

# 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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup> Article 10(1) of the ECHR authorises States to require the licensing of broadcasting enterprises.<sup>3</sup> 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.<sup>4</sup> OSCE standards reiterate the participating States' commitment to respect the right to freedom of expression, including the right to communication,<sup>5</sup> and the right of persons belonging to minorities to enjoy this right (and others) without discrimination and in full equality before the law.<sup>6</sup>

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 diversity<sup>7</sup> and ensure the representation of existing pluralities within society.<sup>8</sup> 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.<sup>9</sup> Minority language

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<sup>2</sup> 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.”

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> 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>.

<sup>6</sup> *Ibid.*, para. 31.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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.<sup>10</sup> Moreover, they are required to ensure that persons belonging to minorities are granted the possibility to create and use their own media,<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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):<sup>14</sup>

[...] 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.).<sup>15</sup>

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.<sup>16</sup>

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<sup>10</sup> 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.”

<sup>11</sup> The Framework Convention, *ibid.*, Article 9(2).

<sup>12</sup> 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.

<sup>13</sup> 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.

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

<sup>15</sup> The Oslo Recommendations, *op. cit.*, para 10.

<sup>16</sup> *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.”<sup>17</sup>

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,<sup>18</sup> 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”.<sup>19</sup>

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<sup>17</sup> *Ibid.*, para. 11.

<sup>18</sup> 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.”

<sup>19</sup> 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".<sup>20</sup> 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".<sup>21</sup>

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

<sup>21</sup> *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”.<sup>22</sup>

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

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<sup>22</sup> *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-licenced 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.<sup>23</sup>

## 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,

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<sup>23</sup> 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,<sup>24</sup> 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, Bulgaria, Croatia (in the standard Croatian language), Cyprus, Denmark, Estonia, France,

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<sup>24</sup> 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.

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.<sup>25</sup> 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”.

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<sup>25</sup> 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).<sup>26</sup> 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.<sup>27</sup>

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<sup>26</sup> 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).

<sup>27</sup> 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).

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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.<sup>28</sup>

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<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.”<sup>31</sup>

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 task of disseminating knowledge of the official/State language. This is the case, for example,

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<sup>29</sup> 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).

<sup>30</sup> Barendt, *op. cit.*, p. 52.

<sup>31</sup> 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.

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.<sup>32</sup> 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 different languages and dialects used by Turkish citizens in their daily lives. However, such

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<sup>32</sup> 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;).

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 (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);<sup>33</sup> 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).

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

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<sup>33</sup> 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.

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).<sup>34</sup> 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 -licenced 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 stations” (this means that they are exempt from licensing requirements and certain regulations

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<sup>34</sup> See section 1.3 of the country report on Latvia, *infra*.

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.<sup>35</sup> 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".<sup>36</sup> 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 legal schemes for affirming or channelling that right. We have noted the elaborate and special

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<sup>35</sup> 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 *European Yearbook of Minority Issues*, Vol. 2, 2002/3 (forthcoming).

<sup>36</sup> *Op. cit.*, p. 1.

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.”<sup>37</sup> 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.

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<sup>37</sup> *Ibid.*, at p. 39. Emphasis in original.

