

22 THREE MODELS OF MINORITY MEDIA PARTICIPATION

A Brief Analysis of Language Related Prescriptions in National Media Laws

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22.1 INTRODUCTION

Language is key to any media, be it print, radio, television or other audio-visual media, since the content shall typically be conveyed in a written or verbal form. As such, language use requirements in the media shall in effect reorganize (enable or inhibit) access to media content. Consequently, language restrictions, prescriptions, quotas¹ and other rules governing language use in the framework of media services and products have a huge impact on the investment choices of media service providers as well as the exercise of fundamental rights and broadcasting possibilities of minorities.²

The present article aims to shed light on the variety of language rules enshrined in national legislation governing audio-visual media³ from a language policy perspective. The study will show, that national legislators often seek to regulate the language of audio-

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1 Oliver Castendyk, 'Article 4 TWFD', in: Oliver Castendyk, Egbert Dommering, Alexander Scheuer (Eds.), *European Media Law*, Alphen aan den Rijn, Wolters Kluwer (2008) 441.

2 In the following, I shall use the term 'minority' to refer to communities "that are dominated politically and economically by numerically larger communities within a particular state". The minorities referred to in the present article are linguistic minorities meaning that these communities share languages that are distinct from the 'national', 'state' or majority language, yet, in contrast with the concept put forward by Heller, according to which "linguistic minorities are created by nationalisms which exclude them", these linguistic minorities are not the constructions of the majority, nor are they necessarily "excluded". Monica Heller, *Linguistic Minorities and Modernity: A Sociolinguistic Ethnography*. Longman (1999), cited by: Mike Cormack, 'Introduction: Studying Minority Language Media', in: Michael J. Cormack, Niamh Hourigan (Eds.), *Minority Language Media: Concepts, Critiques and Case Studies. Multilingual Matters* (2007) 2 p.

3 "When dealing with the organization of minority language media, one of the clearest features is the clear-cut distinction between the press and the audio-visual media. The existence of newspapers and magazines dedicated to minority languages has almost always been left to the initiative of the linguistic groups themselves. (...) As far as audiovisual media are concerned, there is a distinctiveness in the European situation as most countries there opted for a public service broadcasting system. (...) [I]n order to ensure political and social cohesion, priority tends to be given to content with a common national culture background, thus leaving aside language diversity." Jacques Guyot, 'Minority Language Media and the Public Sphere', in: Cormack, Hourigan (2007) op. cit., 37 p.

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visual media services in order to attain certain language policy goals – which in turn, affect minorities present in the given state. Namely, language rules in media legislation may be used to ward off media content in an unwanted language, or to ensure access to certain media contents or air time for defined language groups for language policy reasons.⁴ In the complicated context of the European linguistic landscape, language prescriptions become the nation states' instrument of choice in the balancing act⁵ between economic interests, language policy choices as well as requirements set forth by international organizations.

In the following I shall briefly describe three different sets of audio-visual media policy rules governing language use in the media (Baltic states, Belgium, Finland). Next, I will use these examples to develop three models of minority participation in the national media. I will show that the models employed in the national media context depend heavily on national language policy goals. Subsequently, I analyse the individual models upon the backdrop of the 2013 OSCE Guidelines on the use of Minority Languages in the Broadcast Media⁶ in order to substantiate, that all three solutions meet the international standards of minority protection. Finally, I draw conclusions with respect to the need for further research into minority participation in the media from a language policy perspective.

22.2 LANGUAGE RULES IN NATIONAL MEDIA LAWS – SETTING THE SCENE

National media law evolved prior to and more or less independently of European legislation up until the nineties when it became obvious, that diverse national media rules constituted severe obstacles to the formation of an internal market of media products and services.

4 As such, a study of the language rules in the ambit of national media laws may be considered a showcase for the broader issues of media pluralism, describing but one possible front in “the war of values”. Ibid., 3 p. Further cleavages include intra-community as well as extra-community cultural and economic considerations. As regards the intra-community aspect, member states must abide by the country of origin principle when assessing broadcasting jurisdiction, yet, in case a broadcast is targeted ‘wholly or mostly towards its territory’, the member state may take restrictive measures against such broadcasts. To assess whether or not such broadcast was targeted wholly or mostly towards its territory, the member state may “refer to indicators such as ... the main language of the service” (AVMS Directive recitals 42-43). Language restrictions, such as European and national quotas may target extra-community threats. European media law is namely influenced by the European Union’s protectionist stance towards US cultural and economic dominance in the field of audio-visual products and services. By allowing for language restrictions in the field of broadcasting in the form of mandatory transmission times for European or national media products the European Union is making an effort to shield the budding European audio-visual industry from the overwhelming pre-eminence of American audio-visual products in the internal market. Margie Berns, Kees de Bot, Uwe Hasebrink (Eds.) ‘In the presence of English – Media European Youth’ (2007) *Language Policy* 3, 12, 30-31; Giuliana Muscio, ‘Sicilian Film Productions: Between Europe and the Mediterranean Islands’, in: William Uricchio (Ed.), *We Europeans? Media, Representations, Identities; Intellect* (2003); 183.

5 Cf. Ewa Komorek, *Media Pluralism and European Law*, Wolters Kluwer (2013), 2 p.

6 www.osce.org/hcnm/32310?download=true.

The limitation inherent in early media services also contributed to the fact that national media laws evolved in somewhat of an isolation,⁷ albeit developing into vague but converging models of regulation (e.g. ‘liberal’, ‘democratic corporatist’, ‘polarized pluralist’,⁸ and, according to Jakubowicz, ‘post-Communist’).⁹

Yet, in part, the differences between national media laws¹⁰ are owed to the singularity of the societies they serve. As Keller points out, “national media regimes are (...) unique. Each one is shaped by the extraordinary mix of language, culture, religion, geography, and much else that is distinctive to each locality.”¹¹ By enacting language rules in the ambit of media law, states pursue different political, social and cultural goals,¹² while at the same time, must be mindful of their respective obligations under international law. In respect of using language rules in the framework of media law in order to achieve language policy goals we may distinguish between rules promoting the use of the majority language in national media (22.2.1), rules securing the status quo between different language groups (22.2.2) and rules promoting minority language use (22.2.3).

22.2.1 Rules Promoting Majority Language Use (Baltic States)

Language rules geared at privileging the official language in the national media are best illustrated by the Baltic states, where special demographic and linguistic circumstances appear to substantiate a strong focus on media services in the titular language. Druviete reminds that

7 Perry Keller, *European and International Media Law: Liberal Democracy, Trade and the New Media*, Oxford University Press (2011); 200-201 p.

8 David C. Hallin, Paolo Mancini, *Comparing Media Systems. Three Models of Media and Politics*, Cambridge University Press (2004); 11 p.

9 Karol Jakubowicz, ‘Media Systems in Post-Communist European Countries’, in: Georgios Terzis (Ed.), *European Media Governance: National and Regional Dimensions*, Intellect Books (2008); 29-39 pp. For a complete categorization, see also: Johannes Bardoel, ‘Conclusions: Converging Media Governance Arrangements in Europe’, in: Georgios Terzis (Ed.), *European Media Governance: National and Regional Dimensions*, Intellect Books (2008); 46 p.

10 One marked commonality of European national media is highlighted by Browne: “Most of the (...) European PSB monopolies were slower (...) to serve their respective countries’ linguistic minorities (...). They generally remained unilingual until the 1970s. (...) Most European countries did not have national and local commercial services until the 1980s or even 1990s, and few afforded opportunities for linguistic minority broadcasters.” Donald R. Browne, ‘Speaking Up: A Brief History of Minority Languages and the Electronic Media Worldwide’, in: Cormack, Hourigan (2007) op. cit. 113 p.

11 Keller (2011) op. cit. 54 p: “Each member state of the Council of Europe has its own unique mix of ethnic groups and its own conceptions of citizenship and belonging.” Perry Keller, ‘Re-thinking Ethnic and Cultural Rights in Europe’, *Oxford Journal of Legal Studies* 18 (1998) Spring; 32 p.

12 Protocol (No. 29) on the system of public broadcasting in the Member States, attached to Treaty on European Union OJ [2012] C 326/312. Komorek (2013) op. cit. 2 p.

Baltic countries represent a unique case, probably not taken into consideration when universal declarations on linguistic human rights were written. Their situation shows that the linguistic human rights of state language speakers can also be infringed and that the official state language in an independent country may be an endangered language at the same time.¹³

As Van Elsuwege points out,

the restoration of the Baltic states' independence, back in 1991, brought about a number of political and legal challenges. The presence of large non-titular communities in Estonia and Latvia has proven to be the most pressing of these.¹⁴

Indeed, according to data cited by Ozolins, due to migration (promoted by the Soviet Union)¹⁵ the proportion of titular nationals dropped to 52 percent in Latvia¹⁶ and 61.3 percent in Estonia, respectively.¹⁷ During the socialist regime, the official soviet policy regarding the equality of languages notwithstanding, the dominant position of Russian in

13 Ina Druviete, 'Linguistic human rights in the Baltic States', *International Journal of the Sociology of Language* 127: 1997; 183 p. "Russian is thus a majorized minority language (a minority language in terms of numbers, but with the power of a majority language), whereas the Baltic languages are minorized majority languages (majority languages, in need of protection usually necessary for the threatened minority languages)." Tove Skutnabb-Kangas, 'Linguistic human rights in education. Language policy in the Baltic States', Conference papers (1994); 178 p.

14 Peter Van Elsuwege, 'Russian-Speaking Minorities in Estonia and Latvia: Problems of Integration at the Threshold of the European Union', *ECMI Working Paper # 20*, April 2004; 1 p.

15 "There is no other region in the world that has survived such massive and forced ethnodemographic changes during such a short period of time. Following the Soviet-German Non-Aggression Pact and its Secret Protocols, most Germans left Latvia and Estonia in 1939, and Lithuania in 1941, for Germany. Soviet troops, consisting of more than 250,000 soldiers and officers, were stationed in the Baltic States. In June, 1941, the first deportation of about 130,000 Baltic people to Siberia and the northern parts of the USSR took place." Druviete (1997) op. cit. 164 p.

16 "[T]he general perception among ethnic Latvians about the Soviet legacy at the time of Latvian independence was that it had left them vulnerable to national extinction, as they barely made up 50 percent of the whole population." Malmöf (2006) op. cit. 123 p.

17 The proportion of Lithuanians remained virtually unchanged (around 80 percent), Uldis Ozolins, 'The Impact of European Accession upon Language Policy in the Baltic States', *Language Policy* 2:2003; 218 p. According to data from 2008, the ratio of Estonian- and Russian-speaking citizens was the following: Estonian – 921 817 people (67.3%), Russian – 406 755 people (29.7%). Country Report – Estonia. Estonian Ministry of Education and Research. www.coe.int/t/dg4/linguistic/Estonia_CountryReport2008_EN.pdf (2008) 17 p.

the public and even private sphere,¹⁸ together with the immense demographic changes led to a situation of asymmetrical bilingualism, or diglossia.¹⁹

After regaining their independence,²⁰ Baltic states grappled to introduce language policies²¹ “preserving the titular languages and ensuring their competitiveness, (...) combating ‘linguistic Darwinism’.”²² An important element of such language policies was to counteract the dominance of Russian²³ and to reassert the status of their titular languages, also with a view to ‘integrating’ the Russian-speaking population, who had to pass, among others, language proficiency tests in the titular language to acquire the citizenship of their Baltic state of residence.²⁴

In the 1990s Baltic States introduced new language laws²⁵ that effectively “dethroned Russian as the principle language of political and public life”,²⁶ and enshrined the status of state language in their respective Constitutions.²⁷ As regards the area of media law, both Estonia and Latvia introduced language restrictions solely in the ambit of the electronic

18 “[E]xperts ultimately consider Russians to be a privileged nation, as many national elites were replaced by Russian migrants, in spite of the constitutionally established equality of nations and languages, ‘demography and Soviet policies have made Russian the dominant language.’ Valeria Jakobson, *Role of the Estonian Russian-language Median in the Integration of the Russian-speaking Minority into Estonian Society* (Academic Dissertation) 2002; 11 p.

19 “Russians remaining largely monolingual, while non-Russians needed to become bilingual to function at any level in the Soviet system.” Ozolins (2003) op. cit. 218 p: [A] clear domination of one language, and gradual suppression of another.” Boris Tsilevich, ‘Development of the Language Legislation in the Baltic States’, *International Journal on Multicultural Societies* Vol. 3, No. 2, 2001; 137 p.

20 “Even before the very idea of independence appeared explicitly on the public agenda, the Supreme Soviets (Soviet-time parliaments) of three Baltic states had adopted special declarations assigning Estonian, Lithuanian and Latvian languages the status of ‘state language’ for the corresponding republics.” Furthermore, special language laws were adopted in all three Baltic countries in 1989: the Language Law of the Estonian SSR adopted 18 January 1989, the Decree on the Lithuania. SSR Official Language Usage adopted 25 January 1989 and the Republic of Latvia Language Law adopted 5 May 1989. These laws essentially had a dual nature: while the aim of asserting the position of the newly re-established state languages was more than apparent, the role of Russian, the official language of the then superior state structure, had to be secured in order to avoid an overly hostile reaction from the Moscow authorities, who still maintained at that moment control over the situation in the Baltics.” Tsilevich (2001) op. cit. 139 p.

21 “Baltic language laws, strengthened after independence, required [among others] measures promoting the national languages in broadcasting, publication and public life.” Ozolins (2003) op. cit. 218 p.

22 Tsilevich (2001) op. cit. 150 p.

23 Ozonlins op. cit. 218 p: “Domination by the Russian language gave rise to widespread concerns about the ‘imminent extinction’ of Latvian, and slogans aimed at the protection of language were actively supported by a great majority of ethnic Latvians.” Tsilevich (2001) op. cit. 138-139 p.

24 Druvieta (1997) op. cit. 169-170 p.

25 Estonian Language Act (1995); Lithuanian Law on the State Language (1995), Latvian State Language Law (1999). Tsilevich (2001) op. cit. 138 p. For further details, see: Bartóki-Gönczy Balázs: Államnyelvek Európában. Kisebbségkutatás 2014:4. www.hhrf.org/kisebbssegkutatas/kk_2010_04/cikk.php?id=1889#sdfoot-note23anc.

26 Sue Wright, ‘Editorial’, in: Sue Wright (Ed.), *Language Policy and Language Issues in the Successor States of the Former USSR*, Multilingual Matters (2000), 3 p.

27 “Article 14 of the Constitution of the Republic of Lithuania, Article 6 of the Constitution of Estonia and Article 4 of the Satversme – Constitution of Latvia.” Tsilevich (2001) op. cit. 140 p.

media, the Estonian Language Act prescribing the translation of foreign language broadcasts.²⁸ Although radio broadcasts aimed at foreign language audiences are exempted from this requirement, the situation of television is different, with the Language Act limiting the volume of foreign language programmes without translation to a maximum of 10 percent of the volume of weekly production on all Estonian TV channels.²⁹

As regards language requirements in Latvia, distinction is made between private and public media. Foreign language broadcasts on private radio and television channels were limited to 25 percent of total daily broadcasting until the Constitutional Court declared this provision null and void in 2003.³⁰ In the field of public service broadcasting, “the first channel must broadcast exclusively in the state language, whereas the same law allows for up to 20 percent of broadcasting in minority languages³¹ on the second channel.”³² Otherwise, with minor exceptions, foreign language films and television broadcasts must be subtitled, dubbed or provided with voice-over in Latvian.³³ As Tsilevich points out,

the restrictions placed on radio broadcasting are particularly detrimental as, in contrast to television broadcasting where a compromised solution can be achieved through dubbing or subtitling (...), no technical means of translation are available for radio broadcasts.³⁴

28 Art. 25 of the Estonian Language Act. Tsilevich (2001) op. cit. 146 p.

29 Art. 25 para. 4 of the Estonian Language Act. Tsilevich (2001) op. cit. 147 p. At the same time, the Country Report on Estonian Language Education Policy contends that “the press is predominantly Estonian-based, 21 but Russian-language media is also supported by the state (for example the Russian language news programme *Aktuaalne Kaamera* broadcast on the national TV channel (ETV) of the Estonian national broadcaster, the national Russian-language Radio 4 and newspapers and magazines. National TV channel 2 (ETV2) also intends to broadcast multilingual programmes).” Country Report – Estonia. Estonian Ministry of Education and Research. www.coe.int/t/dg4/linguistic/Estonia_CountryReport2008_EN.pdf (2008) 19 p.

30 Section 19 of the Latvian Radio and Television Law of 1995. www.policy.hu/myagmar/Latvia_Radio_and_TV_Law.PDF; Judgement of the Constitutional Court of the Republic of Latvia, Case No. 2003-02-0106, 5 June 2003. Boriss Cilevič: Language Legislation in the Baltic States. In: Matthias Koenig, Paul de Guchteneire: Democracy and Human Rights in Multicultural Societies. UNESCO Publishing/Ashgate (2007); 176 p.

31 While the Estonian legislation enshrines the notion of minorities, Latvian law has failed to include provisions on such a status. Although “Russia and Latvia-Russians have (...) assumed that the latter should automatically be given the status of a national minority”, Latvia contends that the Russian-speaking community is an immigrant group with regard to whom instruments of international law promoting minority rights are not applicable. Tomas Malmöf, *The Russian Population in Latvia – Puppets of Moscow?* FOI – Swedish Defence Research Agency (2006), 123-124 p.

32 Tsilevich (2001) op. cit. 147. “Of the annual broadcasting time, 20 per cent may be allocated to broadcasts in the languages of the State ethnic minorities, including in such broadcasting time also films and theatrical performances sub-titled in the Official language.” Section 62 para. 3 of the Latvian Radio and Television Law of 1995. www.policy.hu/myagmar/Latvia_Radio_and_TV_Law.PDF.

33 “[E]xcept live broadcasts, re-transmissions, broadcasts to foreign countries, news and language instruction broadcasts.” Section 19 para. 4 of the Latvian Radio and Television Law of 1995. www.policy.hu/myagmar/Latvia_Radio_and_TV_Law.PDF.

34 Tsilevich (2001) op. cit. 147.

In Latvia, violation of these language rules have resulted in fines and temporary suspensions of broadcasting licenses by the National Radio and TV Council.³⁵

Although initially reaping serious criticism from international organizations including the European Union,³⁶ the OSCE has found “no evidence of persecution of the Russian-speaking minorities in the Baltic States.”³⁷ Yet the integrationist efforts of language rules in the national media may fail to yield the desired results. An analyst of the Russian language media in Latvia warns that

[m]edia in Latvia are creating a separate information space for Latvian- and Russian-speaking people. Taking the long view they might actively contribute to the creation of a divided state, consisting of a Latvia-Russian and a Latvian community.³⁸

Other commentators point out that taking into consideration the fact that the proportion of Russian-speaking population fluent in Estonian does not even amount to 14 percent,³⁹ “it is not surprising that the Russian-speaking population of Estonia is oriented to Russian TV-channels.”⁴⁰

35 Tsilevich (2001) op. cit. 147.

36 Ozolins (2003) op. cit. 217 p.

37 CSCE Annual Report 1993; 109. “In 1993, the then CSCE HCNM, Max van der Stoep, made his first visit to Estonia and Latvia and reported on his findings. His report was not the damning indictment Russia had hoped for; on the contrary, while expressing some concerns over language matters, he echoed all previous reports in finding ‘no evidence of persecution of the Russian-speaking minorities in the Baltic States.’” Gabrielle Hogan-Brun, Uldis Ozolins, Meilutė Ramonienė, Mart Rannut, ‘Language Politics and Practice in the Baltic States’, in: Robert B. Kaplan, Richard B. Baldauf (Eds.), *Language Planning and Policy in Europe: The Baltic States, Ireland and Italy* (2008) 88 p.

38 Malmöf (2006) op. cit. 122 p.

39 Van Elsuwege (2004) op. cit. 4 p. This low proportion of persons fluent in Estonian in the Russian-speaking community seems to mark a failure of integrationist language policies, in particular in the light of the much cited survey conducted 10 years earlier by William Maley and Richard Rose showed that the majority of the affected community disagreed with the statement that its members “should not be made to learn a Baltic language.” Hogan-Brun et al. (2008) op. cit. 90 p. “Estonian has the status of an official language and it should be possible to use it in every sphere of life and in throughout Estonia. The actual situation is somewhat different. There are regions in Estonia in which the inhabitants are monolingual (Russian) who have no knowledge or insufficient knowledge of Estonian.” Country Report – Estonia. Estonian Ministry of Education and Research. www.coe.int/t/dg4/linguistic/Estonia_CountryReport2008_EN.pdf (2008) 20 p. It is worth noting that “in Estonia (...) there are important differences within the Russian-speaking minority. The older generation ‘would prefer media only in their language, and in this use would lean on media from Russia’. The younger generation, however, view their identity as more complex, tied not only to the Russian language, but also to the Estonian community in which they live. For this generation, then, local media will be of greater interest than imports from Russia.” Jacqueline Mowbray, *Linguistic Justice: International Law and Language Policy*, Oxford University Press (2012) 79 p.

40 Jakobson (2002) op. cit. 17-18 p.

22.2.2 *Rules Preserving the Status Quo between Different Language Groups (Belgium)*

In the 19th century, Belgium was conceived as a unitary state, yet early on, apparent cleavages “split Belgian society in at least two parts (...): Dutch-speaking Flemings felt discriminated against by French-speaking Walloons and the upper class.”⁴¹ This conflict was as much political as it was linguistic. With the escalation of the language problems and the rise of the Flemish movement, the 1970s saw important reforms;⁴² indeed, the decentralization of public broadcasting paralleled the devolution from a unitary state to a federal polity.⁴³

Today, Belgian media legislation and, in particular, the structure of Belgian media are oriented towards preserving the delicate status quo between the three language groups indigenous to the Kingdom.⁴⁴ Belgium is a federal state organized around its linguistic communities: the Dutch-speaking Flemish Community (Vlaamse Gemeenschap),⁴⁵ the French-speaking Wallonia (Région wallonne),⁴⁶ and the German-speaking community (Deutschsprachige Gemeinschaft),⁴⁷ plus a bilingual capital city. Puusinen and Akdogan point out that “the most important characteristic of the Belgian media is that each community has its own media in its own language.”⁴⁸ According to Belgian federal law, competences regarding culture, information, press and audio-visual matters pertain to the communities.⁴⁹ Since 1988 communities are solely responsible for media regulation, establishing and operating supervisory bodies.⁵⁰ Consequently, there are three separate public broadcasting

41 Victor Sampedro Blanco, Jan Van den Bulck, ‘Regions vs States and Cultures in the EC Media Policy Debate: Regional Broadcasting in Belgium and Spain. Media’, *Culture & Society* (1995), 242 p.

42 *Ibid.*, 243 p.

43 Leen d’Haenens, Frédéric Antoine and Frieda Saeys, ‘Belgium. Two Communities with Diverging Views on How to Manage Media Diversity’, *The International Communication Gazette* 71 (2009) 1-2; 51 p. “Regional decentralization of broadcasting in Europe has (...) been permeated by strong political and cultural reasoning.” Sampedro Blanco, Van den Bulck (1995) *op. cit.* 241 p.

44 “Language planning in Western countries like Belgium can in reality be better defined as the stabilization of the differences in social and economic power in the country, combined with a regional and often ethnic differentiation.” Mattias Hartig, ‘The Language Situation and Language Policy in Belgium’, in: William R. Beer, James E. Jacob (Eds.), *Language Policy and National Unity*, Rowman & Allanheld (1985) 72 p.

45 Approximately 55-60 percent of the total population of Belgium. Liina Puustinen, Itir Akdogan: Mapping Media and Communication Research: Belgium. Communication Research Centre, University of Helsinki Department of Communication, Research Reports 7/2008; 8 p.

46 Approximately 44 percent of the total population of Belgium. *Ibid.*

47 Approximately 0.5 percent of the total population of Belgium. *Ibid.*

48 Puustinen, Akdogan (2008) *op. cit.* 12 p.

49 Marc Lits, ‘Media in Belgium: Two separate public opinions’, in: Dave Sinardet, Marc Hooghe (Eds.), *Is democracy viable without a unified public opinion? The Swiss experience and the Belgian case*, Re-Bel e-book 3 - June 2009; 46 p.

50 Vlaamse Regulator voor de Media (VRM) for the Flemish Community and Conseil Supérieur de l’Audiovisuel (CSA) for the French Community. Bart Van Besien: Belgian Media Law: overview of main acts and regulations. <http://siriuslegaladvocaten.be/en/belgian-media-law-overview-of-main-acts-and-regulations/>

companies⁵¹ in Belgium,⁵² while the privately owned and operated single national news agency, *Belga* also maintains two independent editorial departments for the two major language communities.⁵³

Besides the complete separation of broadcasting services as a structural factor, linguistic, technical⁵⁴ and control measures also contributed to the isolation of,⁵⁵ in particular, the Flemish media landscape. While the RTBF “opted for a policy of complementarity with the French channels rather than attempting to compete with them”,⁵⁶ Flemish broadcasting rules effectively shielded the Flanders media market from unwanted content, with the government possessing the power to order cable companies to stop transmitting signals from undesirable channels.⁵⁷

Although the media laws of the different constituent communities include certain provisions on language,⁵⁸ the most important instrument guaranteeing the status quo between the communities is the structure of the Belgian media landscape which was formed by affording exclusive rights to the communities to regulate their media. This structural

(30/07/2014). Els de Bens, ‘The Belgian Media Landscape’, in: Georgios Terzis (Ed.), *European Media Governance: National and Regional Dimensions*, Intellect (2007) 80 p; Sampedro Blanco, Van den Bulck (1995) op. cit. 243 p. d’Haenens et al. (2009) op. cit. 51 p.

51 “There are three public service broadcasting companies in Belgium: RTBF for the French-speaking community, VRT for the Dutch-speaking community together with the small Belgian Broadcasting and Television Centre (BRF), established for the German speakers in the country, who are concentrated in eastern Wallonia.” Puustinen, Akdogan (2008) op. cit. 15 p; Lits (2009) op. cit. 46 p. It is important to note, that not only the public broadcasting companies, but also private broadcasters adhere to “the same linguistic separation”. Van Besien (2013) op. cit. For a comprehensive categorization of regional television broadcasting models including the Belgian model, see: Sampedro Blanco, Van den Bulck (1995) op. cit. 240-241 p.

52 Originally, broadcasting in Belgium followed the unitary structure (1930), with one director and two ‘language directors’ which were soon reorganized into two subdirectorates (1936) and later, into two institutes (1960) broadcasting to the Dutch- and the French-speaking language groups (BRT and RTB). Sampedro Blanco, Van den Bulck (1995) op. cit. 243 p.

53 de Bens (2007) op. cit. 78-79 p.

54 Besides broadcasting to the different communities through separate institutes and in different languages, the technical choices taken by these institutes also contributed to the isolation of the viewership: standard television sets were unable to receive both signals. Sampedro Blanco, Van den Bulck (1995) op. cit. 243 p.

55 “There is no Flemish newspaper with significant sales figures in French-speaking Belgium, and almost no French language newspaper with significant sales figures in Flanders.” Van Besien (2013) op. cit. “The media of one community do not have any audience from the other communities.” Puustinen, Akdogan (2008) op. cit. 12 p. See also: Rudi Janssens, ‘Language use in Brussels and the position of Dutch. Some recent findings’, No. 13, 2008 January the 7th Brussels Studies. www.briobrussel.be/assets/andere%20publicaties/en_51_brus13en.pdf, 11 p.

56 d’Haenens et al. (2009) op. cit. 64 p.

57 Sampedro Blanco, Van den Bulck (1995) op. cit. 244 p.

58 Flemish Act on Radio and Television Broadcasting of 27 March 2009, Arts. 154, 155, 157 and 186 para. 2 item 2; (the German-speaking Community’s) Decree of 3 December 2009 amending the Decree of 27 June 2005 on Radio Broadcasting and Cinema Presentations, Art. 12 para. 3 item; the Walloon Decree of 26 March 2009 on audiovisual media services Art. 4 para. 3, Art. 43 para. 3, Art. 53 para. 2 item 1 lit c-d, Art. 61 paras. 3-4.

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design is inherently linguistic in nature,⁵⁹ since it provides for a segregation along linguistic lines,⁶⁰ preserving monolingual media in the different communities and preventing any form of integration.⁶¹ If anything, maintaining the status quo has been so successful, that there is a risk that the segregation of the media will undermine national unity.

22.2.3 Rules Promoting Minority Language Use (Finland)

Finland is a relatively new country: before the 19th century, it formed part of Sweden, only to be attached to Russia until its secession following the Bolshevik Revolution in 1917.⁶² Owing to its history and demographic situation, the largest linguistic minorities in Finland are the Swedish-⁶³ and Russian-speaking minorities, as well as the Roma and the Sami.⁶⁴ This is captured in Section 17 of the Constitution of Finland, which designates Finnish and Swedish as the national languages⁶⁵ and foresees special rights for the Sami and the Roma.⁶⁶ The privileged position of Swedish⁶⁷ may be gleaned from the provision according to which “the public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an *equal basis*.”⁶⁸

59 “There are States, like Belgium, where the architecture of society and the architecture of language are intermeshed.” Tarlach McGonagle, Bethany Davis Noll, *Monroe Price: Minority-Language Related Broadcasting and Legislation in the OSCE*, April 2003; 7 p.

60 Van Besien (2013) op. cit.

61 Ulrike Vogl, Matthias Hünig, ‘One Nation, One Language? The Case of Belgium’, *Dutch Crossing* 34 (2010) 3; 227, 244-245 p.

62 Karmela Liebkind, Marika Tandefelt, Tom Moring, ‘Introduction: why a special issue on the Swedish-speaking Finns?’, *International Journal of the Sociology of Language* 187/188 (2007), 1-2 p.

63 “The Swedish-speaking population has continuously decreased in both absolute and relative terms from the time Finland became independent in 1617. The language group, which in those times made up some 14% of the population of the country, today is about 5.4%.” Vincze László, ‘Language Minorities and New Media: Facing Trilingualism? Language Minorities and New Media: Facing Trilingualism?’, in: *European Yearbook of Minority Issues* 9:2010, Martinus Nijhoff Publishers (2012); 381 p.

64 According to 2001 data, 92.27 percent of the Finnish population are Finnish native speakers, 5.6 percent are Swedish speakers, the Sami amount to 0.03 percent, while Russian-speakers make up 0.6 percent of the total population. McGonagle et al. (2003) op. cit. 192, 196 p. The Sami population in Finland represents almost 10 percent of the entire Sami population scattered across Norway, Sweden, Finland and Russia. Cf. Sari Pietikäinen, ‘Broadcasting Indigenous Voices. Sami Minority Media Production’, *European Journal of Communication* 23 (2008) 2; 175 p.

65 The Constitution of Finland (131/1999), Section 17 – Right to one’s language and culture. In its Section 1 the Finnish Language Act (423/2003) reiterates.

66 Ibid. “The Sami, as an indigenous people, as well as the Roma and other groups, have the right to maintain and develop their own language and culture.”

67 “[T]he Swedish language group in Finland can be considered as being strong in status and institutional support, but weaker when it comes to demography. Being one of Finland’s two national languages, Swedish has high status.” Vincze László, Tom Moring, ‘Towards Ethnolinguistic Identity Gratifications’, in: Elin Haf Gruffydd Jones, Enrique Uribe-Jongbloed (Eds.), *Social Media and Minority Languages – Convergence and the Creative Industries*, Multilingual Matters (2013) 49 p.

68 Ibid.

While according to the Section 7 Paragraph 4 of the Act on Television and Radio Operations the Finnish public service broadcaster is obliged

to treat in its broadcasting Finnish and Swedish speaking citizens on equal grounds and to produce services in the Sami and Romany languages and in sign language as well as, where applicable, also for other language groups in the country,⁶⁹

no such provisions apply to private sector broadcasting. Since Swedish-speaking citizens are to be treated equally in broadcasting, YLE (Yleisradio), the Finnish public service broadcaster maintains two Swedish radio channels, while the YLE's two television stations broadcast Swedish programmes produced in the YLE Swedish production centre on a daily basis.⁷⁰ In 2001 the YLE also introduced FST kanalen, a Swedish television station.⁷¹ Since the YLE is required to produce services also in the Sami and Romany languages,⁷² it broadcasts in the Sami language⁷³ in cooperation with Norway and Sweden,⁷⁴ and "caters to a limited extent for speakers of Russian⁷⁵ and Romany."⁷⁶

69 Act on Television and Radio Operations (744/1998).

70 Amit Schejter, Juraj Kittler, Ming Kuok Lim, Aziz Douai, Murali Balaji, "Let's go down, and there confuse their language, that they may not understand one another's speech:" Developing a Model for comparative Analysis and Normative Assessment of Minority Media Rights', *Global Media Journal* 6 (2007) 10; 12 p.

71 Ibid.

72 The involvement of the state is essential – albeit fraught with compromises – since minorities often lack the resources to establish and operate their own audiovisual media. "The development of [minority language] television was very slow because of the high costs of production and transmission, as well as the practice on the part of many nations to broadcast through a single national outlet with modest if any regional or local production. That worked against the interest of linguistic minorities, many of which were (and still are) living in specific locales, and thus weren't 'nationally prominent'. It also discouraged the creation of local [minority language] television services. (...) The decreasing cost of TV equipment and the development of 'access television' channels in many of the industrialized nations also helped numerous linguistic minority groups to express themselves through TV, often through weekly or less frequent programs, from 30 minute to 1 hour, that emphasized cultural aspects of their lives." Donald R. Browne, Enrique Uribe-Jongbloed, 'Introduction: Ethnic/Linguistic Minority Media – What their History Reveals, How Scholars have Studied them and What We might Ask Next', in: Elin Haf Gruffydd Jones, Enrique Uribe-Jongbloed (Eds.), *Social Media and Minority Languages – Convergence and the Creative Industries*, Multilingual Matters (2013); 4 p. See also item 16 of the OSCE Guidelines on the use of Minority Languages in the Broadcast Media of October 2003.

73 While initially, as of 1938 Sami radio programs were broadcast in slots within the Finnish service, later, a Finnish Sami radio within YLE was also developed. Sami television news programs and children's programs have also been launched in the new millennium. For further details, see: Sari Pietikäinen, Helen Kelly, 'Gifting, service, and performance: three eras in minority-language media policy and practice', *International Journal of Applied Linguistics* (2011) 55, 59 p. and Pietikäinen (2008) op. cit. 176 p.

74 McGonagle et al. (2003) op. cit. 198 p.

75 Launched in 1999, Radio Sputnik is a commercial, entirely Russian language radio channel broadcasting 24 hours a day. Ibid.

76 Ibid. 192 p.

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The Åland Islands, an autonomous region with a Swedish-speaking majority, enjoys special privileges in the field of audiovisual legislation and even has its own public service broadcaster, Ålands Radio och TV Ab operating a radio channel and producing television programs.⁷⁷ The 1991 Act on Autonomy of Åland affords the Islands the right to grant operating licenses,⁷⁸ while the Provincial Act on Broadcasting on the Åland Islands (117/1993) grants Åland the right to levy its own license fees.⁷⁹

As Vincze and Moring note,

in comparison to its modest size in Finland, the media landscape at the service of this small population is quite rich (...). With regard to mainstream media supply, the landscape available in Swedish is thus almost institutionally complete.⁸⁰

The abundance of media services rendered in particular to the Swedish-speaking citizens stems from the constitutional provision that puts Swedish at an equal footing with Finnish, obliging the state to make equal effort in catering to the cultural needs of the Swedish language group in Finland.⁸¹

22.3 THREE MODELS OF MINORITY PARTICIPATION IN THE NATIONAL MEDIA

Based on the three solutions of minority participation in the national media, we may distinguish between models of Integration, Separation and Emancipation.

The Baltic solution typically operates with maximum quotas to suppress broadcasting in languages other than the national 'majority' language, with the public service broadcaster intended to serve the integrationist language policy goal of the state. Restrictive rules on language use in the media clearly mirror the subordinate status of minority languages and the preponderant position of the national language.

In the case of Belgium, besides certain language rules contained in regional legislation governing audio-visual broadcasting, the most important instrument for maintaining the status quo between the linguistic communities is structural separation. The equal status of the regional languages goes hand in hand with the virtually complete separation of the affected communities both territorially and in the area of audio-visual broadcasting.

77 Ibid. 197 p.

78 Act on Autonomy of Åland (1144/1991), Section 18 para. 20: "Åland shall have legislative powers in respect of (...) 20) the postal service and the right to broadcast by radio or cable in Åland (...)."

79 Mary Kelly, Gianpietro Mazzoleni, Denis McQuail, *The Media in Europe: The Euromedia Handbook*, Sage (2004); 61 p.

80 Vincze, Moring (2013) op. cit. 49 p.

81 Ibid.

Finland elevates Swedish to the status of national language in complete equality with the majority language of Finnish. The Finnish Constitution foresees the equal treatment of Swedish language and its speakers in social and cultural terms, which prompted the national public service broadcaster to dedicate sufficient air-time to Swedish language programs and to establish an entirely Swedish television station. The special position of the Åland is also considered by affording wide reaching competences to the Islands in the field of regulating and licensing audio-visual broad-casting in its territory. As such, the Finnish model seeks to contribute to the full emancipation of the Swedish-speaking community.

Table 22.1

	Baltic States	Belgium	Finland
Status of minority's language	• — •	• •	• •
	National language		National languages
	Minority language	Regional languages	
Type of language rules	Maximum quotas	Structural separation	Equal treatment
Language policy goal	Integration	Separation	Emancipation

22.4 EVALUATION OF NATIONAL MEDIA RULES AFFECTING MINORITY LANGUAGE USE IN LIGHT OF THE OSCE GUIDELINES

Besides more general international obligations and recommendations,⁸² perhaps the most elaborate provisions designed to orient national media and language law legislation with respect to minorities is the OSCE Guidelines on the use of Minority Languages in the Broadcast Media of October 2003. Although a soft-law source, the Guidelines are the most recent relevant document specifically focusing on minorities and audio-visual media. Building on provisions stemming from other documents promoting minority rights, the Guidelines incorporate signatories' obligations under the International Covenant on Civil and Political Rights, the European Convention on Human Rights as well as the relevant provisions of the European Charter for Regional and Minority Languages and the Frame-

82 International Covenant on Civil and Political Rights, Art. 19; 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Art. 1 paras. 1-2; European Convention on Human Rights, Art. 10; The Framework Convention for the Protection of National Minorities, Arts. 6 and 9; the European Charter for Regional or Minority Languages, Art. 11. From the area of soft-law: OSCE Oslo Recommendations on the Linguistic Rights of National Minorities, Art. 9.

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work Convention for the Protection of National Minorities. The Guidelines set detailed requirements for governments seeking to

ensure the maximum opportunities for all those within their jurisdiction, including persons belonging to national minorities, to access the media and impart and receive information, including in their own language.⁸³

According to item 3 of the Guidelines (Protection of Identity),

all persons, including persons belonging to national minorities, have the right to maintain and develop their identity, including through the use of their language(s), in and through the broadcast media.

In particular, states should establish and maintain public service broadcasting among others to cater to the cultural needs of national minorities and where possible, facilitate minority language broadcasting (item 7). All three of the analysed media regimes supported public service broadcasting, albeit serving the national minorities to a different degree. While in Finland, YLE is geared towards equally meeting the needs of the Swedish-speaking population and even set up FST kanalen, the television station for the Swedish national minority, in Belgium, the constituent language groups all maintain their own public service broadcaster with certain rules on language quotas. In the Baltic states, public service broadcasting shall take place in the national language, with maximum quotas (Estonia) and prescriptions for subtitling, dubbing (Latvia). Although the Advisory Committee on the European Framework Convention “raised concerns about (...) minimum quotas for content in official or national languages; requirements for programmes in minority languages to be subtitled or translated into an official languages”,⁸⁴ according to item 10 of the Guidelines (Promotion of Languages), states may choose to promote selected languages. This however, “should not restrict the use of other languages”, furthermore, “States may not prohibit the use of any language in the broadcast media.”

Indeed, the considerable freedom recognized by international organizations with respect to the Baltic states in shaping their media policy may be explained by the specific situation of their respective national languages and the perceived threat of extinction due to the pressure of the dominant Russian language. Such circumstances are duly considered under item 11, which foresees considering specific factors, such as “the existing political, social (...) context, including cultural and linguistic diversity, (...) and regional characteristics.”

83 OSCE Guidelines on the use of Minority Languages in the Broadcast Media of October 2003; 3 p.

84 E.g. ACFC Opinion on Ukraine (30 May 2008), ACFC/OP/II(2008)004, paras. 21, 131-136, 139. Quoted by: Jacqueline Mowbray; Mowbray (2012) op. cit. 77-78 p.

The latter provision also explains the structure of Belgian public broadcasting and language quotas, which mirrors the regional characteristics and socio-political context of the state.

According to item 12, “minority language broadcasting should not be subject to the imposition of undue or disproportionate requirements for translation, dubbing, postsynchronisation or subtitling.” The Baltic states strive to *restrict* foreign language broadcasting through quotas, translation requirements (subtitling, dubbing, voice-over), pursuing a language policy goal deemed “essential to the survival of small cultures”.⁸⁵ By contrast, subtitling rules under the Finnish media law much rather seek to *enable* persons with visual or hearing impairment to access public service programs or ‘programs in the public interest’ broadcast in Finnish or Swedish.⁸⁶ The latter holds true for the respective Flemish rules endeavouring to make, in particular, news programs accessible to the visually or hearing impaired.⁸⁷ That is, Finnish and Flemish rules do not foresee the translation of the programs broadcast, but merely the use of subtitling or other instruments for the benefit of persons living with disabilities. Finally, as regards state support and capacity building for minority language broadcasting (items 14, 17) and access to broadcasting through the allocation of frequencies and program scheduling (item 15) is primarily met by Finnish media requirements, which promote Swedish and Sami language broadcasting through public service channels.

22.5 CONCLUSIONS

The present article is a brief attempt to sketch the outlines of the possible models for minority participation in the national media. More research is needed to discern the commonalities and distinctive features of national media laws dedicated to implementing language policy aims. As Moring notes

in international media research, focus was for many decades on ethnicity, race and class. (...) However, the question of language has had a less prominent position and it has often been set aside altogether, particularly in the very influential research that has been carried out in the English-speaking part of the world.⁸⁸

85 Uldis Ozolins, ‘Between Russian and European Hegemony: Current Language Policy in the Baltic States’, in: Sue Wright (Ed.), *Language Policy and Language Issues in the Successor States of the Former USSR*, Multilingual Matters (2000), 7 p.

86 Section 19 a of the Act on Television and Radio Operations (744/1998).

87 Art. 151 of the Flemish Act on Radio and Television Broadcasting of 27 March 2009.

88 Tom Moring, ‘Functional Completeness in Minority Language Media’, in: Cormack, Hourigan (2007) op. cit. 18 p.

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Thus, in particular, the issue of how the territoriality or non-territoriality of minorities affect their possibilities for media participation, deserves attention.⁸⁹

Yet what seems to be apparent already from the brief analysis presented above, is that there is no ‘one size fits all’ solution for minority participation in the national media. For as Guyot stresses,

each state represents a specific historical construction, which means that the laws passed to allow minority language expression are different from one country to another and determine the way minority languages are taken into account in the media.⁹⁰

As it is clear from the OSCE Guidelines, the underlying political, social, cultural and linguistic context must be given due consideration,⁹¹ including the actual needs⁹² of the minority community affected by the national legislation in order to arrive at a workable solution that may hold up under international scrutiny. National media rules conforming to the given political and cultural factors may arrive at a successful solution in line with international minority protection standards and the specific needs of the affected minorities.

89 Cf. Jacques Guyot, ‘Minority Language Media and the Public Sphere’, in: Cormack, Hourigan (2007) op. cit. 42-43 p.

90 Ibid., 35 p.

91 OSCE Guidelines on the use of Minority Languages in the Broadcast Media of October 2003; item 11.

92 “Reading through the Advisory Committee’s Opinions, it is difficult to escape the feeling that there is something mechanical about this analysis: the relevant groups are identified and then the Committee enters into a discussion of how many hours of television and radio, how many newspapers are available in the language of that group. Differentiation between and within these groups, in terms of their needs for minority language media, tends not to be discussed.” Mowbray (2012) op. cit. 79 p.