
Regulation of Minority-Language Broadcasting

"Mehr Sprachen – mehr Europa" (More languages - more Europe) was the theme of a specialist conference on foreign languages held in 2002. However, the reverse is also true: "More Europe - more languages", a fact clearly illustrated by the problems in the recruitment of translators and interpreters for the new official languages of the 25-state European Union.

Language is an important element of European history, culture and politics; it is highly relevant to all of us that we should have the free choice of language. This also, and perhaps especially, applies to those for whom their country's official language is not their mother tongue, maybe because they speak a national minority language. These citizens' desire to choose their "own" language also applies to the audiovisual media.

This *IRIS plus* therefore considers whether - and if so, how - the use of minority languages in broadcasting is protected and promoted. It investigates the examples of Ireland, Latvia, Poland, Russia and Ukraine. This *IRIS plus* also contains information about the international legal framework which aims to determine how minority languages should be treated.

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Introduction¹

At first glance, the freedom to choose and use one's own language would appear to lie at the very heart of the right to freedom of expression, as guaranteed by international human rights law standards. Without detracting from the accuracy of this statement, it must be conceded that the conventional protection afforded to freedom of expression is surprisingly unexpansive on the details of the crucial issue of linguistic freedom. A cohesive examination of existing protection at the international level would involve recourse to a number of documents of differing parentage.² Given the importance of language for the promotion of culture; assertion of individual and collective (and, of course, national) identity; safeguarding equality; enhancing participation in political, social and economic circles, etc., it is all the more surprising that the relevant international standards should be something of a patchwork quilt.

In a European context, Article 10 of the European Convention on Human Rights (ECHR) is, of course, of fundamental importance. Careful consideration should also be given to the relevant provisions of the more thematically-focused Framework Convention for the Protection of National Minorities (FCNM) and European Charter for Regional or Minority Languages.

Article 9 FCNM is modelled on Article 10 ECHR,³ but introduces additional specificities of particular importance to persons belonging to national minorities. These include the express stipulation that the right to freedom of expression includes linguistic freedom and non-discrimination as regards access to the media (Article 9.1); the unhindered creation and use of print and broadcast media outlets (Article 9.3) and the requirement for 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).

The European Charter for Regional or Minority Languages protects and promotes the use of regional or minority languages in a variety of ways, including in the broadcasting sector. The relevant provision is Article 11 and it, too, is redolent of Article 10 ECHR.⁴ In the graduated approach that typifies the Charter, Article 11 sets out a number of possible options for the realisation/enhancement of broadcasting in regional or minority languages in the public service and general/commercial broadcasting sectors. Its provisions embrace issues such as the production and distribution of audiovisual works; the provision of financial assistance; the training of journalists and the representation of users of regional or minority languages on relevant decision-making boards.

Similar ground is covered by paras. 8-11 of the Oslo Recommendations Regarding the Linguistic Rights of National Minorities, which were elaborated to elucidate "the content of minority language rights generally in the situations in which the HCNM⁵ is involved".⁶

Figure 1: Ratification of Relevant Council of Europe Conventions⁷

Country	European Convention on Human Rights	Framework Convention for the Protection of National Minorities	European Charter for Regional or Minority Languages	European Convention on Transfrontier Television	Protocol Amending Convention on Transfrontier Television
Ireland	25-02-1953	07-05-1999	-	-	-
Latvia	27-06-1997	11-05-1995 (S)	-	26-06-1998	01-10-2000 (T)
Poland	19-01-1993	20-12-2000	12-05-2003 (S)	07-09-1990	01-10-2000 (T)
Russia	05-05-1998	21-08-1998	10-05-2001 (S)	-	-
Ukraine	11-09-1997	26-01-1998	02-05-1996 (S)	14-06-1996 (S)	-

The treatment given in these international human rights instruments to the already-identified issues cannot realistically expect to match the detail of concrete situations or the serendipities and challenges that surface in real-life situations.

The complex interaction of a number of diverse factors affects the use of specific languages in the audiovisual sector.⁸ These include linguistic topography (including transfrontier considerations); official/State recognition of minorities/languages and market sustainability, all of which help to determine the climate in which certain types of language-broadcasting take place. The licensing of broadcasters, for its part, has great potential for stimulating and securing access to broadcasting opportunities for specific interest groups, including minorities. The most direct and palpable source of influence, however, is the regulation of broadcasting output itself: legal prescriptions governing the use of minority languages in public (and private) means of communication, especially access to broadcast facilities and time. Also of importance are questions of the representation of minorities on relevant authorities and decision-making bodies; public service broadcasting requirements and practices, especially as regards regional programming; the development of notions and strategies of social and special-interest broadcasting; miscellaneous financial, fiscal and capacity-building initiatives. Individual country approaches typically amalgamate these features in some shape or form.

The first section of this article presents the varied and often contrasting approaches to the question of (minority-) language regulation in the broadcasting sectors of five different countries: Ireland, Latvia, Poland, Russia and Ukraine. This choice of countries reflects a broad geographical spread and illustrates the different priorities that attach to relevant issues and the strikingly different approaches that have been adopted to pursue relevant goals. The second section of the article proceeds to detail a recently elaborated set of international Guidelines on the Use of Minority Languages in the Broadcast Media that draw inspiration from, and indeed seek to crystallise, existing international standards (both legal and political) dealing specifically or even implicitly with the topic.⁹ Structurally, the article therefore progresses from an examination of the *status quo* in a number of states, to a presentation of exhortatory standards.



Ireland

The Irish language is the first official national language of Ireland (by virtue of Article 8(1) of *Bunreacht na hÉireann* (the Constitution of Ireland), 1937),¹⁰ even though it is spoken regularly by only a minority of the population. According to the results of the 2002 Census, only 42.8% of the country's total population of 3.9 million persons¹¹ consider themselves able to speak Irish.

One Irish-language television station (*TG4*) and one Irish-language radio station (*Raidió na Gaeltachta*) broadcast nationwide. Both are public service stations and maintain a steady, if minority, audience, drawn to a large extent from *Gaeltacht* (i.e., Irish-language speaking) areas. Their services complement the offer of Irish-language programming on the mainstream radio and television channels of *Radio Telefís Éireann* (RTÉ - the national public service broadcaster). In the independent broadcasting sector, some degree of Irish-language programming is provided by most radio stations, but the volume of such programming varies considerably from station to station and generally remains quite low.

Existing broadcasting legislation is strewn with general references to the promotion of the language (and other aspects of culture). For instance, Section 28(2)(a) of the Broadcasting Act, 2001,¹² obliges the public broadcaster to "provide a comprehensive range of programmes in the Irish and English languages that reflect the cultural diversity of the whole island of Ireland and include, both on television and radio [...] programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of the community generally as well as members of the community with special or minority interests and which, in every case, respect human dignity." Section 28(2)(b) then requires the public broadcaster to "provide programmes of news and current affairs in the Irish and English languages, [...]".

Sections 42 *et seq.* of the 2001 Act establish *Teilifís na Gaeilge* (now known as *TG4*) as a body corporate with the responsibility of providing a national, public service, free-to-air broadcasting service. At the moment, the station benefits from a statutory obligation on RTÉ to provide it with the equivalent of one hour's programme material each day (s. 47), but the Government has stated its intention to "establish *TG4* as a separate statutory body", in line with existing legislation on the matter.¹³ Section 45 of the Act requires *TG4* to "commission the making of programme material, originate programme material and [...] acquire programme material from such sources as it thinks appropriate so as to ensure that the programme schedules [...]":

"(a) provide a comprehensive range of programmes, primarily in the Irish language, that reflect the cultural diversity of the whole island of Ireland and include programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of those of all age groups in the community whose preferred spoken language is Irish or who otherwise have an interest in Irish,
(b) provide programmes, primarily in the Irish language, of news and current affairs,
[...]"

In addition to the statutory provisions governing broadcasting organisations, Irish broadcasting legislation also contains relevant provisions concerning the Broadcasting Commission of Ireland (BCI), the statutory body with responsibility for the licensing, monitoring and development of independent broadcasting services

in Ireland (s. 11 of the 2001 Act). Furthermore, under the Radio and Television Act, 1988, the BCI must have due regard to a number of concerns when considering applications for sound broadcasting contracts, such as "the quantity, quality, range, and type of programmes in the Irish language and the extent of programmes relating to Irish culture proposed to be provided" (s. 6(2)(d)). It is also required to consider applicants' responsiveness to the needs and interests of target communities, and in respect of areas comprising a *Gaeltacht* area, particular attention should be paid to the preservation of the Irish language as a spoken language (s. 6(3)).

In practice, the BCI's relationship with independent broadcasters is regulated, based on legislation, by way of individual contracts with each broadcaster. The terms of such contracts are set by the Commission and include a range of programming requirements, *inter alia*, in respect of programmes in the Irish language. The BCI, however, has yet to invoke these clauses to any significant extent. Each contractor is bound by its individual programme policy statement and programme schedule, which contain commitments to provide certain levels of Irish-language programming.

The BCI has formulated a Policy Statement on the Irish language;¹⁴ it has had an Advisory Committee on Irish-language programming since 1999 and its first-ever, full-time Irish Language Co-ordinator was appointed in 2002. The key objectives of the new post are to "coordinate the implementation of the recommendations of the Advisory Committee on Irish Language Programming and to increase the use of the Irish language across the range of broadcast output in the independent sector nation wide."¹⁵

The Forum on Broadcasting¹⁶ was established in 2002 to consider, *inter alia*, the roles of public and commercial/independent broadcasters in Ireland today.¹⁷ Its Final Report contained four main recommendations regarding broadcasting in the Irish language: (i) the amount of extra public funding required for the establishment of *TG4* as a separate statutory entity should be determined before its establishment as such; (ii) RTÉ's obligations concerning Irish-language broadcasting (including bilingual programmes) should be a central point in its Charter; (iii) the availability of programmes for learners of Irish should be secured at various levels on RTÉ or *TG4*, and (iv) the BCI should continue seeking to enhance and incentivise Irish-language broadcasting in the commercial sector.¹⁸

The Broadcasting (Funding) Act 2003¹⁹ sets aside 5 per cent of net receipts for television licence fees for the funding of grants to support certain types of television and radio programmes, including programmes on Irish heritage, culture and experience and the Irish language. News and current affairs programmes are not eligible for funding under the terms of the Act, and another key condition is that these programmes will have to be broadcast at peak times. It is estimated that EUR 8 million per annum will be available for the scheme(s) envisaged by the Act and most broadcasters licensed in the State will be eligible to apply.

Concerning digital television: of the envisaged six multiplexes to serve the Irish market, a half of one multiplex has been set aside for *TG4* by statute (see Section 9 of the Broadcasting Act, 2001), but at the time of writing, no multiplex operator has yet been licensed.

Latvia

On 30 December 2003, the population of Latvia stood at 2,320,200, according to the data of the Central Statistical Bureau of Latvia.²⁰

Ethnic non-Latvians constitute around 42% of the population, dominated by Russians (29.61%) and including Byelorussians (4%), Ukrainians (2.6%), and smaller groups of Poles, Lithuanians, Jews and Roma.²¹ According to the Constitution, Latvian is the only official language of the country (Article 4).²² Any other language is defined as “foreign” in Article 5 of the Statute “On the State Language” and is subject to restrictive regulation.

There is no definition of national minority anywhere in Latvian law, although the Constitution and legislation do contain provisions on the protection of national minorities.

Article 100 of the Constitution guarantees free speech and outlaws censorship. The principle of non-discrimination is included in Article 91: “All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind”. The only article of the Constitution that directly concerns persons belonging to national minorities is Article 114: “Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.”

The Statute “On Unrestricted Development of National and Ethnic Groups of Latvia and the Rights to Cultural Autonomy” (adopted by the Supreme Council – Latvia’s Parliament before 1993 – on 19 March 1991) does not provide concrete mechanisms for the implementation of the principles it sets out, such as “National societies, associations and organizations have the right to use government mass media resources as well as to establish their own mass media” (Art. 13).²³ No subsequent executive orders have been issued to this end.

The Statute “On the State Language” (adopted by the *Saeima*, the Parliament, on 9 December 1999)²⁴ acknowledges the right of minorities to use their native or other languages (Article 1, paragraph 4). However, governmental intervention in the private sphere to regulate language use is envisaged to a degree determined by a “legitimate public interest”, e.g. in matters affecting public health, public safety and order, taking into account the principle of proportionality (Article 2, paragraph 2). As regards the use of languages in the media, Article 16 of the Statute leaves that issue to the Statute “On Radio and Television”.

Article 62 of the Statute “On Radio and Television” (adopted by the *Saeima* on 24 August 1995)²⁵ stipulates that Latvian Radio and Latvian Television (public broadcasters) shall produce their programmes for the first distribution network (*LTV1*) in the state language only, while their programmes on the second distribution network (*LTV2*) shall be *primarily* in the state language.

Later, on 30 October 1997, the quota for *LTV2* was set in more specific terms: at least 80 per cent of airtime should be in Latvian.²⁶ It should be mentioned here that all remaining time is *de facto* in Russian only.

Similar language restrictions apply to public radio.²⁷ Although the majority of foreign-language time is allotted to productions in Russian, half-hour radio broadcasts prepared by representatives of other minorities (Armenian, Azeri, Byelorussians, Estonian, Georgian, German, Greek, Jewish, Lithuanian, Polish, Tartar and Ukrainian) are aired on a regular basis.²⁸

The National Radio and Television Council (NRTC), develops governmental strategies related to broadcast media, issues licences, monitors compliance of private broadcasters with the law

and imposes sanctions – all according to the Statute “On Radio and Television”.²⁹ Nine members of the NRTC are chosen by the *Saeima* from among persons well known to the public; no-one from a linguistic minority has ever been elected to this body.

The percentage of *private* radio and television broadcasts allowed in minority languages is restricted to 25% per twenty-four hours (Article 19 of the Statute “On Radio and Television”). This provision is not applicable to cable or satellite television and satellite radio.³⁰ As a result, there is a trend amongst Russian speakers to turn to services that offer television programmes from Russia.³¹

Private stations are often fined and warned by the authorities for exceeding the language quota prescribed by the law. According to Article 40(2) of the Statute “On Radio and Television”, the NRTC is entitled to suspend the broadcasts of a television or radio channel for up to seven days for violations of the Statute. The Council is also entitled to bring an action before the courts against a television or radio company to try to terminate its broadcasting for regular violations of the law. The Code of Administrative Misdemeanours provides for the possibility to fine a broadcaster for violations. The fine can be up to LVL 1,500 (approx. EUR 2,500); for a subsequent violation within one year, the fine can rise to LVL 2,500 (Section 201(5), paragraphs 2 and 3).

The quota restricting the amount of airtime in minority languages in the private broadcast media was recently challenged in the Constitutional Court of Latvia by 24 opposition deputies of the Parliament. In its judgment of 5 June 2003³² the Court declared the language quotas as stipulated in Article 19 of the Statute “On Radio and Television” to be in conflict with Article 100 of the Constitution (see above). The Court found that such a language restriction could not be regarded as necessary (mainly since the minorities had turned to watching foreign TV on cable and satellite) or proportionate in a democratic society (implicitly advising the use of licensing mechanisms to achieve the aims of “further public integration”). At the same time the Court decision does not refer to the quotas for the public broadcasters, which seem to remain intact. Moreover, up to now, no necessary changes in the Statute “On Radio and Television” have been made by the Parliament.

Poland

The Polish Constitution of 2 April 1992³³ safeguards the right to freedom of expression (Articles 54, 14) and minority rights (Articles 30 (dignity) and 32 (equality) and, in more explicit terms, Article 35). Article 35(1) guarantees to “Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture”. The reference here to language should be read in conjunction with Article 27, which designates Polish as the official language of the Republic, but also introduces the caveat that “this provision shall not infringe upon national minority rights resulting from ratified international agreements”.

It is estimated that 2-3%³⁴ of the country’s entire population of 38.65 million³⁵ are persons belonging to national minorities (e.g., Germans, Ukrainians, Byelorussians, Lithuanians, Slovaks, Russians, Jews, Armenians, Czechs, Roms, Tartars, Lemkos (Lemkowie) and Karaites (Karaimi)).³⁶ Much of the broadcasting that currently targets minorities in Poland is provided by the public service broadcaster, often at regional and local levels.

The Polish Constitution entrusts to the National Broadcasting Council of Poland (NBC) the task of upholding freedom of speech, the right to information and the public interest as regards radio and television broadcasting. The Broadcasting Act of 1992 (as amended)³⁷ contains a number of provisions that are of direct and indirect relevance to broadcasting in the languages of national minorities. Article 21(1) sets out the tasks of public service broadcasting, which include the dissemination of knowledge of the Polish language (Article 21(1)(6a)). Article 21(2) deals with the programme services of public radio and television and requires public broadcasters, *inter alia*, to “have regard to the needs of ethnic groups and minorities” in this connection (Article 21(2)(9)).

For present purposes, a key concept in Polish broadcasting legislation is that of the “social broadcaster”. The notion is defined in Article 4(1a) of the Broadcasting Act as being a broadcaster who:

- a) propagates learning and educational activities, promotes charitable deeds, respects the Christian system of values, being guided by the universal principles of ethics, and strives to preserve national identity in the programme service,
- b) does not transmit programmes or other broadcasts referred to in Article 18 paragraph 5³⁸ within the programme service,
- c) does not transmit advertising or teleshopping, sponsored programmes or other sponsored broadcasts,
- d) does not charge any fees for transmission, retransmission or reception of the programme service.

According to Article 39b(1) of the Act, associations, foundations, churches (or a legal person of a given church) and religious organisations (as regulated by legislation) can all apply to acquire the status of “social broadcaster”. Thus, this is clearly an option for minority (language) organisations. One major advantage flowing from the acquisition of such status is that it exempts broadcasters from “fees payable for awarding or altering the licence” (Article 39(2)), on the strength of the social role they fulfil. However, for economic reasons, no minority association has yet availed itself of this opportunity, as the start-up costs for broadcasting activities are high, even without having to pay the aforementioned fees.

Work on a draft Bill on national and ethnic minorities has been taking place since the 1990s. The beginning of 2002 saw the new presentation of a draft Bill on National and Ethnic Minorities in the Republic of Poland. This draft text provides, *inter alia*, that public radio and television should have to (i) promote awareness of the history, culture and lifestyles of national minorities in Poland, and (ii) produce and transmit programmes in their mother tongues. It also provides for the public financing of various non-commercial activities in the sphere of minority culture(s). However, at the time of writing, the draft Bill had yet to be adopted.

A consciousness of the needs and interests of persons belonging to national minorities is also reflected in non-legislative initiatives, not least by those involving the NBC. It accepts communications (complaints and recommendations) from minority associations; it initiates and organises meetings and conferences on minorities’ difficulties and their involvement in broadcasting activities³⁹ and, when deciding on the allocation of income from licence fees among public radio stations, it gives due consideration to the impact applicants’ programming proposals are likely to have on minorities.

Another development worth singling out for attention is the establishment by media organisations in December 2001 of the Council of Electronic Media of National and Ethnic Minorities. It

comprises members of minority groups and it seeks to promote dialogue concerning public radio and television between national and ethnic minorities on the one hand, and public institutions on the other. Its primary goals include: the introduction of a model of cooperation between national and ethnic minorities and national public media institutions; ensuring that decisions concerning programmes for minorities are taken in consultation with the Council; developing clear criteria governing programmes targeting minorities, and ensuring greater representation for minorities on the Programme Councils of public radio and television broadcasters.

Russia

In the Russian Federation (RU), the main sources of law on the issue of languages in broadcasting are the Constitution, and also the norms of international law and intergovernmental treaties.

The Constitution, adopted on 12 December 1993,⁴⁰ guarantees equality regardless of nationality and does not provide special privileges for minorities (Article 19).

The language-related provisions of the Constitution are developed in statutes. In Article 69 the Constitution guarantees the rights of aboriginal numerically small peoples. A special regime regarding such peoples (living in communities of fewer than 50,000 people) and the peoples of the Far North is set down by the Statute “On the Guarantees of the Rights of Numerically Small Indigenous Peoples of the Russian Federation” of 1999.⁴¹ This statute provides them with the right to an original socio-economic and cultural development and obliges the Government to provide assistance by devising programmes for providing support, allocating funds, etc. It guarantees the right to preserve and to develop native languages as well as to receive and disseminate information in native languages and to establish mass media.

The Constitution (para. 2 of Article 26) confirms the right of everyone to use his/her native language, and to the free choice of the language of communication. It further (Article 68) establishes that while Russian is the state language of the Federation, the national republics have the right to set their state languages, which in fact become parallel official languages of the territories. In fact, while Russian remains the dominant language and also the language of communication between all ethnic groups in the country, other languages are widely spoken and are actively promoted in the 21 national republics of the Federation, as well as in 11 autonomous territories and regions and other areas of dense population of the ethnic groups.

The use of the state language and other languages in the territory of Russia is further regulated by the 1991 Statute “On the Languages of the Russian Federation”.⁴² Article 20 of the Statute deals specifically with language-use by the mass media. In particular, it states that broadcasts of the all-Russian TV and radio programmes are conducted in Russian as the state language of the RU. At the same time, the Russian language, the state languages of the republics, as well as other languages of the peoples living on their territories can be used in the mass media of all subjects of the Federation.

In practice, *Rossia* national (all-Russian) TV channel has slots for broadcasting by regional stations, and whenever applicable they broadcast in the national language. These stations are part of the Moscow-based all-Russian TV and radio holding company, thus giving rise to friction. E.g., in October of 2003 the State Commit-

tee on Minorities and a number of cultural minorities organisations of the Karel Republic formally complained to *Rossia* about the disappearance of broadcasting in the Karel, Finn, and Veps languages in the regional slots. The reason was that in early 2003 there was a change in the concept of broadcasting of the state channel for the territory - without consideration of the opinion of local authorities and non-governmental organisations.

Several national republics (Tartar, Ingush, etc.) have recently established state-run broadcasters that are not subordinate to Moscow; their national-language programmes claim a large share of the local audience.

No normative act on regulation of broadcasting deals with the use of the languages of the peoples of the Russia. The 1991 Statute "On the Mass Media"⁴³ establishes only the general conditions for issuing and suspending/revoking licences for television and radio broadcasters. Several governmental rulings (No.1359 of 7 December 1994, No.698 of 26 June 1999, etc.) specify the licensing procedures. None of these acts specify the conditions of minority participation in establishing and managing broadcasting.

The Statute "On the Mass Media" envisages that the language in which a mass medium is going to be disseminated (print or broadcast) should be indicated during the registration process (Article 10). However, the choice of language(s) is made by the founder of a mass media outlet. The language indication does not influence the outcome of the registration process, though the Statute requires re-registration if the language is changed (Article 11). Mass media shall be re-registered according to the same procedures by they were originally registered, which is a longer process than a simple notification procedure, such as, e.g., in the case of a change of location of the editorial office.

While there are no legal obstacles to obtaining licences for broadcasting in a language other than Russian, the issue of the language of broadcasts may be considered during competition for a license as a means of satisfying socially-significant interests. On the other hand, the licensing body (the Ministry of Press, Television, Radio and Mass Communications) has never adopted special measures in order to facilitate access to broadcasting for persons belonging to national minorities (e.g., by announcing a competition for minority language broadcasting with a reduced licence fee). It would be fair to say that governmental policy in the sphere of minority-language broadcasting is still to be defined.

The 1995 Statute "On Advertising"⁴⁴ gives great freedom to the use of language in advertising in mass media (Article 5). It permits advertising "in Russian and, at the discretion of the advertiser, additionally in the official languages of the republics and native languages of the peoples of the Russian Federation. This statute does not apply to radio broadcasts, television broadcasts or printed publications produced exclusively in the official languages of the republics or in the native languages of peoples of the Russian Federation or in foreign languages [...]."

Ukraine

The predominant languages in Ukraine are Ukrainian and Russian. This reflects both the ethnic composition of Ukraine and its historical development. An official census was taken in 2001 and according to its official results the population of the country was 48,457,000. Ukrainians make up 78% of the population, Russians - 17%, and 5% - others.⁴⁵

The Constitution of Ukraine was adopted on 24 June 1996.⁴⁶ Article 11 of the Constitution promulgates that the "State promotes the consolidation and development of the Ukrainian nation, of its historical consciousness, traditions and culture, and also the development of the ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine." Article 10 establishes Ukrainian as the state language, but also guarantees free development, use and protection of Russian (specifically naming it!) and other languages of national minorities.

General legislation affecting minorities and their linguistic rights is based on the Statute "On Minorities in Ukraine"⁴⁷ of 1992 and contains general equality principles on the rights of minorities and the native population as well as prohibitions on any discrimination on the ground of nationality.

Consideration should be given to the Statute "On Languages in Ukrainian SSR" adopted, under Soviet rule, on 28 October 1989.⁴⁸ Article 3 of the Statute obliges the government to provide conditions for the development and use of the languages of other nationalities of Ukraine, while Article 4 specifically provides for the free use of Russian. Article 33 provides that Ukrainian is a language of "official" mass media, but that they can use other languages also.

Ukrainian law establishes rights and guarantees for national minorities but does not establish a system for their implementation. The general rules that govern the protection of minority rights give equal rights both to minorities and to all other citizens.

The Statute "On Television and Radio Broadcasting" of 22 February 1994 (Article 9)⁴⁹ stipulates that broadcasting should be done in the state language. But this rule is followed by the provision: "Broadcasts in certain regions may also be in the language of national minorities densely inhabiting those areas." When an entity applies for a frequency, it must state the percentage of the programming that will be in Ukrainian and in other languages in the letter of application. Then the issue becomes a subject of informal negotiations between the applicant and the National Council on Television and Radio Broadcasting (NCTRB), the state body that issues licences and reinforces the obvious governmental policy to promote Ukrainian language and culture. The resulting figures are then fixed in the licence requirements and must be followed by the broadcaster.

On 20 November 2003 the Parliament, by an overwhelming majority, adopted at the first reading the amendments to the Statute "On Television and Radio Broadcasting". According to the bill there will be a minimum quota for national broadcasters of 75 percent of time in the Ukrainian language and of 50 percent of time for national productions. All feature films to be broadcast shall be dubbed into Ukrainian.

In the meantime, most broadcasting is done in Ukrainian and Russian. In border regions, programmes from neighbouring countries are retransmitted on air and cable channels. The availability of Russian television and radio channels and the use of Russian by Ukrainian broadcasters have, however, been reduced. In 2001, and then in 2003, a number of Russian channels were removed from packages or from inexpensive basic packages offered by cable operators in Kiev, Kharkov and elsewhere on a mass scale. One such incident, concerning the removal of Russian channels by a Kiev operator in August 2003, raised so many protests from its subscribers that the case was heard by the governmental Anti-monopoly Committee and the NCTRB which ordered the operator to put the Russian channels back, but with mixed results.

The legal basis in all cases involving removing channels was violation of copyright law. Retransmission of foreign broadcasts in any language requires a broadcasting license from the NCTRB. In order to obtain or to keep it, from 1 January 2003 onwards, a channel has to produce agreements with all the stations covering each programme they plan to rebroadcast.⁵⁰ Many are unable to conclude written agreements.

A cable operator may not change the set of foreign programmes it retransmits without a written permit from the NCTRB, to be granted within a month after the operator submits a request. In addition, the recently-amended decree of the Cabinet of Ministers of Ukraine envisages fees for the use of frequencies and other channels that disseminate TV and radio signals that are 10 times higher if a broadcaster (operator) deals in the retransmission of programmes of foreign broadcasters.⁵¹

Recently the Parliament also adopted the new edition of the Statute "On Advertising",⁵² Article 6 of which prohibits advertising in languages other than Ukrainian. Violation of this rule involves fines of up to four times the cost of advertising. Article 13 (paragraph 9), which will enter into force on 1 January 2005, stipulates that retransmission of advertising in the programmes of foreign broadcasters shall be permitted only if the Ukrainian counterpart in this retransmission obtains specific payment for such advertising. The restrictions were based on the argument that Ukrainians do not know foreign languages sufficiently well, and if advertising is not in Ukrainian there is the risk that Ukrainians will get dishonest information about a product or a service or will buy products of bad quality.

Guidelines on the Use of Minority Languages in the Broadcast Media

At the invitation of the OSCE High Commissioner on National Minorities (HCNM), a new set of Guidelines on the use of minority languages in the broadcast media was prepared in 2003 by a group of internationally-recognised independent experts. They were discussed at the conference on "Use of Minority Languages in Broadcast Media" in Baden-bei-Wien, Austria, on 24-26 October 2003, which was organised by the OSCE HCNM and the OSCE Representative on Freedom of the Media.

The Guidelines on the use of minority languages in the broadcast media are based on the general principles of freedom of expression of every person, including persons belonging to national minorities; cultural and linguistic diversity; protection of identity; equality and non-discrimination.

The Guidelines, endorsed by the HCNM on 28 November 2003, state the following general policy recommendations:

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."

The Guidelines point out "that 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."

"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."

"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." The Guidelines indicate such factors as:

- **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)."⁵³

While the Guidelines confirm that the free reception of transfrontier broadcasts, whether direct or by means of retransmission, 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."

The Guidelines deal specifically with measures to promote minority languages, which may be achieved through, *inter alia*, subsidies and capacity building for minority language broadcasting. Among ways of providing meaningful access to minority language



broadcasting, the Guidelines point to “the allocation of frequencies, establishment and support of broadcasters, and program scheduling”. They say that availability of such broadcasting at regional or local level “does not justify the exclusion of minority language programming in nation-wide broadcasting, including for dispersed minorities.”

The Guidelines are specific in the matters of awarding frequencies, requirements for broadcasters and programming.

As to public funding, they say that States should consider providing support for minority language broadcasting through “direct grants, favourable financing/tax regimes, and exemption from certain fees payable on award or alteration of a license”. “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”. Such support includes providing resources for the “education and training of

personnel for minority language broadcasting.” All of this may require the provision of a greater share of available resources than the amount that would be calculated purely on the basis of the numerical size of minority communities.

These new Guidelines provide a useful and detailed benchmark against which national policies, laws and practice on issues relating to the use of minority languages in broadcasting can be measured. Of particular importance is the attention paid in the Guidelines to supporting the socio-economic and cultural needs of minorities through ensuring unrestricted access to [the production of], and the availability of, foreign and domestic broadcasts in the languages of persons belonging to national minorities.

One of the main aims of this article is to provide information on individual State practices and general trends that can be identified across a selection of States; all against the backdrop of the new Guidelines.

- 1) This issue of *IRIS plus* is based on the comprehensive study which appeared in T. McGonagle, B. Davis Noll & M. Price, Eds., *Minority-Language Related Broadcasting and Legislation in the OSCE*. The study was commissioned by the OSCE High Commissioner on National Minorities and carried out by the Programme in Comparative Media Law and Policy (PCMLP), Oxford University, and the Institute for Information Law (iViR) of the University of Amsterdam. It was completed in April 2003 and published in September 2003, available at: <http://www.ivir.nl/index-english.html>. The authors would like to thank Leonid Raihman and Alexei Dimitrov (Latvia), Malgorzata Pek (Poland), Yana Sklyarova (Russia) and Taras Shevchenko (Ukraine), who served as country experts for the OSCE study, for permission to use those chapters, as well as for the additional information provided for the preparation of the present issue. Thanks is also due to Celene Craig (the Broadcasting Commission of Ireland) for the useful background information she provided. The usual disclaimer applies.
- 2) E.g. the Council of Europe, European Union (EU), Organization for Security and Co-operation in Europe (OSCE) and United Nations (UN). See further, K. Jakubowicz, *Report on Persons belonging to National Minorities and the Media*, “Filling the Frame”, Conference marking the 5th anniversary of the entry into force of the Framework Convention for the Protection of National Minorities, Strasbourg, 30-31 October 2003, available at: http://www.coe.int/T/E/human_rights/minorities/5_5_anniversary/PDF_Final%20_Report_media_Jakubowicz.pdf. See also, “Overview” in *Minority-Language Related Broadcasting and Legislation in the OSCE*, *op. cit.*, pp. 1-31, esp. pp. 2-7, and the Explanatory Note to the Guidelines on the Use of Minority Languages in the Broadcast Media (see *infra*).
- 3) This is explicitly acknowledged in the Explanatory Report to the Framework Convention for the Protection of National Minorities: see, in particular, paras. 56 and 58.
- 4) For acknowledgement of the textual similarities, see the Explanatory Report to the European Charter for Regional or Minority Languages, paras. 107-113, esp. para. 112.
- 5) Editor’s note: “HCNM” signifies the [OSCE] High Commissioner on National Minorities.
- 6) See the Introduction to the Oslo Recommendations Regarding the Linguistic Rights of National Minorities, (The Hague, The Foundation on Inter-Ethnic Relations, February 1998), available at: <http://www.osce.org/hcnm/documents/recommendations/index.php3>
- 7) Note: Except where otherwise indicated, all dates appearing in columns 2-6 are the dates of ratification of the international instruments in question. “S” means “signed” (as opposed to ratified) and “r” stands for “tacit acceptance”. See further: <http://conventions.coe.int/>
- 8) See further, T. McGonagle, *Comments on Access of persons belonging to national minorities and the media*, “Filling the Frame” Conference, *op. cit.*, available soon at: http://www.coe.int/T/E/human_rights/minorities/
- 9) Available at: <http://www.osce.org/hcnm/> See further, T. McGonagle, “International Guidelines on Use of Minority Languages in Broadcast Media”, *IRIS* 2004-1: 3.
- 10) Available at: <http://www.taoiseach.gov.ie/upload/static/256.pdf>
- 11) See further the website of the Central Statistics Office of Ireland: <http://www.cso.ie>
- 12) Available at: <http://www.gov.ie/bills28/acts/2001/a401.pdf> See further, M. McGonagle, “Broadcasting Bill Becomes Law”, *IRIS* 2001-4: 9.
- 13) “Culture and Heritage” Section, *An Agreed Programme for Government between Fianna Fáil and the Progressive Democrats*, June 2002, p. 33, available at: <http://www.taoiseach.gov.ie/upload/publications/1480.pdf>
- 14) *Irish Language Programming in the Independent Broadcasting Sector*, The Independent Radio and Television Commission/Foras na Gaeilge, 6 December 2000.
- 15) Job Description: Irish Language Co-ordinator, Broadcasting Commission of Ireland, 2002.
- 16) See further: <http://www.forumonbroadcasting.ie/> See also: C. van Strien-Reney, “IE – Establishment of Forum on Broadcasting”, *IRIS* 2002-7: 13.
- 17) For the Terms of Reference of the Forum on Broadcasting, see: <http://www.forumonbroadcasting.ie/terms.html>
- 18) Broadcasting and the Irish Language, Recommendation Nos. 32-35, ‘Forum on Broadcasting Report to the Minister For Communications Marine and National Resources Dermot Ahern TD, August 2002, available at: <http://www.dcmnr.gov.ie/files/BroadcastingFinal.doc> See further, M. McGonagle, “IE – Broadcasting Forum Report”, *IRIS* 2002-10: 10. It should also be noted that the Department of Communications, Marine and Natural Resources subsequently prepared a report for the Minister, outlining its response to the Report of the Forum on Broadcasting, which included proposals on the Irish language: *Report of the Forum on Broadcasting – Department’s Report to the Minister*, November 2002, pp. 29-30, available at: <http://www.dcmnr.gov.ie>
- 19) See further, T. McGonagle, “IE – Adoption of New Broadcasting (Funding) Act”, *IRIS* 2004-2: 13
- 20) See: <http://www.csb.lv/Satr/rad/C1.cfm?akurs3=C1>
- 21) See: <http://www.np.gov.lv/en/fakti/index.htm>
- 22) See: <http://www.satv.tiesa.gov.lv/Eng/satversme.htm> (EN).
- 23) See: http://www.minelres.lv/NationalLegislation/Latvia/Latvia_CultAut_English.htm (EN).
- 24) Available at: http://www.minelres.lv/NationalLegislation/Latvia/Latvia_Language_English.htm (EN).
- 25) Available on the website of the National Radio and Television Council at: <http://www.nrtp.lv/en/Law.doc> (EN).
- 26) Article 62(3) of the Radio and Television Statute, see *infra*.
- 27) *Ibid.*
- 28) N. Muiznieks, “Minorities and Media in Latvia”, contribution to a Europe-wide research project organised by Article 19, Global Campaign for Free Expression and Minority Rights Group, 1999, p.5.
- 29) See Chapter VI ‘National Radio and Television Council’, Sections 41 *et seq.*, available at: <http://www.nrtp.lv/en/Law.doc>
- 30) Amendments of 30 October 1997 and 29 October 1998.
- 31) “On the Way to a Civic Society: Survey of Latvian inhabitants”, Baltic Institute of Social Sciences, 2001. This survey was sponsored by the United Nations Development Programme (UNDP), the Soros Foundation – Latvia, the OSCE Mission and others. Available at: <http://www.np.gov.lv/en/info/owcs2k.htm> (EN).
- 32) Judgment (case No.2003-02-0106) available at: [http://www.satv.tiesa.gov.lv/Eng/Spridumi/02-0106\(03\).htm](http://www.satv.tiesa.gov.lv/Eng/Spridumi/02-0106(03).htm) (EN). See further, L. Ozola, “TV – Constitutional Court Decides to Amend the Law on Radio and Television”, *IRIS* 2003-7: 11.
- 33) Available at <http://www.sejm.gov.pl/prawo/konstytucja/kon1.htm> (PL) and at <http://www.sejm.gov.pl/english/konstytucja/kon1.htm> (EN).
- 34) Report submitted by Poland pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, Council of Europe Doc. ACFC/SR (2002) 2 of 10 July 2002, available at <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/StateReports/2002/Poland%20state%20report.doc> (EN).
- 35) Source: Statistical Yearbook of Poland, 2000, available at: <http://www.stat.gov.pl>
- 36) Report submitted by Poland pursuant to Art. 25(1), FCNM, *op. cit.*
- 37) Available at: <http://www.krrit.gov.pl/stronykrrit/english.htm> (EN).
- 38) Editor’s note: this provision refers to programmes or other items which may threaten the physical, mental or moral development of minors, which are ordinarily only allowed to be broadcast after the 11 p.m. watershed.
- 39) One recent example of this was a two-year project aimed at encouraging greater participation by national minorities in the Polish media: it was carried out by the NBC in conjunction with the French Embassy.
- 40) Available at: <http://www.constitution.ru/en/10003000-01.htm> (EN).
- 41) No. 82-FZ of 30 April 1999.
- 42) No. 1807-1 of 25 October 1991 (as amended), available at: http://www.minelres.lv/NationalLegislation/Russia/Russia_Languages_English.htm (EN).
- 43) No. 2124-1 of 27 December 1991 (as amended), available at: http://www.medialaw.ru/e_pages/laws/russian/massmedia_eng.html (EN).
- 44) No. 108-FZ of 18 July 1995, available at: http://www.medialaw.ru/e_pages/laws/russian/advertising_eng/advertising_eng.html (EN).
- 45) Interfax-Ukraine News Agency, 2 January 2003, see further: <http://www.interfax.kiev.ua/eng/>
- 46) Adopted by the Parliament on 28 June 1996, the official English translation is available at: <http://www.rada.kiev.ua/const/coneng.htm>
- 47) No. 2494-XII, of 25 June 1992. Available at: http://www.minelres.lv/NationalLegislation/Ukraine/Ukraine_Minorities_English.htm (EN).
- 48) No. 8312-11, as amended on 28 February 1995, No. 75/95-VR, and 6 March 2003, No. 594-IV. Available at: http://www.minelres.lv/NationalLegislation/Ukraine/Ukraine_Language_English.htm (EN).
- 49) No. 3759-XII; the statute was amended 14 times over the past 10 years, last time on 22 May 2003, though Article 9 was never altered. The English translation (by Peter Krug and Andrei Richter) of the original text of the statute is available at: http://www.internews.ru/law/ukraine/tvradio_eng/index.html
- 50) Decision of the NCTRB of 7 July 2003, No. 938.
- 51) No. 392 of 5 June 1995 (as amended on 20 November 2003, No. 1793).
- 52) No. 1121-IV of 11 July 2003.
- 53) Emphasis in original.