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Strasbourg, 9 March 2009

DH-MIN(2009)003

**COMMITTEE OF EXPERTS ON ISSUES RELATING TO THE
PROTECTION OF NATIONAL MINORITIES (DH-MIN)**

**Analysis of Information provided by DH-MIN members on the
Questionnaire on the access of national minorities
to the new media in the information society**

Overview of information provided by States and possible validity concerns

Report prepared by
Prof. Tom Moring & Dr. Tarlach McGonagle

Overview of information provided by States and possible validity concerns

Introduction

This report reflects a process that was started by the *Committee of Experts on Issues relating to the Protection of National Minorities* (DH-MIN) in October 2005, when the Committee decided in its second meeting to launch work on a number of themes, one of them being the issue of the minorities and media. After a preliminary analysis of the information available in other contexts, the Committee decided to focus on the emerging field of new media services. The development of services in digital media and other types of new media, such as satellite television and the relay of global media in cable networks, had emerged only after some main international instruments for the protection of national minorities and regional and minority languages had been developed. Thus these instruments had not been constructed to deal in a detailed fashion with these emerging media forms.

The committee invited Professor Tom Moring (University of Helsinki) to present an analysis of current developments in the field. Two other experts, Dr. Karol Jakubowicz (University of Warsaw) and Dr. Tarlach McGonagle (University of Amsterdam) were invited to comment on the presentation.

In the meeting of DH-MIN on 20 October 2006, after hearing the three experts, an examination of the theme on access of national minorities to media and discussions on the future work was carried out. The conclusion of this examination was for DH-MIN to, through a questionnaire directed at its member states, chart the measures related to new media developments in more detail. The questionnaire was concluded in June 2008, when altogether 24 states had replied. In a later communication, one more country replied, bringing the total number of responses to 25.¹ Professor Tom Moring and Dr. Tarlach McGonagle were asked to present a summary and analysis of the responses, as is hereby presented.²

General methodological considerations

The methodology in this report is attuned to the overall approach taken by the DH-MIN in its efforts to chart the situation in the field of how new media are put into service of national minorities. A point of departure has been an assessment of how the two main Council of Europe instruments in the field, the Framework Convention for the Protection of National Minorities (FCNM), and the European Charter for Regional or Minority Languages (ECRML), *de facto* serve the underlying goals of those instruments.

¹ The states are Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Czech Republic, Denmark, Finland, Germany, Georgia, Hungary, Italy, Latvia, Lithuania, Moldova, the Netherlands, Norway, Poland, Romania, Russian Federation, Serbia, the Slovak Republic, Slovenia, Sweden, Switzerland and Ukraine.

² It is important to note that the authors have, in conducting their analysis, proceeded on the basis of the reliability and *bona fide* character of the information provided in States' responses to the Questionnaire and are not responsible for any inaccuracies in, or omissions from, the same.

This assessment has been done against the background of the body of analysis presented at the meeting of the DH-MIN in October 2006 that was referred to above (Moring 2006; Jakubowicz 2006; McGonagle 2006). A conclusion from the presentations was that the instruments as such do include provisions that would, *mutatis mutandis*, apply for new media and public services provided through new media platforms. However, as specific provisions obliging states to apply more detailed provisions in this field are not in place, it is possible that those general principles that run across the instruments are not being enforced in the same manner as the more detailed and explicated obligations are. There was particular concern raised regarding a lack of positive and affirmative action with the objective to facilitate, promote and enhance access to new media and services on new media platforms that would match the actions required in the field of those types of media that were in place when the instruments were established in the early and mid-1990s.

Consequently, a questionnaire was constructed, structured into 17 specific questions and distributed to the member states of the Council of Europe. The replies to the questionnaire from 24 states have been collected and presented in a separate report that is an appendix to this report (DH-MIN(2007)009rev.3). The questions in the questionnaire aggregated a total of 27 aspects regarding measures relating to the supply and use of new media in regard to national minorities.

In order to provide a summary of the responses, the replies of the states were coded according to the 27 aspects that rose out of the questionnaire. To highlight the issues raised by the expert opinions referred to above, the coding aims at identifying the existence and character of measures, and the existence of proactive approaches, such as facilitation, promotion or enhancement of supply and use of new media in respect to national minorities (see tabular summary). On the basis of this mainly quantitative approach, some general observations will be presented regarding the presence of different types of measures in the States that have responded to the questionnaire. The responses are also contextualised with respect to the positioning of the states in regard to the ratification of the ECRML (all respondents have ratified the FCNM), and geographical position in Europe (East and West).

The qualitative analysis has been conducted on a question-by-question basis. For each question, attention is paid to: (i) (where relevant) methodological difficulties encountered when analysing the information submitted by States; (ii) the substantive analysis of the information provided, and (iii) possible best practices.

In a final concluding part the results are discussed with the aim of identifying positive trends across replies by States and specific best practices and their potential for replication. The eventual need for further, more comprehensive and ongoing mapping of relevant practices is discussed.

Tabular summary of measures taken by field of issue

The following tables present a quantitative account of all the 17 questions in the questionnaire. The numbering of the questions is according to the original numbering used in the questionnaire. In cases where the questions address several aspects, they have been divided and the sub-questions are presented separately.

Methodological difficulties

In many cases the questions were answered only partly. This is the case particularly when questions included two or more aspects. Furthermore, some states did not reply to the questionnaire on a question-by-question base but gave a more general account of the situation in the State.³ These replies have been coded according to the questionnaire as applicable. However, also in these replies several questions were unanswered. This has led to a high level of missing cases. The missing cases have, in the tables, been combined with the (very few) cases where states noted that the question for one reason or another did not to apply in the state in question. It is ambiguous to conclude that a missing reply means that no measures exist with regard to the question concerned, though this may often be the case. A preferred strategy of reading the tables is thus to follow the positive responses, as they will always reflect facts demonstrated in the replies to the questionnaires. In other words, it is safer to build conclusions on the evidence of existing measures and their characteristics, rather than to infer conclusions from the absence of measures. It must furthermore be noted that the replies to the questionnaire, particularly when reporting on positive promotion, in many cases reflect measures taken with respect to only one or a few demonstrable cases. Thus the results must not be read as a full account of the total situation but as an indication of what is going on in this field.

For a detailed consideration of the replies, we refer to the qualitative analysis presented further down in this report, and to the appendix containing the full body of answers from the states.

Analysis

The quantitative analysis of States' responses to the Questionnaire has been organised in order to distinguish between different levels of specificity with regard to measures in the field of new media and national minorities. Thus a distinction has been made between, on the one hand, the existence of measures that are of a general character and also applying to new media, and on the other hand measures that are specifically constructed to deal with situations that have occurred with the introduction of new media. A similar distinction has been made between measures directed at the population as a whole but also applying to minorities, and measures that specifically deal with national minorities and their related culture, such as regional or minority languages. In a subsequent analysis the measures were arranged according to these features and cumulative scores were calculated in order to supply gross measures of the existence of different types of measures in different types of states.

³ Eg. Bulgaria, Hungary, Moldova, Russia.

1. Describe what regulatory and other measures have been taken with regard to the new media and new communication services in order to promote the fundamental values of pluralism and diversity, respect for human rights and non-discriminatory access?

	Frequency	Percent
No reply/DNA	1	4,0
General	15	60,0
Specific re. minorities, not regulatory	2	8,0
Specific re. minorities, regulatory	7	28,0
Total	25	100,0

In the above table (question 1), the two main categories found were general measures on the one hand and specific regulatory measures on the other. Interestingly, specific (non regulatory as well as regulatory) measures were reported by half of the former socialist states but only one West-European state, whereas all other West-European states reported only general measures. This finding can be assessed in the light of the traditions of civic society that have developed in different parts of Europe. In the West-European states, voluntary measures appear to play a stronger role.

2a. Has a code of ethics/professional code of conduct been adopted by the service providers?

	Frequency	Percent
No reply/DNA	5	20,0
None	2	8,0
General	13	52,0
Specific re. new media for minorities	5	20,0
Total	25	100,0

The replies to question 2a show that media in a majority of states apply codes of ethics. However, only one of five states applies codes that specifically address new media for minorities. In five cases, such codes had been developed in former socialist states, in only one case in a West-European state.

2b. Does it address the questions of non-discriminatory access and hate speech or other illegal content?

	Frequency	Percent
No reply/DNA	7	28,0
No	2	8,0
Non-discriminatory or hate speech;	12	48,0
Other	4	16,0

2b. Does it address the questions of non-discriminatory access and hate speech or other illegal content?

	Frequency	Percent
No reply/DNA	7	28,0
No	2	8,0
Non-discriminatory or hate speech;	12	48,0
Other	4	16,0
Total	25	100,0

In almost half of the states the codes addressed non-discriminatory access and hate speech (question 2b). This was clearly more normal in Western Europe, whereas regulatory measures were more common in Eastern Europe (as demonstrated in question 1 *supra*).

3. What instruments have been developed to promote the passive and active access of national minorities to the new media?

	Frequency	Percent
No reply/DNA	8	32,0
None	3	12,0
Passive only	4	16,0
Active only	1	4,0
Both passive and active	9	36,0
Total	25	100,0

Replies to question 3 show that more than half of the states promote access of national minorities to new media either passively or actively. Here, the division between Western and Eastern Europe was insignificant. However, a clear difference occurred between states that, in addition to FCNM, had ratified also ECRML. In the latter group of states, active promotion occurred in more than half of the cases, whereas only one case of active promotion was reported from the group of states that had not ratified this instrument.

4a. What regulatory and other measures have been taken to promote cultural and linguistic diversity in the new media?

	Frequency	Percent
No reply/DNA	7	28,0
None	4	16,0
General	5	20,0
Specific	9	36,0
Total	25	100,0

General or specific measures were present in more than half of the states (question 4a). However, legal provisions with regard to the use of the languages were reported by only one state of three (question 4b)

4b. Are there any specific legal provisions regulating the use of minority languages?

	Frequency	Percent
No reply/DNA	10	40,0
No	7	28,0
Yes	8	32,0
Total	25	100,0

The replies to questions 5a to 5c indicate that the question measures mainly the technical development of the communication system in the state. In West-European states, where digitalisation of television and other digital media developments have gone further, more promotion was found, whereas the ratification of the ECRML did not affect the response level to these questions.

5a. How has the development of new media affected the number and availability of the services in minority languages?

	Frequency	Percent
No reply/DNA	9	36,0
General/Equal opportunity	7	28,0
Positive promotion	9	36,0
Total	25	100,0

5b. Are the services on demand available in national minority languages?

	Frequency	Percent
No reply/DNA	14	56,0
None	2	8,0
Yes	9	36,0
Total	25	100,0

5c. Are electronic programme guides available in national minority languages?

	Frequency	Percent
No reply/DNA	18	72,0

No	5	20,0
Yes	2	8,0
Total	25	100,0

Access to satellite digital television is widely spread. Information about how the access is distributed with regard to national minorities was, however, difficult to obtain (questions 6a and 6b).

6a. What is the number of households with access to satellite digital television?

	Frequency	Percent
No reply/DNA	10	40,0
Exact number or percent given (see text)	12	48,0
General access	3	12,0
Total	25	100,0

6b. Do the regions with compact minority populations differ from the average in terms of such access?

	Frequency	Percent
No reply/DNA	18	72,0
No	3	12,0
Positively	2	8,0
Other	2	8,0
Total	25	100,0

As is the case with digital television, also cable is widely spread. In almost all of the states where cable networks are reported to exist, they also carry (public service) channels that contain programming for national minorities (questions 7a and 7b).

7a. What is the number of households with access to cable TV?

	Frequency	Percent
No reply/DNA	9	36,0
None	1	4,0
Exact number (see text)	15	60,0
Total	25	100,0

7b. Are any channels/programmes in languages spoken by persons belonging to national minorities transmitted via the cable network?

	Frequency	Percent
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No reply/DNA	9	36,0
None	2	8,0
Yes	14	56,0
Total	25	100,0

New media initiatives that involve trans-frontier access were reported in somewhat more than one third of the states. In only one case were such initiatives reported to have negative effects on access of national minorities (questions 8a and 8b). Thus, at least so far, the fear of negative consequences on cross-border viewing from digitalisation of television broadcasting appears to be unfounded. It must, however, be noted that more than half of the states did not reply to question 8a, which reflects the preliminary phase of the development of digital television broadcasting in many countries. As is seen in the reply to question 9a, three out of four states are either already broadcasting digitally or preparing for a switch to digital broadcasting. Thus the problems may occur at a later stage. So far, however, only few concerns related to this shift are reported (questions 9b and 9c, see also the qualitative analysis).

8a. Do the “new media” initiatives on the part of the authorities involve trans-frontier access of national minorities to the media, including in respect of “kin-state”?

	Frequency	Percent
No reply/DNA	14	56,0
None	2	8,0
yes	9	36,0
Total	25	100,0

8b. Have new media initiatives (e.g., digital television) had any negative effects on access of national minorities to the media caused by the disappearance of old media?”

	Frequency	Percent
No reply/DNA	10	40,0
No	14	56,0
Yes	1	4,0
Total	25	100,0

9a. What is the status of possible plans as regards digitalisation of public service media...

	Frequency	Percent
No reply/DNA	7	28,0
Plans exist/Digital Broadcasting is operative	18	72,0
Total	25	100,0

9b. ...and are there any specific concerns related to minorities and their access to digital media?

	Frequency	Percent
No reply/DNA	13	52,0
No	8	32,0
Yes	4	16,0
Total	25	100,0

9c. Are there, for example, gaps in the coverage of the digital television network that particularly affect areas with compact minority population?

	Frequency	Percent
No reply/DNA	15	60,0
No	9	36,0
Yes	1	4,0
Total	25	100,0

Almost half of those states that have ratified the ECRML have developed instruments to promote active use of new communication technologies by minorities, compared to only one out of four states that have not ratified. The issue of ratification appeared to have some prominence, whereas the division between Western and Eastern Europe did not, adding to the impression indicating that ratifying the ECRML may have an independent impact on promoting also new media for minorities (question 10).

10. What instruments have been developed to promote the active use of new communication technologies by minorities?

	Frequency	Percent
No reply/DNA	10	40,0
No	5	20,0
Yes, there are instruments	10	40,0
Total	25	100,0

Regarding specifically Internet and ICT, the technological development of the state again appears to play a main role. Thus differences are biggest between Western Europe, where measures exist, and Eastern Europe, where such measures are rarer. In both groups of countries, consultations in this field are rare (questions 11a and 11b).

11a. What policy measures have been taken (if any) with regard to ensuring the digital inclusion and the effective and affordable access to the Internet and other ICTs for minority populations?

	Frequency	Percent
No reply/DNA	9	36,0
None	3	12,0
General measures	9	36,0
Specific measures	4	16,0
Total	25	100,0

11b. To what extent are such policy measures based on (public) consultation exercises or other research aimed at ascertaining the needs and concerns of persons belonging to national minorities in the context of digital technologies?

	Frequency	Percent
No reply/DNA	17	68,0
No measures	2	8,0
General measures	2	8,0
Specific measures	4	16,0
Total	25	100,0

Access to broadband is, according to the responses to question 12, more often related to regional factors than to factors immediately related to being a national minority. However, an indirect effect was in many cases not excluded.

12. Are there any differences detected as regards access to broadband by persons belonging to national minorities compared to the majority population?

	Frequency	Percent
No reply/DNA	15	60,0
No	9	36,0
Less access	1	4,0
Total	25	100,0

Specific legal measures regarding hate speech in the new media were reported in only one of five states. These states were mainly West-European. Such measures were not reported from any state that had not ratified the ECRML.

13. Describe what legal and other measures have been taken (if any) to effectively counter/combat “hate speech” or other illegal content which affects national minorities in ICTs.

	Frequency	Percent
No reply/DNA	6	24,0
No measures	2	8,0
General re. hate speech/illegal contents	12	48,0
Specific re occurrence of this in new media	5	20,0
Total	25	100,0

Regarding specific measures by authorities in order to develop on line public services, and include services for minorities, such measures exist in only one state out of four (question 14). Also here, the technological development appears to play a role. However, some states from Eastern Europe have developed these instruments as well – one such case was found in the group that had ratified ECRML, and one case in a state that had not ratified this instrument.

14. Describe what measures have been taken (if any) by public authorities when developing on-line public services (use of the Internet to facilitate participation in public affairs and democratic processes (e-democracy) at national as well as local and regional levels) to enable effective participation by persons belonging to national minorities?

	Frequency	Percent
No reply/DNA	10	40,0
No measures	2	8,0
General measures	7	28,0
Specific measures re. minorities and new media	6	24,0
Total	25	100,0

Measures to support the skill development for professionals from national minorities in the field of new media or to develop media literacy were quite rare in all groups (questions 15 and 16).

15. Describe what measures (if any) have been taken to enable media professionals (including trainees/students) from national minorities to acquire the necessary skills for maximising their exploitation of new technologies, e.g. accessing government-held information online, use of technological innovations for various stages of content-production and distribution, etc.?

	Frequency	Percent
No reply/DNA	12	48,0
No measures	5	20,0
General measures	6	24,0

Specific measures re. minorities and new media	2	8,0
Total	25	100,0

16. To what extent do strategies for the promotion of media literacy take the needs, interests and concerns of persons belonging to national minorities into account?

	Frequency	Percent
No reply/DNA	13	52,0
No measures	3	12,0
General measures	6	24,0
Specific measures re. national minorities and new media	3	12,0
Total	25	100,0

Particular projects were reported from almost two thirds of the states. Here, somewhat more often projects were reported from states that had ratified the ECRML (question 17), whereas more East European countries than West-European countries reported projects.

17. Please give a short description of a project or activity already running in your country that might be considered as good practice in the field of new media and new ICTs with relevance for national or ethnic minorities.

	Frequency	Percent
No reply/DNA	10	40,0
There are projects	15	60,0
Total	25	100,0

Qualitative analysis

Question 1

1. Describe what regulatory and other measures have been taken with regard to the new media and new communication services in order to promote the fundamental values of pluralism and diversity, respect for human rights and non-discriminatory access?

Methodological difficulties

The information provided was incomplete/inconsistent in places.

Analysis

The responses to Question 1 provide important insights into whether:

- general regulatory and other measures concerning new media technologies include specific provisions on national minorities, or
- general regulatory and other measures concerning traditional media *also* apply to new media technologies *and* include specific provisions on national minorities.

There appears to be a tendency to extend or adapt existing regulatory and other measures in order to embrace the advent of digitisation and other new media technologies, leading to the (partial) extension of broadcasting rules on pluralism/diversity and the promotion of minority languages to the online environment.

Another key consideration, besides whether legislative and other measures specifically dealing with new media technologies and persons belonging to national minorities exist and how they are calibrated, is whether relevant regulatory competences are clearly demarcated. This can be very important for monitoring and implementation purposes. If there is uncertainty about the scope of various regulatory bodies' competence to engage with relevant issues – largely due to reasons of technological convergence, it is less likely that pro-active measures will be adopted unilaterally. A concerted approach by all relevant regulatory bodies is therefore desirable in order to ensure a comprehensive approach.

Possible best practices

Extension of existing regulation and policy in a way that is informed by the communicative and social specificities of the new technological environment, as well as the communicative needs and interests of national minorities.

Concerted, inclusive approaches to regulation, policy-making and monitoring, with effective participation of national minorities in all relevant processes.

Question 2

Has a code of ethics/professional code of conduct been adopted by the service providers? Does it address the questions of non-discriminatory access and hate speech or other illegal content?

Methodological difficulties

Whereas the question specifically enquired about the adoption of codes of ethics/professional codes of conduct by service providers, the answers provided by States referred, for the most part, only to the applicability of such codes to journalists (in general)⁴ or specifically in the broadcast sector,⁵ or more specifically, the public service broadcasting sector.⁶ The (potential) applicability of such codes to service providers, as such, unless explicated, should not automatically be assumed. The responses of the German and Slovenian authorities note the applicability of (respectively) general media (programming) principles and journalistic codes to ISPs. Likewise, the response of the Dutch authorities usefully clarifies that public and commercial broadcasters are required to adhere to their respective codes of conduct, regardless of the media platform used. The response of the Slovakian authorities states that criminal law provisions concerning hate speech also apply in the online environment.

The following analysis therefore deals only with the precise focus of the question, i.e., ethical/professional codes governing the activities of service providers. Some States responses clarify that such codes have not been adopted by ISPs.⁷

It is important to distinguish between standards which are self-regulatory in character⁸ and those which are legally binding on journalists/broadcasters.⁹ The existence of the former indicates awareness and engagement from within the media sector.

Analysis

2(i) Where adopted, only some ISP codes of conduct or equivalent guidelines include specific focuses on, eg. “hate speech”,¹⁰ whereas others appear to be primarily concerned with the prevention of dissemination of child pornography.¹¹ Of the ISP codes with specific focuses on “hate speech”, the Latvian example (see below) is of possible wider interest: it involves a professional code of conduct for ISPs and online media designed specifically to counter online hate (“Internet – free of hate”);¹² involving a multi-stakeholder approach (i.e., “major newspapers in on-line versions, NGOs active in human rights field and various web sites”) and a mutual monitoring system.¹³ Such codes

⁴ Azerbaijan, Lithuania, Poland, Ukraine.

⁵ Bosnia & Herzegovina, Serbia.

⁶ Georgia, Latvia.

⁷ Italy (relevant measures are set out in an Interministerial Decree), the Netherlands, Sweden, Switzerland.

⁸ Czech Republic (journalists in general).

⁹ Serbia, Czech Republic (public service broadcasters).

¹⁰ Latvia, Norway (Content Provider Access Agreement).

¹¹ Denmark, Italy.

¹² See also, details of the “Cyber Hate Watch” project in Romania (Q. 17).

¹³ See further: www.iecietiba.lv.

could usefully clarify, *inter alia*, the notice-and-takedown or other remedial procedures (to be) followed by ISPs when confronted with “hate speech” that contravenes the law and engages their responsibility.

The effective monitoring of (relevant provisions of) codes is crucial to their credibility and success. In this connection, it is important to know whether codes are self- or co-regulatory in character and overseen by independent and impartial bodies. For example, the Dutch Press Council oversees a self-regulatory system and in Poland, the Media Ethics Council monitors the observance of the principles set out in the Media Ethics Charter. In Latvia, the monitoring of hate speech and related offences is conducted jointly by the Secretariat of the Special Assignments Minister for Society Integration Affairs and the Bureau of Ombudsman. In Slovenia, recourse can be had to the Human Rights Ombudsman.

2(ii) As already mentioned above, States’ responses to this question often focused on codes/standards governing journalists or broadcasters generally and not specifically ISPs. Very little information could be gleaned from States’ responses concerning provisions in relevant codes guaranteeing non-discriminatory access. This can partly be explained by the fact that access issues are typically of central relevance to ISP activities, but less so in the context of individual journalistic activities (where the emphasis would more likely be on issues of fairness and impartiality in reporting and presentation). General legal provisions guaranteeing equality and non-discrimination to everyone are ordinarily taken to apply to online access issues as well.

Possible best practices

The adoption of self- or co-regulatory approaches specifically targeting online “hate speech”.

Access to analogue and digital new media

Question 3

What instruments have been developed to promote the passive and active access of national minorities to the new media?

Methodological difficulties

Examples given by States in their responses to this question often concern the promotion of access to traditional media. It would undoubtedly be very important to give prominent inclusion to this kind of information if a comprehensive overview of access to the media was to be given. The forthcoming analysis will, however, track the original question and only deal with instruments concerning the new media.

Nevertheless, it should also be noted that the tendency of States’ authorities to include information on the promotion of access to different kinds of media is not misplaced. New media are best considered alongside existing or traditional media as their relationship is necessarily additive/aggregative and complementary, not substitutive (Moring, 2008). This can be explained – at

least in part – by considerations of media functionality (Moring and Dunbar, 2008), i.e., the particular characteristics of some media may be better suited than others to fulfilling the general communicative needs and objectives of particular national minorities, which can result in continued reliance on familiar media despite the introduction of new media. Moreover, traditional media players are the drivers of a very significant amount of new media activities and content. The development of an online presence is often a logical extension of their existing activities.

Analysis

In answering this question, some States dwelt on the absence of legal or other restrictions to access to the new media. It is submitted here that the promotion of access goes beyond the removal of restrictions and implies active and purposeful endeavour on the part of States. The formal absence of restrictions or obstacles does not necessarily ensure the *de facto* absence of the same. This point is made in Sweden’s response to the question: it stresses the importance of implementing “appropriate measures to facilitate access to the mass media for persons belonging to national minorities”. It would have been instructive if this emphasis had consistently been replicated (and relevant details provided) in all States’ responses.

States’ responses to this question often underscore the intersectionality between the rights to freedom of expression, information and education, as well as linguistic rights. In practice, access to new media technologies, whether passive or active, can be of instrumental importance in the realisation of all of these rights. Passive and active access to the media correspond to two constitutive components of the right to freedom of expression, i.e., the right to receive information or ideas and the right to impart information or ideas.

The effectiveness of the access to the new media enjoyed by persons belonging to national minorities must be measured in terms of: (i) general instruments and initiatives, and (ii) minority-specific instruments and initiatives. Both are important, but it can be difficult to assess whether the full potential of generally applicable measures is actually exploited by persons belonging to national minorities. Very often, States’ responses refer only to measures which apply to everyone or which aspire to inclusiveness. However, in the absence of specific details of how minorities actually avail of relevant general measures, it cannot simply be assumed that their potential is fully enjoyed by minorities. For instance, it is clear that the advent of digital technologies is full of promise; it makes it technically feasible to provide a greater diversity of content in a wider range of languages. But to what extent does that promise come true in specific cases? In some cases, it has been suggested that relevant potential is underused by minorities.¹⁴ Regrettably, this kind of information and level of detail is often lacking across States’ responses.¹⁵

The language in which media operate can affect their potential for inclusion or exclusion. The effectiveness of access to the media for persons belonging to national minorities can therefore depend on concurrence between their language and that of the media. The Georgian authorities’ response identifies a “lack of knowledge” of the Georgian language in certain regions which are densely populated by national minorities as a “major impediment” for the minorities concerned in securing access to the media. In consequence, the Georgian language has been promoted in State

¹⁴ Germany.

¹⁵ Ukraine.

teaching programmes in order to enhance ethnic minorities' access to the media. Conversely, other States' authorities have chosen to promote the languages of the minority populations in order to reduce difficulties experienced by minorities in securing access to the new media.

States' responses reveal approaches designed to address the needs of specific groups (eg. the Roma) or specific languages (eg. Frisian). The Latvian authorities' response referred to an initiative providing a State grant for the development of a Roma information portal and the Norwegian response draws attention to an educational programme for Romani pupils which seeks to increase their competence in new media technologies. The Dutch authorities' response detailed State funding for the promotion of reading and writing in the Frisian language, with a portion of the funding being specifically ear-marked for new media. The Polish authorities' response refers to State subsidies for the creation of websites for minorities or to provide minorities with access to online magazines and newspapers on minority issues, but does not provide specific examples of the same. A similar grant scheme exists in Slovakia, which includes a sub-programme to support online cultural projects of/for national minorities and the publication of cultural and scientific information. Again, further (specific) information is not provided.

Although international instruments, such as the FCNM and ECRML, typically address and create obligations for States, the promotion of access to the new media for persons belonging to national minorities can also be advanced by other parties. This political reality is recognised by references in States' responses to the role of civil society organisations,¹⁶ international governmental organisations and private corporations.¹⁷

Possible best practices

The first possible best practice in this connection concerns participatory approaches to monitoring how the public service media discharge their duties to promote cultural and linguistic diversity. For example, the Finnish Broadcasting Company, YLE, is under a statutory obligation to report every two years on the discharge of its public service mandate. Its preparation of such reports must involve consultation with the Sami Parliament on the section of the report concerning services designed specifically for the Sami population. This example could be of interest for other States as it facilitates the mapping of concrete attempts to promote minority access to programming and participatory decision-making in the media sector.

A second possible best practice is the ear-marking of public funds for stimulating the creation and dissemination of online content for national minorities (especially in their own languages). One noteworthy example is an initiative in the Netherlands: the development of FARSK, a multi-media, Frisian-language website.

Question 4

¹⁶ Georgia.

¹⁷ See further, the examination of Q. 10, *infra*.

What regulatory and other measures have been taken to promote cultural and linguistic diversity in the new media? Are there any specific legal provisions regulating the use of minority languages?

Methodological difficulties

As with Question 3, the information provided by States in response to Question 4 was not always sufficient to allow for a meaningful assessment of the level of operationalisation of relevant measures.¹⁸ It would have been helpful to have consistently received detailed information about how the potential of new media technologies for enhancing cultural and linguistic diversity is harnessed in practice.¹⁹

Analysis

Some State responses provide details of the promotion of specific types of content, eg. news in minority languages.²⁰ While such promotional measures may appear limited in focus, they can validly contribute to overall diversity. When only limited resources are available, certain types of content are routinely prioritised over others. Hence, news, cultural, language-learning and children's programming may be given precedence over other types of programming in different contexts/countries.

The responses to this question reveal that market-driven reasoning also informs policy-making. The Latvian authorities consider that there is no need for specific legal provisions regulating the use of minority languages "because the number of channels in cable and satellite TV packages in languages other than Latvian (predominantly in the Russian language) far outstrips the number available in Latvian"; they consider the matter to be one for determination by market forces.

Possible best practices

In funding schemes for different types of media or content production, it is possible to set aside a certain amount of available funds for productions addressing the cultures and languages or in the languages of minority groups; such funds could also be coupled with distribution via new media technologies. An analogous example of such a scheme – concerning film production - is mentioned in the German authorities' response (there is no mention of a requirement that the films be distributed via new media technologies, though). It is also mentioned that the uptake of this funding opportunity by speakers of regional or minority languages has been poor.

Efforts to develop linguistic terminology relating to information technology and software in the languages of national minorities could be considered as best practices in the context of a number of questions.²¹ A concrete example of the former involves the establishment, by the Norwegian Government, of "a joint competence pool of experts in Sámi language and information technology".

¹⁸ Bosnia & Herzegovina, Georgia, Slovak Republic. C.f. Sweden (extensive information about relevant content of PSB licences).

¹⁹ Czech Republic, Georgia.

²⁰ Denmark.

²¹ See also, Q. 3, *supra*, and Q. 10, *infra*.

Public bodies can avail of the support provided by the competence pool. Its website²² offers users “general information, references to legislative documents, technical specifications in relation to the application of Sámi, as well as other relevant information concerning Sámi languages”. A concrete example of the latter involves a collaborative Nordic project for the computer standardisation of the Sámi language.

Question 5

How has the development of new media affected the number and availability of the services in minority languages? Are the services on demand available in national minority languages? Are electronic programme guides available in national minority languages?

Methodological difficulties

When assessing States’ replies to this question, it is important to examine both quantitative and qualitative considerations. An increase in, for example, the number of websites maintained by (persons belonging to) national minorities is reported in a number of replies, but it is necessary to also enquire about the content of those sites. For example, do they serve similar communicative purposes to more traditional media; how much potential do they have for interactivity between users; what are the thematic focuses and languages used on the sites, etc. These considerations can be very important from the point of view of media functionality (Moring and Dunbar, 2008).

Although the focus of Question 8, the importance of the transfrontier dimension should not be overlooked when analysing the replies to Question 5. With the exception of Sweden, States generally did not mention the increased availability of new media originating in other States.²³

The response of the Romanian authorities departs from the terminology of the original Questionnaire. It is not entirely clear whether the references to “program grids” should read “EPGs”.

Analysis

According to their responses, on-demand services are (partly) available in minority languages in some States,²⁴ pending in others²⁵ and not available at all in a final set of others.²⁶ Similarly, EPGs in minority languages are reportedly (partly) available in some States,²⁷ but not in others.²⁸ In the digital environment, with its abundance of content, EPGs and other informational/navigational aides assume heightened importance for minority-language broadcasters insofar as they can be instrumental in ensuring the continued visibility of those broadcasters and their programme offer.

²² www.samit.no.

²³ See further, Q. 8, *infra*.

²⁴ Azerbaijan – Russian; Finland – Swedish; Switzerland.

²⁵ Germany – details of projected plans of one radio station in Sater Frisian.

²⁶ Poland – general.

²⁷ Azerbaijan – Russian; Finland – Swedish; Switzerland.

²⁸ Denmark; Poland – general.

An important point with potential relevance for other States was made in respect of the Dutch regional public broadcaster, *Omrop Fryslân*. While it does not have its own EPG, it does display information about its programmes on teletext and Internet. Furthermore, “Information about programs of *Omrop Fryslân* is also available as a part of nationwide used Internet sites (public and commercial) and on screen (digital cable)”. The point is important because it shows that there are other online possibilities for minority (language) broadcasters to effectively disseminate information about their programming output.

Possible best practices

The promotion of on-demand services and EPGs (or other effective methods for publicising relevant programming offers) in the languages of national minorities.

Question 6

What is the number of households with access to satellite digital television? Do the regions with compact minority populations differ from the average in terms of such access?

Methodological difficulties

A clear pattern emerges from the replies to this question, *viz.* only very limited information is available about access to satellite digital television generally and virtually none about access of minorities to satellite digital television (or access to satellite digital television in regions densely populated by minorities) specifically. Not only is the disaggregated information sought by the questionnaire simply not readily available in most States, a major impediment to its collection in some States (eg. Sweden) is the existence of non-discrimination legislation prohibiting the gathering of information that differentiates on the basis of ethnic origin. Furthermore, some of the data provided in the present responses by States is in the form of estimations and therefore not a fully reliable basis for analysis.

A final methodological observation is that where general information is available, it would be useful to convert the numbers of households into percentages of the population as this would allow for a more ready assessment of the importance of satellite digital television in national and regional media sectors.²⁹

Analysis

In light of the foregoing observations, it is not possible to conduct meaningful analysis of States’ responses to this question.

Possible best practices

N/A (this question seeks statistical data only)

²⁹ See also, Question 7, *infra*.

Question 7

What is the number of households with access to cable TV? Are any channels/programmes in languages spoken by persons belonging to national minorities transmitted via the cable network?

Methodological difficulties

As observed in respect of Question 6, *supra*, where general information is available, it would be useful to convert the numbers of households into percentages of the population (as some States have done) as this would allow for a more ready assessment of the importance of satellite digital television in national and regional media sectors.³⁰ The following table provides an overview of percentages (where provided by States in their responses).

State	% - Households	% - Population	% - TV Households
Czech Republic	20 (estimate)		
Denmark	60 (estimate)		
Finland	(almost) 60		
Germany		19.35	
Latvia	44.5		
Netherlands	94 ³¹		
Norway		40-50	
Slovak Republic	33 (estimate)		
Sweden			(approx.) 50

Analysis

From the above table, it is clear that cable television holds a position of considerable strength as regards the broadcasting of audiovisual content in Europe. Its sizeable share of the media market points up the importance of ensuring that channels/programmes in the languages of national minorities are carried via cable networks. Local cable networks (especially when they operate in areas where there are concentrations of persons belonging to linguistic minorities) are often considered particularly suitable for the carriage of such channels/programmes.³² Must-carry provisions can also be used to ensure the carriage of channels/programmes in the languages of national minorities, although the States' responses do not document specific examples of this. Some must-carry regulations govern the carriage of public service broadcast channels, thereby (indirectly) assuring that some programming in the languages of national minorities is carried via cable

³⁰ On occasion (eg. Bulgaria), statistical data has been provided about the number of cable operators active in a State (as opposed to the number of recipient households). While detailed, it renders meaningful comparisons difficult because like is not being compared with like.

³¹ Of which 20% are also subscribed to the digital programmes of their cable distributors.

³² Denmark.

networks.³³ The practice of transmitting foreign channels – in the languages of national minorities – is also mentioned.³⁴

Although sometimes patchy, the data provided in the States' responses indicates divergent practices as regards the presence of minority-language channels/programmes in cable networks: some States report the carriage of such channels/programmes by cable networks³⁵ and others state that no such channels/programmes are carried,³⁶ whereas a third group of States indicates that relevant/official/specific information is not available to them.³⁷

Possible best practices

Responses to this question by the Dutch, German and Slovenian authorities provide exemplary levels of detail about cable-carriage of channels/programmes in the languages of national minorities.

The Dutch response, for example, provides valuable information about the actual reach of the Frisian public regional service broadcaster: “One third of the habitants in Fryslân watch the Frisian public regional broadcaster (‘Omrop Fryslân’) every day (200.000). In one week the percentage reaches more than 50% and monthly Omrop Fryslân reaches almost 80% of all Frisians.”

It also gives details of the multi-platform presence of the broadcaster (a key strategy in its quest for prominence and effective transmission): “Omrop Fryslân is also distributed on satellite (since November 2006) and as a part of the digital offer of the cable networks all over the Netherlands. Some programs of Omrop Fryslân (radio / television) are also available on the internet site of the Omrop (live stream and ‘video on demand’). The national public broadcaster also broadcasts a selection of Frisian programs (in total 37 hours every year) produced by Omrop Fryslân. They also offer a selection of Frisian programs as part of their ‘video on demand’ service.”

It is interesting to note that in the Slovenian capital, Ljubljana, “cable television providers offer a free access – the subscription is covered by Republic of Hungary – to two Hungarian channels (Duna TV and MTV2, both are broadcasted via satellite), nevertheless, the users need to buy a decoder for them”.

Question 8

Do the “new media” initiatives on the part of the authorities involve transfrontier access of national minorities to the media, including in respect of “kin-state”? Have new media initiatives (e.g., digital television) had any negative effects on access of national minorities to the media caused by the disappearance of old media?”

³³ Bosnia & Herzegovina, Georgia, the Netherlands.

³⁴ Norway, Slovak Republic, Slovenia.

³⁵ Georgia, Latvia, Lithuania, Norway, Poland, Slovenia, Sweden.

³⁶ Italy.

³⁷ Lithuania (despite information provided), Romania, Sweden (information provided is based on “a search at the Internet”).

Methodological difficulties

It seems particularly important to separate the two sub-questions comprising Question 8 as they are not related.

Again, the patchy nature of the information provided by States authorities makes it particularly difficult to conduct a comprehensive comparison of national approaches.

Analysis

(i) Flowing from the last-mentioned methodological difficulty, States reported that in their new media initiatives:

- a transfrontier dimension was present and provided details of the same,³⁸
- a transfrontier dimension was present but failed to provide details of the same,³⁹
- a transfrontier dimension was not present,⁴⁰ or
- they were not in possession of relevant information.⁴¹

(ii) In all the States' responses to this Question, only one example was given of new media technologies having a negative impact on the access of national minorities to the media. The German authorities identified a number of problems that will result from digitization in respect of the reception of Danish broadcasts in Schleswig-Holstein:

- "Terrestrial broadcasting: Digitalization of terrestrial services in Denmark reduces the overspill to Schleswig-Holstein. Discontinuation of analogue terrestrial transmission in Schleswig-Holstein results in a reduction of the equipment available in the *Land's* households for analogue terrestrial reception so that analogue terrestrial programmes, which Denmark plans to continue to operate in parallel with digital terrestrial services, will *de facto* be received in Schleswig-Holstein on a constantly decreasing scale.
- Satellite: At the same time, direct reception of Danish programmes via satellite is rendered more difficult because the Danish broadcasters, unlike German broadcasting stations, encrypt their signals. For the reception of such programmes, smart cards are required, which can be obtained in Germany only with considerable input of effort, and against payment of 300 € per year.
- Cable: While Danish programmes are given priority in Schleswig-Holstein's cable systems, cable operators wishing to retransmit Danish programmes were faced with the problem that they would no longer be exempted from the payment of copyright royalties to the Danish broadcasters. In this regard, the aforementioned agreement provides a solution for the time being."

³⁸ Finland, Germany, Norway, Switzerland.

³⁹ Azerbaijan, (Netherlands), Ukraine (describes only relevant legal provisions, not actual practice).

⁴⁰ Czech Republic, Denmark, Georgia, Latvia, Poland.

⁴¹ Bosnia & Herzegovina.

Apart from these observations by the German authorities, there were no other references to actual or foreseen negative effects of the advent of new media technologies on the access of national minorities to the media. This could be taken to be corroboration of the aforementioned view that the introduction of new communicative technologies usually tends to be aggregative rather than substitutive.

Possible best practices

Possible best practices gleaned from the foregoing would centre on engagement by States authorities with the transfrontier dimension or at least a willingness to do so in the future (eg., pending specified technological developments such as the Norwegian authorities' stated commitment to encourage the establishment of a joint radio station for the Sami population in the various Nordic countries "once the digital network is developed" there).

Question 9

What is the status of possible plans as regards digitalisation of public service media and are there any specific concerns related to minorities and their access to digital media? Are there, for example, gaps in the coverage of the digital television network that particularly affect areas with compact minority population?

Methodological difficulties

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Analysis

Different States are at different stages in the digital switch-over process and it is not possible to detect any clear pattern in this respect (some States have already switched over from analogue,⁴² others are doing so on a phased basis, more still are pursuing a two-track approach (i.e., a more accelerated pace for commercial broadcasters and another for public service broadcasters)⁴³ and some remain in a preliminary or partial test phase⁴⁴). Notwithstanding the fact that States are at different points in the process, very few of them have flagged concerns about how any problems arising from the process might have particularly adverse effects on areas where there are concentrations of minority groups.

Some concerns were expressed about possible interruptions to reception due to technical or geographical complications. Technical difficulties could include the cost/availability of decoder

⁴² Finland, Netherlands.

⁴³ Germany.

⁴⁴ Poland, Bulgaria.

equipment,⁴⁵ whereas geographical concerns could include the quality or very possibility of reception in remote⁴⁶ or border⁴⁷ areas. Relatedly, if commercial media prioritise more lucrative urban markets over and above sparsely populated ones, “supply shortcomings” could result.⁴⁸ Comparatively lower standards of living and education were also cited in one reply as possible obstacles to access to the media.⁴⁹ The potential for such factors to disproportionately affect national minorities has been highlighted in the Slovenian response to Question 1, which warns that “there is a danger that older people (and socially weaker) will not be able to change to digital television” and that this “could especially affect the Hungarian minority, as well as the Italian, as the age pyramid of both minorities is considerably below the national average and show signs of distinctive ageing”.⁵⁰

Conversely, a couple of States reported that they had deliberately chosen areas with high concentrations of linguistic minorities as pilot or forerunner areas for the implementation of digital broadcasting,⁵¹ thereby allowing those areas to benefit sooner than others from superior quality services.⁵² Similarly, some States commenced Internet broadcasting in the languages of national minorities prior to the switch-over to digital terrestrial television.⁵³

The creation/existence of a separate budget line for public service broadcasters to develop new media services can prove advantageous for national minorities insofar as their interests are subsumed in those of the public service broadcaster.⁵⁴ A separate budget line can offer the security and scope needed to plan strategically on a multi-annual basis. This is particularly true of budget lines based on explicit extensions of public service broadcasters’ mandates to exploit new media technologies in the pursuit of their activities.

Possible best practices

The approach to the phasing-in of the digitisation of public service broadcasting in Germany merits attention. The commitment to simulcast in analogue and digital formats and only discontinue analogue broadcasting “when digital reception is possible for everybody on reasonable conditions”, will assure continuity of reception of public service broadcasting for all sections of the population, including persons belonging to national minorities, even during the transitional switch-over period.

Another possible best practice to avoid any disruption in reception of public service broadcasting in certain areas during or as a result of the switch-over to digital television is the contingency strategy devised by the Norwegian authorities. Whereas the envisaged digital television ground-network in Norway is required to cover 95% of the population, a solution was needed for households “situated

⁴⁵ Lithuania.

⁴⁶ Romania.

⁴⁷ Latvia.

⁴⁸ Germany.

⁴⁹ Romania (in respect of the Roma population).

⁵⁰ Similar issues are also addressed in Q. 12, *infra*.

⁵¹ Italy (Sardinia), Switzerland (first, Grisons and Tessin, to be followed by la Suisse normande and then la Suisse alemanique).

⁵² This was the reasoning employed by Switzerland.

⁵³ Sweden.

⁵⁴ The Netherlands.

in areas not covered by the digital ground network”. Those households “shall have the possibility to access the services of Norwegian public service broadcaster, NRK, through a satellite distribution service”.

Information and communication technologies (ICT)

Question 10

What instruments have been developed to promote the active use of new communication technologies by minorities?

Methodological difficulties

Unavailability of disaggregated data.

Analysis

Reported instruments and initiatives for the promotion of new communication technologies throughout society and the reduction of digital divides do not appear to typically include minority-specific components. However, the objectives of a number of the general instruments and initiatives mentioned by States in their replies to this question are often consistent with the more specific goal of promoting access to, and use of, new media by minorities, but in the absence of specific information about how they are implemented, it is difficult to gauge their effectiveness for minorities.

Possible best practices

In this context, a number of best practices can be identified, including the promotion of access to, and knowledge of, computers and Internet, in the education sector. A concrete example of a project with this aim is repeatedly referred to in the Georgian response to the Questionnaire: the so-called “Deer Leap” project for the development of computer and Internet skills in schools (through provision of equipment, connections and software, as well as training) throughout the country, including in regions with dense populations of minorities. Similarly, the Latvian response mentions a cooperative project involving governmental authorities, a Roma NGO and Microsoft to “support Roma training in the field of new technologies”.⁵⁵

Another noteworthy best practice involves the development of software in the languages of national minorities. Variants of such projects exist in a number of States, for example, in the Netherlands where there is a cooperative initiative between provincial authorities in Friesland and Microsoft to develop software in Frisian.⁵⁶

⁵⁵ The Lithuanian authorities also mention a project to provide computer classes for the Roma.

⁵⁶ For further examples, see Q. 3, *supra*.

Question 11

What policy measures have been taken (if any) with regard to ensuring the digital inclusion and the effective and affordable access to the Internet and other ICTs for minority populations?

To what extent are such policy measures based on (public) consultation exercises or other research aimed at ascertaining the needs and concerns of persons belonging to national minorities in the context of digital technologies?

Methodological difficulties

Unavailability of disaggregated/minority-specific data.

Analysis

See corresponding section for Q. 10.

Possible best practices

Certain States expressly mention that the formulation of relevant policy objectives, such as the creation of a sustainable Information Society with affordable Internet access for all, has been based on “public consultation mechanisms”.⁵⁷ One concrete example of the same is provided by Norway, where the national authorities engaged in dialogue with the Sami Parliament during the preparation of the White Paper, “An Information Society to all”.

Question 12

Are there any differences detected as regards access to broadband by persons belonging to national minorities compared to the majority population?

Methodological difficulties

Unavailability of relevant information.

Analysis

States did not identify any relevant differences in their responses to this question, either because they considered that no such differences existed or because they lacked relevant data. Two responses by States did, however, suggest that ease of access to broadband could be influenced by factors such as:

⁵⁷ Sweden.

(i) whether or not one resides in an urban environment or is economically well-off,⁵⁸ or (ii) gender, age, education, income, ethnic origin and disability.⁵⁹ However, as noted in the response by the Swedish authorities, it can be difficult to isolate individual factors and their particular impact on communicative practices: “it is important to remember that the different factors interact and strengthen one another and that the spreading of new media works in a different pace in different groups which complicates comparisons of this sort”.

In Bulgaria, a report (e-Bulgaria 2006) – itself a useful preparatory step for the introduction of digital broadcasting – does address the question lower levels of Internet usage by minority groups:

“Facilitating access of persons belonging to disadvantaged groups or ethnic, religious or linguistic minorities to digital services remains a challenge for policy makers, as data suggest that [internet penetration rates](#) among certain [ethnic groups](#) are 3 to 5 times lower than the average figures for the country. While the proliferation of new services in the business sector is considerable, and saturation has been reached there, their social potential still remains not effectively made use of. For instance, Internet access has only 2% of the Roma population, 5% of the ethnic Turks, and 8% of the Bulgarian Muslims, the average [Internet usage](#) for Bulgaria being 25%.”

Possible best practices

N/A (because the question primarily seeks statistical data and in the absence of any identified differences, it is difficult to come up with suggestions for best practices). However, it could also be added that once lower levels of Internet access for minority groups are detected, there is an onus on relevant public authorities, first to explain/contextualise the situation, and then to engage with the issue by devising appropriate measures to redress the imbalance. The Bulgarian response to the above-mentioned problem of Internet access is explained “mainly by the limited opportunities for persons belonging to these social groups for access to computers at home and/or at schools”. It is reportedly being addressed by the preparation of projects (by the Ministry of Education and Culture in conjunction with other bodies) to promote computer education in schools and also by the elaboration of a special strategy for the introduction of digital broadcasting which would include “measures to promote the access of persons belonging to minority groups to new communication technologies.”

Question 13

Describe what legal and other measures have been taken (if any) to effectively counter/combat “hate speech” or other illegal content which affects national minorities in ICTs.

Methodological difficulties

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⁵⁸ Serbia.

⁵⁹ Sweden.

Analysis

The responses provide by States to this question document a variety of standards and measures countering “hate speech” or other illegal content adversely affecting minorities in ICTs:

- Constitutional principles
- Legislative provisions (civil and criminal, including sanctions)
- Monitoring systems
- Self- and co-regulatory mechanisms
- Policy documents and measures
- Educational and awareness-raising strategies

The term “hate speech” can cover many different types of hateful expression, all of which are objectionable, but to differing degrees. Consequently, whereas some – particularly grave – forms of “hate speech” are often subject to proscriptions or penalties, other – comparatively less grave – forms of “hate speech” may be more appropriately and effectively countered by educational and inter-group communication strategies.

While the existence of constitutional provisions against “hate speech” is symbolically very important, the practical relevance of such provisions is best assured by their effective operationalisation through legislative or other measures. In turn, the effectiveness of the chosen operationalising measures largely depends on the rigour with which they are implemented in practice. Thus, interpretation, application and monitoring can be crucial. States’ responses reveal several interesting examples of multi-stakeholder approaches to the monitoring of relevant standards and measures.⁶⁰ Such approaches – if designed and conducted appropriately - could conceivably enhance the democratic legitimacy of the monitoring exercises in question.

Relatedly, the democratic legitimacy of law and policy can prove determinative of the effectiveness of relevant standards and measures in practice. Laws and public policy initiatives (eg. Action Plans against “hate speech” or racism) gain in credibility and legitimacy when they have been elaborated on an inclusive, consultative basis.⁶¹ The effective participation of minorities in relevant public consultative exercises is vitally important because minorities are typically the targets/victims of “hate speech” and racism. The practice of adopting and implementing successive Action Plans has the advantage of facilitating sustained strategic planning; offering regular structured opportunities to review objectives and practice and consolidate and build on accumulated experience.

Another central consideration in this context is whether existing standards and measures govern ICTs as well as the media that would be considered their traditional focuses. Three patterns emerge from States’ responses. First, certain standards and measures are formulated in a medium-neutral way and therefore presumably apply to all channels/means of expression, including ICTs.⁶² Second,

⁶⁰ Denmark, Latvia.

⁶¹ See, for example, the Slovak Republic.

⁶² Georgia, Serbia, Slovak Republic, Sweden.

some standards and measures have been amended in order to explicitly affirm the extension of their applicability to ICTs.⁶³ Third, in some cases, specific new measures have been adopted for ICTs.⁶⁴

Possible best practices

As already discussed in the context of Question 2, *supra*, comprehensive strategies for countering racism and “hate speech” are very much in line with the general approach taken by the Advisory Committee in its monitoring of Articles 6 and 9, FCNM. Comprehensive strategies are also suited to countering online racism and “hate speech” and, as already outlined, the adoption and implementation of specific action plans can be important prongs to such comprehensive strategies.⁶⁵ The establishment of Internet hotlines (as mentioned, for example, in the Polish response) enabling members of the public to notify ISPs or relevant public authorities of instances of “hate speech” online, can also be an important element in such comprehensive strategies. Multi-stakeholder monitoring and the structured sharing of information and experiences in context of educational initiatives (eg. as mentioned in the Swedish response) could be considered useful features of such comprehensive approaches to tackling online racism and “hate speech” as well.

Question 14

Describe what measures have been taken (if any) by public authorities when developing on-line public services (use of the Internet to facilitate participation in public affairs and democratic processes (e-democracy) at national as well as local and regional levels) to enable effective participation by persons belonging to national minorities?

Methodological difficulties

Lack of relevant information.

Analysis

Once again, the interrelationship and interdependence between different rights – freedom of expression and effective participation in democratic society – and the instrumentality of technology for their realisation in practice, are plain to see.

States’ responses indicate a tendency to ensure that the content of official/public authorities’ websites is (at least partly) provided in the languages of national minorities (at national level when the content relates to minorities⁶⁶ and at least at geographical levels where it is most relevant).⁶⁷ The

⁶³ Finland.

⁶⁴ See Question 2, *supra*.

⁶⁵ Poland, Slovak Republic.

⁶⁶ The Netherlands, Norway.

⁶⁷ Denmark, Lithuania, the Netherlands, Slovak Republic.

emergent practice of creating (open or thematic) discussion fora on official/public authorities' websites is also noteworthy.⁶⁸

Possible best practices

Further development of the emergent tendencies outlined in the foregoing analysis.

Question 15

Describe what measures (if any) have been taken to enable media professionals (including trainees/students) from national minorities to acquire the necessary skills for maximising their exploitation of new technologies, e.g. accessing government-held information online, use of technological innovations for various stages of content-production and distribution, etc.?

Methodological difficulties

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Analysis

As with other questions, States responses indicated that no measures have been adopted *specifically* concerning minorities *and* new media technologies; any relevant initiatives have tended to be general in character or not necessarily with the new media as their primary focus.

Possible best practices

Experience gained from successful training and educational initiatives relating to any of the focuses mentioned in the question could usefully be built on and combined with a view to devising more specific equivalents to further minorities' use of new media technologies.

Question 16

To what extent do strategies for the promotion of media literacy take the needs, interests and concerns of persons belonging to national minorities into account?

Methodological difficulties

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⁶⁸ Finland, Sweden.

Analysis

Again, it is evident from States' responses to this question that strategies for the promotion of media literacy are general in scope; very little information is provided about minority-specific focuses within the general promotional and educational strategies employed.

Possible best practices

The mainstreaming of media literacy in both regular educational cycles, but also in specialised training programmes for media students and professionals can be viable strategies for its promotion. Such practices are documented in the responses of some States. For instance, in Finland, media literacy has been included in mother tongue instruction in schools, thereby rendering it accessible to pupils with different linguistic backgrounds. Under the project, "Children and Media", with the backing of the Finnish Ministry of Education, a media education project specifically for Sami children has been designed. Such purpose-designed projects can effectively address any pertinent cultural, linguistic or other specificities of their target groups, thereby enhancing their likelihood of successfully meeting their stated aims.

As regards the mainstreaming of media literacy in media training programmes, in the Dutch province of Fryslân, the "provincial government believes that the subject 'multilingualism' (special attention for the bilingual situation in Fryslân) must be an integrated part of traineeships in the field of journalism and communication technology".

Question 17

Please give a short description of a project or activity already running in your country that might be considered as good practice in the field of new media and new ICTs with relevance for national or ethnic minorities.

The most noteworthy best practices in States' responses to this question have been selected and repositioned, according to theme, throughout the foregoing analysis of replies to Questions 1-16.

Conclusions & recommendations

The central conclusion of this report is that the media-related provisions of existing international instruments, in particular the FCNM and ECRML, offer a suitable legal basis for the promotion of access to, and use of, new media technologies by persons belonging to national minorities. However, it is evident from responses to the Questionnaire that the full potential of those treaty provisions has not yet been realised in State practice across Europe. The realisation of that potential will require more systematic engagement with relevant issues, both by States and the monitoring bodies of the FCNM and ECRML, than is presently the case. The observations presented in this report aim to contribute to the dynamic of dialogue between States and monitoring bodies by highlighting key issues and suitable strategies for advancing the communicative, cultural, linguistic, participatory and other rights, needs and interests of minorities.

Methodology & information-gathering

Central objectives of the Questionnaire were to establish to what extent:

- (i) general regulatory and other measures concerning new media technologies include specific provisions on national minorities;
- (ii) general regulatory and other measures concerning traditional media *also* apply to new media technologies *and* include specific provisions on national minorities.

Specific and general measures can be equally important for securing effective access to new media technologies for persons belonging to national minorities, but their actual importance can be difficult to assess if the extent of their applicability is not explicitly clarified. Thus, when listing relevant standards/provisions, States could usefully include indications of applicability and thereby avoid the need to assume or rule out the potential relevance of particular measures.

The information provided by States in response to the Questionnaire is often incomplete or fails to specifically address the intersection of minority rights and new media. This shortcoming re-emphasises the difficulty – already apparent from the regular State reporting systems – of obtaining such specialised information. A spread of public authorities deal with relevant issues from different angles and it often requires considerable effort to ensure a coordinated response to information requests concerning this interface. These logistical difficulties should be borne in mind and pro-actively addressed in future exercises of this nature, and especially in the context of regular State reporting systems.

When evaluating the impact of relevant regulatory and other measures, due regard must be had for the extent to which new media technologies are used in a given State generally. The merits of *both* regulatory *and* other measures to promote the access and use of new media by persons belonging to national minorities must be duly recognised as different types of measures may be better suited for the achievement of different goals in different States.

Whereas the preparation of this report has had to navigate several methodological difficulties due to the submission of information which did not consistently or directly answer the precise questions

posed, the information contained in the compilation of States responses is nevertheless of potential value for other information-mapping and processing purposes. It could therefore be useful for DH-MIN to undertake an examination of the collected information in order to ascertain the extent to which it supplements or updates information provided in the regular State reporting systems that are central to the monitoring of the FCNM and ECRML (i.e., including follow-up questioning and State visits).

DH-MIN should continue to draw the Questionnaire to the attention of, first and foremost, States authorities, but also civil society (organisations). The Questionnaire provides a useful inventory of issues on which additional or clearer information would be very welcome in the context of ongoing monitoring of the FCNM and ECRML.

Quantitative analysis

The quantitative analysis leads to four tentative conclusions:

- (i) the States which have ratified the European Charter for Regional or Minority Languages (in addition to the Framework Convention for the Protection of National Minorities, which has been ratified by all responding states) were found to be more active in positive promotion regarding new media. Thus, this instrument appears to have spin-off effects outside its more detailed scope of application, which is indeed in line with the spirit of this instrument.
- (ii) In Western Europe, regulatory measures regarding media contents were less present and voluntary codes were more in use, whereas in Eastern Europe the opposite was the case. This apparently reflects different traditions of civil society.
- (iii) The measures taken by the states with regard to national minorities in the field of new media are more often general than specific. There appears to be a need for greater attention particularly with regard to online “hate speech” and the development of effective and varied strategies for combating it (see further, below).
- (iv) There is little information about how new media has developed with respect to national minorities in states which have only recently started to develop digitalisation of television and broadband access to Internet. This development deserves close consideration in the future. Particular attention should be given to how public services by the authorities themselves are offered on new digital platforms.

These findings will have to be validated by further research as many states did not respond to this questionnaire and the replies from those states that responded were in many cases inconclusive.

Qualitative analysis

It is important to know whether public service broadcasters are actually mandated to pursue online activities or whether they are merely allowed to do so. The difference can be crucial insofar as it can

lead to targeted strategic planning and separate budget lines for pro-active development of relevant activities.

States responses reveal that a wide variety of measures and strategies are employed to counter “hate speech” and intolerance directed at persons belonging to national minorities, in new and old media alike. Various measures are often used in concert, in order to tackle the problem in different ways (civil remedies, criminal sanctions, longer-term educational and awareness-raising strategies for society in general and media professionals in particular, etc.). Such approaches are consistent with the approach taken by the Advisory Committee and Committee of Ministers in respect of Articles 6 and 9, FCNM, *viz.* to promote tolerance and intercultural dialogue and understanding, including via the media (McGonagle 2008).

Another key conclusion that emerges from States’ responses is the importance of ensuring that persons belonging to national minorities enjoy effective participation in law- and policy-making in the field of new media technologies, as well as in the monitoring and implementation of relevant standards. It is important – also in the interest of securing national minorities’ right to effective participation (another important focus of DH-MIN’s work) – that the voices of national minorities are heard at all stages of the regulatory and monitoring processes (McGonagle 2009 (forthcoming)).

Flowing from the previous conclusion, notwithstanding the fact that the States which responded to the Questionnaire have different levels of experience with new media technologies, engagement with the specific needs and interests of persons belonging to minorities is imperative at all stages. In this connection, the adoption and implementation of inclusively prepared Action Plans setting out strategies for promoting new media technologies can have a determinative impact on actual practice.

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