The use of minority languages in the broadcast media: Introducing new guidelines

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Introduction
The following is intended to provide an introduction to the new Guidelines on the Use of Minority Languages in the Broadcast Media\(^2\) developed by a group of independent experts at the request of the OSCE High Commissioner on National Minorities (HCNM). The Guidelines and Explanatory Note were presented for consideration and discussion at an international conference on the subject co-hosted by the HCNM and the OSCE Representative on Freedom of the Media which took place in Baden bei Wein in Austria on 24-25 October 2003.\(^3\) It is the intention of the HCNM that the new Guidelines will assist States in adopting in this field policies, laws and practices which meet international standards and are appropriate to the factual situation of their country.

The High Commissioner was motivated to act in this field out of concern about the practice in a number of OSCE participating States with regard to the use of minority languages as a vehicle of communication in the broadcast media.\(^4\) In a number of situations where the HCNM has been involved persons belonging to linguistic minorities were or remain restricted in their opportunities to establish their own broadcast media and/or to access television and radio programming provided in their own language. In a number of cases States adopted legislation prescribing quotas for broadcasting time which in effect limit minority language

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\(^2\) For the full text of the Guidelines, see infra pp. 111.

\(^3\) The conference brought together officials and civil society representatives from 30 OSCE participating States together with representatives of intergovernmental and international non-governmental organizations, as well as independent experts. The conference proceedings and related materials will be published in a forthcoming special issue of the Mercator Media Forum, see http://www.aber.ac.uk/~merwww/english/publications.htm.

\(^4\) For a comprehensive survey of State legislation and related practice with regard to the use of minority languages in the broadcast media which was prepared at the High Commissioner's request by the Programme in Comparative Media Law and Practice at the Centre for Socio-Legal Studies, Wolfson College, Oxford University and the Institute for Information Law, University of Amsterdam, see Tarlach McGonagle, Bethany Davis Noll & Monroc Prince (eds.), Minority-Language Related Broadcasting and Legislation in the OSCE, http://www.ivir.nl/index/english.html or http://www.pcmlp.socleg.ox.ac.uk.
use. In some cases a direct limit has been imposed on the amount of broadcasting allowed in one or more languages. In others, while the regulation may not directly target a particular minority language or languages for restriction, the prescription of high quotas (or even exclusive use) for broadcasting in the State language has had the same effect of setting a maximum limit for broadcasting in other languages. The retransmission of foreign broadcasting may also be subject to regulation, including limitations on the volume of programming that may be relayed on domestic networks and the imposition of translation or other requirements. This has had negative effects in relations between persons belonging to national minorities and so-called ‘kin-States’.

Frequently, prescribed quotas for language broadcasting and other forms of regulation fail to make any distinction between publicly and privately owned and run broadcasting, meaning, in practice, that private media established and funded by persons belonging to national minorities (or others) can broadcast in their mother tongue only to a limited extent irrespective of their intended or actual audiences. Such limitations on private broadcasters are particularly problematic in situations where the private sector has effectively taken over the function — including minority language broadcasting — of a public service broadcaster (PSB).

Access to the media in one’s own language is important both for the maintenance of cultural identity and for exercising one’s right to freedom of expression including to impart and receive information and ideas of general interest, regardless of frontiers. Obviously, this is only possible where the language of broadcasting is understood. Thus, not only the substance of the ideas and information expressed, but also the medium of choice — including both the chosen form and the language of transmission or reception — are protected since ‘any restriction imposed on the means necessarily interferes with the right to receive and impart information.’ In our complex and pluralist societies, the

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5 A ‘kin-State’ is the State in which the ethnic/national minority constitutes the majority or dominant titular community, e.g., the ‘kin-State’ of the ethnic/national Hungarian minority in the Slovak Republic is the Republic of Hungary.

6 As guaranteed by Article 19 of the 1966 International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR). See also Case of Informationsverein Lentia and Others v. Austria, Judgment of 24 November 1993, Series A, No. 276, para. 38, stressing the role of freedom of expression in imparting information and ideas ‘of general interest, which the public is moreover entitled to receive’.

7 Autronic AG v. Switzerland, Judgment of 22 May 1990, Series A, No. 178, para. 47. See also: Oberschlick, Judgment of 22 May 1991, Series A, No. 204, para. 57; and General Comment No. 10 (1983), para. 2 (UN doc.HRI/GEN/1/Rev.6 at 132, 2003). The relationship between language and freedom of expression has been articulated by the Supreme Court of Canada in the case of Ford v. Quebec as follows: ‘Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one’s choice’; quoted in Leonid Railman, Media Legislation, Minority Issues, and Implications for Latvia, http://www.policy.hu/railman/ PolicyPaper.htm, p. 8.