosovo.⁷ RTK is obliged by its constitutive regulation to provide primetime news coverage, of which not less than 15% must be in the languages of minority communities within Kosovo. It must also give voice to all communities by, among other things, establishing a programming services office to support these communities and dedicating to them not less than 15% of RTK’s television and radio programming, including primetime news coverage.

2 Constitution

The United Nations Interim Administration Mission in Kosovo, in its first law-creating mission, appointed a Special Representative of the Secretary General (SRSG), who has promulgated more than 130 Regulations in the past three years. UNMIK’s Regulation 1999/24 defines the applicable law in Kosovo and also establishes the direct enforcement of international instruments as part of the legal system of Kosovo. On 15 May 2001, UNMIK promulgated the Regulation on a Constitutional Framework for Provisional Self-Government in Kosovo.⁸

2.1 Freedom of expression

The Constitutional Framework contains no explicit mention of freedom of expression. However, the right to freedom of expression can be inferred from provisions incorporating the major international and European human rights instruments (Chapter 3, Section 3.2).

Chapter 3 (Human rights)

⁴ This registration was conducted due to the need to hold the first post-conflict elections in Kosovo. See further: <http://www.osce.org/kosovo/elections/>.

⁵ See further: <http://www.unmikonline.org>.

⁶ See further: The Kosovo Temporary Media Commissioner Report 2000-2001, p.12 and Appendix 7, available at: http://www.osce.org/kosovo/bodies/tmc/pdf/tmc_report.PDF.

⁷ UNMIK Regulation No. 2001/13.

⁸ UNMIK Regulation No. 2001/9, available at: <http://www.un.org/peace/kosovo/pages/regulations/reg01.09.html>.

3.1 All persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms.

3.2 The Provisional Institutions of Self-Government shall observe and ensure internationally recognized human rights and fundamental freedoms, including those rights and freedoms set forth in:

- a) The Universal Declaration on Human Rights;
- b) The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- c) The International Covenant on Civil and Political Rights and the Protocols thereto;
- d) The Convention on the Elimination of All Forms of Racial Discrimination;
- e) The Convention on the Elimination of All Forms of Discrimination Against Women;
- f) The Convention on the Rights of the Child;
- g) The European Charter for Regional or Minority Languages; and
- h) The Council of Europe's Framework Convention for the Protection of National Minorities.

3.3 The provisions on rights and freedoms set forth in these instruments shall be directly applicable in Kosovo as part of this Constitutional Framework.

2.2 Broadcasting

The Constitutional Framework assigns the responsibility for regulating the broadcast media to the Provisional Institutions of Self-Government.

Chapter 5 (Responsibilities of the Provisional Institutions of Self-Government)

5.4 The Provisional Institutions of Self-Government shall also have the following responsibilities in the field of mass media:

- a) Adopting laws and enforcement mechanisms in accordance with international human rights and freedom of expression standards as contained in Articles 19 and 29 of the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols to prevent defamation or hate speech in the Kosovo systems of mass media;
- b) Regulating broadcast media consistent with these international legal constraints and the best European practices through an independent media commission, whose members will be appointed by the Provisional Institutions of Self-Government from nominations submitted by non-governmental and non-political organizations in Kosovo; these members will include both genders and will reflect the ethnic and regional diversity of Kosovo society;
- c) Guaranteeing the editorial independence of the public broadcaster by safeguarding the independence of its Board, whose members will be appointed by the Provisional Institutions of Self-Government from nominations submitted by non-governmental and non-political organizations in Kosovo; these members will include both genders and will reflect the ethnic and regional diversity of Kosovo society; and
- d) Establishing an office or offices of public information to present the Institutions' deliberations and decisions to the international and local media.⁹

⁹ Emphasis added.

The Framework also guarantees all the communities “access to, and representation in, public broadcast media, as well as programming in relevant languages” (Chapter 4, Section 4.4, Paragraph o – see further, *infra*).

2.3 Minority rights

The Constitutional Framework provides a mechanism to protect Kosovo’s various “communities”.¹⁰

Chapter 4 (Rights of Communities and Their Members)

General Provisions

4.1 Communities of inhabitants belonging to the same ethnic or religious or linguistic group (Communities) shall have the rights set forth in this Chapter in order to preserve, protect and express their ethnic, cultural, religious, and linguistic identities.

4.3 The Provisional Institutions of Self-Government shall be guided in their policy and practice by the need to promote coexistence and support reconciliation between Communities and to create appropriate conditions enabling Communities to preserve, protect and develop their identities. The Institutions also shall promote the preservation of Kosovo’s cultural heritage of all Communities without discrimination.

Rights of Communities and Their Members

4.4 Communities and their members shall have the right to:

(a) Use their language and alphabets freely, including before the courts, agencies, and other public bodies in Kosovo;

[...]

(c) Enjoy access to information in their own language;

[...]

(e) Enjoy unhindered contacts among themselves and with members of their respective Communities within and outside of Kosovo;

[...]

(g) Establish associations to promote the interests of their Community;

[...]

(i) Provide information in the language and alphabet of their Community, including by establishing and maintaining their own media;

[...]

(k) Promote respect for Community traditions;

[...]

[...]

(o) Be guaranteed access to, and representation in, public broadcast media, as well as programming in relevant languages; and

(p) Finance their activities by collecting voluntary contributions from their members or from organizations outside Kosovo, or by receiving such funding as may be

¹⁰ In Chapter 9 (Sections 9.1.12 – 9.1.17), the Constitutional Framework foresees the existence of a Committee on Rights and Interests of Communities composed of the representatives of each of Kosovo’s Communities elected to the Assembly. The Committee would be responsible for making recommendations regarding proposed laws, or, on its own initiative, propose laws and such other measures within the responsibilities of the Assembly, as it deems appropriate to address the concerns of Communities.

provided by the Provisional Institutions of Self-Government or by local public authorities, so long as such financing is conducted in a fully transparent manner.¹¹

Protection of Rights of Communities and Their Members

4.5 The Provisional Institutions of Self-Government shall ensure that all Communities and their members may exercise the rights specified above. The Provisional Institutions also shall ensure fair representation of Communities in employment in public bodies at all levels.

4.6 Based on his direct responsibilities under UNSCR 1244(1999) to protect and promote human rights and to support peace-building activities, the SRSG will retain the authority to intervene as necessary in the exercise of self-government for the purpose of protecting the rights of Communities and their members.

2.4 (Official/State) language(s)

Chapter 9, entitled ‘Provisional Institutions of Self-Government’, sets out the approach to the question of language usage as regards the Assembly and the Government.¹²

3 Legislation

Pending the establishment of a regulatory regime for broadcasting, the Special Representative promulgated UNMIK Regulation No. 2000/36 on the licensing and regulation of the broadcast media in Kosovo.¹³ This regulation provides for (the institution of) a Temporary Media Commissioner (TMC).¹⁴ The authority and responsibility of the TMC is described in Section 1.1:

The Temporary Media Commissioner is responsible for the development and promotion of an independent and professional media in Kosovo and the implementation of a temporary regulatory regime for all media in Kosovo, pending the establishment of an Interim Media Commission, and shall be independent in the performance of these responsibilities.

The TMC acts as the regulatory agency for the broadcast media and is responsible for ensuring that broadcasters do not broadcast in Kosovo without a broadcast licence issued by the TMC.¹⁵ Applicants for a broadcast licence must agree to abide by the Broadcast Code of Conduct issued by the TMC,¹⁶ which is consistent with sub-section 2.2 of UNMIK Regulation No. 2000/36.

Affirming respect for the principles of the Universal Declaration of Human Rights,¹⁷ the Code of Conduct ensures that broadcasters will meet generally accepted international standards of ethnic, cultural, religious and linguistic respect for all communities in Kosovo.

¹¹ Emphasis added.

¹² See, in particular, paras. 9.1.49, 9.1.50 and paras. 9.3.17, 9.3.18, respectively.

¹³ 17 June 2000, available at: <http://www.osce.org/kosovo/bodies/tmc/unmikreg.php3?ik=1>.

¹⁴ See generally: <http://www.osce.org/kosovo/bodies/tmc/>.

¹⁵ See further: The Kosovo Temporary Media Commissioner Report 2000-2001, *op. cit.*, Appendices 5 and 6.

¹⁶ Code of Conduct for the Broadcast Media in Kosovo, 8 September 2000, available at: <http://www.osce.org/kosovo/bodies/tmc/bcoc.php3?lg=e>.

¹⁷ See Articles 2, 5, 6, 10, 19 and 29 of the Universal Declaration of Human Rights.

Section 8 of the Code requires that broadcasters “will not be [sic] prohibit or censor expression on the grounds that it is in a particular language, especially the language of an ethnic minority”.

UNMIK Regulation No. 2000/36 also establishes a Media Appeals Board as an independent body that hears and decides appeals of decisions by the TMC regarding refusal to issue a broadcast licence, the conditions attached to a broadcast licence, or sanctions.

4 Application of legislation and other measures affecting language

UNMIK’s regulation dealing with media incorporates the direct enforcement of international conventions as part of media policy. Nevertheless, Kosovo still lacks a legal framework and a strategy for the overall development of the media, although the former has begun to take shape. Although media enterprises have sprouted throughout Kosovo, they are all economically and professionally fragile and substantially dependent on either international donors or political parties (the exception is RTK, which is financed by the consolidated budget of Kosovo).

5 Current developments

The process has begun for the establishment of an Independent Media Commission that will be in charge of both licensing and enforcement of the Code of Conduct.

Slovakia

The official language of Slovakia is Slovak. Prior to 1999, the use of minority languages in broadcasting (and other spheres) was stringently restricted by Slovakian law. In 1999, the Government enacted a widespread reform. There are still concerns with its implementation, but the policies and formal structure have altered greatly. The legislation introduced in 1999 re-established minority-language rights, but for the purposes of the law, only languages spoken by national minorities that constitute at least 20% of the inhabitants of a given municipality are recognised, thus denying language rights to certain minorities. Current broadcasting legislation includes the requirement that programming should contribute to the support/development of the cultures of national minorities in Slovakia. Broadcasters also have a duty to ensure the use of the state language and the languages of national minorities in accordance with special regulations relating to the broadcasting of programmes and other elements of the programme service. Slovak Radio and Slovak Television are under a special obligation to guarantee broadcasting in the mother tongues of national minorities and ethnic groups residing in Slovakia. A bilateral treaty with Hungary provides for the right of Hungarians living in the Slovak Republic to have access to public mass media on a non-discriminatory basis and also to establish and operate their own media.

1 Introduction

1.1 Linguistic topography

The population of Slovakia is about 5,414,937 (July 2001 est.). Of that population, about 85.7% are Slovak; 10.6%, Hungarian; 1.6%, Roma (the 1992 Census figures under-report the Gypsy/Romany community, which is about 500,000); 1.1%, Czech, Moravian, Silesian; 0.6%, Ruthenian and Ukrainian; 0.1%, German; 0.1%, Polish; and 0.2%, other (1996).¹

1.2 Broadcasting

Slovakia's broadcasting sector has changed considerably since the adoption of the 1993 Broadcasting Law. The introduction of commercial television, in particular, transformed the market completely. In 1996, the first private television station, *Markíza*, began operating. Private radio stations exist in larger numbers and have operated for a longer period of time. The audience share of public television broadcaster *Slovak TV (STV)* shrank from nearly 75% in 1995 to less than 20% by 2000. *Markíza* began to claim 60% of television viewers. Channels from neighbouring countries, in particular the Czech Republic and Hungary, have a sizeable audience. In addition, the foreign media and extensive cable and satellite penetration, with some two-thirds of households connected by 2000, have affected the broadcasting market.

On 4 May 1999, the Slovak Republic submitted a report pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities to the Council of Europe.² This Report stated:

¹ Slovakia, CIA World Factbook 2002.

² Report submitted by the Slovak Republic pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, 4 May 1999, Doc. ACFC/SR(1999)008, available at: [http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_\(MONITORING\)/2._Monitoring_mechanism/3._State_reports/ACFC_SR\(1999\)008%20E%20state%20report%20Slovakia.asp#TopOfPage](http://www.coe.int/T/e/human_rights/Minorities/2._FRAMEWORK_CONVENTION_(MONITORING)/2._Monitoring_mechanism/3._State_reports/ACFC_SR(1999)008%20E%20state%20report%20Slovakia.asp#TopOfPage).

In Slovakia, public radio and television provide broadcasts in languages of national minorities. At present, Slovak Radio and Slovak Television broadcast in Hungarian, Ukrainian, Ruthenian, German and Romany. On the territory of the SR, it is also possible to receive radio and television signals from a number of television and radio stations (both public and private) from neighbouring countries.³

1.3 Government policies on broadcasting and minorities

The Act of the Slovak National Council of 24 May 1991 on Slovak Radio, No. 255/1991 Coll., regulates the licence-granting procedure operated by the Council for Broadcasting and Retransmission.⁴ The Law requires Slovak Radio to provide “by means of radio broadcasting in mother tongues the exercise of the interests of nationalities and ethnic groups living in the Slovak Republic” (§5 (2)).⁵ Both this Law and the Act on Slovak Television, No. 254/1991 Coll.⁶ (see *infra*), require the promotion of the national culture and cultures of the various minorities living in the Slovak Republic through programming and other activities.

2 Constitution

The following presents excerpts from the Constitution, as adopted on 3 September 1992 (including the Amendments of 14 July 1998 and 14 January 1999).⁷

2.1 Freedom of expression

Article.26

- (1) Freedom of expression and the right to information shall be guaranteed.
- (2) Every person has the right to express his or her opinion in words, writing, print, images and any other means, and also to seek, receive and disseminate ideas and information both nationally and internationally. No approval process shall be required for publication of the press. Radio and television companies may be required to seek permission from governmental authorities to set up private businesses. Further details shall be provided by law.
- (3) Censorship shall be prohibited.
- (4) Freedom of expression and the right to receive and disseminate information may be lawfully limited only where, in a democratic society, it is necessary to protect rights and freedoms of others, state security, law and order, health and morality.

2.2 Minority rights

Article 12

2. Fundamental rights shall be guaranteed in the Slovak Republic to every person regardless of sex, race, colour, language, faith, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, birth or any

³ *Ibid.*, Section on Article 9.

⁴ For further information on the Council for Broadcasting and Retransmission, see: <http://www.rada-rtv.sk>.

⁵ Source: Ministry of Culture of the Slovak Republic: <http://www.culture.gov.sk/english/LEG/leg1.html>; also available at: <http://www.rada-rtv.sk>.

⁶ Available at: <http://www.rada-rtv.sk>.

⁷ Source: Government Office of the Slovak Republic, available at: http://www.government.gov.sk/VLADA/USTAVA/en_vlada_ustava.shtml.

other status, and no person shall be denied their legal rights, discriminated or favoured on any of these grounds.

Article 34

1. Citizens of national minorities or ethnic groups in the Slovak Republic shall be guaranteed their full development, particularly the rights to promote their cultural heritage with other citizens of the same national minority or ethnic group, receive and disseminate information in their mother tongue, form associations, and create and maintain educational and cultural institutions. Details thereof will be determined by law.

Article 47

2. Every person shall have the right to counsel from the outset of proceedings before any court of law, or a governmental or public authority as provided by law.

2.3 (Official/State) language(s)

Article 6

1. Slovak is the official language of the Slovak Republic.
2. The use of languages other than the official language in official communications shall be determined by law.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

On 1 January 1996, the Meciar Government passed a language law, which set Slovak as the only official language in Slovakia. This law was problematic as it broke the 1995 Slovak-Hungarian State Treaty, which guaranteed Slovak minorities in Hungary and Hungarian minorities in Slovakia the right to use their own language in official contacts.

In the autumn of 1997, the Slovak Constitutional Court ruled the Law on the State Language 270/1995⁸ unconstitutional as it violated Articles 24, 28 and 34 of the Constitution.⁹ On 11 July 1999, the Slovak Parliament passed the final draft version of the Law on the Use of Minority Languages to replace the unconstitutional law. The new Law re-established minority language rights in Slovakia, although for the purposes of the Law, only national minorities that represent at least 20% of the inhabitants of a given municipality are entitled to the rights set out therein. This threshold may thus exclude several minorities, including Ruthenian populations.

LAW ON THE USE OF MINORITY LANGUAGES, 1999¹⁰

Preamble:

⁸ Adopted on 15 November 1995, available at: http://www.culture.gov.sk/english/LEG/Z95_270.htm.

⁹ Constitutional Court of the Slovak Republic, File Ref. PL. ÚS 8/96 of 26 August 1997, published in the Collection of Laws of the Slovak Republic, Part 110, under No. 260/1997. See: <http://www.concourt.sk>.

¹⁰ Passed into law by the 17th Session of the Slovak Parliament on 11 July 1999. Source: Ministry of Culture of Slovak Republic website: <http://www.culture.gov.sk/english/LEG/leg1.html>. Footnotes omitted.

[...] recognizing that the Slovak language is the state language of the Slovak Republic and that it is desirable to establish the use of languages of citizens of the Slovak Republic who are members of national minorities, enacted the following law:

§ 1

The citizen of the Slovak Republic who is a member of a national minority is entitled to use, in addition to the state language, the language of the national minority (hereinafter referred to as “minority language”). The purpose of this law is to establish, in harmony with other legislation, the rules of use of minority languages also in official contacts.

§ 2

(1) Citizens of the Slovak Republic who are members of national minorities and, by the results of the latest census, represent at least 20 % of the total population in the community may use the minority language in such a community in official contacts.

(2) The list of communities pursuant to par. (1) shall be established by decree of the Government of the Slovak Republic.

[...]

3.2 Broadcasting legislation

ACT ON BROADCASTING AND RETRANSMISSION AND ON AMENDMENTS OF ACT NO. 195/2000 COLL. ON TELECOMMUNICATIONS, NO. 308/2000¹¹

§ 16 Basic duties of broadcasters

A broadcaster has the duty

[...]

g) to ensure the use of the state language and the languages of national minorities in accordance with special regulations in the broadcasting of programmes and other elements of the programme service.

The current Slovak Radio and Television Acts state that radio and television must provide programming that contributes to the development of national minorities living in Slovakia.

SLOVAK RADIO ACT, NO. 255/1991 COLL.¹²

§ 5 (2) Slovak Radio ensures by means of radio broadcasting in mother tongues the exercise of the interests of nationalities and ethnic groups living in the Slovak Republic.

§ 6 : Slovak Radio fulfils the following tasks in particular:

[...]

d) contribute by radio broadcasting to the development of the national culture and the cultures of nationalities living in the Slovak Republic as well as transmitting the cultural values of other nations.

¹¹ Adopted on 14 September 2000, available at: <http://www.rada-rtv.sk/a/a1.1.html>. Footnotes omitted.

¹² As amended by Act No. 483/1992 Coll.; Act No. 166/1993 Coll.; Act No. 83/1995 Coll.; Act No. 321/1996 Coll.; Act No. 335/1998 Coll.; source: The Ministry of Culture of the Slovak Republic: <http://www.culture.gov.sk/english/LEG/leg1.html>; also available at: <http://www.rada-rtv.sk>.

SLOVAK TELEVISION ACT, NO. 254/1991 COLL.¹³

§ 3 (3): Slovak Television also caters for the interests of the national minorities and ethnic groups living in the Slovak Republic through television broadcasts in their respective mother tongues.

§ 6 Slovak Television fulfils the following tasks:

[...]

(j) it contributes, by means of television broadcasting, to promoting national culture and the cultures of the minorities living in the Slovak Republic, and to mediating the cultural values of other nations.

3.3 Transfrontier dimension

Slovakia is party to a treaty of good neighbourliness with Hungary, which requires it to provide the “the right of access to public mass media without discrimination and the right to their own media” to the Hungarian minority.

TREATY ON GOOD NEIGHBOURLINESS AND FRIENDLY COOPERATION BETWEEN THE SLOVAK REPUBLIC AND THE REPUBLIC OF HUNGARY, 19 MARCH 1995

Article 15 (2)(g)

Persons belonging to the Hungarian minority in the Slovak Republic and those belonging to the Slovak minority in the Republic of Hungary shall have the right to use, individually or in community with other members of their group, orally and in writing, their minority language both in private and in public. They shall also have [...] the right of access to public mass media without discrimination and the right to their own media.¹⁴

¹³ Amended by: Act No. 482/1992 Coll.; Act No. 166/1993 Coll.; Act No. 82/1995 Coll.; Act No. 321/1996 Coll.; Act No. 335/1998 Coll.. Source: Minority Electronic Resources: http://www.riga.lv/minelres/NationalLegislation/Slovakia/Slovakia_TV_excerpts_English.htm. The full text of the Law is also available at: <http://www.rada-rtv.sk>.

¹⁴ Emphasis added. Source: Government Office for Hungarian Minorities Abroad, see: <http://www.htmh.hu/dokumentumok/asz-sk-e.htm>.

Slovenia

The Slovenian Constitution grants special rights to Hungarians, Italians and the Roma who reside in the country. While the Slovene language is the official language of the state, constitutional and legislative provision is made for Hungarian and Italian to enjoy equal status with Slovene for administrative, judicial and other purposes in certain parts of the country. Special consideration is also given to the three minority-language communities in question in the main piece of broadcasting legislation. Apart from affirming the right of access of these minorities to information and expressly authorising programming and advertising in these languages, the legislation also equates linguistic competence in Hungarian or Italian with similar competence in Slovene, where appropriate. The significance of this is that it removes the obligation of proficiency in Slovene (usually a precondition for becoming a “responsible editor”) for individuals aspiring to editorial roles in the broadcasting sector when their likely linguistic area of activity will be Hungarian or Italian. The legislation consistently applies such equations, for instance, when determining the origin of audiovisual works (which must amount to a “significant proportion” of the annual transmission time of every television station). Conversely, radio stations for the Hungarian and Italian ethnic communities are exempted from the requirement that at least 10% of the daily transmission time of any radio station must comprise Slovenian music.

1 Introduction

1.1 Linguistic topography

In terms of ethnic structure, the Republic of Slovenia is a relatively homogeneous country. The ethnic structure of the population living on the Slovene territory has not changed significantly throughout different historical periods. The main changes in this regard date from after the Second World War. During this time, the proportion of Slovenes decreased, as did the proportion of members of autochthonous ethnic communities (Hungarians and Italians). At the same time, there was also a rise in the proportion of “new-era ethnic minorities”, namely people who moved to Slovenia from various parts of the former Yugoslav Federation, mostly for economic reasons, after the Second World War. The majority of these immigrants (more than 170,000) have been granted Slovene citizenship since Slovenia gained independence in 1991.¹

The main nationality in Slovenia is Slovene and the main language spoken is Slovene. According to data collected for the last Census (1991),² the population of Slovenia included 1,727,018 Slovenes (87.84% of the total population). The same data shows that the population also included: 8,503 Hungarians (0.43%) and 3,064 Italians (0.16%), groups which are constitutionally-recognised autochthonous national minorities, with special rights guaranteed by Constitution. The Slovene Constitution also grants special rights to members

¹ See Sonja Novak Lukanovic, “The Italian and Hungarian Autochthonous Ethnic Communities, and the Romany in the Republic of Slovenia”, June 1999, Government of the Republic of Slovenia - Public Relations and Media Office, available at: <http://www.uvi.si/eng/new/background-information/minorities-in-slovenia/>.

² A national Census is also being conducted in 2002 and the results will be published in April 2003 at: <http://www.gov.si/zrs/eng/index.html>.

of the Roma Community living in the Republic of Slovenia. At the moment, 2,293 Roma (0.12%) are living in Slovenia.³

The Italian ethnic community lives in relatively dense groups in the ethnically-mixed territory of Slovene Istria, in the municipalities of Koper/Capodistria, Izola/Isola and Piran/Pirano. The region in which the Hungarian autochthonous ethnic community is settled covers a narrow belt along the Slovene-Hungarian border. In administrative terms, they fall under the jurisdiction of five municipalities: Hodos, Moravske Toplice, Salovci, Lendava and Dobrovnik. The Hungarian ethnic community is densely populated in this region. The ethnically-mixed areas are set out in municipal statutes.

The majority of the Roma live in relatively dense groups in north-eastern Slovenia, mostly in the Prekmurje region, while they are also scattered throughout southern Slovenia, along the border with Croatia. The exact number of the Roma population is not known, since censuses have shown that a decreasing number of people declare themselves to belong to the Roma Community.⁴

Besides the constitutionally-recognised autochthonous minorities and the Roma Community (which also benefits from constitutionally-conferred rights), citizens of many other nations are currently residing in Slovenia, including: 199 Austrians (0.01% of the total population); 546 Germans (0.03%); 4,396 Montenegrins (0.22%); 54,212 Croats (2.76%); 4,432 Macedonians (0.22%); 26,842 Muslims (1.36%)⁵ and 47,911 Serbs (2.44%).⁶

1.2 Broadcasting

According to the law,⁷ RTV Slovenia broadcasts on two national television channels and three national radio channels; airs one radio and television channel for the Italian and Hungarian national community respectively; produces radio and television programmes for Slovene national minorities in neighbouring countries, radio and television programmes for foreign audiences and radio and television programmes in the regional centres in Maribor and Koper/Capodistria.⁸

There is one national public television station, *TV Slovenija*, which transmits two national television programmes (*RTV Slovenija 1*, *RTV Slovenija 2*). There are also three nationwide private television stations (*POP TV*, *TV3* and *A-kanal*) in Slovenia.

There is one national public radio station, *Radio Slovenija*,⁹ which transmits three national radio programmes (*Prvi program A1*, *Drugi program VAL 202*, *Tretji program ARS*). Apart from these, there are many regional and local radio stations which can be heard in one or

³ Statistical Office of the Republic of Slovenia - Statistical Yearbook 2001 SY 2001 - 04. Population, available at: <http://www.gov.si/zrs/eng/index.html>.

⁴ See further: Čampa Margit, *Širjenje Evropske unije in varstvo manjšin – primer Slovenije*, 2001; Sonja Novak Lukanovic, *op. cit.*

⁵ The ethnic category 'Muslim', which was introduced in the post-war censuses of the Yugoslav population, mostly incorporated people from the territory of Bosnia-Herzegovina, who today mostly declare themselves 'Bosnjaks'.

⁶ Slovene Statistical Yearbook 2001, *op. cit.*

⁷ *Zakon o Radioteleviziji Slovenija*; *Uradni list RS*, št. 18-729/1994.

⁸ *Radio televizija Slovenija*, see further:

http://www.rtvsllo.si/portal/page?_pageid=33,31370&_dad=portal&_schema=PORTAL

⁹ *Radio televizija Slovenija*, see further:

http://www.rtvsllo.si/portal/page?_pageid=33,32636&_dad=portal&_schema=PORTAL&p_calledfrom=1

more regions. Because of very specific terrain, smaller stations all around the country experience signalling difficulties.

Slovenia's legislation takes into account the specific needs of the ethnic communities. In the ethnically-mixed region of Slovene Istria, where Slovenes live together with Italians, the regional Koper/Capodistria radio and television station plays a very important role. This is a part of the national public institution, *Radiotelevizija Slovenija*, but is independent in terms of management of programming policy and has a direct influence on the appointment of the directors and editors of the Koper/Capodistria station. Radio Koper/Capodistria (*Onda Blu*) began to transmit programmes in Italian in 1945 and today it broadcasts for fourteen hours per day in the Italian language.¹⁰ Television Koper/Capodistria¹¹ began operating in 1971 and its target audience is members of the Italian ethnic community living in Slovenia and Croatia; it broadcasts eight hours a day in the Italian language. It must also be emphasised that there are no technical or legal obstacles to receiving all major Italian radio and television programmes in the parts of Slovenia where the Italian minority is living.

Members of the Hungarian ethnic community can also listen to programmes in the Hungarian language broadcast by the Hungarian regional studio (for Hungarian programming), which operates as part of *Radiotelevizija Slovenija*. *MMR Pomurski madžarski programme (Muravidék Magyar Radió)* broadcasts in the Hungarian language.¹² The head office of radio and television programming management for the Hungarian ethnic community is based in Lendava. There is also a Hungarian television programme service – *Mostovi/Hidak*.¹³

1.3 Government policies on broadcasting and minorities

The Government grants special subsidies for (autochthonous and non-autochthonous) minority organisations in the field of broadcasting. There is a wide consensus among people, reflected in governmental policies, that members of minority groups should have special and preferential status, with a view to achieving full equality in society.

2 Constitution

Ustava Republike Slovenije (the Constitution of the Republic of Slovenia), 1991,¹⁴ is the highest legal act in the Republic of Slovenia. Before describing in full its most important provisions for present purposes, note should be taken of Article 8 of the Constitution, which reads:

Laws and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly.

¹⁰ See further:

http://www.rtv slo.si/portal/page?_pageid=33,32642&_dad=portal&_schema=PORTAL&p_calledfrom=1.

¹¹ *Radio televizija Slovenija*, see further:

http://www.rtv slo.si/portal/page?_pageid=33,32642&_dad=portal&_schema=PORTAL&p_calledfrom=1.

¹² *Radio televizija Slovenija*, see further:

http://www.rtv slo.si/portal/page?_pageid=33,32622&_dad=portal&_schema=PORTAL&p_calledfrom=1.

¹³ *Radio televizija Slovenija*, see further:

http://www.rtv slo.si/portal/page?_pageid=33,32625&_dad=portal&_schema=PORTAL&p_calledfrom=1.

¹⁴ Adopted on 23 December 1991 (Official Gazette of the Republic of Slovenia, No. 33/91-I), as amended by the Constitutional Act of 14 July 1997 (Official Gazette of the Republic of Slovenia, No. 42/97) and the Constitutional Act of 25 July 2000 (Official Gazette of the Republic of Slovenia, No. 66/2000), available at: <http://www.dz-rs.si/en/aktualno/zakonodaja.html>.

This Article is very important, as many international treaties are ratified by, and applied in, the Republic of Slovenia. The Constitutional Court of the Republic of Slovenia has gone even further and refers in its own decisions to the most important, generally-accepted principles of international law and their application in different legal fields by various, generally-recognised legal bodies.¹⁵ Human rights are given both general and specific treatment in the Slovenian Constitution.

Article 5

In its own territory, the state shall protect human rights and fundamental freedoms. It shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities. [...] It shall provide for the preservation of the natural wealth and cultural heritage and create opportunities for the harmonious development of society and culture in Slovenia [...]

2.1 Freedom of expression

Concerning broadcasting rights and freedom of expression, there is only one provision dealing generally with such issues. However, as already mentioned, international legal instruments to which Slovenia is a party also play an important role in domestic law.

Article 39 (Freedom of Expression)

Freedom of expression of thought, freedom of speech and public appearance, of the press and other forms of public communication and expression shall be guaranteed. Everyone may freely collect, receive and disseminate information and opinions. Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well founded legal interest under law.

2.2 Minority rights

Hungarian and Italian minorities, because of their special historical status, are guaranteed special rights by the Constitution.

Article 64 (Special Rights of the Autochthonous Italian and Hungarian National Communities in Slovenia)¹⁶

The autochthonous Italian and Hungarian national communities and their members shall be guaranteed the right to use their national symbols freely and, in order to preserve their national identity, the right to establish organizations and develop economic, cultural, scientific and research activities, as well as activities in the field of public media and publishing. [...] These national communities and their members shall be guaranteed the right to foster relations with their nations of origin and their respective countries. The state shall provide material and moral support for the exercise of these rights.

¹⁵ There are many references to decisions of the European Court of Human Rights.

¹⁶ Emphasis added.

In order to exercise their rights, the members of these communities shall establish their own self-governing communities in the geographic areas where they live. On the proposal of these self-governing national communities, the state may authorize them to perform certain functions under national jurisdiction, and shall provide funds for the performing of such functions.

The two national communities shall be directly represented in representative bodies of local self-government and in the National Assembly.

The position of the Italian and Hungarian national communities and the manner in which their rights are exercised in the geographic areas where they live, the obligations of the self-governing local communities for the exercise of these rights, and those rights which the members of these national communities exercise also outside these areas, shall all be regulated by law. The rights of both national communities and their members shall be guaranteed irrespective of the number of members of these communities.

Laws, regulations and other general acts that concern the exercise of the constitutionally provided rights and the position of the national communities exclusively, may not be adopted without the consent of representatives of these national communities.

In addition, the Roma Community in Slovenia is recognised and accorded special status by the Constitution:

Article 65

(Status and Special Rights of the Romany Community in Slovenia)

The status and special rights of the Romany community living in Slovenia shall be regulated by law.

2.3 (Official/State) language(s)

Article 11 of the Constitution grants official-language status to the Slovene language and in some parts of Slovenia, to the Italian and Hungarian languages as second official languages.

Article 11

The official language in Slovenia is Slovene. In those municipalities where Italian or Hungarian national communities reside, Italian or Hungarian shall also be official languages.

In this context, Articles 14, 61 and 62 should also be read:

Article 14

(Equality before the Law)

In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance.

All are equal before the law.

Article 61
(Expression of National Affiliation)

Everyone has the right to freely express affiliation with his nation or national community, to foster and give expression to his culture and to use his language and script.

Article 62
(Right to Use One's Language and Script)

Everyone has the right to use his language and script in a manner provided by law in the exercise of his rights and duties and in procedures before state and other bodies performing a public function.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

There are many acts dealing with minority and linguistic rights: the Courts Act (1994),¹⁷ the Public Administration Act (2002)¹⁸ and the Act on special rights of members of Italian and Hungarian ethnicity in the schooling system.¹⁹ Everyone can use the language of his/her choice in private, but in public, one is obliged to use the Slovene language, with some exceptions. In the ethnically-mixed regions of Prekmurje and Slovene Istria, the Hungarian and Italian languages enjoy equal status with the Slovene language on the level of both private and public use. Slovene and Italian, or Slovene and Hungarian, have equal status in the operation of administrative, national and judicial bodies. Topographical signs in these regions are also bilingual, as is the schools system.

THE PUBLIC ADMINISTRATION ACT OF 2002

Article 4

The official language in administration shall be Slovene.

In municipal areas with original Italian and Hungarian ethnic communities the second official language shall be Italian and Hungarian, respectively. In these areas the

¹⁷ *Zakon o sodiščih*; *Uradni list RS*, št. 19/94; amended: 45/1995, 26/1999, 38/1999, 45/1999 Odl.US: U-I-144/95, 28/2000, 26/2001, 56/2002), available in Slovene at: <http://www.sodisce.si/Zakoni/B/ZS.htm>. Excerpts in English available at:

http://www.riga.lv/minelres/NationalLegislation/Slovenia/Slovenia_Courts_excerpts_English.htm. See, in particular, Article 4. Similar provisions to the ones found in the Act on Public Administration can be found in almost every Act dealing with the operation of administrative, national and judicial bodies. For members of national minorities, identity cards are in the Slovene language and in the language of the national minority, if they want and decide to have such identity cards. The same rule applies for visas and for passports.

¹⁸ *Zakon o državni upravi /ZDU-1/, Uradni list RS*, št. 52/2002, available in Slovene at: http://www.dz-rs.si/si/aktualno/spremljanje_zakonodaje/sprejeti_zakoni/sprejeti_zakoni.html. See in particular, Article 3.

¹⁹ *Zakon posebnih pravic pripadnikov italijanske in madžarske narodnosti na področju vzgoje in izobraževanja*, *Uradni list RS*, št. 35-2046/2001, available in Slovene at: http://www.dz-rs.si/si/aktualno/spremljanje_zakonodaje/sprejeti_zakoni/sprejeti_zakoni.html.

administration shall carry out operations, conduct proceedings and issue legal and other acts in Slovene or in the language of the ethnic community, if the party residing in such an area should speak Italian or Hungarian, as the case may be.
[...]

3.2 Broadcasting legislation²⁰

MASS MEDIA ACT OF 2001²¹

Slovene broadcasting legislation is relatively new. Members of recognised minorities enjoy the same status as Slovenes, with some preferential exceptions which are designed to give those minorities more breathing space. The Mass Media Act was adopted on 25 April 2001 and it deals with a range of minority issues in different Articles. Article 4 defines the public interest in the area of the mass media.

Article 4

(1) The Republic of Slovenia shall support the mass media in the dissemination of programming important to:

The exercise of the right of citizens of the Republic of Slovenia, Slovenes around the world, members of the Slovene minorities in Austria, Hungary and Italy, the Hungarian and Italian ethnic communities in Slovenia, and the Romany community living in Slovenia to public information and to be informed in general the protection of the Slovenian national and cultural identity, the promotion of cultural creativity in the area of the mass media, a culture of public dialogue the consolidation of the social state based on the rule of law, the development of education and science.

(2) The Republic of Slovenia shall support the development of technical infrastructure in the area of the mass media.

(3) The Republic of Slovenia shall provide extra support to the dissemination of programming intended for the blind and the deaf-and-dumb using techniques thereto adapted, and to the development of the appropriate technical infrastructure.

(4) The government shall at the proposal of the minister responsible for culture (hereinafter: the responsible minister) set out the conditions, criteria and procedure for carrying out a regular annual public tender for co-financing the creation of programming and the development of the technical infrastructure specified in this article using funds from the national budget, in accordance with the provisions of the act governing the implementation of the public interest in the field of culture.

Article 5 defines the protection given to the Slovene language.

Article 5

²⁰ Emphasis has been added to certain sections of the provisions quoted in this section.

²¹ Available in Slovene at: http://www.dz-rs.si/si/aktualno/spremljanje_zakonodaje/sprejeti_zakoni/sprejeti_zakoni.html.

(1) Publishers founded and registered in the Republic of Slovenia must disseminate programming in Slovene, or must translate programming into Slovene in an appropriate manner, unless such is primarily intended for readers, listeners or viewers from any other language group.

(2) Publishers may disseminate programming intended for language education in a foreign language.

(3) The reason for disseminating programming in a foreign language or the purpose thereof must be separately elaborated in a discernible position within/on the programming medium using clear graphic, visual or acoustic symbols in Slovene.

(4) If programming is intended for the Hungarian or Italian ethnic communities, publishers may disseminate the programming in the language of the ethnic community.

(5) If, for reasons of the immediacy, directness, and authenticity of informing the public, or because of unavoidable time or technical obstacles or other unforeseen obstacles, programming is exceptionally disseminated in a foreign language, the provision of the third paragraph of this article shall apply.

(6) The sense of the provision of the first paragraph of this article shall also apply to media carrying information specified in the third paragraph of Article 2 of the present act.

The Act also guarantees the freedom to distribute programming across state borders:

Article 7

The Republic of Slovenia shall in its territory ensure freedom in disseminating and receiving programming from other countries, and may in individual cases restrict such freedom only in accordance with an international treaty by which the Republic of Slovenia is bound, and with the present act.

There are many Articles concerning the rights of members of minorities (see Articles 19, 51, 63, 68, 78, 86, 87):

Article 19

(1) Any person who fulfils the following conditions may be a responsible editor:

- *the person possesses a certificate of active knowledge of Slovene if the person is not a citizen of the Republic of Slovenia*
- *the person possesses a certificate of active knowledge of Hungarian or Italian in the event that the mass medium is for the Hungarian or Italian ethnic communities*
- the person has commercial capability
- no ban on working in the profession, performing activities or making public appearances has been pronounced against the person

(2) The provisions of the first and second indents of the previous paragraph shall not apply if the programming is disseminated in a foreign language in accordance with the first paragraph of Article 5 of the present act.

(3) Any person who enjoys immunity under the constitution or the law may not be a responsible editor.

Article 51

(1) It shall be obligatory to disseminate advertisements in Slovene or in a Slovene translation, unless disseminated in a foreign language in accordance with the present act.

(2) Mass media for the Hungarian and Italian ethnic communities may publish advertisements in the language of the ethnic community.

Stakes of foreign persons

Article 63

The provisions of this section shall also apply to foreign legal and natural persons, irrespective of the country in which their head office or permanent residence is located, unless stipulated otherwise by the present act.

Slovenian audio-visual works

Article 68

(1) Under the present act Slovenian audio-visual works are works produced originally in Slovene or works intended for the Hungarian and Italian ethnic communities in the language thereof, and works of Slovenian cultural origin from other areas of the arts.

(2) Audio-visual works specified in the previous paragraph are only those expressed in any manner as individual intellectual creations from the fields of literature, science and art.

(3) In accordance with Articles 4 and 110 of the present act the Republic of Slovenia shall support the establishment and progressive development of the Slovenian audio-visual industry, and shall promote the creation of Slovenian audio-visual works, such as TV feature films and dramas, arts and culture series, entertainment series, serials, documentaries and educational works.

(4) The Republic of Slovenia shall promote the development of technical infrastructure for audio-visual production.

(5) The Government of the Republic of Slovenia shall at the proposal of the relevant ministry adopt an act setting out the detailed criteria and conditions for the definition of works specified in this article.

Article 78

(1) A publisher specified in this article may acquire the status of a local radio or television station if it also fulfils the following extra conditions:

- the station provides objective and unbiased information for inhabitants of the local community and the balanced presentation of different opinions and views on political, cultural, religious, economic and other issues important to the life and work of the local inhabitants
- the publisher appoints a program committee in which the interests of the local community in the areas of commerce, culture, education and sport, and of the publisher of the station are represented
- the programming is primarily of a local character, and is jointly created by inhabitants of the local community
- *it has programming from the lives and work of Slovenes in neighboring countries, members of the Hungarian and Italian ethnic communities, and Roma, if it is receivable in areas where such communities live*
- the station's daily transmission time provides a higher proportion of programming of a local character than other radio and television stations that fulfil the criteria specified in this article and broadcast in the same area

(2) The program committee specified in the third indent of the previous paragraph, which shall have at least three members, shall monitor the implementation of the program concept, acquaint the responsible editor with its viewpoints and suggestions, offer opinions on the program concept and perform other tasks in accordance with the present act and the act on the founding of the program committee. Within fifteen days of adopting the act on the founding of the program committee or amendments or additions thereto the publisher must send such to the agency for their information.

(3) The agency shall issue a ruling on the assignment of the status of a local radio or television station, following a prior opinion from the relevant ministry.

(4) If a radio or television station no longer fulfils the conditions specified in this article the agency may revoke its status via a ruling and shall notify the relevant ministry of such.

Proportion of Slovenian music on radio stations Article 86

(1) *At least ten per cent of the daily transmission time of any radio station must be Slovenian music.*

(2) No more than twenty per cent of the daily transmission time during which Slovenian music is presented may count towards the proportion specified in the third paragraph of the previous article.

(3) *The provisions of this article shall not apply to radio stations for the Hungarian and Italian ethnic communities.*

Proportion of Slovenian audio-visual works
Article 87

(1) The publisher of every television station must endeavor to see that a significant proportion of the annual transmission time comprises Slovenian audio-visual works.

(2) Slovenian audio-visual works must account for at least two per cent of the annual transmission time of each television station of a publisher. The publisher must increase the proportion of such works each year in comparison with the proportion of annual transmission time in the previous year, until the proportion reaches five per cent of the annual transmission time, unless stipulated otherwise by the present act.

(3) Advertisements and telesales shall not be included in the annual transmission time specified in this article.

4 Application of legislation and other measures affecting language

The Mass Media Act 2001 entered into force on 25 April 2001. The application of the Act throughout its brief existence has been smooth and has not yet given rise to any special questions in practice. As regards minority rights, the Act has reaffirmed already-existing and enacted rights.

5 Current developments

At the moment, there are no significant specific developments to report in this connection. Although Slovenia has recognised only two autochthonous minorities and the Roma Community, the State also gives financial support to newspapers of other non-officially recognised minorities. It should also be mentioned that there is an ongoing debate about whether Austrians, Germans and in some parts of Slovenia, Serbs and Croats, may be recognised as autochthonous minorities. These concern small minority populations which have been living on that territory for centuries, as opposed to “new-era minorities”.

Spain

Although Castilian is recognised by the Spanish Constitution as the official language of the state, provision is also made for the use of other (co-official) languages by the country's Autonomous Communities, where applicable. Basque, Catalan, and Galician are the most well-known of these other languages, which are also frequently used in regional and local broadcasting. It is the Autonomous Communities themselves which must declare a language spoken within their territories as “co-official”, should they wish to do so. To date, six of the 17 Autonomous Communities have their own co-official languages and two more have committed themselves to the protection of their dialects. It follows from this that the Autonomous Communities also have responsibility for devising and implementing their own broadcasting legislation/policies (which would, of course, remain subject to the corresponding national order). Radio and television concessionaires under Catalan jurisdiction must, for example, comply with quotas for audiovisual works in Catalan (half of their programming must be in Catalan; for radios, an extra quota of 25% of the songs must also be in Catalan).

Relevant national legislation declares all broadcasting to be a public service; a vehicle for information and a vector for political participation, education and culture. One of its enumerated guiding principles is respect for linguistic pluralism. The public service broadcaster (which operates two national analogue terrestrial television stations and five radio stations) is obliged to provide regional programme material, including programmes in the co-official languages. The public service broadcaster has an advisory committee in each Autonomous Community. Similarly, the three national private analogue terrestrial television concessionaires are required to provide some regional programme material. Where public service broadcasters exist in Autonomous Communities with co-official languages, most (if not all) of the programming is in the co-official language. The forthcoming advent of digital terrestrial broadcasting is likely to lead to the establishment of regional private broadcasters, which will comply with the relevant regional legislation on the promotion of co-official languages. In the same vein, despite the liberalisation of the telecommunications sector, cable television broadcasters targeting an audience strictly from one Autonomous Community shall also apply to existing legislation on the use or promotion of the co-official language, where applicable. Whether public or private in character, regional radio stations must also comply with existing regional provisions on the use and promotion of co-official languages.

1 Introduction

1.1 Linguistic topography

Castilian (also known as Spanish) is the official language of Spain (Article 3.1 of the 1978 Spanish Constitution). It is spoken all over the country (40 million inhabitants). According to Article 3.2 of the Spanish Constitution, the other languages of Spain will also be official in their respective Autonomous Communities.

Three other languages are also spoken in Spain:

Galician (in Spanish, *gallego*; in Galician, *galego*) is spoken in Galicia and in some parts of Asturias and northern Castilla-León. Galician and Spanish are the official languages in the Autonomous Community of Galicia. Galician is spoken by approx. two million people.

Basque (*vasco* - *euskara*) is spoken in the Basque Country and in some parts of Navarra. Basque and Spanish are the official languages in those territories. Basque is spoken by approx. 700,000 people.

Catalan (*catalán* - *català*) is spoken in Catalonia, in the Balears and in the Autonomous Community of Valencia (where it is called *valenciano*). Spanish and Catalan/Valenciano (hereinafter, “Catalan”) are the official languages in those territories. Catalan is spoken by approx. six million people.

Some dialects (*bable* in Asturias, *fabla* in Aragon) are also protected by regional legislation. *Aranés*, a dialect of the Occitan language, is spoken in Val d’Arán (a county in Catalonia), and Catalan legislation also protects it.

The Spanish Constitution clearly mandates the public authorities to promote the use of all the official languages of Spain. The 1978 Spanish Constitution brought an end to the discrimination against minority languages suffered by several regions during Franco’s dictatorship (1939 - 1975). Now, more than a quarter of a century later, the use of minority languages is widely accepted and highly encouraged by the authorities of the Autonomous Communities which have a co-official language.

1.2 Broadcasting

The co-official languages of Spain are frequently used by regional and local broadcasting stations. Moreover, some Autonomous Communities (in particular, Catalonia) have approved several provisions that oblige audiovisual media under their jurisdiction to broadcast programmes in their respective co-official languages. Spain has reinforced its commitment to protect and promote all the official languages of Spain by signing and ratifying the European Charter for Regional or Minority Languages.¹

In Spain, there are 13 million households. Nearly all of them are able to receive analogue terrestrial broadcasting. 18% of households receive satellite broadcasts, while only 5% are cable subscribers.

2 Constitution²

2.1 Freedom of expression

Article 20

- (1) The following rights are recognised and protected:
- a) To express and disseminate thoughts freely through words, writing, or any other means of reproduction.
 - b) Literary, artistic, scientific, and technical production, and creation.
 - c) Academic freedom.

¹ See the declarations contained in the Instrument of Ratification for the Charter deposited by Spain at: <http://conventions.coe.int/treaty/EN/DeclareList.asp?NT=148&CM=1&DF=>. The Instrument of Ratification was published in the Spanish Official Journal n. 222 of 2001 (15 September 2001).

² The Spanish Constitution, 1978, available at: http://www.uni-wuerzburg.de/law/sp00t_.html (EN, ES).

d) To communicate or receive freely truthful information through any means of dissemination. The law shall regulate the right to the protection of the clause on conscience and professional secrecy in the exercise of these freedoms.

(2) The exercise of these rights cannot be restricted through any type of prior censorship.

(3) The law shall regulate the organisation and parliamentary control of the means of social communication owned by the state or any public entity and shall guarantee access to those means by significant social and political groups, respecting the pluralism of society and the various languages of Spain.

(4) These liberties find their limitation in the respect for the rights recognized in this Title, in the precepts of the laws which develop it and, especially, in the right to honour, privacy, personal identity, and protection of youth and childhood.

(5) The seizure of publications, recordings, or other means of information may only be determined by a judicial resolution.

2.2 Broadcasting

According to the Constitution, responsibility for the regulation of telecommunications and the technical aspects of broadcasting lies with the state (Article 149.1.21). In the media sector, the state has the power to approve the basic legislation for the press, radio, television and any other media, without prejudice to the powers of the Autonomous Communities to implement and enforce this basic legislation (Article 149.1.27). Responsibility for the promotion and teaching of the co-official languages lies with the Autonomous Communities (Article 148.1.17).

Title VIII - Territorial Organisation (Articles 137 to 158)

Article 137

The State is organised territorially into municipalities, provinces, and the Autonomous Communities which may be constituted. All these entities enjoy autonomy for the management of their respective interests.³

Article 148

(1) The Autonomous Communities may assume competences in the following: [...]

17) Promotion of culture, research, and, when applicable, the teaching of the language of the Autonomous Community;

Article 149

³ It is important to note that 17 Autonomous Communities have been constituted in Spain, each of which has its own legislative and executive bodies. Their responsibilities are determined by their basic institutional norms, the Estatutos de Autonomía, which were devised in accordance with Articles 148 and 149 of the Spanish Constitution.

The state holds exclusive competence over the following matters [...]: [...] mail and telecommunications; [...] aerial cables, submarine cables, radio communication; basic norms of the system of press, radio, and television and, in general, of the any means of social communication, without prejudice to the faculties which in their development and execution belong to the Autonomous Communities.

2.3 Minority rights

Article 2

The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards, and recognizes and guarantees the right to autonomy of the nationalities and regions which make it up and the solidarity among all of them.

Article 9.2

It is the responsibility of the public powers to promote conditions so that liberty and equality of the individual and the groups he joins will be real and effective; to remove those obstacles which impede or make difficult their full implementation, and to facilitate participation of all citizens in the political, economic, cultural, and social life.

Article 14

Spaniards are equal before the law, without any discrimination for reasons of birth, race, sex, religion, opinion, or any other personal or social condition or circumstance.

2.4 (Official/State) language(s)

Article 3

(1) Castilian is the official Spanish language of the state. All Spaniards have the duty to know it and the right to use it.

(2) The other languages of Spain will also be official in the respective Autonomous Communities, in accordance with their Statutes.

(3) The richness of the linguistic modalities of Spain is a cultural patrimony that will be the object of special respect and protection.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

The Autonomous Communities are entitled to declare a language as co-official in their territory. They shall make these declarations by means of their “Statutes of Autonomy” (their basic institutional norms). Six of the 17 Spanish Autonomous Communities have their own

co-official languages,⁴ and two other Autonomous Communities have committed themselves to the protection of their dialects.⁵

The Parliaments of these Autonomous Communities have passed Acts on the use and promotion of these languages and dialects. These Acts include provisions that deal specifically with the media under the jurisdiction of these Autonomous Communities (in particular, public regional media).⁶ The 1998 Catalan Act on linguistic policy even imposes some quotas on the use of the co-official language in regional and local audiovisual media.⁷ The regional Acts on the use of the co-official languages and dialects require public authorities to fund the production and distribution of audiovisual works in those regional languages.

3.2 Broadcasting legislation

In Spain, there are specific rules for nearly every kind of broadcasting service: public national terrestrial television (Act 4/1980); public regional television (Act 43/1983); national private terrestrial television (Act 10/1988); local terrestrial television (Act 41/1995); digital terrestrial television and radio (Act 44/1997); satellite television (Act 37/1995); cable television (Act 42/1995); the provision of conditional access services for digital television (Act 17/1997) and AM & FM radio (Act 31/1987). There are also two Acts which deal with content regulation (Act 25/1994 on the incorporation into Spanish law of the EC “Television without Frontiers” Directive and Act 21/1997 on the broadcasting of listed events) and which apply to any television programme, regardless of the delivery network used for its transmission. Some Autonomous Communities have approved rules implementing some of these national Acts.⁸

The two basic laws in Spanish broadcasting are the Statute on Radio and Television of 1980, which declares broadcasting to be an essential public service and sets out some basic principles which should regulate the activity of broadcasting; and Act 25/1994 on the

⁴ See the Statutes of Autonomy of the Basque Country (Article 6 of Organic Act 3/1979 of 18 December 1979); Catalonia (Article 3 of Organic Act 4/1979 of 18 December 1979); Galicia (Article 5 of Organic Act 1/1981 of 6 April 1981); Comunidad Valenciana (Article 7 of Organic Act 5/1982 of 1 July 1982); Navarra (Article 9 of Organic Act 13/1982 of 10 August 1982) and Baleares (Article 3 of Organic Act 2/1983 of 25 February 1983, as amended by Organic Act 3/1999 of 8 January 1999).

⁵ See the Statutes of Autonomy of Asturias (Article 4 of Organic Act 7/1981 of 30 December 1981, as amended by Organic Act 1/1999 of 5 January 1999) and Aragon (Article 7 of Organic Act 8/1982 of 10 August 1982, as amended by Organic Act 5/1996 of 30 December 1996). Article 3.4 of the Statute of Autonomy of Catalonia also refers to the protection of a dialect (Aranés).

⁶ See Catalan Act 1/1998 of 7 January 1998 (Articles 25 to 29 and the Fifth Additional Provision); Act of the Basque Country 10/1982 of 24 December 1982 (Articles 22 to 25); Act of Galicia 3/1983 of 15 June 1983 (Articles 18 to 20); Act of Valencia 4/1983 of 23 November 1983 (Articles 25 and 26); Act of Navarra 18/1986 of 15 December 1986 (Articles 27 and 28); Act of Baleares 3/1986 of 29 April 1986 (Articles 27 to 32); Act of Asturias 1/1998 of 28 March 1998 (Articles 12 to 14) and Act of Aragon 3/1999 of 10 March 1999 (Article 4 and the First Final Provision).

⁷ Article 26 of Catalan Act 1/1998 obliges radio and television concessionaires under Catalan jurisdiction to comply with quotas for audiovisual works in Catalan (as a general rule, 50% of their programming must be in Catalan and for radio, an additional quota of 25% of the songs in Catalan also applies).

⁸ Some examples include: Act 18/2001 of 5 July 2001 on the regulation of the provision of audiovisual services in Navarra and on the creation of the Audiovisual Council of Navarra, available at:

http://v2.vlex.com/es/asp/boe_detalle.asp?Articulo=15780; Act of the Autonomous Community of Madrid 2/2001 on Audiovisual Content and Additional Services, available at:

<http://www.comadrid.es/bocm/20010504/10500001.htm>; Catalan Decree 320/1996 on the regulation of the local terrestrial television, 1 October 1996; Decree of the Autonomous Community of Extremadura 131/1994 on the awarding of concessions for the provision of FM radio services, 14 November 1994; Basque Decree 138/1994 on the provision of FM radio services by local authorities, 22 March 1994.

incorporation into Spanish law of the “Television without Frontiers” Directive, which is the most important rule as regards content regulation.

STATUTE ON RADIO AND TELEVISION, 1980

The Statute on Radio and Television of 1980⁹ declares that broadcasting shall be considered a public service,¹⁰ an essential vehicle for information and for political participation, as well as for education and the diffusion of culture. This public service can be provided directly by the state (RTVE and the public regional broadcasters), or it can be provided by private entities, once they have been granted a concession in a call for tenders (terrestrial television concessionaires, cable television concessionaires or radio concessionaires). Although private cable television, terrestrial television and radio broadcasters are therefore concessionaires which provide a public service, hardly any specific public service obligations have been imposed upon them. They have to comply with the general provisions relating to the provision of media services (eg. the Act on the incorporation into Spanish law of the “Television without Frontiers” Directive, which also applies to satellite television broadcasters (which do not provide a public service)). Those broadcasters which provide their services in a specific Autonomous Community (regional or local television or radio broadcasters) also have to comply with regional legislation, which is sometimes of relevance to minority-language broadcasting. Article 4 of this Statute establishes a series of principles that should regulate the activities of broadcasting, one of which is respect for political, religious, social, cultural and linguistic pluralism.¹¹

The Statute on Radio and Television also sets out the guidelines for the public entity RTVE, which is responsible for the direct provision of the essential public service of radio and television at national level. RTVE operates two national analogue terrestrial television channels and five radio stations. The stations operated by RTVE are legally obliged to include regional programme material, part of which is broadcast in co-official languages.¹² Article 13 of the Statute states that that RTVE, through its regional centres, shall provide radio and television programming which shall be broadcast in the territories of the relevant nationalities or regions. This regional programming shall comply with the time limits and the criteria established for national programming by the government, according to a joint proposal made by the Board of Directors and the General Director of RTVE. RTVE has a regional Advisory Committee in each Autonomous Community.¹³

The three national private analogue terrestrial television concessionaires are also obliged to provide some regional programme material.¹⁴ This obligation, however, does not involve any specific language requirements: it merely refers to programming relating to regional matters.

⁹ See Act 4/1980 of 10 January 1980, available at: http://www.setsi.mcyt.es/legisla/radio_tv/ley4_80.htm.

¹⁰ With the exception of television satellite services, which have been liberalised in accordance with Article 1.1 of the 1995 Satellite Telecommunications and the Abrogating Provision of the 1998 General Telecommunications Act.

¹¹ Other broadcasting laws in Spain quote these principles or refer expressly to them. See, for example, Article 3 of Act 10/1988 on Private Television; Seventh Additional Provision of Act 37/1995 on Satellite Telecommunications and Article 6 of Act 41/1995 on Local Terrestrial Television.

¹² Article 13 of Act 4/1980 on the Statute on Radio and Television.

¹³ See the following regional provisions on the creation of the Advisory Committees of RTVE in those Autonomous Communities with co-official languages or protected dialects: Decree of Catalonia 198/1982 of 7 July 1982; Act of Galicia 10/1983 of 9 December 1983; Act of Valencia 3/1984 of 6 June 1984; Act of Balears 6/1984 of 15 November 1984; Act of Navarra 2/1985 of 4 March 1995; Act of the Basque Country 9/1985 of 4 December 1985; Act of Asturias 5/1983 of 4 August 1983 and Act of Aragon 4/1984 of 26 June 1984.

¹⁴ See Article 4, Act 10/1988 of 3 May 1988 on Private Television, available at: http://www.setsi.mcyt.es/legisla/radio_tv/ley10_88.htm.

At the regional level, there are public broadcasters in some Autonomous Communities.¹⁵ As regards those Autonomous Communities with official languages of their own, it must be noted that the public broadcasters of the Basque Country, Catalonia and Comunidad Valenciana each operate two analogue terrestrial television channels and that the public broadcaster of Galicia operates one television channel. Each of these public broadcasters also runs a television channel intended to be broadcast nationwide by satellite and/or cable. Moreover, all of these regional public broadcasters operate regional radio stations. These regional public radio and television stations broadcast most (and sometimes all) of their programmes in the co-official language.

There are no private regional analogue terrestrial broadcasters, but the introduction of digital terrestrial broadcasting will make it possible to create regional private broadcasters,¹⁶ which shall comply with the relevant regional legislation on the promotion of co-official languages.

ACT 25/1994 ON THE INCORPORATION INTO SPANISH LAW OF THE “TELEVISION WITHOUT FRONTIERS” DIRECTIVE

One of the main planks in Spanish media law is Act 25/1994 on the incorporation into Spanish law of the EC “Television without Frontiers” Directive.¹⁷ This Act deals mainly with subjects that are not closely related to the protection of regional and minority languages, such as advertising or the protection of minors. However, there is an exception: Article 2.5 of this Act establishes that the provisions of this Act on the promotion of European works shall not apply to local television broadcasts not forming part of a national network, without prejudice to the right of the Autonomous Communities to set similar provisions in order to promote the use of their respective co-official languages by local television operators.¹⁸

¹⁵ The regional provisions on the creation of regional public broadcasters shall comply with the basic requirements established by national legislation in this field (in particular, the above-mentioned Act 4/1980 on the Statute on Radio and Television and Act 46/1983 of 26 December 1983 on the Third TV Channel, available at http://www.noticias.juridicas.com/base_datos/Admin/l46-1983.html).

On the creation of regional public broadcasters in some of the Autonomous Communities with co-official languages or protected dialects, see Act of the Basque Country 5/1982 of 20 May 1982; Catalan Act 10/1983 of 30 May 1983; Act of Valencia 7/1984 of 4 July 1984; Act of Galicia 9/1984 of 11 July 1984; Act of Baleares 7/1985 of 22 May 1985; Act of Navarra 16/1985 of 27 September 1985 and Act of Aragon 8/1987 of 15 April 1987. According to these Acts, the regional public broadcasters have the duty to use and promote the respective co-official languages or protected dialects.

¹⁶ See the Forty-Fourth Additional Provision (Regulation of Digital Audio Broadcasting and Digital Terrestrial Television) of Act 66/1997 on taxation, administrative provisions and social affairs of 30 December 1997, available at http://www.setsi.mcyt.es/legisla/radio_tv/da44.htm. This Act has been implemented by the Decree 2169/1998, on the National Technical Plan on Digital Terrestrial Television (DTTV) of 9 October 1998, available at: http://www.setsi.mcyt.es/legisla/radio_tv/rd216998.htm. This provision initially identifies one regional multiplex in each Autonomous Community, which shall carry four DTTV programme services (with two of them having been reserved for the regional public broadcasters where applicable). According to the National Technical Plan on DTTV, frequencies will be reserved for up to three additional regional or local multiplexes and up to two additional local multiplexes.

¹⁷ See the Spanish Act 25/1994 on the incorporation into Spanish law of the “Television without Frontiers” Directive, available at: http://www.setsi.mcyt.es/legisla/radio_tv/ley25_94.htm (as amended by Act 22/1999, available at http://www.setsi.mcyt.es/legisla/radio_tv/ley22_99.htm and Act 15/2001, available at http://v2.vlex.com/es/asp/boe_detalle.asp?Articulo=13268).

¹⁸ This provision reads: “2.5 Chapter II [the promotion of the distribution and production of television programmes] shall not apply to television broadcasts that are intended for local audiences and do not form part of a national network. / However, the Autonomous Communities are allowed to approve provisions which are similar to those of Chapter II in order to promote audiovisual production in their own language, in those local television services which fall under their jurisdiction.”

LOCAL TERRESTRIAL TELEVISION ACT, 1995

Local terrestrial television is regulated by the Local Terrestrial Television Act of 1995.¹⁹ According to this Act, local terrestrial television is a public service that may be provided by up to two concessionaires in each municipality. One of the two concessions available in each municipality is reserved for the local authorities. The second concession may be granted by the Autonomous Communities to natural persons. However, the Autonomous Communities have not been able to grant these concessions because the national government has not approved the Technical Plan on local terrestrial television yet. In the meantime, those local terrestrial television operators that were providing their services before January 1995 have been temporarily authorised to continue their activities until such time as the concessions are granted. Many operators which are not covered by this transitional measure are illegally providing these services as well.

DECREE 313/1996 OF NAVARRA; CATALAN DECREE 360/1996

The governments of the Autonomous Communities of Catalonia and Navarra have approved provisions dealing expressly with local terrestrial television,²⁰ which include among the concessionaires' obligations, the broadcasting of programme material in the co-official languages. Article 6(h) of Decree 313/1996 of Navarra²¹ establishes that one of the principles which shall guide the activities of local terrestrial television concessionaires is the promotion and protection of the Basque language. Article 18 of the Decree states that one of the criteria that shall be taken into account when granting local terrestrial television concessions in Navarra shall be "the use and promotion of the Basque language". Catalan Decree 360/1996 includes similar provisions, although Catalan Act 1/1998 on linguistic policy does impose some specific quotas on the use of the co-official language by local terrestrial television concessionaires (at least 50% of the programmes produced by the television concessionaire and of the remaining "teleservices").²²

CABLE TELECOMMUNICATIONS ACT, 1995

As regards cable television services, the 1995 Cable Telecommunications Act²³ divided the country into regional or local geographic areas. In each geographic area, up to two concessionaires were authorised to provide cable telecommunications services (cable television, Internet access, and voice communications). Those cable television programmes that are only broadcast within the territory of a single Autonomous Community shall comply with its legislation on the promotion of the co-official language, where applicable. Moreover, the Autonomous Community of Catalonia has approved an Act that expressly obliges Catalan

¹⁹ See Act 41/1995 on Local Terrestrial Television of 22 December 1995, available at:

http://www.setsi.mcyt.es/legisla/radio_tv/ley41_95/ley41_95.htm.

²⁰ At regional level, only four Autonomous Communities have already approved legal provisions implementing this national Act, two of them being among those with co-official languages: Navarra (Decree 313/1996 of 9 September 1996) and Catalonia (Catalan Decree 320/1996 of 1 October 1996, as amended by Catalan Decree 111/1998 of 12 May 1998).

²¹ Available at: <http://www.cfnavarra.es/bon/969/96923001.htm>.

²² Article 26 and Third Transitional Provision of Act 1/1998, available at:

<http://www.gencat.es/leicat/eindex.htm>.

²³ See the Cable Telecommunications Act 42/1995 of 22 December 1995, available at http://www.setsi.mcyt.es/legisla/cable/ley42_95.htm.

cable operators to comply with additional requirements relating to the use of the co-official language.²⁴

ACT 21/1997 ON THE BROADCASTING OF LISTED EVENTS

Another national provision relating to content regulation which also deals with co-official languages is Act 21/1997 on the broadcasting of listed events. This Act does not merely ensure that certain events of general interest will be broadcast free-to-air: it also sets out measures intended to guarantee that these events can be broadcast in all co-official languages.²⁵ The operative provision is Article 4.5, which reads: “Bearing in mind the need to take duly into account the different official languages of the state, it shall be possible to broadcast all of the listed sport competitions or events in the official language of the Autonomous Communities. If the holder of the television rights does not want to provide that service, it shall license, following competitive criteria, other programmers or broadcasters interested in doing so. The amount to be received by the rights holder shall be established following the criteria mentioned in paragraph 4 of this Article.”

Concerning radio, stations may be operated by regional or local authorities or by private companies.²⁶ These radio broadcasters shall comply with regional sector-specific regulation,²⁷ which in some cases obliges them to comply with quotas for the broadcasting of programme material in the co-official language of the Autonomous Community in question.²⁸ Moreover, they have to comply with the regional provisions on the use and promotion of co-official languages.

The public authority in charge of enforcing the sector-specific provisions approved by the Autonomous Communities will be a department of the regional government or, in the case of Catalonia and Navarra, an independent audiovisual authority.²⁹ These two independent

²⁴ Catalonia is the only Autonomous Community that has already implemented the national Act 42/1995 on cable telecommunications. See Catalan Act 8/1996 on the regulation of audiovisual programming broadcast by cable of 5 July 1996, as amended by Catalan Act 2/2000 of 4 May 2000. See also Catalan Decree 265/1997 of 17 October 1997. As regards the quotas on the use of Catalan by cable operators, see Article 7 of Catalan Act 8/1996 and also Article 26.1 of Catalan Act 1/1998 on linguistic policy.

²⁵ See Article 4.5 of Act 21/1997 on the broadcasting of listed events of 3 July 1997, available at:

http://www.noticias.juridicas.com/base_datos/Admin/121-1997.html.

²⁶ On the provision of radio services, see, at the national level, Act 4/1980 on the Statute of Radio and Television; the Sixth Additional Provision of Act 31/1987 on Telecommunications of 18 December 1987; Act 11/1991 on the organisation and control of radio broadcasters controlled by the local authorities, 8 April 1991 (http://www.setsi.mcyt.es/legisla/radio_tv/ley11_91.htm) and the Forty-Fourth Additional Provision (Regulation of Digital Audio Broadcasting and Digital Terrestrial Television) of Act 66/1997 on taxation, administrative provisions and social affairs of 30 December 1997, available at:

http://www.setsi.mcyt.es/legisla/radio_tv/da44.htm.

²⁷ At the regional level, see above the regional Acts on the creation of regional public broadcasters and see also the provisions relating to radio approved by those Autonomous Communities with co-official languages or protected dialects: Catalan Decrees 263/1990 of 23 October 1993 and 269/1998 of 21 October 1999; Decrees of Galicia 52/1986 of 6 March 1986 and 156/1989 of 27 July 1989; Basque Decrees 240/1986 of 11 November 1986 and 138/1994 of 22 March 1994; Decrees of Valencia 38/1998 of 31 March 1998 and 175/1999 of 5 October 1999; Decree of Navarra 431/1992 of 21 December 1992; Decrees of Baleares 86/1995 of 7 September 1995 and 62/1997 of 7 May 1997; Decree of Aragon 15/1997 of 25 February 1997; and Decrees of Asturias 31/1997 of 15 May 1997 and 53/1998 of 13 August 1998. Nearly all of these provisions deal with the awarding of FM radio concessions.

²⁸ See, for example, Article 6.f) and the First Transitional Provision of Catalan Decree 269/1998. These articles implement Article 26.3 of Catalan Act 1/1998 on linguistic policy.

²⁹ See Catalan Act 2/2000 of 4 May 2000 on the creation of the *Consell de l'Audiovisual de Catalunya* (<http://www.audiovisualcat.net/box32esp.html>) and Act of Navarra 18/2001 of 5 July 2001, on the regulation of

authorities have been expressly mandated to ensure the application of the legal provisions relating to the use and promotion of co-official languages.³⁰

the audiovisual sector in Navarra and on the creation of the *Consejo Audiovisual de Navarra* (<http://www.cfnavarra.es/bon/017/01716004.htm>).

³⁰ See Article 10.e) of Catalan Act 2/2000 and Article 26.1.l) of Act of Navarra 18/2001.

Sweden

While minority rights are recognised in the Swedish Constitution, it is a Government Bill, introduced in 1999, that fully fleshes out evolving policies in this regard. Existing legislation provides for the protection of three national minority languages in particular: Saami/Lappish, Finnish, and Meänkieli/Tornedalian Finnish. Although the Swedish Parliament has recognised sign language as the mother tongue of the deaf, it has yet to gain full recognition as a minority language as such. Minority languages are not, however, alluded to in the main legislation governing broadcasting. The Government has decided on terms for the use of minority languages in the broadcasting licences of the public service broadcasters. It has been decided that under the new licences, Romani Chib shall have the same status in programming as Sami, Finnish and Meänkieli have today.

Public service broadcasting already has special responsibilities relating to programming for linguistic minorities. Public service radio broadcasts in 20 languages: Swedish, four minority languages, ten immigrant languages, and five foreign languages. There is a special channel for Finnish and Meänkieli. It has responsibility for the provision of national, regional and local programmes in these languages and a significant part of its output is transmitted by digital radio. Another nationwide radio channel, based in the north of Sweden, broadcasts in the Sami language. This year, broadcasting in Romany commenced, but there are no programmes in Yiddish yet. Another special channel broadcasts in the languages of ten different groups of immigrants and five foreign languages. Public service television broadcasts programmes in Finnish and Saami and also in sign language. The dominant *lingua franca* of the public service television broadcaster remains Swedish. Transborder cooperation initiatives guarantee a larger offer of programmes in certain minority languages, most notably Finnish and Saami.

1 Introduction

1.1 Linguistic topography¹

Swedish is the mother tongue of nine million people. It is the dominant language in Sweden and is also a national language in Finland. Although Swedish is the dominant language in Sweden, many other languages are also spoken in the country. Sweden's ethnic and cultural diversity has a long history. Many of the groups that have long been minorities in Sweden have worked actively to preserve their culture and language. In this country report, the following terms are used:

* The five (recognised) national minority languages:

- Saami/Lappish
- Finnish
- Meänkieli/Tornedalian Finnish
- Yiddish
- Romany/Romani Chib

¹ See also: Appendix 1 – 'Sweden's five national minorities', Swedish Report to the Council of Europe on the Framework Convention for the Protection of National Minorities, submitted in accordance with Article 25, paragraph 1, of the Framework Convention, available at: <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/StateReports/2001/sweden/Sweden.htm>.

* Sign language: mother tongue of the deaf.²

* Immigrant languages: about 200 different languages are spoken in Sweden.

In Sweden, there are no official statistics on the use of languages or the number of speakers of each. All estimates of the number of speakers are therefore rather unreliable. The Swedish Language Committee³ estimates the numbers of speakers of the national minority languages as follows:⁴

- Saami: approximately 9,000 speakers
- Finnish: approximately 70,000 – 90,000 speakers
- Meänkieli: approximately 50,000 – 60,000 speakers
- Romany: information not available
- Yiddish: approximately 3,000 speakers

1.2 Broadcasting⁵

The national public service broadcasting companies provide programmes in different languages, primarily Swedish, Saami, Finnish and sign language. Programmes in different languages are also broadcast on local radio stations. In a Bill on Public Service Broadcasting, the Government has stressed that the public service companies have a responsibility for the national minorities in Sweden. The companies have to pay attention to the interests of the minorities and especially to the Saami, Finnish, Meänkieli and Romany languages.⁶

2 Constitution

2.1 Freedom of expression

Freedom of expression is firmly established in the Swedish Constitution, which consists of four parts:⁷

- the Instrument of Government (1974) is the most important part of the Constitution. It contains the basic rules on governance and democracy (eg. equality of all citizens and freedom of expression).⁸
- the Freedom of the Press Act (1949) regulates freedom of expression in the print media (newspapers, books, etc.).⁹
- the Fundamental Law on Freedom of Expression (1991) protects freedom of expression in radio, television, films and videos, etc.¹⁰

² For further information (in English), see the website of the Department of Sign Language at Stockholm University: <http://www.ling.su.se/tsp/>.

³ See further the website of the Swedish Language Committee (in Swedish): <http://www.sou.gov.se/svenskan/>.

⁴ Action Plan for the Swedish Language (*Mål i mun. Förslag till handlingsprogram för svenska språket*. SOU 2002:27).

⁵ For further information about radio and television in Sweden (in English), see: <http://www.rtvv.se/english/index.htm>

⁶ Government Bill on Public Service Broadcasting (*Radio och TV i allmänhetens tjänst 2002–2005*, prop. 2000/01:94).

⁷ The Instrument of Government (*Regeringsformen*, 1998:1437), the Act of Succession (*Successionsordningen*), the Freedom of the Press Act (*Tryckfrihetsförordningen*, 1949:105) and the Fundamental Law on Freedom of Expression (*Yttrandefrihetsgrundlagen*, 1991:1469), all available at: <http://www.riksdagen.se/english/work/constitution.asp>.

⁸ Available at: <http://www.riksdagen.se/english/work/fundamental/government/index.htm>.

⁹ Available at: <http://www.riksdagen.se/english/work/fundamental/press/index.htm>.

- the Act of Succession (1810).¹¹

According to Article 1 of the Fundamental Law on Freedom of Expression, every Swedish citizen has the right to express his or her thoughts, opinions and feelings by means of radio, television, films, etc. There is no regulation of language. Article 3 prohibits censorship. Freedom of the media and the right to express one's opinion on radio and television, etc. is also affirmed in the Freedom of the Press Act.

FUNDAMENTAL LAW ON FREEDOM OF EXPRESSION 1991

Article 1

Every Swedish citizen shall be guaranteed the right under this Fundamental Law, vis-à-vis the public institutions, publicly to express his ideas, opinions and sentiments on sound radio, television and certain like transmissions, films, videograms, sound recordings and other technical recordings, and in general communicate information on any subject whatsoever.

The purpose of freedom of expression under this Fundamental Law is to secure the free exchange of opinion, free and comprehensive information, and freedom of artistic creation. No restriction of this freedom shall be permitted other than such as follows from this Fundamental Law.

References in this Fundamental Law to radio programmes shall apply also to television programmes and to the content of certain other transmissions of sound, pictures and text made using electromagnetic waves, as well as to sound radio programmes.

Technical recordings shall be understood in this Fundamental Law to mean recordings containing text, pictures or sound which may be read, listened to or otherwise comprehended only using technical aids.

Article 2

Every Swedish citizen shall be guaranteed the right to communicate information on any subject whatsoever to authors or other originators, editors, editorial offices, news agencies and enterprises for the production of technical recordings for publication in radio programmes, or such recordings. He shall also have the right to procure information on any subject whatsoever for such communication or publication. No restriction of these rights shall be permitted other than such as follows from this Fundamental Law.

Article 3

There shall be no obligatory prior scrutiny by a public authority or other public body of matter which is intended for publication in a radio programme or technical recording.

¹⁰ Available at: <http://www.riksdagen.se/english/work/fundamental/expression/index.htm>.

¹¹ Available at: <http://www.riksdagen.se/english/work/succession.asp>.

[...]

2.2 Minority rights

Minority rights are referred to in Article 2.4 of the Instrument of Government:

Opportunities should be promoted for ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own.

2.3 (Official/State) language(s)

No part of the Constitution deals with the question of an official language of Sweden. This question is now under consideration (see *infra*).

3 Legislation¹²

3.1 General legislation affecting minorities and their linguistic rights

In a Government Bill from June 1999, the Government presented its proposals for a concerted Swedish minorities policy for the protection of national minorities in Sweden.¹³ A number of measures were proposed by the Government aimed at improving the situation for the national minorities and giving their languages the support necessary for their survival. Five minority languages were recognised as national, official minority languages. The Government proposed that Sweden ratify the Council of Europe's Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages (it has since done so in respect of both treaties). This Bill was subsequently passed by the Swedish Parliament.

The goal of the Minorities Policy is to protect the national minorities and to strengthen their ability to influence and to support the historical minority languages so that they can be kept alive.

The Swedish Parliament has also adopted two laws for the protection of three of the national minority languages (Saami/Lappish, Finnish and Meänkieli/Tornedalian Finnish): The Minority Acts (lag 1999:1175 and 1999:1176). These laws deal with the right of individuals in some municipalities¹⁴ in the north of Sweden to use these languages in their dealings with administrative authorities and courts of law. According to these laws, individuals also have the right to obtain pre-school activities (childcare) and geriatric care in these languages.

The official status of sign language in Sweden is rather unclear. It has been used by the deaf since 1875. The Swedish Parliament has recognised sign language as the mother tongue of the deaf.¹⁵ Sign language has not yet been recognised as a minority language. The Parliament

¹² Legislation, Government Bills, etc. are available on the website of the Swedish Parliament (in Swedish): http://www.riksdagen.se/debatt/lagar_forordningar.asp.

¹³ The Government Bill National Minorities in Sweden (*Nationella minoriteter i Sverige*, prop. 1998/99:143). This Bill was based on the State Committee Report, 'Towards a minorities policy' (*Steg mot en minoritetspolitik*, SOU 1997:192).

¹⁴ *Saami/Lappish*: The municipalities of Arjeplog, Gällivare, Jokkmokk and Kiruna. *Finnish and Meänkieli/Tornedalian Finnish*: The municipalities of Gällivare, Haparanda, Kiruna, Pajala and Övertorneå.

¹⁵ Government Bill on the State Budget (*Budgetpropositionen*, prop 1980/81:100, annex 12); Parliamentary Report (Betänkande UbU 1980/81:25).

has, however, approved a request to the Government to make an investigation about the status and standing of the sign language.¹⁶

3.2 Broadcasting legislation¹⁷ and practice

The Radio and Television Act regulates questions on broadcasting in Sweden.¹⁸ In Article 6:1, the principles of democracy and equality are stressed:

A person or entity that broadcasts television or sound radio programmes under a licence issued by the government is to ensure that the overall programme services reflect the fundamental concepts of a democratic society and the principle that all persons are of equal value, and the freedom and dignity of the individual.

According to Article 6:8:

Television broadcasts in accordance with the first paragraph, and sound radio broadcasts which take place under a licence issued by the government, are to contain a considerable proportion of programmes in the Swedish language, programmes with Swedish artists, and works by Swedish authors, unless there are special reasons to the contrary.

The purpose of this Article is to protect Swedish culture, not to discriminate against those of foreign origin. Minority languages are not mentioned in this Act.

When the Government presented its Bill on National Minorities, it stated:

When considering new broadcasting licences for the public service broadcasters, Swedish Television, the Swedish Broadcasting Company and the Swedish Educational Broadcasting Company, the Government intends to raise the issue of affording Romani Chib the same status in programming as Saami, Finnish and Meänkieli have today.¹⁹

The Government and the Parliament have decided that public service broadcasting has a special responsibility when it comes to producing programmes for the linguistic minorities.²⁰ The five national minority languages have a special status. There are special reasons for providing programming in four minority languages: Saami (the Saami people are an original population); Finnish (historical relations between Sweden and Finland, as well as the large number of Finnish-speaking people in Sweden); Meänkieli (a part of the native population of

¹⁶ Parliamentary Report (Betänkande 2000/01:KU14).

¹⁷ See also, 'Developments in the Media Field, 2000', available at: <http://www.rtvv.se/english/pdf/develop.pdf>.

¹⁸ The Radio and Television Act (*Radio- och TV-lagen* 1996:844), available at:

<http://www.rtvv.se/english/pdf/rtvact.pdf>.

¹⁹ 'National minorities in Sweden', Factsheet, Ministry of Culture, June 1999, available at:

http://naring.regeringen.se/pressinfo/faktablad/PDF/ku99_023e.pdf.

²⁰ Government Bill on Public Service Broadcasting (*Radio och TV i allmänhetens tjänst*, prop. 2000/01:94), available at:

http://rixlex.riksdagen.se/htbin/thw?%24%7BHTML%7D=PROP_LST&%24%7BOOHTML%7D=PROP_DO_K&%24%7BSNHTML%7D=PROP_ERR&%24%7BMAXPAGE%7D=26&%24%7BCCL%7D=define+reverse&%24%7BTRIPSHOW%7D=format%3DTHW&%24%7BBASE%7D=PROPARKIV0001&%24%7BFREETEXT%7D&PRUB=&DOK=&PNR=94&ORG=. See also the relevant Parliamentary Report (Betänkande 2000/01:KrU8).

Sweden for whom the language is important for their own identity) and Romany Chib (the Romany people have been in Sweden for a long time).

Under the broadcasting licences of the public service companies, they are required to pay attention to the interests of linguistic minorities.²¹ There are three public service broadcasting companies in Sweden:

1. Swedish Broadcasting Company (*Sveriges Radio, SR*)²²
2. Swedish Television Company (*Sveriges Television, SVT*)²³
3. Swedish Educational Broadcasting Company (*Sveriges Utbildningsradio, UR*)²⁴

According to the broadcasting licences of SVT, SR and UR, the efforts of the public service companies as regards minority languages will increase in the period 2002-2005 (compared with the year 2001).²⁵ It should be noted that there are not provisions concerning minority-language questions in the broadcasting licence for TV4 or other (private-sector) broadcasting companies.

3.2.1 Radio

Sveriges Radio is a public service company which broadcasts in 20 languages (Swedish, four minority languages, ten immigrant languages, and five foreign languages). SR has special channels for Finnish and Meänkieli, Saami and immigrant languages.

Finnish and Meänkieli: A special channel—*SR Sisuradio*—is responsible for national, regional and local programmes in Finnish and Meänkieli. This channel is located in the north of Sweden (Luleå). In the year 2000, 5,452 hours were transmitted (3,173 of which in digital radio).

Saami: The *SR Sameradio* has its editorial staff in the north of Sweden (Kiruna). The programmes are transmitted to all parts of Sweden, both in the Saami language and in Swedish. In the year 2000, 204 hours were transmitted in Saami.

This year, the SR has started to broadcast in Romany. There are no programmes in Yiddish. A special channel—P6 Radio Sweden International—has programmes in ten different immigrant languages and five foreign languages. In the year 2000, 624 hours in the different immigrant languages were transmitted.

3.2.2 Television

The public service company for television, *Sveriges Television* (SVT), has programmes in some of the national minority languages:

- Finnish (107 hours in the year 2000)

²¹ Decision by the Government (*Tillstånd att sända television, Regeringsbeslut 2001-12-20, Ku2001/1543/Me*), available at: http://www.svt.se/svtinfo/publicservice/lagar/011220-svt_tillst2002-2005.pdf.

²² See further the website of *Sveriges Radio* (in English): <http://www.sr.se/omsr/english/>.

²³ See further the website of *Sveriges Television* (in English): <http://www.svt.se/inenglish/>.

²⁴ See further the website of *Sveriges Utbildningsradio* (in English): <http://www.ur.se/ur/frameset.html>.

²⁵ Decision by the Government (*Ku 2001/1543/Me*), *op. cit.*

- Saami (17 hours in the year 2000). In August 2001, daily television news in Saami started (in cooperation with NRK of Norway and YLE of Finland).

In the same year, SVT (*Dövas TV*) had 74 hours of programmes in sign language.

As a result of a cooperation between Sweden and Finland, Finnish television can be seen in Stockholm and in 25 other cities in Sweden.

4 Other measures affecting language

In addition to legislation, the various state measures for minorities and minority languages, immigrant languages and sign language are also worthy of mention. As regards language cultivation and planning: the Saami Parliament (*Sametinget*)²⁶ is responsible for the cultivation and planning of the Saami language.²⁷ The Government gives grants to the Finnish Language Council in Sweden (*Sverigefinska språknämnden*) for language cultivation and planning of Finnish.²⁸ The Government also gives grants to an organisation for the deaf (*Sveriges Dövas Riksförbund*) for the development of sign language.

In the educational sector, frameworks are in place for mother-tongue instruction;²⁹ bilingual education³⁰ and furthermore, the national curricula of the state primary and secondary schools; pre-schools and after-school centres and independent schools³¹ have been amended to include the provision of information about national minorities and regional and minority languages.

As far as culture is concerned, the Swedish National Council for Cultural Affairs (*Statens kulturråd*) is responsible for implementing national cultural policy determined by the Government and Parliament. The Council gives annual grants to different projects regarding culture and minority languages.

²⁶ See further the website of the Saami Parliament (in Swedish): <http://www.sametinget.se/st/index.html>.

²⁷ The Saami Parliament Act (*Sametingslagen* 1992:1433).

²⁸ For further information, see the website of the Finnish Language Council in Sweden (in Finnish and Swedish): <http://www.spraknamnden.se/sverigefinska.htm>.

²⁹ The children of parents who speak languages other than Swedish shall be offered mother-tongue instruction. There are, however, some restrictions; the most important ones being that there have to be at least five pupils who request teaching in each language and that the school is obliged to arrange for such instruction only if it is possible to find a teacher. For some of the minority languages (Saami, Meänkieli, and Romany), mother-tongue instruction must be offered also if fewer than five pupils wish to have such mother-tongue instruction. See further: the Government Ordinances 1994:1194 (*Grundskoleförrordningen*) and 1992:394 (*Gymnasieförrordningen*).

³⁰ Parts of the teaching for the first six years in school can be given in a language other than Swedish if this other language is the mother tongue of the pupils. For the education of Saami pupils, there are six schools in the north of Sweden for Saami children, offering education for the first six years. For Finnish-speaking pupils, bilingual instruction can be given for the first nine years in schools.

³¹ See respectively: *Läroplan för det obligatoriska skolväsendet* (Lpo94):

<http://www.skolverket.se/english/index.shtml>; *Läroplan för förskolan* (Lpfö98):

<http://www.skolverket.se/english/index.shtml>; *Läroplan för de frivilliga skolformerna* (Lpf94):

<http://www.skolverket.se/english/index.shtml>. As an example of a state measure in the educational area, it could be mentioned that the National Agency for Education (*Skolverket*) has begun to promote the production of teaching media in Romany.

5 Current developments

In October 2000, the Government decided that a parliamentary committee should draw up an action plan for the Swedish language—the Swedish Language Committee (*Kommittén för svenska språket*). The Action Plan was presented in April 2002 and contains a number of different proposals.³² The Committee has stressed that Sweden is a multilingual society and that the different languages are of great importance both for society as a whole and for individuals.

The Committee has proposed that Government and Parliament shall decide on goals for a national language policy. One of the proposed goals is that all shall have the right to languages: the respective mother tongue, Swedish and foreign languages.

To achieve these goals, the Committee has several suggestions for the promotion of both Swedish and other languages in Sweden. Some of these proposals deal with minority languages and the broadcasting media:

- The provision of radio and television programmes in minority languages shall increase. It is important that there are journalists who speak the different minority languages.
- The provision of radio and television programmes in immigrant languages ought to rise. It is important that immigrants can obtain information about Sweden in their own languages. Programmes in Swedish should to a larger extent have subtitles in minority and immigrant languages.
- Local broadcasting for national minorities and immigrants shall be given State support.

The Committee has also proposed a Language Act to the Government. According to this proposed law, Swedish shall be the official language of Sweden.

The Committee has proposed that a State agency (*Sveriges språkråd*) for language planning and cultivation shall be formed. This agency shall also be responsible for parts of the planning and cultivation of the minority languages and sign language.

³² The Committee Report Action Plan for the Swedish Language (*Mål i mun. Förslag till handlingsprogram för svenska språket*, SOU 2002:27). An English summary of the Draft Action Plan for the Swedish language is now available on the website of the Swedish Government:
<http://kultur.regeringen.se/propositionermm/sou/pdf/engelska.pdf>.

Switzerland

Four languages enjoy the status of national languages in Switzerland: German, French, Italian and Romansh, but only the first three are also official languages of the Confederation (although use of the fourth is widespread in administration). Each of the 26 Cantons is free to designate any language spoken on its territory as official for internal purposes. The Swiss Constitution sets out a number of objectives to be fulfilled by the whole system of radio and television broadcasting (in contradistinction to any individual broadcaster). These objectives include education, cultural development, entertainment, diversity of opinion, factual and balanced presentations, etc., and are essentially replicated in the main piece of Federal legislation on broadcasting, which applies to public and private broadcasting alike. Each Canton is entitled to legislate in relation to minority rights, on condition that the legislation complies with the Constitution. The Confederation only intervenes by default, when such competences are delegated to it by the Cantons.

Aside from the exhaustive legislative provisions adopted by the individual Cantons concerning minorities and language-usage, the Confederation does subsidise schemes aiming to preserve and promote the Italian and Romansh languages and cultures. While the relevant legislation does not impose quotas on broadcasters, more specific obligations may be negotiated on a case-by-case basis in the licences granted to individual broadcasters. Regional and local broadcasters are obliged to ensure the suitability of their programming to the specificities of the communities they serve; thereby reflecting the requisite *couleur locale* to an appropriate degree and promoting regional or local cultural activities.

The public service broadcaster is obliged by statute to transmit custom-made radio programmes for each of the national languages of Switzerland. It must do the same with television programmes for each of the official languages of the Confederation. As regards television programmes in Romansh, the relevant requirements and underlying principles for such broadcasting must first be determined by the Federal Council. In practice, a number of national radio stations do broadcast in German, French and Italian, but only one in Romansh. Selected national television stations also broadcast in the three official languages, whereas television broadcasting in Romansh is limited to individual programmes.

1 Introduction

1.1 Linguistic topography

Despite a small population of barely over seven million people, Switzerland has four national languages, namely German (declared as their “main language”, in the standard or dialectal form, by 63.6% of the resident population), French (19.2%), Italian (7.6%) and Romansh (0.6%), according to 1990 Federal Census returns. Accordingly, 9% of the resident population claims a non-national language as their main language.¹ Provisional figures for the 2000 Census released by *Statistik Schweiz – Bundesamt für Statistik* (the Swiss Federation’s

¹ Grin, François, “Language Policy in Multilingual Switzerland: Overview and Recent Developments”, Paper presented at the *Cicle de conferències sobre política lingüística Direcció general de política lingüística*, Barcelona, 1998. According to the (provisional) figures from the 2000 Census, 63.9% of the Swiss population speaks German; 19.5%, French; 6.6%, Italian; 0.5%, Romansh and 9.5%, others.

Statistics Office) indicate the following break-down for language use: German, 63.9%; French, 19.5%; Italian, 6.6%; Romansh, 0.5% and others, 9.5%.²

The majority of the population (three out of four Swiss) lives in German-speaking Switzerland. German is spoken in 17 of the 26 Cantons. In the western part of the country, the ‘Suisse Romande’, French is spoken. Four Cantons are French-speaking: Geneva, Jura, Neuchâtel and Vaud. Three Cantons are bilingual: In Bern, Fribourg and Valais, both French and German are spoken. Italian is spoken in Ticino and in four southern valleys of Grisons. The Canton of Grisons is trilingual, with German, Italian and Rhaeto-Rumantsch (Romansh). Romansh, like Italian and French, is a language with Latin roots.³

Switzerland’s four (national) languages are by no means fully homogeneous, but instead display a whole host of variations. The language spoken in German-speaking Switzerland, for example, is quite different from standard German—called High German—as spoken in Germany. The German Swiss speak Swiss German, which is itself broken up into numerous local dialects. In Switzerland, High German is first and foremost a written language, which Swiss German children have to learn at school. All lessons are taught in it and it is the language of newspapers and magazines and most books. It is also widely used in the media.

Language rights are enshrined in the Swiss Constitution. German, French, Italian and Romansh all have the status of national languages, but only the first three are official languages. Nevertheless, Romansh is used in official communications with Romansh speakers, who in turn have the right to use their native language in addressing the central authorities. The Constitution also contains provisions to enable the federal authorities to help Ticino and Grisons support Italian and Romansh respectively.

1.2 Broadcasting

Responsibility for broadcasting in Switzerland is shared by three agencies at three different levels of government: the Federal Council grants broadcasting licences for regional-language, national and international programmes and adopts directives on the development of broadcasting network plans. The Federal Department of the Environment, Transport, Energy and Communications (DETEC) issues broadcasting licences for local and regional programmes and is responsible for the financial supervision of the public service provider (the Swiss Radio and Television Broadcasting Company, SSR). The Federal Office for Communications (OFCOM) grants short-term broadcasting licences not exceeding 30 days per year for radio and television programmes (short-term broadcasts) and for short-term trials of new technologies. It grants licences for retransmission (cable or terrestrial broadcasts). It establishes transmitter network plans for terrestrial broadcasting in accordance with Federal Council guidelines and submits them to the latter for approval. OFCOM is responsible for frequency allocation and spectrum management. It administers the cable network survey.

² See further: <http://www.statistik.admin.ch>.

³ For further information, see: Schläpfer, Robert, et al., *Die viersprachige Schweiz* (Zürich, Benziger Verlag, 1982); Département fédéral de l’intérieur, *Le quadrilinguisme en Suisse—présent et futur. Analyse, propositions et recommandations d’un groupe de travail du Département fédéral de l’intérieur* (Berne, Chancellerie fédérale, 1989); Lüdi, Georges, Werlen, Iwar and BIANCONI, Sandro, *Sprachlandschaft Schweiz* (Berne, Office fédéral de la statistique, 1997); Matthey, Marinette, and De Pietro, Jean-François, “La société plurilingue: utopie souhaitable ou domination acceptée?”, in Boyer, H. (ed.), *Plurilinguisme: “contact” ou “conflit” de langues?* (Paris, L’Harmattan, 1997), at pp. 133-190.

In its programming, the public service provider, SSR, is required to broadcast selected radio and television programmes in German, French and Italian: there is one radio programme in Romansh. There are only selected television broadcasts in this language, but no specific programming. The SSR's programming must take into account the specific nature of the country and the needs of the Cantons, in particular it must contribute: to public cultural development, notably by including Swiss production wherever possible; and to the free development of public opinion, in particular by adopting a reliable information policy that gives priority to events of national interest or events relating to the linguistic region concerned. In its television programming, the SSR must include Swiss audiovisual production and European productions. There are also special obligations for local and regional broadcasters (see further, Section 3.2, *infra*).

2 Constitution

The Federal Constitution of the Swiss Confederation of 18 April 1999,⁴ is the fundamental source of law in Switzerland. The Federal Constitution grants the freedom of all languages spoken in Switzerland (Article 18). Articles 4 and 70 enumerate the four national languages and the three official languages used in Switzerland. It is up to the 26 different Cantons in Switzerland to designate their official languages in their territory, but they have to respect the traditional territorial distribution of languages and take into account the indigenous linguistic minorities.

2.1 Freedom of expression

Article 16 Freedom of Opinion and Information

- 1 The freedom of opinion and information is guaranteed.
- 2 All persons have the right to form, express, and disseminate their opinions freely.
- 3 All persons have the right to receive information freely, to gather it from generally accessible sources, and to disseminate it.

Article 17 Freedom of the Media

- 1 The freedom of the press, radio and television, and of other forms of public telecasting of productions and information is guaranteed.
- 2 Censorship is prohibited.
- 3 Editorial secrecy is guaranteed.

Article 18 Freedom of Language⁵

The freedom of language is guaranteed.

2.2 Broadcasting

The constitutional basis for radio and television broadcasting is Article 93. This Article also sets out the mandate for radio and television in Switzerland in general. Individual

⁴ Available at: <http://www.admin.ch/ch/f/rs/101/index.html> (DE, FR, IT).

⁵ Language freedom implies the right for residents to use any language of their choice in the private sphere, which includes the language of business and commerce (see *infra*).

broadcasters are not required to fulfil these obligations on their own, but the whole system of radio and television should do so. The public service provider SSR has special obligations.⁶

Article 93 Radio and Television

- 1 Legislation on radio and television and other forms of public telecasting of features and information is a federal matter.
- 2 Radio and Television shall contribute to education and cultural development, to the free formation of opinion, and to the entertainment of the listeners and viewers. They shall take into account the particularities of the country and the needs of the Cantons. They shall present events factually, and reflect diverse opinions fairly and adequately.
- 3 The independence of radio and television and the autonomy of their programming are guaranteed.
- 4 The situation and the role of other media, in particular the press, shall be taken into account.
- 5 It shall be possible to submit complaints about programs to an independent authority.

2.3 (Official/State) language(s)

Article 4 National Languages

The national languages are German, French, Italian, and Romansh.

Article 70 Languages

- 1 The official languages of the Confederation are German, French, and Italian. Romansh shall be an official language for communicating with persons of Romansh language.
- 2 The Cantons shall designate their official languages. In order to preserve harmony between linguistic communities, they shall respect the traditional territorial distribution of languages, and take into account the indigenous linguistic minorities.
- 3 The Confederation and the Cantons shall encourage understanding and exchange between the linguistic communities.
- 4 The Confederation shall support the plurilingual Cantons in the fulfillment of their particular tasks.
- 5 The Confederation shall support the measures taken by the Cantons of Grisons and Ticino to maintain and to promote Romansh and Italian.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

Due to the federalism in Switzerland, each of the 26 Cantons has the right to legislate in matters affecting minorities and their linguistic rights as long as this legislation respects the constitutional provisions.⁷ Sovereignty therefore rests with the Cantons, which only delegate some areas of competence to the Confederation. By implication, as long as a given competence is not explicitly assigned to the federal government by the Constitution, it

⁶ See the section entitled 'Legislation'.

⁷ Especially Articles 17, 18 and 70 of the Federal Constitution of the Swiss Confederation.

remains within the purview of Cantons. One direct result is that there is practically no federal-level language policy. Another important result is that if a competence belongs to the Cantons, the administrative acts flowing from this competence will take place in the respective official language of each individual Canton.⁸ In bilingual Cantons, the cantonal authorities will normally use one language *or* the other (but not both) for the local provision of services (such as education), following the linguistic boundary. In the case of the trilingual Canton of Grischun/Graubünden/Grigioni, the choice of official language has been devolved from the cantonal to the communal authorities and language policy is defined at the level of the smallest political unit.⁹

It would be beyond the scope of this survey to quote the legislation of all these Cantons.

Notwithstanding the constitutional provisions and legislation of each Canton, there is national legislation on the granting of financial aid for the preservation and development of the Romansh and Italian languages and cultures.¹⁰

3.2 Broadcasting legislation

THE FEDERAL RADIO AND TELEVISION ACT OF 21 JUNE 1991

The Federal Radio and Television Act of 21 June 1991 (LRTV),¹¹ requires that all broadcasting (radio and television) take into account the diversity of the country and its population; promote Swiss artistic creation; encourage listeners and viewers to participate in cultural life; give preference to Swiss audiovisual productions, notably Swiss cinema, and include European productions, wherever possible (Article 3, LRTV).

Article 3. Mandate

1. In general, radio and television shall:
 - (a) contribute towards the free formation of public opinion and provide listeners and viewers with diversified and objective general information for their education and entertainment, and impart public knowledge;
 - (b) take account of the diversity of the country and its population and portray this to the general public, and promote an understanding of other nations;
 - (c) promote Swiss culture and stimulate listeners and viewers to participate in cultural life;
 - (d) facilitate contacts with Swiss living abroad and promote the presence of Switzerland abroad and an understanding of the country's affairs;
 - (e) take special account of Swiss audio-visual production and particularly films;
 - (f) take account as far as possible of European productions.
2. The overall range of programmes in any one supply area shall not be unduly biased towards specific parties, lobbies or ideologies.
3. The different regions of the country must be provided with a sufficient range of radio and television programmes.

⁸ Grin, F., *op. cit.*

⁹ Grin, F., *ibid.*

¹⁰ [Bundesgesetz vom 6. Oktober 1995 über Finanzhilfen für die Erhaltung und Förderung der rätoromanischen und der italienischen Sprache und Kultur](http://www.admin.ch/ch/d/sr/c441_3.html) (http://www.admin.ch/ch/d/sr/c441_3.html).

¹¹ Available at http://www.admin.ch/ch/d/sr/c784_40.html (DE) and at http://www.admin.ch/ch/f/rs/c784_40.html (FR).

The Act does not provide for quotas as such but more specific obligations may be negotiated on a case-by-case basis in the licences granted to broadcasters.

Local and regional broadcasters must ensure that the domestically produced content of their programmes is adequate and adapted to the specific features of the area covered (including the language); they must ensure that programmes reflect local and regional life and promote the region's cultural activities (Articles 21 and 23, LRTV).

Article 21. Mandate

In their programmes local and regional broadcasters must primarily take account of the characteristics of the supply area, and contribute especially to:

- a. the formation of opinions on issues of local and regional social life;
- b. the promotion of cultural life in the supply area.

Article 23. Prerequisites for the granting of a licence

1. A licence for operating local and regional radio and television programmes may be granted provided:
 - a. the applicant is resident or domiciled in the supply area;
 - b. the portion of original productions is commensurate with the broadcasting time and the particular characteristics of the supply area.
2. The cantons in which the supply area is located must be consulted prior to the granting of the licence.

In its programming on a national level, the public service provider (SSR) is required to broadcast selected radio and television programmes in German, French and Italian: there is one radio programme in Romansh. There are only selected television broadcasts in this language, but no specific programming. The SSR's programming must take into account the specific nature of the country and the needs of the Cantons. It must also include Swiss productions where possible (Articles 26, 27 and 28, LRTV).

Article 26. Licence and mandate

1. The SSR is granted a licence for the operation of programmes at national level and in the various linguistic regions.
2. The SSR shall, within its overall programme range, take into account the characteristics of the country and the needs of the cantons. In particular, through the presentation of an appropriately balanced programme, it shall contribute to:
 - a. cultural development, specifically by taking into account Swiss productions as much as possible;
 - b. the free formation of opinion, specifically by providing factual information with the priority on events of interest at national level and in the linguistic regions.
3. The SSR shall take Swiss audio-visual productions into account in its television programmes.

Article 27. Range of programmes

1. The SSR shall distribute custom-made radio programmes for each region of the national languages in the country.

2. It shall distribute custom-made television programmes for each region of the official languages in the country. The Federal Council shall determine the principles according to which the requirements of the Rhaeto Romanic speaking area of Switzerland are to be taken into account.
3. The SSR may distribute combined national radio and television programmes.
4. It may also distribute regional programmes within its range of programmes for linguistic regions.

Article 28. Distribution

1. Any television programme intended for a linguistic region shall be distributed throughout Switzerland. The Department shall determine the conditions under which this shall not apply.
2. One radio programme each in German, French and Italian, shall be distributed throughout Switzerland in so far as the distribution of local and regional programmes so permits. If necessary, additional frequencies shall be deployed for this purpose.
3. The Federal Council may authorise the SSR to set up and offer programmes in conjunction with local, regional and other broadcasters. Such co-operation is subject to the provisions of Article 25, Paragraph 3.
4. The Department may issue directives for the SSR concerning the distribution of its programmes.

On the international level, SSR has to produce programmes for abroad in the Swiss national languages and in other languages (Article 33, LRTV).

Article 33

1. The SSR shall receive a special licence for operating a radio programme intended to be broadcast abroad in the Swiss national languages and in other languages.
2. The programme must provide for close links between Swiss living abroad and their home country, promote an understanding between peoples, the presence of Switzerland abroad and an understanding of the country's affairs.

Cable television operators are required to carry a minimum choice of basic programmes (must-carry rule). This includes radio programmes broadcast by terrestrial channels for the cable network service area; SSR's other regional-language radio programmes broadcast by terrestrial channels; non-encrypted television programmes broadcast by terrestrial channels for the cable network service area broadcast and other SSR television programmes (Article 42, LRTV).

Article 42. Programme range

1. The licensee may freely choose the programmes which he redistributes, without prejudice to Paragraph 2 and Articles 47 and 48.
2. The licensee shall redistribute at least the following programmes provided that they can be received by the public with reasonable technical resources and in average quality and that the licensee receives them in sufficiently good quality:
radio programmes intended for the licensee's service zone in accordance with this Law and which are distributed by wireless terrestrial means;

other SSR radio programmes for linguistic regions which are distributed by wireless terrestrial means;
uncoded television programmes intended for the licensee's service zone in accordance with this Law and which are distributed by wireless terrestrial means;
the other SSR television programmes.

3. The competent authority may, if requested, waive part of the licensee's obligation to redistribute the programmes if, for reasons of capacity, he cannot reasonably be expected to redistribute the programmes in accordance with Paragraph 2.

4. The licensee may not claim any remuneration from the operators for the redistribution of programmes pursuant to Paragraph 2.

5. The Federal Council may forbid the licensee to receive remuneration for redistributing uncoded programmes of foreign broadcasters. It may decide that such provision depends on the condition that reciprocity is granted by a foreign State, provided this does not infringe on any international obligation.

6. It may stipulate that licensees controlling channel occupancy in the terminals shall give preference to the programmes referred to in Paragraph 2 and those distributed on behalf of an operator.

7. To avoid any discrimination between the programmes referred to in Paragraph 2, the Federal Council may issue regulations concerning the measures taken by licensees to allow the public a choice of programmes.

4 Current developments

The Federal Council has mandated the Federal Department of Environment, Transport, Energy and Communications (DETEC) to organise a national consultation for the drafting of a new Radio and Television Law (RTVG). According to this project, the public service radio and television will continue to be assigned to the national broadcasting corporation, SSR, which will be given strong means to this effect; private broadcasters of radio and television programmes will be granted more freedom. There will be, for example, no more special obligations for local and regional broadcasters.

In January 2000, the Federal Council adopted a discussion paper on the main features of future legislation on radio and television and at the same time instructed DETEC to revise the law.¹² At the end of 2000, DETEC published an initial draft of the Law on Radio and Television and initiated the public consultation procedure. Concerned and interested parties had until the end of April 2001 to take part in the consultation.¹³ Some 200 Cantons, parties, associations, radio and television stations and other organisations took the opportunity to express their opinions on the draft law.¹⁴ On 21 November 2001, the Federal Council discussed the results of the consultation on the Radio and Television Bill and mandated DETEC to draw up the legal message to the draft law.¹⁵ In December 2002, the *Bundesrat* (Council of Ministers) submitted a communiqué to the Swiss Parliament concerning the complete revision of the Radio and Television Act. It proposes, *inter alia*, that particular

¹² See: http://www.bakom.ch/en/aktuell/revision_rtvg/auftrag/index.html. See also, O. Sidler, "CH – Go-Ahead for Revision of the Radio and Television Act", *IRIS – Legal Observations of the European Audiovisual Observatory*, 2000-2: 4.

¹³ See: http://www.bakom.ch/en/aktuell/revision_rtvg/entwurf/index.html. See also, O. Sidler, "CH – New Radio and Television Act under Discussion", *IRIS – Legal Observations of the European Audiovisual Observatory*, 2001-1: 6.

¹⁴ See: http://www.bakom.ch/en/aktuell/revision_rtvg/vernehmlassung/index.html.

¹⁵ See: http://www.bakom.ch/en/aktuell/revision_rtvg/vernehmlassung/index.html.

provision be made “for an independent Swiss broadcasting service that serves all the language regions equally”.¹⁶

¹⁶ O. Sidler, “CH – Communiqué Concerning the complete Revision of the Radio and Television Act”, *IRIS – Legal Observations of the European Audiovisual Observatory*, 2003-2: 6.

Tajikistan

The Constitution of Tajikistan recognises Tajik as the state language, but acknowledges at the same time that Russian is a language of communication between the nationalities. The free use of one's mother tongue in Tajikistan is constitutionally guaranteed. Legislation has tended to promote the use and development of the Tajik language, including by means of target-setting as regards its usage by state bodies. The application of the relevant legislation has proved inconsistent and previous targets (eg. the sole usage of Tajik as the official state language by 1996/7) have not been met. A Government Resolution promotes the use of Tajik in broadcasts and films, in particular for educational purposes. According to legislation, the retransmission of foreign programming is implemented on the basis of international agreements signed by Tajikistan or on the basis of direct agreements between broadcasting companies. However, a set of regulations on this topic issued by the relevant state authority stipulate that such direct agreements may only be concluded between the authority itself and foreign broadcasters. Thus, non-state television and radio broadcasters are excluded from international cooperation activities. Applications for broadcasting licences must state the intended language(s) to be used for broadcasts.

1 Introduction

1.1 Linguistic topography

Population: 6,578,681 (July 2001 est.): Tajik 64.9%, Uzbek 25%, Russian 3.5% (declining because of emigration), other 6.6%.¹ The following is from the US State Department Report of 2001:

Ethnic Uzbeks make up approximately a quarter of the population. The number of Uzbek language newspapers, television broadcasts, and schools has declined significantly since 1992. With the exception of the trilingual (Tajik/Uzbek/Russian) school structure, the Uzbek language has no official status.

In practice, Russian is the language of interethnic communication and is used widely in government. Ethnic Russians and other Russian speakers, for example, Ukrainians, make up less than 2 percent of the population..²

1.2 Broadcasting

The Government permits radio and television broadcasts in Russian and Uzbek, in addition to Tajik, but broadcast time is dominated by Tajik- and Russian-language programmes. Some 16 private and public television companies are registered in Tajikistan. Most of them broadcast only for two-three hours a day, and until August 2002, no private television or radio companies operated in Dushanbe (see Current Developments, *infra*). In November 2001, the Tajik Ministry of Communication ceased rebroadcasting of the Russian public television broadcaster, ORT, the country's major source of news, analysis and cultural programming. In this connection, it has been reported that "relays of Russian TV stations

¹ Tajikistan, CIA World Factbook 2002, available at: <http://www.cia.gov/cia/publications/factbook/geos/ti.html>.

² "Tajikistan", Country Reports on Human Rights Practices, 2001, Released by the Bureau of Democracy, Human Rights, and Labor, 4 March 2002, available at: <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8353.htm>.

have been limited by overdue debt payments”.³ Only foreign visitors, international aid workers and a small stratum of wealthy *nouveau-riches* (the “new Tajiks”) can afford satellite dishes.

2 Constitution⁴

The 1994 Constitution was published in Russian, Tajik and Uzbek.

2.1 Freedom of expression and broadcasting

Article 30

Each person is guaranteed the freedoms of speech and the press, and the right to use mass media. Governmental censorship and prosecution for criticism are forbidden. A list of information considered secrets of the state is determined by law.

2.2 Minority rights

Article 17

All are equal before the law and the courts. The state guarantees the rights and freedoms of every person regardless of nationality, race, sex, language, religious beliefs, political persuasion, social status, knowledge, and property. Men and women have the same rights.

2.3 (Official/State) language(s)

Article 2

The state language of Tajikistan is Tajik. Russian is a language of communication between the nationalities. All nationalities and peoples living on the territory of the republic are entitled freely to use their mother tongue.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

THE LAW ON LANGUAGE, 1989⁵

Article 1 of the Law on Language, passed on 22 July 1989, prescribed Tajik as the official state language to be used solely by the year 1996. However, by 1996–1997, only 5–10% of government offices and public organisations used Tajik. Russian and Uzbek are the other languages of administration and Kyrgyz and Turkmen also have legal status. Russian is the language used in communication between the countries of the CIS (Article 2). Uzbek, Kyrgyz, Turkmen and the languages of the Gorno-Badakhshan received guarantees of free use in all spheres of society, including official institutions (Article 3).

³ BBC News Country Profile of Tajikistan (as per updated version of 11 March 2003).

⁴ Available on the website of the Open Society Institute:
<http://www.osi.hu/ipf/fellows/Zaripova/Constitution.htm>.

⁵ U.S. ENGLISH Foundation, Inc. Research on Other Countries “Tajikistan”, available at: <http://us-english.org/foundation/Tajikistan.PDF>. For further information on the U.S. ENGLISH Foundation, Inc., see: <http://us-english.org/foundation/>.

An amended version of the language law drafted in the summer of 1992 eliminated altogether the status of Russian as a language for conducting official business. While the educational system could continue to conduct classes in Tajik, Russian and Uzbek, government workers would be required to conduct all written and oral work in Tajik by 1994.⁶ This law was passed, but in practice is not enforced.

Relevant provisions of the Law on Language include the following:

Article 1

The state language of the Tadzhik Soviet Socialist Republic is Tadzhik.

Article 2

The Russian language is freely used in the territory of the Tadzhik Soviet Socialist Republic as a communication means between the USSR nations.

Article 3

The TSSR establishes good conditions for a free development and usage of Gorno-Badakshan (Pamir) languages and for preservation of the Jagnob language.

The Highland Badaschan Autonomous Region sets regulations for the usage of local languages independently.

Article 28

The Tadzhik Soviet Socialist Republic ensures production of films, TV films, video films and other pieces of art in the state language and their follow-up translations into other languages. It also ensures translation of the aforementioned pieces of art from other languages to the state language.

Article 35

Advertising animosity to any national language, any act of defamation or degradation motivated by language usage, or of setting obstacles and limits to free language usage or of restricting citizens' constitutional rights and freedoms as well as any breach of the language equality shall be prosecuted.

RESOLUTION #459: "PROGRAMME OF THE GOVERNMENT OF THE REPUBLIC OF TAJIKISTAN ON DEVELOPMENT OF THE STATE LANGUAGE AND OF OTHER LANGUAGES IN THE TERRITORY OF THE REPUBLIC OF TAJIKISTAN", 1997⁷

This Programme recommended that broadcasts and films in Tajik be improved and used for education. It recommended the "creation of favourable conditions for the use of Russian as a means of communication between the CIS States, with a slot allotted to it in the radio and

⁶ U.S. Department of State, "Tajikistan", Country Reports On Human Rights Practices for 1992 (Washington, D.C.: U.S. Government Printing Office, February 1993), p. 930.

⁷ Adopted by the Government of the Republic of Tajikistan on 21 October 1997.

television”. It was recommended that special conditions should be established for the use of Uzbek in broadcasts too.

The Programme revised all the measures already carried out pursuant to the implementation of the “Law On Language” during the period 1989-1997. It consisted of two parts: Part I: Tajik (State) Language; Part II: Other Languages. Part I is aimed at encouraging further development of Tajik, such as special educational programmes in Tajik and the use of Tajik in business, executive and judicial decisions and acts. It imposes several obligations on governmental bodies in order to implement the Programme. Part II lays out a plan for maintaining and developing other languages. It includes stipulations for education in those languages, their use and development in television and radio broadcasts.

3.2 Broadcasting legislation

LAW ON THE PRESS AND OTHER MASS MEDIA, 1990 (AS AMENDED)

In May 2002, the Tajik Parliament amended Article 3 of the Law On the press and other mass media (the Law was adopted in 1990). The previous version of the Article read: “[T]he materials of the mass-media which are to be published in different languages, first are written in the state language, than are translated and published in other languages”. In May 2002, the following version was adopted: “[T]he mass-media of the Republic of Tajikistan will conduct its activities in the state language and in other languages in accordance with the Constitution of the Republic of Tajikistan and other normative legal acts of the Republic of Tajikistan”.

LAW ON TELEVISION AND RADIO BROADCASTING, 1996⁸

Preamble

The Law regulates the activity of television and radio broadcasting in the Republic of Tajikistan, defines legal, economic, social, organisational conditions of their functioning directed to implementation of freedom of speech, citizen’s rights for receiving fully, authentic and energetic information, for open and free discussion of the public processes.

Article 19 Language of television and radio broadcasting

Television and radio organisations broadcast in the state language and also in other languages.

According to Article 33 of the Law On Television and Radio Broadcasting, the retransmission of foreign programming is implemented on the basis of international agreements signed by Tajikistan, or on the basis of a direct agreement between companies. However, the regulations on licensing adopted in 2001 by the Tajik Committee on Television and Radio Broadcasting (the licensing body which operates under the President’s control) state that any direct agreement can be concluded only between the Committee and foreign television and radio organisations (Article 11). Article 5 of these Regulations states that the language(s) to be used for broadcasts must be stated in the application for a licence.

⁸ 14 December 1996.

3.2.1 Affirmative measures

There are no affirmative measures or financial incentives for national minority broadcasting.

3.2.2 Prohibitive measures

Tajik legislation does not have any official prohibitive measures to minorities' access to broadcasting in their own languages.

3.3 Transfrontier dimension

Four years ago, the Tajik and Uzbek Governments began discussing a treaty that would allow each country to translate mutual television broadcasting. So far, however, no such treaty has been concluded.

The Tajik Ministry of Communication has an agreement with Russian state television (RTR). RTR broadcasts throughout most of Tajikistan.

4 Application of legislation

In practice, Tajik State Television (TVT) broadcasts for 1-3 hours a day in Russian and for around one hour a week in Uzbek. While interviewing an Uzbek person (when programming is in Tajik) s/he usually speaks in Uzbek. Some of the non-state television like "Gulakandoz" (from the Rasulov district), "Regar" (from Tursunzoda Town) broadcast mainly in Uzbek, since the Uzbek population is a majority in these regions. Moreover, on 2 May 2002, the newspaper, "Jahoni Payom", which belongs to the Committee on Television and Radio Broadcasting, reported that broadcasts in the Sugd oblast were made up almost exclusively of Uzbek songs and music. There are eleven non-state television stations in the region.

5 Current developments

In August 2002, the Government began loosening ties on media by allowing a private broadcasting company to offer television channels in Dushanbe. It also allowed the independent news agency *Asia Plus* to open the first private radio station in the capital (they had been denied a licence for four years). The private broadcasting company, *TV Service*, holds broadcasting rights for a total of 12 channels featuring sports, feature films, cartoons, and musical programmes in Russian, English and Hindi. It is a cable subscription service. Two other radio stations, *Asia FM* and *Vatan* were also granted licences, along with *Asia Plus*, to broadcast in the capital.

Turkey

Turkish is the official language of Turkey, but the free usage of other languages by Turkish citizens is not prohibited. However, until August 2002, when a major reform allowing broadcasting in minority languages was passed by the Turkish Parliament, radio and television broadcasts were required to be in Turkish. Broadcasting in languages other than Turkish is now limited to the State broadcaster and then to: two hours per week on television (with subtitles in Turkish throughout) and four hours per week on radio (where each programme has to be followed by the translation into Turkish of the entire programme).

1 Introduction

1.1 Linguistic topography

From its inception following the Greco-Turkish war of 1920–1922, the Turkish Republic has been viewed as a unitary state. The population can be divided between those speaking: Turkish, Kurdish, Laz or other languages like Albanian, Bulgarian, Chechen, Circassian. Strong social and other pressures were historically brought to bear to make all citizens speak Turkish as their mother tongue. Manifestations of ethnic difference between Turkish and non-Turkish Muslims were discouraged, and penalties were levied against the use of the Kurdish language. The ethnic breakdown is approximately: Turkish, 80%; Kurdish, 20%.¹ Languages spoken in Turkey include: Turkish (official), Kurdish, Arabic, Armenian and Greek.²

The Kemalist model, characterised by a strongly centralised unitary state in which the only officially recognised minorities were small religious ones as per the Lausanne Treaty, remains to a large degree essentially unchanged. The minorities recognised by the Lausanne Treaty are the Greek Orthodox, Armenians and Jews. The Kurds are not considered a minority as the Treaty of Lausanne recognises only religious, i.e., non-Muslim minorities. Therefore, they are not granted some of the rights granted to minorities under the Treaty.

1.2 Broadcasting

The 1980s saw the ending of the old state monopoly on electronic broadcasting and the beginnings of greater opportunities for diversity of media expression which has greatly expanded since. Until recent reforms (see ‘Legislation’, *infra*), licences for private media were not granted to Kurdish-language broadcasters. The Turkish armed forces run *Dicle Sesi* (‘Voice of the Tigris’), the one radio channel that does broadcast in two Kurdish dialects – in a catchment area where most of the population does not understand Turkish.

2 Constitution

The Constitution,³ adopted in 1982,⁴ and since amended,⁵ is imbued with Kemalist principles, including with respect to the expression of minority identity and the use of languages.

¹ The US Central Intelligence Agency World Factbook (Chapter on Turkey), available at: <http://www.cia.gov/cia/publications/factbook/geos/tu.html>.

² *Ibid.*

³ Available at <http://www.tbmm.gov.tr/anayasa/constitution.htm>, and also at <http://www.mfa.gov.tr/grupc/ca/cag/I142.htm>.

⁴ The Constitution of the Republic of Turkey was approved by a public referendum on 7 November 1982 and published in the Official Gazette, no. 17863 of 9 November 1982.

Preamble to the Constitution

§5 The recognition that no protection shall be accorded to an activity contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Atatürk and that, as required by the principle of secularism, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics; [...]

Article 2.

The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tents set forth in the Preamble.

Amendments to the Constitution, introduced by Law No. 4709 which entered into force on 17 October 2001, reworded Articles 13 and 14 dealing with the restrictions on and prohibitions of fundamental rights and freedoms.

Article 13.

Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality.

Article 14.

None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights.

No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution.

The sanctions to be applied against those who perpetrate these activities in conflict with these provisions shall be determined by law.

2.1 Freedom of expression

Article 26 (3), which had banned statements and publications “in a language prohibited by law”, was abolished. A specific ban on Kurdish-language use had been suspended in 1991. The amended Article 26 continues to provide that the exercise of the right to freedom of

⁵ Of particular importance for present purposes are the amendments of 17 October 2001.

expression can be restricted in limited circumstances and Article 28 bans any media activity which threatens the “indivisible integrity of the state with its territory and nation”.

Article 26.

Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licensing.

The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

The formalities, conditions and procedures to be applied in exercising the right to expression and dissemination of thought shall be prescribed by law.

Article 28.

The press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee.

The state shall take the necessary measures to ensure the freedom of the press and freedom of information.

In the limitation of freedom of the press, Articles 26 and 27 of the Constitution are applicable.

Anyone who writes or prints any news or articles which threaten the internal or external security of the state or the indivisible integrity of the state with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified state secrets and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law relevant to these offences. [...]

2.2 Broadcasting

Until 1993, television and radio broadcasting was State-controlled under Article 133 of the Constitution. In 1993, Parliament amended Article 133 to allow for private radio and television stations.

Article 133.

Radio and television stations shall be established and administered freely in conformity with rules to be regulated by law.

The unique radio and television administration established by the state as a public corporate body and the news agencies which receive aid from public corporate bodies shall be autonomous and their broadcasts shall be impartial.

2.3 (Official/State) language(s)

Article 3.

The Turkish State, with its territory and nation, is an indivisible entity. Its language is Turkish.
[...]

3 Legislation⁶

3.1 General legislation affecting minorities and their linguistic rights

Law No. 2932 of 1983, Prohibiting Languages Other than Turkish, (which banned the use of “any language aside from those used by states which have been formally recognised by the state of Turkey, to explain an opinion verbally or in print”) in conjunction with Article 26 of the Constitution had penalised the use of Kurdish for over a decade. It was abolished in April 1991. In practice, Kurdish-language publications have been available, and non-political Kurdish music was allowed to be aired, although Kurdish-language broadcasts remained illegal until recent reforms.

A number of laws currently on the statute books and which affect the right to freedom of expression generally also have a potential impact on language choice in the context of the exercise of the right to freedom of expression, including in the broadcasting sector. This potential linkage is recognised, *inter alia*, in the section, ‘Cultural Life and Individual Freedoms’, of the Turkish National Programme for the Adoption of the Acquis (see further, Section 3.1.1, *infra*). It states that the “free usage of different languages, dialects and tongues by Turkish citizens in their daily lives [...] may not be abused for the purposes of separatism and division” (quoted in full *infra*).

In practice, the provisions of laws criminalising expression which incites separatism and division might have a consequence for the use of a particular language. Such provisions are to be found in the Penal Code and the Law to Fight Terrorism, as outlined below.

THE PENAL CODE

The main Articles of the Penal Code that have affected freedom of expression (including by minorities) are Articles 159, 311 and 312. They criminalise: the act of publicly insulting or ridiculing “the moral personality of Turkishness, the Republic, the Parliament, the Government, State Ministers, the military or security forces of the State, or the Judiciary” (Article 159); incitement to criminal activity or threatening in order to incite panic and fear (Article 311) and the open praising of criminal actions, incitement to disobey the law and open incitement to “enmity and hatred by pointing to class, racial, religious, confessional, or regional differences” (Article 312).

LAW TO FIGHT TERRORISM, 1991

⁶ A number of unofficial English-language translations of Turkish laws are available online at: <http://www.us-english.org/foundation/Turkey>.

On 12 April 1991, at the same time as Law No. 2932 of 1983 (which prohibited the use of Kurdish) was abolished, Law No. 3713 to Fight Terrorism (TMK) was introduced. This law defines “terrorism” as “any kind of action” by an individual or a group “with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the state with its territory and nation” as well as a number of other provisions open to wide interpretation “by any method of pressure, force, violence, terrorisation, intimidation, oppression or threat”. “Terrorism” is not necessarily equated with violent methods. Article 8 provides prison sentences and fines for those deemed to make propaganda against “the indivisible unity of the state”.

Article 8. Propaganda against the indivisibility of the state

Written or oral propaganda, along with meetings, demonstrations, and marches that have the goal of destroying the indivisible unity of the state with its territory and nation of the Republic of Turkey cannot be conducted. Those who conduct such activities shall be punished with imprisonment of between one and three years and a heavy fine of between 100 million lira and 300 million lira. If this crime is conducted habitually, imprisonment cannot be converted into a monetary fine [...]

POLITICAL PARTIES LAW OF 1982⁷

The political parties law expressly bans the creation of minority parties and regulates the use of language:

Article 81: Preventing the Creation of Minorities

Political parties:

- a) cannot put forward that minorities exist in the Turkish Republic based on national, religious, confessional, racial, or language differences [...]
- c) cannot use a language other than Turkish in writing and printing party statute or program, at congresses, at meetings in open air or indoor gatherings; at meetings, and in propaganda; cannot use or distribute placards, pictures, phonograph records, voice and visual tapes, brochures and statements written in a language other than Turkish; cannot remain indifferent to these actions and acts committed by others; However, it is possible to translate party statutes and programs into foreign languages other than those forbidden by law.

LAW CONCERNING FUNDAMENTAL PROVISIONS ON ELECTIONS AND VOTER REGISTRIES OF 1961⁸

This is further reinforced by the law concerning fundamental provisions on elections and voter registries.

Article 58

It is forbidden to use any other language or script than Turkish in propaganda disseminated in radio or television as well as in other election propaganda.

⁷ Law No. 2820, adopted on 26 April 1982.

⁸ Law No. 298, adopted on 26 April 1961.

3.1.1 International influences on domestic legislation

It should be noted that the Turkish Government has stated its intention to review Article 312 of the Penal Code and Articles 7 and 8 of the Anti-Terrorism Law in the short-term and the Political Parties Law in the medium term. The commitment to review these – and other Constitutional and legislative provisions – was made in the aforementioned National Programme for the Adoption of the Acquis.⁹ The willingness to undertake this review has also been adverted to in recent friendly settlements of cases concerning violations of the right to freedom of expression before the European Court of Human Rights. For example, the Turkish Government made the following statement to the Court in the case of *Altan v. Turkey*:

The Court's rulings against Turkey in cases involving prosecutions under Article 312 of the Penal Code or under the provisions of the Prevention of Terrorism Act clearly show that Turkish law and practice urgently need to be brought into line with the Convention's requirements under Article 10 of the Convention. This is also reflected in the interference underlying the facts of the present case. The Government undertake to this end to implement all necessary reform of domestic law and practice in this area, as already outlined in the National Programme of 24 March 2001.¹⁰

After Turkey was given the status of a candidate for accession to the European Union (EU) in December 1999 in Helsinki, an Accession Partnership was agreed on 26 February 2001 and adopted on 8 March 2001, which sets out short-term and medium-term priorities for Turkey to achieve in order to fulfil the Copenhagen political criteria, a pre-condition for accession negotiations to start.¹¹ The Accession Partnership calls for the strengthening of legal and constitutional guarantees for the right to freedom of expression in line with Article 10 of the European Convention on Human Rights in the short-term, and requests Turkey to address the situation of persons in prison sentenced for expressing non-violent opinions. It also calls upon Turkey to remove any legal provisions forbidding the use by Turkish citizens of their mother-tongue in television broadcasting.

The EU called for the lifting of any legal restrictions on mother-tongue broadcasting as a short-term priority and the full guarantee for cultural diversity and cultural rights for all citizens irrespective of their origin, including in the field of education, in the medium-term. Turkey's National Programme for the Adoption of the Acquis, which was adopted in March 2001, described the *status quo* in the following terms:

⁹ "2.1.1 Freedom of Thought and Expression", *National Programme for the Adoption of the Acquis*, March 2001, available at: <http://www.euturkey.org.tr>.

¹⁰ Judgment (friendly settlement) of the European Court of Human Rights (former First Section), Case of *Altan v. Turkey*, Application no. 32985/96 of 14 May 2002. Similar statements have been made by the Turkish Government before the Court in other recent cases. See, for example, the friendly settlements in the cases: *Ali Erol v. Turkey*, Application no. 35076/97, Judgment of 20 June 2002; *Özler v. Turkey*, Application no. 25753/94, Judgment of 11 July 2002; *Sürek (no. 5) v. Turkey*, Application nos. 26976/95, 28305/95 and 28307/95, Judgment of 16 July 2002; *Mehmet Bayrak v. Turkey*, Application no. 27307/95, Judgment of 3 September 2002 (all available at: <http://www.echr.coe.int>). Reference was also made in the Turkish Government's statements in these cases to the individual measures mentioned in the Interim Resolution adopted by the Committee of Ministers of the Council of Europe on 23 July 2001 (ResDH(2001)106) and the Government's intention to implement those measures in the instant cases.

¹¹ See further: <http://www.euturkey.org.tr>.

The official language and formal educational language of the Republic of Turkey is Turkish.

This, however, does not prohibit the free usage of different languages, dialects and tongues by Turkish citizens in their daily lives. This freedom may not be abused for the purposes of separatism and division.¹²

3.2 Broadcasting legislation

LAW ON THE ESTABLISHMENT OF RADIO AND TELEVISION ENTERPRISES AND THEIR BROADCASTS, 1994 (AS AMENDED)¹³

Up until August 2002, the Law on the Establishment of Radio and Television Enterprises and Their Broadcasts, laid down the basis for the operation of private broadcasting sections. For present purposes, its key provision was Article 4 (t): “Radio and television broadcasts will be made in Turkish; however, for the purpose of teaching or of imparting news those foreign languages that have made a contribution to the development of universal cultural and scientific works can be used”.

On 3 August 2002, the Turkish Grand National Assembly (parliament) voted to approve a group of human-rights reforms which have legalised broadcasting and education in languages other than Turkish, notably Kurdish. Thus, under the constitutional amendments of October 2001 and the legislative amendments of August 2002, the ban on broadcasting in Kurdish was lifted with certain restrictions.

Law No. 4771, which entered into force on 9 August 2002, amended the Law on the Establishment of Radio and Television Enterprises and Their Broadcasts to allow “broadcasts in the different languages and dialects used traditionally by Turkish citizens in their daily lives”. Yet it stipulates that broadcasting in different languages and dialects “shall not contradict the fundamental principles of the Turkish Republic enshrined in the Constitution and the indivisible integrity of the state with its territory and nation.”

Broadcasting Standards Article 4¹⁴

Radio, television and data broadcasts shall be conducted within a spirit of public service, in compliance with the supremacy of the law, the general principles of the Constitution, fundamental rights and freedom, national security and general moral values. The broadcasts shall be in Turkish language. However, it may also be broadcast for the purpose of teaching foreign languages, which may have contribution to the formation of universal culture and scientific works or transmitting music or news in those languages.

Furthermore, there may be broadcasts in the different languages and dialects used traditionally by Turkish citizens in their daily lives. Such broadcasts shall not contradict the fundamental principles of the Turkish Republic enshrined in the Constitution and the indivisible integrity of the state with its territory and nation. The

¹² “2.1.9 Cultural Life and Individual Freedoms”, *National Programme for the Adoption of the Acquis*. See also: Amnesty International, ‘Turkey: Briefing on present state of human rights development during the pre-accession process’, AI Index: EUR 44/041/2002, September 2002.

¹³ Law No. 3984 of 20 April 1994, available (with amendments) at: <http://www.rtuk.org.tr/ying3984.htm>.

¹⁴ As amended by the Law No. 4756 of 21 May 2002 and by the Law No. 4771 of 9 August 2002.

principles and procedures for these broadcasts and the supervision of these broadcasts shall be determined through a regulation to be issued by the Supreme Board.
[...]

Regulations on the language of radio and television broadcasts in various languages and local dialects, implemented on 18 December 2002, provide for two hours per week of television broadcasting in “different languages and dialects” and four hours per week on radio, broadcasts to be exclusively on the state television and radio channels, and to be followed in the case of radio programmes by a complete translation of the entire programme into Turkish and subtitles in Turkish throughout television broadcasts. Private broadcasts in these languages remain banned. The Regulations are to be supervised by the Supreme Board of Radio and Television.¹⁵

Provision is also made in the Law for the correct usage of the Turkish language in broadcasting:

Broadcasting Standards Article 4

[...]
The broadcasting standards in radio, television and data broadcasts are as follows:
[...]
h) Broadcasts shall use the Turkish language in its spoken form without destroying its characteristics and rules; shall ensure its development in the form of a modern cultural, educational and scientific language as a basic element of national unity and integrity.
[...]

3.3 Transfrontier dimension

Law No. 4771 also amended Article 26 of the Law on the Establishment of Radio and Television Enterprises and Their Broadcasts so that it now reads:

The re-transmission of the broadcasts shall be allowed provided that it does not contradict with this Law. The principles and procedures relating to re-transmission shall be by a regulation to be issued by the Supreme Board.
The Supreme Council shall be informed about the retransmitted broadcasts.
[...]

As stated above, the Treaty of Lausanne defines minorities as non-Muslim and only including Greek Orthodox, Armenians, and Jews. Thus, though the treaty ensures that no restrictions will be placed on the use of any language in print and publications, this has been known to not apply to Muslim minorities, such as the Kurdish.

TREATY OF PEACE WITH TURKEY SIGNED AT LAUSANNE IN 1923¹⁶

¹⁵ See further: “Regulations legalizing Kurdish broadcasts on state TV adopted”, Turkish Daily News Online, 19 December 2002, available at: http://www.turkishdailynews.com/old_editions/12_19_02/heads.htm.

¹⁶ The Lausanne Treaty was signed on 24 July 1923 by the British Empire, France, Italy, Japan, Greece, Romania and the “Serb-Croat-Slovene” State on one side and Turkey on the other; (excerpts) available at: <http://www.mfa.gov.tr/grupe/ed/eda/edaa/default.htm>.

Article 39

Turkish nationals belonging to non-Muslim minorities will enjoy the same civil and political rights as Muslims.

All the inhabitants of Turkey, without distinction of religion, shall be equal before the law.

Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions and industries.

No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.

There is little effective control over Kurdish-language television programmes, which beam into the country by satellite. Satellite dishes are widely owned throughout the country. Many Kurds tuned into *Med-TV* until the UK Independent Television Commission suspended its licence in 1999. *Med-TV* was succeeded by *Medya-TV*, which continues to broadcast in Kurdish to Turkey (and elsewhere).

Note: Since this report was compiled/edited, the Turkish Government has stated, in the (revised) National Programme for the Adoption of the Acquis, its commitment to implementing the “provisions on broadcasting in [...] different languages and dialects used by Turkish citizens in daily life”.¹⁷

¹⁷ Section II – Political Criteria, 1 – Freedom of Thought and Expression, Turkish National Programme for the Adoption of the Acquis, *Official Gazette* of 24 July 2003, No. 25178 *bis*, available at: <http://www.abgs.gov.tr/NPAA/up.htm>.

Turkmenistan

The state language of Turkmenistan is Turkmen. The Constitution guarantees every citizen's right to use his/her own native language and legislation grants Russian the status of the language of interethnic communication. The State has a monopoly on all mass media, including the electronic media. There are no measures in place for encouraging minority-language broadcasting. There are no editorial offices in minority languages and the only programmes designated specifically for minority-language groups are short news programmes in Russian. Restricted retransmissions of Russian television by the state channels does, however, also take place. Regional (provincial) studios, including in the regions densely populated by national minorities, ceased to exist in the early 1990s. Privately-owned satellite equipment allows some people living in Turkmenistan to receive television programmes from Russia and Turkey, in particular.

1 Introduction

1.1 Linguistic topography

According to a July 2001 estimate, the population of Turkmenistan is 4,603,244. The population is roughly divided along the following lines: Turkmen, 77%; Uzbek, 9.2%; Russian, 6.7%; Kazakh, 2%; other, 5.1% (1995).¹

The Russian-speaking population is mostly concentrated in towns and settlements related to transport and industrial infrastructure.

Kazakhs and Uzbeks live in the remote areas of the country on the border with Kazakhstan and Uzbekistan: the Kazakh population is visible in the Northern Balkan *velayat* (formerly Krasnovodsk region); Uzbeks inhabit Dashoguz *velayat* (province) in the North and the East of the country, as well as Lepabsk *velayat* in the East, on the border with Uzbekistan.

There are Armenian, Azerbaijanian and Persian communities living predominately in towns. Relatively big communities of Beludgi live in rural areas (Mariy *velayat*, former Mariy region).

There are also small German, Tartar and Molkan communities. At the beginning of the 1990's, communities of refugees from Tajikistan lived in the east of Turkmenistan and refugees from Afghanistan lived in the south and the east of Turkmenistan.

It should be noted that studies show that practically all Turkmens older than 25 years (for women, 70–75% and for men, 95–99%) know enough Russian to understand this language, if not to speak in Russian.

1.2 Broadcasting

In Turkmenistan, the State has a monopoly on all mass media, including the electronic media. Currently, all broadcasting is done by the state company, TMT. Central censorship bodies regulate all broadcasting. Regional studios, including in the regions densely populated by minorities were closed by the Government in the early 1990s. Diversity of television

¹ Turkmenistan, 2002. CIA World Factbook.

broadcasting is limited to that provided by three state channels: *Altin Ashir*, *Miras* and *Yashlick*.

There are no editorial offices in minority languages. Nor are there special programmes in minority languages, apart from 15-minute daily news programmes in Russian. Nevertheless, the state channels retransmit ORT programmes received through satellite. Broadcasting consists of previously recorded and censored programmes. These are entertainment programmes, television serials, news programmes (once a day). The total volume of daily broadcasting time is from three to six hours in the evening.

Radio programmes are broadcast only in the Turkmen language. The Russian 24-hour radio station *Mayak* is retransmitted day and night.

Many residents of Turkmenistan receive programmes by satellite from Russia and Turkey via individual sets of equipment. There is evidence that this tendency also exists in the remote regions of Turkmenistan. Urban residents have several sets and often organise a collective network of several apartments and households to watch satellite television.

1.3 Government policies on broadcasting and minorities

All decisions on mass media policy are made entirely by the Government. However, Government policy with regard to broadcasting and minorities has not been announced.

2 Constitution

The Constitution of Turkmenistan was adopted by the Supreme Soviet and promulgated by the President on 18 May 1992.

2.1 Freedom of expression

Article 3

In Turkmenistan, the highest value of the society and the State is a human being. The State is responsible to each citizen and ensures the creation of conditions for the free development of an individual, protects the life, honour, dignity and freedom, personal immunity, and inalienable civil rights.

Article 10

The State is responsible for the preservation of national historical and cultural heritage, environment, ensuring equality between social and national communities, encouraging scientific and artistic creative work and disseminating its results, and promoting the development of international links in the area of science, culture, education, sport and tourism.

2.2 Minority rights

Article 17

Turkmenistan guarantees its citizens the equality of rights and freedoms as well as the equality of its citizens by law regardless of their nationality, origin, property or official status, place of residence, religious beliefs, political views, party membership.

2.3 (Official/State) language(s)

Article 13

The state language of Turkmenistan is Turkmen. The right to use one's native language is guaranteed to all the citizens.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

LAW OF THE TURKMEN SSR ON LANGUAGE, 1990²

The Law of the Turkmen SSR On Language establishes the Turkmen language as the state language. The Law contains 36 Articles dealing with the rights of citizens to choose/use language and guarantees for the protection of such rights. It regulates the use of language in names and also in the mass media. There is a section devoted to the protection of the state language. Russian is granted the status of the language of interethnic communication.

Article 1: The government language of the Turkmen Soviet Socialist Republic is Turkmen.

The Turkmen SSR defends the Turkmen language and pays attention to its development and active use by government organs, public organisations, in economics, education, culture, technology, in the spheres of service, mass media and other common spheres of life.³

3.2 Broadcasting legislation

There are no facilitative/affirmative measures relating to minorities' access to broadcasting in their own languages in Turkmenistan. Nor are there any prohibitive measures relating to minorities' access to broadcasting in their own languages.

3.3 Transfrontier dimension

Provisions concerning the national situation and also any transfrontier dimensions relevant to broadcasting do not exist. No relevant intergovernmental treaties have been signed.

² Adopted on 20 May 1990.

³ Unofficial translation by the editors. For the purposes of clarity, we provide the original here: Статья 1. Государственным языком Туркменской Советской Социалистической Республики является туркменский язык: Туркменская ССР осуществляет государственную защиту туркменского языка и проявляет заботу о его всемерном развитии и активном применении в государственных органах и общественных организациях, в экономике, народном образовании, культуре, технике, о сферах обслуживания, массовой информации и других сферах общественной жизни.

In 1994 the retransmission of Russia's RTR channel was stopped after several critical programmes about Turkmenistan. After 1996, ORT broadcasting started to be gradually restricted; now it is four–six hours daily. The retransmission of the Turkish channel *Avrasia* was broken several times because of the negative coverage of some aspects of Turkmen-Turkish relationships.

Ukraine

While the Constitution of Ukraine stipulates that the state language is Ukrainian and that the language should be used in all spheres of social life throughout the national territory, it also provides for the free development, use and protection of Russian and other languages of national minorities in Ukraine. Television and radio broadcasting must be in the state language, save for in regions densely populated by national minorities, where the relevant minority languages may also be used (a proposal for legislative amendment currently under examination would, if adopted, allow for broadcasting in minority languages, irrespective of the place of residence of the relevant minorities in Ukraine). A further exception concerns broadcasts to foreign audiences, which shall be in Ukrainian or in the corresponding foreign language. In practice, though, most broadcasting is done in the Russian language (which along with the state language is the other main language used in Ukraine). In 2001, a number of Russian channels were removed from packages offered by Ukrainian cable networks.

The State is required by law to support the mass media which consistently promote minority languages and cultures – in effect, this support is largely budgetary in nature. The percentage of programming in Ukrainian and in other languages must be stated in applications for broadcasting licences (awarded by the licensing authority). When agreed upon, these percentages are fixed in the requirements of the licences binding broadcasters. Legislation restricts foreign ownership stakes in broadcasting companies to a maximum of 30%. Ukraine is also party to a number of bilateral treaties which, *inter alia*, provide for minorities' rights to receive and impart information in their native languages and to establish mass media outlets for that purpose. The national broadcasting council adopted a decision in June 2002 which obliges television and radio companies to ensure that their own programmes are totally in Ukrainian within one year.

1 Introduction

1.1 Linguistic topography

The predominant languages in Ukraine are Ukrainian and Russian. This reflects both the ethnic composition of Ukraine and its historical development. Ethnic Ukrainians make up the majority of the population of the country. The second biggest group is the ethnic Russians. The last official census with information on the national and linguistic topography of Ukraine was taken in 2001. According to its official results, the population of the country is 48,457,000.¹ According to the 2001 data, Ukrainians make up 78% of the population; Russians, 17% and others, 5%.

The territorial settlement of Ukrainian and Russian speakers is traditionally divided into western and eastern Ukraine. The west is predominately Ukrainian-speaking and the east Russian-speaking. To be more precise, Ukrainian is used predominantly in western, northern and central Ukraine, and Russian in its eastern and southern parts. Russian is the predominant language of communication in the Autonomous Republics of Crimea, Lugansk, Donetsk, Kharkov, Odessa, Zaporozhie, Kherson, and some other regions. It is also necessary to note that the traditional Russian-speaking population is more concentrated in urban areas, while in rural areas, the usual language of communication is Ukrainian - even in the eastern regions.

¹ Interfax-Ukraine News Agency, 2 January 2003 (see further: <http://www.interfax.kiev.ua/eng/>).

Crimea is a big centre for minority settlement. The biggest group is the Crimean Tatars. There are also Bulgarians, Romanians, Greeks and Jews. Many minority representatives live in the border territories. In the west of Ukraine these are Romanians, Hungarians, Roma Gypsies, Slovaks, Czechs and Poles; in the north, these are Belarussians and Russians, and in the south these are Moldavians and Gagauzes.

In preparation for the ratification of the European Charter for Regional or Minority Languages, minorities protected under this convention have been identified as the following: Russians, Jews, Belarussians, Moldavians, Romanians, Crimean Tatars, Bulgarians, Poles, Hungarians, Greeks, Germans, Gagauzes and Slovaks. The Charter for Regional or Minority Languages was ratified but the Constitutional Court of Ukraine subsequently declared this ratification unconstitutional, having found procedural violations in the Parliament's adoption of the Charter.²

1.2 Broadcasting

The total combined volume of broadcasting in Ukraine in 2001 amounted to about 19,000 hours daily. Most broadcasting was done in Russian. However, there are no precise figures. Broadcasting in other minority languages is insignificant. In border regions, programmes from neighbouring countries (for example, Poland, Hungary and Slovakia) are retransmitted on air and cable channels. Broadcasting proper in minority languages, not including in Russian, does not exceed 50 hours a day.

1.3 Government policies on broadcasting and minorities

Government policy in the sphere of information in Ukraine is still to be defined. In spite of detailed broadcasting legislation, conceptual policy documents remain unapproved. One such document is the Concept of TV and Radio Information Environment in Ukraine. It was elaborated by specialists of the National Council on Television and Radio Broadcasting and reviewed by the Committee on Freedom of Speech of the Ukrainian Parliament. The draft contains provisions on minority rights to broadcast in (their) native languages. Thus, although the document remains a draft, it envisages the introduction of obligatory quotas for the distribution of programmes in minority languages.

2 Constitution

The Constitution of Ukraine was adopted on 24 June 1996.³ It contains several articles regulating the issues of freedom of expression, languages and minority rights. There is no article regulating broadcasting. However, Articles 85 and 106 contain the order for the formation of the National Council of Ukraine on Television and Radio Broadcasting, which is the regulating body in the sphere of broadcasting.⁴

2.1 Freedom of expression

Article 34

² Decision of the Constitutional Court of Ukraine of 12 July 2000, N 9-пп/2000.

³ Adopted at the Fifth Session of the *Verkhovna Rada* of Ukraine on 28 June 1996, the official English-language translation of the Constitution is available at: <http://www.rada.kiev.ua/const/conengl.htm>.

⁴ In accordance with Article 85(20), the *Verkhovna Rada* appoints half of the members of the National Council of Ukraine on Television and Radio Broadcasting and in accordance with Article 106(13), the President of Ukraine appoints the other half of the Council's members.

- Everyone is guaranteed the right to freedom of thought and speech, to the free expression of his or her views and beliefs.
- Everyone has the right to freely collect, store, use and disseminate information by oral, written or other means of his or her choice.
- The exercise of these rights may be restricted by law in the interests of national security, territorial indivisibility or public order, with the purpose of preventing disturbances or crimes, protecting the health of the population, the reputation or rights of other persons, preventing the publication of information received confidentially, or supporting the authority and impartiality of justice.

2.2 Minority rights

Article 11

The State promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.

2.3 (Official/State) language(s)

Article 10

- The state language of Ukraine is the Ukrainian language.
- The State ensures the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the entire territory of Ukraine.
- In Ukraine, the free development, use and protection of Russian, and other languages of national minorities of Ukraine, is guaranteed.
- The State promotes the learning of languages of international communication.
- The use of languages in Ukraine is guaranteed by the Constitution of Ukraine and is determined by law.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

The main normative act regulating the linguistic rights of minorities is the Constitution of Ukraine. At the legislative level, the Law of Ukraine On Minorities in Ukraine⁵ was adopted in 1992 and contains general equality principles on the rights of minorities and native population as well as prohibitions to any discrimination on the ground of nationality. Thus, Article 8 reads: “[I]n the work of public bodies, public organizations as well as companies, institutions and organizations located in the places where most of the population is a minority its language can be used equally with the state language.”

In addition, consideration should be given to the statute “On Languages in Ukrainian SSR” adopted during Soviet rule on 28 October 1989,⁶ as amended on 28 February 1995.⁷ Article 3

⁵ N 2494-XII, of 25 June 1992.

⁶ N 8312-11.

of the Statute obliges the Ukrainian SSR to provide conditions for the development and use of languages of other nationalities of the Republic. Article 4 specifically provides for the free use of Russian. Article 33 of the Statute provides that Ukrainian is a language of “official” mass media, but other languages can also be used by them.

3.1.1 Protection and promotion of minority rights

Ukrainian legislation establishes the rights and guarantees for national minorities but does not establish a system for their implementation. The general rules that govern the protection of minority rights are equal both for minorities and all other citizens.

3.2 Broadcasting legislation

LAW OF UKRAINE ON TELEVISION AND RADIO BROADCASTING OF 22 FEBRUARY 1994⁸

Article 9:

Tele-radio organizations shall broadcast in the state language.

Broadcasts in certain regions may also be in the language of national minorities densely inhabiting those areas.

Broadcasts to foreign audiences shall be in Ukrainian or the corresponding foreign language.

3.2.1 Facilitative/affirmative measures

The only legal act determining incentives for broadcasting in minority languages in their own languages is the Law of Ukraine On the State Support to Mass Media, signed on 24 February 1996. Article 3(4) of this law reads that “the State renders target support to the mass media, which consistently promote the development of minority languages and culture in Ukraine.” In accordance with this law, the means for the support of mass media are fixed by a separate line in the budget.

In practice, several successful examples of the access of minorities to broadcasting can be given. For example, in Crimea, the state broadcasting company “Crimea” broadcasts in Bulgarian, German and Crimean Tartar, as well as Russian and Ukrainian.

Another successful example in this area was the public radio station established in the Transcarpathian region by the International Foundation, “Vozrozhdenie.” The radio broadcasts daily on FM in the languages of the minorities living in the region – Slovak, Hungarian and Czech.

3.2.2 Prohibitive measures

In Ukraine, foreign entities shall not found (establish) broadcasting organisations, nor shall foreign investors have more than a 30% ownership stake in a broadcasting company (Article 13 of the Law on Television and Radio Broadcasting).

⁷ N 75/95-Bp.

⁸ The Law on Television and Radio Broadcasting is available on the website of Internews: http://www.internews.ru/law/ukraine/tvradio_eng/index.html.

Article 13. Right to Establish a Tele-Radio Organization.

The right to establish a tele-radio organization in Ukraine belongs to: Citizens of Ukraine not limited in legal capacity, the Supreme Council of Ukraine, the president of Ukraine and other juridical persons of Ukraine.

Establishment and operation of tele-radio organizations by foreign juridical and natural persons and persons without citizenship are prohibited in Ukraine. Establishment and operation of tele-radio organizations with foreign investment exceeding 30% of their capital stock are prohibited.

Foreign investment in tele-radio organizations in Ukraine shall be under the oversight of, and with the consent of, the National Council.

Registration of tele-radio organizations shall take place in accordance with procedures established by legislation of Ukraine concerning enterprises.

To register, a founder must present to the appropriate agency a petition, the decision of the founders concerning creation of a tele-radio organization, its charter, and other documents required by applicable legislation of Ukraine.

All tele-radio organizations shall be listed in the State register of tele-radio organizations of Ukraine, which shall be maintained by the National Council.

3.3 Transfrontier dimension

Ukraine concluded an agreement On Cooperation in Ensuring Minorities' Rights with the neighbouring Republic Belarus on 23 July 1999. This document obliges the parties to ensure the rights of ethnic Ukrainians in Belarussia and ethnic Belarussians in Ukraine. The agreement establishes social rights and guarantees, which should be secured by the parties. Besides, the parties recognise their respective minorities' right to access information in their own language, to freely disseminate information, and to establish mass media outlets in the native language.

Similar norms are contained in more general agreements, for example, in the Treaty on the Foundations of Neighbourliness and Cooperation between Ukraine and Romania of 2 July 1997, and the Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation of 31 May 1997.

4 Application of legislation and other measures affecting language

There are no substantial discrepancies between the legislation and the practice of its implementation in Ukraine. Besides Article 13 of the Law on Television and Radio Broadcasting (discussed *supra*), there are generally no prohibitive measures in Ukraine that would impair access of a minority to broadcasting in their own language. The availability of Russian television and radio channels and the use of Russian by Ukrainian broadcasters have, however, been reduced. Specifically, in 2001, the Russian channels NTV, TNT, RTR and ORT started to be taken out of the packages of the Ukrainian cable networks on a mass scale.

In most of the cases only ORT—International remained in the cable package. The legal basis was violation of copyright law. In order to obtain a broadcasting licence from the National Council on Television and Radio Broadcasting, the channels had to produce agreements with all the stations covering each programme they planned to rebroadcast. Many were not able to conclude written agreements.

Article 9 of the Law on Television and Radio Broadcasting states that Ukrainian is the state language and that mass media shall be in the state language. The Law provides for an exception for the areas densely populated by national minorities, where the media can distribute information in the languages of the minorities. When a person or group applies for a frequency, they must state the percentage of the programming that will be in Ukrainian and in other languages in their letter to the licensing authority. Then the issue becomes a subject of informal negotiations between the applicant and the state body that issues licences (and reinforces the national policy to promote Ukrainian language and culture). The resulting figures are then fixed in the licence requirements and must be followed by the broadcaster.

5 Current developments

On 27 June 2002, the National Council of Ukraine on Television and Radio Broadcasting adopted the Decision (N 41) to oblige television and radio companies of the country to have 100% of their own programmes in Ukrainian within one year. “Own” is the operative term here: this decision does not prevent broadcasters from buying programmes from elsewhere.

The Supreme Rada of Ukraine (Parliament) is currently considering a draft law moved by People’s Deputy Victor Ponedilko on the amendments to Article 9 of the Law of Ukraine On TV and Radio Broadcasting. This Article regulates the issues of languages on television (see *supra*). The proposed amendment would allow television and radio organisations to broadcast in minority languages, irrespective of the place of residence of these minorities in the territory of Ukraine. In that case, the language of broadcasting would be determined only by the terms of the broadcasting licence. As of February 2003, no amendments were introduced.

There are several political groups (in particular, the Communists) who have lobbied the Parliament to amend the Constitution and establish the Russian language as an official language of Ukraine. However, no tangible legislative steps have been taken. As of February 2003, no amendments had been introduced.

United Kingdom

English is the *de facto* official language of the United Kingdom; Welsh is on an equal legislative footing with English in Wales, by virtue of successive language acts and Gaelic and Irish are simply recognised in Scotland and Northern Ireland, respectively. Cornish has recently been given recognition for the purposes of Part II of the European Charter for Regional or Minority Languages. Welsh, Gaelic and Irish are, in effect, the main indigenous minority languages used in the UK. Each of these linguistic communities enjoy some level of broadcasting in their own languages. Broadcasting in Welsh is well developed and has firm statutory underpinnings. The Welsh broadcasting authority must ensure that evening programmes of the channel designated for Welsh-language broadcasting are “mainly” in Welsh and of a high general standard. Some of the main national public service broadcasters are required by law to provide programming for the Welsh-language television station. Welsh-language broadcasting is assured by national radio and television services, as well as local radio broadcasting. In Scotland, Gaelic television programmes are aired by the BBC and ITV, but are mainly funded by the Gaelic Broadcasting Committee. Radio broadcasting in the Gaelic language is also relatively well developed. The digital terrestrial television provider is required to ensure at least 30 minutes of Gaelic programming during peak times throughout Scotland. In Northern Ireland, broadcasting in Irish is by and large limited to the radio, and even then to individual programme items provided by the regional BBC service and selected independent local broadcasters. Governmental commitments to Irish-language broadcasting are contained in the Belfast Agreement between the Irish and British Governments and in the latter’s White Paper, ‘A New Future for Communications’. The Independent Television Commission has devised specific policies for broadcasting in Welsh and Gaelic; these take the form of special ‘Notes’. It should also be mentioned that broadcasting services providing programming for many other diverse ethnic communities in the UK have also been licensed by the relevant regulatory bodies. There is also an array of non-legislative measures promoting minority-language broadcasting.

1 Introduction

1.1 Linguistic topography

The majority of people in the United Kingdom speak English. Welsh, Gaelic and Irish are known as “indigenous minority languages”.¹ In November 2002, the British Government announced its decision to recognise Cornish as falling under Part II of the European Charter for Regional or Minority Languages (see further, *infra*). The 2001 Census data returns reveal the following for Welsh, Gaelic and Irish:²

- Welsh: Welsh is spoken by upwards of half a million people (20.5% of the population in Wales). This compares with 18.5% of the population in Wales in the 1991 Census. In addition, more than 28% are able to understand Welsh.³

¹ Fifth periodic report of States parties due in 1999: United Kingdom of Great Britain and Northern Ireland, 11 April 2000, Doc. CCPR/C/UK/99/5 (State Party Report), available at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/377ca7042b54319cc12569670054d1b6?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/377ca7042b54319cc12569670054d1b6?Opendocument).

² See further: <http://www.statistics.gov.uk/census2001/default.asp>.

³ See further: “Census shows Welsh language rise”, 14 February 2003, available at: <http://news.bbc.co.uk/1/hi/wales/2755217.stm>.

- Gaelic: 58,650 people aged three years or over are able to speak, read or write Gaelic. This represents a decrease of 11% since the 1991 Census and is the first time that the number has fallen below 60,000.⁴
- Irish: In the Northern Ireland 1991 Census 142,003 people (9% of the population) aged three years and older recorded some knowledge of the Irish language and, of those, 79,012 recorded an ability to speak, read and write the language.⁵

Besides the indigenous minority populations, the United Kingdom is home to several groups of ethnic minorities, each of which generally has its own language.⁶ Ethnic minorities accounted for 6.4% of the total UK population aged 16 and over in 2001.

Table 1: Ethnic minority groups broken down into broad sub-groups⁷

Mixed	240,000
Asian or Asian British	1,450,000
Black or Black British	708,000
Chinese	135,000
Other ethnic groups	312,000
Total ethnic minority groups	2,845,000 (6.4% of total population)

The CIA World Factbook lists the following percentages for the UK ethnic groups overall: English, 81.5%; Scottish, 9.6%; Irish, 2.4%; Welsh, 1.9%; Ulster,⁸ 1.8%; West Indian, Indian, Pakistani and others, 2.8%.

1.2 Broadcasting in minority languages

The Report of the UK Committee of the European Bureau for Lesser Used Languages notes that there are six “lesser used” languages spoken in the UK. The report catalogues *inter alia* the audiovisual media presence of each language.

REPORT OF THE UNITED KINGDOM COMMITTEE: EUROPEAN BUREAU FOR LESSER USED LANGUAGES⁹

Cymraeg (Welsh) (1991 census/500,000+ speakers)

Media: The national radio service Radio Cymru broadcasts about 100 hours per week in Welsh. A few local radio stations also carry programmes in Welsh. The 1980

⁴ See further: “Census shows drop in Gaelic speakers”, 13 February 2002, available at:

<http://news.bbc.co.uk/1/hi/scotland/2755411.stm>.

⁵ Report submitted by the United Kingdom pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (Received on 26 July 1999), Doc. ACFC/SR (99)13, available at:

<http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/StateReports/1999/uk/uk.htm>. See, in particular, the section of Report on Article 10, *ibid.*, available at:

http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/StateReports/1999/uk/Article_10.htm.

⁶ For an interesting article about ethnic minorities in Britain, see: Sunder Katwala, “The truth of multicultural Britain: Mapping out the nation reveals Britain to be in a state of flux”, *The Observer*, 25 November 2001, available at: <http://www.guardian.co.uk/Archive/Article/0,4273,4306676,00.html>.

⁷ See “Demographics: The United Kingdom”, available on the website of the British Council at:

http://www.britishcouncil.org/diversity/race_demo.htm.

⁸ Now used loosely to describe Northern Ireland (where pronouncedly different identities exist) in political terms, the word ‘Ulster’ actually refers to a traditional province, which corresponds to modern-day Northern Ireland plus three counties in (the Republic of) Ireland.

⁹ Available at: <http://www.eurolang.net/State/uk.htm>. See also:

<http://www.eblul.org/wow/stad.asp?stad=Royaume-Uni&B1=Go%21&yezh=saozneg>.

Broadcasting Act established the Welsh television channel S4C which broadcasts Welsh-language programmes about 30 hours a week.

Gaeilge (Irish) (1991/142,000 claiming knowledge)

Media: The regional BBC station broadcasts annually about one hundred and fifty hours of Irish-language programmes on radio and three and a half hours of Irish-language programmes on television.

Gaidhlig (Gaelic) (1991/67,000 speakers; 2001 Census expected to show around 55,000)

Media: Currently, there are about 300 hours of Gaelic television broadcasts per year (BBC and ITV), mainly funded by the Gaelic Broadcasting Committee. Gaelic-language radio programmes amount to about 45 hours per week.

Kernewek (Cornish) (840 fluent+ 2,900 conversational)

Media: There are no regular bilingual or Cornish television broadcasts. A local radio service broadcasts a fifteen minute bilingual programme per week.

Scottish (1996/1,500,000)¹⁰

Media: Scots is now increasingly being heard in the broadcast media in a wide range of programmes. Plans exist for the creation of a defined policy towards Scots in the major public service broadcasting organisation while the independent sector company is sponsoring a Scots language competition for schools.

Ulster Scots (100,000)

Media: Ulster-Scots has no access to regional television or radio.

ADVISORY COMMITTEE ON THE FRAMEWORK CONVENTION - OPINION ON THE UK, 2001¹¹

The Opinion on the United Kingdom adopted by the Advisory Committee on the Framework Convention for the Protection of National Minorities provides updated data on the availability of minority-language broadcasting in the UK:

Article 9

62. The Advisory Committee takes note of the information provided by the Government on the regional radio stations licensed to serve the ethnic minority communities (five for Asian groups, three for African Caribbean audiences and another serving a range of ethnic minority groups) as well as the availability of programme streams on local digital television multiplexes (eight of which contain streams for ethnic minorities).

63. The Advisory Committee notes with approval the level of coverage and support for television in Welsh on Channel S4C, with 4,388 of its total of 10,255 hours annual

¹⁰ The General Register Office (Scotland) has estimated the number of Scottish speakers at 1.5 million. Other surveys have suggested higher numbers.

¹¹ Advisory Committee on the Framework Convention for the Protection of National Minorities Opinion on the United Kingdom, adopted on 30 November 2001, available at:
<http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/AdvisoryCommittee/Opinions/uk.htm>

broadcasting in Welsh. The Advisory Committee similarly notes that BBC Radio Cymru broadcasts in Welsh for approximately 18 hours daily.

64. In relation to Gaelic in Scotland the Advisory Committee notes that the Gaelic Broadcasting Committee receives £8.7 million to finance the production of Gaelic programmes, training and research and that some 130 hours of television programming are broadcast on BBC1 and BBC Scotland in Gaelic each year.

[...]

66. The Advisory Committee notes that there is no Irish language television station in Northern Ireland. The Advisory Committee also notes that there have been complaints from members of the Irish speaking community in Northern Ireland about the lack of progress on the development of Irish language television production and understands, in this respect, that there are calls for specific legislation on Irish language broadcasting for Northern Ireland.

1.3 Government policies on broadcasting and minority languages

The Report of the UK Committee of the European Bureau for Lesser Used Languages catalogues the varying levels of official recognition and protection for each of the 6 lesser used languages in the UK.

REPORT OF THE UNITED KINGDOM COMMITTEE: EUROPEAN BUREAU FOR LESSER USED LANGUAGES¹²

***Cymraeg* (Welsh)**

Status: The Welsh Language Act 1993 states that Welsh has equal status with English. This Act, a substantial step forward for status language planning, follows the Welsh Language Act of 1967, which made limited provision for Welsh to be used in the courts and in public administration, and the Welsh Courts Act 1942, which first allowed Welsh language evidence to be submitted in courts of law

***Gaeilge* (Irish)**

Status: The UK Government does not grant any official legal status to the Irish language.

***Gaidhlig* (Gaelic)**

Status: Gaelic has no statutory legal status, although it is used in some committees by the Western Isles Council. It is also used by the Highland Council at its Gaelic Working Group Meetings and in Gaelic related debates in the Scottish Parliament.

***Kerewek* (Cornish)**

Status: No official legal status within the UK, but recognised by the Government as a legitimate autochthonous language.¹³

Scottish

Status: No legal status or protection at this time.

¹² See <http://www.eurolang.net/State/uk.htm>.

¹³ The Government recently announced its decision to recognise Cornish under Part II of the European Charter for Regional or Minority Languages. See Current Developments.

Ulster Scots

Status: The UK Government does not grant any official legal status to Ulster-Scots.

2 Constitution

The United Kingdom does not have a (written) constitution. Please refer to the Legislation section for relevant details on freedom of expression, and minority-language broadcasting policies and official language.

3 Legislation

3.1 Official language(s) of the United Kingdom

According to information received from the UK's Permanent Committee on Geographical Names, via the House of Commons, the official languages of the UK are English and Welsh in Wales.

3.1.1 English

The status of English as an official language is accepted *de facto*; there seems to be no authoritative source specifying this.

3.1.2 Welsh

Welsh is the subject of the Welsh Language Act (1993)

An Act to establish a Board having the function of promoting and facilitating the use of the Welsh language, to provide for the preparation by public bodies of schemes giving effect to the principle that in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality, to make further provision relating to the Welsh language, to repeal certain spent enactments relating to Wales, and for connected purposes.¹⁴

3.1.3 Gaelic and Irish

The position of two other languages is, in addition, recognised: Gaelic (in Scotland) and Irish (in Northern Ireland). As reported by the Council of Europe:

The UK Government announced in June 1998 that it proposed to become a signatory to the Charter for Regional or Minority Languages, and to specify provisions for Part III of the Charter in respect of Welsh and Gaelic. The Government also intends to specify Irish at an early date.

In Scotland, in the main traditional Gaelic speaking area, the local authority for the western Isles, Comhairle nan Eilean Siar, operates a bilingual policy in its contacts with the public, and conducts some of its business in Gaelic. In September 1998 the Highland Council launched a Gaelic Development Strategy to support and promote the language. Argyll and Bute Council will accommodate enquiries from Gaelic speakers in Gaelic wherever possible.¹⁵

¹⁴ Welsh Language Act 1993, available at:

http://www.hmsi.gov.uk/acts/acts1993/Ukpga_19930038_en_1.htm#end.

¹⁵ http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/StateReports/1999/uk/Article_1.htm.

Gaelic has a special place in the Scottish Parliament and the Parliament maintains its website in both English and Gaelic.¹⁶ The Scottish Executive website also has Gaelic pages¹⁷ and a Minister of the Scottish Executive is responsible for promoting Gaelic in Scotland.

3.2 General legislation affecting minorities and their linguistic rights

In its 1999 Report, the UK states that:

The Government recognises that members of ethnic minorities have the right to use their minority language freely and without interference.¹⁸

There is no specific legislation in the UK on “minorities”. The UK’s approach is to enact anti-racism laws, notably, the Race Relations Act 1976, (which replaced the Acts of 1965 and 1968). Recently, the Race Relations (Amendment) Act (2000) was passed broadening the scope of protections.¹⁹ The recently-released Committee for the National Minorities Treaty Advisory Opinion on the UK provides an update on the general state of minority rights in the United Kingdom.

V. Concluding Remarks

[...]

133. The Advisory Committee notes the commendable efforts of the United Kingdom through the devolution process in Scotland, Wales and Northern Ireland, to create the conditions necessary for persons to participate effectively in affairs concerning them. The Advisory Committee notes however that devolution has brought with it increasing awareness and demand for recognition of the essential elements of the different communities’ identity and in particular their language. The Advisory Committee considers that there remains scope, in particular, for further improving the protection of minority languages in Northern Ireland, notably concerning the use of Irish.

[...]

3.3 Broadcasting: indigenous minority languages

3.3.1 Welsh

The Broadcasting Act 1990²⁰ laid out the functions of the Welsh Authority which provides the Sianel Pedwar Cymru (S4C) broadcasting service. The Act requires that a substantial portion of programmes on S4C be in Welsh. The principal current provisions for Welsh (S4C) are in the 1990 Act, sections 24, 26, 27, 56 to 65 and Schedules 1 and 6, as amended

¹⁶ See the Scottish Parliament website in Gaelic:
<http://www.scottish.parliament.uk/gaidhlig/gaidhlig.htm>

¹⁷ See <http://www.scotland.gov.uk/gaelic/intro.asp>.

¹⁸ State Report on Framework Convention. See:
http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/StateReports/1999/uk/Article_9.htm.

¹⁹ For information on the 2000 Act, see the special Home Office pages,
<http://www.homeoffice.gov.uk/raceact/welcome.htm>

²⁰ Available at: http://www.legislation.hmsso.gov.uk/acts/acts1990/Ukpga_19900042_en_1.htm.

by sections 80-84 of the 1996 Broadcasting Act,²¹ and in section 29 of the 1996 Act. The most relevant provisions include the following:

THE BROADCASTING ACT 1990

Television Broadcasting by Welsh Authority

57.—(1) The function of the Welsh Authority shall be to provide a television broadcasting service of high quality for reception wholly or mainly in Wales to be known as Sianel Pedwar Cymru (or S4C); and in this Part references to S4C are references to that service.

(2) It shall be the duty of the Welsh Authority—

- (a) to provide S4C as a public service for disseminating information, education and entertainment;
- (b) to ensure that a substantial proportion of the programmes broadcast on S4C are in Welsh and that the programmes broadcast on S4C between 6.30 pm and 10 pm consist mainly of programmes in Welsh; and
- (c) to ensure that the programmes in Welsh which are broadcast on S4C maintain—
 - (i) a high general standard in all respects (and, in particular, in respect of their content and quality), and
 - (ii) a wide range in their subject matter, having regard both to the programmes as a whole and also to the days of the week on which, and the times of the day at which, the programmes are broadcast.

58.—(1) For the purpose of enabling the Welsh Authority to comply with their duty under section 57(2)(b) it shall be the duty of the BBC to provide the Authority (free of charge) with sufficient television programmes in Welsh to occupy not less than ten hours' transmission time per week, and to do so in a way which meets the reasonable requirements of the Authority.

(2) It shall be the duty of the Channel Four Television Corporation—

- (a) to provide the Welsh Authority with programme schedules for the programmes broadcast on Channel 4, including information as to the periods available for the broadcasting of advertisements, far enough in advance to enable the Welsh Authority to comply with section 57(3); and
- (b) to provide the Welsh Authority (free of charge) with any programmes which are required by the Authority for the purpose of complying with that provision.

THE BROADCASTING ACT 1996

29. - The S4C Digital Service

(1) If the Welsh Authority provide S4C Digital, it shall be their duty-

- (a) to provide it as a public service for disseminating information, education and entertainment,
- (b) to ensure that all the programmes in Welsh which are broadcast on S4C are broadcast on S4C Digital at the same time, and
- (c) to ensure that the programmes which are broadcast on S4C Digital but not on S4C maintain-

²¹ Available at: <http://www.legislation.hms.gov.uk/acts/acts1996/1996055.htm>.

- (i) a high general standard in all respects (and, in particular, in respect of their content and quality), and
- (ii) a wide range in their subject matter, having regard both to the programmes as a whole and also to the days of the week on which, and the times of the day at which, the programmes are broadcast.

(2) Sections 57(4), 58(5), 59, 60 and 64 of the 1990 Act shall apply in relation to S4C Digital as they apply in relation to S4C.

(3) No payment shall be required by the BBC in respect of the broadcasting pursuant to subsection (1)(b) of programmes provided by them under section 58(1) of the 1990 Act.

(4) In this section "programme" does not include an advertisement.

COMMUNICATIONS WHITE PAPER 2000

The Government's 2000 White Paper, *A New Future for Communications*²² contains a Chapter on "Maintaining Diversity and Plurality". Section 4.4. is on "Meeting the Needs of Different Communities". The Government's policy, in general, is that: "[A]s well as serving regional interests, broadcasters all need to be alert to the UK's many cultural, linguistic and social communities".²³ In particular, "S4C provides a distinctive public service for Welsh speakers. We reaffirm its continuing importance. We also support S4C's commercial activities as a way of funding expansion into new services that will benefit Welsh speakers".²⁴

The Communications Bill which resulted from the White Paper has passed all the stages of its reading in the House of Commons. The House of Lords read the Bill for the second time on 25 March. Thus, at this stage, there are no finalised, legal changes to the treatment of Welsh-language television and radio services. However, the Bill has a number of pertinent provisions on these matters, in particular relating to the "Welsh Authority" (see sections 200-204).²⁵

UK'S FIFTH REPORT TO THE UN HUMAN RIGHTS COMMITTEE²⁶

There are several affirmative measures for the preservation of Welsh, as an indigenous minority languages on broadcasting in the UK.

²² Available at: <http://www.communicationswhitepaper.gov.uk/>.

²³ Section 4.4.7.

²⁴ Section 4.4.9.

²⁵ Latest version available at: <http://www.publications.parliament.uk/pa/ld200203/ldbills/041/2003041.htm>.

²⁶ Fifth Periodic Report of States parties due in 1999: United Kingdom of Great Britain and Northern Ireland, CCPR/C/UK/99/5, 11 April 2000, available at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.UK.99.5.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.UK.99.5.En?Opendocument). The following is the formal declaration entered at the time of ratification of the Charter by the UK Government:

Declaration contained in a Note Verbale from the Foreign and Commonwealth Office of the United Kingdom, handed at the time of deposit of the instrument of ratification on 27 March 2001 - Or. Engl.

a) The United Kingdom declares, in accordance with Article 2, paragraph 2 and Article 3, paragraph 1, of the Charter that it will apply the following provisions for the purposes of Part III of the Charter to Welsh, Scottish-Gaelic and Irish.

[...]

b) The United Kingdom declares, in accordance with Article 2, paragraph 1 of the Charter that it recognises that Scots and Ulster Scots meet the Charter's definition of a regional or minority language for the purposes of Part II of the Charter.

Article 27 (Minority rights)

[...]

636. The Government has announced its intention of signing and ratifying the Council of Europe Charter for Regional or Minority Languages. Signature of the Charter commits the Member State to the principles set out in Part II of the Charter in support of all its indigenous minority languages, ratification to a range of specific measures, selected from a list in Part III of the Charter, to support specific languages. Welsh in Wales, Gaelic in Scotland, and, at an early date, Irish in Northern Ireland will be specified.²⁷

[...]

Welsh in Wales

643. The Welsh Language Act 1993 established the Welsh Language Board, a non-departmental public body, to promote the use of Welsh. The Welsh Office granted the Board £5.8 million in 1998-1999. The Board has to approve schemes implementing the principle in the Act that English and Welsh languages should be treated equally in the conduct of public business and the administration of justice in Wales.

[...]

645. Since 1981, Sianel Pedwar Cymru (S4C, the Welsh Fourth Channel) has been the sole television broadcaster in Welsh. In 1998, S4C expanded its Welsh service to 12 hours a day, using its new digital channel. S4C receives a Government grant of about £75 million a year. The BBC provides its own Welsh radio channel, Radio Cymru, which broadcasts about 18 hours a day. [...]

INDEPENDENT TELEVISION COMMISSION NOTES

The Independent Television Commission's policy regarding Welsh Broadcasting/Gaelic Broadcasting is set out in the series ITC Notes.²⁸

3.3.2 Gaelic

Under the Broadcasting Act 1990, the Gaelic Television Committee was required to make grants for the financing of programmes in Gaelic for broadcasting mainly in Scotland. Funds could also be used for training, research and for related purposes such as support materials.

The Broadcasting Act 1996 put a requirement upon the provider of the digital terrestrial multiplex carrying Channel 5 and S4C to provide a minimum of half an hour a day of Gaelic programming during peak time throughout Scotland. The Multiplex operator is also charged to consult the Committee on the quantity of programmes and the proposed scheduling for the broadcast.

Section 95(6)(b) of the Act expanded the remit of what was then the Gaelic Television Committee to provide support to Gaelic radio to widen the range and improve the quality of sound programmes in Gaelic that are broadcast for reception in Scotland. In recognition of

²⁷ Editor's Note: Charter has now been signed, ratified and it has entered into force in the UK. Signature: 2 March 2000; Ratification: 27 March 2001; Entry into Force: 1 July 2001.

²⁸ The Note on Television in Wales is available at:
http://www.itc.org.uk/itc_publications/itc_notes/view_note.asp?itc_note_id=33.

these changes, Comataidh Telebhisein Gaidhlig (The Gaelic Television Committee) was re-named Comataidh Craolaidh Gaidhlig (The Gaelic Broadcasting Committee).

THE BROADCASTING ACT 1990

Gaelic Television Programmes

Financing of programmes in Gaelic out of Gaelic Television Fund.

183.— [...]

(2) Any amount received by the Commission under subsection (1) shall be carried by them to the credit of a fund established by them under this section, to be known as the Gaelic Television Fund. [...]

(4) The Fund may be applied by the Committee—

(a) in the making of grants for the following purposes, namely—

(i) financing the making of television programmes in Gaelic primarily with a view to the broadcasting of such programmes for reception in Scotland;

(ii) financing the training of persons employed or to be employed in connection with the making of such programmes; and

(iii) other purposes connected with or related to the making of such programmes; and

(b) in financing the undertaking of research into the types of television programmes in Gaelic that members of the Gaelic-speaking community would like to be broadcast.

[...]

(6) The Committee shall perform their functions under this section with respect to the making of grants out of the Fund in such manner as they consider will secure that a wide range of high quality television programmes in Gaelic are broadcast for reception in Scotland; but nothing in this section shall be construed as authorising programmes to be commissioned by the Committee.

(7) The Commission shall so exercise their power under subsection (3) to appoint the members of the Committee as to secure that a majority of the members are persons who appear to them to represent the Gaelic-speaking community; and Schedule 19 to this Act shall have effect with respect to the Committee.

[...]

Broadcasting of programmes in Gaelic on Channel 3 in Scotland.

184.—(1) Section 16 shall have effect in relation to any service to which this section applies as if the following requirements were included among those specified in subsection (2) of that section, namely—

(a) that a suitable proportion of the programmes included in the service are programmes in Gaelic other than funded Gaelic productions;

(b) that the service includes funded Gaelic productions of which—

(i) a suitable proportion are of high quality, and

(ii) a suitable proportion are shown at peak viewing times; and

(c) that (taking the programmes included in the service in accordance with paragraphs (a) and (b) above as a whole) the service includes a wide range of programmes in Gaelic.

[...]

THE BROADCASTING ACT 1996

32. Digital Broadcasting of Gaelic Programmes

(1) The Secretary of State may by order provide for the Commission to include in any multiplex licence granted in respect of one frequency to which section 28 applies such conditions relating to the broadcasting of programmes in Gaelic for reception wholly or mainly in Scotland as may be specified in, or determined by them under, the order.

(2) The Secretary of State may by order require the holder of a multiplex licence ("the holder"), in complying with any such conditions, to broadcast programmes in Gaelic supplied by each of the persons mentioned in subsection (4) ("the suppliers") amounting to such minimum number of hours (if any) of transmission time per year as may be specified in the order in relation to that supplier.

(3) For the purpose of enabling the holder to comply with any such conditions and any obligation imposed by virtue of subsection (2), it shall be the duty of each supplier to provide the holder, free of charge, with such programmes in Gaelic which have been broadcast by the supplier as the holder may request.

(4) The suppliers are-

- a) the BBC,
- b) the Channel Four Television Corporation,
- c) any holder of a Channel 3 licence to provide a regional Channel 3 service (within the meaning of Part I of the 1990 Act) for reception wholly in Scotland, and
- d) such other persons providing television broadcasting services as may be specified by order by the Secretary of State.

[...]

95. Financing of Gaelic Sound Programmes

(1) Section 183 of the 1990 Act (financing of television programmes in Gaelic out of Gaelic Television Fund) is amended as mentioned in subsections (2) to (6).

[...]

(6) In subsection (6)-

- (a) after "will" there is inserted "- (a) "; and
- (b) for "but" there is substituted- "(b) widen the range and improve the quality of sound programmes in Gaelic that are broadcast for reception in Scotland; but".

ITC LICENSEES

The ITC's Invitation to Apply for regional Channel 3 licences states that the Central Scotland and North of Scotland licensees must broadcast at least one hour a week on average of programmes in the Gaelic language funded by themselves. They must in addition broadcast programmes in the Gaelic language on a regular basis up to 200 hours a year funded by the CCG.

It is a licence condition that Grampian TV show 53 minutes a week of Gaelic programmes funded by themselves plus an additional 30 minutes a week, which may be supplied by Scottish Television.

The annual performance reviews by the ITC of its licensees include an assessment of the provision of Gaelic programmes required by the Broadcasting Act 1990. In particular, the service provided by the two Scottish licensees must include a wide range of Gaelic programmes, taking such programmes as a whole. A suitable proportion must be of high quality and shown in peak viewing times.

The CCG must prepare a separate report and accounts to the 31 March each year to be sent to the Secretary of State for Scotland to be laid before Parliament. Details are included in the ITC's performance reviews for 2000 within its annual report on the provision of Gaelic programmes by Grampian Television and Scottish Television.

A Gaelic Broadcasting Task Force, chaired by Alasdair Milne produced a report in 2000, which recommended the establishment of a Gaelic Broadcasting Authority to run a new digital Gaelic channel. The Government is currently considering the task force's recommendations.²⁹ In addition, the Education, Culture and Sport Committee of the Scottish Parliament has now reported on the progress to date of the CCG.³⁰

COMMUNICATIONS BILL, 2001

As mentioned *supra*, the Communications Bill has passed all the stages of its reading in the House of Commons and was read by the House of Lords for the second time on 25 March. Thus, at this stage, there are no finalised, legal changes to the treatment of Gaelic-language television and radio services. However, the Bill has a number of pertinent provisions on these matters, in particular relating to the "Gaelic Media Service" (previously the "Gaelic Television Fund"), sections 205-207.³¹

UK'S FIFTH REPORT TO THE HUMAN RIGHTS COMMITTEE

Gaelic and Scots in Scotland

637. The Government is stepping up support for Gaelic, the Celtic language of Scotland, by:

[...]

- Giving £8.5 million a year for the Gaelic Broadcasting Committee to fund television and radio programmes in Gaelic, and as stated; [...]

INDEPENDENT TELEVISION COMMISSION NOTES

The Independent Television Commission's policies regarding Gaelic Broadcasting are set out in a series of ITC Notes.³²

²⁹ Point 4.4.10 in the Government White Paper "A New Future for Communications, 2000" states: "4.4.10 The Gaelic Broadcasting Task Force, established by the Scottish Office in 1999, has reviewed the current provision of programming in the Gaelic language and considered options for the future. We will give careful consideration to the *Task Force's recommendations*." See the White Paper, available at: <http://www.communicationswhitepaper.gov.uk/>. The Gaelic Broadcasting Task Force paper is available at: <http://www.scotland.gov.uk/library3/heritage/gbtf-00.asp>.

³⁰ See Report on the Gaelic Broadcasting Committee, 14th Report, Education, Culture and Sport Committee, SP Paper 473, available at: http://www.scottish.parliament.uk/official_report/cttee/educ-01/edr01-14-vol01-01.htm.

³¹ Latest version available at: <http://www.publications.parliament.uk/pa/ld200203/ldbills/041/2003041.htm>.

³² The Note on Gaelic broadcasting is available at: http://www.itc.org.uk/itc_publications/itc_notes/view_note.asp?itc_note_id=32.

3.4 Irish

COMMUNICATIONS WHITE PAPER 2000

4.4.11 Irish language broadcasting in Northern Ireland is less developed than Celtic language broadcasting in Scotland and Wales. The Government has made several commitments in the Belfast Agreement, reaffirmed in a Joint Statement with the Republic of Ireland Government on 5 May 2000, in relation to promoting and facilitating the use of the Irish language.

*The Belfast Agreement*³³

On broadcasting, the Agreement states that the Government will: (a) explore urgently with the relevant British authorities, and in co-operation with the Irish broadcasting authorities, the scope for achieving more widespread availability of Teilifis na Gaeilge (an Irish-medium television station based in the Republic of Ireland, now known as TG4) in Northern Ireland; and (b) seek more effective ways to encourage and provide financial support for Irish language film and television production in Northern Ireland.

Our aim is to give effect to these commitments without adversely affecting English language broadcast provision. A two year Irish language TV and film production pilot scheme, which is due to start by April 2001, will help identify appropriate structures and mechanisms for developing the Irish language film and television sector in Northern Ireland.

UK'S FIFTH REPORT TO THE UN HUMAN RIGHTS COMMITTEE

There are several affirmative (broadcasting) measures for the preservation of Irish as an indigenous minority language in the UK.

Article 27 (Minority rights)
[...]

642. The Belfast Agreement (see paragraph 12]) recognises the importance of Irish (the Celtic language of Ireland), Ulster-Scots (or Ullans, a variety of the Scots language), and the various ethnic minority languages in Ireland. Provision for Irish and Ulster-Scots in Northern Ireland meets the requirements of Part II of the Charter. An agreement, signed by the British and Irish Governments in March 1999, provides for a language implementation body which will have two parts: an Irish Language Agency in Dublin with an office in Belfast, and an Ulster-Scots agency in Belfast, possibly with an office in Donegal in the Irish Republic. The body will have these functions:

The Irish Language Agency

- Promoting Irish, and supporting Irish-medium education and the teaching of Irish on both sides of the border;

³³ The Belfast Agreement, 10 April 1998, available at: <http://www.nio.gov.uk/issues/agreement.htm>.

- Encouraging its use in speech and writing in public and private life in the South and, in the context of Part III of the Charter, in Northern Ireland where there is appropriate demand;
- Advising both administrations, public bodies and groups in the private and voluntary sector;
- Supporting projects and grant-aiding bodies and groups;
- Undertaking research, promotional campaigns and public and media relations; and;
- Developing terminology and dictionaries.

The Ulster Scots Agency

- Promoting greater awareness and use of Ullans and of Ulster-Scots culture throughout the island.

3.5 Broadcasting: non-indigenous minority languages

The UK's 1999 Report regarding the European Framework Convention for the Protection of National Minorities states the following:

There is nothing in UK law or practice which hinders the creation and use of printed [sic] media by persons belonging to ethnic minorities. Anyone is free, jointly and severally, to set up media enterprises, and to use or use any media.

One of the main aims of the Broadcasting Act 1990 was to provide opportunities for communities of all kinds to have access to broadcasting stations, material designed to meet their specific tastes and interests.

The Radio Authority is required, in selecting licensees, to have regard for the extent to which any proposed radio station would cater for the tastes and interests of people living in the area and the extent to which it would broaden the range of programmes already available on independent local radio there. These provisions have facilitated applications from ethnic minorities to operate their own stations. There are now six licences to provide full-time local radio services aimed at catering for the tastes and interests of black and other ethnic minority audiences. In addition many short-term licences are granted for local events, including religious festivals.

The Independent Television Commission has issued over twenty broadcasting licences for television services aimed at the Asian, Chinese, Japanese, Turkish, Iranian and Afro-Caribbean communities. A number have been available on cable television since the late 1980's and it is likely that with the arrival of digital television services, more will become operational.

The Broadcasting Act 1996 made provision for broadcasting licences to be issued to provide television services for particular locations in the UK and an Indian language service seems likely to be one of the first to start transmissions.

The British Broadcasting Corporation's Statement of Promises to Viewers and Listeners includes a commitment to, 'work harder to reflect the wide interests and

varied cultures of the whole of the United Kingdom and to provide programmes of particular interest to ethnic minority audiences.³⁴

UK'S FIFTH REPORT TO THE UN HUMAN RIGHTS COMMITTEE

As regards “non-indigenous minority languages” the UK’s Fifth Report to the United Nations Human Rights Committee does not provide any facilitative measures in the area of broadcasting, but rather leaves this largely up to the minority community.

INDEPENDENT TELEVISION COMMISSION NOTES

The Independent Television Commission’s policies regarding Ethnic Minorities are set out in its series of ITC Notes.³⁵ The Note entitled ‘Ethnic Minorities’ states:

Employment

Section 38 of the Broadcasting Act 1990 on the promotion of equal opportunities states that licences for Channels 3, 4 and 5 must include conditions requiring the licensee: to make arrangements for promoting, in relation to employment by him, equality of opportunity between men and women and between persons of different racial groups;

[...]

Programming

Section 14(3) of the Broadcasting Act 1990 allows the ITC to determine whether Channel 3 licensees should provide different programmes for different parts of the licence area and for different communities living within the area.

[...]

Cable and Satellite

Various services in operation are designed for ethnic communities in this country and, in many cases, across Europe. There are two services for Chinese viewers and others transmitting in Greek, Farsi and Japanese. Of the two Arab services, the newest is Arab News Network, a 24-hour news channel. There are 20 services in English and a variety of Indo-Pakistani languages and three RSLs...which serve this market. Two licensees target African Caribbean communities and a third is anticipated before the end of 2001.

[...]

RADIO RESTRICTED SERVICE LICENCES

Another mechanism for access for minorities is via the Radio Restricted Service Licences. There are currently about 90 long-term but small-scale radio restricted service licences (LRSL’s), predominantly for hospital and student radio stations, as well as a steady stream (around 400 per year) of very short-term restricted service licences (RSL’s), often for particular events. Each year, upwards of 20,000 people take part in making radio through RSL’s. The activities supported by RSL’s are wide-ranging, such as festivals (including religious events), sports events and youth, educational and community projects. There has been a marked increase in demand for licences to support youth and community projects and a number of schools use RSL’s. Most ethnic minority RSL’s are services run by Asian

³⁴ See:

http://www.humanrights.coe.int/minorities/Eng/FrameworkConvention/StateReports/1999/uk/Article_9.htm

³⁵ Independent Television Commission Note: Ethnic Minorities, available at:

http://www.itc.org.uk/itc_publications/itc_notes/view_note.asp?itc_note_id=41.

community groups, usually for religious purposes. Among Muslims for example, Ramadan and Eid are popular periods for stations. A number of Christian Millennium services were licensed under the generic name of Flame FM.³⁶

4 Other initiatives

THE CULTURAL DIVERSITY NETWORK

The Cultural Diversity Network (CDN),³⁷ which held its first meeting in February 2000, was set up by television broadcasters in response to concerns raised by the Secretary of State for Culture, Media and Sport and others about the adequacy of the representation of our multicultural society on and behind the screen. The network is a cross-industry initiative.

REPORT OF THE COMMISSION ON THE FUTURE OF MULTI-ETHNIC BRITAIN BY THE RUNNYMEDE TRUST

The Report of the Commission on the Future of Multi-Ethnic Britain (2000) by the Runnymede Trust has a chapter which includes the issue of the media.³⁸ As with the CDN, it is mainly concerned with issues of “programming, staffing, bias and representation in the arts and media” rather than the issue of linguistic rights of UK minorities as regards the audiovisual media.

As well as calling for fairer hiring and greater attention to programming for more inclusive programmes and activities it has called for a national cultural policy that pays “particular attention to issues of cultural inclusion and identity”. It urges “protection for programme suppliers who will offer channels targeted at particular cultural interests” on digital television and states that:

Organisations funded by public bodies should lose some of their funding if they do not make changes in their staff and governance, and do not demonstrably make their programmes and activities more inclusive.

5 Current developments

5.1 General development

The Advisory Committee on the Framework Convention for the Protection of National Minorities Opinion on the United Kingdom, adopted on 30 November 2001, and the UK Government’s Response, dated 13 May 2002, outline areas for further development in minority language broadcasting and legislation.³⁹

OPINION OF THE ADVISORY COMMITTEE ON FRAMEWORK CONVENTION

Article 9

³⁶ See the ITC Notes on Restricted Service Licences, available at: http://www.itc.org.uk/itc_publications/itc_notes/view_note.asp?itc_note_id=48.

³⁷ See further: http://www.cre.gov.uk/media/nr_arch/nr010405.html.

³⁸ See <http://www.runnymedetrust.org/meb/TheReport.htm#Chapter12>.

³⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities Opinion on the United Kingdom, adopted on 30 November 2001, available at: <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/AdvisoryCommittee/Opinions/uk.htm>

65. The Advisory Committee welcomes the statement in the Government's Communications White Paper, published on 12 December 2000, that consideration will be given to the recommendations of the Gaelic Broadcasting Taskforce on the feasibility of a dedicated Gaelic television service once digital television becomes widely available.

[...]

67. The Advisory Committee also understands that there are complaints from members of the Ulster-Scots community about the lack of provision for broadcasting Ulster-Scots on the television and the radio in Northern Ireland.

[...]

69. More generally and notwithstanding the different steps already taken, the Advisory Committee has received calls for greater diversity and opportunity in media broadcasting. The Advisory Committee recognises the limited frequencies accessible for broadcasting, and the competition for the limited licences available. The Advisory Committee also notes that digital, cable and satellite broadcasting will bring with it new and further possibilities for meeting demands. Encouragement should be given to opening up broadcasting further to national minorities, using for example opportunities offered by the implementation of new technologies.

THE COMMITTEE FOR THE NATIONAL MINORITIES TREATY ADVISORY OPINION
ON THE UK – THE UK'S RESPONSE⁴⁰

Article 9

Paragraph 118: The Advisory Committee finds that importance should be attached to linguistic diversity in Northern Ireland and considers that the United Kingdom should explore further how to cater for the needs of the Irish speaking community in particular, as well as the needs of the Ulster-Scots speaking community, in terms of their access to and creation of their own media.

The commitments made by the Government in relation to promoting and facilitating the use of the Irish language were reaffirmed in a Joint Statement with the Republic of Ireland Government in May 2000.

The Government's aim is to give effect to the commitments made in the Belfast Agreement without adversely affecting English language broadcast provision. In addition to the specific commitment in the Belfast Agreement to Irish language broadcasting and production, future planning will need to reflect the broader commitment to promote understanding, respect and tolerance for linguistic diversity, which also includes Ulster-Scots and minority ethnic languages.

Irish language broadcasting in Northern Ireland is less well developed than Celtic language broadcasting in Scotland and Wales. The focus therefore is to enable people in Northern Ireland to receive Irish language broadcasting that is already available in the Republic of Ireland. To this end, the UK and Irish broadcasters agreed a series of technical arrangements to enable analogue signals from Clermont Carn transmitter

⁴⁰ Comments of the Government of the United Kingdom on the Opinion of the Advisory Committee on the Report on the Implementation of the Framework Convention for the Protection of National Minorities in the United Kingdom, 13 May 2002, available at: <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/AdvisoryCommittee/Opinions/UK.Comments.htm>.

located in the Republic of Ireland to reach more of Northern Ireland. This was a unique and highly complex arrangement for the UK which has enabled significant coverage improvements of RTE and TG4. We understand the Irish broadcasters estimate an increase in coverage of their services from around 30% to 65-70% of the Northern Ireland population. It is open to Irish broadcasters to reach agreement with broadcasters for carriage of their services on digital television platforms for reception in Northern Ireland (provided of course that ITC licensing requirements are met). Discussions continue between the British and Irish Governments to consider how greater coverage can be achieved.

The Department of Culture, Arts and Leisure reports that an action plan for a two-year Irish language TV and film production scheme has been produced. The plan is entitled “A New Beginning for a New Age Irish Medium Production Training”. The plan is supported by funding of £500,000 over the two years. A training course began in February 2002 and fifteen trainees are currently taking part.

5.2 Cornish

Cornish, from the Brythonic branch of Celtic languages, was formerly considered defunct. As reported in *The Times*:

Numbers speaking the language fluently are now put from 30 to 50, by Cornwall County Council — to as many as 500, by enthusiasts and the Cornish separatists, Mebyon Kernow. Another 2,000 to 3,000 are credited with some knowledge.

Official recognition will mean that public bodies must protect and promote the use of Cornish. It will be illegal for them to discriminate against Cornish speakers and they will have a duty not to suppress the language.

Cornish speakers will also have access to millions of pounds of National Lottery and European Union funding earmarked for the support of minority languages.⁴¹

On 5 November 2002, the Minister for Local Government and Regions announced, in response to a Parliamentary Question, that: “after careful consideration and with the help of the results of an independent academic study on the language commissioned by the Government, we have decided to recognise Cornish as falling under Part II of the European Charter for Regional or Minority languages. The Government will be registering this decision with the Council of Europe”.⁴²

⁴¹ David Brown, “Kernuak Becomes Britain's Latest Official Language”, *The Times*, 10 August 2002.

⁴² See further:

http://www.publications.parliament.uk/pa/cm200102/cmhansrd/cm021105/text/21105w15.htm#21105w15.html_sbhd1.

United States

There are no prohibitions on foreign language programming (or more properly broadcasting in languages other than English); nor are there compulsions for broadcasting in other languages. There are areas of US law that are significant, however, in determining the extent of foreign language broadcasting that is available. The boom in cable television and the existence of satellite to home has meant a burgeoning of multiple language broadcasting. These new programme services are wholly unregulated and also can be owned by foreign interests. The Corporation for Public Broadcasting and the Public Broadcasting Service (often with federal funding) have sought to expand the opportunities for non-English language broadcasting, especially in Spanish.

1 Introduction

1.1 Linguistic topography

The latest estimate (July 1999) for the ethnic breakdown of the United States provides the following figures: Hispanic: 11.49%; American Indian and Alaskan Native: 0.88%; Pacific Islander: 3.96%. According to Department of Labor statistics, Latinos are the fastest growing ethnic minority in the United States; the number of Latinos in the workforce will have increased to 10% by the year 2000. At present, approximately 31 million Latinos live in the United States, and sometime between 2000 and 2007 that number will reach 40 million. The Census Bureau projects that by 2020, more than 52 million Latinos (representing close to 20% of the total population) will reside in the United States. By 2050, the Bureau estimates that the percentage will rise to nearly twenty-five. The ethnic population that represents the most significant source of language controversy is expanding as a demographic unit and becoming increasingly complex as a subgroup of the American political community.

The Spanish language, spoken in many forms and with varying degrees of facility, represents a significant element of this demographic mix. In 1999, approximately 48% of Latino households spoke Spanish, 33% spoke English, and the remainder spoke a combination of the two languages. According to the 1990 Census, more than 17 million of the 230.4 million Americans speak Spanish at home, and 31.8 million speak languages other than English. It is safe to say that the proportion of bi- and multilinguals has grown considerably over the last decade.

Table 1: 1990 Census Figures

Language	Percentage of total	Percentage of total that speak language and speak English less than very well
Total Non-English:	14%	6%
Spanish	7.52%	3.6%
French	0.74%	0.2%
German	0.67%	0.17%
Italian	0.57%	0.19%
Chinese	0.54%	0.32%
Other	4%	1.52%

1.2 Broadcasting

Table 2: Radio (Total Commercial Stations: 11,013)

Radio format	Total stations	Percentage
Spanish	549	5.4%
Korean	6	0.05%
Portuguese	5	0.05%
Greek	4	0.04%
Polish	4	0.04%
French	4	0.04%
Italian	2	0.02%
Japanese	2	0.02%
Chinese	2	0.02%
Vietnamese	1	0.01%
Arabic	1	0.01%
Russian	1	0.01%

Table 3: Television (Total Television Stations: 8,760)

Television format	Total stations	Percentage
Spanish	52	0.6%

1.3 Government policies on broadcasting and minorities

The US Congress has authorised the Federal Communications Commission (FCC)¹ to regulate the broadcasting industry in the public interest because of the scarcity of available frequencies or wavelengths. While government policy was once concerned with language elements of broadcasting, in a regulatory and often restrictive way, that has shifted. Because of deregulation and the operation of the market, major language needs, particularly Spanish, are almost always met through competition, especially in urban markets. In addition to the traditional use of certain UHF stations for Spanish-language broadcasting, the development of the Spanish language market as an economical entity has meant the growth of a mature, sophisticated, and profitable national and multinational industry serving certain Spanish-language needs in the United States. Technology has also contributed to this.

For most of its history, but not so much at the present time, there were comparative hearings between applicants for radio and television licences. During that time, language differences were of some consequence.

For example, in 1956, the FCC gave favourable consideration to an applicant seeking a television licence because it already operated a radio station that broadcast in Spanish. Only two years later, however, when an applicant sought to provide 5.8% of its programming in foreign languages, the FCC refused to prefer it over another applicant with less commitment to foreign-language broadcasting. In the FCC's view, the foreign-language programming was detrimental to those who could not understand it, and this harm outweighed the benefit to a foreign-language audience. In 1966, the FCC seemed to shift again, this time preferring an applicant who planned to operate an all-Spanish radio format to one who sought only part-time broadcasting in Spanish. The FCC considered the fact that a substantial population of

¹ See further: <http://www.fcc.gov/>.

Latinos, who had little or no command of English, would benefit from full-time Spanish programming. Thus, the Review Board in *La Fiesta Broadcasting Co.*² found in a comparative proceeding that an applicant which proposed to broadcast all-Spanish-language programming was entitled to a preference in satisfying demonstrated needs over another which proposed only part-Spanish-language programming, on the basis of a showing of an unfilled need for Spanish-language programming.

Another major issue in the growth of foreign-language programming (or non-English programming) was a requirement by the FCC that the licensee not delegate his or her responsibility for supervising content. Some stations that had foreign-language programming were specifically licensed for that purpose and management of that station was familiar with the languages used. Licensees were and are engaged in “time brokerage” in which ethnic groups “rented” space on the radio station. In either case, the FCC required that the station keep logs and write reports that would serve as evidence to the FCC that the programming met FCC standards. The cost element of monitoring might, in certain instances, have been a barrier to foreign-language programming.

The most significant case exploring foreign language usage and monitoring requirements is *Cosmopolitan Broadcasting Corp. v. FCC*.³ The radio station, WHBI, was licensed in Newark, New Jersey and broadcast in some 18 languages for about 70% of its programming. The FCC ruled against renewal of its licence on the ground that the licensee was merely subletting time to various ethnic groups without any supervision, and that the logs maintained by the station were inadequate.

The FCC had held in 1967 that “[L]icensee responsibility requires that internal procedures be established and maintained to insure sufficient familiarity with the foreign languages to know what is being broadcast and whether it conforms to the station’s policies and to requirements of the Commission’s rules. Failure of licensees to establish and maintain such control over foreign language programming will raise serious questions as to whether the station’s operation serves the public interest, convenience and necessity”.⁴

Later, in 1980, as part of the general policy of deregulation, these monitoring responsibilities were seriously reduced and so do not substantially affect broadcasting access by minority language groups anymore. The FCC revised its views and stated the following:

The broadcast industry has changed substantially since the pre-television epoch, when radio was the dominant entertainment medium. Because of the limited number of then existing stations, the Commission specifically encouraged program formats designed to appeal to the broadest audiences, rather than specialized formats that would appeal only to particular segments of the total audience. See, e.g., *Young People's Association for the Propagation of the Gospel*, 6 F.C.C. 178 (1938). That policy was intended to assure that there would not be large segments of the audience whose demands were left unmet. Changed circumstances render that policy obsolete. The growth of television and the increase in the number of radio stations over time has yielded an environment where, for most radio stations, the preferred strategy is to seek specialized audiences rather than mass audiences. There are, nonetheless, some

² 6 FCC 2d 65 (1965).

³ 581 F.2d. 917 (1978).

⁴ Public Notice Concerning Foreign Language Programs, 9 P. & F. Radio Regs. 2d 1901 (1967).

specialized audiences whose tastes continue to go unmet because they are too small to support an entire weekly schedule of such programming. This is frequently the case for foreign language audiences, whose preferred programming is unlikely to attract a sizeable cross-over audience. Greater flexibility in time brokerage and time sharing arrangements could encourage more programming responsive to these specialized audiences.

[...] It is time for the Commission to adopt a new policy. [...] Neither licensees nor minority groups facing difficult economic circumstances should be discouraged from exploring programming alternatives that appear to reflect accurately both consumer wants and competitive incentives.⁵

Separately, in 1985, the special interest group, U.S. English, that advocated the preservation of the English language lobbied the Federal Communications Commission to adopt a rule limiting the number of Spanish-language stations in south Texas because of what it perceived as a “systematic displacement of English-language radio stations in the Texas border counties.” It was unsuccessful.⁶

Most recently, policy implications are involved in the growing competition for national Spanish-language networks.⁷

2 Constitution & Declaration of Independence

2.1 Freedom of expression

Constitution of the United States⁸

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2.2 Broadcasting

The Constitution does not address broadcasting except in that the First Amendment guarantees free speech and freedom of the press.

2.3 Minority rights

The Declaration of Independence, 1776,⁹ states:

§2 We hold these Truths self-evident, that all Men are created equal.

⁵ *In the Matter of Petition for Issuance of Policy Statement or Notice of Inquiry on Part-Time Programming*, 82 F.C.C.2d 107 (1980).

⁶ Antonio J. Califa, “Declaring English the Official Language: Prejudice Spoken Here”, 24 Harv. C.R.-C.L. L. Rev. 293, 335 n.262 (1989).

⁷ See Andrew Pollack, “*The Fight for Hispanic Viewers: Univision's Success Story Attracts New Competition*”, N.Y. TIMES, 19 January 1998, at D1).

⁸ Available at: http://memory.loc.gov/const/abt_const.html.

⁹ Available at: <http://lcweb2.loc.gov:8081/const/declar.html>.

2.4 (Official/State) language(s)

There is no official language in the United States. Several states have passed statutes or amendments to their state constitutions stating that English is the official language. In 1978, Hawaii passed a constitutional amendment declaring the state officially bilingual – recognising English and Native Hawaiian as official languages. Not including Hawaii, a total of 23 states have laws that make English the official language. In Alaska and Arizona, official language laws have been declared unconstitutional on the grounds that they violate free speech rights.¹⁰

3 Legislation

It should be noted at this juncture that regulatory policies – not statutes – have driven language issues in the broadcasting sector.

3.1 Facilitative/affirmative measures affecting minorities and their linguistic rights

A wide array of facilitative/affirmative measures are relevant. During the last decades there has been an emphasis on alternative modes of education for students with English as a second language.¹¹ “Contemporary discussions of language policy are dominated by popular initiatives to abolish bilingual education in public schools in states such as Arizona and California, where voters have approved ballot initiatives to replace bilingual instruction with English immersion classes. The combination of sizable immigration flows and a perceived strain on public resources and public culture have made the citizenship and language nexus urgent once again. The debate does not break down neatly into two camps, one pro-official English and the other pro-minority language rights. Instead, the meaning of concepts that undergird the language debate, such as inclusion, integration, and assimilation, are themselves contested. The debate concerns whether language should be understood as a deficiency to be overcome, a personal characteristic that deserves protection from discrimination, or a group status that demands preservation. The answers that existing law provides constitute a patchwork of protections¹² that lack an underlying conception of a larger political or constitutional project.”¹³

The best known set of affirmative measures involves statutes encouraging bilingual education. There is also a body of law concerning language discrimination in the workplace.¹⁴

3.2 Public service broadcasting

The Corporation for Public Broadcasting and federal agencies have combined to fund the development of Spanish-language programming for children for distribution on the public

¹⁰ Carol Schmid, “Employment Rights and the Legal Status of Employment -Only Laws in the Public and Private Sector”, 20 N.C. CENT. L.J. 65, 71 (1992).

¹¹ A comprehensive theoretical discussion is contained in Drucilla Cornell & William W. Bratton, “Deadweight Costs and Intrinsic Wrongs of Nativism: Economics, Freedom, and Legal Suppression of Employment”, 84 CORNELL L. REV. 595, 609 (1999).

¹² Equal Educational Opportunities Act (“EEOA”) of 1974, 20 U.S.C. § 1703(f) (1994) (requiring that educational agencies take appropriate action to overcome language barriers in schools); *Valeria G. v. Wilson*, 12 F. Supp. 2d 1007 (N.D. Cal. 1998) (holding that the replacement of bilingual education with English immersion could constitute appropriate action to overcome language barriers).

¹³ Cristina M. Rodriguez, “Accommodating Linguistic Difference: Toward a Comprehensive Theory of Language Rights in the United States”, 36 Harv. C.R.-C.L. L. Rev. 133 (2001).

¹⁴ Steven I. Locke, “Language Discrimination and English-Only Rules in the Workplace: The Case for Legislative Amendment of Title VII”, 27 TEX. TECH L. REV. 33, 44 (1996).

broadcasting service. Subsidies have been made available, from, for example, a Diversity Fund, for non-English programming to help ensure that the needs of diverse groups in the society are met.

3.3 Ownership and closed captioning

There are a few policies, which may tend to either loosen ownership restrictions for Spanish-language broadcasters or facilitate access to Spanish-language broadcasting.

Stations have sought waivers of FCC rules because of carriage of non-English programming. For example, the FCC has in the past prevented one company from owning two stations in a market. In an exemplary case, a broadcaster used language to assert that the public interest benefits of the waiver would outweigh any detrimental effects. In order to better serve an Hispanic population, the owner pledged to maintain KCSO(TV) as a Spanish-language station and increase its Spanish-language programming to 24 hours per day. These efforts would include the addition of a Spanish-language late evening news broadcast, a weekly locally originated public affairs programme, and the establishment of a KCSO(TV) news bureau in Sacramento.¹⁵

Closed captioning refers to the textual display of the audio portion of a program. It is designed to make television programmes more accessible to persons with hearing disabilities. In 1997 the Commission adopted closed captioning rules. These rules require broadcasters (among others, video programming distributors and providers), by 1 January 2006 and continuing thereafter, to caption 100% of “new” programming (defined as programming first published or exhibited on or after 1 January 1998), and to meet certain interim benchmarks in the meantime. The rules also require broadcasters (and others), by 1 January 2008 and continuing thereafter, to caption 75% of “pre-rule” programming by 2008.¹⁶ Video programming distributors must caption 100% of new Spanish-language programming by 2010, and meet other benchmarks before that time.¹⁷ The rule does not require Spanish language programming, but it requires that such programming be captioned.

4 Application of legislation and other measures affecting language in broadcasting

4.1 Employment issues

In some instances, in US jurisprudence, the issue of language on broadcasting has been affected by employment or employment discrimination issues. In the mid-1980’s, a disc jockey was terminated for his refusal to stop speaking Spanish on his radio broadcasts. In the case, *Jurado v. Eleven-Fifty Corp.*, he challenged his termination.¹⁸

The plaintiff in *Jurado* based his civil rights claim not only on his own right to speak another language while performing his job but also on the importance of making the radio station’s broadcasts accessible to the Spanish-speaking communities of Los Angeles.

¹⁵ 13 FCC Rcd 9216; 1997.

¹⁶ Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, Report and Order, 13 FCC Rcd 3272 (1997), recon. granted in part and denied in part, 13 FCC Rcd 19973 (1998).

¹⁷ 47 C.F.R. § 79.1(b)(3).

¹⁸ *Jurado v. Eleven-Fifty Corp.*, 813 F.2d 1406 (9th cir. 1987).

The Ninth Circuit held that (1) the plaintiff failed to establish a *prima facie* case of disparate treatment; (2) the plaintiff failed to show that he was engaging in protected activity because his Spanish-language broadcasts did not constitute opposition to management policy; and, most importantly, (3) the plaintiff's claim that the English-only regulation disproportionately disadvantaged Hispanics was without merit because the plaintiff was bilingual. The court concluded that the station manager had the right, as a businessperson, to base his station policy on his belief that the Mexican and black audiences were not essential to the success of his station.

In its finding, the court treated the first part of Jurado's claim as incoherent given that the plaintiff had the capacity to broadcast in English. He, and those similarly situated, could not have been disadvantaged by a rule that did not prevent them from fulfilling their job description as envisioned by their employers. Moreover, the court rejected his group-based claim, elevating the radio station's right to define its target audience above the right of the disc jockey himself to define the community to be served by the station. Community-based claims advanced by the plaintiff had no place in the anti-discrimination analysis applied by the court. The success of the station did not depend on its ability to reach monolingual Spanish speakers, and as a result, the court found that the language regulation could not have been motivated by racial animus.

Indeed, the *Jurado* plaintiff's community-based claim was weak. In Los Angeles, the airwaves are likely full of stations and programmes targeting Spanish speakers. For the purpose of developing an accommodationist practice, however, the element worth highlighting is the court's conditioning of the extension of antidiscrimination protection to language on the claimant's capacity to speak English. In the *Jurado* court's view, the ability to speak English may justify discrimination based on the decision to speak non-English. Language restrictions are increasingly evaluated from the premise that language represents a mutable characteristic and is therefore not a proxy for race or ethnicity. As a consequence, policies based on language can be easily justified by business necessity.¹⁹

4.2 Foreign ownership

Some believe that the continuing restriction on foreign ownership has some effect on the nature and extent of minority language stations in the United States. Section 310(b) of the 1934 Communications Act²⁰ bars foreign ownership and control of radio and television stations. The law has complicated, and in some cases stymied, efforts by Mexican and South American entrepreneurs to invest more heavily in Spanish-language broadcasting in America. In settling a case in 1986, the Spanish International Communications Corporation and Bahia de San Francisco Television Company transferred all of their long-held FCC licences for six Spanish-language television stations to a completely unrelated buyer—the Hallmark greetings card company. The Section 310(b) foreign ownership challenge was the primary issue forcing the sale. In a related case focusing on the renewal by the Seven Hills television company of a Spanish-language station in Phoenix, the FCC ordered Seven Hills to limit its financial ties with a Mexican family which had large holdings and experience in the Mexican television industry and which was seeking to export its Spanish-language programming into

¹⁹ Cristina M. Rodriguez, *op. cit.*

²⁰ Available at: <http://www.fcc.gov/Reports/1934new.pdf>.

international markets.²¹ A number of articles in US law reviews have attacked Section 310(b).²²

5 Current developments

The growth of cable television and satellite to home broadcasting has increased greatly language programming to meet the needs of various groups in the population. There are two strong national Spanish language networks that use a combination of terrestrial broadcasting, cable, and satellite to amass a large Spanish-language audience. In major cities, cable television offers channels in Chinese, French, Italian, and many other languages. In a recent arrangement with China, Time Warner agreed to carry the international channel of CCTV on some of its cable systems. Doordarshan, the Indian broadcaster, provides channels that are carried on relevant cable systems. The development of terrestrial digital broadcasting will mean many more opportunities for multi-language channels.

²¹ See *Coalition for the Preservation of Hispanic Broadcasting v. FCC*, 931 F.2d 73, 75 (D.C. Cir.), cert. denied, 502 U.S. 907 (1991). For more information on this protracted litigation, see also *In re Spanish Int'l Communications Corp.*, 2 F.C.C.R. 3336 (Comm'n 1987); *In re Seven Hills Television Co.*, 2 F.C.C.R. 6867 (Rev. Bd. 1987); Douglas H. Ginsburg et al., *Regulation of the Electronic Mass Media 207220* (2d ed. 1991).

²² Ian Rose, "Barring Foreigners from our Airwaves: An Anachronistic Pothole on the Global Information Highway", 95 *Columbia Law Review* 1181 (1995).

Uzbekistan¹

Uzbeks constitute the majority of the country's population (approx. 72%) and minority groups include Russians, Tajiks, Kazakhs, Kyrgyz and Turkmen. The dominant languages in broadcasting are Uzbek (the state language) and Russian, but other minority languages are also catered for. The Uzbek Agency for Post and Telecommunications is responsible for state broadcasting policies and licences are issued by the Interagency Coordination Commission. The public television broadcaster, Television and Radio Company of Uzbekistan, dominates the television market. Its first two channels broadcast almost exclusively in Uzbek, but Russian-language programmes on its third channel amount to up to 50% of that channel's entire programme schedule. However, the geographical availability of this channel is more limited than that of the first two channels. The fourth channel devotes most of its time to minority-language programmes. The languages of the estimated 20–40 operational private television broadcasting stations are Uzbek and Russian. Similarly, state radio has one multilingual station, and in the private sector, Uzbek and Russian dominate. There are no express restrictions on, or quotas pertaining to, minority-language broadcasting.

1 Introduction²

The Republic of Uzbekistan came into existence on 31 August 1991, when the Supreme Council of the Uzbek Soviet Socialist Republic adopted the Declaration of Independence. Today, Uzbekistan covers a total area of 447,400 km² and has an estimated population of more than 24 million people, which makes it the most populous State in the post-Soviet Central Asia.³ The last official census, carried out in 1989, showed that members of more than 130 different ethnic groups populated the republic. About 40% of the country's population live in the urban areas, and some 60% are under the age of 25.⁴

1.1 Linguistic topography⁵

The concept of ethnicity/nationality was imported into Central Asia by Moscow in the early years of the Soviet Union.⁶ The resulting division of the region's population into 'ethnic

¹ Thanks are due to Odil Ruzaliev and Josh Machleder for clarifying some facts and to Farkhad Sattarov, Anna Trimaylova, and Sergey Shirov for providing the requested acts of legislation. All views expressed and any errors contained in the text are those of the author alone.

² The term 'nationality', as it is used in Uzbekistan, denotes a community/affiliation based on ethno-national origin, accordingly, the term 'national', in normative documents, more often than not means 'ethnic'. The term 'legislation', according to the adopted usage, denotes the whole corpus of the written, state-approved law and includes the totality of all legislative acts passed by the *Oliy Majlis* (Parliament) and the regulatory acts adopted by the various organs of the executive.

Where excerpts from normative acts had to be translated, the author, preferring accuracy over smoothness, preserved the original wording and grammatical structures to the maximum extent of their possible accommodation in the English language, which accounts for the occasional awkwardness in the translations.

³ The official government figure for 1998 was 23,773,300 persons (see Table 1). The US Department of State's estimates for 2001 were 24.756 million. See the US Department of State's 2001 Country Report on Human Rights Practices in Uzbekistan, available at: <http://www.usembassy.uz/reports/humr01.htm>. The UNDP figure for January 2000 was 24.5 million people. See further: <www.undp.uz/au_co_in/index.html>. EurasiaNet, a Soros Foundation subsidiary, based in New York, mentions a 24.416 million population figure on its website: <http://www.eurasianet.org/resource/uzbekistan/index.shtml>.

⁴ Official website of Uzbekistan's Embassy in the United States: <http://www.uzbekistan.org/population.html>.

⁵ See further: <http://www.umd.uz/Main/Uzbekistan/Population/population.html>.

⁶ Prior to the 'natsional'noe razmezhevanie' (national delimitation) of 1920s, the major criteria of identity in Central Asia were religion, sedentary/nomadic lifestyle, place of residence, and social position, as most of the population in the bigger towns was multilingual. See further V. V. Barthold, 'Note on the Question of Historical

communities' was essentially arbitrary.⁷ Ethnic awareness, nevertheless, has eventually picked up and national identities slowly formed.

Uzbeks constitute the majority of the country's population (see Table 1 below). The official figures estimate their proportional share at about 72%. Together with Tajiks, Kazakhs, Karakalpaks, Kyrgyzs, Turkmen, Bukharan Jews and Uyghurs, they represent the native (indigenous) peoples of the region. Members of other ethnic groups belong to the more recent arrivals. Some have come to the country as a result of the resettlement policies of the Tsarist Russia and the Soviet Union.⁸ The proportionate share of Uzbeks in the population is continuously increasing due to the higher birth rate and the emigration of the Russophone population after the demise of the Soviet Union.⁹ Today, Uzbeks live in all regions of Uzbekistan. However, the areas of their highest concentration are the old cities (pre-20th century) and the Ferghana, Zarafshan and Kashkadarya valleys. Only in Karaklpackstan, where they account for one-third of the population, Uzbeks do not form the ethnic majority.¹⁰

Tajiks live mostly in and around the old cities of Samarkand and Bukhara (historical centres of the Perso-Tajik civilisation and the biggest Tajik-speaking oases in Uzbekistan) and the Surkhandarya region. Some also live in the Kashkadarya region and in the Zarafshan and Ferghana valleys. Karakalpaks are concentrated in the Republic of Karakalpakstan, around the lower reaches of the Amudarya river, and the coast of the Aral Sea. Kazakhs mostly inhabit the country's northern provinces, which border Kazakhstan, and are concentrated in the Navoi and Tashkent regions, Karakaplakstan, and the capital. Turkmen predominantly inhabit the Republic of Karakalpakstan and the Khorezm region, while Kyrgyzs live mostly in the Ferghana valley. Russians and members of other Russophone communities (Koreans, Ukrainians, Belarussians, Armenians, etc.) live almost exclusively in cities and big industrial centres, such as Navoi, Chirchik and Almalyk. After the disintegration of the USSR, substantial migration flows occurred, with a significant number of the Russophone population moving to Russia and other CIS States. A large number of Crimean Tatars left the country to return to their historical homeland in Ukraine, and it is estimated that a significant proportion of Uzbekistan's Jewish community emigrated to the United States and Israel.¹¹

Relationship between Turkish and Iranian peoples of Middle Asia', ca. 1924, available at: <http://ctaj.elcat.kg/tolsty/a/a090.shtml> (in Russian). See also, Igor Torbakov, 'Tajik-Uzbek Relations: Divergent National Historiographies Threaten to Aggravate Tensions', 21 June 2001, *EurasiaNet* news, available at <http://www.eurasianet.org/departments/culture/articles/eav061201.shtml>.

⁷ "Nation making in Central Asia has been a top-down, state-generated project, rather than a 'natural' evolution from language or culture." Ronald Grigor Suny, 'Provisional Stabilities: the Politics of Identities in Post-Soviet Eurasia', *International Security*, Vol. 24, No. 3 (Winter 1999/2000), 139, at 165.

⁸ Notably the Crimean Tatars and the Volga Germans.

⁹ On the general implications of emigration and its far-reaching human capital effects, see further Eric W. Sievers, *The Post-Soviet Decline of Central Asia*, New York: RoutledgeCurzon, 2003 (hereafter Sievers, *Post-Soviet Decline*), at 53-67.

¹⁰ See Uzbekistan's First Periodic Report under the International Covenant for Civil and Political Rights, UN Doc. CCPR/C/UZB/99/1 (original in Russian), issued on 15 February 2000, para. 361, available at: [http://193.194.138.190/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/2a0468df90dd71ca802569060036120b/\\$FILE/G0040772.pdf](http://193.194.138.190/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/2a0468df90dd71ca802569060036120b/$FILE/G0040772.pdf).

¹¹ Additionally, many ethnic Germans have emigrated to Germany. Overall, it is estimated that some two million persons belonging to various ethnic minorities have left Uzbekistan since the independence. See *ibid.*, para. 372. Figures presented by a former chair of Tashkent Jewish Cultural Centre, indicate that only 15,000-20,000 Jews remain in Uzbekistan today. See Mikhail Degtiar, 'Is There a Future for the Jews of Uzbekistan?', *Central Asia Caucasus Analyst*, 11 April 2001, available at: http://www.cacianalyst.org/April_11_2001/April_11_2001_Jews_Uzbekistan.htm.

As of today, the bulk of Uzbekistan's Russophone community is concentrated in and around the capital where the members of the indigenous ethnicities are almost invariably bilingual. In 1989, some 40% of Uzbekistan's Russians were registered as residing in Tashkent.

Table 1. Uzbekistan, Ethnic Composition, from data based on official census figures¹²

Ethnic group	1989		1998	
	thousands	%	thousands	%
Uzbeks	14142.5	71.4	18361.8*	77.2*
Russians	1653.5	8.3	1244.3**	5.2**
Tajiks	933.6	4.7	1145.9	4.8
Kazakhs	802.2	4.1	957.2	4.0
Tatars	656.6	3.3	324.2**	1.4**
Karakalpaks	411.9	2.1	See Uzbeks*	See Uzbeks*
Kyrgyzs	174.9	0.9	212.8	0.9
Koreans	183.1	0.9	N/a***	N/a***
Ukrainians	153.2	0.8	113.4	0.5
Turkmen	121.6	0.6	141.4	0.6
Turks	106.3	0.5	N/a	N/a
Jews	93.9	0.5	15.6	0.1
Armenians	50.5	0.3	46.0	0.2
Azerbaijani	44.4	0.2	41.0	0.2
Uyghurs	35.8	0.2	N/a	N/a
Belarussians	29.4	0.1	24.5	0.1
Persians	24.8	0.1	N/a	N/a
Others	191.9	1.0	1145.2	4.8
Total	19810.1	100	23773.3	100

* The 1998 figures, taken from Uzbekistan's Periodic Reports under the Convention on the Elimination of all forms of Racial Discrimination and the International Covenant on Civil and Political Rights, unite Uzbeks and Karakalpaks into one group.

** The UNHCR figures from 1999 estimate that Russians make up only 3% of the population and Tatars make up 0.6%.¹³

*** The figures cited for the Korean minority in the Periodic Report under CERD – 1,123,200 persons, or 4.7% of the population – differ so significantly from the 1989 figures that, considering that there was no significant immigration of ethnic Koreans in the intervening years, they seem to contain a typing mistake.

Today the CIA World Factbook offers the following figures to illustrate the linguistic make-up of Uzbekistan's population: 74.3% of the population speak Uzbek as their mother tongue, 14.2% - Russian, 4.4% - Tajik, 7.1% - other.¹⁴ However, both scholars and political observers

¹² The 1989 data is taken from <www.umid.uz/Main/Uzbekistan/Population/population.html>. The 1998 data is based on Uzbekistan's Periodic Report submitted under the International Convention on the Elimination of all Forms of Racial Discrimination, UN Doc. CERD/C/327/Add.1 (original in Russian), 9 May 2000, at 8, available at:

[http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/c20ac9ee3d0ae236c1256918004dcac1/\\$FILE/G0041947.pdf](http://www.unhchr.ch/tbs/doc.nsf/385c2add1632f4a8c12565a9004dc311/c20ac9ee3d0ae236c1256918004dcac1/$FILE/G0041947.pdf). See also the Periodic Report under the ICCPR, *op. cit.*, para. 9.

¹³ State Department Report, *op. cit.*, Section 5.

¹⁴ Sources: <http://www.cia.gov/cia/publications/factbook/geos/uz.html>.

have long emphasised the fluidity of linguistic identities in Central Asia in general, and in Uzbekistan in particular. As Ronald Grigor Suny observes:

Language does not match up easily with nation in Central Asia, for the various Turkic languages of the region are closely related. ‘Classifying Central Asian Turkic languages / dialects,’ writes one specialist, ‘is rather like cutting soup.’[...] Even after seventy years of an Uzbek republic, the linguistic homogenization of an Uzbek people remains incomplete. Uzbeks in the west speak a dialect close to that of Turkmen, while those in the east are easily understood by Kazakhs or Kyrgyz.¹⁵

Although one does not necessarily have to agree with all of Suny’s conclusions, in practice his observations seem not far from reality. The proximity between the Turkic languages spoken in the Ferghana valley is higher than elsewhere.

The standard version of the Uzbek language is the product of the national revival policy that has been in place for little more than a decade, as the Soviet linguistic policies hindered the development of all non-Russian languages. Consequently, the standardisation of spoken Uzbek is far from complete, although the written literary Uzbek, which is commonly understood to stem from an amalgamation of the Ferghana and Tashkent dialects, has already taken shape.¹⁶ Currently, written Uzbek is in the process of transferring from the Cyrillic to the Latin script.¹⁷ Despite several delays of the official deadline for the complete transition,¹⁸ the Latin script has been gradually replacing Cyrillic on television and in schools.

Russian is not recognised as a State language in Uzbekistan, but many members of the native population are bilingual speakers of Russian and Uzbek. On the other hand, members of the Russophone minority, especially in the capital, are less likely to have an advanced knowledge of Uzbek.

Generally, each significant ethnic community seems to constitute a separate linguistic community as well. However, due to their small numbers and because of the absence of an educational infrastructure providing primary and secondary education in their mother tongues, such communities as Ukrainians, Koreans, Belarussians, and Armenians have turned predominantly Russophone. Today, although their separate ethnic identity is recognised, in linguistic terms, the members of the indigenous ethnicities perceive them as Russophones.¹⁹ The Jewish minority generally does not seem to have retained a separate existence as a linguistic community either, as the Bukharan Jews traditionally speak Judeo-Tadjik (close to Persian), and the Ashkenazim Jews, who moved into the region later, are predominantly Russophone.²⁰

On the national scale, thus, there are fewer linguistic communities in Uzbekistan than there are ethnic groups. Moreover, the linguistic and the ethnic boundaries between some of the major indigenous communities—Uzbeks, Tajiks, Kazakhs, and Kyrgyzs—do not always

¹⁵ Suny, *op.cit.*, at 165-6. Suny cites from John Schoeberlein-Engel’s Ph.D. dissertation. See further, John Schoeberlein-Engel, ‘The Prospects for Uzbek National Identity’, *Central Asia Monitor*, 2/1996, 12.

¹⁶ For more information on the Uzbek language, see: <http://www.lmp.ucla.edu/profiles/profu02.htm>.

¹⁷ Uzbek used to be written in the Latin script between 1926 and 1940.

¹⁸ As of today, the date stands fixed at 2005.

¹⁹ See Suny, *op. cit.*, at 166: “Armenians, Jews, Ukrainians, and Russians are generally lumped into a general category of European or Russian.”

²⁰ See Degtiar, *op. cit.*

coincide, as both multilingualism and linguistic assimilation are common occurrences, the two phenomena being facilitated by the proximity of the region's Turkic languages.

Among the indigenous languages, Tajik occupies a special place, as it belongs to the Iranian branch of the Indo-European family of languages.²¹ Being closely related to Farsi and Dari, Tajik employs rules of grammar, vocabulary, and pronunciation markedly different from Uzbek. Nevertheless, even between Tajiks and Uzbeks the boundaries between the ethnic communities are not a reliable guide to determining the linguistic boundaries. Thus, although the official statistics show that in the Samarkand and Bukhara regions Uzbeks comprise the ethnic majorities of 87.7% and 81.6% respectively,²² these figures may not accurately reflect the actual size of the Tajik-speaking minority, some members of which formally identify themselves as Uzbeks.²³ The historical traditions of multilingualism in these regions further complicate the task of identifying an individual's mother tongue in each particular case.

1.2 Broadcasting

According to the figures provided by *Internews-Russia*,²⁴ in 1997 there were 538 media outlets in Uzbekistan, including 21 television stations, registered with the State Committee on the Press.²⁵ The State-owned Television and Radio Company of Uzbekistan (TVRCU) requires no registration. According to Presidential Decree No. 1823, issued on 23 July 1997, State policies in the sphere of television and radio broadcasting are developed and supervised by the Uzbek Agency of Post and Telecommunications (formerly the Ministry of Telecommunications). Normative acts issued by the Agency have the power of law. Broadcasting licences are issued by the Interagency Co-ordination Commission for a term of five years (until October 2000 the term was one year).²⁶

1.2.1 State television²⁷

As the only republic-wide broadcaster, the TVRCU produces four channels that dominate television broadcasting: UzTV I; UzTV II, also known as *Yoshlar telekanali* (Youth TV Channel); UzTV III, also known as the Tashkent TV; and UzTV IV, also known as the International Channel.

Apart from the daily evening news programme in Russian (*Akhborot*) and the *First Channel News* (which comes out three times a week in English), the language of broadcasting on UzTV I is Uzbek. Official news reports are mostly produced by the state-owned Uzbekistan Information Agency. UzTV II, although more entertainment-oriented, has a dynamic news service (*Davr*). Like the first channel, it broadcasts almost exclusively in Uzbek. UzTV III is essentially an entertainment channel, although it also has a news service of its own (*Poytakht*), operating in two languages. The share of Russian-language programmes on UzTV III - up to 50% - is higher than on both UzTV I and UzTV II; however, the area covered by its broadcasts is smaller.

²¹ Uzbek, Kazakh, Kyrgyz, Tatar, Turkmen and Uyghur, on the other hand, are Turkic languages which belong to the Altaic family.

²² Periodic Report under the ICCPR, *op. cit.*, para.362.

²³ See Suny, *op. cit.*, at 169.

²⁴ Yasha Lange, 'Media in the CIS', entry 'Uzbekistan', see http://www.internews.ru/books/media/uzbekistan_4.html.

²⁵ It is unclear how many of them still function.

²⁶ See Appendix.

²⁷ The bulk of the factual information on broadcasting in Uzbekistan comes from Odil Ruzaliev, 'Brief Media Report', see: <http://uzland.narod.ru/fact/media.htm> and *Internews-Uzbekistan's* website, <http://www.internews.uz>.

With most of its airtime taken by minority-language programmes, UzTV IV provides the most linguistically diverse environment on the republican television. It broadcasts and retransmits more news programmes than any other channel: dailies, *Akhborot* (produced by TVRCU; language of production: Russian), *Vremya* (ORT, Russia), *Vesti* (RTR, Russia); weeklies, *Euronews* (Russia), *7 dney* (TVRCU; Russian). Additionally, it rebroadcasts *First Channel News* (TVRCU; English) and *Tahlilnoma* (TVRCU; Uzbek) from UzTV I. It also retransmits, for about four hours each day, programmes from Russian television (mainly the first Russian channel, ORT). Additionally, it transmits the following weekly programmes in minority languages: *Umid* (Uyghur), *Rangikamon* (Tajik), *Zamandas* (Kazakh), *Biznen miras* (Tatar), and *Chinsen* (Korean). Most of them are transmitted during daytime, at week-ends.

1.2.2 Private television

Private television is mainly concentrated in the provinces. By various counts, there are between 20 and 40 private television stations in Uzbekistan,²⁸ although it is not clear how many of them are still functioning, as no reliable comprehensive up-to-date independent reports are readily available. Only one private television station broadcasts from the capital (Channel 30).

The regional character of private television necessarily results in a smaller coverage area. It also means that for their survival, private television broadcasters are dependent on the success of their relationship not only with the central licensing and regulatory bodies, but also with the local authorities.

As a rule, most private broadcasters simply retransmit films and programmes from Russian television and generally concentrate on feature films, entertainment shows and private advertisements. Even their news programmes are mostly produced with the help of *Internews-Uzbekistan*,²⁹ which also provides them with extensive overall support in the form of grants and contracts.³⁰

In 1996, *Internews-Uzbekistan* established what it calls “a weekly news exchange programme”, *Zamon* (Time), through which news items in Uzbek and Russian are contributed into a common pool by 20 private broadcasters from Uzbekistan and two from abroad.³¹

The languages of private television broadcasting are mostly Uzbek and Russian, with the *Internews*-supplied *Zamon* and *Open Asia* news programmes being produced in both languages. The retransmitted programmes are predominantly of Russian origin, and the local programmes, such as talk shows, are mostly made in Uzbek. Broadcasters in the larger cities tend to have a higher Russian-language share (eg. Bakhtiyor TV in Jizzakh airs approximately 10% of its programmes in Russian; on Channel 30, more than two-thirds of broadcasts are in Russian). In their communications with the author of this report, *Internews-Uzbekistan* confirmed that the bulk of the journalists employed by the private broadcasters with whom they work are Uzbek-speakers.

²⁸ See the media overview under the entry ‘Uzbekistan’ on the *Internews-Uzbekistan* website at: <http://www.internews.uz/articles/uzbekistan.html>. C.f. State Department Report, *op. cit.*, Section 2(a).

²⁹ Ruzaliev, ‘Brief Media Report’, *op. cit.*

³⁰ See: <http://www.internews.uz/articles/uzbekistan.html>.

³¹ *Ibid.*

Private television stations in Samarkand and Andijan seem to be the most sophisticated and promising of all. They produce their own regional news and entertainment programmes. Plans of expansion have been announced.³²

A joint Uzbek-American venture, *Kamalak*, also offers cable television services in and around the capital city of Tashkent. The standard *Kamalak* package contains some 15 channels, offering a selection of several Russian channels, the Hong-Kong-based Star TV, world news services, such as BBC and CNN, and international channels, such as Eurosport and MTV. There are numerous other smaller entertainment-oriented cable television companies throughout Uzbekistan.

1.2.3 State radio

The TVRCU runs four State radio channels, including a foreign service – Channel IV (Tashkent) – which broadcasts mainly abroad in 12 languages. The main domestic State channels are Channel I (*Uzbekiston*), Channel II (*Mashal*), and Channel III (*Dostlik*). In their make-up, *Uzbekiston* and *Mashal* largely mirror UzTV I and UzTV II respectively. Channel *Dostlik* is the multi-lingual channel which regularly broadcasts programmes in several minority languages.

1.2.4 Private radio

Currently nine private FM radio stations are reported to exist, seven of which are based in Tashkent: Ekho Doliny, Khamroh, Oriat-Dono, Oriat FM, Radiogrand, Radio Terra, Sezam, STV radio, and Uzbegin Taronasi. All are predominantly music- and entertainment-oriented, although news updates are regularly broadcast on all stations in two (Uzbek and Russian) or three (Uzbek, Russian and English) languages. Of those in the province, one station – Ekho Doliny – primarily services three *viloyats* (regions) of the Ferghana valley, and the other – STV radio – covers the Samarkand *viloyat*. Two of the Tashkent-based private stations – Radiogrand and Sezam – enjoy international sponsorship. Radiogrand is supported by the Konrad Adenauer Foundation; Sezam, by the joint venture Rubicon Telecommunications. All private channels in the capital are bilingual. The shares of Uzbek and Russian-language programmes are roughly equal, and STV radio also broadcasts in Tajik.

At least two private radio stations – Evropa Plus and Moy gorod – were shut down in 1998-1999 on technical grounds.

1.2.5 Measures for the development of private broadcasting

Presidential Decree No. 1462, issued on 7 May 1996, authorised the TVRCU to earn money commercially while also preserving budgetary spending; made all State-owned regional television and radio stations subsidiaries of the TVRCU, endowed with separate legal personalities and entitled both to receive budgetary support and to seek commercial incomes; and exempted the TVRCU and all its subsidiaries from all taxes until 2000. By comparison, private broadcasters have not had tax exemptions and are not generally eligible for State subsidies, which some see may create unfair competition.³³ Under Article 15 of the Law ‘On Mass-Media’, the registration of a mass-media outlet is refused if one of its founders is foreign-based.³⁴

³² Ruzaliev, ‘Brief Media Report’, *op. cit.*

³³ See Lange, *op.cit.*

³⁴ See Appendix.

There is no official hierarchisation of broadcasting languages. Nevertheless, after Uzbek, Russian is clearly the second language of broadcasting in Uzbekistan. The volume of Russian-language programmes by far exceeds the total volume of all other minority-language programmes put together.

There are no quota limitations on the minority-language programmes other than that the first two channels of the State Television and the State Radio broadcast almost exclusively in Uzbek. In both cases, however, the TVRCU has taken care to introduce viable multi-lingual State channels (UzTV IV and Dostlik radio channel) broadcasting across the whole of the country's territory with regular programmes in the languages of all the major linguistic groups in the country. The duration and the periodicity of minority-language programmes seem to be defined not so much by the State policies, as by the elementary supply-demand: the larger the linguistic diversity of the area, the higher the share of the minority-language programmes.

2 Constitution³⁵

The Constitution of the Republic of Uzbekistan was adopted on 8 December 1992, by the Supreme Council of Uzbekistan.³⁶ Although the Constitution's non-binding Preamble recognises "the priority of the generally accepted norms of international law" over the domestic legislation, no equivalent provision is included in the operative part of the Constitution. In the legal order where written legislation represents the only formal source of law, this deliberate omission, put against the background of Article 15 of the Constitution, clearly suggests that the Constitution prevails over international law.

Article 15

The Constitution and the laws of the Republic of Uzbekistan shall have absolute supremacy in the Republic of Uzbekistan.

The state, its bodies, officials, public associations, and citizens shall act in accordance with the Constitution and the laws.

Nevertheless, the Government has repeatedly proclaimed on the international level the precedence of general international law in Uzbekistan's domestic legal order.³⁷

2.1 Freedom of expression

Freedom of expression is entrenched in Article 29 of the Constitution. The wording of the restriction clause differs from those accepted in the international human rights instruments in that it includes the concepts of 'State secrets' and 'other secrets'.

Article 29

³⁵ The quoted constitutional provisions come from the English translation of the Constitution available at http://www.press-service.uz/eng/konstitutsiya_eng/konstitutsiya_eng.htm and <http://www.uta.edu/cpsees/UZBEKCON.htm>. For an alternative English-language translation by Eric W. Sievers and the LEEP (hereafter Sievers's variant), see: http://www.ecostan.org/laws/uzb/uzbekistancon_eng.html.

³⁶ Then the highest legislative body.

³⁷ See Periodic Report under the ICCPR, *op. cit.*, para. 13; Periodic Report under the CERD, *op. cit.*, para. 46 (c).

Everyone shall be guaranteed freedom of thought, speech and convictions. Everyone shall have the right to seek, obtain and disseminate any information, except that which is directed against the existing constitutional system and in some other instances specified by law.

Freedom of opinion and its expression may be restricted by law if any state or other secret is involved.

Chapter 15 of the Constitution, consisting of a sole Article 67, is dedicated to the mass media.

Article 67

The mass media shall be free and act in accordance with the law. It shall bear responsibility for trustworthiness³⁸ of information in a prescribed manner. Censorship is impermissible.

Reviewing Uzbekistan's Report under the ICCPR, the Human Rights Committee expressed concerns over the restriction clauses similar to that in Article 29 of the Constitution and opined that they could be inconsistent with the obligations imposed by Article 19 of the Covenant.³⁹

2.2 Minority rights

Article 18 of the Constitution entrenches the principles of equality and non-discrimination:

All citizens of the Republic of Uzbekistan shall have equal rights and freedoms, and shall be equal before the law, without discrimination by sex, race, nationality, language, religion, social origin, convictions, individual and social status.

Any privileges may be granted solely by the law and shall conform to the principles of social justice.

Although by virtue of Article 34, freedom of association is guaranteed, political parties based on ethnic (national) or religious identity are prohibited under Article 57.

Article 34

All citizens of the republic of Uzbekistan shall have the right to form trade unions, political parties and any other public associations, and to participate in mass movements. [...]

³⁸ Perhaps a more appropriate translation of the term would be 'truthfulness' or 'accuracy'. Cf. Sievers's variant, *op. cit.*: 'Mass media are not hindered and operate in accordance with the law. They are, in the established manner, responsible for the reliability of their information.'

³⁹ United Nations Human Rights Committee Concluding Observations, *op.cit.*, para 18.

2.3 (Official/State) language(s)

Following the 1989 Law ‘On State Language’,⁴⁰ Article 4 of the Constitution establishes Uzbek as the state language. It also contains the main constitutional provision on minority protection.

Article 4

The state language of the Republic of Uzbekistan shall be Uzbek. The Republic of Uzbekistan shall ensure a respectful attitude toward the languages, customs and traditions of all nationalities and ethnic groups living on its territory, and create the conditions necessary for their development.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

In the absence of a special legislative act on the rights of minorities, the Law ‘On State Language’ can be seen as Uzbekistan’s charter for minority languages.

LAW ON STATE LANGUAGE, 1989 (AS AMENDED)

In 1989, the Supreme Council of the Uzbek SSR passed the Law ‘On State Language’, which established Uzbek as the state language in the Uzbek SSR. The Law was subsequently amended in December 1995. For present purposes, its main provisions include:

Article 1

The State language of the Republic of Uzbekistan shall be Uzbek.

Article 2

The status of the Uzbek language as the State language shall not infringe on the constitutional rights of the nations and nationalities residing in the territory of the Republic to use their native languages.
[...]

Article 16

Television and radio broadcasts shall be produced in the State language as well as in other languages.

Article 17

Publishing shall be realised in the State language and, where needed, in other languages.

The status of linguistic minorities regarding their access to broadcasting media is otherwise governed by the general norms on equality and non-discrimination and the legislation on

⁴⁰ For the text of the Law ‘On State Language’, see Appendix.

mass-media. There are a number of provisions scattered across the legislation that proscribe discrimination on racial, ethnic (national) and religious grounds.

In Paragraph 42 of Uzbekistan's Periodic Report submitted under the International Convention on the Elimination of All Forms of Racial Discrimination,⁴¹ the Government outlines its national policy with regard to national minorities. According to it, Uzbekistan recognises the fact of racial, national, and ethnic minorities' existence on its territory and aims to safeguard their members' individual and collective rights, including the right to public participation and proportional representation. In the Report, the Government also reaffirms its opposition to the policy of assimilation and voices preference for multicultural integration:

42. The national policy of the Republic of Uzbekistan has the following components:
- (a) Actions to create an atmosphere of ethnic harmony and tolerance in the society;
 - (b) The development of institutional and legislative machinery to safeguard individual and collective human rights, including those of racial, national and ethnic minorities;
 - (c) Measures designed to prevent the cultural identity of national minorities and their integration into Uzbek society;
 - (d) Measures to ensure the proportional representation of national groups in all areas of public life.

The practical realisation of these policies has seen the creation, with governmental support, of friendship associations with the 'kin States' of certain national minorities. The current list includes friendship associations with Russia, Ukraine, Korea, Latvia, Poland and Azerbaijan. The activities of these associations are coordinated by the National Association for International Cultural Educational Ties of the Republic of Uzbekistan.⁴² In addition to this, more than 30 national cultural centres and associations have been created since the late 1980s, including the Korean, Kazakh, Russian, Jewish, Tatar, German, Crimean Tatar, Ukrainian, Armenian and Polish cultural centres. Their activities are coordinated by the International Cultural Centre of the Republic of Uzbekistan.⁴³

3.2 Broadcasting legislation

As stated above Article 16 of the 1989 Law 'On State Language' (amended in 1995) states:

Television and radio broadcasts shall be produced in the State language as well as in other languages.

Although the mass media tend to constitute a central element in any minorities policy, being one of the crucial "means of cultural reproduction",⁴⁴ there are no minority-specific provisions in the national legislation on mass media, other than clauses such as that contained in Presidential Decree No. 1462 (1996), which prohibits the airing of materials on radio and television that can be interpreted as insulting people on the basis of their "religious, national, and cultural features." The major legislative provisions affecting the freedom of expression and the work of the mass media are included in the Appendix to this Report.

⁴¹ Periodic Report under the CERD, *op. cit.*

⁴² *Ibid.*, para. 54(d).

⁴³ *Ibid.*, paras. 159-167.

⁴⁴ See Kristin Henrard, *Devising an Adequate System of Minority Protection*, The Hague: Marinus Nijhoff, 2000, at 267-8.

3.3 Transfrontier dimension

3.3.1 Regional commitments

There are considerable Uzbek minorities living in neighbouring States, especially in those regions which border on Uzbekistan.⁴⁵ Thus, a quarter of Tajikistan's population is said to be of Uzbek origin.⁴⁶

Uzbekistan is a member of at least one international structure built along linguistic lines and known as the Summits of the Heads of Turkic-speaking States. Within this structure, Uzbekistan intensifies its economic, cultural and humanitarian links with Kazakhstan, Kyrgyzstan, Turkmenistan, Azerbaijan and Turkey, and addresses a host of various issues ranging from economic integration to ecological cooperation.

National minority policies in Uzbekistan are also influenced by the political developments within the framework of a regional initiative called 'Turkestan – our Common Home', carried out by the Central Asian States.

3.3.2 Bilateral agreements

Uzbekistan has entered into a number of bilateral agreements containing provisions for the promotion of culture and language of minorities in the States in question.

KAZAKHSTAN, 1998

On 31 October 1998, Uzbekistan and Kazakhstan signed the Treaty of Eternal Friendship, which superseded the 1992 Treaty on Friendship, Cooperation and Mutual Assistance. The new Treaty was ratified by the *Oliy Majlis* on 20 August 1999 and is similar in many aspects to the analogous treaties Uzbekistan concluded in late 1990s with other CIS States. Article 10 provides that the Parties shall further encourage the intensification of transborder cultural contacts and Article 18 provides the basis for the cross-border regional cooperation. The main provisions on minority protection are contained in Article 6. Very similar provisions are contained in the 1997 trilateral Uzbek-Kazakh-Kyrgyz Treaty on Eternal Friendship.

Article 6.

[...] The High Contracting Parties shall ensure the right to the preservation and development of the national culture for the [ethnic] Uzbeks residing in Kazakhstan and the [ethnic] Kazakhs residing in Uzbekistan, as well as develop their collaboration in this area.⁴⁷

KYRGYZSTAN, 1997

In addition to the aforementioned 1997 Uzbek-Kazakh-Kyrgyz Treaty, there also exists the Uzbek-Kyrgyz Treaty on Eternal Friendship, concluded on 24 December 1996, which superseded the old Treaty on Friendship, Cooperation and Mutual Assistance of 1992. It is also very similar in substance to the Uzbek-Kazakh Treaty.

⁴⁵ See International Crisis Group, 'Uzbekistan at Ten', ICG Asia Report no. 21, Osh, Kyrgyzstan / Brussels, Belgium, 21 August 2001, at 20, fn. 85, available at: http://www.crisisweb.org/projects/asia/centralasia/reports/A400393_21082001.pdf.

⁴⁶ See International Crisis Group, 'Tajikistan: an Uncertain Peace', ICG Asia Report no. 30, Osh, Kyrgyzstan / Brussels, Belgium, 24 December 2001, at 1, available at : www.crisisweb.org/projects/asia/centralasia/reports/A400521_24122001.pdf.

⁴⁷ Translation by author.

RUSSIA, 1992

The Treaty on the Foundations of Inter-State Relations, Friendship and Co-operation between the Republic of Uzbekistan and the Russian Federation was concluded on 30 May 1992 and entered into force on 19 March 1993. As compared to the Uzbek-Kazakh Treaty, the scope of minority protection provisions under this treaty is broader.

TAJIKISTAN, 2000

The Treaty on Eternal Friendship with Tajikistan was signed on 15 June 2000. The provisions on minority protection are similar to those of the Uzbek-Kazakh Treaty.

UKRAINE, 1998

The Treaty on Friendship and Further Intensification of All-around Co-operation with Ukraine was signed on 19 February 1998. Minority protection provisions are mostly contained in Article 18. On the same day, the TVRCU signed a Collaboration Agreement with the Ukrainian National TV to serve as the basis for journalist exchanges and exchanges in television materials. According to Article 6 of the Agreement:

[...]

The Parties shall consider organising on a biannual basis the week of Uzbek television in Ukraine and Ukrainian television in the Republic of Uzbekistan.⁴⁸

4 Current developments

A new national programme on human rights is said to be currently in preparation. It is scheduled to be adopted in the nearest future and is likely to contain some provisions on the linguistic minorities.

⁴⁸ *Ibid.*

Appendix: Uzbekistan

THE LAW OF THE REPUBLIC OF UZBEKISTAN “ON MASS-MEDIA”, 26 DECEMBER 1997⁴⁹

Article 1. Mass-media

Mass-media shall include newspapers, magazines, bulletins, newsletters, information agencies, television (cable and terrestrial television) and radio, documentary cinema, electronic information media, as well as state-owned, independent and other mass periodicals with permanent names. Mass-media may publish addenda in accordance with the order established by the law.

Article 2. Freedom of mass-media

Mass-media in the Republic of Uzbekistan shall be free and carry out their activities in accordance with the Constitution of the Republic of Uzbekistan, the present Law and other acts of the legislation.

Mass-media shall be entitled to search, receive and disseminate information and are amenable for the truthfulness and authenticity of the published information in accordance with the law.

Article 3. Freedom of speech

Everyone shall have the right to participate in the mass-media and openly express his opinion and convictions.

Article 5. Language of the mass-media

Mass-media in the Republic of Uzbekistan shall carry out their activities in accordance with the Law “On State Language.”

Article 11. Right to establish a mass-media outlet

Juridical and natural persons of the Republic of Uzbekistan⁵⁰ shall have the right to establish mass-media outlets. An outlet of mass-media may be established by several founders.

Article 12. Registration of a mass-media outlet

The editors [of a mass-media outlet] may start operating after receiving the certificate of registration. The founder shall submit the application for the registration of a mass-media outlet in accordance with the established order, to the organ authorised by the Government of the Republic of Uzbekistan.⁵¹ The application for registration shall be reviewed within one month from the date of submission. The right to operate the mass-media outlet shall be retained within three months from the date of the reception of the certificate. If within this period the mass-media outlet does not publish (air) a single issue (broadcast), the certificate of registration shall be deemed void.

Article 13. Application for the registration of a mass-media outlet

The following must be specified in the application for the registration of a mass-media outlet: founder(s); name, language(s) of publication, address; purposes and tasks; target audience; periodicity, volume, sources of material-technical supply and funding. [...]

Article 14. Dissemination of information without registration

⁴⁹ Translation by author. Cf the unofficial English translation provided by *Internews* at <http://www.internews.uz/legal/law1.html>.

⁵⁰ Juridical persons of the Republic of Uzbekistan include enterprises, institutions and organisations of various forms of ownership incorporated in Uzbekistan. Natural persons of the Republic of Uzbekistan include citizens of Uzbekistan and stateless individuals permanently residing on the territory of the country. See Civil Code of the Republic of Uzbekistan.

⁵¹ That is the Cabinet of Ministers.

Organs of state power and administration, publishing their normative acts and other documents in official publications, bulletins and newsletters, as well as enterprises, institutions and organisations (*inter alia* educational and scientific institutions), publishing information materials and documents necessary for their work, shall have the right to disseminate information without registration. No registration shall be required for the production of print, audio- and audiovisual materials through technical means, if they are not intended for mass dissemination, or are reproduced in the form of a manuscript, if the legislation does not prescribe to the contrary.

Article 15. Refusal of the registration of a mass-media outlet

The registration of a mass-media outlet may be refused if: the purposes and tasks of the outlet contradict to the Constitution of the Republic of Uzbekistan and the present Law; another mass-media outlet has already been registered under the same name; the application was submitted before one year elapsed since the date when a court decision on the termination of the mass-media outlet entered into force; the founder or one of the founders of the mass-media outlet or its publisher is based outside the territory of the Republic of Uzbekistan. The refusal of the registration of a mass-media outlet shall be communicated to the applicant by a written notification specifying the grounds for refusal. [...]

Article 28. Responsibility for violating the legislation on mass-media

Individuals found guilty of violating the legislation on mass-media shall bear responsibility in accordance with the established order. The editor (chief editor), as well as the journalist, shall not be responsible for the dissemination of materials not corresponding to the reality, through the means of mass-media, if the said information was taken from official reports, received from information agencies or press-services of state organs, or contained in speeches made by individuals which were broadcast without a preliminary recording.

LAW OF THE REPUBLIC OF UZBEKISTAN ‘ON THE RADIO-FREQUENCY SPECTRUM’, 25 DECEMBER 1998⁵²

[...]

Article 4. The right to distribute and use the radio-frequency spectrum

The distribution of radio frequencies to the users of the radio-frequency spectrum within the borders of the Republic of Uzbekistan shall remain an exclusive right of the authorised State organs. [...]
[...]

Article 7. Radio-frequency organs

The radio-frequency organs shall include:

- the Uzbek agency for post and telecommunications;
- the Ministry of Defence of the Republic of Uzbekistan;
- the Service of Governmental Communications under the Cabinet of Ministers of the Republic of Uzbekistan.

[...]

Article 8. The powers of the radio-frequency organs

The radio-frequency organs shall:

- issue the licences to use the radio frequencies;
- issue the licences to acquire (transfer), project, construct (install), exploit on the territory of the Republic of Uzbekistan, and import from abroad radio-electronic and high-frequency devices, within the limits of the radio frequency allocated to them by the organ of state administration in charge of the radio-frequency spectrum;
- prohibit, according to the established order, the exploitation of radio-electronic and high-frequency devices when the latter do not correspond to the established standards and

⁵² Translation by author.

technical norms, do not ensure the safety of citizens, [and/or] the protection of the environment, and in the presence of special circumstances. [...]

APPENDIX NO. 2 TO THE RESOLUTION OF THE CABINET OF MINISTERS NO. 293 10 JULY 1998 ⁵³

Statute of the Inter-Agency Co-ordination Commission on the Improvement and Raising of the Efficiency of Information Activities and Data Transmission

1. The Inter-Agency Co-ordination Commission on the Improvement and Raising of the Efficiency of Information Activities and Data Transmission (hereafter the Inter-Agency Co-ordination Commission) shall co-ordinate the activities of the organs of state administration and economic entities, regardless of their form of ownership, including foreign-owned, related to the formation and dissemination of information and data transmission with the use of telecommunications, safe and rational utilisation of the radio-frequency spectrum, and consumer protection in the spheres of TV and radio broadcasting and telecommunications.

[...]

6. The main purposes and directions of activity of the Inter-Agency Co-ordination Commission shall be:

...

- the licensing of economic entities, including foreign-owned, with the purpose of entitling them to project, construct and exploit electric communications through data processing and transmission nets, including the Internet, as well as TV and radio broadcasting nets;
- the organisation of activities on the issuance of special permissions (licences) and registration of economic entities in the spheres of TV and radio broadcasting and data transmission with the use of telecommunications;
- the determination of measures ensuring a safe and rational utilisation of the radio-frequency spectrum and the TV and radio airing time, the development of data transmission nets and systems;
- the determination of the order and conditions of transmitting foreign TV and radio programmes on the territory of the Republic of Uzbekistan and domestic TV and radio programmes on the territories of other States and the integration of Uzbekistan's information net into the global nets;

...

- the organisation of supervision over the legitimate and rational utilisation of radio frequencies, creation of conditions for the exclusion of abuses in the utilisation of technical devices for TV and radio broadcasting and the transmission of the information prohibited by the legislation.

[...]

9. On the basis of the decision by the Inter-Agency Co-ordination Commission:

- the Uzbek Agency for Post and Telecommunications shall, according to the established order, issue economic entities, including those with foreign ownership, with licences to project, construct and exploit data processing and transmission nets, including the Internet, as well as the TV and radio broadcasting nets;
- the State Committee on Press of the Republic of Uzbekistan shall, according to the established order, issue certificates of registration to economic entities which create, form, and disseminate TV and radio programmes, and transmit data.

APPENDIX 2 TO THE RESOLUTION OF THE CABINET OF MINISTERS NO. 458 22 NOVEMBER 2000 ⁵⁴

⁵³ Translation by author.

Regulations on the Licensing in the Sphere of Telecommunications

[...]

2. The Uzbek Agency for Post and Telecommunications (hereafter the licensing body) shall license all activities of legal entities and individuals in the sphere of telecommunications.

3. In the sphere of telecommunications licensing shall cover the activities of projecting, constructing, exploiting and delivering telecommunication services through:

- local nets;
- inter-city nets;
- international nets;
- nets of mobile radio-telephone communications;
- personal radio nets;
- data transmission nets;
- TV and radio broadcasting nets.

[...]

8. Licences shall be issued for each type of licensable activity. [...]

[...]

12. Licences to project, construct, exploit and deliver services through data transmission nets and TV and radio broadcasting nets shall be issued for the term of 5 years.

⁵⁴ Translation by author.

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