NOTE

on

Changes Made to the Draft Law for the Republic of Belarus "On Television and Radio Broadcasting" (Draft by the Belarussian Association of Journalists)

by

ARTICLE 19
Global Campaign for Free Expression

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I. Introduction

In November 2004, ARTICLE 19 published a Memorandum ("November Memorandum") in which we analysed a previous draft version of "On Television and Radio Broadcasting" ("previous Draft"), produced by the Belarussian Association of Journalists. Shortly thereafter, along with an expert from the Council of Europe and various other experts and interested parties, we met with the drafters to discuss our recommendations for changes to the previous Draft. The result of those discussions is a new draft ("current Draft") which, we are very pleased to say, has adopted most of the changes we had recommended. In this Note, we set out very briefly (in Section II) the positive changes as represented in the current Draft; and we proceed (in Section III) to an analysis of provisions of the current Draft which, in our view, still could be improved.[1]

The November Memorandum contains, in addition to the detailed analysis of pertinent provisions of the previous Draft, a description of applicable international law and standards relating to freedom of expression in the specific context of broadcasting. It also contains an account of those provisions of the Belarussian Constitution which

[1] ARTICLE 19 accepts no responsibilities for errors or inaccuracies in the analysis below attributable to mistranslation.

bear on the rights of broadcasters. We incorporate those sections of the November Memorandum into this Note by reference.

II. Positive Changes

We very much welcome the following innovations and additions contained in the current Draft:

- As to the Advisory Monitoring Council on Television and Radio Broadcasting ("Council"):
    - Provision for staggered terms for members, and a limit on the number of terms possibly served (Article 34);
    - Clearer rules of incompatibility for membership on the Council (Article 33) (but see Section III.1.b below);
    - Provision of clear termination conditions for members of the Council which, to a considerable degree, insulate them from interference in their work (Article 40) (but see Section III.1.d below);
    - A provision for funding of the Council, including for salaries for members (Article 42);
    - Responsibility of appealing to courts and other public bodies to protect the rights and interests of broadcasting organisations and those using the information services of such organisations (Article 35);
    - Provision of a graduated range of penalties which the Council can mete out in the event of misconduct by broadcasters (insuring, to some degree, proportionality of such penalties) (Article 37);
    - Responsibility for monitoring and reacting to situations in which inappropriate interference with the activities of broadcasters occurs (Article 38);
    - Increased obligations on the Council to render its activities open to public view, including the obligation to submit detailed annual reports to parliament (Article 41), and the holding of open hearings where punitive actions are being considered (Article 37);
- Provision for the enumeration of frequencies for radio and television, by the Ministry of Information, and the development of a frequency plan by the Council (Article 22);
- Provision for the inclusion of financial data, including financial plans, for applicants for broadcast licenses (Article 23); clearer specification of the types of information to be disseminated in the context of tenders for licences (Article 24); and the possibility for applicants to cure minor defects in application materials (Article 23);
- Creation of a rebuttable presumption in favour of the renewal of broadcast licences (Article 27);
- Clarification that election coverage must be fair and impartial (Article 10);
- Elimination of the requirement, contained in the previous Draft, that cable broadcasters obtain "permissions" to carry out cable broadcasts (Article 30);
- Inclusion of significant new and largely positive articles governing commercial advertising and sponsorship (Articles 12-17); and
- Removal of many problematic references to other laws, particularly with respect to the regulation of content (but see comments below relating to election coverage and to anti-monopoly legislation).

All these changes are welcome, and they contribute to a stronger draft Law than that represented by the previous Draft. At the same time, we continue to have some concerns with the current Draft, as we describe below.

III. Analysis of Certain Provisions of the Current Draft

1. Matters relating to the Council

a. Procedures for membership on the Council

Article 33 of the current Draft governs the process by which the Council is to be formed. This article is a substantially redrafted version of Article 26 of the previous Draft.

Subarticle (1) provides that the Council will be comprised of "9 members and 6 candidates", to be elected by the parliament. Subarticle (3) provides that "republic non-political public associations, professional and creative unions shall nominate no more than one candidate from each organisation",[2] for consideration by the parliament as potential Council members. Finally, Article 33(5) provides that "candidates to the membership" of the Council may be reimbursed their expenses, but will work "on the basis of a social service".

Analysis

While it appears to us that the drafters have devoted attention to our comments in the November Memorandum relating to the process for the appointment of members to the Council, we continue to have some doubts about the process.

First, the article appears to draw a distinction, not present in the previous Draft, between "members" and "candidates", without explaining what the distinction amounts to, or what its significance is. Article 33(5) reinforces the idea that this is a substantial distinction, as it appears to imply that "members" are paid a salary (this is confirmed by Article 42(2)), while "candidates" are not paid at all. Article 34(3), too reinforces this idea, by appearing to envisage that candidates are implicated in the rotation system. Because this distinction is new and unclear, we strongly recommend that it be developed in substantial detail, including specifying what the duties, rights and responsibilities of candidates are.

Second, we note that, by the terms of this article, the nominating organisations are intended to put forward candidates *from their own organisations*. We believe that this is somewhat inappropriate. The independence of Council members, ideally, is an independence not just from government, but from all undue sources of pressure: such members are charged, in their individual capacities, with oversight of the broadcasting system to ensure that public interest and public good are maximised. Yet, when candidates are put forward by organisations *from their own ranks*, there is every chance that such candidates will be thought of, and will think of

[2] We are informed that the phrase "republic non-political public associations" is intended to refer to NGOs. In the event that this is not perfectly clear in the original, we recommend that the point be made quite explicit, to avoid any possible suggestion that any "association" affiliated with government may put forward candidates for membership on the Council.

themselves as, *representing their organisations, rather than the public as a whole*. This, as we have just suggested, is the wrong model.

It is preferable, therefore, that nominating organisations not be obligated in any way to put forward candidates from within their own organisations. Rather, their charge should be to find the very best candidates possible, those candidates indeed with the characteristics specified in Article 33(2). (Of course, there should be no *bar* prohibiting organisations from nominating persons from within their own ranks, when such persons appear independently to have the requisite qualifications.)

Recommendations:

- The distinction between members and candidates, employed in Article 33(1), should either be removed, or should be developed with sufficient clarity.
- Article 33(3) should drop the requirement that candidates be drawn from the organisations which have put them forward.

b. Membership conditions

Article 33(4) disqualifies as possible members of the Council: foreign citizens, members of parliament, high-ranking members of public bodies, officials of internal affairs bodies, persons who have been declared incapable or who are "serving their sentences or who have been sentenced", as well as persons involved in the administration of any broadcasters or who have financial interests in such broadcasters.

Analysis

While this list of disqualified persons is somewhat broader in scope than that found in the previous Draft, there are still some difficulties, not only of underinclusion (as in the previous Draft), but of overinclusion as well.

First, as noted in the November Memorandum, *any elected or appointed official should be disqualified from Council membership*, at least during the time of their election or appointment. While the expanded list in the current Draft reaches some elected or appointed officials, it does not reach all of them, and should be redrafted accordingly.

Second, while (as noted in the November Memorandum) persons convicted of violent crimes or a crime of dishonesty should not be eligible for five years after their convictions, we believe that the disqualification of any person "serving a sentence" reaches too broadly. To take just a single example, it could serve to keep persons involved in the mass media who have merely violated certain content restrictions which are themselves in violation of international law from serving as Council members.

Recommendations:

- Any elected or appointed official should be disqualified for Council membership for the duration of his or her election or appointment.
- With respect to the commission of crimes, only those persons convicted within the previous five years of a violent crime or a crime of dishonesty should be disqualified from Council membership.

c. The complaints system

Article 36 contains a much-expanded complaints system. Subarticle (1) provides that legal persons and individuals "who believe their rights and legal interests have been violated" by activities of broadcasters may submit complaints to the Council. Subarticle (2) provides that the Council may hear such complaints *or* that it "shall submit them to the corresponding public bodies, bodies of local self-government, public associations" for decisions to be taken upon them by such bodies. Three-member panels of Council members are to consider those received complaints which the Council elects to consider in-house; reports by these panels are to be submitted to the entire Council at open sittings, which representatives of both sides of the complaint may attend. Finally, and as already noted in Section II, the Council is empowered (by Article 37) to hand down a graduated range of penalties, ranging from warnings to fines to license revocations; it is also empowered to require offending broadcasters to broadcast "refutations".

Analysis

By and large, we welcome this more fully elaborated system of complaints; we welcome particularly the system of graduated penalties which appears to be sensitive to the need to protect broadcasting freedom and to ensure that penalties are proportionate to harms done.

However, Article 36(2), in our view, has the substantial possibility of undermining the hard-won independence of the Council and its members, albeit indirectly. That subarticle appears to *require*, but in any case to permit, the Council to refer certain complaints to "corresponding public bodies", without giving indication in any way when, or under what circumstances, such referrals would be made. Once made, however, the subarticle appears to contemplate that the public bodies in question would make a decision with respect to the complaint. By the terms of this subarticle, therefore, the Council might be able to refer complaints regarding objectionable content (as broadly defined in new Article 5 – see below) to a prosecutor or other law enforcement office; it might be able to refer a complaint regarding the financial viability of a broadcaster to a taxing or other authority; and so on. Yet, as the drafters are fully aware, such bodies cannot be expected necessarily to render objective and independent judgments; to the contrary, there is reason to fear that they could employ the powers implicitly vested in them by this subarticle to harass broadcasters of which they merely disapprove. Accordingly, we strongly recommend that this power to refer out complaints be removed from the current Draft.

Recommendation:

- Article 36(2) should be rewritten to prohibit the Council from referring any complaint within its remit out to any other public body.

d. Suspension and termination of Council members

Article 40 governs the suspension and termination of Council members and candidates; it is a substantially expanded and revised version of Article 26(7) of the previous Draft (which deferred the development of termination conditions to some to-be-developed regulations). Specifically, subarticle (1) provides for the termination of a member or candidate, inter alia, if a guilty verdict has been entered against such person "concerning the compulsory measures of medical character"; if

such person has not been able over a 6-month period to carry out his/her obligations due to such person's "state of health"; or if such person "carries out activities incompatible with" membership in the Council.

Article 40(3) provides that, where a vacancy in the Council has occurred, it should be filled within three months in accordance with the provisions of the current Draft and with the Rules of Procedure of the Council.

Analysis

A minor point first: we are unclear as to the precise meaning of the phrase "concerning the compulsory measures of medical character". We speculate that this might refer to a finding of medical incapacity of a member or candidate; in that event, however, we wonder whether the fourth provision for termination, based on "state of health", might not cover this situation as well. In the event that the former provision means something else, we would urge the drafters to supply clarification.

A much more fundamental problem arises with respect to the final termination condition: that a member or candidate may be terminated if he or she "carries out activities incompatible with" membership. The problem here is that the quoted phrase is extremely vague; with such vagueness in place, the serious possibility arises of members or candidates being terminated for clearly inappropriate reasons, and for political influence to be smuggled into the process. Accordingly, we strongly reiterate our recommendation in the November Memorandum that a termination of a member or candidate be permitted only when such person "(a) no longer meets the rules of incompatibility; (b) commits a serious violation of his or her responsibilities, as set out in the law, including through a failure to discharge those responsibilities; or (c) is clearly unable to perform his or her duties effectively".

Finally, the current Draft should resolve an ambiguity contained in subarticle (3). That subarticle refers both to the Council's Rules of Procedure as well as to the provisions of the current Draft as the source of the means by which vacancies shall be filled. While it may be appropriate for certain Rules of Procedure to apply, for example, with respect to the means by which nominating organisations and parliament are to be notified of the existence of vacancies, the current Draft should be revised so that it is perfectly clear that the rules of the appointment process, as set out in Article 33, apply as the only substantive rules relating to the appointment of new members.

Recommendations:

- The phrase "concerning the compulsory measures of medical character" should be substantially clarified; alternatively, the provision containing that phrase should be removed.
- The final termination condition in Article 40(1) should be removed and replaced with a provision containing the content indicated in the text.
- Article 40(3) should be revised to provide explicitly that the appointment of a member to fill a vacancy shall be strictly in accordance with the appointments procedure set out in Article 33.

e. Denials of licenses

Article 26 sets out conditions under which the competition committee may refuse to issue a license. Certain of these conditions are unobjectionable; however, the article also includes the following disqualifying conditions:

- The coming into force of a "verdict of guilty" against an applicant;
- The institution of legal proceedings to declare the applicant bankrupt.[3]

Analysis

We note, in the first place, our assumption that Article 26 effectively sets out conditions which would disqualify an applicant *from being considered* by the competition committee. We recommend, at any event, that the article make this clear, if this is its intent.

Second, a point made just above is also applicable here, with respect to the disqualification of any applicant as to which a verdict of guilty has come into legal force. This condition is far too broad, permitting the disqualification of applicants for minor infractions unrelated to their ability to carry out responsible broadcasting, or perhaps for infractions of content regulations even where the regulations are impermissible under the international law of freedom of expression. Moreover, as written, this disqualification is not related only to *recent* serious offences; an applicant, even if fully rehabilitated and otherwise fully qualified to be a broadcaster, may be prohibited from becoming one for a crime committed decades earlier. To remedy these shortcomings, we recommend that this disqualification apply only with respect to guilty verdicts occurring within the preceding five years, for serious crimes (i.e., violent crimes and crimes of dishonesty).

Third, the disqualification condition relating to the initiation of bankruptcy proceedings is problematic for two different reasons. In the first place, if the initiation of proceedings is truly justified, that will be because the applicant's financial situation is in fact significantly problematic; but if that is so, the applicant would in any event be disqualified because it would lack "financial resources to carry out the broadcasting", as provided by the sixth point under Article 26(1). In the second place, it is well recognised that governments may initiate bankruptcy proceedings, which plainly have no merit, simply to harass broadcasters (and others) of whom they disapprove. The mere initiation of such proceedings should not, on its own, justify the disqualification of applicants for licences, therefore.

Recommendations:

- Article 26 should specify, if that is the intent, that the conditions it sets out disqualify applicants from being considered in licence competitions.
- The "verdict of guilty" disqualification should be amended along the lines indicated in the text.
- The bankruptcy-related disqualification should be removed.

[3] A further condition is if granting of a licence to an applicant would violate applicable anti-monopoly legislation. This provision will be unobjectionable provided that the national anti-monopoly legislation is unobjectionable, so far as broadcasting is concerned. As noted below, we do not have sufficient information to be in a position to make the latter judgment, however.

2. Certain content restrictions

Article 5 creates certain "standards of broadcasting". The previous Draft did not contain a provision that swept nearly as broadly.

Subarticle (1) provides that "television and radio programmes, their presentation and content should provide respect to human dignity and to the basic rights of other people". Subarticle (2) prohibits, inter alia, the "attract[ion of] the excessive attention to the scenes of violence", and the "humiliat[ion of] national honour and dignity. Subarticle (4) forbids the use of "veiled insertions, affecting the subconsciousness of people or damaging their health", and subarticle (5) requires broadcasters to "provide accurate broadcasting of facts and events in the news programmes and encourage the freedom of formation of opinions and their expression".

Analysis

While we do not doubt that these provisions have been drafted in good faith to ensure quality broadcasting in the public interest, each of them (that is, each of the ones listed in the previous paragraph) is drafted in terms sufficiently vague that they are subject to considerable abuse by officials intent on controlling content in favour of the status quo.

Specifically:

- The injunction that all broadcast programmes to "respect human dignity and the basic rights of other people" is too broad, and is not sufficiently sensitive to the vast array and variety of programmes that should be available in a country or region.[4] For example, programmes of political satire may well be regarded by certain officials, perhaps even by members of the Council, as not respecting the dignity of the targets of the satire; yet such programme content should, of course, not be discouraged, let alone banned. A general requirement for all programmes to respect human dignity and human rights, moreover, may suggest that all programmes must, to some degree, *concern themselves with these themes*, whereas, in fact, much desirable programme content may fall outside these matters altogether. The proper place for encouraging respect for human dignity and human rights is in voluntary codes of conduct which would be undertaken by broadcasters themselves, rather than through any type of government regulation.
- Subarticle (2)'s proscriptions are also problematic due to their vagueness. For example, it is quite unclear what it is to "attract excessive attention to scenes of violence": by terms, it would be not be forbidden to attract *some* attention to violence, but not *excessive* attention. With no indication of how to measure when attention would be excessive, this prohibition would effectively leave

[4] We note that there is a potential ambiguity, at least in the English translation, which might make the criticism here inappropriate. Article 5(1) says that broadcasters *should* provide respect for human dignity and basic rights. As such, this subarticle may not in fact set out a *requirement* on broadcasters; instead, it may only set out the drafters' *wish* that they promote and disseminate such materials. To the extent that Article 5(1) is not intended to be binding on broadcasters, we would withdraw the main criticism of it in the text. In that event, however, we would recommend that the subarticle be redrafted, if necessary, to make it explicit that it does not lay down a genuine legal duty on broadcasters.

members of the Council or other officials (including courts) with no means of determining when subarticle (2)'s proscription has been violated.

- The prohibition on humiliating national honour and dignity presents a related but potentially more serious problem. It is our view that only individual human beings have the kind of honour and dignity which can be "humiliated" by the exercise of freedom of expression; and, therefore, nations and their representatives, as such, should not be protected from any such alleged "humiliation". Moreover, even if this view is rejected in its full form, it is well documented that provisions of this sort are subject to great abuse by officials whose only interest is to stifle any form of political critique or comment whatsoever, other than comment in favour of the powers that be. For both these reasons, therefore – that is, because nations cannot be humiliated, and because prohibitions on humiliating nations are regularly used to stifle legitimate dissent – it is of particular importance that this provision be removed from the current Draft.
- Similar concerns of overbreadth apply to subarticle (4), relating to "veiled insertions". No doubt, *governments* may be guilty, in their operation of state-run media, of employing such media to affect the subconscious minds of the citizens whom they wish to control. Equally, however, a government bent on stifling criticism and dissent, and to controlling a free press more generally, would easily be able to employ such a vague provision to allege that virtually any "objectionable" content whatsoever fell its ambit, and should therefore be banned. Again, being subject to such considerable abuse, this provision should be removed from the current Draft.
- Finally, it is certainly true that broadcasters should "provide accurate broadcasting of facts and events in news programmes," and any reasonably self-regulatory code would include such a provision. However, it is quite another thing to have such a provision in a *law regulating broadcasters*. Officials, including courts, were they so minded, could employ such a provision to penalise broadcasters who, through no fault of their own, and despite their best efforts, end up broadcasting erroneous information in their news programmes. With the potential for liability for publishing responsibly materials which may turn out to be false, broadcasters may be expected to "steer clear of the forbidden zone", with the predictable consequence that much news of great public interest will end up not being broadcast.

Recommendation:

- The requirement "to respect human dignity and the basic rights of other people", though a worthy *goal*, should be removed as a *requirement* on broadcasters[5];
- Article 5(2)'s reference to attracting "excessive attention to the scenes of violence" should be removed and replaced with a clearer and narrower restriction;
- The prohibition on humiliating national honour and dignity should be removed;
- Articles 5(4) and 5(5) should be removed.

[5] But see the caveat in note 3.

3. Advertising provisions

As already noted, the newly-drafted advertising provisions are in general unproblematic, and seem well designed to serve the public interest. Of some concern, however, are the following provisions:

- Article 14(2) prohibits "veiled advertising"; and Article 14(3) prohibits advertising by "regular news and current events reporters". These provisions present different, but related problems. In the former case, it is simply unclear what would constitute "veiled" advertising; in the latter case, as applied to radio at least, it is unclear why such a prohibition should be in force, particularly where it is unlikely that the voices in question would be recognised as those of news or current event reporters. In both cases, we would suggest that consideration be given to drafting rules applicable to broadcasters by which they would signal more generally which content is advertising and which is not. With such rules in place, provisions like Articles 14(2) and 14(3) would be rendered unnecessary.
- Article 16(2) makes impermissible any advertising which "pays special attention to the content of alcohol in any drinks". This provision is overbroad. It would prohibit, for example, an alcohol advertiser setting out a *warning* as part of its advertising strategy, that the alcoholic content of certain drinks render them unfit for certain at-risk consumers. We recommend the removal of this provision.

Recommendations:

- Articles 14(2) and 14(3), and Article 16(2) should be removed from the current Draft.

4. References to other laws

Article 6 provides that radio and television broadcasting shall "be carried out" in conformance with the current Draft and "other legislative acts adopted on its basis".

Additionally, Article 8, prohibiting "monopolisation" in broadcasting, provides that detailed regulation on this matter "shall be regulated by anti-monopoly legislation of the Republic of Belarus in the sphere of mass media".

Analysis

While Article 6 is welcome as far as it goes, in providing that the current Draft and *subsequent* laws based on it shall be the source of regulation for broadcasting, it may not go far enough. A further subarticle should be added, relating to any other *existing* provision of law which is inconsistent with any provision of the current Draft: the subarticle should stipulate that any such inconsistent provision is inapplicable to broadcasters.

Regarding Article 8, we note that the phrase "in the sphere of mass media" has been added to the former article of the previous Draft, apparently acknowledging the point we made in the November Memorandum that anti-monopoly provisions need to be specifically tailored to the context of the mass media, including broadcasting. What is not clear, however, is whether Article 8 envisages that a new anti-monopoly law be created, or that a new section of the existing anti-monopoly law be added, which is specifically tailored to the unique situation of broadcasters. Regardless, we would

recommend that Article 8 make explicit that anti-monopoly provisions indeed need to be drafted with the specific context of broadcasting in mind.

Recommendations:

- Article 6 should provide that any existing legislative provisions with potential application to broadcasters do not apply to broadcasters in the event that their application would be inconsistent with any provision of the current Draft.
- Article 8 should explicitly call for the development of anti-monopoly provisions specifically relating to broadcasting.

5. Coverage of election campaigns

Article 10 generally is welcome, as noted, insofar as it specifies that election campaign coverage must be fair and impartial. However, Article 10(1) goes on to provide that all citizens must be granted the right "to freely discuss the election programmes, political, business-like and personal qualities of the candidates, as well as the issues submitted to the referendum".

Article 10(2) retains the main gist of the formulation from the previous Draft, to the effect that the coverage of elections campaigns and referenda "shall be regulated by the election legislation of the Republic of Belarus".

Analysis

The precise import of the Article 10(1) language quoted above is unclear. While we do not doubt that the intentions behind the provision are good, the fact remains that it is consistent with obligations being imposed on even commercial broadcasters to provide broadcasting time to citizens to discuss election programmes, candidates, and the like. Of course, it is quite uncontroversial that citizens do have the right to discuss these things, but such a provision in a *broadcasting law* carries with it the suggestion that citizens have the right to command air time from broadcasters to have these discussions. But it would be quite inappropriate, at least with respect to non-public broadcasters, to vest a right in all citizens to that effect.

As to the reference to the national election legislation, we repeat the point we made in the November Memorandum, that we are unfamiliar with such legislation and cannot comment, therefore, on any shortcomings it might have that are not remedied by Article 10 of the current Draft.

Recommendation:

- The following language from Article 10(1) should be removed: "and shall grant the right to the citizens to freely discuss the election programmes, political, business-like and personal qualities of the candidates, as well as the issues committed to the referendum".

6. Dissemination of official news

Article 11, though somewhat reformulated, retains the point from the previous Draft that "public bodies and bodies of local self-government and their officials", though generally not entitled to demand air time from broadcasters, may do so where "necessary to declare the state of emergency or martial law, or in case of natural calamity, epidemics, epizootics, and catastrophes".

Analysis
While the formulation has changed slightly, this Article continues to vest power in public officials to commandeer air time when they deem it necessary for the declaration of states of emergency and related matters. Our comment from the November Memorandum bears repeating in this context:

> While it is certainly important that broadcasters should carry news of importance as specified in Article [11], provisions such as these are both unnecessary and susceptible to abuse. They are unnecessary because any responsible media outlet will carry information of public importance without being required to do so by law. Experience in countries all over the world shows that both public and private media provide ample coverage of emergencies and the like even when they are not bound by a legal duty. The provisions are open to abuse because officials may use them in circumstances for which they were not intended.
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> Even in relation to State and public service broadcasters, the Committee of Ministers of the Council of Europe has voiced concern over "must-carry" requirements, stating:
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>> The cases in which public service broadcasting organisations may be compelled to broadcast official messages, declarations or communications, or to report on the acts or decisions of public authorities, or to grant airtime to such authorities, should be confined to exceptional circumstances expressly laid down in laws or regulations.[6]

We conclude here, as we did with respect to Article 10 of the previous Draft, that the must-carry provision of Article 11 constitutes a violation of freedom of expression because it would limit editorial independence. As we further noted in the November Memorandum: "The severity of the infringement is aggravated by the broad range of bodies which may attempt to require broadcasters to carry messages, which includes all public and local government bodies".

Recommendation:
- Article 11 should be removed from the current Draft.

7. Obligations on public broadcasting organisations

Article 19 of the current Draft retains virtually all of the content of Article 13 of the previous Draft – in particular, relating to the obligation of public broadcasting organisations to provide "fair and impartial information" and to assist in public education, with special emphasis on the interests of minorities.

Analysis
As was the case in the previous Draft, the current Draft does not, at least by terms, restrict the application of the obligations of Article 19 to public broadcasters *created by statute and supported by public moneys*. However, as we noted in the November Memorandum:

> [As] the term 'public broadcasting organisation' is not fully defined by the Draft Law, the possibility exists that certain *private*, albeit non-profit, broadcasters, such as community broadcasters, might qualify as public broadcasters and as such may be subject to the content requirements imposed by Article [19(2)].

[6] Recommendation No. R (96)10.

There is no firmly established position internationally on the propriety of imposing such content restrictions on certain private broadcasters. At the same time, there is always the possibility of abuse of such restrictions, a risk that is far from remote in the Belarussian context. We therefore urge the drafters to consider this matter and, in particular, to consider whether they do not wish to define public broadcasters more clearly and narrowly so that private, non-profit broadcasters are clearly excluded from its scope.

Recommendation:

- As urged in the November Memorandum, consideration should be given to defining a public service broadcaster so as to make it clear that private, non-profit broadcasters are not included.

8. Creation of a public service broadcaster

Article 45 of the current Draft carries over the previous Draft's commitment to the transformation of the current state broadcaster into a non-commercial (public service) broadcaster, and Article 19(4) carries over the commitment to the creation of a law "On Public Television and Radio Broadcasting". We reiterate our recommendations on the content that such a law should contain. See November Memorandum, pp.7-9.[7]

Recommendation:

- The meaning of the phrase "the output of the Republic of Belarus in the programmes" should be clarified, in the event that its meaning in the original is not optimally clear.

[7] Article 24, relating to competitions for broadcasting licences, has added language providing that "the output of the Republic of Belarus in the programmes" will be taken into account in the competition. While this is probably a simple matter of translation, we note our concern simply that the meaning of this provision, in English, is quite opaque; in the event that the provision is also opaque in the original, there is the chance that those in charge of the competition will not be in a position to comply with this provision of the current Draft. Accordingly, the meaning of that phrase should be clarified, in the event that its meaning in the original is not optimally clear.