

**Guidelines
on the use of Minority Languages
in the Broadcast Media**

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INTRODUCTION

In its Helsinki Decisions of July 1992, the Organization for Security and Co-operation in Europe (OSCE) established the position of High Commissioner on National Minorities (HCNM) to be “an instrument of conflict prevention at the earliest possible stage”. This mandate was created largely in reaction to the situation in the former Yugoslavia which some feared would be repeated elsewhere in Europe, especially among the countries in transition to democracy, and could undermine the promise of peace and prosperity as envisaged in the Charter of Paris for a New Europe adopted by the Heads of State and Government in November 1990.

The first High Commissioner, Mr. Max van der Stoel, took up his duties on 1 January 1993. Drawing on his considerable personal experience as a former Member of Parliament, Foreign Minister of The Netherlands, Permanent Representative to the United Nations, and long-time human rights advocate, Mr. van der Stoel turned his attention to the many disputes between minorities and State authorities in Europe which had the potential, in his view, to escalate. He was succeeded on 1 July 2001 by the Swedish diplomat Ambassador Rolf Ekéus who was active in the Conference on Security and Co-operation in Europe (CSCE) during the period of post-Communist transition and is well known for his work on arms control and disarmament, most particularly as Executive Chairman of the United Nations Special Commission on Iraq (UNSCOM) where he led the weapons inspectors between 1991 and 1997. Acting quietly through diplomatic means, the HCNM has through the years been involved in over a dozen States, including Albania, Croatia, Estonia, Greece, Hungary, Kazakstan, Kyrgyzstan, Latvia, the former Yugoslav Republic of Macedonia, Moldova, Romania, Serbia and Montenegro, Slovakia and Ukraine. Involvement has focused primarily on situations where persons belonging to national/ethnic groups constitute the numerical majority in one State but the numerical minority in another (often neighbouring) State, thus engaging the interest of governmental authorities in each State and constituting a potential source of inter-State tension if not conflict. Indeed, such tensions have defined much of European history.

In addressing the substance of tensions involving national minorities, the HCNM approaches the issues as an independent, impartial and co-operative actor. While the HCNM is not a supervisory mechanism, he employs the international standards to which each State has agreed as his principal framework of analysis and the foundation of his specific recommendations. In this relation, it is important to recall the commitments undertaken by all OSCE participating States, in particular those of the

1990 Copenhagen Document of the Conference on the Human Dimension which, in Part IV, articulates detailed standards relating to national minorities. All OSCE States are also bound by United Nations obligations relating to human rights, including minority rights, and the great majority of OSCE States are further bound by the standards of the Council of Europe.

Through the course of more than ten years of intense activity, the HCNM has identified certain recurrent issues and themes which have become the subject of his attention in a number of States in which he is involved. Among these are issues of minority education and use of minority languages, in particular as matters of great importance for the maintenance and development of the identity of persons belonging to national minorities. A third recurrent theme which has arisen in a number of situations in which the HCNM has been involved is that of forms of effective participation of national minorities in the governance of States. With a view to achieving an appropriate and coherent application of relevant minority rights in the OSCE area, the HCNM requested the Foundation on Inter-Ethnic Relations – a non-governmental organization (now defunct) established in 1993 to carry out specialized activities in support of the HCNM – to bring together three groups of internationally recognized independent experts to elaborate three sets of recommendations: **The Hague Recommendations regarding the Education Rights of National Minorities** (1996); **the Oslo Recommendations regarding the Linguistic Rights of National Minorities** (1998); and **the Lund Recommendations on the Effective Participation of National Minorities in Public Life** (1999). These recommendations have subsequently served as references for policy- and law-makers in a number of States. The recommendations are available (in several languages) free of charge from the Office of the HCNM and may be accessed electronically at: www.osce.org/hcnm/documents/recommendations.

One further issue which has engaged the interest of the HCNM is the use of minority language(s) as a vehicle of communication in the broadcast media. A number of States have taken steps to limit this use, most commonly through the adoption of legislation prescribing quotas for broadcasting time in a certain language (typically that of the majority, and usually designated the "official" or "State" language) – a practice which has generated negative reactions among minorities in a number of countries insofar as broadcasting possibilities are in effect restricted.

At the March 2001 OSCE Supplementary Human Dimension Meeting on Freedom of Expression a strong interest in issues concerning media and minorities was expressed by a number of OSCE participating States. Later that month in the Permanent Council, some delegations requested that the HCNM and the OSCE Representative on Freedom of the Media address these issues in co-operation with one another.

In seeking to respond to these concerns, the HCNM decided to undertake two parallel and complementary processes focusing on the use of language as a means of communication in the broadcast media. The first was a survey of State practice across the OSCE region in order to clarify the basic facts (essentially in terms of legislation, principal regulations and critical jurisprudence) with regard to the regulation of minority languages in the broadcast media. The survey was carried out at the High Commissioner's request by the Programme in Comparative Media Law and Policy at the Centre for Socio-Legal Studies, Wolfson College, University of Oxford, and the Institute for Information Law, University of Amsterdam. The resulting study can be accessed electronically at: <http://www.ivr.nl/staff/mcgonagle.html>. In a second, separate but closely related process, the HCNM (in close co-operation with the Office of the OSCE Representative on Freedom of the Media), together with the directly responsible international organisations, engaged in a process of analysis of the specific content of relevant provisions of the applicable international instruments (and relevant case law). An initial meeting of experts comprising representatives of relevant international organizations, along with independent persons and non-governmental actors with particular expertise in this field was convened by the HCNM in March 2002. A further expert meeting took place in June 2003 to discuss a set of draft Guidelines on the Use of Minority Language(s) in the Broadcast Media based on a commissioned paper. On the basis of this work, the independent experts agreed in the autumn of 2003 on the accompanying Guidelines.

The independent experts were:

Ms. Julia Apostle (Canadian), Legal Officer, Article 19, United Kingdom; Dr. Elena Chernyavska (Ukrainian), Head of CEE Projects, MADP, European Institute for the Media, Germany; Ms María Amor Martín Estébanez (Spanish), Researcher and Consultant, Centre for Socio-Legal Studies University of Oxford, United Kingdom; Professor Karol Jakubowicz (Polish), Expert, National Broadcasting Council of Poland; Mr. Mark Lattimer (British), Director, Minority Rights Group International, United Kingdom; Mr Tarlach McGonagle (Irish), Researcher/Editor, the Institute for Information Law (IViR), University of Amsterdam, The Netherlands; Professor Tom Moring (Finnish), Swedish School of Social Science, University of Helsinki, Finland; Professor Monroe Price (American), Cardozo School of Law, New York, and Co-Director, Programme in Comparative Media Law and Policy, Centre for Socio-Legal Studies, University of Oxford, United Kingdom.

Valuable input was also received at both meetings and in subsequent communications from: the Secretariat of the Council of Europe; the Legal Service of the European Commission; the office of the Council of the Baltic Sea States Commissioner on Democratic Development; and the office of the OSCE Representative on Freedom of the Media.

Insofar as existing standards of minority rights are part of human rights, the starting point of the consultations among the experts was to presume compliance by States with all other human rights obligations including, in particular, freedom from discrimination. It was also presumed that the ultimate object of all human rights is the full and free development of the individual human personality in conditions of equality. Consequently, it was presumed that civil society should be open and fluid and, therefore, integrate all persons, including those belonging to national minorities. Moreover, insofar as the objective of good and democratic governance is to serve the needs and interests of the whole population, it was presumed that all governments seek to ensure the maximum opportunities for all those within their jurisdiction, including persons belonging to national minorities, to access the media and impart and receive information, including in their own language. This follows, *inter alia*, from the principles of pluralism, tolerance and broadmindedness and from the special role of independent and pluralistic media which is a basic condition for free, open and democratic societies.¹

The purpose of the accompanying Guidelines like The Hague, Oslo, and Lund Recommendations before them, is to encourage and facilitate the adoption by States of specific measures to alleviate tensions relating to national minorities and thus to serve the ultimate conflict prevention goal of the HCNM. It is the experience of the HCNM and consistent with international standards, that this be pursued in an open and inclusive manner which seeks to accommodate – and to integrate in the broader society – the range of express demands and existing diversity. This maximises and contributes to social cohesion.

In seeking to clarify the content of existing rights, the Guidelines aim to provide States with some practical guidance in developing policies and law which fully respect the letter and spirit of internationally agreed standards and which can balance and meet the needs and interests of all sectors of the population, including those of persons belonging to linguistic minorities. While consistently reflecting the

¹ See, e.g., *Handyside v. United Kingdom*, Judgment of European Court of Human Rights of 7 December 1976, Series A. No. 24, para. 49. See also the preamble to the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension in which OSCE participating States expressed their commitment to the ideals of democracy and pluralism.

international standards, the Guidelines are sensitive to real situations in various States – including perceptions regarding the vulnerability of (and consequent desire to promote) certain languages. In order to provide further guidance in practical situations and drawing on examples of good practice identified in the survey of State practice, suggestions are provided for ways in which States may meet their obligations with respect to linguistic minorities.

The Guidelines are also intended to be read and implemented in the context of technological developments in the modern broadcast media with the increasing possibilities in the field of communication for the use of multiple languages. The important role of the free market in ensuring a flourishing diverse and independent broadcast media are also reflected in the Guidelines, which provide options for the realisation of obligations relating to minority language use whether through public or private sector broadcasting.

The Guidelines are divided into four sub-headings which group the seventeen individual Guidelines under general principles, policy, regulation, and the promotion of minority languages. All guidelines are to be interpreted in accordance with the General Principles in Part I. In Part II, the need for States to develop policy and law in this area is established and guidance in this respect is provided. Some parameters for the limits of permissible regulation are then defined. In the final section, a number of alternatives are suggested for the promotion of minority languages. A more detailed explanation of each recommendation or guideline is provided in an accompanying Explanatory Note wherein express reference to the relevant international standards is found.

It is hoped that the Guidelines will be widely used and broadly distributed.

GUIDELINES ON THE USE OF MINORITY LANGUAGES IN THE BROADCAST MEDIA

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 fulfill 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 nationwide 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. program 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.

EXPLANATORY NOTE TO THE GUIDELINES ON THE USE OF MINORITY LANGUAGES IN THE BROADCAST MEDIA

This explanatory note provides a brief overview of the principal international standards upon which the Guidelines are based.

I. GENERAL PRINCIPLES

- 1) The right to **freedom of expression** is a cornerstone of international human rights protection. It comprises the right to receive and impart information and ideas by everyone without interference from public authority and regardless of frontiers. It is enshrined in Article 19 of the 1948 Universal Declaration of Human Rights (UDHR), Article 19 of the 1966 International Covenant on Civil and Political Rights (ICCPR), and Article 10 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). For example, paragraphs 2 and 3 of Article 19 of the ICCPR state:
 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
 3. 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.

The U.N. Human Rights Committee, established to supervise implementation of the ICCPR, has clarified in its General Comment 10 (1983) that the right to freedom of expression enshrined in Article 19 includes not only the freedom to seek and receive information and ideas of all kinds, but also in whatever medium. With regard to the ECHR, the European Court of Human Rights in the

cases of *Oberschlick v. Austria* (judgment of 22 May 1991, Series A, No. 204, para. 57) and *Autronic AG v. Switzerland* (judgment of 22 May 1990, Series A, No. 178, para. 47) has held that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed. Within the CSCE/OSCE, the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension (Copenhagen Document, para. 9.1) and the 1991 Document of the Cracow Symposium on the Cultural Heritage of the CSCE Participating States (Cracow Document, para. 6.1) reiterate the right to freedom of expression. According to the Copenhagen Document, persons belonging to national minorities have the right to use their mother tongue in private and in public (para. 32.1) as well as the right to disseminate, have access to, and exchange information in their mother tongue (para. 32.5).

In *Handyside v. United Kingdom* (judgment of 7 December 1976, Series A, No. 24, para. 49), the European Court of Human Rights has provided the following further interpretation of Article 10 of the ECHR: “Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. This means, amongst other things, that every ‘formality’, ‘condition’, ‘restriction’ or ‘penalty’ imposed in this sphere must be proportionate to the legitimate aim pursued”.

- 2) Under Article 15(a) of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) States parties recognize the right of everyone to take part in cultural life. Article 27 of the ICCPR protects the right of persons belonging to, *inter alia*, linguistic minorities to enjoy their own culture or to use their own language in community with other members of the group. The safeguarding and promotion of pluralism in the broadcast media, reflecting **cultural and linguistic diversity**, is a necessary component of the freedom of expression. According to Article 2 of the 2001 UNESCO Universal Declaration on Cultural Diversity, policies ensuring cultural pluralism give expression to the reality of cultural diversity. In Article 6, the Declaration notes that cultural diversity is guaranteed by, *inter alia*, the freedom of expression, media pluralism and multilingualism. In the *Case of Informationsverein Lentia and Others v. Austria* (judgment of 24 November 1993, Series A, No. 276), the European Court of Human Rights has emphasised the importance of pluralism

for freedom of expression. In that case, the Court specified (in para. 38) that the public's entitlement to receive information and ideas of general interest "cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor. This observation is especially valid in relation to audio-visual media, whose programmes are often broadcast very widely." In the same vein, Article 9(4) of the Council of Europe's 1994 Framework Convention for the Protection of National Minorities (Framework Convention) requires 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".

Moreover, Article 10*bis* of the 1989 (amended 2002) European Convention on Transfrontier Television (ECTT) requires States Parties to endeavor to avoid endangering **media pluralism**. The Declaration on the Freedom of Expression and Information, adopted by the Committee of Ministers of the Council of Europe in 1982, in Article II(d) stipulates the objective to achieve "the existence of a wide variety of independent and autonomous media, permitting the reflection of diversity of ideas and opinions". The OSCE participating States, in paragraph 6.2 of the Cracow Document, have expressed their conviction that a diversity of private-sector broadcasters "helps to ensure pluralism and the freedom of artistic and cultural expression".

- 3) The duty of the State to protect the **linguistic (and other) identity** of persons belonging to national minorities is entrenched in a number of international instruments and in the jurisprudence of the European Court of Human Rights. Article 1 of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (U.N. Declaration on Minorities) is particularly relevant:
 1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
 2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 4(2) further stipulates that "States shall take measures to create favourable conditions to enable persons belonging to minorities to express their

characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards”. Article 17(a) of the 1989 U.N. Convention on the Rights of the Child requires States Parties to “encourage the mass media to disseminate information and material” in accordance with the Convention’s educational goals, including the development of respect for the child’s own cultural identity and language as prescribed in Article 29. The Framework Convention echoes these provisions. In its Preamble, the Framework Convention states that a pluralist and genuinely democratic society should not only respect the linguistic identity of each person belonging to a national minority, but should “also create appropriate conditions enabling them to express, preserve and develop this identity.” Article 5(1) of the same instrument explicitly places an obligation on States Parties to promote the conditions necessary for persons belonging to national minorities “to preserve the essential elements of their identity,” including their language. OSCE participating States are committed to protect, *inter alia*, the linguistic identities of persons belonging to national minorities according to the 1989 Concluding Document of the Vienna Follow-up Meeting 1986-1989 of the Conference on Security and Co-operation in Europe (Vienna Document, Principles, para. 19), the Copenhagen Document (paras. 32 and 33), and the 1991 Report of the CSCE Meeting of Experts on National Minorities in Geneva (Geneva Document, Chapters III and VII).

- 4) The **prohibition of discrimination** on the basis of, *inter alia*, language is a bedrock principle of international human rights law. International instruments that prohibit discrimination expressly on the basis of language include: the UDHR (Article 2); the ICCPR (Articles 2(1) and 26); the ICESCR (Article 2(2)); the U.N. Declaration on Minorities (Article 2(1)); the ECHR (Article 14 and Article 1 of Protocol 12); and the 2000 Charter of Fundamental Rights of the European Union (Article 21). Among OSCE documents, analogous commitments appear in the 1975 Helsinki Final Act (Principle VII) and the Vienna Document (Principles, para. 13.7), while the Copenhagen Document prohibits “any discrimination” (para. 5.9).

The principle of non-discrimination includes a duty to treat differently persons whose situations are different, so that **effective equality** can be achieved. Paragraph 19 (under Principles) of the Vienna Document, for example, commits OSCE participating States to ensure the “full equality” of persons belonging to national minorities. If difference in treatment is to be non-discriminatory, it must be based on reasonable and objective criteria, have a

legitimate aim, and must exhibit a reasonable relationship of proportionality between the differential treatment and the aim pursued. This principle is discussed by the U.N. Human Rights Committee in its General Comment 18 on Non-Discrimination (1989) and by the European Court of Human Rights specifically in connection with linguistic rights in its seminal decision in the *Belgian Linguistics Case* (judgment of 23 July 1968, Series A, No. 6).

The principle of non-discrimination includes the possible use of **special and concrete measures** which are aimed at accelerating and achieving *de facto* equality for persons belonging to national minorities. This concept appears explicitly in Articles 1(4) and 2(2) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination and Articles 3 and 4 of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women. In paragraph 31 of the Copenhagen Document, OSCE participating States have committed to adopt, “where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms”. Article 4(1) of the U.N. Declaration on Minorities similarly stipulates that States “shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.” Article 4(2) of the Framework Convention also requires States Parties to adopt adequate measures in order to promote full and effective equality for persons belonging to national minorities, in respect of which due account shall be taken of their specific conditions. Article 7(2) of the 1992 European Charter for Regional or Minority Languages (European Language Charter) explicitly states that measures aimed at promoting the equality of minority languages should not be considered discriminatory.

II. POLICY

- 5) OSCE participating States have undertaken to protect and **create conditions** for the promotion of linguistic and other aspects of the identity of persons belonging to national minorities on their territory (Copenhagen Document, para. 33). The Framework Convention prescribes essentially the same obligation in Article 5(1). Article 9(4) of the Framework Convention also requires 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 7(1) of the European

Language Charter requires that States Parties “base their policies, legislation and practice” on, *inter alia*, “the need for resolute action to promote regional and minority languages in order to safeguard them,” and “the facilitation and/or encouragement of the use of regional or minority languages, in speech [...] in public and private life”. In Article 7(3), the Parties undertake to encourage the mass media to promote “mutual understanding between all the linguistic groups of the country”. The Convention on the Rights of the Child, in Article 17(d), stipulates that “States Parties shall encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous”.

OSCE participating States have undertaken to create conditions for persons belonging to national minorities to have equal opportunity to be effectively involved in the public life, economic activities, and building of their societies (Chapter IV of the Geneva Document). Article 15 of the Framework Convention states that “The Parties shall create the conditions necessary for the **effective participation** of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”. In paragraph 33 of the Copenhagen Document, OSCE Participating States have undertaken when adopting measures to, *inter alia*, protect the linguistic identity of national minorities, and to conduct “due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State”. In Chapter III of the Geneva Document, OSCE Participating States have recognized that appropriate democratic participation of persons belonging to national minorities or their representatives in decision-making or consultative bodies constitutes an important element of effective participation in public affairs. Article 11(3) of the European Language Charter requires Parties to ensure that the interests of minority language users are represented or taken into account specifically within broadcast media regulatory bodies.

- 6) The need for **independent regulatory bodies** derives from the principles of democracy and good governance and from international best practices. The Council of Europe’s Committee of Ministers Recommendation No. R 99(1) to Member States on Measures to Promote Media Pluralism notes that “national bodies responsible for awarding licences to private broadcasters should pay attention to pluralism in the discharge of their mission” (Appendix, item I, Regulation of ownership: broadcasting and the press). More specifically, the 1998 Oslo Recommendations regarding the Linguistic Rights of National Minorities states in Recommendation 10 that public media bodies “overseeing

the content and orientation of programming should be independent and should include persons belonging to national minorities serving in their independent capacity”.

- 7) In Recommendation No. R (96) 10 of the Committee of Ministers of the Council of Europe to Member States on the Guarantee of the Independence of Public Service Broadcasting, the role of **public service broadcasting** is underlined “as an essential factor of pluralistic communication which is accessible to everyone at both national and regional levels, through the provision of a basic comprehensive programme service comprising information, education, culture and entertainment”. The role of public service broadcasting in ensuring programming of quality and balance has been recognized by the European Court of Human Rights in, e.g., the *Lentia Case* (para. 33). The European Language Charter explicitly contemplates in Article 11(1) broadcasters carrying out “a public service mission” to address the needs of users of minority languages. The Council of Europe’s Committee of Ministers Recommendation Rec (2003) 9 to Member States on Measures to Promote the Democratic and Social Contribution of Digital Broadcasting stresses that the role of public service broadcasters in a democratic society is to support “the values underlying the political, legal and social structures of democratic societies, and in particular respect for human rights, culture and political pluralism”.

According to the Committee of Ministers of the Council of Europe “while public service broadcasters have a special commitment to promote a culture of tolerance and understanding, the broadcasting media as a whole are a potent force for creating an atmosphere in which intolerance can be challenged” (Appendix to Recommendation No. R (97) 21 to Member States on The Media and the Promotion of a Culture of Tolerance, item 5). In Recommendation No. R (99) 1 to Member States on Universal Community Service Concerning New Communication and Information Services, the Committee of Ministers points to the synergetic effects of co-operation between public authorities and the private sector for the benefit of users of new communication and information services.

- 8) The possibility for persons belonging to minorities to **establish and maintain broadcast media** in their own language is guaranteed by Article 9(3) of the Framework Convention. Article 11 of the European Language Charter specifies options which States may pursue in order to realize such possibilities for linguistic minorities.

III. REGULATION

- 9) Regulation of the broadcast media must be in **conformity with the general principles** enumerated in these Guidelines, including freedom of expression, the protection of cultural and linguistic diversity through minority language broadcasting, and the protection of linguistic identity, without discrimination. Regulations that interfere with the right to freedom of expression are subject to the requirements of Article 19(3) of the ICCPR and Article 10(2) of the ECHR, the latter of which stipulates in part that no restrictions shall be placed on the exercise of these freedoms other than such “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”.

In accordance with Article 10(1) of the ECHR, licensing constitutes a possible avenue for media regulation. Article 9(2) of the Framework Convention states that with regard to freedom of expression and access by national minorities to the media, States Parties may require “licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.” Within the OSCE, in both the Cracow Document (para. 6.1) and the report of the Geneva Document (Chapter VII), Participating States have committed to regulating the broadcast media only as prescribed by law and consistent with international standards.

- 10) The OSCE participating States recognize the right of persons belonging to national minorities to “disseminate, have access to and exchange information in their mother tongue” (Vienna Document, Cooperation in Humanitarian and Other Fields, Human Contacts, para. 45; Copenhagen Document, para. 32.5). This right should not be impaired through **licensing or other types of regulation**. The European Commission of Human Rights in its decision on admissibility in the *Case of Verein Alternatives Lokalradio Bern v. Switzerland* (16 October 1986, App. No. 10746/84), citing the *Handyside* judgment, stated that a licensing system must respect the requirements of pluralism, tolerance and broadmindedness. The Commission explained that this includes the language of the broadcast:

[...] Refusal to grant a broadcasting licence may raise a problem under Article 10, in conjunction with Article 14 of the [European]

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.

With regard to private media, the Parliamentary Assembly of the Council of Europe in paragraph 17(vi) of Recommendation 1589 (2003) on Freedom of Expression in the Media in Europe has urged Member States “to abolish restrictions on the establishment and functioning of private media broadcasting in minority languages”.

- 11) With regard to the **proportionality of any regulation**, the European Court of Human Rights has consistently found Article 10 of the ECHR to require that broadcasting regulations pursue a legitimate aim and be proportionate to that aim.

In paragraph 32 of the *Lentia Case*, the Court enumerated the following considerations, other than technical, for appropriate licensing: “the nature and objectives of a proposed station, its potential audience at national, regional or local level, the rights and needs of the specific audience and the obligations derived from international legal instruments”. In its judgment in the case of *Tele 1 Privatfernsehgesellschaft MBH v. Austria* (21 September 2000, App. No. 32240/96, paras. 39-40), the Court found that the **size of the target audience and their ease of access** to alternative broadcasts (e.g., through cable television) are relevant factors in determining the proportionality of restrictions. In the *Verein Alternatives Case*, the Commission specified that political circumstances – “such as cultural and linguistic pluralism, balance between lowland and mountain regions and a balanced federalist policy” – may also be taken into account when assessing proportionality of regulation.

- 12) The regulation of the **translation, dubbing, post-synchronisation and subtitling** of audiovisual works in minority languages and into minority languages should be consistent with the right to freedom of expression, contribute to the fulfilment of international obligations regarding minority protection as well as the promotion of understanding, tolerance and friendship between persons belonging to national minorities and the majority population of the State. Regulations should not interfere with the broadcasting or the receipt of broadcasts in minority languages. Article 12 of the European Language Charter requires States Parties to foster access to works produced in regional or minority languages by aiding and developing translation, dubbing,

post-synchronisation and subtitling, and, if necessary, by creating, promoting and financing translation and terminological research services.

- 13) The ICCPR and ECHR guarantee the freedom of expression “regardless of frontiers”. The **free reception of transfrontier broadcasting** is an aspect of the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers particularly with those with whom they share an ethnic, cultural, linguistic or religious identity, or common cultural heritage, as stipulated in Article 17 of the Framework Convention and, in similar terms, in paragraph 32.4 of the Copenhagen Document.

Article 4 of the ECTT states, in part, that the Parties shall “guarantee freedom of reception and shall not restrict the retransmission on their territories of programme services which comply with the terms of this convention”. In addition, Article 11(2) of the European Language Charter, while permitting regulation, states that “The Parties 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, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language”.

Finally, the principle that transfrontier broadcasting does not relieve States of their obligation to facilitate domestically produced broadcasting is derived from Article 9 of the Framework Convention. According to the Advisory Committee under the Framework Convention, “availability of [...] programmes from neighbouring states does not obviate the necessity for ensuring programming on domestic issues concerning national minorities and programming in minority languages” (2002 Opinion on Albania, para. 50). More specifically, Recommendation 11 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities states that “Access to media originating from abroad shall not be unduly restricted. Such access should not justify a diminution of broadcast time allocated to the minority in the publicly funded media of the State of residence of the minorities concerned”.

IV. PROMOTION OF MINORITY LANGUAGES

- 14) The principle that States should **support broadcasting in minority languages** is reflected in a variety of international instruments. Under Article 27 of the

ICCPR States Parties are obliged to ensure the effective enjoyment of the rights of minorities and to take such positive measures as may be necessary in order to protect the rights of members of minority groups to enjoy and develop their culture and language. The U.N. Declaration on Minorities states in Article 4(1) that “States shall take measures where required” to ensure that persons belonging to national minorities effectively exercise their human rights. The Framework Convention states in Article 6(1) that Parties shall “promote mutual respect and understanding and co-operation” among persons, “irrespective of linguistic identity”, through, *inter alia*, the media. The European Language Charter states in Article 7(1)(c) that the Parties agree on “the need for resolute action to promote regional or minority languages in order to safeguard them”. Under Article 10(3) of the ECTT, States Parties “undertake to look together for the most appropriate instruments and procedures to support, without discrimination between broadcasters, the activity and development of European production, particularly in countries with a low audiovisual production capacity or restricted language area”. More specifically, Article 11(1)(a, b and c) of the European Language Charter requires the State to create, encourage or facilitate radio or television channels or programming in regional or minority languages. Moreover, Article 11(1)(d) of the European Language Charter requires States Parties “to encourage and/or facilitate the production and distribution of audio and audiovisual works in regional or minority languages”.

Likewise, international instruments point explicitly to the need to provide **meaningful access** to minority language broadcasting. The Framework Convention, for example, provides in Article 9(4) that: “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”. Article 9(1) forbids discrimination against persons belonging to national minorities in their access to the media. The European Language Charter obliges States Parties in Article 12(1)(a) to “foster the different means of access to works produced in [regional or minority] languages”.

- 15) The requirements that States, when providing meaningful access to minority language broadcasting, take into account the **numerical size, concentration and distribution as well as needs and interests** of persons belonging to national minorities, are intended to assist States in implementing effective equality of access. The European Language Charter, in Article 11(1), states that policy towards the media should be designed, *inter alia*, “according to the situation of each language”. Recommendation 9 of the Oslo Recommendations regarding the Linguistic Rights of National Minorities states more specifically

that broadcast time and quality should be “commensurate with the numerical size and concentration of the national minority and appropriate to its situation and needs”. In facilitating access to the media for persons belonging to national minorities, the Framework Convention requires States Parties to permit cultural pluralism and to promote tolerance (Article 9(4)) as well as to promote mutual respect and understanding and co-operation among all persons (Article 6(1)). Article 7(1)(e) of the European Language Charter highlights the importance of the maintenance of links, including through broadcasting, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages. The same instrument also underlines the importance of the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire (Article 7(1)(g)). Accordingly, an appropriate level of minority language broadcasting should be encouraged at the nationwide level. This is particularly relevant for dispersed minorities.

Subparts A, B and C of this section of the Guidelines present a non-exhaustive list of recommended ways that States may promote minority languages in the broadcast media. They reflect best State practices as well as the principles set out in the Guidelines. The special responsibility to enable the existence of **public service broadcasting** in minority languages is highlighted. The Central European Initiative’s 1994 Instrument for the Protection of Minorities states in Article 19, *inter alia*, that “In [the] case of TV and radio in public ownership, the States will assure, whenever appropriate and possible, that persons belonging to national minorities have the right of free access to such media including the production of such programmes in their own language.” In the framework of the EU, the June 1997 Protocol on the System of Public Broadcasting in the Member States to the Treaty of Amsterdam establishes that “the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism”.

Encouragement of minority language broadcasting by the **private media** is possible through a variety of means, including **licensing**. The Council of Europe’s Committee of Ministers has recommended to Member States that “national bodies responsible for awarding licences to private broadcasters should pay particular attention to the promotion of media pluralism in the discharge of their mission” (Appendix to Recommendation No. R (99) 1 to Member States on Measures to Promote Media Pluralism, item I, Regulation of

ownership: broadcasting and the press). The OSCE Geneva Document, in Chapter VII, calls for specific support by the State to the electronic mass media by providing information so that the latter takes into account in their programmes, *inter alia*, the linguistic identity of national minorities.

- 16) The call for States to consider providing **financial support** for minority language broadcasting is derived from the requirements of effective equality in access to the broadcast media for persons belonging to national minorities. Article 19 of the Central European Initiative's Instrument for the Protection of Minority Rights stipulates, *inter alia*, that "States guarantee the right of persons belonging to a national minority to avail themselves of the media in their own language, in conformity with relevant State regulations and with possible financial assistance". The principle of non-discrimination requires that minority language broadcasters receive an equitable proportion of State support for the media. Article 11(1)(f) of the European Language Charter stipulates that States Parties must either "cover the additional costs of those media which use regional or minority languages, wherever the law provides for financial assistance in general for the media," or "apply existing measures for financial assistance also to audiovisual production in the regional or minority languages".

Regarding the **production and distribution of audiovisual works** in minority languages, as noted above Article 11(1)(d) of the European Language Charter obliges States Parties "to encourage and/or facilitate the production and distribution of audio and audiovisual works in the regional or minority languages." In Recommendation No. R (93) 5 of the Committee of Ministers of the Council of Europe, entitled *Containing Principles Aimed at Promoting the Distribution and Broadcasting of Audiovisual Works Originated in Countries or Regions with a Low Audiovisual Output or a Limited Geographic or Linguistic Coverage on the European Television Markets*, the Committee has expressed the view that the freedoms enshrined in Article 10 of the ECHR "can be exercised meaningfully by audiovisual producers in countries and regions with a low audiovisual output or a limited geographic or linguistic coverage by enabling them to have an effective access to the European television markets for the distribution of their works". Within the European Union, Recital 31 of the Preamble to Directive 97/36/EC stresses the need for the Community to promote independent producers "taking into account the audiovisual capacity of each Member State and the need to protect lesser used languages of the European Union." In defining the notion of "independent producer", Member States should "take appropriate account of criteria such as

the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights” (Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on The Co-ordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities).

- 17) The requirement to **build the capacity** of minority language broadcasting is implicit in the requirements of many of the instruments cited above. Article 11(1)(g) of the European Language Charter explicitly requires States Parties “to support the training of journalists and other staff for media using regional or minority languages”.