

**Memorandum
on the
Bulgarian Draft Laws on National Radio and
Television**

**by
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International Centre Against Censorship
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A draft Law on National Radio and Television is currently being considered by the Bulgarian government. ARTICLE 19 welcomes the broad thrust of the draft law and believes it represents a significant step forward for broadcasting freedom in Bulgaria. There are, however, three broad areas of the draft law of particular concern to ARTICLE 19. They involve illegitimate restrictions on the content of broadcasts, lack of independence of broadcasters from state control and measures likely to discourage the expression of a diversity of views in the broadcast media. ARTICLE 19 urges those responsible to make appropriate changes to the law to bring it into harmony with the requirements of international law.

Freedom of Expression and International Law

Bulgaria is a party to both the International Covenant on Civil and Political Rights and the European Convention on Human Rights and Fundamental Freedoms, which protect freedom of expression, including broadcasts. In order to be legitimate, any restrictions on expression must comply with the three-part test spelt out in paragraph two of Article 10 of the European Convention. Each restriction must be clearly “prescribed by law” and aimed at the protection of one of the specific interests defined in the paragraph. They must also be necessary in a democratic society, satisfying a “pressing social need”, and be a proportionate response to one of the legitimate aims. The listed aims include the protection of national security, public safety and the rights of others. According to the jurisprudence of the European Court of Human Rights, the ambit of permissible restrictions is to be interpreted narrowly because of the fundamental importance of freedom of expression in a democratic society. Restrictions on broadcasting that did not comply with these requirements would therefore be illegitimate under international law and would, if implemented, involve a breach of Bulgaria’s obligations under both the European Convention on Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.

Illegitimate Restrictions on the Content of Broadcasts

ARTICLE 19 is concerned that a number of provisions in the Draft Radio and Television Law unduly restrict the permissible content of broadcasts and do not comply with international standards.

Section 6 defines the duties of public radio and television broadcasters. Paragraph 3(3) of that section enjoins broadcasters to foster the “national and spiritual values of the Bulgarian people”. Such a formulation may be acceptable as a broad goal of general programming. It is, however, important that it not be interpreted to permit restrictions on particular programmes, since international law requires that even programmes critical of “the national and spiritual values of the Bulgarian people” must be tolerated. Similarly in Section 7, which defines the duties of Bulgarian National Radio and Television, paragraph 4 forbids the creation of programmes connected with “political, economic, religious, ethnic and other interests”. While it is legitimate to promote impartiality of the national broadcaster as an overall goal, ARTICLE 19 fears that the provision could be interpreted in such a way as to prohibit particular programmes relating to the listed interests. Such interests are protected by international law, however, and must be represented in order for programming to be truly impartial.

Paragraph 8 of section 7 suggests that the national broadcaster must provide an opportunity for citizens to acquaint themselves with the official position of the state on important social issues. There is, however, no justification in international law for privileging the official views of the state in the broadcast media. Broadcasters must be free to determine their own editorial policy and are not to be regarded as the mouthpieces of the State. A broad range of interests must be represented by publicly-funded broadcasters, since those receiving broadcasts have the right to as wide a range of information as possible, and it is upon the State that the obligations of international law to protect and promote freedom of speech fall.

Sections 10(5) & (6) and 16(2) prohibit broadcasts that incite “national, political, ethnic, religious, racial, sexual or any other intolerance” as well as those “praising or excusing cruelty or violence”. While Bulgaria is obliged by international law to prohibit incitement to war, and advocacy of national, racial or religious hostility, discrimination and violence, the restrictions in these sections are too broad. Incitement to intolerance and praise of violence are not considered of sufficient magnitude under international law as to warrant such absolute restrictions on expression. Furthermore, according to the jurisprudence of European Court of Human Rights, a media outlet is not to be held liable for the broadcasting of “hate

speech” where it is merely reporting the opinions of others, and is not seeking to promote such views.

Sections 11(2)(1)&(2) assert that freedom of expression may be restricted by any law or the rules of broadcasters. This provision is unnecessary since the government clearly retains the authority to enact laws. It is also misleading inasmuch as it implies the government is free to pass such laws without regard to the constraints of the international guarantee of freedom of expression. From the perspective of international law, any restriction not in conformity with accepted constraints on freedom of expression is unacceptable.

ARTICLE 19 recommends that those responsible:

- Clarify sections 6(3)(3) and 7(4) to ensure that these broad guidelines cannot be used to restrict the content of individual broadcasts.
- Delete section 7(8).
- Amend sections 10(5)&(6) and 16(2) to bring them into conformity with the requirements of Article 20 of the International Covenant on Civil and Political Rights and the jurisprudence of the European Court of Human Rights.
- Delete sections 11(2)(1)&(2) or amend them to ensure that any restrictions on freedom of expression will always be understood as subject to the requirements of international law.
- Include a provision requiring the National Radio and Television Council to conduct a consultation exercise and draft a code of conduct for the guidance of broadcasters. Such a code may contain a procedure for individual complaints against broadcasters.

Lack of Independence from State Control

In order to ensure the free flow of ideas, to guarantee that the public has access to a wide range of opinions, especially on matters of public interest, and that the broadcast media do not become a mouthpiece of the state, international law requires that such media be independent of state control.

ARTICLE 19 is concerned that a number of provisions in the draft law submit the broadcast media to an undue amount of actual or potential state control.

Section 24 regulates the composition of the National Radio and Television Council, the body responsible for regulation of the broadcasting media. Four of the seven members of the Council are to be elected by the National Assembly, while three are to be appointed by the President of the Republic. As a result, the Council is subject to the direct political control of the governing party and undue influence by the incumbent President. Furthermore, sections 30(2)(1) and 31(5) contain provisions for the unconditional removal of members of the Council which may, therefore, be subject to political manipulation. In addition, section 53(1) requires the Bulgarian National Radio and Television services to grant automatic broadcasting access to the President, and members of the government and judiciary. Other sectors of the population are granted no such automatic access. ARTICLE 19 submits that this provision represents a severe restriction upon the independence of the broadcast media and neither serves an internationally legitimate aim, nor is necessary in a democratic society. Such lack of independence from political control is not acceptable under international law given the absolute protection of all internationally legitimate forms of expression and the need to interpret restrictions narrowly. Bulgarians have the right to receive information and ideas from all sources and should not have such information presented through the prism of state control.

ARTICLE 19 recommends that those responsible:

- Amend section 24(1) to remove the power of the President to appoint members of the National Radio and Television Council.
- Amend section 24(1) to require at least a two-thirds majority vote in the National Assembly for appointment to the Council.
- Amend sections 30(2)(1) and 31(5) to clarify the grounds for discharging members of the NRTC from office and to ensure that they may only be discharged following the unanimous resolution of all other members of the Council or by a two thirds majority vote in the National Assembly.

Measures Likely to Discourage Plurality

As both Article 10 of the European Convention and Article 19 of the International Covenant on Civil and Political Rights protect the right of the public to receive information and ideas from a variety of sources, governments are under a positive obligation to ensure media pluralism. ARTICLE 19 is concerned that a number of provisions in the draft law have the potential to discourage the plurality of views in the broadcasting media.

Section 3(2) establishes that only certain types of legal persons may be involved in licensed radio and television broadcasting. This restricts individuals from seeking licences and may discourage pluralism, particularly in the community radio sector. Such a restriction does not promote one of the legitimate aims under international law and is therefore unacceptable.

The exhortation in paragraph 9 of section 10, to protect the “purity of the Bulgarian language”, may be illegitimate if interpreted so as to exclude the use of other languages in broadcasts. The restriction of broadcast languages cannot be justified by reference to any of the legitimate restrictions defined by international law.

Sections 25-27 and 61 place restrictions on the types of people eligible for membership of the National Radio and Television Council, the managing boards of the Bulgarian National Radio and Television services, and upon the activities of members of these bodies. While regulation of the professional standards of broadcasters and the encouragement of their impartiality are legitimate aims, some of the restrictions are too broad and may have the effect of attracting a narrow group of candidates for election. Such a group may not be in a position to encourage or reflect the plurality of views in the wider community. There is, for example, no legitimate reason under international law to reject those involved in commercial activity, those previously sentenced to imprisonment, those involved in political parties or trade unions, or those previously involved in the State Security service.

The meaning of section 47(2) is unclear. If its correct interpretation is to restrict the production of news, economic and political broadcasts to Bulgarian National Radio and Television, to the exclusion of commercial broadcasters, then it represents an unwarranted restriction on the freedom of other media outlets to present their interpretations of current affairs.

Section 54 provides specifically for religious coverage by BNR and BNT, mandatory in the case of the Bulgarian Orthodox Church and

discretionary for other religious denominations. ARTICLE 19 is concerned about the wording of Section 54, in particular the fact that while the Bulgarian Orthodox Church is guaranteed broadcasting coverage, access of officially registered denominations appears to be entirely discretionary and non-registered denominations are granted no right of access at all. The role of public broadcasters, as set out generally in Sections 6 and 7, is to ensure that diverse cultural, political and social views are represented. This implies that religious denominations should have access to the airwaves, albeit with some regard to the degree of support they command within the whole population. There is, however, no justification for privileging the Bulgarian Orthodox Church to the extent provided for in the draft law.

ARTICLE 19 understands that section 49(2), as amended, restricts Bulgarian National Radio and Television from broadcasting in languages other than Bulgarian and the languages of recognised minorities. Given that important national minorities, such as the Macedonians, are not recognised and that restricting broadcasting language is not a legitimate aim under international law, this provision is unacceptable.

ARTICLE 19 is also concerned at the tenor established by a number of these provisions taken together. Exhorting the protection of the “national and spiritual values of the Bulgarian people” and the “purity of the Bulgarian language”, privileging broadcasts of the government and established Church, and discouraging broadcasts by religious and ethnic minorities all suggest a residual “cultural” xenophobia and an over-emphasis upon the interests of the State.

ARTICLE 19 recommends that the National Assembly:

- Amend section 3(2) to allow individuals and community groups to apply for broadcasting licences.
- Clarify section 10(9) to ensure that it cannot be used to restrict the language of broadcasts to Bulgarian only.
- Amend sections 25-27 and 61 to promote rather than discourage diversity in the NRTC and the BNT and BNR.
- Clarify section 47(2) to ensure that the BNR and BNT do not have a monopoly on the production of news or economic and political broadcasts.
- Delete or amend section 49(2) to ensure that all languages in Bulgaria may be represented in the broadcast media.
- Delete section 54 or amend it to remove the monopoly of the Orthodox Church, and to provide for religious broadcasts that reflect the principle of reasonable access by all religious denominations.