

# The Tallinn Guidelines on National Minorities and the Media in the Digital Age & Explanatory Note

February 2019

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# Introduction

In its Helsinki Decision of July 1992, the Organization for Security and Co-operation in Europe (OSCE) established the position of High Commissioner on National Minorities (HCNM) to be an instrument of conflict prevention at the earliest possible stage in respect of tensions involving national minority issues. Over a period of more than 25 years, the five successive High Commissioners have encountered a number of recurring issues in their work. In response, they have published eight thematic Recommendations and Guidelines providing insight and advice for States facing such issues. These syntheses of accumulated experience and expertise on selected themes provide comprehensive, detailed and nuanced overviews of their subject matter. They also enhance understanding of how the selected themes affect relations between national minorities and other groups in society. This, in turn, gives the High Commissioner a range of options when assessing which measures are best suited for preventing conflicts involving national minorities.

The first three sets of Recommendations – *The Hague Recommendations regarding the Education Rights of National Minorities*, *The Oslo Recommendations regarding the Linguistic Rights of National Minorities* and *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* – are primarily concerned with clarifying minority-rights standards in the areas of education, language and participation in public life. The subsequent two publications – *Guidelines on the use of Minority Languages in the Broadcast Media* and *Recommendations on Policing in Multi-Ethnic Societies* – address specific challenges that many States face in ensuring minorities' access to broadcast media in their own languages and in providing effective policing in ethnically diverse societies. *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations* address the conditions and limitations within which States may support minorities residing in other countries. *The Ljubljana Guidelines on Integration of Diverse Societies* are concerned with enhancing the integration and cohesion of diverse, multi-ethnic societies. Most recently, *The Graz Recommendations on Access to Justice and National Minorities* focus on the conditions for ensuring equal and effective access to justice for all.

The present Guidelines continue this line of thematic work by the HCNM in a very important policy area – the media and use of information technologies. The media and information technologies can play an instrumental role in preventing or igniting conflicts involving or affecting national minorities, which is a central concern for the HCNM. The media and information technologies can also make influential

contributions to conflict resolution and peace-building and reconciliation processes. In addition, the Guidelines seek to clarify minority rights in a specific area – freedom of expression and the media – and their relevance to conflict prevention. They address specific challenges shared by OSCE participating States, namely how to operationalize the right to freedom of expression in diverse societies by providing guidance on creating and sustaining structures and processes for a pluralistic discussion between and within communities of majorities and minorities in the digital age. The media and more generally communication technologies play an increasingly important role in conflict cycles; they are often abused to stoke tension, but can also serve as an influential tool to foster dialogue and understanding.

Information and communication, and the technologies which enable them, can facilitate democratic deliberation, participation in public debate and public affairs, and integration of diverse societies in the broad sense of the Ljubljana Guidelines. They can also have important transnational and international dimensions. The right to seek, receive and impart information and ideas exists regardless of frontiers, and it is crucial that this right is guaranteed by States in their mutual relations. This right should be guaranteed to everyone, including in respect of access to the media, without discrimination based on ethnic, cultural, linguistic or religious grounds.<sup>1</sup> Moreover, the participating States have committed to make information available that will assist the electronic mass media in taking into account, in their programmes, the ethnic, cultural, linguistic and religious identities of national minorities.<sup>2</sup>

The present Guidelines also draw inspiration from the Bolzano/Bozen Recommendations, which are concerned with national minorities in inter-State relations, because the transnational and international dimensions to freedom of expression are essential for many national minorities who wish to maintain effective cultural, linguistic, political and other ties with their “kin-” or neighbouring States.<sup>3</sup> Moreover, States’ active involvement with these matters has proved to be tension-prone, often requiring the HCNM’s intervention to support efforts to foster an enabling approach to minorities’ access to the media and communication platforms from neighbouring States, while balancing this against other legitimate aims. Thus,

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<sup>1</sup> See ICCPR, Article 2.

<sup>2</sup> See: Report of the CSCE Meeting of experts on national minorities, Geneva, 1991. See also, *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations* (The Bolzano/Bozen Recommendations), Recommendation 14; *The Guidelines on the use of Minority Languages in the Broadcast Media* (the Broadcast Media Guidelines), Guideline 13.

<sup>3</sup> “This term has been used to describe States whose majority population shares ethnic or cultural characteristics with the minority population of another State. [...] In addition, “kin” is regarded as one of the essentially contested concepts that lacks agreed scientific or legal definition. For these reasons, the term “kin-State” [...] is referred to only sparingly.” See: *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations* (the Bolzano/Bozen Recommendations), p. 3.

the present Guidelines acknowledge the complementary roles of the media in advancing the goal of societal cohesion within States, while ensuring that the human rights to freedom of expression and cultural rights are not limited by State borders.

Pluralistic democratic society requires ample space for interaction, deliberation and debate on matters of importance and interest to the population. Such spaces should be inclusive: all members of society, including national minorities, should be able to access those spaces without discrimination and participate effectively in the deliberation that takes place in them. Inclusive deliberative spaces allow different groups in society to interact with each other, to explore and develop their identities and articulate their views, and to share information and perspectives. These activities can play instrumental roles in enhancing understanding and reducing intolerance and mutual distrust in diverse societies and thereby strengthen societal integration, cohesion and stability. They can also provide valuable safeguards against societal tensions and conflicts.

As well as being inclusive, these deliberative spaces must be pluralistic. They must allow for robust public debate and the expression of wide-ranging viewpoints and perspectives, including those which are critical of the State or any member of society, from majorities or minorities alike, or which may even be considered offensive by some. This principle is well-established in European and international human rights law, but it bears recalling because it is often downplayed in practice in the heat of political discussion. The exercise of the right to freedom of expression is moreover governed by certain duties and responsibilities. Everyone participating in public debate – members of majority and minority communities alike – must abide by those duties and responsibilities. “Everyone” refers to both natural and legal persons, i.e. individuals as well as media organizations, internet intermediaries, civil society organizations, etc. Such duties and responsibilities include avoiding gratuitous insults and negative stereotyping of individuals, groups or communities.

European and international human rights law also provide for certain limitations on the right to freedom of expression, and the right may not be limited more than is provided for by authoritative international standards. Permissible limitations must be prescribed by law, pursue one of the legitimate aims expressly set out in European and international law, and be necessary for, and proportionate to, the realization of the stated aim. European and international human rights law also recognize a limited number of types of expression which States must render punishable (by law), in particular: direct and public incitement to commit genocide and all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination,



as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin. European and international law also recognize a limited number of types of expression which States must prohibit, in particular: any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Those types of expression have no place in public debate.

Spaces for inclusive, pluralistic deliberation rarely emerge spontaneously, however. They must be facilitated, nurtured and defended with vigilance. States can play a determinative role in guaranteeing such spaces, first by protecting everyone who wishes to participate in public debate – whether they are journalists, media professionals, bloggers, civil society organizations, academics or others. States should also ensure that those who wish to contribute to public debate are not subjected to threats or violence, including by taking effective measures against gender-based violence or threats of such violence. States must provide such protection even when the ideas being expressed are critical of the State, any group in society or a particular member of society, or when the ideas may be considered offensive by some.

The second determinative role that States can play in guaranteeing such spaces is to take measures to ensure the sustainability and vitality of pluralistic media and content that adequately serve all groups in society, including national minorities. Such measures should take into account the need to balance public interest media and content for all groups in society and media and content corresponding to the cultural and linguistic specificities of national minorities.

The present Guidelines' focus on the media can be explained by the fundamental role that the media play in sustaining spaces for inclusive, pluralistic deliberation in diverse society. The media inform and influence public opinion about diversity in society; act as public watchdogs holding authorities or non-State actors to account if there is a risk that their actions may increase divisions and even lead to a conflict; create shared forums and channels through which public debate takes place; and provide groups, including national minorities, with their own forums and channels through which they can maintain, develop and transmit their cultures and languages. Increasingly, these roles are also being played – to different extents and in a variety of ways – by other actors online.

These Guidelines both build upon and update HCNM approaches with regard to media and national minorities. The Broadcast Media Guidelines were issued in

2003 with a specific focus on language use in the broadcast media. The present guidelines take a broader view of the media and its role in society, and specifically focus on the digital evolution that has occurred in the media space since 2003 and is ongoing. They also incorporate the approaches to the integration of society, as espoused in the Ljubljana Guidelines, and the role the media can play in facilitating or obstructing this process.

The emergence of the digital age has ushered in many new information and communication technologies, and with them many opportunities and challenges for freedom of expression. As the internet has evolved, its architecture has become more participatory, which has facilitated the emergence of mass self-communication alongside mass communication. Individuals and organizations are able to express themselves and participate in public debate more easily than ever before. More particularly, these developments have led to the rapid growth of a variety of social networking services (or social media), several of which have become firmly established as conventional means of communication and sources of information for vast numbers of people.

Society's growing reliance on digital technologies is having profound consequences for the media environment. Whereas in the past the institutionalized media were the dominant players that provided and mediated content intended for the public, vast amounts of content are now generated by individuals and are disseminated through social media networks. The dynamics of network distribution of content has contributed to the waning of the shared points of reference traditionally provided by the broadcast and print media. Search, ranking and recommendation techniques used by social media operators can reinforce the personalization of communications and information activities and experiences, which can in turn affect levels of inter-person and inter-group interaction and deliberation online. Broadly speaking, certain tensions exist between the increased opportunities for seeking, receiving and imparting information and for deliberative interaction, on the one hand, and technology-aided trends towards informational insulation and societal fragmentation on the other hand. These complexities and contradictions pose pressing challenges for law- and policy-makers alike.

These Guidelines consist of four parts, focusing on: freedom of expression and the media; the (evolving) media environment; pluralism and diversity, and media, information technologies and conflict prevention. These thematic focuses are inter-related. The first sets out the principles and rights that create and shape an enabling environment for freedom of expression and the media. The second addresses the

developments in the media environment that have seen society become increasingly reliant on digital information and communication technologies, in particular the internet. The third focus is the far-reaching nature of these changes for societal and media pluralism and diversity. Conflict prevention is the final focus and it is understood as a key element of the notion of comprehensive security, as espoused by the OSCE.

The OSCE's notion of comprehensive security encompasses three distinct, but inter-related dimensions: the politico-military, the economic and environmental, and the human dimensions. The notion of comprehensive security integrates different levels of security: collective security at the international and regional levels; national security; and human security, including for members of majority and minority communities. Increasingly, it is also taken to include information security and cybersecurity. The OSCE recognizes that gender equality contributes to comprehensive security and is committed to mainstreaming a gender perspective in all dimensions.<sup>4</sup>

While an explicit structural focus, conflict prevention is also a cross-cutting theme throughout the Guidelines, due to their central concern that the media and information technologies should contribute to the freedom of expression and ability of all groups in society to participate in public debate. The net benefit of the media's contribution – to increase inter-group deliberation and understanding and to reduce tensions and prevent conflicts – has clear implications for security issues.

Although these Guidelines are primarily addressed to OSCE participating States, their successful promotion and implementation will depend on constructive engagement and co-operation by States authorities with a wide range of actors and stakeholders at the international, national and sub-national levels, including (specialized bodies of) intergovernmental organizations, representatives of national minority groups, independent national media regulatory authorities, the media, internet intermediaries, civil society and academia.

OSCE participating States are encouraged to embrace this set of Guidelines in the spirit of the OSCE's general co-operation framework, with due acknowledgement of the specific mandates of OSCE institutions, in particular the HCNM, the Office for Democratic Institutions and Human Rights (ODIHR) and the Representative on Freedom of the Media (RFoM), as essential instruments for preventing conflict, ensuring respect for human rights and promoting tolerance between ethnic groups. OSCE participating States are also encouraged to co-operate constructively with each another on the issues addressed in these Guidelines.

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<sup>4</sup> 2004 OSCE Action Plan for the Promotion of Gender Equality.

The term “national minority”, as used in the Guidelines, refers to a wide range of persons belonging to national minorities, including ethnic, religious, linguistic and cultural communities, regardless of whether these groups are recognized as such by the States where they reside and irrespective of the designation applied to or claimed by them. In addition, “national minority” or “minority” is often used as a shorthand term for “persons belonging to national minorities”. This does not imply that all principles, minority rights and policy options presented in the document apply to every situation in the same way. Although it is clear that basic human rights standards apply to all, policies will need to be tailored to some extent to meet the challenges and needs of different minorities and different circumstances, in order to ensure that the exercise of those rights is effective in practice. The content of media-related policies may depend on such factors as the numerical size of the national minority, its geographical concentration and location, whether or not it has its own language, the extent of its integration, whether it has strong ties with other countries, and its particular social, economic and cultural needs, among other considerations. In addition, different media have different objectives, functionalities, affordances, reach and impact. People use different media for different purposes and in different ways. The fact that many individuals have multiple identities that may be asserted in different ways, times and contexts must also be recognized when developing media-related policies for the digital age.

In recent years, with the emergence and consolidation of the internet as a dominant medium for communication, society has taken a notable turn towards the use of digital technologies for the purposes of accessing information and communicating. To describe this mass uptake of digital technologies and at the same time to capture its societal impact, terms such as the “digital age” and the “information society” have come to the fore.

It is important to realise, however, that the so-called digital age is not exclusively digital. Properly understood, the term denotes the centrality of the digital dimension, but does not suggest that it is all-encompassing. Rather, the present era is characterized by the co-existence of different types of media in an evolving environment. Traditional media still play important roles in everyday life and in law- and policy-making. However, they must necessarily be considered alongside and in terms of their relationship with digital media. That relationship is one of, alternately, complementarity and continuity, but also displacement, adaptation and perhaps even disruption.

The present Guidelines are based on concrete provisions in, and contemporary and forward-looking interpretations of, international and European human rights, media and communications law and policy standards. Some of the instruments are legally binding on all or some OSCE participating States, whereas others have a political character, which means that they are primarily of referential, persuasive or inspirational value. The overall range of international standards drawn on in the Explanatory Note seeks to be representative rather than exhaustive. The Guidelines not only follow those standards, but necessarily also build on them, in order to reflect fast-moving technological developments. Such developments often require fresh thinking about how best to apply familiar principles of freedom of expression in changing technological and societal contexts of diverse societies.

In light of the fast-moving pace of today's digital age, please also note that we have endeavoured to cite and include all the latest legislative decisions and developments relevant to this field up until the conclusion of the writing process, which formally ended on 17 December 2018. For this reason, any developments after this date will not appear in the text.

At this point it should also be noted that, while the Tallinn Guidelines undoubtedly benefitted from the input and advice of an extensive multidisciplinary team of experts, the Guidelines themselves are grounded in specific experiences of the HCNM and do not reflect the views of any single expert. Rather, the institution of the High Commissioner on National Minorities is grateful to several HCNM staff members, past and present, as well as a number of external experts and practitioners for this latest addition to its ongoing series of thematic Recommendations and Guidelines. Tarlach McGonagle in particular is to be commended for his exceptional work on compiling, collating and cross-referencing the various research threads that make up this unique set of 37 guidelines. Special thanks also go to Henrik Villadsen, Iryna Ulasiuk and Michael Angermann for overseeing the drafting and reviewing process from beginning to end. In addition, the final text has benefitted from the critical input of international experts during the reviewing process. Therefore, for their willingness to work together with us on this set of Guidelines and provide us with their expertise and insights, I wish to thank the following experts: Sally Broughton-Micova, Boriss Cilevičs, Vincent de Graaf, Pierre François Docquir, Jennifer Jackson-Preece, Tove Malloy, Toby Mendel, Tom Moring, Dmitry Nurumov, Federica Prina, Eugenia Siapera and Mark Thompson.

The excellent institutional co-operation with the OSCE Representative of Freedom of the Media (RFOM) and the Gender Section, OSCE Secretariat, also deserves credit. For this, I am especially grateful to Amarsanaa Darisuran (Gender Section, OSCE Secretariat) and Andrey Rikhter (RFOM): aside from contributing new perspectives to the Guidelines, their excellent collaboration once again demonstrates the benefits of working together and the added value of the longstanding relationship between our respective institutions.

I am confident that *The Tallinn Guidelines on National Minorities and the Media in the Digital Age* will serve as an important and timely benchmark for all of the 57 OSCE participating States in this dynamic and fluid field. I therefore encourage all Governments and Parliaments throughout the OSCE area to actively use them on a day-to-day basis as guiding principles for all media policies that have an impact on minorities and diverse communities.

*Lamberto Zannier*  
*OSCE High Commissioner on National Minorities*  
*The Hague, 13 February 2019*

# The Tallinn Guidelines on National Minorities and the Media in the Digital Age

## **I. Enabling Environment for Freedom of Expression and Media Freedom**

1. States should take all appropriate measures to ensure that everyone, including persons belonging to national minorities, can exercise the right to freedom of expression in a practical and effective manner in the digital age. This includes the right to seek, receive and impart information, regardless of frontiers, in the languages and through the media of their choice.
2. States should take all appropriate measures to fulfil their positive obligation to create an enabling environment for robust, pluralistic public debate in which everyone, including persons belonging to national minorities, can participate effectively and express their opinions, ideas and identities without fear.
3. States should put in place effective systems of legal and practical protection to guarantee the safety and security of everyone wishing to participate in public debate. This requires the effective enforcement of legislation penalizing threats and violence against journalists and other media actors and the prosecution of the perpetrators of such abuses. The systems of protection must be fully applicable and accessible to persons belonging to national minorities and sensitive to their needs, including gender-specific needs. Such systems could include specialized mechanisms of protection, as needed.
4. State and/or public officials should not undermine or threaten journalists and other media actors, or incite hatred towards or discrimination against them, on the grounds of belonging to a national minority or for reporting on national minority issues. Nor should they attack the integrity of journalists or of other media actors by making deliberately false accusations against them, and thereby jeopardizing their safety. They should moreover publicly and unequivocally condemn all threats and violence against journalists and other media actors, irrespective of the source of those threats and acts of violence.

5. States should take all appropriate regulatory and other measures to ensure that key features of an enabling environment for freedom of expression, the media and public debate are safeguarded in law, policy and practice. Those features include a law and policy framework for equality and non-discrimination; a system of protection for national minorities and their rights; an effective freedom of information regime; pluralism in an evolving media environment; and a culture of independence in the media sector, including in respect of national regulatory bodies and the operation of public service, commercial, community and other media.
  
6. If they have not already done so, States are encouraged to draw up, adopt and implement clear policy to ensure the effective realization of the right to freedom of expression in the digital age for everyone, including persons belonging to national minorities, women and men. The process of developing such policy should involve the effective participation of a wide range of stakeholders, including representatives of national minority groups, independent national media regulatory authorities, the media, internet intermediaries, civil society (including women's groups) and academia. States should ensure equal participation of women and men in these processes.



## II. Media Environment

7. States should develop and deploy a range of measures to ensure that persons belonging to national minorities can take full advantage of the unprecedented opportunities to seek, receive and impart information and ideas of all kinds, regardless of frontiers, in the present media environment. The abundance of information and media does not, however, diminish existing State obligations to:
  - Ensure the effective access of persons belonging to national minorities to such expressive opportunities and informational resources; and
  - Support and/or facilitate the production of content by and for national minorities, including in their own languages, and the dissemination of such content across a range of platforms.
8. States should ensure that universal service obligations governing the communications sector are fully implemented in practice, including for national minorities and other communities residing in rural and geographically isolated areas, or which are otherwise marginalized. Such obligations include the provision of electronic communications services of a specified quality at an affordable price, as well as a stable and reliable connection to the public communications network through (mobile) telephony and internet.
9. States should ensure that everyone – of all ages and genders and from all walks of life – can develop the set of skills that enable them to access, understand, critically analyse, evaluate, use and create media content, including online media and digital content. To achieve this aim, States should take effective measures to promote media and information literacy, including in the languages of national minorities.
10. States should adopt necessary and effective measures to encourage or, as appropriate, require internet intermediaries based within their jurisdiction to apply human rights due diligence throughout their operations and to take account of any particular implications for the rights of national minorities while doing so, including the elimination of all forms of online violence against women. All such measures – by States and internet intermediaries alike and which may include self- and/or co-regulatory mechanisms – should be fully in line with evolving interpretations of international and European human rights law, including the rights to non-discrimination, privacy and data protection, and be informed by relevant technological and regulatory developments.

11. Internet intermediaries should be allowed to, and encouraged to, offer their services in the languages of national minorities. They should also be encouraged to devise and implement strategic plans and concrete measures to enhance the availability, accessibility, prominence and findability of content produced by national minorities, including in minority languages, online. Intermediaries which use algorithm-based search or recommendation systems should be encouraged to provide greater transparency in respect of how those systems work and how they impact on minority content. They should also provide for improved levels of individual autonomy over the personal data and preferences that they use, including those which can lead to their identification (or not) as persons belonging to national minorities.

### III. Pluralism and Diversity

12. States are encouraged to adopt a range of measures to support initiatives by the media to foster intercultural dialogue by offering content, programmes and services for all of society and thereby sustain shared points of reference. States should support the production of content by national minorities and its widespread dissemination across different platforms. Any measure taken to provide such support should not interfere with the editorial and operational independence of the media.
13. States may use regulatory or other measures to promote the use of particular languages in the media, including the State/official language(s) or other languages, for instance to foster societal cohesion and integration or to ensure a common language of communication, provided the goals are legitimate and clearly stated and the regulation is proportionate to those goals. States may similarly promote the languages of national minorities, which are an essential component of their identity. Any measures to promote the use of particular languages in the media should seek to balance and provide reasonable and fair accommodation of the needs and interests of different linguistic groups in society.
14. Language quotas for public (digital) broadcasting are permissible if they comply with international and European human rights and media law, in particular as regards their proportionality to their stated objectives. They must furthermore not have the purpose or effect of unfairly restricting the use of other languages, especially national minority languages. The imposition of rigid language quotas on private broadcasters may conflict with freedom of expression and should be avoided by employing other approaches to foster a shared communication space. These safeguards for pluralism and diversity should also govern any language quotas that are applied to music or film. Language quotas should not apply to advertising.
15. States may require public service media, and encourage the audiovisual media generally, to make reasonable arrangements for the translation of media content in the State/official language(s) into the languages of national minorities, and vice-versa, in order to enhance the linguistic accessibility of both types of content throughout society and thereby help to foster intercultural dialogue. Any such requirements for public service media should be set out clearly in legislation and be proportionate to the aim pursued. Minority language audiovisual linear media should not in any case be subject to undue or disproportionate requirements for subtitling, dubbing, post-synchronization or any other forms of translation.

16. Public service announcements should be translated into the languages of national minorities, as appropriate, and disseminated in an equitable and non-discriminatory manner through a range of media, including minority media.
17. States should take effective measures to guarantee pluralism in the evolving media environment and to ensure that persons belonging to national minorities can access a wide range of media providing content that corresponds to their needs and interests, including in their own languages. These could include measures to promote such content and to ensure its visibility and findability.
18. States should take effective measures, including regulatory measures, as required, to prevent concentrations of media ownership and control which threaten media pluralism and the availability of national minority media services and content, including in the languages of national minorities.
19. States should introduce legislation and/or amend existing legislation to guarantee the independence and sustainability of public service media and allow them to fulfil their mandate to serve all sections of society, including national minorities, by providing diverse high-quality programming and services across a range of platforms. Such legislation should provide for, or at least facilitate, the effective participation of national minorities in public service media activities at various levels, such as content-production, editorial decision-making and supervisory activities.
20. States are encouraged to introduce legislation and/or amend existing legislation to recognize the distinct nature of not-for-profit community media, which can be run by or otherwise serve national minority communities. Such legislation should guarantee the independence of community media and allow them to fulfil their objective to provide members of the communities they serve, including national minorities, with the opportunities and training that enable them to produce their own media content and to participate fully in the operation and management of their own media.
21. States may explore the potential for commercial media to provide pluralistic content and, in particular, national minority content, including in the languages of national minorities, and develop appropriate measures to incentivize the promotion of such content.

22. States should adopt specific legislative and other support measures to facilitate the independent and stable operation of a range of media at regional or local levels, including in geographical areas with national minority populations and/or in national minority languages.
23. States should not impede or restrict the ability of persons belonging to national minorities to access media established in other countries which serve the interests of national minorities. The ability to access such media does not diminish States' obligation to facilitate and support the development and effective operation of media serving national minorities in their own jurisdictions. States should moreover seek to prevent, or at least mitigate, the adverse effects for national minorities of copyright agreements that result in geo-blocking of media content.
24. Independent national media regulatory authorities should develop mechanisms to enable women and men belonging to national minorities to participate effectively in all areas of their work that are relevant to such groups. States are encouraged to consider introducing or strengthening, as appropriate, the structured representation of persons belonging to national minorities in independent national media regulatory authorities. Appropriate mechanisms should be adopted to ensure gender balance within these authorities.
25. Licensing schemes for (digital) radio and television should be based on predetermined, public, clear, transparent and equitable criteria. States should include, in appropriate ways, the service of national minority communities, including shared and dedicated channels and/or channels or programming in the languages of national minorities, among those criteria. Licensing schemes should be administered in a fair and non-discriminatory manner by designated independent authorities that adhere to clear procedures supported by appeal mechanisms.
26. States should explore, use and develop the potential of licensing schemes for (digital) radio and television to promote minority media, including in minority languages, in each type of radio and television service. Such provisions could include special status for "minority" or "community" media meeting particular criteria, which could entitle them to, for instance and as appropriate, concessionary licence fees or less onerous technical specifications, fiscal obligations or regulatory reporting requirements.

27. States should require independent authorities charged with implementing licensing processes to issue information and guidance on the opportunities and requirements for minority media within existing licensing schemes. The information and guidance should be issued in the State/official language(s) and in the languages of national minorities and they should be publicized in appropriate ways.
28. Network operators, including cable, IPTV and satellite, as well as multiplex operators, should be allowed to, and encouraged to, include national minority channels, including in the languages of national minorities, in their (basic) packages. States may consider using fair and proportionate must-carry regulations to ensure that public service broadcasting or national minority channels are included in the (basic) packages of cable network or multiplex operators, for instance.
29. When licensing multiplex services and electronic programme guides, States should provide a legislative basis for appropriate accommodation of, and due prominence for, minority media channels, including in minority languages.
30. States should endeavour to incentivize the production, dissemination and promotion of national minority content, including in minority languages, and especially online. Media support schemes should take appropriate measures to cater adequately for the needs and interests of persons belonging to national minorities. To this end, existing schemes to promote general interest or pluralistic content, or particular types of independent media or content, could emphasize the need for content corresponding to the needs and interests of national minorities, including in their own languages, and especially online. Portions of the funds available under existing schemes could be earmarked for those purposes. The establishment of dedicated funding schemes is also encouraged.

#### **IV. Media, Information Technologies and Conflict Prevention**

31. States and State or public actors should refrain from disseminating, supporting or endorsing in any way disinformation, propaganda or inflammatory discourse which aim to, or are likely to, undermine friendly relations among States and/or the sovereignty of other States; obstruct integration in other States, and/or generate hostility towards particular groups, including national minorities. Internet intermediaries should uphold human rights principles, respect human rights online, and voluntarily accept and apply all international human rights and women's rights instruments in the digital environment.
32. States may restrict or prohibit expression only in strict accordance with international or European human rights law. This means that any restriction on the right to freedom of expression must be provided by law and be a necessary and proportionate measure to achieve a stated, legitimate aim. Any prohibition of expression under domestic law must clearly correspond to, and be fully in compliance with, relevant specific provisions of international law. States should refrain from using vague or blanket terms for types of expression as a basis for content regulation, restriction or prohibition.
33. For offensive or harmful types of expression which do not have sufficient gravity or intensity to legitimately be restricted under international law, alternative responses are called for, such as counter-speech; intercultural dialogue, including via the media and social media; and education and awareness-raising activities. Internet intermediaries should commit to eradicating online gender-based violence and allocate resources for information and educational campaigns to prevent ICT-facilitated violence against women and girls. States should support such initiatives and encourage the media, without encroaching on their editorial independence, and internet intermediaries, to do so as well.
34. States should encourage the media and internet intermediaries to foster intergroup dialogue and understanding in ways that are appropriate to their roles, functions and capacities, especially in the contexts of conflict prevention and conflict resolution. The media and internet intermediaries are governed by certain duties and responsibilities whenever they exercise their right to freedom of expression.
35. States must not jam broadcast signals, block websites, web-based services (including social media services) or applications or IP-addresses from within or outside their jurisdiction, save in compliance with international human rights law and pursuant to an order by an independent court or other independent, impartial and authoritative body.

36. Internet intermediaries should not be held liable for third-party content disseminated through their services or networks which they have not altered or edited, except when they have or reasonably ought to have knowledge of the illegal nature of particular content or they have refused to obey an independent and authoritative court order requiring them to block or remove illegal content and they have the technical capacity to do so. Nor should internet intermediaries be obliged to conduct general monitoring of content to ascertain the nature of third-party content disseminated through their services or networks.
37. States should require internet intermediaries to adopt and effectively implement clear and transparent policies and procedures governing the removal of illegal content disseminated by users through their services or networks. Those procedures should be subject to due process, including adequate oversight and effective appeal mechanisms, and ultimately be subject to independent judicial review and remedies. To deal with cases of online and ICT-facilitated violence, in particular against women and girls, internet intermediaries should put in place complaint mechanisms that are easily accessible, including from linguistic and technical perspectives, user-friendly and easy to find.



# The Tallinn Guidelines on National Minorities and the Media in the Digital Age & Explanatory Note

## I. Enabling Environment for Freedom of Expression and Media Freedom

1. States should take all appropriate measures to ensure that everyone, including persons belonging to national minorities, can exercise the right to freedom of expression in a practical and effective manner in the digital age. This includes the right to seek, receive and impart information, regardless of frontiers, in the languages and through the media of their choice.

The right to freedom of expression comprises the freedom to hold opinions and the right to seek, receive and impart information and ideas of all kinds through any media and regardless of frontiers. This compound right is firmly enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR), Article 19 of the International Covenant on Civil and Political Rights (ICCPR), Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 11 of the Charter of Fundamental Rights of the European Union (EU Charter of Fundamental Rights). These instruments are supplemented by other legally and politically binding standards, and constitute an integral part of the international system for the protection and promotion of human rights.

The UN Human Rights Committee has affirmed that “freedom of opinion and freedom of expression are indispensable conditions for the full development of the person” and that they “constitute the foundation stone for every free and democratic society.”<sup>5</sup> The European Court of Human Rights has consistently underscored the importance of freedom of expression in very similar language, while adding that it is also “one of the basic conditions for [societal] progress.”<sup>6</sup> As well as being essential for individual and societal development, freedom of expression is also essential for the development of societal groups, including national minorities.

A cornerstone principle of the international system for the protection and promotion of human rights is that all human rights – including the rights of persons

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<sup>5</sup> UN Human Rights Committee, General Comment 34: Article 19 (Freedom of Opinion and Expression) (hereafter, ‘GC 34’), UN Doc. CCPR/C/GC/34, 12 September 2011, Para. 2. See also Para. 13.

<sup>6</sup> *Handyside v. the United Kingdom*, 7 December 1976, Para. 49, Series A, No. 24.

belonging to national minorities – are “universal, indivisible and interdependent and interrelated.”<sup>7</sup> This means that there is important interplay between all the rights enjoyed by persons belonging to national minorities, including the rights to freedom of expression, equality and non-discrimination, peaceful assembly and association, effective participation in public affairs and cultural life, freedom of religion and belief, and cultural and linguistic rights.<sup>8</sup> Minority-specific aspects of these rights have been set out in various international and/or European treaties, such as the Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM) and political standards, such as the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.<sup>9</sup> Linguistic and cultural dimensions are prioritized in instruments such as the European Charter for Regional or Minority Languages (ECRML) and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

The OSCE Commitments on Freedom of Expression, Freedom of the Media and the Free Flow of Information,<sup>10</sup> the Mandate of the OSCE HCNM<sup>11</sup> and the thematic Recommendations and Guidelines elaborated by the High Commissioner,<sup>12</sup> have been adopted in the context of, and are part of, that international framework and system. In the Helsinki Final Act of the Conference on Security and Co-operation in Europe, participating States undertook to “fulfil their obligations as set forth in the international declarations and agreements in [the field of human rights and fundamental freedoms], including the International Covenants on Human Rights, by which they may be bound.”<sup>13</sup>

The Helsinki Final Act contains extensive sections on freedom of information, expression and the media. Participating States have since consistently reaffirmed that “freedom of expression is a fundamental human right and a basic component of a democratic society” and have stated that they “take as their guiding principle that they will safeguard this right.”<sup>14</sup> Participating States have also recognized the

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<sup>7</sup> Article 5, Vienna Declaration, World Conference on Human Rights, Vienna, 25 June 1993.

<sup>8</sup> UN Human Rights Committee, GC 34, Paras. 3-4.

<sup>9</sup> UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN General Assembly Resolution 47/135, 18 December 1992.

<sup>10</sup> The OSCE Commitments on Freedom of Expression, Freedom of the Media and the Free Flow of Information, 1975–2017 (4th Edition), available at: <https://www.osce.org/representative-on-freedom-of-media/354081>.

<sup>11</sup> Mandate of the OSCE High Commissioner on National Minorities, as originally set out in: CSCE Helsinki Document 1992 – The Challenges of Change. Available at: <https://www.osce.org/hcnm/107878>.

<sup>12</sup> Available at: <https://www.osce.org/hcnm/thematic-recommendations-and-guidelines>.

<sup>13</sup> Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975, under 1. (a) Declaration on Principles Guiding Relations between Participating States, VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief.

<sup>14</sup> Budapest Document: Towards a Genuine Partnership in a New Era, Budapest Decisions, Summit of Heads of State or Government, Budapest, 5–6 December 1994, VIII. Human Dimension, Para. 36.

“need to strengthen the implementation of OSCE commitments in the field of media, taking into account, as appropriate, the work of other international organizations”,<sup>15</sup> to which end they decided to establish the office of the RFoM.<sup>16</sup> In December 2018, the OSCE Ministerial Council called on participating States to take a number of courses of action to strengthen freedom of expression, media freedom and, in particular, safety of journalists.<sup>17</sup> Guarantees of the right to freedom of expression and media freedom are furthermore enshrined in the constitutions and legislation of OSCE participating States.

States must ensure that everyone, including persons belonging to national minorities, is able to exercise the right to freedom of expression in a “practical and effective” manner, thereby ensuring that the right is not merely “theoretical or illusory”.<sup>18</sup> States must take all necessary measures to fulfil this obligation.<sup>19</sup> In the first place, States may only restrict the right to freedom of expression in accordance with international and European human rights law.<sup>20</sup>

Concretely, any interference with the right to freedom of expression must:

- Be provided/prescribed by law (and be accessible and foreseeable and “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.”<sup>21</sup>);
- Pursue a legitimate aim (as set out in Article 10(2) ECHR) or be for specific purposes (as set out in Article 19(3)(a) and (b) ICCPR<sup>22</sup>); and:
- [ECHR] Be necessary in democratic society (i.e., any measure interfering with the right must have been taken to address a pressing social need, must be proportionate to the aim pursued, and the reasons advanced by the State for having taken the measure must be relevant and sufficient)<sup>23</sup> or [ICCPR] Be necessary for one or more of the specific purposes enumerated in Article 19(3) (a) and (b) ICCPR (i.e., any measure interfering with the right must “conform to the strict tests of necessity and proportionality.”<sup>24</sup>).

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<sup>15</sup> Lisbon Summit Declaration, Summit of Heads of State or Government, Lisbon, 2–3 December 1996, Para. 11.

<sup>16</sup> Establishment of the Office of the OSCE Representative on Freedom of the Media, Mandate of the OSCE Representative on Freedom of the Media, Decision No. 193 of the Permanent Council, 5 November 1997.

<sup>17</sup> OSCE Ministerial Council. Decision No. 03/18. “Decision on the Safety of Journalists” (MC.DEC/3/18. Milan, 7 December 2018).

<sup>18</sup> *Airey v. Ireland*, 9 October 1979, Para. 24, Series A No. 32.

<sup>19</sup> Article 1, ECHR; Article 2(1), ICCPR and Human Rights Committee, General Comment No. 31 – The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004.

<sup>20</sup> Article(s) 19 (and 20) ICCPR and Article 10 ECHR, respectively.

<sup>21</sup> UN Human Rights Committee, GC 34, Para. 25; (and using almost identical language) *The Sunday Times v. the United Kingdom* (No. 1), 26 April 1979, Para. 49, Series A No. 30.

<sup>22</sup> UN Human Rights Committee, GC 34, Para. 22.

<sup>23</sup> See generally, *The Sunday Times v. the United Kingdom* (No. 1).

<sup>24</sup> UN Human Rights Committee, GC 34, Para. 22.

However, to ensure that everyone can exercise the right to freedom of expression in a practical and effective manner, it will not always be enough for States to fulfil the negative obligation of non-interference with the right. States have a corresponding positive obligation to take affirmative measures to secure the right; for example, by safeguarding pluralism in the (audiovisual) media sector,<sup>25</sup> fostering a favourable or enabling environment for public debate,<sup>26</sup> and ensuring minority rights.<sup>27</sup> Such positive obligations may, on occasion, require State intervention in relations between third parties when the right to freedom of expression is in danger of being violated.<sup>28</sup> Such positive obligations also require States to ensure that effective remedies are available to everyone whose right to freedom of expression is violated, either by State authorities or by third parties, such as internet intermediaries.<sup>29</sup>

The right to freedom of expression must moreover be practical and effective in the digital age. International human rights standards are living instruments which evolve over time.<sup>30</sup> Indeed, the drafters of many international and regional human rights standards anticipated technological advances and drafted relevant provisions in a technology-neutral manner.<sup>31</sup>

This allows relevant standards to remain in tune with the times by taking due account of the continuing, rapid evolution of the media environment. The same awareness must be reflected in national constitutional and legislative provisions. OSCE participating States have committed to “take every opportunity offered by modern means of communication, including cable and satellites, to increase the freer and wider dissemination of information of all kinds.”<sup>32</sup> States should therefore keep their national laws, policies and practice under review to ensure that they are fully in compliance with international human rights law, in particular the right to freedom of expression and the rights of persons belonging to minorities (see further in this connection, Guideline 6, on page 35).

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<sup>25</sup> *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Series A No. 276.

<sup>26</sup> *Dink v. Turkey*, Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, Para. 137, 14 September 2010.

<sup>27</sup> UN Human Rights Committee, General Comment No. 23 – The rights of minorities (Article 27), Doc. No. CCPR/C/21/Rev.1/Add.5, 8 April 1994; Human Rights Committee, General Comment No. 31 – The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004.

<sup>28</sup> UN Human Rights Committee, GC 34, Para. 7; *X and Y v. the Netherlands*, 26 March 1985, Para. 23, Series A No. 91; *Özgür Gündem v. Turkey*, No. 23144/93, Para. 43, ECHR 2000-III.

<sup>29</sup> See Article 13, ECHR.

<sup>30</sup> *Tyrer v. the United Kingdom*, 25 April 1978, Para. 31, Series A No. 26; *Matthews v. the United Kingdom* [GC], no. 24833/94, Para. 39, ECHR 1999-I.

<sup>31</sup> See, for example, Article 12(1), ECRML.

<sup>32</sup> Concluding Document of the Vienna Meeting (Third Follow-up Meeting to the Helsinki Conference), Vienna, 15 January 1989. Para. 35, See also Para. 34.

Media freedom is a crucial corollary of the right to freedom of expression. Free media are instrumental for the realization of the right to freedom of expression in practice.<sup>33</sup> This is due to the crucial roles that the media play in democratic society: to inform the public, to scrutinize the activities of the government and other powerful actors, and to provide forums for public debate. In the digital age, these roles are also carried out – to varying degrees – by a growing range of online media and non-media actors.<sup>34</sup>

The public has the right to receive information and ideas on matters of general interest to society and the media have the task of imparting such information and ideas.<sup>35</sup> Politics, current affairs, health matters, religion, culture and history are all examples of topics that are of interest to the public, unlike individuals' strictly private relationships or family affairs. The media disseminate information and ideas widely – often with explanation and contextualization – and thereby inform public opinion. Similarly, by selecting, framing and analysing issues, the media, in particular journalistic and news media, are capable of influencing public opinion and political agendas. It is essential that this task of disseminating information and ideas also covers matters of interest to national minorities. The targeting of national minorities is, however, not enough: when content for minorities is actually produced by the minorities themselves, including in their own languages, it is more likely that the content will satisfy their informational needs. The participation of persons belonging to national minorities in the production of such news and information, including in their own languages, should therefore be encouraged.

The media perform a public watchdog role by investigating and exposing wrongdoing and corruption by State authorities and officials and powerful forces in society, and thereby holding them to scrutiny and account.<sup>36</sup> Powerful forces in society include political, commercial and religious groups and figures, as well as the media and internet intermediaries. The media are sometimes called the Fourth Estate in recognition of their function to provide checks and balances against the three institutional pillars of State power (the executive, the legislature and the judiciary). When performing their public watchdog role, the media should also pay attention to the misuse of political or economic power that specifically affects the interests of national minorities.

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<sup>33</sup> UN Human Rights Committee, GC 34, Paras. 13 et seq.

<sup>34</sup> UN Human Rights Committee, GC 34, Paras. 15 and 44.

<sup>35</sup> *The Sunday Times v. the United Kingdom* (No. 1), 26 April 1979, Para. 65, Series A No. 30; Human Rights Committee, GC 34, Para. 13 and Human Rights Committee, Communication No. 1334/2004, *Mavlonov and Sa'di v. Uzbekistan*.

The media also provide forums and channels in or through which public debate takes place.<sup>37</sup> Persons belonging to national minorities must be able to gain access to those shared forums and channels and be able to participate effectively in debates conducted there. This role of the media is very important for enhancing the participation and integration of persons belonging to national minorities in society. By providing shared discursive spaces, the media can help to advance intergroup and intercultural awareness, dialogue and understanding and to reduce intolerance. All of this can contribute to conflict prevention and resolution and to peace, societal cohesion and stability.<sup>38</sup>

Besides the shared discursive spaces provided by mainstream media, persons belonging to national minorities also require alternative, autonomous discursive spaces which can be provided by media operated by and/or serving minority communities. The value of such alternative discursive spaces lies in the scope they create for persons belonging to national minorities to articulate, explore and sustain their cultural and linguistic identities. It is widely recognized that minorities have the right to establish and use their own media, including in their own languages.<sup>39</sup> The purpose of minority media should be seen in the broader context of societal cohesion and integration in diverse societies; they should not lead to the insulation or isolation of minority groups from other groups and viewpoints in society.<sup>40</sup> Nor should the right of national minorities to establish and use their own media imply that minority institutions should control those media.<sup>41</sup>

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<sup>36</sup> *Barthold v. Germany*, 25 March 1985, Para. 58, Series A No. 90; *Goodwin v. the United Kingdom*, 27 March 1996, Para. 39, Reports of Judgments and Decisions 1996-II.

<sup>37</sup> *Társaság a Szabadságjogokért v. Hungary*, No. 37374/05, Para. 27, 14 April 2009.

<sup>38</sup> Articles 6(1) and 9(4), FCNM.

<sup>39</sup> Article 9(3), FCNM; Article 11(1), ECRML; *The Oslo Recommendations regarding the Linguistic Rights of National Minorities* (The Oslo Recommendations), Recommendation 8; *The Broadcast Media Guidelines*, Guideline 8.

<sup>40</sup> Articles 6(1) and 9(4), FCNM; *The Ljubljana Guidelines on Integration of Diverse Societies* (The Ljubljana Guidelines), Guideline 7.

<sup>41</sup> *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (The Lund Recommendations), Explanatory Note to Recommendation 18.

2. States should take all appropriate measures to fulfil their positive obligation to create an enabling environment for robust, pluralistic public debate in which everyone, including persons belonging to national minorities, can participate effectively and express their opinions, ideas and identities without fear.

States have a broad, positive obligation to create a favourable or enabling environment for public debate in which everyone can participate and express their opinions and ideas without fear, even when they may offend, shock or disturb the State or any sector of the population.<sup>42</sup> States Parties to the FCNM have a similar obligation: “to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.”<sup>43</sup>

States must foster robust public debate in which a wide diversity of voices and viewpoints, including opposing viewpoints, can be heard and contested. While public debate should be robust, it should not be exclusionary. The inclusiveness of the forums in which public debate takes place, including the media and social media, must therefore be guaranteed by non-discrimination measures.<sup>44</sup>

In the enabling environment that States should create and maintain, everyone, including persons belonging to national minorities, should also be able to express their identities; “States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.”<sup>45</sup> States should also encourage “individuals and social groups” to “create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples.”<sup>46</sup>

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<sup>42</sup> *Dink v. Turkey*, Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, Para. 137, 14 September 2010.

<sup>43</sup> Article 15, FCNM. See also: Article 25, ICCPR; Article 15, ICESCR; Article 2(2) and (3), UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and generally, The Lund Recommendations.

<sup>44</sup> Article 9(1), FCNM.

<sup>45</sup> Article 4(2), UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The Preamble to the FCNM considers that “a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity” and this was recognized by the European Court of Human Rights in its judgment in *Gozelik and Others v. Poland* [GC], no. 44158/98, Para. 93, ECHR 2004-I.

<sup>46</sup> Article 7(1)(a), UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

3. States should put in place effective systems of legal and practical protection to guarantee the safety and security of everyone wishing to participate in public debate. This requires the effective enforcement of legislation penalizing threats and violence against journalists and other media actors and the prosecution of the perpetrators of such abuses. The systems of protection must be fully applicable and accessible to persons belonging to national minorities and sensitive to their needs, including gender-specific needs. Such systems could include specialized mechanisms of protection, as needed.

To fulfil their obligation to create an enabling environment for public debate, States must first put in place an effective system of protection for everyone who wishes to participate in public debate.<sup>47</sup> Such systems of protection should take full account of the specific roles of journalists and other media actors in democratic society and include all necessary safeguards to ensure their safety and security. Journalists and other media and non-media actors who contribute to public debate – including whistle-blowers, citizen journalists, bloggers, civil society organizations, academics and individual commentators – are sometimes subjected to intimidation, harassment, threats, abuse, attacks and torture, and are even murdered because of their investigative work, opinions or reporting.<sup>48</sup> Sometimes they are targeted because they belong to a national minority or because of their gender, gender identity, sexual orientation, ethnic, cultural or religious identity.<sup>49</sup> Specific gender-related dangers faced by female journalists and other female media actors, including “sexist, misogynist and degrading abuse; threats; intimidation; harassment and sexual aggression and violence”, are a source of particular concern.<sup>50</sup>

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<sup>47</sup> *Dink v. Turkey*, Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, Para. 137, 14 September 2010; Article 6(2), FCNM; Human Rights Committee, GC 34, Para. 23.

<sup>48</sup> Council of Europe, Recommendation CM/Rec(2016)4 of the Committee of Ministers to Member States on the protection of journalism and safety of journalists and other media actors, 13 April 2016, Para. 1; Human Rights Committee, GC 34, Para. 23. See also, Council of Europe, Recommendation CM/Rec(2018)11 of the Committee of Ministers to Member States on the need to strengthen the protection and promotion of civil society space in Europe, 28 November 2018.

<sup>49</sup> *Ibid.*, Para. 2.

<sup>50</sup> *Ibid.* See also: UNESCO International Programme for the Development of Communication, UN Plan of Action on the Safety of Journalists and the Issue of Impunity, 2012, Para. 1.17; OSCE RFoM, Communiqué on the growing safety threat to female journalists online, Communiqué 02/2015, 6 February 2015.



These trends cause fear and have a chilling effect on freedom of expression. They “not only [violate] a woman’s right to live free from violence and to participate online but also [undermine] democratic exercise and good governance.”<sup>51</sup> OSCE participating States “condemn all attacks on and harassment of journalists” and have pledged to “endeavour to hold those directly responsible for such attacks and harassment accountable.”<sup>52</sup> The OSCE Ministerial Council has also called on participating States to take “effective measures to end impunity for crimes committed against journalists” and emphasized the importance of “swift, effective and impartial investigations into acts of violence and threats against journalists” and appropriate remedies for victims.<sup>53</sup>

Effective systems of protection should comprise adequate legislation to ensure the protection of journalists and other contributors to public debate and systems providing for the investigation of threats and violence and the prosecution of perpetrators, in accordance with the detailed guidance set out in relevant case-law of the European Court of Human Rights and in Recommendation CM/Rec(2016)4 of the Committee of Ministers to Member States [of the Council of Europe] on the protection of journalism and safety of journalists and other media actors.<sup>54</sup>

Effective systems of protection could include operational measures, such as providing police protection following threats of violence; evacuating threatened persons to safe houses; establishing early-warning and rapid-response mechanisms, and ensuring effective access to justice, including victim support services.<sup>55</sup> The application of these systems of protection should be sensitive to the needs of persons belonging to national minorities, and of minority women in particular.<sup>56</sup> Measures such as police protection and evacuation to safe houses should be implemented in full consultation with the targeted individuals.

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<sup>51</sup> Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective, Doc. No. A/HRC/38/47, 14 June 2018, Para. 29.

<sup>52</sup> Budapest Document: Towards a Genuine Partnership in a New Era, Budapest Decisions, Summit of Heads of State or Government, Budapest, 5–6 December 1994, VIII. Human Dimension, Para. 37.

<sup>53</sup> OSCE Ministerial Council, Decision No. 03/18. “Decision on the Safety of Journalists” (MC.DEC/3/18. Milan, 7 December 2018). Para. 6.

<sup>54</sup> Council of Europe, Recommendation CM/Rec(2016)4 of the Committee of Ministers to Member States on the protection of journalism and safety of journalists and other media actors, 13 April 2016.

<sup>55</sup> Council of Europe, Recommendation CM/Rec(2016)4 of the Committee of Ministers to Member States on the protection of journalism and safety of journalists and other media actors, 13 April 2016, Paras. 8 et seq.

<sup>56</sup> Building on *The Graz Recommendations on Access to Justice and National Minorities* (Graz Recommendations), Recommendation 7.

4. State and/or public officials should not undermine or threaten journalists and other media actors, or incite hatred towards or discrimination against them, on the grounds of belonging to a national minority or for reporting on national minority issues. Nor should they attack the integrity of journalists or of other media actors by making deliberately false accusations against them, and thereby jeopardizing their safety. They should moreover publicly and unequivocally condemn all threats and violence against journalists and other media actors, irrespective of the source of those threats and acts of violence.

Due to their official and/or public roles and functions and accompanying duties and responsibilities, State officials and other public figures must not incite hatred or discrimination against anyone, including persons belonging to national minorities.<sup>57</sup>

State officials and/or public figures should at all times refrain from making deliberately false accusations against individual journalists, specific media organizations and the media generally in order to undermine their reputation and credibility. Such false accusations can lead to public distrust and contribute to a climate of hostility and aggression towards journalists and the media.<sup>58</sup> The formal, explicit and unconditional condemnation of threats, violence and “hate speech” against journalists and other media actors by State officials and public figures can send out a strong signal that such threats and violence are unacceptable in democratic societies.<sup>59</sup> Specific attention for attacks and threats targeting female journalists is called for.<sup>60</sup>

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<sup>57</sup> Article 4(c), ICERD; *Féret v. Belgium*, No. 15615/07, 16 July 2009.

<sup>58</sup> OSCE Ministerial Council, Decision No. 03/18. “Decision on the Safety of Journalists” (MC.DEC/3/18. Milan, 7 December 2018), Paras 3, 4 and 6. Council of Europe, Recommendation CM/Rec(2016)4 of the Committee of Ministers to Member States on the protection of journalism and safety of journalists and other media actors, 13 April 2016, Para. 15.

<sup>59</sup> CERD, General Recommendation No. 35 – Combating racist hate speech (GR 35), Doc. No. CERD/C/GC/35, 23 September 2013, Para. 37; Council of Europe, Recommendation No. R (97) 20 of the Committee of Ministers to Member States on “Hate Speech”, 30 October 1997, Appendix, Principle 1.

<sup>60</sup> OSCE Ministerial Council, Decision No. 03/18. “Decision on the Safety of Journalists” (MC.DEC/3/18. Milan, 7 December 2018), Para. 4.

5. States should take all appropriate regulatory and other measures to ensure that key features of an enabling environment for freedom of expression, the media and public debate are safeguarded in law, policy and practice. Those features include a law and policy framework for equality and non-discrimination; a system of protection for national minorities and their rights; an effective freedom of information regime; pluralism in an evolving media environment; and a culture of independence in the media sector, including in respect of national regulatory bodies and the operation of public service, commercial, community and other media.

In addition to ensuring the safety of participants in public debate, States are also required to protect the activity of public debate. This requires an overarching framework for equality and non-discrimination. It also entails putting in place an effective freedom of information regime<sup>61</sup> so that official information held by State, semi-State and other public bodies is accessible to everyone, including in the languages of national minorities.<sup>62</sup> To ensure effective access to official information in the digital age, States are encouraged to extend their freedom of information regimes to include the provision of a wide range of e-governance services in the languages of national minorities. The protection of the activity of public debate also calls for measures to ensure effective media pluralism across different media and true diversity in media output that is readily available and easy to find and access for all persons belonging to national minorities.<sup>63</sup>

In an enabling environment for freedom of expression and the media, a culture of independence must prevail for all relevant actors, including individuals, the media and other non-media actors and national (and/or regional) media regulatory authorities. This means that media regulatory authorities, for instance, should be shielded from political, commercial, religious or other forms of interference.<sup>64</sup>

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<sup>61</sup> UN Human Rights Committee, GC 34, Paras. 18-19.

<sup>62</sup> In keeping with relevant sections of the FCNM, ECRML and The Oslo Recommendations, Lund Recommendations and Ljubljana Guidelines.

<sup>63</sup> Council of Europe, Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on media pluralism and transparency of media ownership, 7 March 2018, Appendix/Guidelines, Para. 2.6. See also: Guideline 19, on page 50; Article 10*bis*, European Convention on Transfrontier Television (as amended); Article 11(2), European Charter of Fundamental Rights; CERD, GR 35, Para. 41.

<sup>64</sup> Council of Europe, Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on media pluralism and transparency of media ownership, 7 March 2018, Appendix/Guidelines, Paras. 1.5 and 1.6; Council of Europe, Committee of Ministers, Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector, 20 December 2000; The Broadcast Media Guidelines, Guideline 6; Article 30, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018.

This culture of independence needs to be grounded in the rule of law, guided by human rights values and upheld by independent democratic institutions.

6. If they have not already done so, States are encouraged to draw up, adopt and implement clear policy to ensure the effective realization of the right to freedom of expression in the digital age for everyone, including persons belonging to national minorities, women and men. The process of developing such policy should involve the effective participation of a wide range of stakeholders, including representatives of national minority groups, independent national media regulatory authorities, the media, internet intermediaries, civil society (including women's groups) and academia. States should ensure equal participation of women and men in these processes.

States are expected to keep their laws, policies and practice under review to ensure their compliance with international and European human rights law.<sup>65</sup> As part of such ongoing reviews in respect of the right to freedom of expression, States should examine whether key features of the enabling environment, such as those mentioned in the preceding paragraphs, are adequately protected. States should furthermore develop clear policy, in inclusive processes of consultation or collaboration with a wide range of stakeholders, including representatives of national minority groups,<sup>66</sup> to provide a coherent and comprehensive framework and set out a series of goals to be met. The Committee of Ministers of the Council of Europe has stated that “[all] actors – whether new or traditional – who operate within the media ecosystem should be offered a policy framework which guarantees an appropriate level of protection and provides a clear indication of their duties and responsibilities in line with Council of Europe standards.”<sup>67</sup> Such policy should be aligned with other relevant State policies, for example, on national minorities or on societal integration.

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<sup>65</sup> This is implicit in States' general reporting requirements under international and European (treaty) law and it is specifically referred to in: Council of Europe, Recommendation CM/Rec(2016)4 of the Committee of Ministers to Member States on the protection of journalism and safety of journalists and other media actors, 13 April 2016, Para. 7(ii). See also, OSCE Ministerial Council, Decision No. 03/18, “Decision on the Safety of Journalists” (MC.DEC/3/18. Milan, 7 December 2018), Para 2.

<sup>66</sup> The Broadcast Media Guidelines, Guideline 5; The Ljubljana Guidelines, Guideline 12; Article 5(1), UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

<sup>67</sup> Council of Europe, Recommendation CM/Rec(2011)7 of the Committee of Ministers to Member States on a new notion of media, 21 September 2011.

## II. Media Environment

7. States should develop and deploy a range of measures to ensure that persons belonging to national minorities can take full advantage of the unprecedented opportunities to seek, receive and impart information and ideas of all kinds, regardless of frontiers, in the present media environment. The abundance of information and media does not, however, diminish existing State obligations to:

- Ensure the effective access of persons belonging to national minorities to such expressive opportunities and informational resources; and
- Support and/or facilitate the production of content by and for national minorities, including in their own languages, and the dissemination of such content across a range of platforms.

Society's increasing uptake of digital technologies has entailed significantly reduced reliance on institutionalized media and the growth of decentralized, networked and/or individualized media. This has led to major changes in the dynamics of public debate. New opportunities for individual participation in public debate are offset by new possibilities to control the terms and conditions of access to the forums in which public debate takes place, as well as the actual substance of that debate. Various international and European political standards seek to provide guidance on how States should continue to uphold the right to freedom of expression<sup>68</sup> and media freedom<sup>69</sup> in the evolving media ecosystem.

The development of participatory features of web technology has made it easy for individuals to create their own digital content and disseminate it speedily worldwide. This has resulted in vast and unprecedented opportunities for individualized mass communication. As the European Court of Human Rights has observed, the internet “has now become one of the principal means by which individuals exercise their right to freedom of expression and information, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest.”<sup>70</sup> These developments have also resulted in opportunities to access an abundance of very diverse content online, including content produced in other countries.

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<sup>68</sup> The Specialized Mandates' Joint Declaration: Ten Key Challenges to Freedom of Expression in the Next Decade of 3 February 2010 and their Joint Declaration on Freedom of Expression and the Internet of 1 June 2011.

<sup>69</sup> Council of Europe, Recommendation CM/Rec(2011)7 of the Committee of Ministers to Member States on a new notion of media, 21 September 2011.

<sup>70</sup> *Ahmet Yildirim v. Turkey*, No. 3111/10, Para. 54, ECHR 2012.

Such opportunities do not, however, in any way diminish existing obligations for States to support or facilitate domestically produced broadcasting and other media content, including in the languages of national minorities (see further, Guideline 25 on page 57).<sup>71</sup>

**8. States should ensure that universal service obligations governing the communications sector are fully implemented in practice, including for national minorities and other communities residing in rural and geographically isolated areas, or which are otherwise marginalized. Such obligations include the provision of electronic communications services of a specified quality at an affordable price, as well as a stable and reliable connection to the public communications network through (mobile) telephony and internet.**

Geographical isolation, when compounded by inadequate access to electronic communications networks and services, can be an obstacle to effective participation in public life, including for national minorities. Ensuring effective access to electronic communications networks and services for residents of remote areas may seem less commercially attractive to private providers than the provision of access in densely populated areas. States should therefore use appropriate means to ensure that universal service obligations are upheld by the providers of electronic communications networks and services.<sup>72</sup> As the internet grows in importance for seeking, receiving and imparting information in the digital age, so too does the importance of access and connectivity issues.

**9. States should ensure that everyone – of all ages and genders and from all walks of life – can develop the set of skills that enable them to access, understand, critically analyse, evaluate, use and create media content, including online media and digital content. To achieve this aim, States should take effective measures to promote media and information literacy, including in the languages of national minorities.**

There are numerous digital divides in society, which can also affect persons belonging to national minorities in different ways. Those divides can be gender- and/or age-related or arise from cognitive or physical disabilities. Persons belonging to national minorities are not always able to harness the full potential of these expressive and informational opportunities and resources due to language barriers, lack of

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<sup>71</sup> Article 9, FCNM; Article 11, ECRML; The Broadcast Media Guidelines, Guideline 13(2); The Oslo Recommendations, Recommendation 11; The Bolzano/Bozen Recommendations, Explanatory Note to Recommendation 14 and The Ljubljana Guidelines, Guideline 49.

<sup>72</sup> See, for example, Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Services Directive), as amended by Directive 2009/136/EC (Citizen rights' Directive).

technological know-how, connectivity problems and other technological obstacles, lack of access to equipment, and geo-blocking (see further, Guideline 25 on page 57). States should take appropriate and effective regulatory, policy, financial and other measures to reduce the numerous digital divides in society. States should bear in mind the different ways in which particular groups – and individuals within particular groups – may face disadvantages or obstacles regarding the uptake of new technologies. States should ensure that policies and measures to eliminate inequalities in access to technologies, including gender inequality, are research- and/or evidence-based and are informed by accurate and, where appropriate, disaggregated data.

A range of media and information literacy skills are needed to use new communications technologies in an effective manner: cognitive, technical, civic and social.<sup>73</sup> Acquiring this skill-set can empower individuals in the multimedia environment and facilitate their participation in public debate and public affairs more generally. These skills take on added importance in the context of increased prevalence of mis- and dis-information in the digital environment and especially in the context of the conflict cycle. Any measures taken to promote media and information literacy should take due account of any specific gender- or age-related or other such obstacles in order to be effective in practice.<sup>74</sup>

States can play a very important role in promoting the development of media and information literacy skills and can take various measures to that end.<sup>75</sup> Such measures could include developing and implementing a national media literacy policy and facilitating the establishment or consolidation of existing networks of relevant stakeholders, including national minorities. They could include support for relevant media-driven initiatives, in particular by public service media and community media. They could also include supporting educational and training initiatives from early childhood onwards, in educational institutions and as part of life-long learning programmes, as well as campaigns to encourage members of the public, including national minorities, to participate in those initiatives and programmes.

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<sup>73</sup> Council of Europe, Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on media pluralism and transparency of media ownership, 7 March 2018, Preamble, Para. 10.

<sup>74</sup> See further, the section on “Digital literacy” in the Appendix to: Council of Europe, Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment, 4 July 2018.

<sup>75</sup> Council of Europe Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on media pluralism and transparency of media ownership, 7 March 2018, Appendix/Guidelines, Section 5 – ‘Media literacy and education’: Article 33a, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018.

10. States should adopt necessary and effective measures to encourage or, as appropriate, require internet intermediaries based within their jurisdiction to apply human rights due diligence throughout their operations and to take account of any particular implications for the rights of national minorities while doing so, including the elimination of all forms of online violence against women. All such measures – by States and internet intermediaries alike and which may include self- and/or co-regulatory mechanisms – should be fully in line with evolving interpretations of international and European human rights law, including the rights to non-discrimination, privacy and data protection, and be informed by relevant technological and regulatory developments.

The digital age has seen the emergence of new media and non-media actors which contribute in different ways to public debate. Many of these actors, such as search engines<sup>76</sup> and social network operators,<sup>77</sup> can be regarded as internet intermediaries due to the gate-keeping functions they perform in respect of digital and online media content and other types of content. Internet intermediaries have the ability to influence and/or control the availability, visibility, findability and accessibility of content by the techniques of selection, promotion, ranking, de-indexing, etc., that they employ. Their gate-keeping role therefore has a determinative impact on the relationship between individuals and the diversity of content online. In practice, this has led to important new forums for public debate being controlled by powerful private actors. If the denial of access to such forums were to have the effect of “preventing any effective exercise of freedom of expression or it can be said that the essence of the right has been destroyed”, this could trigger a positive obligation for a State to regulate property rights to ensure access.<sup>78</sup>

Self- and/or co-regulatory regimes should draw on and ensure the effective implementation of the UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, (otherwise known as the “Ruggie Principles”),<sup>79</sup> in which corporate responsibility to respect human rights is of central importance. The Guiding Principles call on

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<sup>76</sup> Council of Europe, Recommendation CM/Rec(2012)3 of the Committee of Ministers to Member States on the protection of human rights with regard to search engines, 4 April 2012.

<sup>77</sup> Council of Europe, Recommendation CM/Rec(2012)4 of the Committee of Ministers to Member States on the protection of human rights with regard to social networking services, 4 April 2012; OSCE RFoM, Social Media Guidelines, 2013.

<sup>78</sup> *Appleby and Others v. the United Kingdom*, No. 44306/98, Para. 47, ECHR 2003-VI.

<sup>79</sup> Endorsed by the UN Human Rights Council in its Resolution 17/4 on 16 June 2011. See also, Council of Europe, Recommendation CM/Rec(2016)3 of the Committee of Ministers to Member States on human rights and business, 2 March 2016.



companies to exercise human rights due diligence, the purpose of which is to “identify, prevent, mitigate and account for how they address their impacts on human rights.”<sup>80</sup>

This would require companies to derive benchmarks for their activities from key international human rights instruments and to develop a due diligence process that should include: policies, impact assessments, integration of human rights policies throughout a company and tracking performance. The UN Special Rapporteur on violence against women has called for the expansion of the Ruggie Principles to explicitly include instruments that prohibit gender-based violence online.<sup>81</sup> The size, range and complexity of the activities carried out by internet intermediaries can be relevant considerations in this connection. The Council of Europe’s Committee of Ministers has identified a specific responsibility for internet intermediaries to conduct regular human rights due diligence assessments.<sup>82</sup> In conducting such assessments, internet intermediaries should take into account any particular implications, including gender-specific implications, for the rights of persons belonging to national minorities to freedom of expression, privacy and data protection. Due diligence assessments should help internet intermediaries to take appropriate, targeted measures to resolve any problems or disadvantages in minorities’ use of their services, and generally ameliorate how minorities use their services to seek, receive and impart information and ideas, including in their own languages.

Ongoing technological developments, such as those relating to big data, internet of things, artificial intelligence, automated decision-making, predictive analytics or algorithm-based personalized recommendation systems, are increasingly shaping how individuals and groups communicate in the digital environment. International and European human rights standards are living instruments and contemporary interpretations of those standards should be informed by, and seek to keep pace with, such technological developments, which can have far-reaching consequences, for instance in respect of the rights to non-discrimination and privacy and data protection.

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<sup>80</sup> Principle 15(b); see also Council of Europe, Recommendation CM/Rec(2016)3 of the Committee of Ministers to Member States on human rights and business, 2 March 2016, Para. 20.

<sup>81</sup> Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective, Doc. No. A/HRC/38/47, 14 June 2018.

<sup>82</sup> Council of Europe, Recommendation CM/Rec(2018)2 of the Committee of Ministers to Member States on the roles and responsibilities of internet intermediaries, 7 March 2018, Para. 2.1.4.

Under international and European human rights law, States have an obligation to uphold non-discrimination effectively in practice, which may entail taking measures to prevent the individual right to non-discrimination from being violated in relations between third parties, including between internet intermediaries and users of their services. One way of achieving this could be through upholding the principle of network neutrality, which implies that internet service providers treat all data travelling via their networks equally, without discrimination as to the type of user, content, website, application or service. The objective of network neutrality rules is to prevent discriminatory practices by internet service providers that could interfere with the right to receive and impart information online in a non-discriminatory manner.<sup>83</sup>

Current regulatory trends in respect of privacy and data protection emphasize the importance of principles such as the lawfulness, fairness and transparency of personal data processing; data sovereignty; informed consent; purpose limitation; data minimization; storage limitation and privacy; and data protection by design and default.<sup>84</sup> The incorporation of these principles into regulation seeks to ensure that individuals have more control over their personal data and that their data are only processed for specific purposes for which they have given informed and unambiguous consent. Personal data may only be processed to the extent that is necessary for the stated purposes and the data may only be stored for a period that is necessary for those purposes. Furthermore, technologies and services that process personal data should be designed to be privacy-friendly ab initio.

These principles and corresponding regulatory safeguards are particularly important for persons belonging to national minorities insofar as they help to prevent the collection, processing and use of their personal data in ways that lead to types of personalization, profiling or predictive analysis that could prove discriminatory.

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<sup>83</sup> See, for instance, Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No. 531/2012 on roaming in public mobile communications networks within the Union.

<sup>84</sup> See, for instance, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

11. Internet intermediaries should be allowed to, and encouraged to, offer their services in the languages of national minorities. They should also be encouraged to devise and implement strategic plans and concrete measures to enhance the availability, accessibility, prominence and findability of content produced by national minorities, including in minority languages, online. Intermediaries which use algorithm-based search or recommendation systems should be encouraged to provide greater transparency in respect of how those systems work and how they impact on minority content. They should also provide for improved levels of individual autonomy over the personal data and preferences that they use, including those which can lead to their identification (or not) as persons belonging to national minorities.

Internet intermediaries should seek to ascertain the particular needs of minority groups and take appropriate measures, for instance through the development and implementation of strategic plans, to offer their services in the languages of national minorities and to enhance the availability, access, prominence and findability of minority content, including in minority languages, online. The potential of algorithmic solutions in this regard should be fully exploited, including by enhancing the transparency of, and accountability for, algorithms, while having due regard for commercial secrets, and by providing for higher levels of individual-user control over the use of algorithm-based services.<sup>85</sup> The Committee of Ministers of the Council of Europe calls for greater transparency in the processes of online distribution of media content, and more diversity of media content,<sup>86</sup> including content produced for and by minorities. The Committee of Ministers also recommends that “[i]nternet intermediaries should clearly and transparently provide meaningful public information about the operation of automated data processing techniques in the course of their activities, including the operation of algorithms that facilitate searches based on user profiling or the distribution of algorithmically selected and personalized content, such as news.”<sup>87</sup>

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<sup>85</sup> See, for example, Council of Europe, Recommendation CM/Rec(2012)4 of the Committee of Ministers to Member States on the protection of human rights with regard to social networking services, 4 April 2012, Appendix, Para. 3. See also, the General Data Protection Regulation, Recital 71 and paras. 13-15 and 22.

<sup>86</sup> Council of Europe, Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on media pluralism and transparency of media ownership, 7 March 2018, Para. 2.5.

<sup>87</sup> Council of Europe, Recommendation CM/Rec(2018)2 of the Committee of Ministers to Member States on the roles and responsibilities of internet mediaries, 7 March 2018, Para. 2.2.3.

### III. Pluralism and Diversity

12. States are encouraged to adopt a range of measures to support initiatives by the media to foster intercultural dialogue by offering content, programmes and services for all of society and thereby sustain shared points of reference. States should support the production of content by national minorities and its widespread dissemination across different platforms. Any measure taken to provide such support should not interfere with the editorial and operational independence of the media.

It is a given that States are pluralistic or heterogeneous in character, some more so than others: different groups, often with distinctive cultural identities and ways of life, co-exist. There is also diversity within groups – among their individual members. Individual identities may be “multiple, multilayered, contextual and dynamic” and regulatory and policy frameworks should recognize such richness.<sup>88</sup> Sometimes, however, the reality and value of societal pluralism are underappreciated or even viewed negatively as possible threats to national identity, cohesion or security. Similarly, the value and existence of national minorities is not always recognized by State authorities. This can have far-reaching implications for the rights of persons belonging to national minorities and the integration of society.<sup>89</sup> It can give rise to tensions and conflicts between national minorities and other groups in society.

Intercultural dialogue is widely acknowledged as a key means of fostering awareness and understanding among different groups in society, and of reducing the potential for intolerance and conflict between them. It embraces and builds on the principles of the equal worth or dignity of cultures and mutual respect between them.<sup>90</sup>

The media, especially public service media and community media, can play very important roles in facilitating and promoting intercultural or intergroup dialogue. They can do so by maintaining shared frames of reference for all groups in society and forums in which members of those groups can communicate and deliberate with each other. To this end, it is important that content produced by the different groups in society, including national minorities, is also disseminated and shared widely. States should rely on measures of encouragement instead of legally binding measures to promote positive contributions by the media.<sup>91</sup>

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<sup>88</sup> The Ljubljana Guidelines, Guideline 5.

<sup>89</sup> See generally, The Ljubljana Guidelines.

<sup>90</sup> Article 2(3), UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>91</sup> The Ljubljana Guidelines, Guideline 11.

This is due to the scope of the right to freedom of expression and the principle of journalistic/media freedom and editorial independence. The right to freedom of expression “protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed.”<sup>92</sup> Respect for the principle of journalistic freedom “implies that it is not for the courts or public authorities to impose their views on the media as to the types of reporting techniques to be adopted by journalists.”<sup>93</sup> Journalists should have the freedom to decide that for themselves, within the limits of the law and bearing in mind the duties and responsibilities that govern the exercise of their right to freedom of expression.<sup>94</sup>

This approach has been widely followed in European and international human rights law.<sup>95</sup> In light of the above principles, there are various ways in which States could support the promotion of intercultural dialogue by the media, as outlined further in Guideline 30 on page 60.

**13. States may use regulatory or other measures to promote the use of particular languages in the media, including the State/official language(s) or other languages, for instance to foster societal cohesion and integration or to ensure a common language of communication, provided the goals are legitimate and clearly stated and the regulation is proportionate to those goals. States may similarly promote the languages of national minorities, which are an essential component of their identity. Any measures to promote the use of particular languages in the media should seek to balance and provide reasonable and fair accommodation of the needs and interests of different linguistic groups in society.**

States’ use of regulatory or policy measures that may promote one or more shared language(s) “as a common basis for the integration and functioning of society” is permitted, as long as such measures strike a balance with the States’ obligation to “safeguard and promote linguistic diversity, including by protecting the linguistic rights of minorities”,<sup>96</sup> offline and online.<sup>97</sup>

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<sup>92</sup> *Oberschlick v. Austria* (no. 1), 23 May 1991, Para. 57, Series A No. 204.

<sup>93</sup> Council of Europe, Recommendation No. R (97) 20 of the Committee of Ministers to Member States on “Hate Speech”, 30 October 1997, Appendix, Principle 7; derived from *Jersild v. Denmark*, 23 September 1994, Series A No. 298, Para. 31.

<sup>94</sup> Explanatory Memorandum to Recommendation No. R (97) 20 of the Committee of Ministers to Member States on “Hate Speech” and Recommendation No. R (97) 21 of the Committee of Ministers to Member States on the media and the promotion of a culture of tolerance, both adopted on 30 October 1997, Para. 12.

<sup>95</sup> See generally, the monitoring activities of the Advisory Committee on the FCNM and of the European Commission against Racism and Intolerance (ECRI), as well as CERD, General Recommendation 35.

<sup>96</sup> The Ljubljana Guidelines, Guideline 42.

<sup>97</sup> UNESCO General Conference Recommendation concerning the Promotion and Use of Multilingualism and Universal Access to Cyberspace (2003).

Such regulatory and other measures are subject to the general safeguards for freedom of expression, as described earlier under Guideline 1.

14. Language quotas for public (digital) broadcasting are permissible if they comply with international and European human rights and media law, in particular as regards their proportionality to their stated objectives. They must furthermore not have the purpose or effect of unfairly restricting the use of other languages, especially national minority languages. The imposition of rigid language quotas on private broadcasters may conflict with freedom of expression and should be avoided by employing other approaches to foster a shared communication space. These safeguards for pluralism and diversity should also govern any language quotas that are applied to music or film. Language quotas should not apply to advertising.

Whereas the promotion of the State/official language(s) in the audiovisual media is a legitimate aim of States, there is also a legitimate public interest in the promotion of other languages, including minority languages, in the audiovisual media. The promotion of the State/official language(s) should not have the purpose or effect of unfairly restricting the use of other languages.<sup>98</sup> Due to their mandate and role in society, public service media promote the State/official or other languages. For other types of audiovisual media, requirements for the promotion of languages should be flexible in character and be adopted alongside support measures for the production of content in minority languages. Such requirements should also respect the principle of editorial freedom. Advertising, unlike editorial content, including television programmes, music and film, has the aim of selling goods and/or services to particular groups. Its purpose is commercial and typically, it does not have the aim or effect of contributing to public debate or societal cohesion. As such, advertising should not be subjected to language quotas. The Human Rights Committee has found that “a prohibition on commercial advertising in one language, with a view to protecting the language of a particular community, violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression.”<sup>99</sup>

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<sup>98</sup> The Ljubljana Guidelines, Guideline 49.

<sup>99</sup> UN Human Rights Committee, GC 34, Para. 33, and earlier in Communication No. 359, 385/89, *Ballantyne, Davidson and McIntyre v. Canada*.

15. States may require public service media, and encourage the audiovisual media generally, to make reasonable arrangements for the translation of media content in the State/official language(s) into the languages of national minorities, and vice-versa, in order to enhance the linguistic accessibility of both types of content throughout society and thereby help to foster intercultural dialogue. Any such requirements for public service media should be set out clearly in legislation and be proportionate to the aim pursued. Minority language audiovisual linear media should not in any case be subject to undue or disproportionate requirements for subtitling, dubbing, post-synchronization or any other forms of translation.

The translation into other languages of media content in the languages of national minorities can contribute to linguistic and cultural diversity in society. The availability and accessibility of translated content via the media can give minority-language content wider exposure, thereby facilitating its acquisition by non-native speakers.<sup>100</sup> However, financial support may be needed to offset the costs involved in providing such translation services. Minority language audiovisual media should not be subject to any undue or disproportionate requirements to provide such translation services.<sup>101</sup>

The sharing of information and viewpoints as part of wider dialogical interaction is key to preventing or reducing tensions between national minorities and other groups in society. This presupposes the free flow of information and the existence of dialogical forums and channels, such as the media. Dialogical interaction across community lines provides various groups with opportunities to articulate and advance their identities, values and viewpoints, as well as with commensurate opportunities for hearing and listening to descriptions of the identities, values and viewpoints of other groups (which are often unfamiliar to them). Exchange and reciprocity of perspective are central to this form of dialogue. So is commonality of language.

Sustained dialogical interaction in inclusive forums for robust public debate can counter the negative and divisive effects of incomplete and incorrect information that circulate in society, which can lead to a lack of understanding or misunderstandings. It can also help to counter negative stereotypes and prejudicial opinions that are fuelled by biased information.<sup>102</sup> It can therefore make an important contribution to pluralistic societal tolerance and security.

By nurturing shared spaces for intergroup dialogue, States are investing in societal resources against the proliferation of echo chambers and filter bubbles; i.e., insular

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<sup>100</sup> Articles 7(1)(g) and 12(1)(b) and (c), ECRML.

<sup>101</sup> The Broadcast Media Guidelines, Para. 12.

<sup>102</sup> CERD, GR 35, Para. 29.

discursive and informational spaces in which like-minded people repeat and amplify their own opinions and sometimes become even more entrenched in their opinions as a result. While autonomous discursive and information spaces are important for persons belonging to national minorities for developing their identities and opinions, as well as for maintaining their cultures and languages, those spaces should not be sealed off from the societal pluralism around them.<sup>103</sup>

**16. Public service announcements should be translated into the languages of national minorities, as appropriate, and disseminated in an equitable and non-discriminatory manner through a range of media, including minority media.**

Public service or official announcements from governmental and other public bodies can be an important source of revenue for the media, especially in times of market changes and/or austerity. State policy in this regard should be transparent and protected against political interference in editorial and operational freedom of the media,<sup>104</sup> apply to all media without discrimination,<sup>105</sup> and provide for translation into minority languages, as appropriate. Such policy can help to ensure that the information contained in public service or official announcements (which should at all times be clearly labelled as such) is accessible to, and has a greater chance of reaching, persons belonging to national minorities. This, in turn, can contribute to the effective participation of national minorities in public life, as it provides them with the information they need to form opinions, make informed decisions and engage in civic activities.<sup>106</sup>

**17. States should take effective measures to guarantee pluralism in the evolving media environment and to ensure that persons belonging to national minorities can access a wide range of media providing content that corresponds to their needs and interests, including in their own languages. These could include measures to promote such content and to ensure its visibility and findability.**

The European Court of Human Rights has held that States are the ultimate guarantors of pluralism in the media sector.<sup>107</sup> They are required to take the

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<sup>103</sup> Articles 6(1) and 9(4), FCNM; The Ljubljana Guidelines, Guideline 7.

<sup>104</sup> The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on Diversity in Broadcasting, 12 December 2007, under "General Points".

<sup>105</sup> UN Human Rights Committee, GC 34, Para. 41.

<sup>106</sup> Council of Europe, Recommendation CM/Rec(2018)4 of the Committee of Ministers to Member States on the participation of citizens in local public life, 21 March 2018, Appendix, Section B. IV., Para 2(i).

<sup>107</sup> *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Para. 38, Series A No. 276.



necessary measures to ensure that media pluralism is effective in practice.<sup>108</sup> The focus of this obligation has traditionally been on mass media, due to their impact and influence, but in the digital age, that focus has broadened to encompass a more varied and increasingly digital media environment. The realization of effective media pluralism entails targeted measures to create and sustain a wide variety of media types and content produced by and for persons belonging to national minorities in the broader context of pluralistic democratic societies. The EU Charter of Fundamental Rights lays down that the “freedom and pluralism of the media shall be respected.”<sup>109</sup> The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions affirms that its States Parties “may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory”, such as regulatory measures and “measures aimed at enhancing diversity of the media, including through public service broadcasting.”<sup>110</sup>

In the spirit of an effective right to freedom of expression and effective pluralism, laws, policies and practices designed to ensure the availability of diverse media content are not enough. Alongside measures to enhance the production and distribution of diverse media content, including in the languages of national minorities,<sup>111</sup> States are encouraged to take measures to promote the visibility and findability of diverse media content to ensure that such content is accessible to all groups in society, in particular national minorities and especially when they face disadvantage or obstacles when searching for and accessing media and media content.

The diversity of media content should be reflective of the actual diversity of identities, ideas and interests in society. True diversity necessarily includes not only ideas and information that are favourably received, but also ideas and information that offend, shock or disturb the State or particular sectors of the population. The central democratic values of pluralism, tolerance and broadmindedness demand no less.<sup>112</sup>

The co-existence of a variety of different types of media (known as external or structural pluralism) can contribute to creating and maintaining diversity of content.<sup>113</sup>

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<sup>108</sup> *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], No. 38433/09, Para. 134, ECHR 2012.

<sup>109</sup> Article 11(2), EU Charter of Fundamental Rights.

<sup>110</sup> Article 6(1) and 6(2)(a) and (h), UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>111</sup> Article 11(d), ECRML; The Broadcast Media Guidelines, Guideline 17.

<sup>112</sup> *Handyside v. the United Kingdom*, 7 December 1976, Para. 49, Series A, No. 24; Human Rights Committee, GC 34, Para. 11.

<sup>113</sup> See generally, Council of Europe, Recommendation CM/Rec(2007)2 of the Committee of Ministers to Member States on media pluralism and diversity of media content, 31 January 2007.

Public service media can play a distinct role in terms of structural pluralism by providing not only a range of content corresponding to the diverse identities, ideas and interests in society, but also a shared, dialogical forum in which such heterogeneous and sometimes frictional content can be exchanged. This, in turn, can help to advance pluralism, tolerance and broadmindedness, as well as social cohesion. Community media can also make a distinct contribution to overall diversity of media content in society by enabling the production and dissemination of content specifically for different communities.

The media differ in terms of their purposes, functions and geographical reach. Accordingly, they are not used in identical ways by all individuals or groups in society and they should not be regarded as interchangeable.<sup>114</sup> In the present media environment, the different functionalities and affordances of different media, social media and media services are particularly apparent.

In the context of media-related pluralism, it is important that persons belonging to national minorities can access different media types and formats addressing topics of interest to them, including in their own languages.<sup>115</sup> In other words, such content should be present on all relevant platforms as part of a diverse and rich range of quality content. What is important is that there is sufficient variety in the overall range of media types and formats to ensure that there is effective pluralism and that there are viable opportunities for individuals and groups to create and access diverse media content.<sup>116</sup>

In addition to different types of media (outlets), different types, genres or formats of editorial content or programming can contribute to diversity of content. Although content focusing on news and current affairs is of most direct relevance for fostering an informed public and facilitating participation in public debate, other genres are also very important for society. Examples include cultural, educational and entertainment content, including in the languages of national minorities.

It should be borne in mind that within national minority groups, there are different informational needs and preferences, determined partly by gender and age. For instance, children belonging to national minorities need to be able to use the media (including social media) to search for, receive and impart information, ideas and

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<sup>114</sup> *Khurshid Mustafa & Tarzibachi v. Sweden*, No. 23883/06, Para. 45, 16 December 2008.

<sup>115</sup> UN Human Rights Committee, GC 34, Para. 14, and more generally, Concluding Document of the Vienna Meeting (Third Follow-up Meeting to the Helsinki Conference), Vienna, 15 January 1989, Co-operation in Humanitarian and Other Fields, Information, Para. 45.

<sup>116</sup> *VgT Verein gegen Tierfabriken v. Switzerland*, No 24699/94, ECHR 2001-V1 and *Centro Europa 7 S.r.l. and Di Stefano v. Italy*.

opinions. They have the need – and the right under international human rights law – to be able to access via the media content that is appropriate for their age and cultural and linguistic background. In this regard, States Parties to the Convention on the Rights of the Child are required to “encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous.”<sup>117</sup>

In a digital age characterized by the co-existence of a multiplicity of media and by content abundance, the functionalities of online media and other internet-based applications and services merit particular consideration from the perspective of pluralism.<sup>118</sup> Traditional distinctions between different types of media can still usefully point to their respective contributions to media-related pluralism, even though they are now typically active on different platforms, both off- and online. The different types of media include: public service media, community media and commercial media, as well as media categorized according to the geographical level at which they operate: sub-national, transnational and global.

**18. States should take effective measures, including regulatory measures, as required, to prevent concentrations of media ownership and control which threaten media pluralism and the availability of national minority media services and content, including in the languages of national minorities.**

The encouragement of media pluralism and the facilitation of access to, and ownership of, media by minorities and other groups, including media in their own languages, can contribute to intergroup understanding and reduce intolerance in society.<sup>119</sup> Conversely, concentrations of media ownership in different media markets can adversely affect pluralism and diversity. They can give rise to situations which jeopardize the availability of content by and for national minorities, including in their own languages.<sup>120</sup> This calls for effective measures by States, including regulatory measures, as required.<sup>121</sup>

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<sup>117</sup> Article 17(d), Convention on the Rights of the Child.

<sup>118</sup> Council of Europe, Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on media pluralism and transparency of media ownership, 7 March 2018.

<sup>119</sup> CERD, GR35, Para. 41.

<sup>120</sup> Council of Europe, Committee of Ministers, Declaration on protecting the role of the media in democracy in the context of media concentration, 31 January 2007.

<sup>121</sup> Joint Declaration on Diversity in Broadcasting, under “On Diversity of Source”. See footnote 104.

Across the OSCE region, there is enormous variety in how media ownership and control are regulated at the national level. Relevant regulation should comply with international human rights standards and take account of considerations such as direct and indirect or beneficial ownership of media entities, cross-media ownership, foreign ownership, transparency towards regulatory authorities and the public.<sup>122</sup>

**19. States should introduce legislation and/or amend existing legislation to guarantee the independence and sustainability of public service media and allow them to fulfil their mandate to serve all sections of society, including national minorities, by providing diverse high-quality programming and services across a range of platforms. Such legislation should provide for, or at least facilitate, the effective participation of national minorities in public service media activities at various levels, such as content-production, editorial decision-making and supervisory activities.**

Public service media are mandated to serve all sectors of society, including persons belonging to national minorities. They can contribute to the quality and balance of programmes in the broader context of external pluralism. Where a public service broadcasting system exists, domestic law and practice must guarantee that the system provides a pluralistic service.<sup>123</sup> It is very important for the proper functioning of democracy that public service media transmit impartial, independent and balanced news, information and comment and, in addition, provide a forum for public discussion in which as broad a spectrum as possible of views and opinions can be expressed. By doing so, they can help to “foster intercultural understanding and address the concerns of minorities.”<sup>124</sup>

In light of the public service media’s mandate to serve all sections of society, States may assign them particular responsibilities and tasks, such as to:

- Avoid negative stereotyping of individuals or groups, as well as other forms of prejudicial, biased or discriminatory reporting;
- Avoid sexist and misogynistic portrayals of women and girls, including those belonging to minority groups;
- Promote national and minority identities, cultures and languages and the societal diversity engendered by their co-existence;
- Provide a diverse range of programming and services for national minorities, including in their own languages, that is adequate, quantitatively and qualitatively; and,

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<sup>122</sup> Council of Europe, Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on media pluralism and transparency of media ownership, 7 March 2018; Recommendation CM/Rec(2007)2 of the Committee of Ministers to Member States on media pluralism and diversity of media content, 31 January 2007.

<sup>123</sup> *Manole and Others v. Moldova*, No. 13936/02, ECHR 2009. See, in particular, Paras. 98 and 107.

<sup>124</sup> The Lund Recommendations, Recommendation 5.

- Promote inter-community awareness, understanding and dialogue and thereby societal cohesion.

It is essential that public service media have the mandate and the resources to fulfil their key tasks – to educate, inform and entertain various sections of society, including minorities – independently and effectively in the digital age.<sup>125</sup> This calls for public service media to be active across different media (services), including online. The effective participation of persons belonging to national minorities in various public service media structures and processes, such as editorial boards, can help to ensure that programming aimed at national minorities corresponds to their needs and interests in practice.<sup>126</sup>

**20. States are encouraged to introduce legislation and/or amend existing legislation to recognize the distinct nature of not-for-profit community media, which can be run by or otherwise serve national minority communities. Such legislation should guarantee the independence of community media and allow them to fulfil their objective to provide members of the communities they serve, including national minorities, with the opportunities and training that enable them to produce their own media content and to participate fully in the operation and management of their own media.**

Community media are independent, not-for-profit media run by and for members of a community; for example, a community located in a particular geographical area or having a shared interest. Their ethos and organizational structures invite active participation in, and autonomy over, the editorial, production and publication/dissemination processes. They give a voice to and train citizens, particularly communities and individuals not represented by the mainstream media. Community media organizations play a specifically important role, as they offer and encourage participation at different levels of the structure of their organizations and instil and nurture a sense of active engagement. Community media organizations can also make important contributions to societal cohesion and intercultural dialogue.<sup>127</sup> The explicit recognition in law of community media as a distinct form of media could help to enhance their sustainability, especially if such recognition were to be used as a basis for tailored licensing procedures and/or concessionary licence fees.<sup>128</sup>

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<sup>125</sup> Council of Europe, Recommendation CM/Rec(2007)3 of the Committee of Ministers to Member States on the remit of public service media in the information society, 31 January 2007. See also, the Broadcast Media Guidelines, Guideline 7.

<sup>126</sup> The Oslo Recommendations, Recommendation 10; Council of Europe, Recommendation CM/Rec(2012)1 of the Committee of Ministers to Member States on public service media governance, 15 February 2012, Para. 43.

<sup>127</sup> Council of Europe, Committee of Ministers, Declaration on the role of community media in promoting social cohesion and intercultural dialogue, 11 February 2009.

<sup>128</sup> Derived from the Joint Declaration on Diversity in Broadcasting, under "On Diversity of Outlet".

**21. States may explore the potential for commercial media to provide pluralistic content and, in particular, national minority content, including in the languages of national minorities, and develop appropriate measures to incentivize the promotion of such content.**

Commercial media typically cater to mainstream audiences and their output aims to be of wide appeal, which is in itself an important contribution to media pluralism and overall diversity of media content. Commercial media with public service obligations (either by law or as part of their broadcasting licence conditions) can complement the offering of public service media.

**22. States should adopt specific legislative and other support measures to facilitate the independent and stable operation of a range of media at regional or local levels, including in geographical areas with national minority populations and/or in national minority languages.**

Sub-national media are regional and/or local media and they could be public service, community or commercial in nature. By operating at a geographical level that is proximate to their target users, regional and/or local media are well-placed to cater for national minorities within their catchment areas.<sup>129</sup> Such media can offer important opportunities for fostering participatory deliberative democracy at the regional or local level and for the development of regional or local identities, including those of national minorities.

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<sup>129</sup> Council of Europe, the Congress of Local and Regional Authorities, “The role of regional media as a tool for building participatory democracy”, Recommendation 364 (2014) and “The role of regional media as a tool for building participatory democracy”, Resolution 374 (2014), both adopted on 15 October 2014.

23. States should not impede or restrict the ability of persons belonging to national minorities to access media established in other countries, which serve the interests of national minorities. The ability to access such media does not diminish States' obligation to facilitate and support the development and effective operation of media serving national minorities in their own jurisdictions. States should moreover seek to prevent, or at least mitigate, the adverse effects for national minorities of copyright agreements that result in geo-blocking of media content.

Persons belonging to national minorities have the right to “establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity or a common cultural heritage.”<sup>130</sup> International law underscores the importance for individuals to have “access to diverse cultural expressions” from their own country and from “other countries of the world”, as well as the need for States to enable such access.<sup>131</sup> As restrictions on transfrontier access to information or content could facilitate the assimilation of national minorities against their will,<sup>132</sup> or otherwise obstruct the integration of diverse societies, the Bolzano/Bozen Recommendations and the Ljubljana Guidelines provide participating States with valuable guidance on how to deal with these issues.

The right to freedom of expression exists, crucially and explicitly, regardless of frontiers.<sup>133</sup> States may only restrict free, cross-border flows of information and expression in accordance with the strict limitations and prohibitions provided for by international and European human rights law (see further, Guideline 1 on page 24, and Section IV – Media, Information Technologies and Conflict Prevention on page 62).

States Parties to the European Convention on Transfrontier Television (ECTT) “shall ensure freedom of expression and information in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and they shall guarantee freedom of reception and shall not restrict the retransmission

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<sup>130</sup> Article 17(1), FCNM; Article 2(5), UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; The Bolzano/Bozen Recommendations, Recommendation 8.

<sup>131</sup> Article 7(2), UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>132</sup> It has been stated, for instance, that “persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will.”: Report of the CSCE Meeting of experts on national minorities, Geneva, 1991 (III). See further, CSCE Helsinki Document – The Challenges of Change, Chapter IX – The CSCE and Regional and Transfrontier Co-operation, Paras. (3), (4) and (5), and the explanation of Guideline 30 on page 60.

<sup>133</sup> See Guideline 1, on page 24, and the accompanying explanation and references.

on their territories of programme services which comply with the terms of<sup>134</sup> the ECTT.<sup>134</sup> All EU Member States are subject to a similar provision, by virtue of Article 3 of the Audiovisual Media Services Directive.<sup>135</sup>

The right of minorities to access transnational or transfrontier media, by whatever means, may not be prohibited on the basis of ethnicity, culture, language or religion.<sup>136</sup> Transnational media, which serve communities outside the country where they are established, supplement national media and can help certain groups in society to maintain ties with countries with which they share linguistic, cultural, ethnic ties and other countries. This is very important for national minorities who share ties with other States, national minorities whose geographical concentration spans two or more (neighbouring) States, and minorities whose nomadic lifestyle involves crossing borders. This is also increasingly important for migrants, immigrants and refugees wishing to maintain contact with their native culture and language.<sup>137</sup>

Global media, too, are very relevant for persons belonging to national minorities. While it is important to recognize the specificity of informational needs and preferences of national minorities, those needs and preferences are complex, diverse and dynamic. They cannot be compartmentalized or reduced to matters pertaining only to their own identities or situations. In an increasingly interconnected world, it is imperative that persons belonging to national minorities are able to access and use media that operate at the global level. The free flow of information and ideas, guaranteed by the right to freedom of expression, is multi-directional and it transcends borders.

The availability of foreign broadcasting and other content in minority languages and the ability of national minorities to access transnational and global media and content neither removes nor reduces States' obligations to facilitate the production of domestic broadcasting and other content in minority languages.<sup>138</sup> The availability of such foreign broadcasting and content does not justify a reduction of broadcast time in the minority languages in question either.<sup>139</sup>

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<sup>134</sup> Article 4, ECTT.

<sup>135</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018.

<sup>136</sup> The Bolzano/Bozen Recommendations, Recommendation 14; The Broadcast Media Guidelines, Guideline 13.

<sup>137</sup> *Khurshid Mustafa & Tarzibachi v. Sweden*, No. 23883/06, Para. 44, 16 December 2008.

<sup>138</sup> See also in this connection, Guideline 7, above. Article 9, FCNM; Article 11, ECRML; The Broadcast Media Guidelines, Guideline 13(2); the Oslo Recommendations, Recommendation 11; The Bolzano/Bozen Recommendations, Explanatory Note to Recommendation 14, and The Ljubljana Guidelines, Guideline 49.

<sup>139</sup> The Broadcast Media Guidelines, Guideline 13(2); The Oslo Recommendations, Recommendation 11; The Bolzano/Bozen Recommendations, Explanatory Note to Recommendation 14.



Geo-blocking for copyright or contractual reasons can sometimes have the effect of depriving national minorities of the possibility to access particular types of media content from neighbouring States. To prevent or mitigate the negative consequences of such restrictions for national minorities, States are encouraged to use their influence in bilateral relations to, for example, ensure equitable exemptions and thereby enable the national minorities in question to be able to access the media content. This encouragement is in the spirit of historical commitments by OSCE participating States, such as to “facilitate the import by competent organizations and firms of recorded audiovisual material from the other participating States.”<sup>140</sup>

**24. Independent national media regulatory authorities should develop mechanisms to enable women and men belonging to national minorities to participate effectively in all areas of their work that are relevant to such groups. States are encouraged to consider introducing or strengthening, as appropriate, the structured representation of persons belonging to national minorities in independent national media regulatory authorities. Appropriate mechanisms should be adopted to ensure gender balance within these authorities.**

States have an obligation to take appropriate measures to reconcile the competing interests of different groups in society, while remaining impartial. In doing so, they must preserve pluralism and the proper functioning of democracy.<sup>141</sup> This can typically be achieved by fostering shared spaces for intergroup dialogue. One way of doing this is to ensure that different groups in society are fairly represented, or that their views are taken into account, as appropriate, in independent national media regulatory authorities.<sup>142</sup>

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<sup>140</sup> Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975, under “Co-operation in Humanitarian and Other Fields, 2. Information, (a) Improvement of the Circulation of, Access to, and Exchange of Information.”

<sup>141</sup> *Supreme Holy Council of the Muslim Community v. Bulgaria*, No. 39023/97, Para. 93, 16 December 2004.

<sup>142</sup> Article 11(3), ECRML.

25. Licensing schemes for (digital) radio and television should be based on predetermined, public, clear, transparent and equitable criteria. States should include, in appropriate ways, the service of national minority communities, including shared and dedicated channels and/or channels or programming in the languages of national minorities, among those criteria. Licensing schemes should be administered in a fair and non-discriminatory manner by designated independent authorities that adhere to clear procedures supported by appeal mechanisms.

An important feature of structural pluralism is the complementary nature of the different types of media involved. Each of the above-mentioned types of media contributes to overall media pluralism in different ways.<sup>143</sup> States' laws and policies should reflect, support and seek to operationalize such contributions. Legislation and procedures concerning licensing offer numerous opportunities to sustain and promote particular types of media.

European human rights treaties recognize that State licensing of audiovisual media is compatible with the right to freedom of expression, provided various substantive and procedural criteria and safeguards are met. They do so in general terms,<sup>144</sup> in respect of national minorities<sup>145</sup> and regional or minority languages.<sup>146</sup> Article 19, ICCPR does not explicitly provide for licensing of audiovisual media, but General Comment 34 demonstrates that the approach taken by the Human Rights Committee under the ICCPR is largely consistent with the approach taken in European human rights law.<sup>147</sup>

26. States should explore, use and develop the potential of licensing schemes for (digital) radio and television to promote minority media, including in minority languages, in each type of radio and television service. Such provisions could include special status for “minority” or “community” media meeting particular criteria, which could entitle them to, for instance and as appropriate, concessionary licence fees or less onerous technical specifications, fiscal obligations or regulatory reporting requirements.

The design and implementation of licensing schemes provide States with opportunities to support broadcasting by and for minorities, including in their own languages, for instance through the allocation of specific frequencies for such

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<sup>143</sup> See generally, Joint Declaration on Diversity in Broadcasting.

<sup>144</sup> Article 10(1), ECHR.

<sup>145</sup> Article 9(2), FCNM.

<sup>146</sup> Article 11(2), ECRML.

<sup>147</sup> Article 19, ICCPR and Human Rights Committee, GC 34, Para. 39.

broadcasting (in whole or in part)<sup>148</sup> and through appropriate exemptions from fiscal, technical or reporting obligations upon award or alteration of a licence.<sup>149</sup>

**27. States should require independent authorities charged with implementing licensing processes to issue information and guidance on the opportunities and requirements for minority media within existing licensing schemes. The information and guidance should be issued in the State/official language(s) and in the languages of national minorities and they should be publicized in appropriate ways.**

In order to apply for and avail themselves of relevant licensing opportunities for broadcasting by and for national minorities, including in their own languages, persons belonging to national minorities must first be aware of the existence of such opportunities and know about the procedures to be followed. In keeping with best practices for the effective participation of national minorities in public life, independent authorities that oversee licensing processes should proactively make all relevant information available, both in the State/official language(s) and in the languages of national minorities, as appropriate. The information should include information about open, forthcoming and, as relevant, previous calls for tender.

**28. Network operators, including cable, IPTV and satellite, as well as multiplex operators, should be allowed to, and encouraged to, include national minority channels, including in the languages of national minorities, in their (basic) packages. States may consider using fair and proportionate must-carry regulations to ensure that public service broadcasting or national minority channels are included in the (basic) packages of cable network or multiplex operators, for instance.**

Must-carry regulations are (regulatory) provisions that mandate access to electronic communications networks for certain parties, subject to certain conditions, in order to ensure universal and equal access to general interest programming. As such, must-carry regulations have considerable potential for ensuring access for minority groups to structural means of audiovisual transmission of, for instance, public service media programming<sup>150</sup> or their own programming. Under Article 31(1) of the EU's Universal Services Directive:

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<sup>148</sup> The Broadcast Media Guidelines, Guideline 15 (A. Frequencies).

<sup>149</sup> *Ibid.*, Guideline 16.

<sup>150</sup> Council of Europe, Recommendation Rec(2003)9 of the Committee of Ministers to Member States on measures to promote the democratic and social contribution of digital broadcasting, 28 May 2003, Appendix, Para. 21 and Recommendation Rec(2007)2 of the Committee of Ministers to Member States on media pluralism and diversity of media content, 31 January 2007, Para. 3.3.

“Member States may impose reasonable ‘must carry’ obligations, for the transmission of specified radio and television broadcast channels and services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcasts to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcasts. Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent. The obligations shall be subject to periodical review.”<sup>151</sup>

The types of networks envisaged by this provision include cable, satellite and digital terrestrial broadcasting networks, but could also include other networks “to the extent that a significant number of end-users use such networks as their principal means to receive radio and television broadcasts.”<sup>152</sup> The Council of Europe’s Committee of Ministers has further recommended that its Member States “should explore the relevance of a must-offer obligation in parallel to the must-carry rules to encourage public service media and principal commercial media companies to make their channels available to network operators that wish to carry them.”<sup>153</sup>

**29. When licensing multiplex services and electronic programme guides, States should provide a legislative basis for appropriate accommodation of, and due prominence for, minority media channels, including in minority languages.**

Presence/prominence in multiplex services and electronic programme guides enhance the visibility and findability of minority media channels, including in minority languages. The promotion of such prominence could be stimulated by appropriate legislative or other measures, along the lines of those envisaged for the promotion of production and access to European audiovisual works under the EU’s Audiovisual Media Services Directive. Pursuant to Article 13 of the Directive, EU member States are required to “ensure that media service providers of on-demand audiovisual media services under their jurisdiction secure at least a 30% share of European works in their catalogues and ensure prominence of those works.”<sup>154</sup>

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<sup>151</sup> Article 31(1), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (Universal Services Directive), as amended by Directive 2009/136/EC (Citizen rights’ Directive).

<sup>152</sup> *Ibid.*, Recital 44.

<sup>153</sup> Council of Europe, Recommendation Rec(2007)2 of the Committee of Ministers to Member States on media pluralism and diversity of media content, 31 January 2007, Para. 3.3.

<sup>154</sup> Article 13, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018. See also, *ibid.*, Recital 69.

30. States should endeavour to incentivize the production, dissemination and promotion of national minority content, including in minority languages, and especially online. Media support schemes should take appropriate measures to cater adequately for the needs and interests of persons belonging to national minorities. To this end, existing schemes to promote general interest or pluralistic content, or particular types of independent media or content, could emphasize the need for content corresponding to the needs and interests of national minorities, including in their own languages, and especially online. Portions of the funds available under existing schemes could be earmarked for those purposes. The establishment of dedicated funding schemes is also encouraged.

Various international or European instruments envisage support for the production or dissemination of particular types of audiovisual media content, which could offer scope for specific support for national minority content. For instance, the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions calls on States Parties to “encourage the conclusion of co-production and co-distribution agreements.”<sup>155</sup>

Changing markets, financial pressures, economic austerity and new business models have affected the dynamics of public debate. This has very often left already precarious media run by or targeting national minorities in even more vulnerable positions or resulted in their closure. This underscores the need for support and subsidy schemes to include specific focuses on media and content produced by and for national minorities, including in their own languages.<sup>156</sup> Such schemes should be based on clear, precisely-formulated, non-discriminatory and transparent criteria and be administered by independent bodies with procedural checks and balances to prevent the possibility of interference with the editorial or operational autonomy of the (media) beneficiaries of the schemes.<sup>157</sup>

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<sup>155</sup> Article 12(e), UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>156</sup> Article 12(1)(d), ECRML; The Broadcast Media Guidelines, Guidelines 14 and 16.

<sup>157</sup> Council of Europe, Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on media pluralism and transparency of media ownership, 7 March 2018, Appendix/Guidelines, Paras. 2.13 – 2.15.

Adequate financing and funding are prerequisites for the sustainability of a pluralistic media environment. Systemic underfunding of public service media and community media is a serious problem in a number of OSCE participating States, with the effect that those media are unable to embrace technological developments and as a result lag behind and are unable to fulfil their remit and make a significant contribution to media pluralism.<sup>158</sup> In some countries, media organizations, in particular public service and community media, are in a financial crisis that threatens their very existence.

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<sup>158</sup> See generally: Council of Europe, Recommendation CM/Rec(2007)2 of the Committee of Ministers to Member States on media pluralism and diversity of media content and Recommendation CM/Rec(2007)3 of the Committee of Ministers to Member States on the remit of public service media in the information society, both adopted on 31 January 2007.

#### IV. Media, Information Technologies and Conflict Prevention

31. States and State or public actors should refrain from disseminating, supporting or endorsing in any way disinformation, propaganda or inflammatory discourse which aim to, or are likely to, undermine friendly relations among States and/or the sovereignty of other States; obstruct integration in other States, and/or generate hostility towards particular groups, including national minorities. Internet intermediaries should uphold human rights principles, respect human rights online, and voluntarily accept and apply all international human rights and women's rights instruments in the digital environment.

In situations involving diplomatic or political tensions between States, disinformation, propaganda and inflammatory discourse can lead to escalations in wars of words and aggravate those tensions, especially when they are disseminated in a systematic way, enabled by (automated) technological capabilities. State actors should therefore avoid having recourse to, supporting or endorsing such types of information and expression. Indeed, under the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, States are expected to “promote the use of new technologies, encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions.”<sup>159</sup> At the time of the Helsinki Final Act (1975), which laid the foundations for the OSCE, the participating States committed themselves, *inter alia*, to promote in their relations with one another “a climate of confidence and respect among peoples consonant with their duty to refrain from propaganda for wars of aggression” against another participating State.<sup>160</sup> In the spirit of the Bolzano/Bozen Recommendations and the Ljubljana Guidelines, participating States should refrain from using, and distance themselves from, types of content and discourse that aim to, and are likely to, adversely affect the integration of national minorities in other participating States. The OSCE participating States have moreover noted that “fomenting hatred and ethnic tension through the media, especially by governments, can serve as an early warning of conflict.”<sup>161</sup> The HCNM has experienced that the use of divisive language in the media of participating States can be a reliable indicator of increasing tensions.

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<sup>159</sup> Article 12(d), promote the use of new technologies, encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions.

<sup>160</sup> Final Act of the Conference on Security and Co-operation in Europe, Helsinki, 1 August 1975, under 1. (a) Declaration on Principles Guiding Relations between Participating States, X. Fulfilment in good faith of obligations under international law. See further: CSCE Helsinki Document – The Challenges of Change, Chapter IX – The CSCE and Regional and Transfrontier Co-operation, Paras. (3), (4) and (5).

<sup>161</sup> Budapest Document: Towards a Genuine Partnership in a New Era, Budapest Decisions, Summit of Heads of State or Government, Budapest, 5–6 December 1994, VIII. Human Dimension, Para. 38.

32. States may restrict or prohibit expression only in strict accordance with international or European human rights law. This means that any restriction on the right to freedom of expression must be provided by law and be a necessary and proportionate measure to achieve a stated, legitimate aim. Any prohibition of expression under domestic law must clearly correspond to, and be fully in compliance with, relevant specific provisions of international law. States should refrain from using vague or blanket terms for types of expression as a basis for content regulation, restriction or prohibition.

States may only restrict the right to freedom of expression in accordance with international or European human rights law. This means that an interference with the right to freedom of expression must meet all of the criteria set out in Article(s) 19 (and 20) ICCPR and/or Article 10 ECHR, as explained in respect of Guideline 1, above.

In addition, international human rights law also recognizes a limited number of types of expression that States must prohibit: “any propaganda for war”;<sup>162</sup> and “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”<sup>163</sup> States Parties to the Convention on the Prevention and Punishment of the Crime of Genocide are obliged to render punishable, “direct and public incitement to commit genocide.”<sup>164</sup> States Parties to the International Convention on the Elimination of All Forms of Racist Discrimination (ICERD) are obliged to “declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.”<sup>165</sup> Although the original text of ICERD “does not supply detailed guidance for the qualification of forms of conduct as criminal offences”, CERD General Recommendation No. 35 – Combating racist hate speech, seeks to fill that interpretive gap.<sup>166</sup> Taking its cue from the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, it considers that the following factors should be taken into account when qualifying dissemination and incitement as offences punishable by law: the content and form of speech; the economic, social and political climate; the position or status of the speaker; the reach of the speech, and the objectives of the speech.<sup>167</sup>

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<sup>162</sup> Article 20(1), ICCPR.

<sup>163</sup> Article 20(2), ICCPR.

<sup>164</sup> Article III, Convention on the Prevention and Punishment of the Crime of Genocide.

<sup>165</sup> Article 4, ICERD.

<sup>166</sup> CERD, General Recommendation No. 35, Para. 15.

<sup>167</sup> *Ibid.*



It should also be stressed that according to the prohibition of abuse of rights doctrine, no State, individual, group, organization, media entity or internet intermediary may invoke the right to freedom of expression for purposes that are contrary to international human rights law. As stated in Article 5(1) ICCPR: “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.”<sup>168</sup> Thus, the right to freedom of expression does not afford protection to racist, xenophobic or other types of “hate speech” which violate the rights of others.

Broad, vague or catch-all terms should not be used as a basis for restricting freedom of expression. Reliance on such terms in the context of the regulation of expression runs the risk of overbread or arbitrary interpretation and implementation of relevant regulation, which in turn has a chilling effect on freedom of expression and leads to self-censorship. Broad and vague terms which cover a range of different types of expression must be assessed in the light of the scope of the right to freedom of expression, as guaranteed by international human rights law and the limitations it permits and the prohibitions it prescribes.<sup>169</sup>

**33. For offensive or harmful types of expression which do not have sufficient gravity or intensity to legitimately be restricted under international law, alternative responses are called for, such as counter-speech; intercultural dialogue, including via the media and social media; and education and awareness-raising activities. Internet intermediaries should commit to eradicating online gender-based violence and allocate resources for information and educational campaigns to prevent ICT-facilitated violence against women and girls. States should support such initiatives and encourage the media, without encroaching on their editorial independence, and internet intermediaries, to do so as well.**

It is well-established under international and European human rights law that the right to freedom of expression covers not only uncontroversial information and ideas, but also information and ideas that may offend, shock or disturb governments or any group in society. This is because the values of pluralism, tolerance and broadmindedness are key features of democratic societies.<sup>170</sup>

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<sup>168</sup> See also, Article 17 ECHR and Article 30 UDHR.

<sup>169</sup> UN Human Rights Committee, GC 34, Para. 46.

<sup>170</sup> These two sentences paraphrase a key excerpt from a seminal judgment by the European Court of Human Rights: *Handyside v. the United Kingdom*, 7 December 1976, Para. 49, Series A, No. 24. See also, Human Rights Committee, GC 34, Para. 11.

The type of response required from States to counter negative and harmful types of expression will depend on the precise nature of the expression and the harm it causes. In keeping with the principle of proportionality, certain objectionable types of expression targeting persons belonging to national minorities, such as negative stereotyping (up to a certain level of intensity<sup>171</sup>) and biased or prejudicial reporting, should be countered by educational, informational and awareness-raising measures. States should wholeheartedly support such initiatives as proportionate, less restrictive measures that also contribute to sustainable solutions for filter bubbles and group enclaves. By way of contrast, criminal sanctions could be considered appropriate for the most egregious and harmful types of expression, such as incitement to genocide, violence or hatred.<sup>172</sup>

**34. States should encourage the media and internet intermediaries to foster intergroup dialogue and understanding in ways that are appropriate to their roles, functions and capacities, especially in the contexts of conflict prevention and conflict resolution. The media and internet intermediaries are governed by certain duties and responsibilities whenever they exercise their right to freedom of expression.**

The roles played by the media in relation to conflicts are ambiguous. On the one hand, the media can be misused as channels to spread disinformation, and aggressive and hateful content which contributes to the stoking of conflicts. OSCE participating States are “deeply concerned about the exploitation of media in areas of conflict to foment hatred and ethnic tension and the use of legal restrictions and harassment to deprive citizens of free media.”<sup>173</sup> On the other hand, the media can serve as channels or forums in which information and perspectives are shared among different groups and the above-mentioned harmful types of expression can be countered, both pre-emptively and reactively.<sup>174</sup>

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<sup>171</sup> *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, Para. 58, ECHR 2012.

<sup>172</sup> See also in this connection, Recommendation 10, European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 15 on combating hate speech, 8 December 2015.

<sup>173</sup> Istanbul Summit Declaration, Summit of Heads of State or Government, Istanbul 18–19 November 1999, Para. 27.

<sup>174</sup> CERD, General Recommendation No. 35 – Combating racist hate speech, Doc. No. CERD/C/GC/35, 23 September 2013, Para. 41.

The challenge for States is to foster inclusive, robust public debate within the parameters of international human rights law, while effectively combating types of expression that do not enjoy protection under international human rights law. This is often a difficult exercise due to some grey areas surrounding the precise scope of protection afforded by international human rights law. In meeting this challenge, States must take full account of the potential of freedom of expression to empower individuals, including persons belonging to national minorities, as well as the harm that can be caused by extremist or abusive types of expression.<sup>175</sup>

**35. States must not jam broadcast signals, block websites, web-based services (including social media services) or applications or IP-addresses from within or outside their jurisdiction, save in compliance with international human rights law and pursuant to an order by an independent court or other independent, impartial and authoritative body.**

The right to freedom of expression covers the substance of information and ideas as well as the technical means used to convey them and it must be enjoyed regardless of frontiers. If individuals, including persons belonging to national minorities, are denied access to media and/or media content emanating from abroad when they wish to do so, their right to seek and access information and ideas is no longer practical and effective. This means that States should not prevent the dissemination or rebroadcast of foreign, transfrontier and global media within their jurisdiction, save in strict accordance with international human rights law.<sup>176</sup> OSCE participating States have repeatedly underscored the importance of transfrontier aspects of freedom of expression and information.<sup>177</sup>

When participating States are confronted with societal tensions within their jurisdiction, also spurred from abroad by State or non-State actors, which involve or affect national minorities in one way or another, freedom of expression and media freedom are important resources for defusing such tensions. The media can report on and provide the public with accurate information about tensions and conflicts, which are clearly matters of utmost public interest.

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<sup>175</sup> See generally, CERD, General Recommendation No. 35 – Combating racist hate speech, Doc. No. CERD/C/GC/35, 23 September 2013.

<sup>176</sup> See further, Guideline 26 and the accompanying explanation and references, on pages 20 and 57 of this publication and; The Bolzano/Bozen Recommendations, Recommendation 14.

<sup>177</sup> See, for example, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991, Para. 26.1.

36. Internet intermediaries should not be held liable for third-party content disseminated through their services or networks which they have not altered or edited, except when they have, or reasonably ought to have, knowledge of the illegal nature of particular content or they have refused to obey an independent and authoritative court order requiring them to block or remove illegal content and they have the technical capacity to do so. Nor should internet intermediaries be obliged to conduct general monitoring of content to ascertain the nature of third-party content disseminated through their services or networks.

When calibrating appropriate responses to third-party content that is hosted by internet intermediaries, States should take due account of the dynamics of public debate in the multimedia environment, including the amplification and aggravated impact that such content can have due to its very wide dissemination and its permanent presence online once it has been posted. For instance, the Committee of Ministers of the Council of Europe has called for a “graduated and differentiated [response] according to the part that media services play in content production and dissemination processes.”<sup>178</sup> States should also take due account of the roles, duties, responsibilities and capabilities of relevant actors for combating such expression.<sup>179</sup>

The EU’s E-Commerce Directive<sup>180</sup> also provides guidance as to the exemptions from liability for service providers acting as a ‘mere conduit’ for information, or those which provide ‘caching’ or ‘hosting’ services.<sup>181</sup>

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<sup>178</sup> Council of Europe, Recommendation CM/Rec(2011)7 of the Committee of Ministers to Member States on a new notion of media, 21 September 2011.

<sup>179</sup> See generally, Council of Europe, Recommendation CM/Rec(2018)2 of the Committee of Ministers to Member States on the roles and responsibilities of internet intermediaries, 7 March 2018 and Recommendation CM/Rec(2011)7 of the Committee of Ministers to Member States on a new notion of media, 21 September 2011.

<sup>180</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce).

<sup>181</sup> See Articles 12-14 of the Directive. Article 15 is also of relevance, pursuant to which EU Member States are not allowed to impose a general obligation on providers to “monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity”.

37. States should require internet intermediaries to adopt and effectively implement clear and transparent policies and procedures governing the removal of illegal content disseminated by users through their services or networks. Those procedures should be subject to due process, including adequate oversight and effective appeal mechanisms, and ultimately be subject to independent judicial review and remedies. To deal with cases of online and ICT-facilitated violence, in particular against women and girls, internet intermediaries should put in place complaint mechanisms that are easily accessible, including from linguistic and technical perspectives, user-friendly and easy to find.

Effective strategies, proportionate to the harms caused, are required to deal with illegal third-party content that is disseminated through the services and networks of internet intermediaries. The removal of such content by intermediaries may only take place in accordance with international human rights standards as it can lead to privatized law enforcement and privatized censorship and have a chilling effect on freedom of expression. Internet intermediaries should be required to put in place all necessary checks and balances, including clear policies and effective procedures with due process guarantees, to safeguard their users' right to freedom of expression. States should also uphold the right to an effective remedy whenever there has been a violation of the right to freedom of expression.

It is essential that States and internet intermediaries understand and appreciate that blocking and filtering of online content can lead to so-called "collateral censorship", which can involve the removal or rendering inaccessible of lawful content or blocking of lawful services that are of relevance and interest to persons belonging to national minorities. They should accordingly avoid taking preventive measures that could render "large quantities of information inaccessible", thereby substantially restricting the rights of internet users and having a significant collateral effect.<sup>182</sup>

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<sup>182</sup> *Ahmet Yildirim v. Turkey*, No. 3111/10, Para. 67, ECHR 2012.

# Note on Terminology<sup>183</sup>

## *Affordances*

The properties of a technology that show how it can be used or, in other words, the utility of a technology that is perceivable to its users.

## *Algorithm*

A computational procedure consisting of a sequence of steps in order to solve a problem.

## *Application*

A software program, often abbreviated to 'app' when used on mobile devices.

## *Beneficial ownership*

A situation where a (natural or legal) person enjoys the actual possession or benefits of a form of property, eg. a media company, even though its legal title is in the name of another entity.

## *Citizen journalist*

Someone who engages in journalistic activities, not in a professional capacity, but in a personal one.

## *Connectivity*

The ability to connect to, or state of being connected to, other media, computers, etc.

## *Data minimization*

The principle that no more personal data than is necessary should be stored or collected.

## *Data protection by design/default*

The principle that privacy considerations should be incorporated in product design decisions, and that privacy protective options should be selected as the default setting.

## *Disinformation*

False information that has been deliberately created to deceive others.

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<sup>183</sup> This Note on Terminology is intended as a guide for the general reader on how the HCNM is applying these terms in this specific document. They are not legal definitions. These terms may be used by the HCNM differently in other documents, depending on the context.

### ***Data sovereignty***

The principle that data are subject to the laws of the jurisdiction in which they are collected.

### ***Echo chamber***

A closed system or (online) space in which similar views are amplified or reinforced by repetition.

### ***Electronic programme guide (EPG)***

An application that allows users to access continuously updated menus providing programme and scheduling information about radio or television channels.

### ***Filter bubble***

A situation in which a person or a group is exposed only to (ideologically) homogeneous content and is insulated from alternative and opposing views.

### ***Fourth Estate***

The media or press, styled as a corrective fourth power vis-à-vis the legislative, executive and judicial branches of State power.

### ***Gate-keeping***

The practice of controlling flows of information (and thus access to information), especially online.

### ***Geo-blocking***

The limitation of access to internet content (sites, services or applications) based on the geographical location of the end-user.

### ***ICT***

Information and Communications Technology.

### ***IP address***

Internet protocol address.

### ***IPTV***

Internet protocol television, which involves the delivery of television content over internet protocol networks and includes the possibility of streaming such content.

### ***Misinformation***

Incorrect or inaccurate information that is misleading.

### ***Multiplex***

An electronic system that combines programme material and related and other data in a digital form and transmits it for reception by the public.

### ***Must-carry regulation***

A regulatory provision that mandates access to electronic communications networks for certain parties; it is often used to promote certain types of content, such as general interest programming.

### ***Must-offer regulation***

A regulatory provision that mandates certain types of media organization to make their channels available to network operators that wish to carry them.

### ***Network neutrality***

The principle that internet service providers treat all data travelling via their networks equally, without discrimination as to the type of user, content, website, application or service.

### ***Personalized content***

Content that is modified based on, or responsively to, personal data about the user.

### ***Predictive analytics***

The practice of making (statistical) predictions about future outcomes and trends on the basis of information that has been taken from existing data sets; this practice typically involves using statistics, data mining, machine learning and artificial intelligence.

### ***Privatized censorship***

Censorship that is performed by private actors (including at the direct or indirect behest of State authorities).

### ***Privatized law enforcement***

The enforcement of law by private actors (as opposed to by State authorities).

### ***Profiling***

The sorting of individuals into categories through (statistical) inferences based on their personal characteristics or behaviour.



### ***Public watchdog***

An actor – traditionally a journalist, the press or the media, but nowadays also other actors like civil society organizations – that keeps a critical watch on State authorities and other influential forces in society.

### ***Purpose limitation***

The principle that personal data may not be processed for purposes other than the original purposes for which the data was collected.

### ***Ranking techniques***

Computational techniques used to determine the order (or ‘ranking’) in which a selection of content is presented to users.

### ***Recommendation techniques***

Computational techniques used to determine which content is presented or recommended to users.

### ***Social networking service***

An online platform or service that allows users to create social networks with other users.

### ***Storage limitation***

The principle that personal data should not be stored longer than necessary.

### ***Universal service obligations***

An obligation to ensure that certain services are made available to all end-users in a given territory, irrespective of geographical location, at a specified level of quality and at an affordable price.

### ***Whistle-blower***

Someone who exposes wrongdoing by informing (‘blowing the whistle’) on unlawful or immoral actions or inaction within an organization (usually where s/he works).

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