BACKGROUND PAPER 4

on

FREEDOM OF EXPRESSION AND COMMERCIAL ISSUES

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1. INTRODUCTION

Although the duty to respect freedom of expression lies with the State, it is often private companies which transform the right into a reality – they produce and distribute the books, newspapers, radio and television programmes, Internet access points and other tools through which citizens make themselves heard and receive information and ideas from others. Moreover, many businesses directly use the right to freedom of expression, for example by advertising their services.

In this Chapter, we consider ways in which State interference in the private sector can harm or alternatively promote the right to freedom of expression.

2. ADVERTISING

As was discussed in Background Paper 1 (see section 1.2.3), the right to freedom of expression covers any kind of information or ideas. This includes not only contributions to political, cultural or artistic debate, but also mundane and commercially motivated expressions. The UN Human Rights Committee has confirmed that advertising is protected by the right:

> In the Committee's opinion, the commercial element in an expression taking the form of outdoor advertising cannot have the effect of removing this expression from the scope of protected freedom. [1]

In this chapter, we survey the international standards that have been developed on the regulation of advertising. We draw a broad distinction between advertising by private persons and companies on the one hand, and advertising by the State on the other.

2.1. Private-sector advertising

2.1.1. Advertising: an 'inferior' form of expression?

The case cited above concerned a law in Canada's majority French-speaking province, Quebec, which forbade advertising in English. The UN Human Rights Committee decided that the law failed the necessity test, because the goal of protecting the French-speaking minority could have been achieved by less restrictive means, such as requiring advertising to be in both English and French. It explicitly rejected the Canadian government's contention that "freedom of expression in commercial advertising requires lesser protection than that afforded to the expression of political ideas":

> The Committee does not agree either that any of the above forms of expression can be subjected to varying degrees of limitation, with the result that some forms of expression may suffer broader restrictions than others.[2]

The UN Human Rights Committee did not elaborate on the reasons for its refusal to consider advertising a less important type of expression than, for example, political speech. It may

[1] *Ballantyne and Davidson v. Canada,* 31 March 1993, Communication Nos. 359/1989 & 385/1989 (UN Human Rights Committee), para. 11.3
[2] *Id.*

have been concerned about the implications of allowing governments to create their own hierarchy between 'more important' and 'less important' types of expression – as this case perhaps shows, such a rule could be abused to unfairly discriminate between different types of businesses and even between different ethnic groups.

The European Court of Human Rights has taken a different approach on this point. It considers that "where commercial speech is concerned, the standards of scrutiny may be less severe."[3] States enjoy a 'margin of appreciation', that is to say a certain degree of discretion, in regulation advertising.[4]

2.1.2. Advertising with a social or political message

Although the European Court of Human Rights has accepted the principle that commercial speech can be subject to broader restrictions, it has also been quick to stress that when a commercial expression goes beyond the normal purpose of encouraging consumers to buy a product, and aims to make a contribution to a debate of general interest, the expression will again enjoy a higher level of protection.

In *Tierfabriken v. Switzerland*,[5] an animal protection agency had been denied the right to broadcast an advertisement which called on viewers to "eat less meat, for the sake of your health, the animals and the environment." Under Swiss law, the broadcasting of political advertising is not allowed; the spot was refused because it was considered to have a "clear political character". The Court determined that the spot sought to make a contribution to a debate of general interest:

> [T]he applicant association's film fell outside the regular commercial context inciting the public to purchase a particular product. Rather, it reflected controversial opinions pertaining to modern society. … As a result, in the present case the extent of the margin of appreciation is reduced, since what is at stake is not a given individual's purely "commercial" interests, but his participation in a debate affecting the general interest."[6]

The Court held that the animal protection agency's arguments for freedom of expression outweighed the Swiss authorities' reasons for the prohibition of political advertising. The purposes of the prohibition were, essentially, to prevent TV advertising from being monopolised by the richest political movements. While the Court did not reject the possibility that a ban on political advertising could be justified under certain circumstances, it reasoned that in this case, the Swiss ban was not "particularly pressing" in nature as it applied only to the broadcast media. Moreover, the reasons adduced by the Swiss authorities were not convincing, given that the association was not using its financial weight to skew the electoral process but was participating in an ongoing general debate on animal protection and the rearing of animals.[7]

The *Tierfabriken* case can be contrasted with the decision in *Murphy v. Ireland*, where a ban on all religious advertising was at stake. The Court considered the ban permissible, because in contrast to political debate,

[3] *Demuth v. Switzerland*, 5 November 2002, Application No. 38743/97, para. 42.
[4] See, for instance, *Vgt Verein Gegen Tierfabriken v. Switzerland*, 28 June 2001, Application No. 24699/94 (European Court of Human Rights), para. 69.
[5] *Id.*
[6] *Id.*, paras. 70-71.
[7] *Id.*

> [A] wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion.[8]

2.1.3. Advertising for legal or medical services

Some States impose strict limitations, or even comprehensive bans, on advertising for medical or legal services. Underlying such restrictions is a fear that those who are in need of medical or legal help often find themselves in difficult circumstances and may be more susceptible to exaggerated claims or promises. Other considerations also play a role, such as the fear that allowing the legal and medical professions to operate as ordinary businesses will lead lawyers and doctors to compete for wealthy clients and profitable services, rather than offering a range of services to suit the needs of all in society.

The US Supreme Court has stressed that advertising, if truthful, may help improve consumers' understanding of the relative merits of different medical services, and rejected the notion that consumers would always opt for the service with the lowest advertised prize as "paternalistic". In the Supreme Court's opinion, adequate medical services should in the first place be safeguarded through direct regulation of the medical profession. In *Virginia State Board of Pharmacy et al. v. Virginia Citizens Consumer Council, Inc., et al.*,[9] a case which concerned a ban on pharmacists advertising the prices of prescription drugs, the Court held:

> Price advertising, it is argued, will place in jeopardy the pharmacist's expertise and, with it, the customer's health. It is claimed that the aggressive price competition that will result from unlimited advertising will make it impossible for the pharmacist to supply professional services in the compounding, handling, and dispensing of prescription drugs. … The strength of these proffered justifications is greatly undermined by the fact that high professional standards, to a substantial extent, are guaranteed by the close regulation to which pharmacists … are subject … Surely, any pharmacist guilty of professional dereliction that actually endangers his customer will promptly lose his license.[10]

The Court did, however, stress that false or misleading advertising could be prohibited:

> Untruthful speech, commercial or otherwise, has never been protected for its own sake. Obviously, much commercial speech is not provably false, or even wholly false, but only deceptive or misleading. We foresee no obstacle to a State's dealing effectively with this problem. (references omitted)[11]

The European Court of Human Rights has gone further, stating that even a blanket ban on advertising may be permissible. In *Casado Coca v. Spain,*[12] the Court upheld a ban on advertising by lawyers which contained only very limited exceptions, such as when a practice was being set up or when there was a change in its membership, address or telephone number. It emphasised that whether a ban is appropriate will depend very much on local conditions:

> For the citizen, advertising is a means of discovering the characteristics of services and goods offered to him. Nevertheless, it may sometimes be restricted, especially to prevent unfair competition and untruthful or misleading advertising. In some contexts, the publication of even objective, truthful advertisements might be restricted in order to ensure respect for the rights of others or owing to the special circumstances of particular business activities and professions …
>
> The wide range of regulations and the different rates of change in the Council of Europe's member States indicate the complexity of the issue. Because of their direct, continuous contact

[8] *Murphy v. Ireland*, 10 July 2003, Application No. 44179/98 (European Court of Human Rights).
[9] 425 US 748 (1976).
[10] *Id.,* at 767-69.
[11] *Id.*, at 771.
[12] 26 January 1994, Application No. 15450/89 (European Court of Human Rights).

> with their members, the Bar authorities and the country's courts are in a better position than an international court to determine how, at a given time, the right balance can be struck between the various interests involved, namely the requirements of the proper administration of justice, the dignity of the profession, the right of everyone to receive information about legal assistance and affording members of the Bar the possibility of advertising their practices.[13]

The Court has, in contrast, taken a dim view of laws or regulations which prevent members of the liberal professions from speaking with the media on matters of public interest. In *Barthold v. Germany*,[14] a newspaper in Hamburg had run an article about the poor availability of veterinary surgeons during the night, illustrating the problem through the case of a cat called Shalen, which had nearly died while its owners telephoned various clinics in vain. The animal was eventually saved by a Dr. Barthold, whose photo accompanied the article. The article also mentioned that Barthold was the director of a clinic and quoted his opinion on the poor availability of vets at night. Shortly after, a court ordered Barthold from making further statements to the media on the matter, on the basis that he had advertised himself in a manner contrary to the Rules of Professional Conduct for the profession.

The European Court of Human Rights agreed with Barthold that the court order had violated his right to freedom of expression, because it gave too much weight to the importance of preventing unfair competition between veterinary practitioners over the importance of free expression:

> The injunction issued on 24 January 1980 does not achieve a fair balance between the two interests at stake. … A criterion as strict as this in approaching the matter of advertising and publicity in the liberal professions is not consonant with freedom of expression. Its application risks discouraging members of the liberal professions from contributing to public debate on topics affecting the life of the community if ever there is the slightest likelihood of their utterances being treated as entailing, to some degree, an advertising effect. By the same token, application of a criterion such as this is liable to hamper the press in the performance of its task of purveyor of information and public watchdog.[15]

2.2. Advertising by public bodies and companies

States, in particular those which maintain large, State-owned corporations, often spend considerable sums on advertising through the media. Because many media outlets depend for a large share of their income on advertising, the State's decision on where to spend its money can have a significant impact on the viability of a publication or broadcasting network. Inescapably, there is a risk of political considerations coming into play in this decision. On at least one occasion, in relation to Lesotho, the UN Human Rights Committee expressed its concern over discriminatory advertising policies:

> [T]he refusal of advertisement by the State and parastatal companies to newspapers which adopt a negative attitude against the Government … [is] inconsistent with a respect for freedom of the press.[16]

A number of international instruments in the area of freedom of expression explicitly oblige governments to avoid or even prohibit discrimination on the basis of political orientation in

[13] *Id.*, paras. 51-54.
[14] *Barthold v. Germany*, 25 March 1985, Applciation No. 00008734/79.
[15] *Id.*, para. 58.
[16] *Concluding observations of the Human Rights Committee: Lesotho*, 8 April 1999, UN Doc. No. CCPR/C/79/Add.106, para 23.

public bodies' decisions where to advertise. The African Commission's *Declaration of Principles on Freedom of Expression in Africa* states, categorically:

> States shall not use their power over the placement of public advertising as a means to interfere with media content.[17]

The *Inter-American Declaration of Principles on Freedom of Expression* provides:

> [T]he arbitrary and discriminatory placement of official advertising and government loans … with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.[18]

The UN, OAS and OSCE special mandates on freedom of expression have stated:

> Governments and public bodies should never abuse their custody over public finances to try to influence the content of media reporting; the placement of public advertising should be based on market considerations.[19]

In some countries, the domestic courts have obliged public bodies to allocate advertising in a non-discriminatory way. In India, for example, the High Court of Andhra Pradesh ruled that while the government could not be compelled to enter into an advertising contract with any newspaper, it was obliged to allocate its advertisements even-handedly:

> It is not expected of the Government to exercise this power in order to favour one set of newspapers or to show its displeasure against another section of the press. It should not use the power over such large funds in its hands to muzzle the press or as a weapon to punish newspapers which criticize its policies and actions.[20]

2.3. Financial regulation of the media

Like any company, media enterprises are required under the law of virtually every State to pay taxes on their profits, to make their books available for inspection by the tax authority, and to meet all sorts of other financial requirements. Although such burdens on the media can be seen as an interference with free expression, their necessity is usually obvious and, in most cases, they are justifiable under international law. On the other hand, legislation which makes the establishment or operation of a media outlet financially more burdensome than an ordinary company, or appears to favour certain media outlets over others, is highly suspect as a restriction on freedom of expression. The following sections discuss some types of financial regulation which are in tension with international law.

2.3.1. Incorporation requirements

Under the law of certain countries, only incorporated companies are permitted to produce and distribute printed matter, or apply for a broadcasting licence. The explanation most often

[17] Adopted at the 32nd Session, October 2002. Available in English at http://www.achpr.org/english/_doc_target/documentation.html?../declarations/declaration_freedom_exp_en.htm, Principle XIV.
[18] Aproved by the Inter-American Commission on Human Rights during its 108th regular session, 19 October 2000, available online in English at http://www.cidh.oas.org/declaration.htm, Principle 13.
[19] Joint Declaration of 10 December 2002. To access this document, see http://www.article19.org/publications/law/intergovernmental-materials.html.
[20] *Ushodaya Publications Pvt Ltd v. Government of Andhra Pradesh*, AIR [1981] AP 109, 117.

given for such requirements is that they ensure that the legal structure governing such corporations, including protections for the public, such as a minimal reserve of capital, is in place for media outlets.

Although incorporation requirements do not directly limit freedom of expression, they are a formality which must be observed before the right can be exercised, and are consequently an interference with the right which is subject to the three-part test (see section 1.3.1 in Background Paper 1). There is little doubt that incorporation requirements serve a recognised legitimate purpose, namely protection of the rights of others. Assuming that such a requirement is clearly defined in law, its permissibility will depend on whether the measure is truly 'necessary' for the achievement of its ends.

No international court has so far had the opportunity to apply the necessity test to an incorporation requirement. It is reasonable to assume, however, that a distinction would be drawn on the basis of the size of the outlet. Leading newspapers and television stations enter into contracts involving significant amounts of money, and can cause substantial harm to the rights of others by carrying stories which wrongfully infringe on someone's privacy or reputation. It would seem that imposing a duty to incorporate on such companies is not necessarily a disproportionate measure, assuming that the procedure for incorporation is straightforward and contains adequate safeguards against refusal on political grounds. By contrast, small media outlets have limited contractual obligations and, due to their limited reach, are less likely to cause significant damage to the rights of others. Moreover, an incorporation requirement – which involves certain costs – will be far more burdensome to a small media business.

Therefore, the smaller the publication, the smaller the need for an incorporation requirement, but the greater the burden such a requirement represents. A law which imposes a blanket incorporation requirement on all media outlets is, then, likely to breach the right to freedom of expression; an incorporation requirement which applies only to the largest outlets may be justifiable, if it is applied fairly and not more complex or costly than necessary.

2.3.2. Taxation and subsidies

Taxes can contribute to the public good but, when their purpose or main effect is to prevent free expression, they are clearly unnecessary and contrary to international law. In the 1991 *Windhoek Declaration*, the international community expressed its concern over the use of tax legislation as a means of repression of media freedom:

> As a matter of urgency, the United Nations and UNESCO … should initiate detailed research … into … identification of economic barriers to the establishment of news media outlets, including restrictive import duties, tariffs and quotas for such things as newsprint, printing equipment, and typesetting and word processing machinery, and taxes on the sale of newspapers, as a prelude to their removal.[21]

Domestic courts have refused to apply taxation schemes which brought unjustifiable harm to the media. In a 1936 case, the US Supreme Court found a tax on newspapers with a circulation of over 20,000 copies per week to be unconstitutional, regarding it as "a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled."[22] In another case, the same Court clarified that the effect of a measure, rather than its intent, would be deciding for its constitutionality: "We have long recognized

[21] 3 May 1991, endorsed by UNESCO's General Conference at its 26th session, p. 16.
[22] *Grosjean v. American Press Co.*, 297 US 233, 250 (1936).

that even regulations aimed at proper governmental concerns can restrict unduly the exercise of the [right to freedom of expression] … A tax that singles out the press, or that targets individual publications within the press, places a heavy burden on the State to justify its action."[23]

The Indian Supreme Court has reasoned along similar lines. Examining the constitutionality of an import duty on newsprint which had been progressively increased over time and which had a crippling effect on many newspapers, it stated that taxes would be unconstitutional if they caused "a distinct and noticeable burdensomeness, clearly and directly attributable to the tax."[24] The Court ordered the government to study the tax's impact on the newspaper industry and reconsider its necessity within six months, while refraining from further collection until the results had been considered.

In contrast to "censorship through taxes", some governments have tried to stimulate the development of the media sector by granting tax exemptions or subsidies. Such schemes can bring benefits, as long as they are based on objective criteria and do not just favour government-friendly outlets or already well-established outlets. The Council of Europe has issued a recommendation on measures to promote media pluralism:

> [A]ny … support measures should be granted on the basis of objective and non-partisan criteria, within the framework of transparent procedures and subject to independent control. The conditions for granting support should be reconsidered periodically to avoid accidental encouragement for any media concentration process or the undue enrichment of enterprises benefiting from support.[25]

Tax exemption schemes for the benefit of the media can take several forms, such as the reduction of VAT taxes on publications, the abolition of import taxes on printing and audiovisual equipment or a lower postal rate for printed matter. Schemes of this sort have been adopted in various countries.

2.4. Concentration of ownership

Like most industries, the media is susceptible to the formation of monopolies and other anti-competitive structures. The concentration of economic power in the hands of a small number of players always poses hazards to consumers and, in the case of the media, the dangers to freedom of expression are particularly pronounced.

2.4.1. Risks posed by excessive concentration

Media concentration can undermine the right to freedom of expression in the following ways:

- A reduced number of media owners can result in a reduced diversity of viewpoints being permitted to express themselves through the media.
- If several media outlets are acquired by the same corporation, that corporation may decide to save money by simply using the same stories in each of its outlets. As a result, the news on the television will become identical to that in the newspaper and on the radio, and there will be little news of specific local or regional interest.

[23] *Minneapolis Star v. Minneapolis Commissioner of Revenue*, 460 US 575, 593 (1983).
[24] *Indian Express Newspapers (Bombay) v. Union of India*, AIR [1986] SC 515, p. 540.
[25] Committee of Ministers of the Council of Europe, Recommendation No. R(99)1 on Measures to Promote Media Pluralism, adopted 19 January 1999, Principle VI.

- The economies of scale achieved by large media conglomerates also mean that competing smaller publications have to reduce their expenditures, and are no longer able to create carefully investigated news items or items.
- Advertisers will choose to go with the largest media conglomerates, further adding to the predicament of smaller competitors.
- Lack of competition may lead to a reduced level of innovation and, in the long run, higher prices for consumers.

On the other hand, an excessively fragmented media sector can also be highly detrimental to the interests of freedom of expression, for example because no outlet can muster sufficient staff and capital to undertake thorough journalistic research. The authorities therefore face the ongoing and complex task of ensuring that the number of competing media businesses is small enough to support quality outlets, but large enough to ensure that a wide range of viewpoints is represented.

2.4.2. International law on concentration

A number of international bodies have confirmed that the right to freedom of expression implies a duty for States to prevent excessive concentration in the media sector. The UN Commission on Human Rights has called on all States to:

> … encourage a diversity of ownership of media and of sources of information, including through transparent licensing systems and effective regulations on undue concentration of ownership of the media in the private sector.[26]

In a Joint Declaration in 2002, the UN, OSCE and OAS special mandates on freedom of expression noted "the threat posed by increasing concentration of ownership of the media and the means of communication, in particular to diversity and editorial independence."[27]

The duty of States to prevent media concentration is further underlined by a number of international instruments. The *African Declaration of Principles on Freedom of Expression* states:

> States should adopt effective measures to avoid undue concentration of media ownership, although such measures shall not be so stringent that they inhibit the development of the media sector as a whole.[28]

The Inter-American Declaration of Principles on Freedom of Expression[29] and the Declaration on Freedom of Expression and Information,[30] the latter adopted by the Committee of Ministers of the Council of Europe, contain similar language.

2.4.3. Domestic anti-trust measures

The Council of Europe has suggested a number of practical measures which its Member States may take to tackle the problem of media concentration:

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[26] Commission on Human Rights, resolution 2003/42.
[27] Joint Declaration of 10 December 2002. To access this document, visit http://www.article19.org/publications/law/intergovernmental-materials.html.
[28] Note 17, Principle XIV.
[29] Note 18, Principle 12.
[30] Committee of Ministers of the Council of Europe, *Declaration on the Freedom of Expression and Information*, 29 April 1982, reprinted in Council of Europe DH-MM (91) 1.

> Member States should examine the possibility of defining thresholds — in their law or authorisation, licensing or similar procedures — to limit the influence which a single commercial company or group may have in one or more media sectors. Such thresholds may for example take the form of a maximum audience share or be based on the revenue/turnover of commercial media companies. Capital share limits in commercial media enterprises may also be considered. If thresholds are introduced, member States should take into consideration the size of the media market and the level of resources available in it. Companies which have reached the permissible thresholds in a relevant market should not be awarded additional broadcasting licences for that market.[31]

Several democratic States have enacted specific legislation with a view to combating media concentration. Such legislation typically addresses one or more of the following situations:

- *Concentration of ownership within a specific type of media.* In France, for example, nobody is permitted to control more than 30% of the national distribution of political and general information daily newspapers;[32] in Italy no publisher may control more than 20% of circulation at the national level and 50% at the regional level.[33]

- *'Cross-ownership' concentration.* 'Cross-ownership' is a situation in which one company has stakes in different types of media, such as television and newspapers. The law of many democratic countries prohibits companies which already have a strong presence in one media sector from crossing over to others. In the Netherlands, for example, no company which controls more than 25% of the newspaper market can obtain a licence for broadcasting.[34]

- *Foreign ownership.* Democracies sometimes limit foreign ownership of the media, usually in order to protect their national culture and identity. In South Africa, "foreign persons" are barred from exercising direct or indirect control over a private broadcasting licensee, from owning more than 20% of the financial or voting interests in a licensee or from holding more than 20% of the directorships.[35] Kazakhstan's law imposes virtually the same limit, which applies also to other types of media outlets.[36] In Poland, companies with foreign shareholders may only be granted licences if the foreign share of the opening capital or stock of the company amounts to no more than 49% and the agreement or the statutes of the company specify that Polish citizens resident in Poland constitute a majority of the Board of Directors and the Board of Management.[37] According to ARTICLE 19, restrictions on foreign ownership of broadcast outlets can be legitimate, so long as they do not undermine the economic viability of the sector:

  > Restrictions may be imposed on the extent of foreign ownership and control over broadcasters but these restrictions should take into account the need for the broadcasting sector as a whole to develop and for broadcasting services to be economically viable.[38]

Self-regulation can play a useful role in preventing media monopolies and making government intervention unnecessary. In the Netherlands, for instance, the main press companies agreed in 1993 to limit their ownership of publications to one-third of the national

[31] See note 25, Appendix, Section I.
[32] *Freedom of Communication Law* No. 86-1067, Article 41.
[33] *Press Law* No. 416 of 1981, Article 4.
[34] Media Act, Article 71b(b).
[35] Independent Broadcasting Authority Act, section 48.
[36] *Law on Mass Media*, Article 5(2).
[37] Broadcasting Act of 1992, Article 35(2).
[38] *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation*, Principle 20.2, available online at http://www.article19.org/publications/law/standard-setting.html.

newspaper market, thereby forestalling government plans to impose ownership limits through the Media Act.

Where self-regulation is not possible and the adoption of legislation to control media concentration proves necessary, the task of enforcing this legislation is usually entrusted to the national competition regulator. Like all bodies which exercise supervisory powers over the media, the body charged with preventing concentration should be strictly independent from the government, so as to avoid selective or politically motivated enforcement of the law.

2.4.4. State ownership of media

The duty to avoid excessive media concentration applies with equal force to ownership of media outlets by the State.

The European Court of Human Rights has confirmed in a series of judgments, starting with *Informationsverein Lentia v. Austria*,[39] that State broadcasting monopolies are an unjustifiable restriction on freedom of expression. In the *Lentia* case, the Austrian government argued that the monopoly of the Austrian Broadcasting Corporation, the country's public service broadcaster, was necessary "to guarantee the objectivity and impartiality of reporting, the diversity of opinions, balanced programming and the independence of persons and bodies responsible for programmes." The Court rejected this argument, finding that the same goals could be achieved through means less restrictive of freedom of expression:

> Of all the means of ensuring that [pluralism is] respected, a public monopoly is the one which imposes the greatest restrictions on the freedom of expression, namely the total impossibility of broadcasting otherwise than through a national station … It cannot be argued that there are no equivalent less restrictive solutions; it is sufficient by way of example to cite the practice of certain countries which either issue licences subject to specified conditions of variable content or make provision for forms of private participation in the activities of the national corporation.[40]

Consequently, the State's broadcasting monopoly was not "necessary in a democratic society."[41] The *Declaration of Principles on Freedom of Expression in Africa* supports this conclusion; it provides that a "State monopoly over broadcasting is not compatible with the right to freedom of expression."[42]

The State's duties to refrain from monopolisation may extend beyond the sphere of traditional media outlets. On at least one occasion, the UN Human Rights Committee has criticised a virtual State monopoly in respect of printing and distribution of newspapers.[43]

[39] 24 November 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90.
[40] *Id.*, para. 39.
[41] *Id.*, para. 43.
[42] *Declaration of Principles on Freedom of Expression in Africa*, note 17 above, Principle V.
[43] *Concluding observations of the Human Rights Committee: Armenia*, 19 November 1998, UN Doc. CCPR/C/79/Add.100, para. 20.