

Albania

While private radio and television broadcasting activities have been pursued in Albania since 1995, the first licences for such broadcasting were only awarded by the regulatory/supervisory authority for broadcasting in 2000. To date, no broadcasters have been licensed to broadcast specifically in minority languages. Furthermore, the legislation regulating broadcasting in the country does not have any provisions dealing specifically with minorities as its provisions apply to nationals and non-nationals alike. Legislation also sets out that Albanian shall be the language of all radio and television programmes, except when programmes specifically target national minorities or when local broadcasters are licensed to transmit programmes in the language of minorities. It is clearly stated in the mandate of the public service broadcaster that it must inform, educate and entertain all sections of society, including national minorities. Repeater facilities are used, especially in the south of the country, to relay and amplify programmes transmitted by Greek and other foreign (television) broadcasters.

1 Introduction

1.1 Linguistic topography

There are five groups of minorities living in Albania: Greek, Macedonian, Montenegrin, Roma and Aromanian. The Greek, Macedonian and Montenegrin minorities are national minorities, whereas the Roma and the Aromanians (commonly known as Vlachs) are linguistic minorities.¹ According to the most recent Census information on minorities (1989),² the Greek minority is the largest national minority in the country (1.846%),³ followed by the Macedonian (0.148%) and Montenegrin national minorities (0.003%).⁴ Of the linguistic minorities, the Roma is the largest.⁵ In the forms used in the 1989 census, there

¹ In Albania, "national minorities" are those minorities that have their own motherlands with whose population they share common characteristics such as the spiritual constitution, language, culture, customs and traditions, religious beliefs, etc. See "Brief historical view on national minorities living in Albania" at p.7 of the "Report Submitted by Albania Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities" (Received on 26 July 2001), Council of Europe Doc. ACFC/SR (2001) 5, available at: <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/StateReports/2001/albania/Albania.htm>.

² The most recent national Census taken in Albania is the census of 1 April 2001. Currently, the Institute of Statistics (INSTAT), which is the authorised state institution for providing statistical information (see: <http://www.instat.gov.al/english/>), is in the process of elaborating the data collected. However, the elaboration of these data is not expected to provide any information in connection with the nationality or the mother tongue of the population since the forms/questionnaires used in this census did not include any questions regarding these topics.

³ Recently, the number of Greeks living in Albania has decreased. Following the opening of the borders in the early 1990s and the economic difficulties of the transition period, a considerable part of the population living near the border with Greece has emigrated there. In terms of emigration, the most privileged have been the Greek minorities, who can receive Greek visas quite easily.

⁴ According to the 1989 Census, the overall population of Albania is 3,182,417, of which 3,117,601 are of Albanian nationality; 58,758 are of Greek nationality; 4,697 of Macedonian nationality; 100 of Montenegrin and Serbian nationality; 782 of Romanian, Bulgarian and Czechoslovakian nationality and the remaining 479 are of Jewish, Italian, Russian or other nationality.

⁵ The Census of 1989 did not indicate the number of people belonging to the Roma or Aromanian minorities, but according to a report from September 2000 issued by the Albanian Helsinki Committee (an Albanian human rights non-governmental organisation) after a one-year survey it had undertaken, it is estimated that about 30,000 Roma live in Albania. The last census with data on the Aromanian minority is the census of 1955, according to which the number of Aromanians living in Albania at that time was 4,249.

were no questions about the mother tongue of the population. However, it may be reasonable to expect that people belonging to a certain minority group speak the relevant minority language.

1.2 Broadcasting

Albanian Radio and Television (ART)⁶ remains the sole public broadcaster in the country, reaching 80% of the population with its transmissions. The headquarters of ART are in Tirana. ART also includes regional radio and television centres throughout the territory of Albania. In October 2000, the National Council of Radio and Television (NCRT),⁷ the body charged by law with the regulation and supervision of broadcasting in the country, awarded the first broadcasting licences to private television and radio operators. Private radio and television stations had begun broadcasting for the first time by the end of 1995, although a law for regulating their activity had not yet been issued. Currently, there are two national television operators, 54 local television operators, one satellite television operator, five cable television operators, one national radio operator and 32 local radio operators licensed to broadcast in Albania.⁸

There are no private radio or television operators licensed specifically for broadcasting in minority languages. However, there are some local public radio stations, affiliates of ART, that broadcast programmes intended specifically for national minorities. Thus, *Radio Gjirokastra*, located in southern Albania,⁹ broadcasts a 45-minute daily news and entertainment programme in Greek. *Radio Tirana*, located in central Albania, broadcasts a programme in Greek for 30 minutes daily. *Radio Korca*, located in south-eastern Albania,¹⁰ broadcasts a 40-minute news bulletin in Macedonian three times a week.

In addition, organs of the local authorities in the southern part of the country have installed more than 20 repeaters to amplify the signals of several Greek television stations. The NCRT is currently in the process of licensing them. ART has also installed a repeater on Mount Dajti for the signal of the Greek public television station, ERT, for the viewers in Tirana.

2 Constitution

The new Constitution of the Republic of Albania entered into force on 28 November 1998.¹¹

2.1 Freedom of expression

The 1998 Constitution guarantees freedom of expression and freedom of broadcasting in Part II, which is devoted to fundamental human rights and freedoms.

Article 22:

⁶ The first radio station in Albania began broadcasting in 1938, whereas Albanian Television transmitted for the first time in 1960, which also marks the founding of Albanian Radio-Television.

⁷ The NCRT is a seven-member body elected by the Parliament, with three candidates proposed by the parliamentary majority; three by the opposition and one by the President of the Republic.

⁸ See *Mediat elektronike 2001- nje realitet me probleme* ("Electronic Media 2001 - A Reality with Problems"), para. 2, at p. 1 of the "Annual Report for the Parliament", (approved by Decision No. 78 of 8 February 2002 of the NCRT) available at: http://www.kkrt.gov.al/informacion/raport_2002.htm.

⁹ This is where most of the Greek minority lives.

¹⁰ This is where the Macedonian minority lives.

¹¹ An English-language version of the text of the Constitution is available at: <http://oncampus.richmond.edu/~jjones/confinder/Alb-oct21.htm>.

1. Freedom of expression is guaranteed.
2. Freedom of the press, radio and television is guaranteed.
3. Prior censorship of means of communication is prohibited.
4. The law may require authorization to be granted for the operation of radio or television stations.

2.2 Minority rights

The Constitution does contain specific mention of minorities. Under Article 3,¹² the coexistence with, and understanding of [ethnic] Albanians for, minorities are among the bases of the Albanian State, which has the duty to respect and protect them. In addition, Article 20 provides:

1. Persons who belong to national minorities exercise the human rights and freedoms in full equality before the law.
2. They have the right freely to express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging. They have the right to preserve and develop them, to study and to be taught in their mother tongue, and to unite in organizations and associations for the protection of their interests and identity.

Clearly, this Article is quite general and does not grant much that is not guaranteed by other Articles.¹³ Only the right to education in the mother tongue gives additional protection.

2.3 (Official/State) language(s)

Article 14(1):

The official language in the Republic of Albania is Albanian.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Albania signed the Framework Convention for the Protection of National Minorities (hereinafter “the Framework Convention”) on 29 June 1995. The Albanian Parliament ratified it on 28 September 1999, and it took effect in Albania from 1 January 2000. This Convention has become part of the internal legal system of Albania, as provided by Article

¹² Article 3: “The independence of the state and the integrity of its territory, the dignity of the person, his rights and freedoms, social justice, the constitutional order, pluralism, national identity and inheritance, religious coexistence, and coexistence with, and understanding of Albanians for, minorities are the bases of this state, which has the duty of respecting and protecting them.”

¹³ It should be noted that Article 18 enshrines the principle of equality. It reads:

“1. All are equal before the law. / 2. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or ancestry. / 3. No one may be discriminated against for reasons mentioned in paragraph 2 if reasonable and objective legal grounds do not exist.”

122(1) of the Constitution.¹⁴ However, the Framework Convention is not self-executing; it leaves the States concerned a measure of discretion in the implementation of its provisions.¹⁵ With respect to radio and television programmes, the Framework Convention has already been given direct legal effect by Article 36 of Law No. 8410 of 30 September 1998, “On Public and Private Radio and Television in the Republic of Albania”, which provides that public and private radio and television programmes shall respect, *inter alia*, the Albanian language and culture, but also “the constitutional and human rights of citizens of national minorities in conformity with international conventions signed by the Republic of Albania [...]”

No separate law on minority languages or minorities in general has been enacted in Albania. There is only secondary legislation¹⁶ regulating the right of people belonging to national minorities to study and be taught in their mother tongue.¹⁷

3.2 Broadcasting legislation

LAW ON PUBLIC AND PRIVATE RADIO AND TELEVISION IN THE REPUBLIC OF ALBANIA OF 1998

Law No. 8410 of 30 September 1998 “On Public and Private Radio and Television in the Republic of Albania”, as amended, is the law that regulates broadcasting in Albania (hereinafter the “Electronic Media Law”).¹⁸ As its title indicates, this law regulates the activity of both public and private broadcasters.

The Electronic Media Law does not contain any special provisions on minorities. The licensing provisions of the Law are equally applicable to all people of Albanian nationality, as well as to those of other nationalities; there are not any additional licensing provisions for minority-language broadcasters. The broadcasting fee regime also is equally applicable to regular broadcasters and to those licensed to broadcast in minority languages.

The Law also does not contain any restriction on the nationality of the owners of broadcasting enterprises. It only requires that applicants for national broadcasting licences be registered as Albanian joint stock companies, and that no person, foreign or national, holds more than 40% of the total capital of the company (Article 20(2) & (3)). Applicants for local broadcasting licences can be natural persons or legal persons registered in Albania for the sole purpose of radio and television activity (Article 20(6)). There are no restrictions on the nationality of the holder of a local licence.

¹⁴ Article 122(1): “Any ratified international agreement constitutes part of the internal legal system after it is published in the Official Journal of the Republic of Albania. It is directly applicable, except when it is not self-executing and its application requires the adoption of a law. The amendment and repeal of laws approved by a majority of all members of the Assembly is done by the same majority for the purposes of ratification of an international agreement.”

¹⁵ See the Explanatory Report (for State reports), Council of Europe, para. 11, available at: <http://www.humanrights.coe.int/Minorities/Eng/FrameworkConvention/Explanatory%20report/explreport.htm>.

¹⁶ Decision No. 396 of 22 August 1994 of the Council of Ministers “On the Elementary Education of Minorities in their Native Languages”; Decision No. 548 of 26 August 1996 “On the Teaching in Greek Language in Some High Schools” and Instruction No. 14 of 3 September 1994 of the Ministry of Education.

¹⁷ A provision regarding this right is also found in Law 7952 of 21 June 1995 “On the Pre-university Education System”; Article 10, item 1 provides: “Opportunities shall be created for persons belonging to national minorities to study and be taught in their mother tongue, to learn about their history and culture within the framework of the school curriculum.”

¹⁸ See further, C.M. Burri, “Albania: Law on Public and Private Radio and Television”, *IRIS – Legal Observations of the European Audiovisual Observatory*, 1999-2: 11.

With regard to the language of “radio-television” programmes,¹⁹ the general rule provided by Article 37(1) is that the use of the Albanian language is obligatory for all programmes, save for a number of exceptions which are set out at Article 37(1). These exceptions include “[...] programs intended specifically for national minorities, and programs of local radio-television subjects licensed to broadcast in the language of minorities”, thus allowing for minorities’ access to broadcasting in their own languages.

Article 37

The use of the Albanian language is obligatory for all programs, except musical works with lyrics in a foreign language, foreign language teaching programs, programs intended specifically for national minorities, and programs of local radio-television subjects licensed to broadcast in the language of minorities.

Films in the original version are broadcast on national channels accompanied by subtitles or dubbing in the Albanian language. For local radio-television stations this obligation comes into effect one year after licensing.

Public and private radio-television reflects in its activity a linguistic culture that conforms to the accepted national literary language norm.

Radio-television subjects otherwise licensed are exempted from this obligation.

The Electronic Media Law also contains provisions which deal specifically with public broadcasting, including Articles 66 and 68:²⁰

Article 66

As a broadcaster dedicated to the highest ideals of broadcasting of national public service, ART conducts high quality radio-television services to inform, educate and entertain the public, serving the nation, all the groups of society, including national minorities.

ART is committed to impartial coverage of national and international news.

ART creates programming that is to reflect the diversity of Albanian life for listeners and viewers of all ages. ART prepares high quality programs with values that enrich the mental and spiritual world of people.

Article 68

The program of ART in broadcasts by the central and regional studios ensures:

- a diversity of political, social and cultural information and entertainment from the country and the world
- the provision of information from the whole territory of the Republic of Albania
- *the provision of information for national minorities*

¹⁹ According to Article 35 of the Electronic Media Law, the term “radio-television program” refers to the all of the programmes broadcast by a given station.

²⁰ Emphasis has been added to the most relevant sections of the Articles cited.

- the provision of information for the public outside the country.

4 Application of legislation and other measures affecting language

So far, there have been no disputes in Albania in connection with minorities' access to broadcasting in their own languages. Currently, as mentioned above, there are no private radio or television stations licensed specifically for broadcasting in the language(s) of minorities. However, people at NCRT explain this is because they have not received any application for minority-language broadcasting licences.

5 Current developments

In 2000, the Office of National Minorities was established at the Ministry of Foreign Affairs. Among other duties, this office has to establish and conduct an official dialogue with the national minorities' communities, their organisations and representatives, and present their concrete problems and complaints to the Government. In addition, it is the duty of this Office to encourage and support minorities' activities that aim at preserving and further developing their linguistic, cultural, religious and national identities, and to assist in providing the proper climate for better inter-ethnic understanding.

Currently, the Office of National Minorities is in the process of collaborating with the Albanian Government for better legislative protection of minorities' rights. However, for the moment it is unclear whether this will be done through the drafting of new laws or through amendments to the existing ones, and whether the changes will affect minorities' access to broadcasting in their own languages.

Andorra

Catalan is the official language of the country, but Spanish and/or French are spoken by practically all citizens. Affirmative measures favouring the use of Catalan are extensive and can largely be found under one legislative umbrella designed for that purpose against background fears for the continued survival of the language, given its precarious position *vis-à-vis* Spanish and French.

As regards the broadcast media, Catalan must be used in programmes and advertising alike, save when participants in a programme express themselves in another language and subtitling or some such measure is adopted by the responsible broadcaster. Public authorities are also required to promote the use of Catalan in the public media. All media companies are obliged to use Catalan correctly. Broadcasters are liable to face sanctions for breach of any of these statutory obligations, although in practice, given that the relevant Act only began to be implemented last year, the public service broadcaster has yet to be sanctioned in this regard. The necessary structures to allow for the licensing of private broadcasting concerns have yet to be put in place by Parliament (this is envisaged by the relevant Act), with the result that in the interim, pre-existing radio and television channels have been allowed to continue to operate, pending the adoption of these implementation measures.

1 Introduction

1.1 Linguistic topography

Catalan (català) is the official language of Andorra. It is spoken by the country's 70,000 inhabitants which live in its 500 km².

There are no other official languages in Andorra; nor are there any minority languages as such, although it is important to stress that nearly all of the citizens of Andorra speak Spanish and/or French, languages which part of the population tends to favour. This situation has prompted the public authorities of Andorra to approve affirmative measures, the aim of which is to protect and promote the use of Catalan.

1.2 Broadcasting

As regards the regulation of the audiovisual media, it is also necessary to take into account that there is officially only one broadcaster in Andorra, the public company *Ràdio i Televisió d'Andorra* (RTVA). Leaving RTVA aside, there are only some small private radio operators, which are temporarily allowed to continue providing their services until the government finally regulates the provision of broadcasting services by private companies. In any case, Andorra is obviously a very small market, and its citizens are able to receive French and Spanish channels (including channels in Catalan), so there is not much room for additional competition.

As a general rule, the public broadcaster, RTVA, shall use Catalan, both in programmes and in advertising spots (although some exceptions to this rule are possible). Moreover, RTVA shall promote the use of Catalan.

2 Constitution

The Constitution of Andorra was approved in 1993.¹

2.1 Freedom of expression

Article 12

Freedoms of expression, of communication and of information are guaranteed. The law shall regulate the right of reply, the right of correction and professional secrecy. Preliminary censorship or any other means of ideological control on the part of the public authorities shall be prohibited.

2.2 Broadcasting

Article 36

The state may create media of social communication. In accordance with the principles of participation and pluralism, a law will regulate their organisation and control by the Consul General [Parliament].

2.3 Minority rights

In the Constitution of Andorra there is no specific mention of minorities, as there are no groups recognised as such in this very small country.

Article 6

1. All persons are equal before the law. No one may be discriminated against on grounds of birth, race, sex, origin, religion, opinions or any other personal or social condition.

2. Public authorities shall create the conditions such that the equality and the liberty of the individuals may be real and effective.

2.4 (Official/State) language(s)

Article 2

(1) The official language of the state is Catalan.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

ACT ON THE USE OF THE OFFICIAL LANGUAGE

The Act on the Use of the Official Language (*Llei d'ordenació d'ús de la llengua oficial*) was approved on 16 December 1999.² The third paragraph of the Preamble to this Act stresses

¹ See the full text of the Constitution of Andorra of 1993 (*Constitució del Principat d'Andorra*, of 28 March 1993) in Catalan at <http://micg.ad/constitcat.htm> and in English at <http://micg.ad/constituk.htm>.

² See the Act on the Use of the Official Language (*Llei d'ordenació d'ús de la llengua oficial*) of 16 December 1999, available at: <http://catala.andorra.ad/CatalaAnd/Llei.htm>.

that the use of Catalan in Andorra is endangered by the widespread use of Spanish and French in this country. In this context, it is understood that the state has to promote the use of the official language. In order to achieve this goal, the Act makes it a right and a duty for citizens of Andorra to use Catalan in their dealings with public administration, in schools, in certain kinds of business, etc.

In the Act, there are no specific references to minority languages, as there are none in Andorra, but it must be noted that:

(i) The Andorran version of Catalan shall be studied and protected (Article 7);

(ii) As regards those persons living in Andorra who are not able to speak Catalan, Article 6 of the Act on the Use of the Official Language provides that the Government shall take all the necessary measures to ensure the enforcement of the right and the duty to ensure the linguistic integration of those who are not able to speak Catalan and who are permanently established in the country.

Articles 25 to 27 of this Act deal with the use of the official language in the Andorran media. Article 25 provides that Catalan is the language that shall be used in all of the Andorran media. This obligation affects both programming and advertising. However, the media may broadcast programmes in a language other than Catalan, provided they fulfil the requirements which shall be established by the legislator by means of a Regulation. At the time of writing, such a Regulation had not been approved and no legal or administrative implementing measures relating to this had been adopted. When some of the participants in a programme express themselves in a language other than Catalan, the broadcasters may translate or subtitle their interventions, but ensuring fair and equal treatment for all of them. Article 26 of this Act states that the public authorities shall promote the use of Catalan in the public media. As regards Article 27, it asks all media companies to use Catalan correctly.

Articles 25 and 27 of this Act are listed by Article 36 as being among those whose infringement may be sanctioned by the authorities. According to Article 36, a breach of Article 27 shall be considered a minor infringement, punishable with a fine of up to 120 Euros, while a breach of Article 25 would constitute a serious infringement, punishable with a fine of up to 1,200 Euros. Several serious infringements could be considered to amount to a very serious infringement, which could result in a fine of up to 3,000 Euros.³

3.2 Broadcasting legislation

ACT ON THE PUBLIC SERVICE OF RADIO AND TELEVISION

Broadcasting has been declared an essential public service by the Act on the public service of radio and television and on the creation of the public company *Ràdio i Televisió d'Andorra* (RTVA), S.A., of 13 April 2000.⁴

³ At the time of writing, none of the outlined sanctions had yet been imposed.

⁴ See the Act on the public service of radio and television and on the creation of the public company *Ràdio i Televisió d'Andorra*, S.A. (*Llei de la radiodifusió i televisió pública i de creació de la societat pública Ràdio i Televisió d'Andorra*, S.A.), of 13 April 2000. For more information about RTVA, see its website: <http://www.rtvassa.ad/>.

In principle, only the public broadcaster, RTVA, is entitled to provide these kinds of service,⁵ although the Act expressly states that private companies shall be able to provide them too, provided they are awarded a concession by the Parliament (*Consell General*) (which has yet to approve the necessary implementation measures).⁶ In the meantime, those radio and television stations which were operating before the approval of this Act have been temporarily allowed to continue broadcasting.⁷

As regards RTVA, the Government is its only shareholder and it appoints RTVA's Director General, although it can only remove him/her in certain circumstances.⁸ The activities of RTVA shall be supervised by a Commission of Members of the Parliament⁹ and by an advisory body, the Andorran Audiovisual Council (*Consell Andorrà de l'Audiovisual*).¹⁰

According to this Act on the creation of RTVA, the public services of radio and television have to comply with several principles, one of them being the promotion of the official language (Article 2.f). Moreover, RTVA has also to comply with the general legislation on linguistic policy (in particular, Articles 25 to 27 of the Act on the Use of the Official Language of 1999).

⁵ See the Fourth Recital of the Preamble to the Act of 13 April 2000, as well as its Article 4.

⁶ See the Fourth Recital of the Preamble and Article 5 of the Act of 13 April 2000.

⁷ See the Fourth Transitional Provision of the Act of 13 April 2000.

⁸ See Article 12 of the Act of 13 April 2000.

⁹ See Article 10 of the Act of 13 April 2000.

¹⁰ See Articles 6 to 8 of the Act of 13 April 2000.

Armenia

The state language of Armenia is Armenian and there is a general requirement, subject to exceptions for national minorities, that programming either be broadcast in Armenian or be otherwise broadcast with a simultaneous Armenian translation. Legislation recognises the existence of national minorities, their cultural needs, their right to apply for broadcasting licences and places a limited obligation on broadcasters, especially the state broadcaster, to meet their needs. Relevant legislation does, however, impose limitations on the volume of the state broadcaster's minority-language output: in total, it should not exceed one hour per week on public television and one hour per day on public radio. Foreign programmes may be broadcast in their entirety whenever this is provided for by an international treaty and they may also be broadcast by licensed local television/radio companies in accordance with the law, but must be accompanied by Armenian-language translations. As regards the licensing of private-sector broadcasters, the number of television/radio frequencies allocated to foreign broadcasters shall not exceed one-third of available frequencies in each band. The broadcasting of domestic productions on a channel must also meet certain percentages of its total airtime, which are scheduled to increase progressively.

1 Introduction

1.1 Linguistic topography

Armenian is the national language of the Republic of Armenia (RA). According to official sources, Armenians make up 97% of the country's population. National minorities form a total of 2.8%. There are over 20 national minorities in Armenia. The minorities with the largest percentage of population are: Russians, Kurds, Yezidis, Greeks, Assyrians, and Boshas (Gypsies). Although these minorities have their own languages, they all speak Armenian. Most of them are fluent in spoken Armenian. According to the State Inspection of Language, Armenia is a 100% Armenian-speaking country.¹

1.2 Broadcasting

Both state and private television and radio broadcasting is available in the country. The law provides for at least one public television/radio company. Today, one public television and one public radio company with nationwide coverage exist. One more public television station called "Shirak" and a public radio station called "Asparez" exist in Gyumri (the second-largest city in the RA); they provide local coverage.

Three forms of private broadcasting exist in Armenia: aired, cable, and satellite. The number of operating television/radio stations in Yerevan is 25. Another 38 companies operate in the *marzes* (regions). These data refer to actually working television/radio companies. Founders of private media can be both legal and physical entities.

Currently, the public radio of Armenia broadcasts daily programmes in the languages of national minorities. For example, the 30-minute "Hayq" programme in Russian is broadcast

¹ The ethnic breakdown in Armenia in 1989, as reported by the CIA World Factbook was as follows: Armenian 93%, Azeri 3%, Russian 2%, other (mostly Yezidi Kurds) 2%. Note: as of the end of 1993, virtually all Azeris had emigrated from Armenia. The Factbook reports the language breakdown as follows: Armenian, 96%; Russian, 2%; other, 2%.

every day at 9.30am. Another 30-minute “Programme for Yezidis” is broadcast daily; a 10-minute programme in Georgian is broadcast every day except for Sunday and a programme in Kurdish is broadcast daily at 6.45 –7.15pm, etc.

Of the minority languages, public television only broadcasts programmes in Russian, including the Russian version of the “Hye Loor” daily news programme at 1.00am. The private television/radio stations, “Prometevs”, “Armenia”, “Shant” TVs, “Radio Van”, “Radio Ardzaganq” and others, broadcast programmes in Russian. In addition to private broadcasters, the Russian ORT (public television), RTR (based on the intergovernmental agreements), and NTV are also available in Armenia. “Shant TV” (a private Armenian television station), for instance, rebroadcasts programmes of REN TV (a private Russian television station). Occasionally, programmes are broadcast in other national minority languages on private television/radio channels.

1.3 Government policies on broadcasting and minorities

Article 28 of the RA Law on Television and Radio, 2000 (*see infra*), directly obliges media to provide programmes addressing national interests of the national minorities. The Article states that the public television/radio company may allocate up to one hour per week on public television and one hour per day on public radio for broadcasting special programmes in the languages of national minorities of the RA.

Current legislation guarantees the independence of the mass media from political and economic authorities. The State is only responsible for regulating media, in particular in the sphere of television/radio broadcasting. The National Committee established pursuant to the Law is responsible for licensing private companies, providing airing frequencies, etc. The Council of the Public Television/Radio Company regulates the activities of the public media.

The governmental standpoint is that all national minorities are lawful citizens of the country. RA guarantees economic, social, political and cultural rights, as well as freedoms of national minority representatives.

It should be noted, that at the time of writing there is no special government body or structure that deals with national minorities issues in the RA. At present those issues are coordinated by the RA President’s adviser on NGOs and national minority affairs. Also, there is no law on national minorities.

The State provides that national minorities shall not be discriminated against in access to the mass media. National minorities have the opportunity to establish their own mass media.² The State has taken the responsibility to undertake appropriate measures to facilitate access to mass media for minorities, encourage tolerance, and provide cultural plurality. While the issue of access is part of State policy, it is not yet fully regulated by legislation (*see infra*).

² These ideas follow from Constitutional provisions, in particular Articles 15 and 37 (*see infra*).

2 Constitution³

2.1 Freedom of expression

Article 24

Everyone is entitled to assert his or her opinion. No one shall be forced to retract or change his or her opinion.

Everyone is entitled to freedom of speech, including the freedom to seek, receive and disseminate information and ideas through any medium of information, regardless of state borders.

2.2 Broadcasting

The Constitution of the RA has no provision regarding television/radio broadcasting.

2.3 Minority rights

Article 15

Citizens, regardless of national origin, race, sex, language, creed, political or other persuasion, social origin, wealth or other status, are entitled to all the rights and freedoms, and subject to the duties determined by the Constitution and the laws.

Article 37

Citizens belonging to national minorities are entitled to the preservation of their traditions and the development of their language and culture.

2.4 (Official/State) language(s)

Article 12

The state language of the Republic of Armenia is the Armenian. [sic]

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

Armenian is the only official language in Armenia.

LAW ON LANGUAGE, 1993⁴

Article 1 of the Law on Language stipulates: “the RA vouches free usage of the national minorities languages”.

LAW ON NON-GOVERNMENTAL ORGANISATIONS, 2001⁵

³ The Constitution of the RA was adopted by nationwide referendum on 5 July 1995, available at: <http://www.president.am/eng/?folder=lib&sub=constitution&chapter=0>.

⁴ Available (in Armenian) at: <http://www.parliament.am>.

⁵ Adopted on 4 December 2001; an unofficial English-language translation of this Law is available at: http://www.worldlearning.am/legal/docs/ngo_law_eng.doc.

The RA Law On Non-governmental Organisations (December 2001) enables national minorities to form and freely propagate their national values (language, religion, traditions, custom), and establish relations with relative communities outside the RA. Almost all of the national minority communities have NGOs (about 30 NGOs).

3.2 Broadcasting legislation

3.2.1 Facilitative provisions

LAW OF THE RA ON TELEVISION AND RADIO, 2000⁶

Article 5 of the Law of the RA on Television and Radio (adopted in 2000) states: “[I]n the territory of the Republic of Armenia the broadcast TVR programs shall be in Armenian language”. It is also mentioned that those television/radio programmes, feature films, documentary films, and cartoons that are in foreign language, as well as those fragments of Armenian programmes that include foreign speech, shall be broadcast with simultaneous Armenian translation; either oral or written. This requirement does not apply to broadcasts in the languages of recognised national minorities.

Article 28 of the Law directly obliges the public television/radio company to broadcast regular and other programmes that address interests of Armenian regions and national minorities in the Republic of Armenia. Although this Article is positive, it does not ensure full access to the mass media for national minorities so that they can also produce their own programmes in their native languages and get airtime to broadcast programmes. The Article states that the public television/radio company can provide airtime for broadcasts in languages of RA National Minorities, but it also places limitations on such airtime (see *infra*) and it does not require media to provide programming for national minorities.

National minorities have the same rights as other RA citizens as regards establishing mass media in their native languages and applying for broadcasting licences. The guarantee for this lies in Article 17 of the same law, which suggests that founders of television/radio companies can also be persons and legal entities representing national minorities (for example, the Article forbids religious organisations or political parties from becoming founders).

Likewise, the law does not prohibit foreigners from acquiring a licence for broadcasting. The only limitation is that the share of foreign capital should not exceed the size of the decisional share when the broadcasting concern is being established.

3.2.2 Restrictive provisions

LAW OF THE RA ON TELEVISION AND RADIO, 2000

Article 28 of RA Law On Television and Radio limits public television/radio airtime for national minorities. It stipulates that the total airtime for broadcasts in the languages of national minorities should not exceed one hour per week on public television and one hour per day on public radio.

Programmes of foreign television/radio companies may be broadcast in their entirety in the Republic of Armenia, if there is a corresponding international treaty that provides for it. The number of television/radio frequencies allocated to foreign television/radio companies for

⁶ An unofficial English-language translation of this Law is available on the website of Internews Armenia: <http://www.internews.am/legislation/index.asp>.

broadcasting in the Republic of Armenia shall not exceed one-third of available television/radio frequencies in each band (very high frequency, ultra-high frequency, high frequency, super-high frequency, etc). Also foreign television/radio programmes may be aired by the licensed local television/radio companies in accordance with the law. In such cases, foreign programmes should be accompanied by an Armenian-language translation.

Another requirement is that domestic television/radio productions on one television or radio channel may not broadcast for less than 65% of the total airtime. Taking into account the difficulty - or impossibility even - for local television/radio channels to meet these requirements at present, the law also includes temporary Articles stipulating that until 2004, the stations may broadcast their domestic productions in the following order: in 2002, the total length of domestic television/radio productions may broadcast for 35% of the total airtime; in 2003, 45% and in 2004, 55%. Concerning the translation requirement, the Law states that in 2002, programmes in foreign languages may be broadcast for up to nine hours a day; in 2003, six hours a day, and in 2004, three hours a day.

4 Current developments

At present, changes are being proposed in two draft versions of the Constitution.⁷ The current Constitution only guarantees the rights of national minorities to preserve their custom and language, develop their culture. Article 41 of the Presidential draft adds: “[P]ersons belonging to national minorities have the right to *preserve their custom[s]; to express, preserve and develop their ethnic, language, cultural and religious identity*”.⁸

The other draft of the Constitution also has supplementary guarantees compared to the present one. For example, Article 35 of the draft stipulates that persons belonging to national minorities have the right to preserve and develop their customs, religion, language, and culture.

The final version of the draft Law on National Minorities in Armenia has not yet been elaborated. Although different national minority organisations have presented draft laws since 1998, none of these have been passed or accepted.

⁷ One of the drafts of the Constitution was proposed by six political parties from the National Parliament and the other by the President of the Republic of Armenia. The one proposed by the political parties was twice published in the *Aravot* daily. It was also circulated to all interested parties, and a series of discussions and seminars was organised. The draft proposed by the President’s Office was not published officially. Instead, an official commentary on the draft was published in the *Republic of Armenia* daily. In addition, conferences and seminars were held on the topic, and a series of discussions was organised during television news programmes and television shows aimed at presenting the draft to the general public.

⁸ Emphasis added to indicate the wording added in the draft.

Austria

Six ethnic groups are officially recognised in Austria: (Burgenland-)Croats, Czechs, Hungarians, Roma, Slovaks and Slovenes. Until 1994 the public service broadcaster had the exclusive right to broadcast in Austria. Recently-revised legislation sets out the mandate of the public service broadcaster and this includes guaranteeing that “reasonable programme shares” are provided in the languages of the recognised national minorities. The Austrian Broadcasting Corporation, however, may also partly comply with this provision by broadcasting such programmes using the transmission capacities allocated to broadcasters in areas of autochthonous minorities or “participate in the creation and production of programmes by other broadcasters which distribute a separate programme geared to the needs of the national minorities”. Such broadcasts count towards the programme shares of the ORF itself. Furthermore, one of the three nationwide public radio stations must feature its verbal content primarily in foreign languages. The amount of programme time for national minorities is laid down in the annual broadcasting schedule after consultation with the Public Audience Council. The Public Audience Council (a specially constituted body to safeguard the interests of viewers and listeners) is constituted also according to proposals of the Advisory Minority Councils (bodies established for the representation of the recognised national minorities and which act as advisory boards for the Federal Government).

In practice, the public service broadcaster in particular transmits a daily radio programme in Slovenian as well as a weekly television programme. One Croatian radio programme and one Croatian television programme are transmitted by the public service broadcaster each week. Broadcasts in the Hungarian language take place several times a year.

Private-sector broadcasting has only been permitted in Austria since 1994, when the state monopoly was abolished. At the licensing level, when a number of applicants fulfil the legal requirements for obtaining an analogue television or radio broadcasting licence, preference must be given to the applicant guaranteeing the greatest diversity of opinion and responsiveness to the various needs and interests of people in the relevant service or catchment area. In the first allocation procedure, applicants with mixed programme offers were considered to be more appropriate for meeting the standards laid down in the Private Radio Act. From 1998 to 2000, the Federal Chancellery granted approximately 2.91 million Euros for the promotion of minority radio activities. The last portion of approximately 730,000 Euros was paid out in 2000. According to the Country Report by Austria concerning the Framework Convention for the Protection of National Minorities, the Federal Government, in this context, takes the view that the amendment of the Austrian Broadcasting Corporation Act will bring about cooperation between the public service broadcaster and private broadcasters and will thus open new financing possibilities for private radio. This assumption, however, has yet not proven to be true. Minority-language private radio programmes which depended on the state funding today face severe financial difficulties.

1 Introduction

1.1 Linguistic topography

With the break-up of the Austro-Hungarian Monarchy in 1918, the former empire, which united many different nations, fell apart into several smaller states and new borders were

created. The new State of Austria united mainly the people of German extraction, but as the settlements of the different nations during the monarchy overlapped in some regions, minorities within the new borders remained. The recognition of national minorities was first governed in 1976 by the Ethnic Groups Act. The recognition of an ethnic group as a so-called “Volksgruppe” presupposes that the very ethnic group lives and has traditionally had its home in parts of the territory of the Republic of Austria and that it is composed of Austrian citizens with non-German mother tongue and with its own ethnic culture. To date six ethnic groups have been recognised as a “Volksgruppe” (“ethnic group”)¹ by the Federal Government with benefits such as representation by so-called “Minority Advisory Councils” and specific State subsidies: Burgenland-Croats, Slovaks, Slovenes, Roma, Czechs and Hungarians.

The settlement-areas of the six recognised minorities may be described as follows:

- The settlements of the (Burgenland-)Croats are mainly in the eastern province of Burgenland; in six of the seven political districts of this province, there are members of the Croatian ethnic group, whereas there is no real compact Croatian territory.
- The Czech ethnic group lives in the eastern parts of Lower Austria and the city of Vienna.
- The Hungarians are located mainly in Burgenland.
- The primary settlements of the Roma are in the Austrian provinces of Burgenland, Vienna and Lower Austria.
- A quarter of the Slovak population lives in the eastern districts of Lower Austria; three quarters in Vienna.

Sources: STATISTIK AUSTRIA, results of the 1991 and 2001 Censuses, available at: <http://www.oestat.gv.at>; legislation and material from the office of the Federal Chancellor, e.g. the ORF-Act 2001, available at: <http://www.bka.gv.at/bka/medien/orfg-eng.pdf> and the Report by the Republic of Austria pursuant to Article 25 paragraph 1 of the Framework Convention for the Protection of National Minorities, 2000, available at: <http://www.bka.gv.at/bka/volksgruppen>; *Volksgruppenreport 2001, Zur Lage der ethnischen Minderheiten in der Republik Österreich, Österreichisches Volksgruppenzentrum (Hrsg); Das Österreichische Volksgruppenzentrum/Gesellschaft für bedrohte Völker, Der Report des Österreichischen Volksgruppenzentrums an die drei EU-Weisen*, available at: <http://www.ines.org/apm-gfbv/3dossier/oevz/oevzindex.html>; *Klagenfurter Erklärung zur österreichischen Sprachenpolitik*, Centre of Intercultural Studies, available at: <http://www.demokratiezentrum.org>; *Die Sprachen der neuen und autochthonen Minderheiten im österreichischen Bildungssystem*, Centre of International Studies, available at: <http://www.cis.uni-klu.ac.at>; *Protection of Ethnic Minorities, Report 2001 of the International Helsinki Federation for Human Rights on Austria*, available at: <http://www.ihf.hr.org>; Cornelia Kogoj, *Minderheiten und Medien in Österreich – Beschreibung eines kommunikativen Missverhältnisses*, available at the *Online-Datenbank des Ludwig Boltzmann Instituts für Menschenrechte, Wien*, <http://www.humanrights.at/humanrights.htm>; informative material from the ORF, <http://www.minderheiten.orf.at>, <http://www.minorities.orf.at>, <http://www.volksgruppen.orf.at>; Theo Öhlinger, *Verfassungsrecht*, 1997; Walter/Mayer, *Bundesverfassungsrecht* (1996); Dieter Kolonovits, *Sprachenrecht in Österreich*, 1999; all provisions, including those of constitutional standing, can be available at: <http://www.ris.bka.gv.at>.

¹ “Volksgruppe” is a legal expression which was introduced by the *Volksgruppengesetz* (Ethnic Minority Act) 1976 and may simply be translated as “ethnic group”. Ethnic groups within the meaning of the Ethnic Minority Act 1976 are “groups of Austrian citizens living and being domiciled within the Federal Territory with non-German mother tongue and own national characteristics”. *Volksgruppen* enjoy special protection by law. The acknowledgement of an ethnic minority as a *Volksgruppe* is by virtue of an Ordinance of the Federal Government. The benefits of such an acknowledgement are the establishment of a “minority advisory council” at the seat of the Federal Government, the receipt of specific promotions by the Federal Government (subsidies, etc.), the right to use the ethnic language before State authorities within the settlement area of the specific *Volksgruppe* and the erection of topographical signposts in the settlement areas of the specific *Volksgruppe* in their mother tongue.

- The settlements of the Slovenes are mainly in the southern Austrian province of Carinthia, but also in the province of Styria.

The Censuses conducted throughout the last century indicate a strong assimilation process, whereas the estimates of the several independent ethnic organisations generally show higher figures for minorities. The Federal Government explains the discrepancy between the figures of the Censuses and the estimates of the ethnic organisations mainly by referring to the right of every person to choose whether s/he wishes to be regarded as member of an ethnic group or not, pursuant to Article 1(3) of the Ethnic Groups Act.²

Table 1: Census Data 1910, 1951, 1991

	1910	1951	1991
Croats	44,243	35,181	29,596
Slovaks	...	301	1,015
Czechs	119,447	3,817	9,822
Slovenians	74,210	42,413	20,191
Hungarians	26,570	8,408	19,638

In the Censuses prior to 2001, the Roma and the Poles were not recognised as separate “ethnic groups” by the Federal Government. The Roma were finally recognised as a *Volksgruppe* in 1993. As regards the Polish minority, the Federal Government has come to the conclusion that the term, “having their home”, in the Ethnic Groups Act 1976 does not apply to this minority. Therefore, the recognition of a Polish minority is not an issue for the Federal Government at the moment. According to the estimates of several ethnic representative organisations, there are about 10,000 – 20,000 Roma and about 30,000 Poles living in Austria today. In the 1991 Census, however, only 122 persons declared that they speak Romany in “everyday life”.

According to the recently published Census of 2001, 95.5% of the Austrian population uses German as sole language in everyday life; 1.1% of the Austrian population - in total 82,500 people - declared that they use a language of the recognised ethnic minorities; 3.4 % of Austrians stated that they use another language besides German and besides one of the other official languages of Austria.³

1.2 Broadcasting

Overview of the current participation of minorities:

The Slovenes in Carinthia: The public service broadcaster (Austrian Broadcasting Corporation, ORF) broadcasts a daily radio programme in Slovene and every Sunday around lunchtime, a regional television programme in Slovene as well. Slovene radio programmes have been broadcast since 1946 and Slovene television programmes since 1989.

Since 1998, there have been two private radio stations as well: *Radio Korotan* broadcasts mainly in Slovene; *Radio Agora* uses German, Slovene and the other languages of the

² *Volksgruppengesetz* 1976, *BGBI* 396/1976. Note that the acronym BGBI stands for *Bundesgesetzblatt* (‘Federal Law Gazette’).

³ Page 19 of the Census, available at: <ftp://www.statistik.at/pub/neuerscheinungen/vzaustriaweb.pdf>.

Alpine-Adria-region instead. In addition, the programmes broadcast by *RTV Slovenija*, which is situated in Slovenia, can be received in some parts of Carinthia.

The Croats in Burgenland: Every Sunday, the ORF, broadcasts a regional ethnic programme, "Dobar dan, Hrvati", and additionally around 48 minutes of radio programming in the Croatian language, both of which are produced by Croatian editors. The Croatian radio programme has been on air since 1979; the television programme since 1989.

In April 1999, the private local radio station, *Antenne 4*, also started to transmit newscasts in the languages of the Croats, Hungarians and Roma; in the evenings, several hours of programming were transmitted in those languages as well. However, since August 2000, this ethnic broadcaster temporarily ceased because of the discontinuation of State subsidies.

The Hungarians: The ORF broadcasts a television programme in the Hungarian language four times a year and a regional radio programme of about 20 minutes' duration every Sunday. These programmes are elaborated by Hungarian-speaking personnel in the Croatian editor's office. Hungarian radio programmes have been broadcast since 1984; Hungarian television programmes since 1989.

Since August 2000, the local private radio-station, *Antenne 4*, has temporarily ceased its Hungarian-language programmes.

The Roma: *Antenne 4* broadcast in Romany from March 1997 until August 2000 as well; furthermore, the ORF used to broadcast a radio programme in Romany lasting half an hour twice a month.

The Czechs and the Slovaks: There is no specific broadcasting in the languages of these minorities.

However, in addition to these regionally-limited radio and television programmes, every Sunday, the ORF transmits a nationwide television programme called 'Heimat, fremde Heimat' ('Home, alien Home') focusing not only on the autochthonous ethnic groups mentioned above, but also on immigrants and immigration in general.

Proportions of State subsidies for the private radio stations with ethnic elements in 1999:

<i>Antenne 4</i>	350,000 Euros
<i>Radio Agora</i>	370,000 Euros
<i>Radio Korotan</i>	370,000 Euros
Total	1,090,000 Euros

The establishment of private radio stations catering for the interests of ethnic minorities was only made possible in 1998 and 1999 by these subsidies and they now enjoy wide popularity among the ethnic groups concerned. In the following years, however, there were massive cuts with negative influences on these stations. The Austrian Government, which came to power in January 2000, is of the opinion that the subsidies were only intended as help in the initial start-up period.

In 2001, the subsidies for private broadcasting were stopped totally. The argument of the Federal Government for these cuts is based on the new ORF-Act 2002. Henceforth, the ORF

is obliged to ensure reasonable programme shares in the languages of the recognised national minorities. Therefore, according to Section 5 of the ORF-Act, the ORF is allowed to cooperate with other broadcasters, especially with those located in areas where ethnic groups are concentrated. The expectations of the Federal Government are that the private ethnic broadcasters will benefit from such cooperative ventures from now on. How this new legal regulation (which only entered into force in January 2002) will work in practice remains to be seen.

1.3 Government policies on broadcasting and minorities

In its Programme of Government of February 2000 and the preceding Declaration of 3 February 2000, the Austrian Government “acknowledges its special responsibility as regards the respectful treatment of ethnic and religious minorities”.

2 Constitution

2.1 Freedom of expression and broadcasting

BASIC LAW OF 21 DECEMBER 1867 ON THE GENERAL RIGHTS OF NATIONALS IN THE KINGDOMS AND *LÄNDER* REPRESENTED IN THE *REICHSRAT*⁴

Article 13

Everyone has the right within the limits of the law to freely express his opinion by word of mouth and in writing, print, or pictorial representation.

[...]

RESOLUTION OF THE PROVISIONAL NATIONAL ASSEMBLY OF 30 OCTOBER 1918⁵

1. All censorship is abolished as illegal as contrary to the basic rights of the citizen.

CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (AS AMENDED BY PROTOCOL NO. 11), 1950⁶

Article 10 – Freedom of Expression

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or

⁴ *RGBI* 1867/142 modified by *BGBI* 1988/684. Authors' own translation.

⁵ *StBBl* 1918/3 modified by *BGBI* 1920/1.

⁶ Ratified by the Austrian Parliament and announced in *BGBI* 1958/210 last modified by *BGBI* III 1998/30; raised to constitutional status by *BGBI* 1964/59.

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.

It should be noted that the European Convention on Human Rights (ECHR) has constitutional standing in Austria and that a remedy against an alleged violation of the rights set out therein lies directly with the Constitutional Court (*Verfassungsgerichtshof*).

FEDERAL CONSTITUTIONAL LAW OF 10 JULY 1974 ON THE PROTECTION OF THE INDEPENDENCE OF BROADCASTING⁷

Article I

(1) Broadcasting is the dissemination of all kinds of items in the form of words, sounds or images, intended for the general public and communicated by means of electrical oscillations without recourse to connecting circuits, or alternatively through or via a conductor, and also the operation of technical facilities serving this end.

(2) More detailed provisions concerning broadcasting and its organisation shall be determined by a Federal Act of Parliament. Such an Act of Parliament shall in particular contain provisions to ensure the objectivity and impartiality of news coverage, respect for diversity of opinion, the presentation of a balanced viewpoint in the programmes and the independence of those persons and organs into whose care the responsibilities specified in Sect. 1 are entrusted.

(3) Broadcasting pursuant to Sect. 1. is public responsibility.

2.2 Minority rights

BASIC LAW OF 21 DECEMBER 1867 ON THE GENERAL RIGHTS OF NATIONALS IN THE KINGDOMS AND *LÄNDER* REPRESENTED IN THE *REICHSRAT*

Article 19

All nations of the state have equal rights and every nation has the invulnerable right of protection and cultivation of its nationality and language.

The equality of all customary languages in school, administration and public life is acknowledged [...]⁸

TREATY OF ST. GERMAIN, 1919⁹

Part III, Section V Protection of Minorities

Article 62

Austria undertakes that the stipulations contained in this Section shall be recognized as fundamental laws, and that no law, regulation or official action shall conflict or

⁷ *BGBI* 1974/396.

⁸ Abrogated.

⁹ 10 September 1919, *StGBI*. No. 303/1920.

interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

Article 63

Austria undertakes to assure full and complete protection of life and liberty to all inhabitants of Austria without distinction of birth, nationality, language, race or religion.

All inhabitants of Austria shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practise are not inconsistent with public order or public morals.

Article 66

All Austrian nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

Differences of religion, creed or confession shall not prejudice any Austrian national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries.

[...]

Article 67

Austrian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Austrian nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

THE FEDERAL CONSTITUTION, 1929¹⁰

Article 7

(1) All Federal nationals are equal before the law. Privileges based upon birth, sex, estates, class or religion are excluded.

STATE TREATY FOR THE RE-ESTABLISHMENT OF AN INDEPENDENT AND DEMOCRATIC AUSTRIA, 1955¹¹

Article 7 - Rights of the Slovene and Croat Minorities

(1) Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall enjoy the same rights on equal terms as all other Austrian nationals, including the right to their own organizations, meetings and press in their own language.

¹⁰ As revised in 1929, *BGBI* 1930/1, last modified by *BGBI* I 2001/121.

¹¹ *BGBI* 1955/25.

[...]

(4) Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall participate in the cultural, administrative and judicial systems in these territories on equal terms with other Austrian nationals.

(5) The activity of organizations whose aim is to deprive the Croat or Slovene population of their minority character or rights shall be prohibited.

CONSTITUTIONAL FEDERAL LAW OF 3 JULY 1973, ON THE IMPLEMENTATION OF THE INTERNATIONAL TREATY ON THE ELIMINATION OF ANY KINDS OF RACIAL DISCRIMINATION, 1973¹²

Article I

(1) Any kind of racial discrimination is – as not already forbidden by Article 7 of the Federal Constitutional Law of 1929 and Article 14 of the ECHR – forbidden. Legislation and administration both have to abstain from any distinction based on the only reason of race, colour of skin, extraction or national as well as ethnic origin.

(2) [...]

2.3 Minority rights and broadcasting

TREATY OF ST. GERMAIN, 1919

Article 66

[...]

No restriction shall be imposed on the free use by any Austrian national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

[...]

2.4 (Official/State) language(s)

THE FEDERAL CONSTITUTION, 1929

Article 8

(1) German is the official language of the Republic without prejudice to the rights provided by Federal law for linguistic minorities.

(2) The republic (Bund, Länder and Gemeinden) is committed to its linguistic and cultural variety, which has evolved in the course of time and finds its expression in the autochthonous ethnic groups. The language and culture, continued existence and protection of these ethnic groups are to be respected, safeguarded and promoted. (inserted in the year 2000; BGBl I 2000/68)

STATE TREATY FOR THE RE-ESTABLISHMENT OF AN INDEPENDENT AND DEMOCRATIC AUSTRIA, 1955

Article 7 - Rights of the Slovene and Croat Minorities

¹² BGBl 1973/390.

(3) In the administrative and judicial districts of Carinthia, Burgenland and Styria, where there are Slovene, Croat or mixed populations, the Slovene or Croat language shall be accepted as an official language in addition to German. In such districts topographical terminology and inscriptions shall be in the Slovene and Croat language as well as in German.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

- *Volksgruppengesetz* (Minorities Act) (*BGBI* 396/1976 modified by *BGBI* I 2002/35)
- Minorities School Act for Carinthia (*BGBI* 1959/101 modified by *BGBI* I 2001/76)
- Minorities School Act for Burgenland (*BGBI* 1994/641 modified by *BGBI* I 1998/136)

3.2 Broadcasting legislation

Until 1994, there only existed one public service broadcaster, the ORF, which was established pursuant to the *Rundfunkgesetz* (Broadcasting Act); the monopoly was then abolished in the course of proceedings before the European Court of Human Rights in anticipation of a finding that the Austrian broadcasting monopoly was incompatible with Article 10, ECHR, guaranteeing freedom of expression. Having said that, it should be noted that the legal basis on which the ORF operated already provided for the involvement of minorities in broadcasting.

The *Bundesverfassungsgesetz vom 10. Juli 1974 über die Sicherung der Unabhängigkeit des Rundfunks* (Constitutional Law on the safeguarding of the independence of broadcasting of 10 July 1974) lays down that “broadcasting has to guarantee objectiveness and impartiality of reporting, the consideration of the diversity of opinions, a well-balanced programme [schedule] as well as the independence of persons and organs”. Finally it lays down that broadcasting is a “public duty” (Article I).

Based on these constitutional provisions, different pieces of legislation were passed, one governing public broadcasting (*Bundesgesetz über den Österreichischen Rundfunk*, *BGBI* 1984/379 modified by *BGBI* I 2001/83, “the ORF Act”); the other creating a basis for the commencement of private broadcasting (*Bundesgesetz, mit dem Bestimmungen für privaten Hörfunk erlassen werden (Privatradiogesetz)*, *BGBI* I 2001/20, “the Private Radio Act”; *Bundesgesetz, mit dem Bestimmungen für privates Fernsehen erlassen (Privatfernsehgesetz)* *BGBI* I 2001/84, “the Private Television Act”).

The amended ORF Act became fully effective on 1 January 2002. With this partially new provision, the former public body was turned into a “public foundation”. Section 1, para. 3 of the ORF Act lays down that the ORF has to consider the principles of the Austrian Constitution and especially has to ensure objectiveness and impartiality of reporting and the consideration of the diversity of opinions. Section 4, para. 1 of the ORF Act further lays down that the programme offer of the ORF (on the whole) has to supply comprehensive information to the public about all important political, social, economic, cultural and sporting questions and furthermore has to promote the understanding of all questions of a democratic

social life. Moreover, Section 4, para. 5, lays down that the ORF has to accommodate the reproduction and exchange of all comments, standpoints and critical opinions with importance for the public under reasonable consideration for all opinions represented in public life.

ORF ACT, 2001¹³

Section 5: Special mandates

(1) In the framework of those programmes distributed under Section 3, reasonable programme shares must be provided in the languages of those national minorities which are represented by a National Minority Council. The scope of the programme share shall be laid down in the annual programme broadcasting plan following a consultation with the Audience Council.

(2) The Austrian Broadcasting Corporation may also partly comply with its mandate under paragraph 1 in that it emits programmes under paragraph 1 following a contractual agreement with other broadcasters in the areas of autochthonous minorities in Austria (paragraph 1) by using the transmission capacities allocated to these broadcasters. The scope of programmes broadcast in such manner shall be counted towards the programme shares listed under paragraph 1 as decided by the Board of Trustees at the proposal of the Director General following the consultation of the Audience Council. Similarly, the Austrian Broadcasting Corporation may participate in the creation and production of programmes by other broadcasters which distribute a separate programme geared to the needs of the national minorities. [...]

(4) The verbal content of the third nation-wide radio programme shall predominantly be in foreign languages.

(5) Beyond its service provision mandate, the Austrian Broadcasting Corporation may also cooperate with other public-law broadcasters or establish joint ventures for the production of broadcasts and programmes.

(6) The Austrian Broadcasting Corporation shall reserve a reasonable proportion of its funds for the activities of the nine regional studios.

Section 28: Audience Council

(1) In order to safeguard the interests of the listeners and viewers, an Audience Council shall be established in the headquarters of the Austrian Broadcasting Corporation. The Audience Council shall consist of 35 members.

[...]

(4) For the appointment of further members, the Federal Chancellor shall solicit proposals from institutions or organisations which are representative of the following sectors or groups: academia, education, arts, sports, youth, students, the elderly, handicapped persons, parents and the family, national minorities, tourism, motorists, consumers, and environmental protection.

¹³ *BGBI* 83/2001.

Section 30: Functions of the Audience Council

(1) The Listeners' and Viewers' Advisory Board shall

[...]

5. submit proposals for compliance with the mandate relating to the cases laid down in this law, and comment on the allocation of programme shares to national minorities. For that purpose, the Audience Council may hear representatives of the national minority advisory councils;

Moreover, Section 10 of the ORF Act lays down the general principles of programming. Accordingly, all programmes of the ORF must "respect the human dignity and fundamental rights of others with regard to presentation and content" (para. 1). According to the Act, it is important that the "diversity of opinions held in public life shall appropriately be taken into account, the human dignity, personal rights and privacy of the individual shall be respected" (para. 6).

In the course of the abolition of the state monopoly on broadcasting in 1994, the Private Broadcasting Acts were passed. In view of the limited number of frequencies, the operative law lays down the selection criteria to be applied to the multitude of applicants.

Accordingly, preference shall be given to those applicants who, among other requirements, can provide for greater consideration for diversity of opinion. Pursuant to Sections 7 and 8 of the Private Television Act, if several candidates who fulfil the general legal requirements (Section 4, paras. 2 and 3 of the Private Television Act) apply for a nationwide or non-nationwide licence for analogue terrestrial television, the regulatory authority has to give preference to the applicant who seems to best guarantee the aims of this Act, in particular a greater diversity of opinions and an autonomous programme offer, considering the interests of people in the service area (see also the corresponding Section 6, para. 1(1) of the Private Radio Act), and from whom [...] the inclusion of Austria-related programmes, which for instance cover the presentation of the cultural, artistic, political and social life, Austrian sports or other elements portraying Austrian characteristics can be expected to a greater extent.

In the first allocation procedure, no "purely-ethnic" applicant was selected; applicants with mixed programme offers were considered to be more appropriate for meeting the standards laid down in the Private Radio Act.

The principles of programming are comparable to those laid down in the ORF Act, although an explicit provision similar to Section 5 of the ORF Act is missing. Sections 30 and 31 of the Private Television Act lay down that all programmes have to be in accordance with the principles of objectiveness and diversity of opinions. In particular, the public, cultural and economic life in the service area shall be presented appropriately and essential social groups and organisations in this area have to be given the opportunity to present their opinions. Furthermore, all programmes have to respect human dignity and the basic rights of the others and must not provoke hatred because of race, sex, age, handicap, religion or nationality (corresponding: Section 16 of the Private Radio Act).

3.3 Transfrontier dimension

GENERAL BI- AND MULTILATERAL TREATIES

Austria has concluded bilateral agreements with all of its neighbouring countries from which the Austrian national minorities may draw benefits in a variety of areas on account of the cultural exchange subsidies provided for therein and the cooperation in the fields of culture (including cooperation in the field of broadcasting), science or education (eg. Slovakia, *BGBI* III 2000/170; the Czech Republic, *BGBI* 1978/586, as modified by *BGBI* III 1997/123; Hungary, *BGBI* 1977/519; Croatia, *BGBI* 1996/474).

One such Agreement, which was negotiated by the governments of the Republic of Austria and of the Republic of Slovenia with a view to establishing cooperation in the field of culture (including broadcasting: Article 9), education and science, was signed by the Foreign Ministers of the two countries on 30 April 2001. It was specifically noted in Articles 14, 15 and 16 of this Agreement that each of the programmes of the Mixed Commission and, where applicable, in the joint working programmes of Ministries of the two countries also have to include topics raised by the Slovenian minority in Austria, by members of the German-speaking minority in Slovenia, and by Slovenian speakers outside the territory of the Slovenian minority (eg. projects in the fields of language teaching, monument protection, scholarships, etc.).

Austria is party to, *inter alia*, the European Cultural Convention,¹⁴ the European Charter for Regional or Minority Languages¹⁵ and the Framework Convention for the Protection of National Minorities.¹⁶ The importance of various programmes within the European Union should also be mentioned.

4 Current developments

The Advisory Committee on the Framework Convention for the Protection of National minorities published its Opinion on Austria on 7 November 2002. The Committee considers that: “[...] Austria has made particularly commendable efforts in respect of the Slovenes and Croats living in the *Länder* of Carinthia and Burgenland, notably as regards their status in such fields as media and education”.¹⁷ The recently-adopted legal guarantees of constitutional and sub-constitutional standing are of particular significance for the Hungarians, the Czechs, the Slovaks and the Roma.¹⁸ The Committee holds that there remains a need for “considerably more determined measures” to help the Slovenian minority of Styria to preserve its identity, notably in the field of media.¹⁹ Concerning the creation and development of radio and television programmes for the Czech, Slovak and Hungarian minorities, there is “scope for improvement”.²⁰

The programme schedule of the ORF for 2003 provides an extension of broadcasts in the languages of the recognised national minorities. Since January 2003, the ORF has been broadcasting, in particular, a multilingual regional radio programme in Romany, Hungarian

¹⁴ *BGBI* 1958/80.

¹⁵ *BGBI* III 2001/216.

¹⁶ *BGBI* III 120/1998.

¹⁷ Para. 103, *ibid.*

¹⁸ Para. 103, *ibid.*

¹⁹ Para. 104, *ibid.*

²⁰ Para. 105, *ibid.*

and Croatian on a weekly basis and - on mid-frequency channel 1476 - in the Czech and Slovak languages, twice a month. Furthermore, Romany has been included in a multilingual (Hungarian, Croatian and German language) television programme, which is broadcast four times a year. The regional Hungarian television programme mentioned is broadcast six times a year.

A cooperation agreement between the ORF and the private radio programmes in Slovenian has not been extended. The continued existence of these programmes seems seriously endangered. Pursuant to a finding²¹ of the Austrian Communications Authority, *KommAustria*,²² the licensee formally known as *Antenne 4* has ceased to broadcast a programme according to the Private Radio Act and the licence in particular because it did not dedicate reasonable programme shares to the languages of the ethnic groups in the Burgenland.

²¹ KOA 1.200/02-39 (not final).

²² For further information on the *Kommunikationsbehörde Austria "KommAustria"* see its website: <http://www.rtr.at/web.nsf/deutsch/Ueber+Uns~KommAustria>.

Azerbaijan

Azerbaijani is the official language of the Republic of Azerbaijan, but the Constitution also provides for the free use and development of other languages spoken by the population. New legislation which recently entered into force requires the mass media to use the state language, but in practice, it is reported that the *status quo ante* has largely prevailed. Prior to the enactment of the new legislation, citizens of the Republic also enjoyed the right to produce and broadcast mass information in other languages spoken by the population, as well as in foreign languages spoken in other countries. Azerbaijan State Radio tended to broadcast programmes in the languages of the main national minorities such as Lezghins, Talishes, Kurds, Georgians, and Armenians. To an extent, local radio and television broadcasters also tended to use minority languages. The Parliament is currently discussing a draft law “On Public Broadcasting” which, if adopted, would require the use of Azerbaijani for public broadcasting, with certain exceptions and/or provisions for translation into Azerbaijani.

1 Introduction

1.1 Linguistic topography

According to the Census of the population in the Azerbaijan Republic of the year 1999, the total population of the Azerbaijan Republic was 7,953,400. The Azerbaijanis constitute 90.6% of the population. 9.4% or 747,900 people belong to national minorities.¹

Table 1 lays out the percentages of ethnic/national minorities living in Azerbaijan, according to the official information provided by the State Statistics Committee.

Table 1: Ethnic-national Minorities in Azerbaijan

National-minority group	Number of people	Location
The Lezghins	178,000 (2.23%)	Northern Azerbaijan: Khachmaz-Gusar region and in big cities as Baku and Sumgait
The Russians	141,700 (1.78%)	Mostly in big cities: Baku, Sumgait
The Ukrainians	29,000 (0.36%)	
The Armenians	120,700 (1.51%)	Mostly territories under Armenian rule
The Talishes	76,800 (0.97%)	South-Eastern Azerbaijan, along the Iranian border
The Avars	50,900 (0.64%)	North-Western Azerbaijan, along the Russian border
The Sakhurs	15,900 (0.19%)	
The Meskhetian-Turks	43,400 (0.55%)	Mid-lowland region of Azerbaijan
The Georgians	14,000 (0.18%)	North Western part of Azerbaijan, along the Georgian border

¹ “Census of the population in the Azerbaijan Republic of the year 1999”, Part IV, State Statistics Committee of the Azerbaijan Republic, Baku 2000, available at: <http://www.statcom.baku-az.com>.

The Kurds	13,100 (0.16%)	Lachin-Kalbajar region being under the Armenian occupation
The Udis	4,700 (0.0059%)	Northern Azerbaijan-Gabala region
The Jews	8,900 (0.11%)	Baku, Guba
The Tatars	30,000 (0.38%)	
The Tats	10,900 (0.14%)	

1.2 Broadcasting

After Azerbaijan achieved independence in 1991, a Presidential Decree “On the state assistance for the protection of rights and freedoms, development of languages and cultures of national minorities and ethnic groups living in the Azerbaijan Republic” (1992) was issued. About five months later, on 1 January 1993, Azerbaijan State Radio started broadcasting programmes in the languages of the main national minorities such as Lezghins, Talishes, Kurds, Georgians, and Armenians. There are no programmes in the languages of national minorities on State Television.

Table 2: Airtime dedicated by the Azerbaijan State Radio to programmes in minority languages

Minority language	Number of programmes per week	Airtime per programme (minutes)
Lazghinian	2	15
Talish	2	15
Kurdish	2	15
Georgian	3	15
Armenian	2	20

In addition, several local radio and television stations broadcast in minority languages. The local radio station in the Belokan district organises broadcasts in the Avar language, while in the Khachmas district, they broadcast in the Lezgin and Tat languages. Local television broadcast in the Lezgin language in the Gusar and Khachmas districts until 2001. These broadcasts were cancelled for unknown reasons. The local private television company “Janub” broadcasts in the Talish language in the Lankaran, Lerik, Astara districts. In the city of Baku there are daily radio and television broadcasts in Russian. The Russian programmes of ORT, RTR, and NTV (though the broadcasting of NTV was cancelled recently) are rebroadcast in full.

2 Constitution

The Constitution of the Azerbaijan Republic of 12 November 1995² declares the Azerbaijani language as the state language in Azerbaijan (Article 21). According to the Constitutional provision, apart from ensuring the development of the Azerbaijani language, Azerbaijan guarantees the free use and development of other languages spoken by the population as well. A special Article of the Constitution is dedicated to everybody’s right to preserve his/her national affiliation (Article 44). The following constitutional provision (Article 45) sets forth

² The Constitution of the Azerbaijan Republic, see further: <http://www.constitutional-court-az.org>.

everybody's right to use his/her mother tongue, obtain education, and engage in creative activity in any language s/he desires.

2.1 Freedom of expression

Article 47. Freedom of thought and speech

- I. Everyone may enjoy freedom of thought and speech.
- II. Nobody should be forced to reveal his/her thoughts and convictions or to renounce his/her thoughts and convictions.
- III. Propaganda provoking racial, national, religious and social discord and animosity is prohibited.

Article 50. Freedom of information

- I. Everyone is free to look for, acquire, transfer, prepare and disseminate information.
- II. Freedom of the mass media is guaranteed. State censorship in mass media, including press is prohibited.

2.2 Minority rights

Article 25. Right for equality

- I. All people are equal with respect to the law and law court.
- II. Men and women possess equal rights and freedoms.
- III. The state guarantees equality of rights and freedoms of everyone, irrespective of race, nationality, religion, language, sex, origin, financial position, occupation, convictions, membership in political parties, trade unions and other public organizations. Rights and freedoms of a person, citizen cannot be restricted due to race, nationality, religion, language, sex, origin, conviction, political and social belonging.

Article 44. Right for nationality

- I. Everyone has the right to preserve his/her national belonging.
- II. Nobody may be forced to change his/her nationality.

Article 45. Right to use mother tongue

- I. Everyone has the right to use his/her mother tongue. Everyone has the right to be educated, carry out creative activity in any language, as desired.
- II. Nobody may be deprived of the right to use his/her mother tongue.

2.3 (Official/State) language(s)

Article 21. Official/State language

- I. The Azerbaijani language is the official language of the Azerbaijan Republic. The Azerbaijan Republic provides for the development of the Azerbaijani language.
- II. The Azerbaijan Republic ensures free use and development of other languages spoken by the population.

3 Legislation

3.1 Broadcasting legislation

Many issues regarding broadcasting in general, let alone minority languages related broadcasting have been left open so far. Existing pieces of legislation, including the Law on Mass Media provide only general rules for regulation of broadcasting. On 25 June 2002, the draft Law of the Azerbaijan Republic “On Television and Radio Broadcasting” passed the third reading in the Azerbaijani Parliament and has now entered into force. According to the Law, television/radio broadcasting within the territory of the Azerbaijan Republic shall be carried out on the basis of a licence which is to be valid for up to six years. Licences for broadcasting shall be granted on a competitive basis. Applicants for participation in the tender for obtaining a licence must pay a fee, the amount of which is to be determined by the relevant governmental executive body. The Law contains requirements to be met while preparing the programmes. These requirements include the provision of diverse programmes which take into consideration the interests of the regions and of national minorities in Azerbaijan, ensuring use of the state language in the programmes that are broadcast. A draft law on public broadcasting is currently before the *Milli Majlis* (Parliament of the Azerbaijan Republic).

The following are the relevant excerpts from the Law on State Language, the Law on Mass Media, and the Presidential Decree on the protection of the rights and freedoms and on state support for the promotion of the languages and cultures of national minorities, numerically small peoples and ethnic groups living in the Republic of Azerbaijan.

LAW OF THE AZERBAIJAN REPUBLIC “ON THE STATE LANGUAGE IN THE AZERBAIJAN REPUBLIC” OF 30 SEPTEMBER 2002³

Article 6

6.1. All television and radio broadcasting, established and operating on the territory of Azerbaijan Republic, regardless of the form of ownership, is carried out in the official state language.

LAW OF THE AZERBAIJAN REPUBLIC “ON MASS MEDIA” OF 7 DECEMBER 1999 (AS AMENDED)

Article 6. The language of the Mass Media

In the Azerbaijan Republic the mass media use the state language.

Citizens of the Azerbaijan Republic enjoy the right to use in producing and broadcasting mass information other languages spoken by the population of the Azerbaijan Republic as well as languages widely spread around the world.⁴

³ This Law entered into force on 4 January 2003 and has been causing many problems for broadcasters. As was the practice prior to the entry into force of this Law, the state radio continues to broadcast programmes in rural languages and commercial television and radio stations also continue to broadcast programmes in Russian and in English.

⁴ Note: Article 6 of the Law of the Azerbaijan Republic “On Mass Media” of 7 December 1999 (as amended) appears to be in conflict with Article 6.1 of the Law of the Azerbaijan Republic “On the state language in the Azerbaijan Republic” of 30 September 2002. However, according to the Constitution of Azerbaijan, if there is

Article 14

Any citizen of the Republic of Azerbaijan has the right to establish a media outlet.

PRESIDENTIAL DECREE “ON THE PROTECTION OF THE RIGHTS AND FREEDOMS AND ON STATE SUPPORT FOR THE PROMOTION OF THE LANGUAGES AND CULTURES OF NATIONAL MINORITIES, NUMERICALLY SMALL PEOPLES AND ETHNIC GROUPS LIVING IN THE REPUBLIC OF AZERBAIJAN”, 16 SEPTEMBER 1992

This Decree established the following goals:

- the maintenance and development of the distinctive cultures, languages and religions of national minorities, numerically small peoples and ethnic groups; [...]

The Decree also contains an assignment to create conditions and to adopt relevant legal measures to guarantee the rights of persons belonging to national minorities to organise their cultural and religious societies and its activities. At the same time, it was deemed purposeful to provide such kinds of societies and associations with state assistance, including providing them with premises, material resources, and financial allocations.

3.2 Transfrontier dimension

Under the Law of the Azerbaijan Republic of 16 June 2000,⁵ Azerbaijan acceded to the Council of Europe’s Framework Convention for the Protection of National Minorities. The Republic of Azerbaijan signed the European Charter for Regional or Minority Languages on 21 December 2001.

4 Current developments

The draft Law “On Public Broadcasting” has been passed by the Parliament of Azerbaijan on its second reading. In order to become law, it should also be approved at its third reading. With regard to the minority language related broadcasting, Article 16 establishes the following:

16.1 Public broadcasting programs are carried out in the Azerbaijani language.

16.2 Speeches in the languages of other nations are accompanied with translation into Azerbaijani.

16.3 Broadcasting of foreign documentary, feature films, and animated cartoons etc. without translation into the Azerbaijani language is prohibited.

16.4 Public broadcasting programs may include programs in the languages of national minorities living in the Azerbaijan Republic.

any contradiction between two laws, the provision of the most recent law takes precedence. Thus, in the instant case, the operative provision of the Law on the state language takes precedence.

⁵ Date of ratification by the Azerbaijan Parliament.

Note: Since this report was compiled/edited, Azerbaijan's National Council for Television and Radio adopted on 25 June 2003 regulations on the use of the state language in television and radio broadcasts according to which a minimum of 75 per cent of all programmes, announcements, and advertisements on both state-controlled and privately owned television and radio stations must be in the Azerbaijani language. It is also stipulated that announcers and moderators must speak fluent and well-articulated Azerbaijani.

Belarus

The two state languages of the Republic of Belarus are Belarussian and Russian. Formal legislation recognises the needs of minority populations and in practice, broadcasts take place in both Belarussian and Russian, but predominantly in the latter. Existing broadcasting legislation does not contain any facilitative or prohibitive measures relating to minorities' access to broadcasting in their own languages. While legislative provisions designed to ensure the correct usage of language do exist, they are not frequently relied upon any more. A new law on the press and other mass media is currently being drafted.

1 Introduction

1.1 Linguistic topography

According to the results of the census of the Republic of Belarus in 1999 the population of the country is 10,045,000 people. Belarussians make up 81.2% of the population. Russians make up 11.4% of the population; Poles, 3.8%; Ukrainians, 2.4%, and Jews, 0.3%. There are also small communities of other nationalities: Tartars, Roma, Lithuanians, Azerbaijanians, Germans, Moldavians, Georgians, etc.¹

1.2 Broadcasting

There is one national television channel ("first national television channel"), which broadcasts to more than 90% of the Republic. The Russian channels ORT and RTR are also received. Some regions receive NTV, "Culture" and TV-6 from Russia. Western regions of Belarussia receive the programmes of Polish television. In regional centres and some district cities, state and private regional television stations broadcast programmes. According to the Presidential Decree of the Republic of Belarus #101 of 15 February 2002, the "second national television channel", ZAO, is being created in Belarussia. According to the plans, this channel will partially broadcast on ORT frequencies. However, the channel has not yet started to broadcast.

Broadcasting on the "first national television channel" is predominately done in Russian. News and some programmes are transmitted in the Belarussian language. There are no minority programmes on the first national television channel. Regional stations broadcast mainly in Russian. Some programmes are transmitted in Belarussian. Minorities do not participate in broadcasting by regional stations.

2 Constitution

The Constitution of the Republic of Belarus was adopted by the republican referendum of 24 November 1996.²

2.1 Freedom of expression

Article 33.

¹ Statistical Yearbook of the Ministry of Statistics and Analysis (in Russian), 2001, p.70.

² Available at: <http://president.gov.by/eng/map/const.shtml>.

Everyone is guaranteed freedom of thoughts and beliefs and their free expression. No one shall be forced to express one's beliefs or to deny them. No monopolization of the mass media by the State, public associations or individual citizens and no censorship shall be permitted.

Article 34.

Citizens of the Republic of Belarus shall be guaranteed the right to receive, store and disseminate complete, reliable and timely information of the activities of state bodies and public associations, on political, economic, cultural and international life, and on the state of the environment.

State bodies, public associations and officials shall afford citizens of the Republic of Belarus an opportunity to familiarize themselves with material that affects their rights and legitimate interests.

The use of information may be restricted by legislation with the purpose to safeguard the honour, dignity, personal and family life of the citizens and the full implementation of their rights.

2.2 Broadcasting

The Constitution of the Republic of Belarus does not regulate broadcasting issues.

2.3 Minority rights

Each person has the right to use his/her native language, and to choose the language of communication. According to the law, the State guarantees freedom of choice for the language of upbringing and education.

Article 14.

The State shall regulate relations among social, ethnic and other communities on the basis of the principles of equality before the law and respect of their rights and interests.

The relations in the social sphere and in labour between the organs of state management, associations of employers and trade unions shall be exercised on the principles of social partnership and interaction of parties.

Article 15.

The State shall bear responsibility for preserving the historic, cultural and spiritual heritage, and the free development of the cultures of all the ethnic communities that live in the Republic of Belarus.

Article 50.

Everyone shall have the right to preserve one's ethnic affiliation, and equally, no one may be compelled to define or indicate one's ethnic affiliation.

Insults to ethnic dignity shall be prosecuted by law.

Everyone shall have the right to use one's native language and to choose the language of communication. In accordance with the law, the State shall guarantee the freedom to choose the language of education and teaching.

2.4 (Official/State) language(s)

Article 17.

The Belarusian and Russian languages shall be the official languages of the Republic of Belarus.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

LAW OF THE REPUBLIC OF BELARUS "ON NATIONAL MINORITIES", 1992³

(1) Advisory bodies consisting of the representative of national minorities can be set up and act under the Councils of People's Deputies. The respectful Councils of Peoples' Deputies determine the order of the formation of such bodies.

(2) According to the legislation the Republic of Belarus promotes the creation of material conditions for the development of national minority education and culture by allocating necessary means from the budget.

(3) Cultural societies (unions) of national minorities have the right to do business according to the legislation of the Republic of Belarus.

(4) Public and cultural organizations of national minorities may create cultural educational institutions on their own means.

3.2 Broadcasting legislation

3.2.1 General measures

According to the 1995 Law of the Republic of Belarus On Press and Other Mass Media (amended by the Law of the Republic of Belarus N 337-3 of 13 December 1999), "the distortion of the recognised norms of the used language" is not allowed. The State Committee on the Press of the Republic of Belarus (now the Ministry of Information of the Republic of Belarus) used this to warn the mass media that used the pre-reform version of the Belarussian language.⁴ The High Court of Commerce, which reviewed the lawsuit of a newspaper on the recognition of the warning as unlawful, decided that the legislation does not establish what is to be "the recognised norms of the language used". After that, the State Committee of the Republic of Belarus and later the Ministry of Information of the Republic of Belarus did not issue warnings on the basis of this Article, and, in fact, it was not used.

3.2.2 Facilitative/affirmative measures

Broadcasting legislation does not envisage any facilitative/affirmative measures relating to minorities' access to broadcasting in their own languages. Nor are any such measures taken in practice.

3.2.3 Prohibitive measures

Broadcasting legislation does not contain any prohibitive/restrictive measures relating to minorities' access to broadcasting in their own languages.

³ Law of Republic of Belarus, dated 11 November 1992, # 1926-XII "On National Minorities in Republic of Belarus", published in *Vedomosti* of the Supreme Council of the Republic of Belarus, 1992, N 35, p. 550.

⁴ In 1939 there was the reform of the Belarussian language, which was made close to the Russian language. This remains important today as some (ultranationalist) media still use pre-reform rules.

3.3 Transfrontier dimension

AGREEMENT “ON COOPERATION IN PROVIDING MINORITY MEMBERS WITH RIGHTS” BETWEEN THE GOVERNMENT OF THE REPUBLIC OF BELARUS AND THE GOVERNMENT OF MOLDOVA, 1997

Article 4

In order to preserve the ethnic originality of the citizens of the Republic of Moldova of Belarussian nationality and the citizens of the Republic of Belarus of Moldavian nationality, the Parties promote the preservation and research of their cultural heritage, the development of crafts, preservation of their historical and cultural monuments, the creation of the necessary conditions for studying their native language, and history and geography of the state, to which these minorities belong by nationality, as well as their traditions and culture.

Article 5

The Parties recognize the citizens belonging to the Belarussian people and Moldavian people, the right to use their national names and surnames including official documents, according to the rules of transliteration, to establish mass media in congruence of the legislation of the Parties.

AGREEMENT BETWEEN THE REPUBLIC OF BELARUS AND UKRAINE “ON COOPERATION IN PROVIDING MINORITY MEMBERS’ RIGHTS”, 1999

Article 7

Each Party recognizes the minority members’ right to use his/her native language in private and public life within the limits established by the Parties’ legislation on languages.

Each Party recognizes minority members’ rights to national surname, name and patronymic.

Article 8

Each Party recognizes minority members’ rights to have the access to information in his/her own language, to disseminate freely such information including the right to establish mass media in their own language.

4 Current developments

Currently, a new Law of the Republic of Belarus On Press and other Mass Media is being drafted. In one of the drafts there is no provision such as the one mentioned above on the distortion of the recognised norms of the used language, and in the other it exists in the same form. At the time of writing the law had not yet been adopted.

On 9 July 2002, 17 Belarusian NGO’s petitioned UNESCO’s General Assembly with respect to the use of Belarussian in national media. The petition stated that programming in Belarussian was quickly giving way to programming in Russian.

The document stated:

For example, on 25 June 2002, Nationwide TV was launched, which uses pure Russian language in its programmes. A situation has emerged in which 97 per cent of TV broadcasting is conducted in Russian, whereas the titled national language is hardly voiced on the air. [...] Conditions are emerging where the young generation do not hear the native language on the air; less than 30 per cent of children use it, which leads to the disappearance of the Belarusian language.

The authors presented their appeal to UNESCO Director-General Koichiro Matsuura who was visiting Minsk and requested that the Assembly address the linguistic situation in Belarus at its next session. They asked the international community to help protect and preserve Belarusian and assist in the development of languages of all ethnic minorities.⁵

⁵ Source: Belapan news agency, Minsk, in Belarusian, 1255 gmt, 9 July 2002.

Belgium

Belgium has one of the most complicated and finely tuned arrangements to ensure language policies that reflect demographic and political realities. The very structure of society is designed with communities and their linguistic needs in mind. Deliberative bodies, broadcasting authorities, cultural and community services are defined by group and language. In a sense, national policy and linguistic policy is one and the same. Belgium is composed of three communities and three regions, each with its own competences. The official languages of the three communities are Dutch, French and German; the three regions are the Flemish, Walloon and Brussels Capital Region. In each case, there are specific linguistic policies that reflect dominant and minority groups within the community or region. May-carry, must-carry and putative quotas are among the tools used within, particularly, the Flemish community to encourage language and identity related programming. While incentives have been provided in the past for other minorities to have language-specific programming, policies with respect to them is more occasional and irregular.

In the Flemish Community, private radio stations must broadcast in Dutch, but exceptions can be approved by the regulatory authority. The Flemish Government may impose quotas to ensure greater use of Dutch-language European productions, but has yet to do so. Cable operators are subject to certain must-carry provisions concerning the Dutch language and may-carry provisions which allow foreign-language broadcasting opportunities. Flemish television productions and co-productions must amount to at least 50% of the public service broadcaster's total programming between 18.00 and 23.00. In the French-speaking Community, the cultural objectives of the public service broadcaster include the requirement that its radio stations broadcast at least 40% of non-classical music in French, except for its two thematic channels, which must broadcast 15% of non-classical music in French (annual averages). At least 33% of its television broadcasting time (excluding news, advertising, sports, etc.) should be carried out by French-speaking professionals. A progressive goal of 33% for own productions in French has been fixed. Private radio stations must broadcast in French, but exceptions can be approved by the regulatory authority. 30% of music broadcast should be in French, of which 15% originates in the French Community. In the German-speaking Community, the promotion of the German language is provided for by law.

1 Introduction

1.1 Linguistic topography

Article 1 of the Belgian Constitution states: "Belgium is a federal state which consists of communities and regions".¹ Besides the Federal Government and Parliament, there are three communities and three regions, which have their own competences. The distribution followed two broad lines: an economic and a cultural-linguistic one. The first resulted in three regions: the Flemish Region, the Walloon Region and the Brussels Capital Region. The Brussels Capital Region is bilingual: Dutch and French are the official languages. The latter gave birth to three communities, based on language: the Flemish Community, the French Community and the German-speaking Community.

¹ See also *infra*.

The Federal State retained important areas of competence like foreign affairs, defence, justice, finances, social security, etc. Regions are responsible for economics, environment, employment, agriculture, etc. The competences of the three communities are culture, education, media, social welfare, tourism, etc. The “laws” which are promulgated by the community or regional parliaments are “decrees”. However, these decrees have an equal status to the federal law, albeit only within the proper region or community.

In 2002, 57.9% of the population lived in the Dutch-speaking region; 31.9% in the French-speaking region and 9.5% in the Brussels bilingual region. Only 71,287 people (0.7%) live in the German-speaking region.²

In 2002, Belgium had 10,309,725 inhabitants, of which 846,734 (8.4%) were foreigners. Most of them lived in the Walloon region (311,471). 260,040 foreigners were resident in the Brussels Capital Region. The Flemish region had relatively the lowest number of foreigners: 275,223.³

1.2 Broadcasting

1.2.1 Flemish Community

Broadcasting in Belgium is a competence of the communities who have their own regulations in this domain. In the Flemish Community, media law is coordinated by the Decree of 25 January 1995.⁴ The Decree recognises seven different categories of television broadcasting companies:

1. The public broadcasting company *Vlaamse Radio en Televisieomroep* (VRT, Flemish Radio and Television Broadcasting Organisation) which has two channels (*TV 1* and *Canvas/Ketnet*). The VRT is mainly financed by public funding from the Flemish Community.
2. Private broadcasting companies for the whole of the Flemish Community: the most important commercial station is the *Vlaamse Media Maatschappij* (VMM, Flemish Media Company) with three channels (*VTM*, *Kanaal 2* and *JIM TV*). Since 1 March 2002, the former British commercial broadcasting station *VT4* (part of the SBS-group) has been operating under a Flemish broadcasting licence. Mainly targeting smaller or specific audiences, there is also *Event TV* (Liberty TV.com), *Kanaal Z* (Belgian business television) and *Vitaya* (Media ad Infinitum NV), a lifestyle television station.
3. Regional stations: there are 10 regional stations, mainly relying on advertising and sponsorship for finances.
4. Target groups and theme-television: this could be television that is programming only one specific kind of programmes or that aims at certain minority groups, such as, for instance, minority-language groups. Until now, however, such target groups and theme-television have not become operational, or rather took the option of obtaining a licence as a general broadcaster, such as the travel station (*Event TV- Liberty TV.Com*), the business channel (*Kanaal Z*) or the lifestyle station (*Vitaya*).
5. Pay-television: *Canal+* is the only pay-TV network in Flanders.

² See:

<http://www.belgium.be/eportal/application?origin=navigationBanner.jsp&event=bea.portal.framework.internal.r efresh&pageid=indexPage&navId=6182>.

³ See: http://statbel.fgov.be/figures/d21_nl.asp.

⁴ Available at: <http://www2.vlaanderen.be/ned/sites/media/gecoördineerde%20decreten2003.pdf>.

6. Television services: television station, which targets a public with “different sort of services” (not operational yet).

Teleshopping television stations (*H.O.T. Thuis Winkelen*, Home Shopping Europe Belgium).

As for radio, the Decree also recognises different sorts of stations. First of all there are hundreds of local radios. They broadcast in a city, a part of a city, a municipality or a limited number of neighbouring municipalities or for a specified audience. A Decree of 1998 opened the possibility for private radio for the whole of the Flemish Community (‘national radio’). In September 2001, two commercial radio stations obtained a radio broadcasting licence: *Q-music* (part of VMM) and *4FM*. The Decree of 25 October 2002⁵ also developed a legal framework for regional radio, which is allowed to broadcast for a maximum of one province. A last category of private radio is cable radio, which is transmitted via cable (Flanders has high cable penetration) to the whole of the Flemish Community.

The public service broadcaster has six radio channels: five of them are for the whole of the Flemish Community (*Radio 1*, *Radio 2*, *Klara*, *Studio Brussel* and *Donna*. *Radio Vlaanderen Internationaal* (Radio Flanders International) is the VRT world service radio.⁶

1.2.2 French Community

The broadcasting legislation of the French community is not coordinated by one decree. The Decree of 14 July 1997 regulates the public service broadcaster, the RTBF.⁷ This station has two television channels, *La Une* and *La Deux*, and six radio channels (*La Première*, *fréquence Wallonie*, *Musique 3*, *Radio 21* and the world service *RTBF international*). It is also a member of *TV5*, a satellite television chain for the French-speaking population all over the world.

The rest of the Walloon audiovisual landscape is regulated by the Decree of 17 July 1987.⁸ As in Flanders, there are different categories:

1. Local and communal television (in practice, there is no difference between the two): twelve of them are licensed by the French Community.
2. Private television for the French Community: there are two commercial television channels, *RTL TVI* and *Club RTL*, both mainly in hands of the RTL-group.
3. Pay-television: as in Flanders, *Canal +* is the only station that offers several paying channels.
4. Other services: the Government can allow the RTBF and the other broadcasting organisations to use the cable for other services than television or radio programmes.

Private radio is regulated by the Decree of 24 July 1997.⁹ It makes a distinction between independent radios and radios belonging to a network or chain (eg. the Bel RTL network, the NRJ network, etc.).

⁵ *Decreet van 25 oktober 2002 houdende wijziging van sommige bepalingen van de decreten betreffende de radio-omroep en de televisie gecoördineerd op 25 januari 1995* (Decree of 25 October 2002 modifying some provisions of the Broadcasting Act 1995), *Le Moniteur belge/Het Belgisch Staatsblad*, 14 December 2002, available at: <http://www.moniteur.be>.

⁶ See further: <http://www.vrt.be>.

⁷ Available at: <http://www.csa.cfwb.be/pdf/Décret%20RTBF.pdf>.

⁸ Unofficially coordinated on 31 October 2000, available at: <http://www.csa.cfwb.be/pdf/Décret%20audiovisuel.pdf>.

⁹ Available at: <http://www.csa.cfwb.be/pdf/Décret%20CSA.pdf>.

1.2.3 German-speaking Community

In the German-speaking Community, there is also a public service broadcaster, the *BRF* (*Belgische Rundfunk- und Fernsehzentrum der Deutschsprachigen Gemeinschaft*). Since it is a rather small community, the television service from the BRF is limited to a daily news programme. The radio station broadcasts 24 hours a day. The Media Decree of 26 April 1999 provides for local radio.

1.3 Government policies

1.3.1 Broadcasting

Policy Note “Media 2002” of the Flemish Minister for the Media addresses new media and Information and Communication Technologies (ICT) developments. The public broadcaster is encouraged to take part in this evolution by launching digital television and developing e-services and an e-platform (“E-VRT”).

No measures have been taken yet against the increasing concentration of media ownership, although one of the goals of the Policy Note is to ensure fair competition in the Flemish media landscape.

Policy Note “Media 2003” again emphasises the need for a media landscape without excessive concentration and monopolies.¹⁰ Therefore, a ‘flashing light’-model will be developed. The present media authorities will also be reformed.

Only recently, the Decree had been adapted so that private radio for the whole of the Flemish Community is made possible. In 2001, the *Vlaams Commissariaat voor de Media*¹¹ awarded two licences for such radio stations. Since 1998, several commercial television broadcasters were also given the opportunity to obtain a licence (cf. *supra*).

In the Flemish Community and in the French Community, the public service broadcasters work via an agreement concerning management or what is called “an executive agreement”. The public broadcasters have to meet some performance criteria, but they can work more or less on an independent basis and their financing is secured by Decree.

The French Community attaches great importance to the defence and promotion of French and its own culture. For example, there is a minimum quota concerning the number of musical productions in French (see further, s. 3.3 *infra*).

The actual Executive Agreement between the *VRT* and the Flemish Government emphasises the “mission statement” of the *VRT*, as formulated in the Flemish Broadcasting Act (Article 8), with explicit reference to the Resolutions of Prague (1994) and Cracow (2000) on the role of public broadcasting in democratic society. The *VRT* has to provide a reference point for all members of the public and be a vector for social cohesion and the integration of all individuals by being attentive to the needs of minority groups and developing pluralistic, innovative and varied programming which meets high quality standards.

¹⁰ Available at: http://www2.vlaanderen.be/ned/sites/beleidsbrieven/Van_Mechelen/Media_2003.pdf.

¹¹ The Flemish Broadcasting Commission, the media authority with responsibility for licensing.

1.3.2 Minorities

The policy on minorities is also under the competence of the Communities. The main Decree in Flanders is the *Minderhedendecreet* (Minorities Decree) of 14 July 1998.¹² The main purpose of the Flemish policy is to give to those who are legally settled in Belgium the opportunities and possibilities to be a valuable member of society. For those who stay in the country temporarily, it creates the conditions so that they can be granted the full respect of their basic human rights.

In the French Community, the *Division de l'Action Sociale et des Immigrés* (Department for social action and for immigrants) supports several actions and services aimed at the social integration of foreigners (eg. literacy courses, socio-professional integration).

1.3.3 Broadcasting and minorities

There is no substantial or explicit policy on broadcasting and minorities, but relevant legislation is instructive in this regard (see *infra*). Until now, however, no coherent framework has been elaborated for a policy towards the access of linguistic minorities to broadcasting or for a specific broadcasting channel for minorities (apart from the German-speaking minority, this being institutionalised within the Belgian federal state). There are, however, some possibilities for minorities to create programmes in their own language. It is argued that for financial reasons, these opportunities often cannot be developed in a sufficient way.

From 1992 until 1995, a prize was awarded for a medium (written or audiovisual) that promoted a multicultural society. It was awarded by the Royal Commissioner for Policy on Immigrants, Paula D'Hondt. There has not been a similar initiative since then.

Special broadcasting programmes for immigrant workers or for ethnic and cultural minorities have been decreasing in the past few years. Programmes such as *Babel* and *Couleur Locale* on the Flemish public broadcasting channels have been discontinued. On several occasions, the Centre for Equality of Chances and the Struggle against Racism has requested a more active media policy with regard to the representation of the multicultural society.¹³

On 19 April 2002 the Flemish Government rejected a proposal of the Flemish Minister for Welfare and Equality of Chances to start up a television channel specifically for minorities and immigrants (especially service programmes for Turks and Moroccans).¹⁴ According to the Flemish Government, such a television channel with only programmes for minorities would be dysfunctional for the social and cultural integration of minority groups. According to some sources they feared that this might lead to "apartheid television" or "ghetto broadcasting".¹⁵ The Flemish Government has now instructed the Flemish Minister for the Media to take steps to elaborate a plan for a better implementation of the obligations of the

¹² Available directly at <http://www.vmc.be/main/mainc04.htm> or else at <http://www.vmc.be> (by clicking on *Beleid* and then on *decreten & uitvoeringsbesluiten*).

¹³ For more information see <http://www.antiracisme.be>. See also L. d'HAENENS and F. SAEYS (eds.), *Media & Multiculturalisme in Vlaanderen* (Gent, Academia Press, 1996) and E. SCHELFHOUT and H. VERSTRAETEN (eds.), *De rol van de media in de multiculturele samenleving* (Brussel, VUBpress, 1998). See also <http://www.minderhedenforum.be> en http://www.kbs-frb.be/code/page.cfm?id_page=125&ID=136

¹⁴ Service programmes are programmes for a specific audience (in this case thus Turks and Moroccans). Its programmes are adjusted to the needs of that audience. Examples of such service programmes are programmes concerning education and training, information to put them wise in the government administration, information concerning integration (e.g. organisations), cultural information, job information.

¹⁵ *De Standaard*, 19 April 2002; *De Standaard*, 20 April 2002.

public broadcasting organisation *VRT* under Article 8 of the Flemish Broadcasting Decree and under the Executive Agreement 2002-2006 between the *VRT* and the Flemish Government according to which the *VRT* must be developed as a factor for social cohesion and integration of all individuals, being attentive to the needs of minority groups. The Minister for the Media has requested the *VRT* to work out a project and programme proposals in order to fulfil more substantially this part of its mission as a public service broadcaster.¹⁶

In the evaluation of its activities in 2001, the *VRT* announced an action plan about the mission and task of the *VRT* in a multicultural society. In April 2003, the public broadcaster will therefore present a 'charter of diversity'. The intention is that immigrants will participate in different ways in the programmes and that they will be better represented in the staff of the *VRT*. Currently, only 1% is of foreign origin. People from ethnic-cultural minorities will also more frequently feature in programmes as citizens or experts.

The *VRT* already organised a project week for allochthonous final-year students of secondary education, which enabled 21 young people from Moroccan, Turkish, Chinese, Pakistani, Polish and Portuguese backgrounds to become acquainted with different jobs in a media concern.

2 Constitution

The Belgian Constitution contains several provisions concerning freedom of expression, broadcasting, minority rights and languages. In the following, we give an overview of the most relevant articles of the Belgian Constitution relating to one of those issues.¹⁷

2.1 Freedom of expression

Art. 19 Freedom of worship, public practice of the latter, as well as freedom to demonstrate one's opinions on all matters, are guaranteed, except for the repression of offences committed when using this freedom.

Art. 25 The press is free; censorship can never be established; security from authors, publishers or printers cannot be demanded.

When the author is known and resident in Belgium, neither the publisher, nor the printer, nor the distributor can be prosecuted.

2.2 Broadcasting

Art. 127 § 1. The French and Dutch Community Councils, respectively, establish by decree:

1° cultural issues;

[...]

§ 2. These decrees have force of law in French-language and in Dutch-language regions respectively, as well as in those institutions established in the bilingual Brussels Capital Region, which, on account of their activities, must be considered as belonging exclusively to one community or the other.

¹⁶ Decision of the Flemish Government of 19 April 2002, press releases.

¹⁷ Available in English at: http://www.oefre.unibe.ch/law/icl/be00000_.html; in Dutch at http://www.senate.be/doc/const_nl.html; in French at http://www.senate.be/doc/const_fr.html and in German at http://www.senate.be/doc/const_de.html.

Art. 130 § 1. The German Community Council rules by decree on:
1° cultural issues;
[...]
§ 2. These decrees have force of law in the German-language region.

2.3 Minority rights

Art. 10 There are no class distinctions in the State.

Belgians are equal before the law; they are the only ones eligible for civil and military service, but for the exceptions that could be made by law for special cases.

The equality between women and men is guaranteed.

Art. 11 Enjoyment of the rights and freedoms recognized for Belgians should be ensured without discrimination. To this end, laws and decrees guarantee notably the rights and freedoms of ideological and philosophical minorities.

Art. 131 The law determines measures designed to prevent all forms of discrimination for ideological or philosophical reasons.

Art. 43 [Linguistic Groups].

(1) For cases determined by the Constitution, the elected members of each House are divided into a French linguistic group and a Dutch linguistic group, in the manner determined by law.

(2) The senators referred to in Article 67 (1)(2,4 and 7) make up the French linguistic group of the Senate. The Senators referred to in Article 67 (1)(1,3 and 6), make up the Dutch linguistic group of the Senate.

Art. 191 All foreigners on Belgian soil benefit from that protection provided to persons and property, save for those exceptions provided for by law.

2.4 (Official/State) language(s)

For purposes of understanding the question of an official language in Belgium we have included the articles that refer to Belgium's regional and community set-up.

Art. 1 Belgium is a Federal State made up of communities and regions.

Art. 2 Belgium is made up of three communities: The French Community, the Flemish Community and the German Community.

Art. 3 Belgium is made up of three regions: The Walloon region, the Flemish region and the Brussels region.

Art. 4 Belgium has four linguistic regions: The French-speaking region, the Dutch-speaking region, the bilingual region of Brussels Capital and the German-speaking region. Each «commune» (county borough) of the Kingdom is part of one of these linguistic regions.

The limits of the four linguistic regions can only be changed or modified by a law adopted by majority vote in each linguistic group in each Chamber, on the condition that the majority of the members of each group are gathered together and from the moment that the total of affirmative votes given by the two linguistic groups is equal to at least two-thirds of the votes expressed.

Art. 30 The use of languages current in Belgium is optional; only the law can rule on this matter, and only for acts of the public authorities and for legal matters.

3 Legislation

3.1 Hierarchy

There are three official languages in Belgium: Dutch, French and German. There is no hierarchy between these languages, but as stated in Article 30 of the Constitution, everybody is free to speak the language of his/her preference. This provision is only applicable for private affairs, and not for public affairs or in court. The administration and the judiciary operate in each community in their own language, while Brussels Capital has a bilingual status and while especially in some Flemish villages close to the French Community facilities are provided for French-speaking citizens.

3.2 Minority rights

The main protection of minority rights is laid down in the Constitution, in federal anti-discrimination legislation and in the Community Decrees on minority rights and integration policy.

3.3 Broadcasting legislation

In the following, we give a systematic overview of the provisions in media law concerning minorities and languages. Where necessary, extra information and, if possible, examples are provided (denoted by the signal: ⇒).¹⁸

FLEMISH MEDIA DECREE OF 25 JANUARY 1995¹⁹

Art. 2 [...]

13° Dutch European productions: productions as meant in 12°,²⁰ but in the Dutch language;

Art. 8 §1 The VRT carries out the public service task for the Flemish Community, as described in this article. As public service broadcaster, the VRT has the duty to reach as many viewers and listeners as possible with a diversity of programmes which attract the attention of the viewers and listeners and satisfy them.

§2 [...] The programming must be adapted so that it aims at certain sections of the population and age groups, especially at children and youth.

¹⁸ The translations of the decrees and management agreements are the authors' own unofficial translations of the same.

¹⁹ Available at: <http://www2.vlaanderen.be/ned/sites/media/gecoördineerde%20decreten2001.pdf>.

²⁰ Article 2, 12° describes what European productions are. See also Article 102-103 on the European productions quota in Flemish Broadcasting.

§3 The programmes have to contribute to the further development of the identity and diversity of the Flemish culture and of a democratic and tolerant society. The VRT has to contribute through its programmes to form an independent, objective and pluralistic opinion in Flanders. Therefore she has to aim for a leading role in information and culture.

§4 To realise the involvement of as many Flemish people as possible and to secure the credibility of the public service broadcaster, a sufficient number of programmes has to be directed at a large and general public. Besides these general programmes, other programmes will meet specific interests of viewers and listeners. The aimed target group must be large enough and they have to be reached by the programmes concerned [...].

Art. 23 In the programmes, every form of discrimination is excluded on the basis of the Universal Declaration of Human Rights. Programming may not cause discrimination between ideological and philosophical convictions.
[...]

Art. 31 §1 Private radios have to broadcast in Dutch. Derogations can be allowed by the Vlaams Commissariaat voor de Media.

⇒ Until now, only a few private radios have applied for this provision. In Antwerp, there is a multi-ethnic radio, *Radio Multipop*, which broadcasts in different languages. In the province of Limburg (where a lot of – especially Italian – immigrants live who have worked in the mines), *Radio Internazionale* has done this also. In Brussels *FM BSSL* has requested such a permission. This radio station is also subsidised by the Flemish Minister for Brussels Affairs. It is, however, only allowed to broadcast 5% of its total broadcasting time in languages other than Dutch. *FM BSSL* broadcasts French, Italian and Arabic programmes. These are all very small initiatives on a local basis. There are no listenership ratings available concerning these stations.

§2 Private radios have the task of broadcasting a diversity of programmes. These programmes must be made on the responsibility of the private radios. Every form of discrimination is averted in the programme content and broadcasting scheme.

Section 2 – national radios

Art. 38 §1. 4° A Dutch music offer must be secured in the programming.

Section 3 – regional radios

Art. 38^{quater} Regional radios have the task of broadcasting a diversity of programmes, especially concerning regional information, cultural, sports and other events from the region and recreation, with the purpose of improving communication among citizens in their area of broadcasting and contributing to the common social and cultural development of the region.
[...]

Section 4 – local radios

Art. 38^{octies} Local radios have the task of broadcasting a diversity of programmes, especially concerning information from their broadcasting area and recreation, with the

purpose of improving communication in their area of broadcasting among citizens or target audience.

Art. 51 The regional broadcasting company has the duty to provide regional information with the purpose of improving communication among the population of their broadcasting area, that is granted by the Vlaams Commissariaat voor de Media following Art. 52, and to contribute to the overall social and cultural development of the region.

[...]

Within the framework of the job description of the regional broadcasting company as described in the first part, the regional broadcasting company can place broadcasting time at disposal of regional actors, but remains responsible for the broadcast.

⇒ When a linguistic minority is a relevant actor in a broadcasting area, this provision can be applied. No such projects in application of this provision have been developed as far as we know. The regional television stations will be invited however by the Minister of the Media to report on this issue and to consider future initiatives.

Art. 52 §1 The Vlaams Commissariaat voor de Media can recognise eleven regional broadcasting companies for the Flemish Community, evenly spread over the provinces. The bilingual Brussels Capital Region is a special broadcasting area. By defining the broadcasting areas, the Flemish Government shall take sociological specifications and the technical possibilities into account. Within one broadcasting area, the Vlaams Commissariaat voor de Media will grant a licence to only one regional broadcaster [...].

Art. 53 To be recognised and to stay recognised, regional broadcasting companies have to meet the following basic conditions:

6° regional broadcasting companies have to broadcast in Dutch, subject to derogations, which have to be allowed by the Flemish Government;

7° regional broadcasting companies have to broadcast own programmes. In their own programmes they strive for the development of the possibilities of expression of the local population and to encourage their participation.

[...]

Art. 59 Every regional broadcasting company sets up an advisory body. The advisory body guards the independent and pluralistic character of the regional broadcasting company.

While the advisory body is composed, the regional broadcasting company strives for a political, sociological, cultural, philosophical, ethnical and geographical representativeness. The advisory body advises the regional broadcasting company on its discretion about all aspects concerning the programme content and the broadcasting scheme.

Once a year, the advisory body draws up an evaluation report that is sent to the board of directors of the regional broadcasting company and to the Vlaams Commissariaat voor de Media.

At least once a year, the meeting of the advisory body is open for every member of the population who lives within the broadcasting area of the regional broadcasting company.

Art. 61 To be recognised as a target group or theme-television, the social goal must be limited to the broadcasting of programmes for a specific target group or set up around one theme.

⇒ This could be used for broadcasting in other languages, aimed at a linguistic minority. The legislator does not mention a language requirement. The same applies for pay television (Art. 64*bis*) and television services (Art. 70).

Art. 99 The television companies of, or recognised by, the Flemish Community report every year before 31 March to the Vlaams Commissariaat voor de Media on all the broadcasting programmes or services of third parties they transmit [...].

⇒ Again, this could be a possibility for broadcasting programmes of linguistic minorities. Permission to broadcast these programmes is not required. The television company that transmits such a programme only has an obligation to report this to the Vlaams Commissariaat voor de Media. No other content or programme obligations are applicable with regard to these “windows” offered to third parties.

Art. 102 The television company of the Flemish Community and the television companies recognised by the Flemish Community on the basis of Article 41, 1°, 3°, 4° and 5°, strive to spend the biggest part of their broadcasting time that is not spent on news, sports, games, advertising, teletext and teleshopping, on European productions.

An important part of it must be spent on Dutch-language European productions.

The Flemish Government can impose quotas for this purpose.

⇒ Until now, the Flemish Government has not imposed quotas on this topic.

Art. 103 The television company of the Flemish Community and the television companies recognised by the Flemish Community on the basis of article 41, 1°, 3°, 4° and 5°, strive to spend at least 10% of their broadcasting time that is not spent on news, sports, games, advertising, teletext and teleshopping, on European productions made by production companies that are independent from television companies.

[...]

Sufficient space has to be made for recent Dutch-language European productions.

The Flemish government can impose quotas for this purpose.

⇒ Until now, the Flemish Government has not imposed quotas on this topic.

Art. 112 §1 Cable operators *must*²¹ simultaneously and in their whole transmit the following broadcasting programmes via the cable network:

1° All radio and television programmes of the public broadcasting company of the Flemish Community intended for the viewers and listeners in the exploitation area of the cable network as far as the programmes are, among other things, in Dutch;

²¹ Emphasis added.

2° Television broadcasting programmes of the private broadcasting companies for the whole Flemish Community and recognised by the Flemish Community, to the extent that the programmes are, among other things, in Dutch;

3° Television broadcasting programmes of the regional broadcasting companies recognised by the Flemish Community, as far as the programmes are, among other things, in Dutch and taking into account their broadcasting area;

The cable operators who operate a cable network within the area of a regional broadcasting company recognised by the Flemish Community; are obliged to transmit the programmes of the regional broadcasting company free of charges, simultaneously and unabridged, on a proper channel via the head stations who are situated within the broadcasting area and via the head stations who were assigned by virtue of Art. 52, §2. The free character refers to the supply and the transmission of the broadcasting programme.

4° 2 radio and 2 television broadcasting programmes of the public broadcasting company of the French Community and the radio broadcasting programme of the German-speaking Community;

5° 2 radio broadcasting programmes and the television broadcasting programmes of the Dutch public broadcasting company.

§2 Without prejudice to the provisions in §1, the cable operator *may*²² transmit the following broadcasting programmes:

1° Television broadcasting programmes of private broadcasting companies recognised by the Flemish Community which are not applicable under §1;

2° Broadcasting programmes of the private radios recognised by the Flemish Community, taking into account the provisions of the licence, *in casu* the exploitation area;

3° Radio and television broadcasting programmes of the public broadcasting companies of the French and German-speaking communities for the whole Community in question and which are not applicable under §1;

4° Television broadcasting programmes of private television companies of the French and German-speaking communities for the whole Community in question;

Television broadcasting programmes of private pay television companies of those Communities, as far as the Vlaams Commissariaat voor de Media records that in those Communities the private pay television companies of the Flemish Community are transmitted via the cable networks.

5° Radio and television broadcasting programmes that are under the jurisdiction of another member of the European Union;

6° On condition that permission is given by the Vlaams Commissariaat voor de Media, who can impose conditions in this connection, the radio and television broadcasting programmes

²² Emphasis added.

of the broadcasting companies who are under the jurisdiction of a country that is not a member of the European Community;
[...]

8° Cable radio broadcasting programmes which broadcast for the whole Flemish Community;

9° Broadcasting programmes of the private radio for the whole of the Flemish Community.
[...]

⇒ These so-called “may-carry” rules for cable transmission have offered the possibility for cable operators to offer several foreign television programmes such as Italian (RAI), Spanish (TVE) and Turkish (TRT) public broadcasting channels, channels that are rather popular within the respective Italian, Spanish and especially Turkish communities. The cable operators also transmit Dutch (NOS), British (BBC), German (ARD and ZDF), French and Luxembourgish television channels, apart from music channels (MTV and TMF), the National Geographic channel, Arte, CNN and some other international, general or specific broadcasting channels.

§3 The Vlaams Commissariaat voor de Media can, when it is of the opinion that the broadcasting programmes of its own recognised television companies are important, and taking into account the financial, technical and organisational conditions for the use of the network, oblige the cable operator to transmit those broadcasting programmes or can prescribe the conditions under which the broadcasting programmes will be transmitted.

Art. 113 Subject to permission given by the Vlaams Commissariaat voor de Media, who can attach conditions to it, a cable operator may not transmit broadcasting programmes or television services via the cable network other than those from which it is permitted by virtue of this title.

[...]

EXECUTIVE AGREEMENT BETWEEN THE VRT AND THE FLEMISH COMMUNITY (2002–2006)²³

Art. 1 Task of the VRT

§1. The VRT carries out the public service mission of the Flemish Community and has the task to reach as many media users as possible with a diversity of programmes that arouse interest and meet it. The public service task is fleshed out according to the principles as formulated in the Resolutions of Prague of 8 December 1994 and of Krakow of 16 June 2000 of the Council of Europe.

The institution ensures a qualitative, principled offer in the information, culture, education and entertainment sectors. The institution has to prioritise the broadcasting of informative and cultural programmes that are directed at the viewer and listener.

[...]

²³ *Beheersovereenkomst tussen de VRT en de Vlaamse Gemeenschap 2002-2006* (Executive Agreement between the VRT and the Flemish Community (2002-2006)), 7 June 2001, available at: <http://www.vrt.be/doc/bo0206.doc>. See further, D. Voorhoof, “BE – New Executive Agreement 2002-2006 between VRT and Flemish Government”, *IRIS – Legal Observations of the European Audiovisual Observatory* 2001-9: 7.

§3. The VRT has to fulfil an important role in the further development of the identity and diversity of the Flemish culture and of a democratic and tolerant society, in accordance with Article 8, §3 of the coordinated Media Decrees. With that an appeal can be made to the expertise, creativity and the offer that exists with the different cultural actors in society. This applies for the diverse expressions of art and culture. The VRT will take into account the specific cultural policy objectives and assignments pursued by the Flemish Community, as well as with the policy objectives and assignments pursued by the Flemish Community in the surface of equal opportunities and the minorities policy, without prejudice to the provisions of Art. 1, §§ 1 to 5 of this Agreement.

[...]

Art. 2 Audiovisual quality

§2. Definitions of the aspects of audiovisual quality

One can talk of “*public*” *quality* when the broadcaster meets the assignments as formulated by the governments. These assignments are not only formulated in the coordinated Media Decrees and this Executive Agreement, but are also clearly set out in the Resolutions of Prague and Krakow of the Council of Europe.

In these [documents], the independence of the public broadcasters was confirmed, it was pointed out that they have an important role for the social cohesion of society and that they have a role as developer of pluralistic, innovative, varied and original productions for a large public, taking into account minority groups.

[...]

Ethical quality formulates the moral and ethical demands made on audiovisual programmes. This implies that every form of discrimination is excluded from the programmes, based on the Universal Declaration of Human Rights. The broadcasting corporation has to be a factor for social bonding and stimulate the integration of all individuals, groups and communities.

⇒ The strategic objectives are always translated in performance criteria.

Strategic objective: The institution takes care of a qualitative principled offer in the information, culture, education and entertainment sectors. The content and the combination have to reach as many Flemish people (“Vlamingen”) as possible with a diversity of programmes that arouse interest and satisfy that interest.

This objective is translated into different criteria. One of them is that “the share of Flemish television productions and co-productions will amount to at least 50% of the total programming broadcast between 6.00 pm. and 11.00 pm.”

Art. 4 Performance of radio

§1. Projects for the future

[...]

Radio Vlaanderen Internationaal [Rvi] occupies a specific place. The objective is double: information and service for the Flemish abroad and the promotion of Flanders in the world.

[...]

Rvi will free itself of its exclusive radio-task and present itself as an entrance to information about Flanders via Internet technology. RVi becomes – or integrates itself in – a multimedia, multilingual portal to Flanders with information (sound, images, text) and a well-selected offer of what interests the Flemish abroad or what could interest foreigners.

DECREE OF 14 JULY 1997 CONCERNING THE STATUTE OF THE RTBF²⁴

Art. 3. The public service mission is by priority assured by an offer to the public, especially to the French-speaking people of Belgium, of radio and television programmes, via Hertzian waves, cable, satellite or any other similar technical means which secures access, on conditions respecting the principle of equality between the users, to all generalist and specific programmes of the corporation in accordance with its public service mission.

The corporation defines its offer according to a programme schedule assuring the diversity of programmes, especially including programmes with general, international, European, federal, communal, regional news, programmes aimed at cultural development, permanent education and entertainment, and programmes directed at youth. In the framework of this programme offer, it will schedule in particular works of authors, producers, distributors, composers and artist-performers of the French Community.

The corporation, while defining its programme offer, takes care that the quality and diversity of the programmes permit to secure the largest possible audiences, to be a factor of social cohesion meeting the expectations of socio-cultural minorities, and permit to reflect the different opinions in society, without discrimination, particularly cultural, racial, sexual, ideological, philosophical or religious and without social distinction. These programmes are aimed at stimulating debate and clarifying the democratic stakes, contributing to the reinforcement of social values, especially by ethics based on respect for the human being and the citizen, favouring the integration and reception of foreigners who live in the French Community.

The corporation ensures that it will make a significant creative effort, by favouring the realisation of original productions, and the appreciation of the heritage of the French Community and its regional specificities. It composes its selection of programmes in the first place on the basis of its own productions. The corporation applies itself to the promotion of exchanges and the joint production of programmes with radio and television corporations—preferably public corporations—of European countries and of countries belonging to the Francophony, and to create and to maintain synergies with all the actors of the communication and cultural sectors of the French Community.

[...]

Art. 8 §2. The executive agreement specifies the general principles which regulate the different tasks assured by the corporation, with a view to realising its public service mission, and any event, the requirements which have to be met:

3° to ensure the cultural development, especially by exploiting and promoting the cultural activities of the French Community, his heritage in the Walloon Region, in Brussels and abroad, as well as the appropriate appreciation of regional specificities.

[...]

²⁴ *Décret du 14 juillet 1997 portant statut de la Radio-Télévision belge de la Communauté française (RTBF)*, available at: <http://www.csa.cfwb.be/pdf/Décret%20RTBF.pdf>

Art. 21 §1. In every regional production centre, a regional commission is installed whose task it is to give advice concerning the functioning and the production of regional production centres. Every year, a report is given to the board of directors.

§2. The regional commissions are made up of 12 members appointed by the board of directors from persons representing the political, economic, social, cultural world and the district of the regional production centre in question. More than half of the members may not hold public mandates or be representatives of the public authority or of public services. The appointment of the persons from the political world takes place on the basis of the system of proportional representation of political movements recognised by the French Community.
[...]

EXECUTIVE AGREEMENT BETWEEN THE RTBF AND THE FRENCH COMMUNITY, 2001²⁵

Introduction

The RadioTélévision belge de la Communauté française Wallonie-Bruxelles (RTBF), autonomous public corporation with a cultural character, is the public service broadcaster of the Belgian French Community, and of all those who are connected with it by language or culture. It aims to reach a public as large as possible, by affirming its specificity through programming, based on the following principles:
[...]

- The corporation engages itself in particular to:
 - a) produce, co-produce, acquire, programme and broadcast federative television and radio programmes, both for a large audience and for a specific audience, without discrimination, especially cultural, racial, sexual, ideological, philosophical or religious and without social distinction related in particular to age or spending power. It undertakes to privilege the production and co-production of these programmes;
[...]
 - c) Contribute to the reinforcement of social and civil values, particularly by an ethics based on respect for every human being;
[...]
 - i) Favour the realisation of original productions, in particular those which promote the heritage of the Walloon-Brussels Community and illustrate its regional specificities;
 - j) Broadcast programmes which seek to stimulate the harmonious integration and the reception of foreigners who live in the Walloon-Brussels Community;
 - k) subscribe to the logic of European construction and international Francophony.

Art. 1 The corporation broadcasts:

1. on radio:

a maximum of five stations which offer, separately or cumulatively, generalist, regional and thematic programmes, besides an international station;

²⁵ *Contrat de gestion R.T.B.F.*, 11 October 2001, available at: http://www.millercabinet.org/contrat_gestion.htm.

[...]

Art. 12 The corporation broadcasts, in a volume and according to the programming as determined by the board of directors, promotional, awareness-raising and cultural information programmes. Within this framework, it broadcasts shows as well as programmes about the heritage, the different ways of expressing and creation and about all artistic disciplines: literature, cinema, music, performing arts, expressive arts and fine arts.

The broadcasting of these programmes will as a priority take into account the right to cultural information for a very large audience; without ignoring the rights of specific audiences, especially those with an interest in programmes in local dialects.

Art 13. The corporation broadcasts in particular :

1. On television:

- a) Every year, at least 50 operas, musical spectacles and dance theatre, of which at least 12 are produced in Walloon-Brussels Community. Within this framework, the corporation provides for the *captation* of at least four new shows every year.²⁶
- b) Every year, at least 12 plays which are produced in the Walloon-Brussels Community, of which at least 10 have to be theatrical works. Within this framework, the corporation provides for the *captation* of at least four new plays every year. It pays special attention to theatre in local dialects.

2. On radio :

- a) Programmes reserved for old, classical and contemporary music. Special attention will be paid to programmes about the musical heritage of the Walloon-Brussels Community and about world music.
- b) Every year at least 300 music concerts and operas, of which at least 200 are produced in the Walloon-Brussels Community.
- c) An annual average, for all the musical programmes of its radio stations, except for the two stations with thematic programmes, of at least 40% of non-classical music in French.
- d) An annual average, for all the programming of a station with thematic programmes, of at least 15% of non-classical music in French.
- e) An annual average, for all the musical programmes of the radio stations, except for the two stations with thematic programmes, of at least 10% of all music of musicians, performers or producers who have their domicile, plant or social seat in the Francophone region or the bilingual Brussels Capital Region. In this framework, the corporation broadcasts non-classical music that is subsidised by the Walloon-Brussels Community.

[...]

Art. 17 In accordance with Article 8, 5° of the Decree of 14 July 1997 concerning the statute of the RTBF, the corporation broadcasts quality entertainment programmes.

²⁶ Captation is the French word for the registration of a spectacle or a play, the picking-up or reception of [programmes or signals].

In this framework, the corporation produces and broadcasts at least 20 light entertainment programmes every year, in which it devotes a significant place to French-language songs and the presentation and promotion of artists of the Walloon-Brussels Community.

Art. 20 §1. The corporation broadcasts quality cinematographic and televisual works. It also takes care to put forward every time when possible authors, producers, performers and distributors of the Walloon-Brussels Community who have their domicile, plant or registered office in the Francophone region or the bilingual Brussels Capital Region.

[...]

§2. The corporation undertakes to broadcast, on average for the duration of this agreement, at least 50% of European productions out of its total fiction programming: long and short films, series and television movies.

[...]

Art. 26 In accordance with the modalities determined by it, the board of directors can assign programmes, both on radio and television, to representative associations who are recognised for this goal by the Government. The broadcasting of these programmes is ensured free-of-charge by the corporation.

Art. 27 Insofar as possible, the corporation can, under its authority and in accordance with the modalities it states, place the installation, staff and the necessary materials at the disposal of the representative associations for the programmes that are assigned to them.

Art. 30 In application of Article 24*bis*, §1 of the Decree of 17 July 1997 about the audiovisual and respecting Article 6 of Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as modified, the corporation must ensure, in the whole of its programming, to spend 51% of its broadcasting time, (excluding time spent on news, sporting events, games, advertising, teletext services, and test card) on European works, in which are included original works by authors from the Walloon-Brussels Community.

Art. 31 On television, the corporation ensures in the whole of its programming, to spend at least 33% of its broadcasting time (excluding time spent on news, sporting events, games, advertising, teletext services, and test card) on works, the making, realisation or production of which is carried out by French-speaking professionals.

DECREE OF 17 JULY 1987 ON AUDIOVISUAL MATTERS²⁷

Art. 2 The Government can grant a permit for the creation and functioning of local and community television stations.

Art. 3 In principle, it is only possible for one permit to be granted for a single local and communal television station that can be distributed in the same administrative district.

The Government can derogate from this principle, taking into consideration the area of the arrondissement, its population, audience possibilities and the conveyance of programmes to

²⁷ Available at: <http://www.csa.cfwb.be/pdf/Décret%20audiovisuel.pdf>.

head cable network stations by defining the authorised zones of one or more head cable network stations in a same administrative district.

The Government can grant a permit to exceed the strict limits of the administrative district in accordance with the cultural characteristics common to the population of one or two adjoining districts, provided that no other local and communal television station covers the district in question.

Art. 4 To be granted a permit, a local and communal television station has to:

[...]

2° target in its programming, local news and entertainment programmes, cultural development and permanent education.

Own productions have to account for at least one third of the total broadcasting time, excluding rebroadcasts.

The co-productions managed and controlled by a local or community television station can be assimilated in whole or in part in own production according to the conditions fixed by the Government.

Art. 15 The Government can grant a permit for the creation and functioning of private television stations with a community audience – [to be] named private television stations of the French Community – of which the objective is to broadcast programmes for the whole of the French Community.

Art. 16 To be granted a permit, a private television station has to:

[...]

3° Ensure in its programming at least 20% of own production. The Government can determine a higher percentage;

4° Promote in its programming the cultural heritage of the French Community, in particular the different regional aspects;

5° In accordance with the modalities stated by the Government, conclude for at least 5% of its programming co-production agreements in French or make contracts for external performances with physical or legal persons established in the French-language region, in the bilingual Brussels Capital Region or anywhere else in the European Community. The Government can determine a higher percentage.

In accordance with other modalities stated by the Government, conclude for at least 2% of its programming co-production agreements or make contracts for external performances with physical or legal persons settled in the French-language region, in the bilingual Brussels Capital Region or anywhere else in the European Community. The Government can determine a higher percentage.

[...]

Art. 19 §1. In conformity with Article 4*bis*, §1 of the Decree of 12 December 1997 concerning the statute of la Radio-Télévision belge de la Communauté française (RTBF), the RTBF can only ensure activities of which the objective is the provision of paying television services, as well as associating itself with private partners and, when it arises, with public

partners, with a view to participating in the establishment of companies, or to take a share in the capital of existing companies of which the objective is the provision of such services.

§ 2. The companies in §1 have to:

1° ensure in their programming a portion of at least 5% of own production. This minimum percentage can be increased by the Government, following advice from the Conseil Supérieur de l'Audiovisuel,²⁸ for all bodies concerned.

[...]

Art. 19*quinquies* Under the conditions and in accordance with the modalities it determines, the Government can authorise the RTBF and the broadcasting organisations of the French Community:

1° to interrupt the broadcasting of their programmes, with a view to broadcasting on the same frequency or channel, whole or parts of television programmes from any other broadcasting organisation recognised by the French Community or by the state where it has its registered office.

2° To insert or accept the insertion of the whole or part of their television programmes, in the whole or part of the television programmes from any other broadcasting organisation recognised by the French Community or by the state where it has its social seat.

The broadcasting organisations concerned determine, in agreement, the conditions on which the whole or part of their television programmes can be broadcast on same frequency or the same channel, and they inform the Government about this.

The programmes or parts of programmes provided by the RTBF or broadcasting organisations of the French Community come solely within the area of responsibility of those organisations.

Art. 20

[...]

§3 The permit can only be granted to legal persons whose registered office and plant is in the French-language region or in the bilingual Brussels Capital Region.

[...]

Art. 22 §1 The operator who has got the authorisation to use a teledistribution network has to transmit at the time of their broadcasting and in their entirety:

- All programmes of the public service broadcaster of the Community;
- The programmes of the local and communal television stations corresponding to the reception areas marked out in agreement with the Government;
- The programmes of the international broadcasting organisations designated by the Government, in which the public service broadcaster of the Community participates;
- The programmes of private television stations of the French Community as defined in Chapter IV of this Decree;
- Two television programmes of the public service broadcaster of the Flemish Community;
- One or more television programmes of the public service broadcaster of the German-speaking Community to the extent that the cable operators who are authorised by this

²⁸ The media authority for the French Community.

Community are obliged to transmit one or more television programmes of the public service broadcaster of the French Community;

- The programmes of the pay television channels as defined in Chapter V of this Decree.
- All the programmes of the broadcasting organisations of the European Community designated by the Government, and who have concluded—after the present disposition came into effect—an agreement with it regarding the promotion of the cultural production in the French Community and in the European Union, providing in particular a direct financial contribution to this. The obligation is limited to the duration of the agreement that has to contain settlement between the broadcasting organisation and the cable operators about the payment of copyright [royalties].
- Other sorts of services as meant in Article 19^{quater}, designated by the government and produced or broadcast by organisations who have concluded an agreement with it regarding the promotion of the cultural production in the French Community and in the European Union, providing in particular a direct financial contribution to this. The obligation is limited to the duration of the agreement.

§1^{bis} The cable operator may transmit at the time of their broadcasting and in their entirety:

- The television programmes of every broadcasting organisation that is established in a Member State of the European Union;
- The television programmes of every broadcasting organisation that is not established in a member State of the European Union but uses a frequency or satellite capacity granted by a Member State of the European Union or an upward link to a satellite that is situated in a Member State of the European Union.

[...]

Art. 23 The operator which is authorised to exploit a radio broadcasting network has the obligation to transmit at the time of their broadcasting and in their entirety, sound programmes from stations of the public service broadcaster of the Community, broadcast in frequency modulation, as well as two radio programmes of the public service broadcaster of the Flemish Community.

It may also transmit at the moment of their broadcasting and in their entirety every Belgian or foreign sound programme, broadcasted by a broadcasting organisation authorised in the State in which it has its social seat. The operator has to reserve at least three channels for private radios to be designated by the Government according to the conditions determined by itself.

Art. 24^{bis} §1 The Radio-Télévision belge de la Communauté française (RTBF) and the other television broadcasting organisations have to ensure to spend, in principle, in their programming a majority proportion of their broadcasting time, except for the time spent on news, sports events, games, advertising, self-promotion, teleshopping or teletext, on European works, in which are included original works from authors of the French Community.

This proportion can never be less than the proportion of works broadcast in 1988, taking into account the broadcasting time of these organisations, except for the time spent on news, sports events, games, advertising, self-promotion, teleshopping or teletext during the same year.

[...]

§3 The proportions envisaged in §1 and §2 will be achieved progressively on the basis of the criteria determined by the Government, after advice from the television organisations concerned and from the Conseil supérieur de l'audiovisuel.
[...]

§5 According to the modalities determined, after advice from the Conseil supérieur de l'audiovisuel, the Government ensures that, for the broadcasting organisations as in §1, the share of original works in French progressively reaches one-third of the broadcasting time as defined in §1.

§6 The present article does not apply to the television broadcasting organisations targeting a local public and which are not part of a national network. It neither applies to television broadcasting organisations that use only a language other than the official languages or those recognised by the States of the European Union and of which the programmes are exclusively meant for *captation* outside the European Union and which are not received directly or indirectly by audiences of one or more Member States.

Art. 26
[...]

§2 The broadcasting organisations meeting the conditions which are determined by the Government by virtue of Article 22, §2, may broadcast commercial advertisements that are more particularly aimed at viewers from the French Community, provided there is an explicit and prior authorisation by the Government.

§3 The Government determines the conditions under which the Radio-Télévision belge de la Communauté française (RTBF) and the broadcasting organisations as meant in §§1 and 2, may insert commercial advertisements in their programmes.

These conditions contain, in particular, the mechanisms according to which these broadcasting organisations must participate in the promotion of the audiovisual cultural production of the French Community and of the Member States of the European Union, in the maintenance and development of the audiovisual pluralism of stations of the French Community and in the maintenance and development of the pluralism in the written press—either opinion or general information—in the French Community.

DECREE OF 24 JULY 1997 CONCERNING THE CONSEIL SUPÉRIEUR DE L'AUDIOVISUEL AND THE PRIVATE RADIO SERVICES OF THE FRENCH COMMUNITY²⁹

Art. 38
[...]

2. The putting out to tender for the attribution of the network authorisation contains in any case, without prejudice to the dispositions expressed in Articles 34 and 35:

1° concerning information:
[...]

²⁹ Available at <http://www.csa.cfwb.be/pdf/Décret%20CSA.pdf> and at http://www.millercabinet.org/decret_24_07_97.htm.

c) The obligation to attend to the cultural promotion, in particular by the free presentation of the main cultural and socio-cultural activities in the service area of the programme;
[...]

2° concerning the programmes:

[...]

b) The obligation to broadcast in French, except for derogations granted by the Government on the advice of the Authorisation and Control Board.³⁰

⇒ This is the same provision as in Flanders and like in Flanders, only a few radio stations have used this possibility. There are, for example, a few radio stations in Brussels that broadcast in languages other than French. *Radio Panik*,³¹ for instance, has broadcasts in Greek, Turkish and Albanian. *Radio Campus*³² has a bilingual (French – Dutch) programme, produced in corporation with *FM BSSL*. It also has programmes in Spanish and Portuguese. However, as in Flanders, these are again very small initiatives with a limited audience.

c) The obligation to broadcast at least 30% of French-language music, of which 15% are musical works of composers, performers and producers of the French Community;

3. The putting out to tender for the attribution of the authorisation and frequencies for independent radios contains in any case, without prejudice to the dispositions expressed in Articles 34 and 35:

1° concerning the programmes:

[...]

b) The obligation to attend to the cultural promotion, in particular by the free presentation of the main cultural and socio-cultural activities in the service area of the programme;

c) The obligation to broadcast in French, except for derogations granted by the Government on the advice of the Authorisation and Control Board.

d) The obligation to broadcast at least 30% of French-language music, of which 15% are musical works of composers, performers and producers of the French Community;

Art. 39 1. Those who responded to the putting out to tender submit a dossier in which they specify the way they intend to fulfil the obligations that are determined in the putting out to tender.

In case of multiple authorisation and attribution applications for identical frequencies or for a same network of frequencies, the Authorisation and Control Board draws up a hierarchy in accordance with the criteria of 2 and 3 in Article 38 and specified in the putting out to tender, and the manner in which the applicant commits itself to meeting the criteria as well as the financial plans as meant in Article 35, 2, 6° and 3, 5°.

2. While drawing up this hierarchy, it will strive to ensure a diversity in the radio landscape and an equilibrium between the different sorts of radio, through the offer of music, culture and information and to give priority to independent radios with a cultural purpose.

³⁰ Collège d'autorisation et de contrôle: this is an organ of the Conseil supérieur de l'audiovisuel.

³¹ See further: <http://www.radiopanik.org>.

³² See further: <http://radiocampus.ulb.ac.be>.

It will take into account the originality and the innovative character of every application and the importance of production that is decentralised in the French Community. It also undertakes to ensure that the whole radio landscape can satisfy the aspirations and demands of all social groups, age groups or other target groups of the French Community. It will also take into account the experience acquired by the radio stations and their possible franchisees as well as their local and regional roots.

*MEDIENDEKRET OF 26 APRIL 1999*³³

Art. 5 The television organisations guarantee in their television programmes:

1. The protection and revaluation of the German language, this among other things, if a relevant proportion of the programmes is broadcast in German;
2. The revaluation the German-language Community, this among other things, if in part programmes and commentaries are broadcast about the German-speaking Community.

The Government determines the proportion of the programmes meant in Part 1, Number 1 and 2 and determines also the additional implementing modalities.

Art. 19 The Government can grant legal persons the permit to transmit other broadcasting services, radio as well as television programmes. These services can be transmitted entirely or partly coded. The reception can be liable to laws.

Art. 22 §1. The cable operators can, as far as they received in accordance with the Law of 30 June 1994 concerning copyrights and neighbouring rights the necessary permissions from the persons entitled:

1. freely transmit the programmes of television organisations from a member state of the European Union or from any other State which is a party to the agreement concerning the European Economic Area, or recognised by a competent Belgian authority.
2. transmit the programmes of television stations recognised by a non-member state of the European Union that are outside the scope of competences of a member state of the European Union or from any other state, which is a party to the agreement concerning the European Economic Area, provided they inform the Government in advance. The Government has 60 days to oppose the transmission of the programmes if these measures seem necessary for the safety of the State, territorial integrity or public safety, the maintenance of order and the prevention of indictable offences, the protection of health and morality, the maintenance of the good reputation and rights of third parties, to prevent the spread of confidential information or to guarantee the authority and impartiality of the judiciary or when there is a charge of violation of the provisions as stated in Article 15.

§2 The cable operators may transmit radio programmes as well as other services like the transmission of programmes from television and radio organisations, provided they inform the government in advance. The Government has 60 days to oppose if these measures seem necessary for the safety of the State, territorial integrity or public safety, the maintenance of order and the prevention of indictable offences, the protection of health and morality, the

³³ This Decree can be found via the website of the Belgian Bulletin of Acts (Moniteur Belge / Belgisch Staatsblad). A link to this site can be found on the website of the Ministry of Justice: <http://just.fgov.be>.

maintenance of the good reputation and rights of third parties, to prevent the spread of confidential information or to guarantee the authority and impartiality of the judiciary or when there is a charge of violation of the provisions as stated in Article 15.

Art. 24 §1 Without prejudice to the provisions of Article 22, the cable operators have to transmit the programmes at the time of their broadcasting and in their entirety:

1. The programmes of the Belgischen Rundfunk- und Fernsehentrums der Deutschsprachigen Gemeinschaft as well as those of the companies with whom the Zentrum has come to a joint venture agreement or in which it participates directly or indirectly;
2. The radio programmes from regional stations that are recognised by the government and those from the television stations recognised by the government;
3. The radio and television programmes from the public service broadcasters from the French Community and the Flemish Community;
4. The programme of the public stations.

§2 In harmony with the cable operators, the government can oblige those to transmit other radio and television stations recognised by the government as well as services recognised by the government like offering the transmission of programmes from television and radio organisations. The sum of the stations to be transmitted in accordance with §1 and §2, part 1 may not be more than half of the available places on the basis of technical capacity.

Art 40 To be granted a permit, private broadcasters have to meet the following conditions:
[...]

4. to guard to reevaluate in the programmes and in accordance with the conditions determined by the government, the culture and artists from the German-speaking Community and neighbouring regions; [...]

Bosnia and Herzegovina

Language policies in broadcasting in Bosnia and Herzegovina are a function of the detailed political arrangements that follow the Dayton Accords. The existence of two Entities and the recognition of three major communities have yielded separate broadcasting policies with an effort at a state-wide plural public entity. Attention to the needs of the major communities may, however, have resulted in less recognition of small linguistic minorities in terms of positive actions. No provisions of existing broadcasting legislation deal directly with the issue of broadcasting in the languages of national minorities, as such.

1 Introduction

Bosnia and Herzegovina (BiH) has an extremely complex legal framework. The distribution of constitutional and governmental power is strongly influenced by nationality. BiH consists of two Entities: The Federation of Bosnia and Herzegovina (FBiH), dominated by Bosniacs and Croats, and the Republic of Srpska (RS), dominated by Serbs.¹ FBiH is divided into 10 federal units called Cantons. BiH is governed by a bicameral Parliamentary Assembly or Skupstina. It consists of the National House of Representatives or *Predstavnicki Dom* (42 seats - 14 Serb, 14 Croat, and 14 Bosniac; members elected by popular vote to serve four-year terms) and the House of Peoples or *Dom Naroda* (15 seats - 5 Bosniac, 5 Croat, 5 Serb; members elected by the Bosniac/Croat Federation's House of Representatives and the Republika Srpska's National Assembly to serve four-year terms).²

1.1 Linguistic topography

The last census was conducted in 1991 by the former Yugoslavia. These data are unreliable, especially considering the major demographic changes—including ethnic cleansing and war migration—that led to the complete transformation of the demographic structure in BiH. Unofficial estimates say that BiH has approximately 3,650,000 citizens.

Table 1: Breakdown of Nationalities • The Federation of Bosnia and Herzegovina
(Total: 2,600,000)

Nationality	Number	Percentage of total
Bosniac	1,900,000	73%
Croat	430,000	16.5%
Serb	200,000	7.6%
Other	70,000	2.7%

Table 2: Breakdown of Nationalities • Republic of Srpska
(Total 1,050,000)

Nationality	Number	Percentage of total
Serb	850,000	80.9%
Bosniac	100,000	9.5%
Croat	50,000	4.8%

¹ Thus a BiH citizen of a particular nationality may be a member of a constituent nationality or a minority depending on where within the territory of the State s/he resides.

² Source: CIA World Factbook 2002.

Other	50,000	4.8%
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These are unofficial estimates³ based on data from the last census, databases of births and deaths, and the UNHCR database of displaced persons and refugees. The next census in BiH will not be held before 2004. As for national minorities, other than Bosniacs, Croats and Serbs, they are not concentrated in one location, but are present in most BiH municipalities, making ethnic language broadcasting more difficult.

1.2 Broadcasting

BiH has three broadcasters that are designed as public broadcasting services. *Radio Televizija Federacije BiH* (RTV FBiH) broadcasts its television programme offer on two channels, and the radio programme offer is broadcast on one frequency. Radio Television Republic of Srpska (RTRS) broadcasts its television programme offer on one channel while the radio programme offer is broadcast on one frequency. A news programme of the Public Broadcasting Service of Bosnia and Herzegovina (PBS) has recently been launched under the name of “BHTV1” and at the moment is broadcasting via the Entities’ frequencies. The news programme is edited in the three languages officially used in BiH. Public radio is in a similar situation. The three networks are *BH Radio 1*, *Radio RS*, and *Radio FBiH*. Unlike PBS, *BH Radio 1* has its own frequency, and has been functional since May 2001.

In addition to these public broadcasting stations, there are dozens of public cantonal, public municipal and private television and radio stations broadcasting in BiH. The majority of these stations do not broadcast in languages of BiH minorities. *Radio Vitez* (founded by the Vitez municipality) has a one-hour show in Roma, and there is also one radio station in the Kotor Varos region that broadcasts children’s programmes in Roma. In 1989, eight of BiH’s 56 radio stations broadcast programmes in Ukrainian, Slovak, Russian, Czech and Roma. State radio and television also carried programmes in the Roma language.

FBiH television and radio broadcast their programming in the Bosnian and Croat languages. The majority of the staff is of Bosnian or Croat nationality. Programmes about minorities appear very rarely—reports about the Roma and Jews are mostly related to their holidays.

1.3 Government policy

RTV FBiH and *RTRS* have been licensed by the Communications Regulatory Agency, while *PBS* broadcasts on Channel 42 Hence the position of minorities is still regulated on the State level with the commitment of the Entities to abide by the highest standards of human rights protection.

2 Constitution⁵

The Constitution requires both BiH and the Entities to protect human rights and freedoms consistently with international standards, and provides enforcement mechanisms for those rights.⁶ It should be noted that, pursuant to Article II(2) of the Constitution, the European

³ The CIA World Factbook offers the following estimates for the ethnic breakdown of Bosnia and Herzegovina for the year 2000: Bosniac, 48%; Serb, 37.1%; Croat, 14.3%; other, 0.5%.

⁴ See further: <http://www.pbsbih.ba>.

⁵ The Constitution of FBiH, adopted on 24 June 1994, is available at: http://www.ohr.int/const/bih-fed/default.asp?content_id=5907. The Constitution of RS is available at: http://www.ohr.int/const/bih-fed/default.asp?content_id=5908.

⁶ BiH Constitution, Articles II and III and Annex I.

Convention for the Protection of Human Rights and Fundamental Freedoms is directly applicable in BiH and has priority over all other law. In addition, Annex I to the Constitution stipulates other international human rights agreements to be applied in BiH, in particular the European Charter for Regional or Minority Languages (1992) and the Framework Convention for the Protection of National Minorities (1994).

2.1 Freedom of expression

BiH CONSTITUTION

Article II: Human Rights and Fundamental Freedoms

3. Enumeration of Rights. All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:

[...]

g) Freedom of thought, conscience, and religion.

h) Freedom of expression.

i) Freedom of peaceful assembly and freedom of association with others. [...]

FBiH Constitution

II. Human Rights and Fundamental Freedoms

A. General

Article 2

The Federation will ensure the application of the highest level of internationally recognized rights and freedoms provided in the documents listed in the Annex to the Constitution. In particular:

All persons within the territory of the Federation shall enjoy the rights:

[...]

(1) To fundamental freedoms: free speech and press; freedom of thought, conscience, and belief; freedom of religion, including private and public worship; freedom of assembly; freedom of association, including to form and belong to and labor unions and the freedom not to associate; and freedom to work; [...]⁷

RS Constitution

Article 25

Freedom of thought and orientation, conscience and conviction, as well as of public expression of opinion shall be guaranteed.

2.2 Broadcasting

The FBiH Constitution delegates broadcasting regulation to the Cantons.

FBiH CONSTITUTION

⁷ Italics in original text.

Article III. Division of Responsibilities between the Federation Government and the Cantons

(4) The Cantons shall have all responsibility not expressly granted to the Federation Government. They shall have, in particular, responsibility for:

(i) Making policy concerning radio and television facilities, including decisions concerning regulation and provision thereof.

Article V

(2) Each Canton may delegate functions concerning education, culture, tourism, local business and charitable activities, and radio and television to a municipality or city in its territory, and is obliged to do so if the majority of population in the municipality or city is other than that of the Canton as a whole.

RS CONSTITUTION

Article 26

Freedom of press and other media of communication shall be guaranteed.

Free establishment of newspaper and publishing houses, publishing of newspapers and public information by other media in accordance with law shall be guaranteed.

Censorship of press and other public information media shall be forbidden.

Public information media shall be obliged to inform the public on time, truthfully and impartially.

The right to correction of incorrect information shall be guaranteed to anyone whose right or legally determined interest has been violated, as well as the right to a compensation for damage arising therefrom.

2.3 Minority rights

BiH CONSTITUTION

Article II (Human Rights and Fundamental Freedoms)

[...]

(4) Non-Discrimination. The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

[...]

FBiH CONSTITUTION

Article I

(1) Bosniacs and Croats as constituent peoples, along with Others, and citizens of Bosnia and Herzegovina from the territories of the Federation of Bosnia and Herzegovina, in the exercise of their sovereign rights, transform the internal structure of the Federation territories, which has been defined by Annex II to the General

Framework Agreement, so the Federation of Bosnia and Herzegovina is now composed of federal units with equal rights and responsibilities.

II. Human Rights and Fundamental Freedoms

A. General

Article 2

The Federation will ensure the application of the highest level of internationally recognized rights and freedoms provided in the documents listed in the Annex to the Constitution. In particular:

All persons within the territory of the Federation shall enjoy the rights:

[...]

(r) To protection of minorities and vulnerable groups.⁸

RS CONSTITUTION

Article 1

Republika Srpska shall be the State of Serb people and of all its citizens

Article 5

The constitutional arrangement of the Republic shall be based upon the following:

- guarantee and protection of human freedoms and rights in accordance with international standards;
- assurance of national equality;
- social justice;
- market economy;
- multi-party political system;
- parliamentary democracy and division of authority;
- free elections;
- local self-government;
- protection of the rights of ethnic groups and other minorities.

Article 10

Citizens of the Republic shall be equal in their freedoms, rights and duties; they shall be equal before the law and they shall enjoy equal legal protection irrespective of their race, sex, language, national origin, religion, social origin, birth, education, property status, political and other beliefs, social status and other personal attributes.

Article 33

Citizens shall have the right to take part in the conduct of public affairs and have access to public service under equal conditions.

Article 34

⁸ Italics in original text.

Citizens shall be guaranteed freedom of profession of national affiliation and culture and the right to use their language and alphabet.
No one shall be obliged to declare national affiliation.

2.4 (Official/State) language(s)

According to the Constitution of FBiH, the official languages are Bosnian and Croatian, with Latin script as the official alphabet.

FBiH CONSTITUTION

Article 6

- (1) The official languages of the Federation shall be the Bosniac language and the Croatian language. The official script will be the Latin alphabet.
- (2) Other languages may be used as means of communication and instruction.
- (3) Additional languages may be designated as official by a majority vote of each House of the Legislature, including in the House of Peoples a majority of the Bosniac Delegates and a majority of the Croat Delegates.

In RS, the official language is Serb and the script Cyrillic, while other languages may be official in areas inhabited by minorities.

RS CONSTITUTION

Article 7

The Serbian language of iekavian and ekavian dialect and the Cyrillic alphabet shall be in official use in the Republic, while the Latin alphabet shall be used as specified by the law.

In regions inhabited by groups speaking other languages, their languages and alphabet shall also be in official use, as specified by law.

3 Legislation

3.1 General legislation affecting minorities and their linguistic rights

The protection of the human rights and fundamental freedoms of ethnic minorities is generally under the Entities' authority, and somewhat under the Cantons' authority in FBiH. A small number of laws that address minority rights exist, mostly relating to the use of language in education and legal and administrative proceedings.

RS recently adopted a Law on the Official Use of Language and Script, which regulates, among other things, the use of language in the public media. This law contains a number of restrictions on minorities' rights to use their language and alphabet. For example, Article 4 of the Law states that parties who are in the publishing business can use both the "ijekavica" and "ekavica" pronunciations, but are obligated to use Cyrillic script. Religious communities and

national cultural and education associations are allowed to use both pronunciations and scripts, but they are not authorised to use their own language.

3.2 Broadcasting legislation and minority rights

After many attempts to reconstruct the public broadcasting in BiH, the High Representative has recently imposed a set of laws regulating the field. These include, *inter alia*:

- Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina of 23 May 2002⁹
- Law on the Radio-Television of the Federation of Bosnia and Herzegovina of 24 May 2002¹⁰
- Law on Radio Television of Republika Srpska of 24 May 2002¹¹

As for broadcasting laws, there are no rules that directly support, stimulate or affirm the right of minorities to broadcast in their own language, either through financial exemptions or through tax policies or staff-training. At the same time, there are no rules that directly forbid the exercise of this right.

Due to the lack of provisions in either the FBiH or RS Constitutions on how to regulate media (see *supra*), the Independent Media Commission (IMC) and then the Communications Regulatory Agency (CRA)¹² were established through the Office of the High Representative (OHR),¹³ the lead international civilian institution in BiH responsible for implementing the Dayton Peace Agreement. The CRA combines the competences of the Independent Media Commission and the Telecommunications Regulatory Agency. In this way, the State is empowered to deal with the regulation of telecommunications, broadcasting and spectrum allocation.

The CRA, however, does not focus specifically on minority-language broadcasting and representation in either its structure or Mission Statement, and in general, it does not push for minority languages in broadcasting. For example, the Decision establishing the CRA specifies that a certain number of members of each of these bodies be nationals of Bosnia and Herzegovina, but does not address minority representation. Its structure is set out in that Decision as follows:

DECISION COMBINING THE COMPETENCIES OF THE INDEPENDENT MEDIA COMMISSION AND THE TELECOMMUNICATIONS REGULATORY AGENCY, 2001¹⁴

2.3 The CRA shall have a Council comprised of seven members. The Council shall guide the CRA with regard to strategic issues of policy implementation and will confer with and receive reports from the Chief Executive. The Council shall adopt

⁹ See also the Decision Imposing the Law on the Basis of the Public Broadcasting System and on the Public Broadcasting Service of Bosnia and Herzegovina of 23 May 2002.

¹⁰ See also the Decision Imposing the Law on Radio-Television of the Federation of Bosnia and Herzegovina of 24 May 2002

¹¹ See also the Decision Imposing the Law on Radio-Television of Republika Srpska of 24 May 2002. All above-mentioned laws and decisions are available on the website of the Office of the High Representative: <http://www.ohr.int>.

¹² See further: <http://www.cra.ba>.

¹³ See further: <http://www.ohr.int>.

¹⁴ 2 March 2001, available at: http://www.ohr.int/decisions/mediadec/default.asp?content_id=75.

codes of practice and rules for broadcasting and telecommunications and shall adopt internal procedural rules. Additionally, the Council shall serve as an appellate body for CRA decisions. All seven members of the Council shall be appointed by the High Representative. There shall be appointed four nationals of Bosnia and Herzegovina and three internationals. [...]

2.4 The CRA shall have an Enforcement Panel comprised of seven members, four nationals of Bosnia and Herzegovina and three internationals, appointed by the High Representative. [...]

COMMUNICATIONS REGULATORY AGENCY MISSION STATEMENT, 2002¹⁵

The Mission Statement does not mention minority-language broadcasting at all.

The Communications Regulatory Agency is fully independent in decision making. It conducts its work at the state level and in accordance with the principles of legality, objectivity, transparency and non-discrimination.

The Communications Regulatory Agency:

- *Promotes* the development of the information society in Bosnia and Herzegovina;
- *Encourages* the development of a market-orientated and competitive communications sector for the benefit of all citizens of Bosnia and Herzegovina;
- *Stimulates* conditions for the development of media freedom, and in so doing helps establish an open society;
- *Enhances* citizens' participation in contribution to the promotion of a professional and responsible media landscape;
- *Protects* the interests of all users and operators of telecommunication services in Bosnia and Herzegovina in terms of non-discriminatory access, quality and prices of services;
- *Encourages* the introduction of new technologies and services according to customer needs;
- *Issues broadcasting and telecommunications licences* in an open and fair manner, promoting the highest level of professionalism and business viability of the broadcasting and telecommunications community in Bosnia and Herzegovina.¹⁶

4 Current developments

The Constitutional Court of BiH recently abolished certain discriminatory regulations from the Entities' Constitutions, including those dealing with language and script, and ordered the Entities to harmonise their Constitutions with the BiH Constitution. This is an ongoing process.

The House of Peoples within the Parliament of BiH has adopted a law on the rights of ethnic minorities in BiH. This law has yet to take effect as it has not been adopted in identical form by the second House. At the same time, the Council of Ministers of BiH made its own proposal for the protection of ethnic minorities. Both texts anticipate the use of minority languages. In addition, one of the conditions that BiH has to fulfil as a result of joining the

¹⁵ 16 July 2002, available at: <http://www.cra.ba/en/about/?cid=659>.

¹⁶ Italics in original text.

Council of Europe is to sign, ratify and fully implement the Framework Convention for the Protection of National Minorities.

In May 2002, the High Representative issued a decision to liquidate *RTV BiH* and transfer its assets, rights and liabilities to Public Broadcasting Service of Bosnia and Herzegovina (*PBS BiH*) or the Radio and Television of the Federation of Bosnia and Herzegovina (*RTV FBiH*).¹⁷

On 21 October 2002, the High Representative passed the Decision (1) Regulating various matters of a transitional nature arising out of previous Decisions of the High Representative and (2) Enacting the Law on Communications of Bosnia and Herzegovina.¹⁸ The Law on Communications was published in the BiH Official Gazette (No 33/02) on 12 November 2002, and has been in force as of 20 November 2002.

¹⁷ See the High Representative's Decision on the Liquidation Procedure to be Applied in the Winding-Up of the Public Enterprise Radio and Television of Bosnia and Herzegovina of 24 May 2002, available at: http://www.ohr.int/decisions/mediadec/default.asp?content_id=8362.

¹⁸ Available at: <http://www.cra.ba/en/legal/?cid=2427>.

Bulgaria

Bulgarian is the official language of the country and its use is promoted by the relevant broadcasting legislation. There are a number of exceptions to the general requirement that the programming of broadcasting operators must be in Bulgarian: when the programmes have educational objectives; when their target-audiences are Bulgarian citizens whose mother tongue is not Bulgarian or listeners/viewers from abroad, or when they amount to retranslations of foreign radio and television programmes. The regulatory scheme is not, however, explicitly restrictive in terms of the extent to which a broader programming approach could be adopted.

Public broadcasters must, through their programme policy, serve the cultural and educational interests of all citizens, regardless of their ethnicity. Further, they are given the task of promoting Bulgarian language and culture, as well as the languages of citizens who are not ethnic Bulgarians. There is also an obligation on public broadcasters to create national and regional programmes and programmes for abroad, including in languages other than Bulgarian. Overall, limited programming directed at linguistic minorities is provided.

1 Introduction

According to the results of the last survey of the Bulgarian population in 2001, 83.6% of the people define themselves as ethnic Bulgarians; 9.5% as Turks; 4.6% as Roma and 1.5% as others (Armenians, Jews, etc.). Thus, less than 15% of the population of Bulgaria has a “mother tongue” other than Bulgarian.¹ There are no legal obstacles to the free use of minorities’ mother tongues in the mass media. However, national broadcasts in non-Bulgarian languages are few in number due to the limited audience and the lack of economic interest from radio and television operators. At present there is only one news broadcast in Turkish on Bulgarian National Television. At the regional level, “Roma TV” has been broadcasting in Roma from the town of Vidin since 1998² and “TV Rodopi” broadcasts evening news in Turkish from the town of Kurdzhali.

¹ According to Decision No. 2/1998 of the Constitutional Court of the Republic of Bulgaria, (the verdicts of this Court are compulsory for all State institutions, legal entities, and citizens), the terms “minority language” and the term “mother tongue” in Article 36(2) of the Constitution do not precisely overlap (see further: <http://www.infotel.bg/juen/resh/summaries98.htm>). According to the Constitution of the Republic of Bulgaria, the term “mother tongue” can be applied to “all persons for whom the Bulgarian language is not their mother tongue.” The minority need not be defined for the use of a mother tongue. It is enough that the mother tongue of the person in question is not Bulgarian. This means that the Constitutional term “mother tongue” has a broader meaning than “minority language” in the sense of the Framework Convention for the Protection of National Minorities. However, in the absence of a legally defined term for “national minority” every comparison will be to some extent hypothetical. Bulgarian legislation does not provide legal definitions for the terms “national minority” and “minority language.” In current Bulgarian law, the term “national minority” is incorporated via Article 14 of the European Convention on Human Rights.

² Founded by the owners of Roma TV, the first Roma radio station (covering Vidin and its surrounding area) was scheduled to start broadcasting on 20 December 2002. News on the hour in both Roma and Bulgarian was planned, along with (at a later stage) special features and programmes in Roma. Because licensing in radio has been suspended until the adoption of a National Radio and TV Operation Strategy, owners often decide to start broadcasting without a licence.

2 Constitution

In the post-totalitarian Constitution of the Republic of Bulgaria of 1991, the leading principle is respect for personal rights and a person's dignity and security (Preamble to the Constitution).³

2.1 Freedom of expression

Article 39
[Expression]

- (1) Everyone is entitled to express an opinion or to publicize it through words, written or oral, sound, or image, or in any other way.
- (2) This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone.

Article 41
[Information]

- (1) Everyone is entitled to seek, obtain, and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health, and morality.
- (2) Citizens shall be entitled to obtain information from state bodies and agencies on any matter of legitimate interest to them which is not a state or official secret and does not affect the rights of others.

2.2 Broadcasting

Article 40
[Press, Media]

- (1) The press and the other mass information media are free and shall not be subjected to censorship.
[...]

2.3 Minority rights

The Constitution also guarantees the right of all citizens to develop their own culture according to their beliefs, consistent with the constitutional principle of equality.

Article 54
[Culture, creativity]

- (1) Everyone shall have the right to avail himself of the national and universal human cultural values and to develop his own culture in accordance with his ethnic self-identification, which shall be recognized and guaranteed by the law.

Article 6
[Human Dignity, Freedom, Equality]

³ Available at: <http://www.infotel.bg/juen/resh/konbg-en.htm> (EN).

1. All persons are born free and equal in dignity and rights.
2. All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status, or property status.

2.4 (Official/State) language(s)

Article 3

[Language]

Bulgarian is the official language of the Republic of Bulgaria.

Article 36

[Language]

(1) The study and use of the Bulgarian language is a right and obligation of every Bulgarian citizen.

(2) Citizens whose mother tongue is not Bulgarian shall have the right to study and use their own language alongside the compulsory study of the Bulgarian language.

(3) The situations in which only the official language shall be used shall be established by law.

3 Legislation

3.1 General provisions on broadcasting and minority languages

The Radio and Television Law passed in 1998⁴ regulates radio and television broadcasting in Bulgaria. The law elaborates on the constitutional provisions with regard to freedom of speech and the use of languages other than Bulgarian by the mass media. Its provisions reflect the country's international commitments in this field. The law does not restrict the right to broadcast radio and television programmes in languages other than Bulgarian.

RADIO AND TELEVISION LAW OF 1998 (AS AMENDED)

Article 11

(1) Every opinion can be expressed freely in radio and television broadcasts.

(2) The journalists and the creative workers who have concluded contracts with radio and television operators shall not receive instructions and directives for their activity from persons and/or groups other than the bodies of management of the radio and television operators.

[...]

3.2 Public broadcasting

Radio and Television Law of 1998 (as amended)⁵

⁴ Promulgated: State Gazette No. 138/24.11.1998; Amended - SG No. 60/1999, 81/1999, 79/2000. English-language excerpts from this Law are available at:

http://www.riga.lv/minelres/NationalLegislation/Bulgaria/Bulgaria_RadioTV_excerpts_English.htm.

⁵ Emphasis has been added to some of the provisions of this Law which are quoted *infra*.

Radio and television operators in the Republic of Bulgaria are either public or commercial (Article 4 of the Radio and Television Law). As the main purpose of the commercial outlets is profit, they have greater freedom with regard to the conception of the radio and television programmes they broadcast. The main aim of the public radio and television operators is to satisfy the constitutional right to information. They have the obligation, via their programming, to protect, *inter alia*, the education and culture of all Bulgarian citizens, regardless of their ethnicity. (Article 6(3)(3)).

Article 6

(1) (suppl., SG 79/00) The public radio and television operators are individuals, sole entrepreneurs and corporate bodies with license for radio and television activity whose main purpose is to contribute to the realization of the basic constitutional right to information.

(2) The public radio and television operators are [subject of] the public or private law.

(3) The public radio and television operators shall:

1. submit for broadcasting political, economic, cultural, scientific, educational and other socially important information;
2. provide access to the national and global cultural values and popularize scientific and technical achievements through broadcasting Bulgarian and foreign educational and cultural programs for all age groups;
3. *provide, through their program policy, protection of the national interest, of the all-human cultural values, of national science, and of education and culture for all Bulgarian citizens regardless of their ethnic belonging;*
4. encourage the creation of works by Bulgarian authors;
5. promote the Bulgarian performing arts.

This provision, however, should be viewed in light of Article 12:

Article 12

(1) The programmes of the radio and television operators shall be broadcast in the official language according to the Constitution of the Republic of Bulgaria.

(2) (Amend., SG 79/00) The programmes or individual broadcasts of the radio and television operators can be in other languages when:

1. they are broadcast with an educational purpose;
2. they are designated for Bulgarian citizens whose mother tongue is not Bulgarian;
3. they are designated for listeners or viewers from abroad;
4. foreign radio and television programmes are retranslated;

The Radio and Television Law also has special provisions for Bulgarian National Radio (BNR) and Bulgarian National Television (BNT). They are obliged to provide programmes for all the citizens of Bulgaria, to support the development of, and to raise awareness of, Bulgarian culture and the Bulgarian language, as well as the languages used by citizens whose ethnicity is not Bulgarian (Article 7).

Article 7

The Bulgarian National Radio (BNR) and the Bulgarian National Television (BNT) are national public radio operator and, respectively, national public television operator who:

1. provide programs for all citizens of the Republic of Bulgaria;
2. *assist the development and popularization of Bulgarian culture and Bulgarian language, as well as of the culture and the language of the citizens according to their ethnic belonging;*
3. provide through their programs access to the national and European cultural heritage;
4. include in their programs broadcasts that inform, educate and entertain;
5. apply the new information technologies;
6. (Amend., SG 96/01) relate the various ideas and convictions of the society by plural points of view in each and every news and current events broadcasts on political and economic subjects;
7. contribute to mutual understanding and tolerance in the relations between people;
8. provide the opportunity for citizens to acquire information regarding the official position of the state on important issues of public life.

Article 49 from the section, “Programmes for BNT and BNR”, provides for the creation of national and regional programmes by BNT and BNR intended for audiences abroad, as well as programmes in other languages intended for Bulgarian citizens whose mother tongue is not Bulgarian. The boards of directors of BNT and BNR, respectively, are obliged to define the direction, development, volume and structure of the programmes, including programmes in languages other than Bulgarian.

Article 49

(1) Bulgarian National Radio and the Bulgarian National Television shall create national and regional programs; programs for abroad, including for the Bulgarians abroad for whom the Bulgarian language is not their mother tongue, including in their language.

(2) (amend., SG 79/00) The regional programs shall report events of local importance. They shall be created by regional radio and television centres and shall be designated for both the population of the respective region and for participation in the national radio and television programs.

(3) The territory of the regions, the regional program schemes and the participation of the radio and television centres with their own programs in the creation of the national radio and television programs shall be approved by the management boards of BNR and BNT.

Since BNT and BNR are the national public television and radio operators, their financing, including the financing of programmes designed for minority ethnic groups, comes from the “Radio and Television” Fund, subsidies from the state budget, funds from advertising and sponsorship, as well as funds from additional activity in the field of radio and television (Article 70).

4 Application of legislation

Radio and Television Law of 1998 (as amended)

The Electronic Media Council, established as a result of the last amendment of the Radio and Television Law in 2001, replaced the National Radio and Television Council (NRTC). The Electronic Media Council monitors radio and television operators' compliance with the basic principles of the Law, as well as the guidelines set out by Article 6(3) and Article 7. The Council is an independent, specialised regulatory body. It is governed by Article 33 of the Radio and Television Law.

Article 33

The Council for electronic media shall supervise the activities of the radio and television operators regarding only:

1. (suppl., SG 79/00) the observance of the principles under Article 10, Paragraph 1 and the ratio under Article 10, Paragraphs 2 and 3;
2. the observance of the requirements under Article 6, Paragraph 3 and Article 7;
3. the reporting of the elections for state bodies and bodies of local independent government;
4. (suppl., SG 79/00) the compliance with the requirements regarding commercials and the radio and TV market in the broadcasts of the radio and television operators;
5. the observance of the norms regarding charitable activities and sponsorship;
6. the preservation of secrets stipulated by the law in radio and television activity;
7. (amend., SG 79/00) the observance of the requirements for broadcasts directed to the underage and minors;
8. the information regarding decisions of [the jurisdiction] and the other state bodies in cases stipulated by the law;
9. the protection of the rights of the consumers;
10. the technical quality of the broadcasts and programs;
11. (amend., SG 79/00) the observance of the restrictions stipulated by law, by the licenses and by enacted international agreements to which the Republic of Bulgaria is a party.
12. (New, SG 96/01) compliance with the conditions of the licenses for radio and television activity.

Before being replaced by the Electronic Media Council (as the national regulatory authority for broadcasting), the National Radio and Television Council (NRTC) ruled in May 2000 that the process for licensing radio and television operators should attempt to stimulate programming for minorities.

So far, the only programme broadcast by BNT in a language other than Bulgarian has been a ten-minute Turkish newscast on weekdays. The programme started on 2 October 2000. BNR does not have a programme of this type yet, although a programme in Turkish is under development. "Rodopi" TV (Kurdzhali) and "Roma" TV (Vidin) are commercial television operators with regional programming. "Rodopi" TV broadcasts a five-minute daily news programme in Turkish, financed by the Open Society Foundation. "Roma" TV started broadcasting in 1998 and is targeted entirely at the Roma population in the town of Vidin. "Roma" TV programming airs for nine hours, 30% of which is in the Roma language. Apart from the news broadcasts, there are entertainment, current (affairs) events, and children's programmes. The owner invests the profits from other activities in the television programme. The funds from advertising and sponsorship are close to zero. The programme has been developed and implemented by a Roma team, trained by the IREX ProMedia – Sofia experts. There is another training course planned, reflecting the increased programme volume and the

addition of new team members. “Roma” TV plans first to cover the north-western region of the country, and later stage achieve national coverage.

5 Current developments

The replacement of the NRTC by the Electronic Media Council, discussed above, was followed by various controversies which, although not directly related to the programmes designed for different ethnic groups, nevertheless affected the development of the national public media. Both BNT and BNR experienced a slowdown in the implementation of new programme schemes/schedules and the starting of new programmes, including programmes aimed at different ethnic groups.

The changes introduced to the Radio and Television Law by the parliamentary majority of the National Movement Simeon II in December 2001 led to confusion and a lack of clarity regarding the implementation of the law.

Existing trends point towards the development of regional radio and television programmes in the future, especially in areas with concentrated ethnic populations. The provision of such programmes will require financial and logistical support for the radio or television outlets. At present, such support is provided only by non-governmental organisations.