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Doc. 11030
22 September 2006

The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance cooperation and synergy with the OSCE

Report
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Boriss Cilevičs, Latvia, Socialist Group

Summary

Linguistic diversity in the media is not only vital to maintaining and developing minority identities, it is also essential if members of minorities are to have proper access to information.

The 2003 guidelines on the use of minority languages in the broadcast media, aimed at encouraging and facilitating the adoption by states of measures to defuse tensions surrounding national minorities, develop detailed advice for everyone in broadcasting, at every stage in promoting and establishing minority languages in the broadcast media.

The Assembly notes that these guidelines and the relevant Council of Europe instruments on the protection of minorities are complementary.

Practical examples show that while in certain countries the situation appears to be fairly satisfactory, member states nevertheless need to make efforts in order to comply fully with their obligations concerning minorities.

The Assembly therefore recommends developing co-operation between the Council of Europe and the Office of the OSCE High Commissioner on National Minorities and invites those responsible to refer regularly to the 2003 guidelines on the use of minority languages in the broadcast media in the context of the monitoring mechanisms linked to the Council of Europe's instruments.

A. Draft recommendation

1. The Parliamentary Assembly considers linguistic diversity to be a source of mutual enrichment which member states should encourage and maintain. Minorities must enjoy full and effective equality with the majority, including the right to preserve and develop their distinct identities. Genuine integration policies must respect differences and diversity.
2. The Assembly stresses that languages, which play a fundamental role in society as a tool for building communities, are particularly important for people belonging to minorities, since they are essential in the exercise of their right to maintain and develop their identity and culture as stipulated in the 2003 Guidelines on the use of minority languages in the broadcast media.
3. The Assembly notes moreover that languages play an important role in access to information and that providing information in minority languages not only has an obvious cultural dimension but also guarantees that minorities actually have full and equal access to information.
4. The Assembly deeply regrets that such access is sometimes deliberately made difficult or denied to minorities.
5. In this context, the Assembly recalls that, in Recommendation 1623 (2003) on rights of national minorities, it *“reiterates the views [...] that all European states should abolish restrictions on the establishment and functioning of private media broadcasting in minority languages. Such restrictions are contrary to Article 10 of the European Convention on Human Rights as developed by the case-law of the European Court of Human Rights”*.
6. Moreover, the Assembly has noted that the relevant Council of Europe and OSCE instruments, which aim to guarantee that minorities can use their own languages and that these languages are broadcast by the media, are complementary.
7. The Assembly recognises the significant role of the OSCE High Commissioner on National Minorities in conflict prevention and supports his continuous efforts to identify and seek early resolution of ethnic tensions.
8. In its Recommendation 1623 (2003) the Assembly stated that *“the co-operation between the Council of Europe’s bodies and other relevant European organisations (including the European Union and the OSCE) [...] should be stepped up”*, and, in Recommendation 1743 (2006), that it attaches *“great importance to relations between the Council of Europe and other institutions”*.
9. The Heads of State and Government of the Member States of the Council of Europe, meeting at the 3rd Summit in Warsaw on 16 and 17 May 2005, stated that they wished to foster *“European identity and unity, based on shared fundamental values, respect for our common heritage and cultural diversity”*.
10. In the Warsaw Declaration they undertook to continue their *“work on national minorities, thus contributing to the development of democratic stability”*, while declaring that they were *“resolved to secure improved practical co-operation between the Council of Europe and the OSCE and [welcomed] the prospect of enhanced synergy opened up by the joint declaration endorsed at this Summit”*.
11. The Assembly welcomes the Action Plan adopted at the Warsaw Summit, in which attention is drawn to the decision taken at the Strasbourg Summit *“to step up co-operation in respect of the protection of all persons belonging to national minorities”*.
12. The Assembly therefore recommends that the Committee of Ministers:
 - 12.1. invite member states which have not yet done so to sign and ratify, without reservations and restrictive declarations, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, which are fundamental instruments for the protection of national and linguistic minorities, and to increase its efforts in this respect;
 - 12.2. invite member states to take legislative measures guaranteeing balanced access to public broadcast media for people belonging to national minorities, as advocated in the Opinions of the Advisory Committee on the Framework Convention and in line with the 2003 Guidelines on the use of minority languages in the broadcast media;

12.3. invite member States to ensure that people belonging to national minorities have an effective right to establish and to use private broadcast media, as advocated in the Opinions of the Advisory Committee on the Framework Convention and in line with the 2003 Guidelines on the use of minority languages in the broadcast media;

12.4. in the framework of the monitoring of the implementation of the Framework Convention for the protection of national minorities and the European Charter for Regional or Minority Languages, regularly take into account the 2003 Guidelines on the use of minority languages in the broadcast media.

13. The Assembly considers that there is a potential for enhanced cooperation and contacts between the Council of Europe and the Office of the OSCE High Commissioner on National Minorities and encourages further synergies including through practical projects of common interest, in which representatives of civil society could be involved.

B. Explanatory memorandum
by Mr Boriss Cilevičs, Rapporteur

Contents:

- I. Introduction
 - II. Instruments and standards for the protection of the use of minority languages in the broadcast media
 - i. Instruments developed in connection with the work of the OSCE
 - a. The High Commissioner's role in media matters: practical assistance
 - b. The 2003 Guidelines on the Use of Minority Languages in the Broadcast Media
 - ii. Council of Europe standards
 - a. The European Convention on Human Rights
 - b. The Framework Convention for the Protection of National Minorities
 - c. The European Charter for Regional or Minority Languages
 - iii. Complementarity of these instruments
 - III. Relevant examples of practical implementation
 - i. Recognition and guarantee of freedom of expression and the use of minority languages in the media
 - ii. Promotion of access to broadcast media for persons belonging to minorities
 - iii. The need to remove obstacles to the use of minority languages in broadcast media
 - iv. Practical assistance with the creation and development of media which broadcast in minority languages
 - IV. Co-operation and synergy
- Appendix: Guidelines on the use of minority languages in the broadcast media

I. Introduction

1. Freedom of expression and the media are subjects dear to the Council of Europe and the Assembly, which has discussed the implications on many occasions.¹
2. Protection of national minorities and promotion of their rights are also longstanding concerns of the Assembly to which it has devoted a considerable body of work.²
3. The fundamental role played by languages in our society cannot be reiterated often enough. Language is not just an essential means of expression but also a key vehicle for transmission of cultures and development of identities. For members of a minority, using their mother tongue frequently constitutes the essence of their cultural identity, and its loss is synonymous with irreversible loss of that identity.³
4. For people belonging to national minorities use of their own language in the broadcast media is also of special importance since it guarantees their effective access to information.
5. Failing such access persons belonging to minorities would not enjoy the full and effective equality with members of the majority community to which they are entitled (under Article 4 of the Framework Convention for the Protection of National Minorities - hereunder the "Framework Convention"⁴).
6. States of course have a margin of discretion which allows them, inter alia, to adopt a policy for the promotion of their official language(s). This is indeed a legitimate aim, but not at any price. The role of minority languages must be guaranteed and secured in a balanced manner. The objective is to achieve balanced cohabitation of the official language and minority languages, giving full recognition to the complementarity of the different languages involved. It is cultural diversity in its entirety that must be preserved here.

¹ See, among many other documents, [Recommendation 1589 \(2003\)](#) on freedom of expression in the media in Europe.

² The first debate on the subject took place in the 1990s.

³ In this connection, see the Venice Commission's draft opinion on the provisions of the European Charter for Regional or Minority Languages which should be accepted by all the contracting States, [CDL-MIN\(1996\)002](#).

⁴ [ETS No 157](#).

7. I deem it important to address the issue of access to the broadcast media for people belonging to minorities and their entitlement to use their own language in these media. It is necessary to examine the situation both from a standard-setting standpoint and in practice.

8. To that end it is essential to analyse the instruments and standards of the Council of Europe that deal with protection of minorities and to compare them with the 2003 guidelines on the use of minority languages in the broadcast media.

9. It soon becomes clear that these instruments are of different kinds and complement one another.

10. My approach as rapporteur is aimed at determining to what extent synergies could be developed and how co-operation between the Council of Europe and the Office of the OSCE High Commissioner on National Minorities could be reinforced.

III. Instruments and standards for the protection of the use of minority languages in the broadcast media

11. Article 10 of the European Convention on Human Rights (hereunder "the Convention") is clearly of relevance whenever the theme of the media and freedom of expression is addressed. We shall nonetheless see that this provision - and the other articles of the Convention - does not explicitly cover the aspects specific to minorities.

12. The Council of Europe has devised two principal instruments for the protection of the rights of persons belonging to minorities: the Framework Convention and the European Charter for Regional or Minority Languages⁵ – hereunder the "European Charter".

13. Article 9 of the Framework Convention expressly provides that the right to freedom of expression shall encompass linguistic freedom and non-discrimination in access to the media (Article 9.1); free creation and free use of media organisations (press, broadcasting) (Article 9.3) and the obligation imposed on the States Parties to adopt "adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism" (Article 9.4).

14. Article 11 of the European Charter itself safeguards and promotes the use of regional or minority languages in the media in a number of ways, not least in the broadcasting sector.

15. The Office of the OSCE High Commissioner on National Minorities (hereunder "the High Commissioner") bases its work on an instrument dealing specifically with use of minority languages in broadcasting: the Guidelines on the Use of Minority Languages in the Broadcast Media drawn up in 2003.⁶

16. It is also interesting to note that Articles 8 to 11 of the [Oslo Recommendations regarding the Linguistic Rights of National Minorities](#)⁷ afford protection in similar fields.

17. All of these instruments have a common purpose in that they are aimed at ensuring full and effective equality between persons belonging to a national minority and those belonging to the majority. However, the approaches and the mode of protection afforded to members of minorities differ, as do the obligations binding on signatory States. It is this very aspect that shows the complementary nature of these instruments.

i. Instruments developed in connection with the work of the OSCE

18. In accordance with the [Helsinki Decisions](#) of 1992, "The High Commissioner provides 'early warning' and, as appropriate, 'early action' at the earliest possible stage in regard to tensions involving national minority issues that have the potential to develop into a conflict within the CSCE [Conference on Security and Co-operation in Europe] area, affecting peace, stability, or relations between participating States."

19. The High Commissioner accordingly has a clear mandate to act as early as possible in order to prevent conflicts linked to inter-ethnic tensions.

⁵ [ETS No 148](#).

⁶ See the full text of the guidelines appended hereto.

⁷ These recommendations, adopted in February 1998, were drawn up under the aegis of the Foundation on Inter-Ethnic Relations at the High Commissioner's request.

20. In the course of its activities the Office of the High Commissioner has identified key fields of action, such as education of minorities and use of minority languages, which are of considerable importance to the preservation of the identities of individuals belonging to national minorities. It has also very closely concerned itself with the issue of national minorities' effective participation in State decision-making structures.

21. The Office of the High Commissioner has also focused further on the question of the use of minority languages in the broadcast media. Its work in this area led it to note that a number of States had passed measures which made their use particularly difficult.

22. It was these findings that resulted in the drafting of the 2003 Guidelines on the Use of Minority Languages in the Broadcast Media, a field of work pursued by the Office of the High Commissioner (at the request of a number of national delegations) in close co-operation with the Office of the OSCE Representative on Freedom of the Media.

a. The High Commissioner's role in media matters: practical assistance

23. As the High Commissioner himself pointed out during the exchange of views with the Sub-Committee on Rights of Minorities held in The Hague on 28 April 2006, his role in media matters consists in identifying practical measures whereby language can serve as a means of integration and social cohesion rather than an instrument of exclusion or repression. He argued that it was essential for a country to ensure the availability of a number of programmes in minority languages.

24. He also explained that the Guidelines on the Use of Minority Languages in the Broadcast Media had been drawn up to assist States in developing balanced policies, answering the expectations and needs of all sectors of the population. The guidelines were intended to clarify the substance of the relevant international standards and to serve as a guide for States seeking solutions to the problems of minorities.

b. The 2003 Guidelines on the Use of Minority Languages in the Broadcast Media

25. To prepare precise guidelines the High Commissioner adopted two approaches. Firstly, he commissioned a major study of the member States' practice in this field (in the light of legislation and regulations in force and case-law).⁸ Secondly, he launched an analysis of the specific substance of the relevant provisions of the applicable international instruments (and the relevant case-law).

26. The outcome of this process was the presentation and discussion of the Guidelines on the Use of Minority Languages in the Broadcast Media at the conference on "Use of Minority Languages in Broadcast Media" in Austria on 24-26 October 2003 organised by the High Commissioner and the OSCE Representative on Freedom of the Media.⁹

27. It should be noted that the Council of Europe secretariat was consulted and contributed to the preparation of the guidelines.

28. The guidelines' declared aim is to encourage and facilitate the adoption by States of specific measures to ease tensions linked to national minorities and thereby serve the High Commissioners' ultimate purpose, i.e. conflict prevention.

29. The guidelines comprise four sections: 1) general principles; 2) policy, giving States a number of pointers for priorities to be set; 3) regulation which must be prescribed by law, based on objective and non-discriminatory criteria and neither aim to restrict nor have the effect of restricting broadcasting in minority languages; 4) promotion of minority language broadcasting in both qualitative and quantitative terms (this section gives a number of practical examples and draws attention to the need for appropriate training of journalists and broadcasting personnel).

30. A particular advantage of the guidelines lies in the fact that they are aimed at all those dealing with the question of broadcasting at all levels, so as to achieve the broadest possible coverage of all the stages involved in promoting use of minority languages in the broadcast media and guaranteeing their access to

⁸ Tarlach McGonagle, Bethany Davis Noll & Monroe Price, "Minority-Language Related Broadcasting and Legislation in the OSCE", Programme in Comparative Media Law and Policy (PCMLP), Centre for Socio-Legal Studies, Wolfson College, Oxford University & Institute for Information Law (IvIR), Universiteit van Amsterdam; Study commissioned by the OSCE High Commissioner on National Minorities, April 2003.

⁹ See the full text appended hereto.

broadcasting. Moreover, the guidelines constitute a compendium of all the relevant international legal and policy standards (including the relevant case-law of the European Court of Human Rights as well as certain non-binding international instruments). In this respect, they group together commitments entered into by a majority of States at the international level. However, their novel nature derives from the fact that they present all these obligations in a single, clear, coherent document that can serve as a reference.

ii. Council of Europe standards

a. The European Convention on Human Rights

31. The European Convention on Human Rights (hereunder "the Convention") contains no provisions specific to minorities apart from the references made to them in Article 14 and in Protocol No 12 concerning the general prohibition of discrimination.

32. The case-law gives extensive recognition to the fact that freedom of expression constitutes one of the foundations of a democratic society, which is dependent on the existence of and respect for **pluralism, tolerance and broadmindedness**.¹⁰

33. Upon closer examination of the Court's case-law, it can indeed be seen that the Convention contains no explicit guarantees of linguistic freedom as such, particularly where education is concerned.¹¹ Yet, it is clear from the case-law that refusing certain individuals or groups access to the broadcast media can be regarded as a discriminatory measure breaching Article 10 in conjunction with Article 14 of the Convention.¹² It is important to note that, according to case-law, means of transmission of expression are inherent to freedom of expression. As is language, the medium of expression.

34. As early as 1983 the European Commission of Human Rights, in its decision concerning the case of Verein Alternatives Lokalradio Bern and Verein Dreyeckland Basel v. Switzerland, observed that "freedom of expression is one of the essential foundations of a democratic society" and considered that "this principle is of **particular importance** not only for the press ... but also **for broadcasting**." It continued "although broadcasting enterprises have no guarantee of any right to a licence under the Convention, it is nevertheless the case that the rejection by a State of a licence application must not be manifestly arbitrary or discriminatory, and thereby contrary to the principles set out in the preamble to the Convention and the rights secured therein." This led it to conclude that "for this reason, a licensing system not respecting the **requirements of pluralism, tolerance and broadmindedness** ... would thereby infringe Article 10 para. 1 of the Convention."

35. The Court in turn subsequently reiterated the "fundamental role of freedom of expression in a democratic society", while underlining that "such an undertaking cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor."¹³ The existence of broadcasts in a language other than the official language is undeniably an intrinsic element of pluralism.

36. The Court also ruled that Article 10 "applies not only to the content of information but also to the means of transmission or reception since any restriction imposed on the means necessarily interferes with the right to receive and impart information."¹⁴

37. It can also be noted that the Court has held that "States are permitted to regulate by a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects ...". However, "Technical aspects are undeniably important, but the grant or refusal of a licence may also be made conditional on other considerations, including such matters as ... its potential audience at national, regional or local level, the rights and needs of **a specific audience** ...".¹⁵

¹⁰ ECHR, Case of Handyside v. the United Kingdom, Application No 5493/72, 7 December 1976, Series A No 24, § 49.

¹¹ ECHR, Case relating to certain aspects of the laws on the use of languages in education in Belgium, Applications Nos 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; and 2126/64, 23 July 1968, Series A No 6.

¹² ECHR, Case of Informationsverein Lentia and others v. Austria, Applications Nos 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90, 24 November 1993, § 32; in this connection see also the case of Radio ABC v. Austria, 109/1996/728/925, 20 October 1997, § 33.

¹³ ECHR, Case of Informationsverein Lentia and others v. Austria, applications nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90, 24 November 1993, § 38; in this connection see also the case of Radio ABC v. Austria, 109/1996/728/925, 20 October 1997, §§ 32 and 33.

¹⁴ Case of Autronic AG v. Switzerland, Application No 12726/87, 22 May 1990, § 47.

¹⁵ ECHR, Case of Informationsverein Lentia and others v. Austria, Applications Nos 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90, 24 November 1993, § 32; in this connection see also the case of Radio ABC v. Austria, 109/1996/728/925, 20 October 1997, § 33.

38. More specifically, on the issue of use of minority languages in the broadcast media, the Commission gave the following decision: "The Commission nevertheless considers that refusal to grant a broadcasting licence may raise a problem under Article 10, in conjunction with Article 14 of the Convention in specific circumstances. Such a problem would arise, for example, if the refusal to grant a licence **resulted directly in a considerable proportion of the inhabitants of the area concerned being deprived of broadcasts in their mother tongue.**"¹⁶

b. The Framework Convention for the Protection of National Minorities

39. As mentioned above, the key provision of the Framework Convention in media matters is Article 9. It expressly provides that the right to freedom of expression shall include linguistic freedom and non-discrimination in access to the media (Article 9.1); free creation and free use of media organisations (press, broadcasting) (Article 9.3) and the obligation for Contracting Parties to adopt "adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism" (Article 9.4). It thus makes explicit provision for freedom of expression and freedom to receive information and ideas in the language of their choice for persons belonging to minorities, freedom of choice of language being inherent to freedom of expression.

40. The link between Article 9 of the Framework Convention and Article 10 of the Convention is very clear, and is highlighted in the explanatory report to the Framework Convention.

41. At the same time, other articles – principally those dealing with discrimination and Article 15 on participation - are relevant and must be taken into account.

42. The provisions of Article 9 are linked to those of Article 15 of the Framework Convention in respect of the effective participation of persons belonging to national minorities in cultural, social and economic life, and in public affairs. The media are undeniably an ideal vector in the sphere of not only cultural life, but also public affairs, in that they are a vital source of information.

43. There are three kinds of obligations on the basis of Article 9 which are incumbent on the States Parties and influence the role that they have to play.

44. Firstly, the States Parties undertake to condemn and take action against any discrimination against national minorities. This obligation stems from the provisions of Article 1, but also those of Articles 4.1 and 6.1, of the Framework Convention. Article 9.1 lays down this obligation where the media are concerned in the following terms: "The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media".

45. Secondly, the States Parties must adopt a positive attitude to providing assistance to persons belonging to national minorities, by introducing a public policy of promoting the access of minorities to the media and by setting up a framework making such access possible. This positive obligation stems from Article 4.2, in general terms, and Articles 6.1 and 9.4 of the Framework Convention, in more particular terms. According to this latter provision, "In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities". The explanatory report to the Framework Convention states that appropriate measures could include the allocation of funds for minority broadcasting or for the production of programmes dealing with issues relating to minorities, etc.

46. Finally, States have to recognise these rights and are under a negative obligation to refrain from hindering the creation and use of media, as defined in Article 9.3 of the Framework Convention.

47. Article 9 also provides that the measures taken by the States Parties must "promote tolerance and permit cultural pluralism".

48. Freedom of expression "across frontiers" is guaranteed by the Framework Convention if one bears in mind that transfrontier broadcasting is an integral part of the right of persons belonging to national minorities "to establish and maintain free and peaceful contacts across frontiers", as provided for by Article 17.1.

¹⁶ European Commission of Human Rights, Case of Verein Alternatives Lokalradio Bern and Verein Dreyeckland Basel v. Switzerland, Application No 10746/84, 13 December 1983.

49. It is clear to anyone reading Articles 23 and 19 of the Framework Convention that the only restrictions that States Parties may impose on the provisions of Article 9 may in no circumstances exceed those for which Article 10 (2) of the European Convention on Human Rights provides.

c. The European Charter for Regional or Minority Languages

50. According to the explanatory report to the Charter, this instrument's purpose is cultural in nature. It is designed to protect and promote "minority languages as a threatened aspect of Europe's cultural heritage". For this reason the Charter sets out to promote the active, effective use of regional or minority languages. Inter alia, it is intended to guarantee "the use of regional or minority languages ... in the media".

51. The Charter addresses the issue of the media from three different standpoints: firstly, it considers the role of the media as a means of promoting tolerance (see Article 7 of the Charter and paragraph 74 of the explanatory report); secondly, it underlines the importance of the media as an instrument of transmission and dissemination of the language; lastly, it highlights the importance of transfrontier exchanges in the promotion and use of regional or minority languages in the media (see Article 14).

52. Article 11 of the Charter, specifically devoted to the media, protects and promotes the use of regional or minority languages in the media in a number of ways, including in broadcasting.

53. Article 11.1 requires States to enter into a number of commitments in support of regional or minority languages geared to ensuring their access to the media.

54. It distinguishes between radio stations and television channels which carry out a public service mission and those which do not. The proposed commitments in support of regional or minority languages differ according to this criterion. States are naturally expected to make greater commitments in the case of public service broadcasters than in the case of private broadcasters, as the public service role directly includes guaranteeing pluralism.

55. Article 11.2 also provides that States shall undertake "to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language...".

56. States have a vital role to play here since it is for them to eliminate obstacles to freedom of communication.¹⁷ A passive attitude by the authorities, who tolerate barriers to freedom of reception (for instance of programmes transmitted from neighbouring countries) or take no active steps to make it effective, will be deemed to breach Article 11 of the Charter.

57. Lastly, Article 11.3 provides that the interests of users of regional or minority languages must be represented within bodies responsible for guaranteeing pluralism of the media.

58. The explanatory report asserts "[t]oday no language can keep its influence unless it has access to the new forms of mass communications." The development of means of communication is perceived as a threat to the preservation of regional or minority languages, which therefore implies that the viability of a regional or minority language, and hence of the culture it underpins, depends on its presence in the media in manifold forms.

59. The Charter goes into detail about obligations to protect regional or minority languages, and therefore provides a highly constructive complement to the provisions of the Framework Convention. On reading the reports of the Committee of Experts of the Charter, it is possible to identify very precise criteria relating to conformity with its provisions (such as, in the media field, hours of broadcasting per day, time slots, etc.).

iii. Complementarity of these instruments

60. It is clear that the 2003 guidelines, drawn up under the High Commissioner's auspices, are not of equivalent legal value to the Council of Europe's standards, which are binding in nature.

61. However, the guidelines are more detailed as regards the measures proposed to promote access to the broadcast media for people belonging to minorities and the use of minority languages in programmes.

¹⁷ See the explanatory report to the Charter.

62. At the same time, the fact that the guidelines are aimed at all those concerned by this question, not just the authorities, makes them a particularly useful reference instrument.

63. In combination with the binding standard-setting instruments of the Council of Europe, the 2003 guidelines are a source of complementarity in practice. The precise examples of measures capable of stimulating use of minority languages in the broadcast media are particularly helpful and constitute a natural complement to the provisions of the Framework Convention and the European Charter, since the guidelines were developed in keeping with the spirit and the principles of these two instruments.

III. Relevant examples of practical implementation

64. I intend to back my arguments with a number of examples of States' practice in the light of the principles enshrined in the above instruments. Without an ambition to scrutinize all relevant cases in exhaustive way, my aim is to highlight good practice examples which could serve as a reference and also examples of failure to comply with these principles.

i. Recognition and guarantee of freedom of expression and the use of minority languages in the media

65. It is clear from the opinions of the Advisory Committee that, as a general rule, freedom of expression within the meaning of Article 9 (1) of the Framework Convention is guaranteed in the Constitutions of the States Parties. The constitutional provisions relating to freedom of expression apply to all forms of media without discrimination and irrespective of the language of expression.¹⁸

66. Generally speaking, broadcasting legislation places increasing emphasis on the right to disseminate information in the mother tongue of minorities.¹⁹

67. Turkey is an example of a country where steps have recently been taken to address serious shortcomings. Since the passage of Law No 4771 on 3 August 2002, the legislation on broadcasting and the creation of broadcast undertakings authorises the broadcasting of programmes in various traditional languages and dialects. Moreover, the broadcasting authority (RTUK) has issued regulations on public and private broadcasting in the languages and dialects traditionally used by Turkish citizens in their daily lives, which entered into force in January 2004. In mid-2004 the public broadcasting service began to air television and radio programmes in a number of languages and dialects (Bosnian, Kurdish, Arabic, Circassian, Zazaki). Furthermore, in March 2006 the RTUK authorised private television channels and radio stations to broadcast in several minority languages.

68. Karol Jakubowicz, an expert, noted a fact that he considered encouraging and which deserves to be highlighted here: the lowest number of failures noted by the Advisory Committee relating to freedom of expression of minorities and their access to the media concerns non-discrimination.²⁰ It is fortunate to note that States seemed to attach due importance to questions of discrimination relating to access to the media and to be sufficiently attentive to this to ensure that such access was not denied to persons belonging to national minorities precisely because they so belonged.

ii. Promotion of access to broadcast media for persons belonging to minorities

69. According to the opinions of the Advisory Committee, most of the difficulties encountered and noted seem to relate to member states' failure to provide the necessary assistance and support facilitating access to the media for persons belonging to national minorities. Yet this is an obligation under Article 9 (4) of the Framework Convention.²¹ It would thus seem that a number of States Parties are failing to guarantee such access in a satisfactory manner, not, for example, allocating sufficient funds.

70. Some interesting examples were mentioned during the hearing in The Hague, including the case of Armenia. In Armenia the general rule is that the official language must be used in television and radio

¹⁸ See, inter alia, the state reports on Albania, [ACFC/SR\(2001\)005](#), 26.07.2001, Italy, [ACFC/SR\(99\)007](#), 03.05.1999, and Germany, [ACFC/SR\(2000\)001](#), 24.02.2000.

¹⁹ See, inter alia, the state reports on Albania, [ACFC/SR\(2001\)005](#), 26.07.2001 and the Slovak Republic, [ACFC/SR\(1999\)008](#), 04.05.1999.

²⁰ "A critical evaluation of the first results of the monitoring of the Framework Convention for the Protection of National Minorities 1998-2003".

²¹ Worth reading in this context is "A critical evaluation of the first results of the monitoring of the Framework Convention for the Protection of National Minorities 1998-2003", Karol Jakubowicz, in "Filling the Frame - 5 years of monitoring the Framework Convention for the Protection of National Minorities", Council of Europe Publishing, 2004.

programmes, but exceptions exist for minority languages and the airing of foreign programmes. One of the priorities of the State television company established in 2000 is to broadcast programmes in Armenian. Although this is indeed the case with the majority of programmes, some are simply sub-titled. Under the legislation on television and radio, public broadcasters are not permitted to air programmes in minority languages for more than one hour per week. In its opinion on Armenia the Advisory Committee considered this legislation too restrictive.²² According to the expert who presented the situation during the exchange of views, surveys conducted by sociologists show that the population would like there to be more news programmes in minority languages.

71. In its second cycle opinion on Romania, the Advisory Committee welcomed the progress made in improving national minorities' access to public media (especially where the German and Hungarian minorities were concerned). It also noted a clear improvement in the quality of programmes for national minorities on public-service radio and television. Nevertheless, an imbalance remained between the different minorities in the media sector. Another problem which remained was that television programmes for minorities and about minorities were broadcast at times when audiences were small.²³

72. Furthermore, in its opinion on Albania, the Advisory Committee noted that no applications for licences to set up local radio or television stations had been made to the National Radio and Television Council by persons belonging to national minorities. Having noted this, the Advisory Committee took the view that this lack of applications could only be due to "the lack of prospective funding rather than a lack of interest from persons belonging to national minorities".²⁴ The Advisory Committee had therefore recommended that the authorities provide further support in order to extend radio and television broadcasting for national minorities.

73. For its part, the Committee of Ministers has encouraged Italy to increase the number of radio and television programmes in minority languages. It is noted that such programmes exist in those regions which enjoy special autonomy. Technical problems, however, seem to make access to programmes in minority languages difficult in certain regions where specific minorities have traditionally lived (particularly the Slovene and Ladin minorities).²⁵

74. The Committee of Experts of the Charter also endeavours in its reports to assess the actual situation in the States Parties and the degree to which they comply with the provisions of the Charter. It has, for instance, noted that, although Russian programmes are regularly broadcast by private radio stations in Armenia, the authorities are failing to meet their commitment to encourage or facilitate the broadcasting of radio programmes in such regional or minority languages as Assyrian, Yezidi, Greek and Kurdish. No licence application has in fact been submitted to date on behalf of any of these minorities. The Committee of Experts concludes that the authorities should take steps to facilitate the broadcasting of radio programmes in the languages concerned.²⁶ Similarly, the Committee of Experts concludes that Germany is not giving sufficient encouragement to the broadcasting of radio programmes in Danish. Where the broadcasting of television programmes is concerned, the ULR (*Unabhängige Landesanstalt für das Rundfunkwesen*), an independent body responsible for supervising private broadcasters, is subsidising a project intended to develop Danish-speakers' capacity to create their own television programmes.²⁷

75. In Spain, public radio station Catalunya Radio and two public television channels, TV3 and CANAL33, broadcast in Catalan. The authorities also give practical support to private radio stations which broadcast in regional or minority languages. The Committee of Experts of the Charter considers that Spain is thus complying with its commitments under Article 11(1) of the Charter.²⁸

iii. The need to remove obstacles to the use of minority languages in broadcast media

76. Among the particularly good examples mention can be made of Lithuania. This country was cited several times in The Hague as a model and a virtually problem-free example. It is true that Article 13 of the law on use of the official language provides that television programmes must be translated into the official

²² [ACFC/INF/OP/I\(2003\)001](#), 16.05.2002.

²³ [ACFC/OP/II\(2005\)007](#), 23.02.2006.

²⁴ [ACFC/INF/OP/I\(2003\) 004](#), 12.09.2002.

²⁵ See Resolution ResCMN(2006)5 on the implementation of the Framework Convention for the Protection of National Minorities by Italy, 14.06.2006.

²⁶ ECMRL(2006)2, 14.06.2006, see also in this respect CM Recommendation [RecChL\(2006\)2](#) on the application of the Charter for Regional and Minority Languages by Armenia, 14.06.2006.

²⁷ ECMRL(2006)1, 01.03.2006.

²⁸ ECMRL(2005)4, 21.09.2005.

language or sub-titled before they can be broadcast publicly in Lithuania. However, many exceptions are also instituted, for instance for programmes targeting ethnic communities and certain foreign radio or audiovisual programmes broadcast in Lithuania.

77. Latvia is another interesting case to study. Indeed, in the 1990s this country applied a policy involving quite strict limitation of the use of minority languages in the broadcast media. In recent years it can be seen that the situation is changing for the better with some very encouraging developments. Of quite particular interest is the Constitutional Court decision of 5 June 2003 on the language restrictions imposed on private broadcasters.²⁹ The Constitutional Court concluded in this case that the provisions of Article 19 of the Radio and Television Law, providing for broadcasts in minority languages to be restricted to 25% of every 24 hours of airtime in private media, were not in accordance with the Constitution. The court had ruled that such a limit was not a proportionate and necessary restriction in a democratic society (explicitly referring, inter alia, to Article 10 of the European Convention on Human Rights and to the relevant case-law of the European Court of Human Rights). Nonetheless, an amendment voted by parliament in December 2004 is still a cause for concern, since it allows the government to "adopt measures" to promote the use of Latvian within the country. One of the experts pointed out during the exchange of views that this provision is too loosely worded and could serve as a justification for new restrictions.

78. As a less good example, I will cite the Advisory Committee's opinion on Azerbaijan in which it regrets the fact that, although the relevant legislation³⁰ provides for minority language programmes, Article 6 of the law on the State language³¹ requires that "all television and radio programmes broadcast in the Republic of Azerbaijan shall be in the State language regardless of ownership of the media concerned." The Advisory Committee nonetheless noted that this provision was not being implemented since programmes in minority languages (such as Avar, Georgian, Kurdish, Lezgin, Russian and Talysh) continue to be aired. The Advisory Committee consistently acknowledges in its opinions that "it is legitimate to introduce measures to promote the State language also in the media field", but it considers that an overall exclusion, such as that provided for in Azerbaijan's law, is not compatible with Article 9 of the Framework Convention.³² However, it seems that the authorities may have improved the situation through recent legislative changes.

iv. Practical assistance with the creation and development of media which broadcast in minority languages

79. In the course of his duties, the OSCE High Commissioner on National Minorities is setting up programmes to support and promote media which broadcast in minority languages. Since 2003, for example, he has been playing an active part in a project in Georgia, the purpose of which is to broadcast the Georgian news in minority languages. The High Commissioner has thus helped to create a local radio and television station managed by journalists who belong to the Armenian minority. As well as providing local coverage, they translate the Georgian news and broadcast it again, providing local populations who belong to the Armenian-language minority with information about political, economic, social and cultural developments in Georgia. Clearly, an initiative of this kind has positive effects on the participation of persons belonging to the minority concerned, giving them access to information about the country in which they are residents, in a language that they fully understand.

80. The High Commissioner has also welcomed, in "the former Yugoslav Republic of Macedonia", the creation by the public broadcasting service of an Internet site which provides information in seven local languages and three foreign languages. The High Commissioner described this as "*a modern and creative way to implement the guidelines*".³³

IV. Co-operation and synergy

81. As the High Commissioner pointed out during his exchange of views with the members of the Sub-Committee on Rights of Minorities in The Hague, the instigation for reinforced co-operation between the OSCE and the Council of Europe came from the joint declaration adopted in Warsaw. The aim was to rationalise relations between the two organisations in accordance with the principles of complementarity, transparency and democratic responsibility. In this connection, four areas of common interest were identified as priorities: the fight against terrorism, the protection of persons belonging to national minorities, combating trafficking in human beings and promoting tolerance and non-discrimination. In his official capacity, the High

²⁹ Constitutional Court decision of 5 June 2003, [Case No 2003-02-0106](#).

³⁰ Law of 1999 on the media and Decree of 1992 on the rights of national minorities.

³¹ Passed on 30 September 2002.

³² [ACFC/INF/OP/I\(2004\)001](#), 22.05.2003.

³³ [SEC.PR/140/06](#), 20.04.2006.

Commissioner is responsible for coordinating of initiatives in the field of protection of persons belonging to national minorities aimed at reinforcing co-operation and avoiding the duplication of efforts. The High Commissioner has already participated in a number of meetings of the Committee of Experts on Issues relating to the Protection of National Minorities³⁴ and the Advisory Committee of the Framework Convention for the Protection of National Minorities. As he stated, his exchange of views with the Sub-Committee on Rights of Minorities was founded on the same will to strengthen co-operation and devise complementarity strategies through joint discussion.

82. In practice, it is clear that the instruments of the Council of Europe and those of the OSCE, like their respective activities, complement one another. On the basis of the texts of the Framework Convention and European Charter, the Advisory Committee and Committee of Experts monitor States Parties' compliance with their commitments. Both bodies' opinions and reports enable difficulties to be identified and recommendations to States Parties to be drawn up, so as to ensure that the situation is in conformity with the texts concerned. The High Commissioner, for his part, gives tangible and practical assistance to States by setting up programmes under which media activities in minority languages can be developed. It seems obvious that coordination should enable the High Commissioner to provide tangible support in those fields where shortcomings have been identified by the Advisory Committee and/or the Committee of Experts.

83. Unlike the Council of Europe, the High Commissioner is unable to bring out binding standards. The Council of Europe's work in this area is of vital importance, and the Office of the High Commissioner invokes the Council of Europe's standards and the OSCE's political commitments while focusing on their implementation in areas linked to the political aspects of majority-minority relations. It is in fact the very practical nature of the action and role of the Office of the High Commissioner that can serve to guarantee the effectiveness of co-operation with the Council of Europe and that makes it so important.

84. Moreover, the question of how to ensure the highest level of implementation of the guidelines is posed. Various strategies can be envisaged, but the complementarity of the work done by the Council of Europe and by the OSCE is clear to see, and the variety of the approaches adopted opens up some particularly worthwhile avenues to be pursued.

85. In matters of co-operation and synergy it is necessary to determine the areas and projects concerned within the existing co-operation structures.

86. In this context thought could usefully be given to the possibility of holding regular strategic planning meetings with the aim of ensuring the co-ordination and complementarity of activities in the field of protection of minority rights, which would bring together representatives of the relevant departments within the Council of Europe and the Office of the OSCE High Commissioner on National Minorities and which civil society representatives might also be invited to attend.

87. At the same time, the rapporteur sincerely hopes that members of the committee belonging to states which have not yet signed and/or ratified the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages - fundamental instruments in the preservation of the cultural identity of national minorities - will continue to raise this matter within their national parliaments.

³⁴ DH-MIN.

APPENDIX

Guidelines on the use of minority languages in the broadcast media

(Developed by a panel of experts at the request of the OSCE High Commissioner on National Minorities - 25 October 2003)

I. GENERAL PRINCIPLES

1. Freedom of Expression

The freedom of expression of every person, including persons belonging to national minorities, includes the right to receive, seek and impart information and ideas in a language and media of their choice without interference and regardless of frontiers.

The exercise of this freedom may be subject only to such limitations as are compatible with international law.

2. Cultural and Linguistic Diversity

States should guarantee the freedom of choice by creating an environment in which a variety of ideas and information can flourish as communicated in various languages.

3. Protection of Identity

All persons, including persons belonging to national minorities, have the right to maintain and develop their identity, including through the use of their language(s), in and through the broadcast media.

4. Equality and Non-Discrimination

All persons, including persons belonging to national minorities, have the right to enjoy the freedom of expression and to maintain and develop their identity in and through the broadcast media in conditions of equality and without discrimination. States should take special and concrete measures, where necessary, to ensure that persons belonging to national minorities enjoy effective equality with regard to the use of their language in the broadcast media.

II. POLICY

5. States should develop policy to address the use of minority language(s) in the broadcast media. Policy should be based on an ascertainment of the needs of persons belonging to national minorities to maintain and develop their identities.

In the development and application of such policy, persons belonging to national minorities should enjoy effective participation, including in consultative processes and representation in relevant institutions and bodies.

6. Independent regulatory bodies should be responsible for the implementation and enforcement of State policy. Such bodies should be established and should function in a transparent manner.

7. State policy should support public service broadcasting which provides a wide and balanced range of informational, educational, cultural and entertainment programming of high quality in order, inter alia, to meet the needs of persons belonging to national minorities. States should maintain and, where necessary, establish the financial, technical and other conditions for public service broadcasters to fulfil their mandates in this field.

8. State policy should facilitate the establishment and maintenance by persons belonging to national minorities of broadcast media in their own language.

III. REGULATION

9. Permissibility of Regulation

States may regulate the broadcast media for the protection and promotion of the freedom of expression, cultural and linguistic diversity, the maintenance and development of cultural identity, and for the respect of the rights or reputations of others. Such regulation, including licensing, must be prescribed by law, based on

objective and non-discriminatory criteria and shall not aim to restrict or have the effect of restricting broadcasting in minority languages.

10. **Promotion of Languages**

In regulating the use of language in the broadcast media, States may promote the use of selected languages. Measures to promote one or more language(s) should not restrict the use of other languages. States may not prohibit the use of any language in the broadcast media. Measures to promote any language in broadcast media should not impair the enjoyment of the rights of persons belonging to national minorities.

11. **Proportionality of Regulation**

Any regulation, whether prescriptive or proscriptive, must pursue a legitimate aim and be proportionate to that aim. When assessing the proportionality of any regulation, specific factors concerning the nature of the media and wider social environment should be considered. Such factors include:

- The nature and objectives of the measure, including its potential to contribute to the quality and balance of programming, in pursuit of the protection and promotion of freedom of expression, cultural and linguistic diversity, and the maintenance and development of cultural identity.
- The existing political, social and religious context, including cultural and linguistic diversity, structures of governance, and regional characteristics.
- The number, variety, geographical reach, character, function and languages of available broadcasting services – whether public, private or foreign – at all levels (national, regional and local). The financial costs to the audience of the various services, technical possibilities for reception and the quantity as well as the quality of broadcasting, both in terms of the scheduling of slots and the type of programming, are all relevant considerations.
- The rights, needs, expressed desires and nature of the audience(s) affected, including their numerical size and geographical concentration, at each level (national, regional and local).

12. **Translation Restrictions**

Minority language broadcasting should not be subject to the imposition of undue or disproportionate requirements for translation, dubbing, post-synchronisation or subtitling.

13. **Transfrontier Broadcasting**

The free reception of transfrontier broadcasts, whether direct or by means of retransmission or rebroadcasting, shall not be prohibited on the basis of language.

The availability of foreign broadcasting in a minority language does not negate the State's obligation to facilitate domestically produced broadcasting in that language nor does it justify a reduction of the broadcast time in that language.

IV. PROMOTION OF MINORITY LANGUAGES

14. **State Support**

The State should support broadcasting in minority languages. This may be achieved through, inter alia, provision of access to broadcasting, subsidies and capacity building for minority language broadcasting.

15. **Access to Broadcasting**

States should provide meaningful access to minority language broadcasting through, inter alia, the allocation of frequencies, establishment and support of broadcasters, and program scheduling. In this regard, account should be taken of the numerical size, geographical concentration, and location of persons belonging to national minorities together with their needs and interests.

The availability of minority language broadcasting at regional or local level does not justify the exclusion of minority language programming in nation-wide broadcasting, including for dispersed minorities.

A. Frequencies

- When awarding licenses, States should consider providing frequencies for minority language broadcasting in whole or in part.
- States should consider providing “open channels” – i.e. programme transmission facilities, which use the same frequency, shared by a number of linguistic groups within the service area – where there are technical limitations on the number of frequencies available and/or groups that do not have sufficient resources to sustain their own services.

B. Broadcasters

- States should prescribe appropriate requirements for State or public service broadcasters with regard to the provision of programming in minority languages.
- States should also consider creating favourable conditions (financial or otherwise) to encourage private minority language broadcasting. This may be achieved through the allocation of licenses, including calls for tender or in response to a proposal from an applicant. States may also choose to exempt minority language broadcasters from competition legislation or create special regimes to relieve them of certain administrative burdens.
- Where there is no private minority language broadcasting, States should actively assist its establishment, as necessary.

C. Programming

States should ensure that the amount of time allocated and the scheduling of minority language broadcasting should reflect the numerical size and concentration of the national minority and be appropriate to their needs and interests. Consideration must also be given to the minimum amount of time and appropriate scheduling needed for small minorities to have meaningful access to broadcast media in their language. These aims may be achieved through licensing, including through stipulation of lengths and periods of minority language broadcasting.

16. Public Funding

States should consider providing financial support for minority language broadcasting. This can be achieved through direct grants, favourable financing/tax regimes, and exemption from certain fees payable on award or alteration of a license. To ensure effective equality, minority language broadcasters in numerically smaller communities may require funds or facilities disproportionate to their size as a percentage of available resources.

States should encourage and facilitate, including through the provision of financial assistance, the production and distribution of audio and audiovisual works in minority languages.

17. Capacity Building

States should contribute to the building of the capacity of minority language broadcasting. This may be done through technical support to distribute minority language productions both domestically and abroad and to facilitate transfrontier broadcasting in minority languages. In addition, States should consider supporting the education and training of personnel for minority language broadcasting.

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: Doc 10362, Reference No 3037 of 24 January 2005

Draft recommendation adopted unanimously by the Committee on 15 September 2006

Members of the Committee: Mr Dick **Marty** (Chairperson), Mr Erik **Jurgens**, Mr Adrien Severin, Mr György **Frunda** (Vice-Chairpersons), Mrs Birgitta Ahlqvist, Mr Athanasios **Alevras**, Mr Rafis Aliti, Mr Alexander **Arabadjiev**, Mr Miguel Arias, Mr Birgir Ármannsson, Mr José Luis Arnaut, Mr Abdülkadir **Ateş**, Mr Jaume Bartumeu Cassany, Mrs Meritxell Batet, Mrs Soledad Becerril, Mrs Marie-Louise **Bemelmans-Vidéc**, Mr Giorgi Bokeria, Mrs Olena Bondarenko (alternate: Mr Vitaliy **Shybko**), Mr Erol Aslan **Cebeci**, Mrs Pia **Christmas-Møller**, Mr Boriss **Cilevičs**, Mr Domenico Contestabile, Mrs Herta Däubler-Gmelin, Mr Marcello Dell'Utri, Mrs Lydie Err, Mr Jan Ertsborn, Mr Václav Exner, Mr Valeriy Fedorov (alternate: Mr Alexey **Alexandrov**), Mr Jean-Charles **Gardetto**, Mr József Gedei, Mr Stef Goris, Mr Valery **Grebennikov**, Mr Holger Haibach, Mrs Gultakin Hajiyeva, Mrs Karin Hakl, Mr Nick Harvey (alternate: Mr Christopher **Chope**), Mr Michel Hunault (alternate: Mr Yves **Pozzo di Borgo**), Mr Rafael **Huseynov**, Mrs Fatme Ilyaz, Mr Kastriot Islami, Mr Želiko **Ivanji**, Mr Sergei Ivanov, Mr Tomáš Jirsa, Mr Antti Kaikkonen, Mr Yuriy Karmazin, Mr Karol Karski, Mr Hans Kaufmann, Mr András **Kelemen**, Mr Nikolay Kovalev (alternate: Mr Yuri **Sharandin**), Mr Jean-Pierre Kucheida, Mrs Darja Lavtižar-Bebler, Mr Andrzej Lepper, Mrs Sabine **Leutheusser-Schnarrenberger**, Mr Tony **Lloyd**, Mr Humfrey Malins, Mr Andrea **Manzella**, Mr Alberto Martins, Mr Tito Masi, Mr Andrew **McIntosh**, Mr Murat **Mercan**, Mr Philippe Monfils (alternate: Mr Luc **Van den Brande**), Mr Philippe Nachbar, Mr Tomislav Nikolić, Ms Ann Ormonde (alternate: Mr Paschal **Mooney**), Mr Rino Piscitello, Mrs Maria Postoico, Mr Christos **Pourgourides**, Mr Jeffrey Pullicino Orlando, Mr Martin Raguž, Mr François Rochebloine, Mr Armen Rustamyan, Mr Michael Spindelegger, Mrs Rodica Mihaela **Stănoiu**, Mr Christoph Strasser (alternate: Mr Johannes **Pflug**), Mr Petro Symonenko, Mr Vojtech Tkáč, Mr Øyvind **Vaksdal**, Mr Egidijus **Vareikis**, Mr Miltiadis **Varvitsiotis**, Mrs Renate Wohlwend, Mr Krzysztof **Zaremba**, Mr Vladimir Zhirinovskiy, Mr Miomir Žužul

N.B.: The names of the members who took part in the meeting are printed in **bold**

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