

ARTICLE 19

Regulation on State Aid to Print Media

December 2012

Policy Brief

Executive summary

Newspapers have an important role in society, providing the means by which different cultural and political voices are heard. However, often the media cannot play their role for financial reasons. In many countries media pluralism is impossible without state financial support. As a result, many European countries have enacted legislation providing for direct and indirect state aid to the print media.

In this policy brief, ARTICLE 19 examines the role of state aid to print media from a freedom of expression perspective. We analyse various state aid systems throughout Europe, providing general background information on state subsidies, including the types of subsidies offered, as well as the history of subsidies in Europe and the justifications for and effects of those subsidies.

The brief also recommends “model” legislation on this topic that is in line with international standards on freedom of expression. The recommendations are focused on state actors and aim at the promotion of media pluralism, cultural diversity, equal treatment, independence and transparency. They are based on the premise that states have positive obligation to adopt such legislative framework as to enable the right to freedom of expression and the right to have diverse and independent media to flourish.

Key recommendations regarding regulation on state subsidies:

- State subsidies should be provided to print media in accordance with a law.
- The law on print media subsidies should have as its objective the media pluralism and maintenance of the cultural and linguistic diversity of the press.
- The law should provide that direct or indirect subsidies shall be allocated in a fair and neutral manner. The law should explicitly prohibit that the eligibility of subsidies depends on the political content or viewpoint of a newspaper.
- If the state decides to indirectly subsidize the print media, the subsidies should be available for all newspapers and magazines.
- Direct subsidies, if available, should be distributed by an independent body on the basis of fair and neutral criteria.
- A newspaper should be able to appeal to court decisions refusing direct subsidization.
- The body allocating state aid to print media should submit a public annual report to parliament on the manner in which it utilizes public funds.
- Regardless of their legal form print media organizations receiving state subsidies should be audited annually like corporations and make public they audited accounts.

Table of contents

Concept and types of state aid to print media	4
Historical development	5
Models of state subsidies	7
Indirect subsidies	7
Value Added Tax (VAT) Relief.....	7
Other Relief	8
Direct subsidies	8
Legislative aid.....	8
Distribution and oversight	8
Effect of state aid on the press in Europe	13
Minority language newspapers	13
Media concentration	13
Criticism	13
Trends and examples of legal regulation.....	15
Examples of legal regulations.....	15
Luxembourg.....	15
Sweden	15
Analysis of state aid from freedom of expression standpoint.....	17
International standards relating to the right to freedom of expression and media freedom.....	17
Standards on media regulation.....	18
International standards on press subsidies.....	18
Recommendations	20

Concept and types of state aid to print media

State aid to print media consists of a system of subsidies through which private newspaper companies receive direct financial support or tax relief from the government. Typically administered by an independent or semi-independent authority, subsidy systems are common in Europe, and many local and regional newspapers qualify for and receive these subsidies, which are often critical to their continued survival.

The purposes of state subsidy systems have been to combat newspaper deaths, promote competition and pluralism, and prevent concentration in individual newspaper markets.

In general, state support for print media consists of two different types of subsidies:

- **Indirect public support** usually includes preferential tax rates, preferential postal and rail tariffs for distribution, and favourable telecommunications tariffs. The entire sector usually benefits from these indirect subsidies, and they often amount to large sums.
- **Direct funding**, typically through a loan or cash transfer by the state, supports qualifying newspapers, usually smaller newspapers with fewer subscriptions and advertising revenue, newspapers in a minority language, or newspapers with a certain amount of original editorial content. An independent body, either within or outside of the state, monitors the distribution of direct subsidies among qualified newspapers.

Several arguments have been put forward as justifications for public support/funding to print press:

- **Financial:** Newspapers in Europe have witnessed their revenues and reach tumble due to declining paid newspaper circulation, likely somewhat a result of the growth of broadcast and new media and consequent movement to a free, online platform. Therefore, it has been argued that the print media need state funding to survive.
- **Media pluralism:** Another justification for state funding of print media is media pluralism. If newspapers are in the hands of a few owners, those owners will be able to control public debate. As the Council of Europe has noted, “[i]t is almost standard for a regional newspaper to have a monopoly in a market and it is a rare occurrence, without some form of subsidy scheme, that a truly competitive regional market exists.”¹
- **Diversity:** Cultural diversity is a third justification for press subsidies. Without subsidies, minority-language newspapers would likely not exist. Currently, there are more than 40 daily newspapers printed in minority languages across Europe. These newspapers represent minority voices and often reach poor or isolated rural communities that lack the resources to compete in the free market.

¹ The State of Regional Print Media In Europe - Pluralism, independence and freedom in regional press, The Council of Europe Congress of Local and Regional Authorities, Rapporteur: Peter Kittelmann (Germany) CPR (9) 4 Part II; available at <https://wcd.coe.int/ViewDoc.jsp?id=898979&Site=COE>.

Historical development

The newspaper was born in Europe, and the European market fostered the creation and growth of the modern, popular newspaper, whose business model is both subscription- and advertising-based. Recognizing the important role of the press in society, European states subsidize the print media.

The French government was the first to introduce newspaper studies, directly after the World War II. Reacting to “the dominance of the inter-war pre-war press by capitalist financiers,” the governments intended these subsidies to promote pluralism and to encourage access to different sources for information.² The Scandinavian countries followed, with Norway and Sweden introducing targeted subsidy systems in 1969 and 1972, respectively. In the 1970s, Finland also introduced a direct subsidy system targeted at economically weaker papers.

The state intervention in the 1960s and 1970s directly resulted from the steady increase in newspaper deaths throughout the region. As a result of these newspaper deaths, many states conducted extensive reviews of government media policy, evaluating the benefits and necessity of subsidizing print media. Consequently, press subsidy systems exist across the continent, varying according to national political, economic, and cultural characteristics.

The strongest subsidy programs developed in strong social welfare states, such as Austria, Norway, Sweden, and Finland. The latter three states also have the highest levels of newspaper readership across Europe. These programs were only cut back under non-socialist governments. Countries with “interventionist state traditions”, such as Italy, Portugal, and Spain (and including France), also traditionally have maintained a system of public subsidies for print media, although Spain terminated its program in 1988. A combination of liberal economic policy and strong press companies in countries such as Germany and the United Kingdom precluded the development of direct press subsidization there. Both Germany and the United Kingdom do however provide indirect subsidies to newspaper companies in the form of VAT relief.

The subsidies that were introduced during the twentieth century largely remain in place today. Changes enacted address either inflation or the independence of the institution responsible for allocating direct subsidies among eligible newspapers.

The most recent example of increased newspaper support is France. In 2009, President Sarkozy dramatically increased the total budget for indirect and direct subsidies for the private press by €600 million – €200 million per year for the following three years – “to help the private press in particular deal with the impact of the global financial crisis and enable structural adjustment to a new media environment.”³ Specifically, the projected rise in postal rates was delayed by one year; the budget for government messages in the press was increased by €16 million; and €70 million was set aside to fund home delivery (up from the previous €8 million earmark). The legislation also contained a newspaper demand stimulus,

² Peter Humphreys, *Press Subsidies in the Context of the Information Society: Historical Perspective, Modalities, Concept and Justification* in *Press Subsidies in Europe*, 38, 43 (Isabel Fernández Alonso et al., eds.) (2006).

³ Nestor Bailly, *Restoring newspaper readership among French youth*, 29 September 2009; available at: http://www.editorsweblog.org/newspaper/2009/09/restoring_newspaper_readership_among_fre.php.

through which the state pledged to pay half the cost of providing 200,000 young people (ages 18 to 24) with a free year-long subscription to a weekly copy of their newspaper of choice.

Models of state subsidies

The current models of state subsidies to print press are as follows.

Indirect subsidies

Value Added Tax (VAT) Relief

In many states in Europe, private sector print media organizations receive indirect public support in the form of tax relief or tax exemptions. The level of relief varies by state. In some states, the total tax relief granted through indirect press subsidies rivals the amount of direct funding that public broadcasters receive. In Finland, for example, private sector newspaper companies receive a VAT exemption for subscription sales, advertising, newsprint, composition, and plant, as well as for general distribution support through the postal service. In 2008, these tax benefits were estimated to amount to €313 million per year. In comparison, the annual household license fee (€218 per year), which directly supports the public broadcaster Yleisradio (YLE), generates approximately €381 million per year.

Country	Reduced VAT Rate ⁴ (%)	Standard VAT Rate (%)	Estimated Value per Year in 2008 ⁵ (in millions)
Austria	10	20	
Belgium	0	21	
Denmark ⁶	0	25	€135 ⁷
Finland ⁸	0	23	€313
France	2.1	19.6	€801
Germany	7	19	€525
Ireland	9	21	
Italy	4	20	€560
Luxembourg	3	15	
Netherlands	6	19	
Norway	0	25	€160 ⁹
Sweden	6	25	
United Kingdom ¹⁰	0	20	€748

⁴ The European Commission Taxation and Customs Union considers any VAT levied at less than 5% a 'super-reduced VAT'.

⁵ Estimates from 2008, see Rasmus Kleis Nielsen & Geert Linnebank, *Public Support for the Media: A Six-Country Overview of Direct and Indirect Subsidies*, Reuters Institute for the Study of Journalism (2011).

⁶ On sales of newspapers normally published at a rate of more than one issue per month.

⁷ Estimated annual saving shared between about 60 daily newspapers and between 15 and 20 magazines, in 2006.

⁸ On newspapers and periodicals sold by subscription for a period of at least one month.

⁹ In 2005.

¹⁰ On supplies for newspapers and periodicals; the British VAT Act defines newspapers as publications that consist of several large sheets folded, rather than bound, together and contain information about current events of local, national, or international interest. This does not allow newspaper companies to claim exemptions for digital advertising sales, even though most – if not all – have transitioned to an online platform as well.

Other Relief

General **reduced postal service rates** for newspapers are available in Denmark, France, Italy, and the United Kingdom, although only newspapers published at least five times per week are eligible for the rate reduction in Denmark. In 2006, the Norwegian government approved a €1.74 million subsidy to compensate newspapers for the rise in postal rates.

Belgium and Italy also provide **reduced telephone rates**. Additionally, France imposes a zero-rated professional tax for newspaper employees and provides reduced National Rail fares and Social Security.

Direct subsidies

Legislative aid

Direct public funding available to eligible newspapers is regulated by statute, the oversight of which is typically given to an independent committee or government body (usually located within the Ministry of Culture). The Swedish Press Subsidies Council, for example, oversees the distribution of direct subsidies, ensuring that the newspapers in receipt of the state aid continue to remain eligible for that funding. Aid can be distributed evenly among all newspapers, based on a variety of factors – generally the amount of original editorial content produced or size of subscription base, or both. Additionally, governments have chosen to grant aid to struggling newspapers, typically those that serve local or minority markets. Norway's subsidy scheme grants funding in proportion to a newspaper's circulation, market position, and company stability and accounts, which directly benefits the second newspaper in a market. Denmark's press subsidy law specifically permits the Daily Press Board to provide funding to newspapers at risk of bankruptcy. Often, aid is reserved for newspapers printed in minority languages as well.

Typically, direct subsidies cover the cost of operation – printing, circulation, etc., and the cost of distribution, or both. Some statutes provide for additional, more specific subsidies for development (i.e., modernization or electronic publication) or distribution of the State's newspapers abroad. As mentioned above, France has specifically authorized funding to aid the development of online newspaper services. Additionally, its circulation subsidy includes funding for the distribution and promotion of the French press abroad.

Distribution and oversight

A move to ensure the independence of the organizations overseeing the distribution of the state funds has resulted in entrusting these powers to 'press councils' throughout Europe. These authorities not only distribute the funding, but also evaluate whether applicant newspapers qualify for such funding under the relevant legislation. The government interest is often represented in these committees, but journalists and journalism organizations are represented as well.

Austria, Belgium, Denmark, Finland, France, Italy, Luxembourg, the Netherlands, Norway, Portugal, and Sweden all directly subsidize newspapers. Additionally, the French government has an annual service contract with the Agence France-Presse (AFP), valued at an estimated €100 million in 2003.

Press Subsidy Oversight Agencies¹¹:

Country & Legislation	Overseeing Organization	Composition	Basic Duties
Austria: Press Subsidies Act of 2004 ¹²	<ul style="list-style-type: none"> Austrian Communications Authority (KommAustria) 	<ul style="list-style-type: none"> 5 members: including a Chairman and a Deputy Chairman Members appointed by the President upon recommendation of the government for a term of 6 years Completely independent in the exercise of their functions 	<ul style="list-style-type: none"> Award funding to applicants that fulfill statutory requirements Must consult Press Subsidies Commission before every decision on application for press subsidy
	<ul style="list-style-type: none"> Press Subsidies Commission 	<ul style="list-style-type: none"> 6 members: 2 each appointed by Chancellor, Association of Austrian Newspapers, and journalists' trade union 1 chairperson, elected by members 	<ul style="list-style-type: none"> Prepare and issue reports on level of applicant compliance with funding requirements Establish criteria for testing circulation figures Give reasoned recommendations to KommAustria concerning the distribution of funds among potential beneficiaries Publish all funding results
Belgium (French Community): Decree of 31 March 2004 Concerning Aid Attributed to the French-language Daily Written Press and the Development of Initiatives by the Daily Press in Education ¹³	<ul style="list-style-type: none"> Centre for Aid to the Written Press 	<ul style="list-style-type: none"> Separately-managed administrative department that receives funding from French community The department is under the authority of the General Secretariat of audiovisual and multimedia services of the Ministry of the French Community 	<ul style="list-style-type: none"> Grant aid only upon written, justified requests, after consultation with association representing editors of daily newspapers Les Journeaux Francophones Belges (JFB) and the First Instance Approvals Committee

¹¹ Information in this chart was collected from: Isabel Fernández Alonso & José Joaquín Blasco Gil, *Press Subventions in Europe in 2006: Categories, Funding Provided and Assignment Systems*, in *PRESS SUBSIDIES IN EUROPE 38* (Isabel Fernández Alonso et al., eds.) (2006); Brigitte Zauner-Jelemensky, *Press Subsidies in Austria*, in *PRESS SUBSIDIES IN EUROPE 87* (Isabel Fernández Alonso et al., eds.) (2006); Google translations of the various legislation cited.

¹² Bundesgesetz über die Förderung der Presse (Presseförderungsgesetz 2004 – PresseFG 2004).

¹³ Décret du 31 mars 2004 relatif aux aides attribuées à la presse quotidienne écrite francophone et au développement d'initiatives de la presse quotidienne écrite francophone en milieu scolaire, n° 28687.

Denmark: Law on the Daily Press Board 2005	<ul style="list-style-type: none"> • Daily Press Board 	<ul style="list-style-type: none"> • 5 members without links to newspaper interest, each appointed for four-year periods • Chairperson directly appointed by Prime Minister; must be jurist of recognized prestige with no links to state administration • Other 4 members appointed by Prime Minister, who must attend proposals made by other bodies • 2 members each must be approved by the Trade and Industry Council and the Research Council for Culture and Communication • 1 member each must be proposed by the National Union of Journalists and the Association of Danish Newspapers 	<ul style="list-style-type: none"> • Distribute funding
Finland: Decree on Press Subsidies (14 April 2005)	<ul style="list-style-type: none"> • Press Subsidies Committee 	<ul style="list-style-type: none"> • Maximum of 12 members who must have press or media experience or knowledge and who represent various social and linguistic groups • One Chairperson, appointed by the government 	<ul style="list-style-type: none"> • Assess applications and make non-binding recommendation to government regarding assignment of selective subsidies
France: Decree Providing Aid to Daily National Newspapers with Political Content and Generally Low Advertising Resources ¹⁴	<ul style="list-style-type: none"> • Advisory Committee 	<ul style="list-style-type: none"> • 6 media company representatives • 6 government representatives 	<ul style="list-style-type: none"> • Assist with assignment of funds
	<ul style="list-style-type: none"> • Control Committee 	<ul style="list-style-type: none"> • 1 member of Audit Office • 1 representative of Ministry of Culture and Communication • 1 representative from Ministry of Economic and Finance 	<ul style="list-style-type: none"> • Ensure funding used for purpose for which assigned
Luxembourg: Law of 3 August 1998 on the Promotion of	<ul style="list-style-type: none"> • Commission 	<ul style="list-style-type: none"> • 6 members <ul style="list-style-type: none"> • 3 members represent the State: the President and 2 additional members • 3 members nominated, 	<ul style="list-style-type: none"> • Determine number of printed pages per newspaper in order to determine aid eligibility (see the model study)

¹⁴ Décret n° 86-616 du 12 mars 1986 instituant une aide aux quotidiens nationaux d'information politique et générale à faibles ressources publicitaires. See also Décret n° 89-528 du 28 juillet 1989 instituant une aide aux quotidiens régionaux, départementaux et locaux d'information politique et générale à faibles ressources de petites annonces.

the Written Press ¹⁵		one each, by the Luxembourg Association of Journalism Editors, the Luxembourg Association of Journalists and the Luxembourg Union of Journalists	below) <ul style="list-style-type: none"> Calculate amount of aid to each newspaper on basis of surveys and documentation submitted
Netherlands: Media Act 2008 ¹⁶	<ul style="list-style-type: none"> Press Fund 	<ul style="list-style-type: none"> Board members appointed and dismissed by Royal Decree on recommendation of Minister for Culture Cannot be both Board member and employed in a Ministry or with a newspaper, magazine or publishing company 	<ul style="list-style-type: none"> Decides on applications for financial help (subsidies)
Norway: Regulations for Production Grants for Daily Newspapers ¹⁷	<ul style="list-style-type: none"> Media Authority of the Ministry of Culture and Church Affairs 	<ul style="list-style-type: none"> Cooperative effort of administration of subsidies between press organizations and government agencies 	<ul style="list-style-type: none"> Administer subsidies Set guidelines for determination of circulation and payment of grants Decisions of Media Authority may be appealed to Ministry of Culture and Church Affairs
	<ul style="list-style-type: none"> Support Committee 	<ul style="list-style-type: none"> Members appointed by Ministry of Culture and Church Affairs for 4 years 	<ul style="list-style-type: none"> Give recommendations to Media Authority regarding allocation of subsidies Assist in assessment of daily newspapers' grant applications
Portugal: Decree-Law n.º 7/2005 ¹⁸	<ul style="list-style-type: none"> Office for the Media (GMCS) 	<ul style="list-style-type: none"> Public institute, independent of government Directors nominated by minister with responsibility for media policy 	<ul style="list-style-type: none">

¹⁵ Loi du 3 août 1998 sur la promotion de la presse écrite.

¹⁶ Mediawet 2008, Artikel 2.145 en Hoofdstuk 8.

¹⁷ Forskrift om produksjonstilskudd til dagsaviser, FOR-2009-11-26-1409

¹⁸ Decreto-Lei n.º 7/2005.



<p>Sweden: Statute of Annual Press Subsidies¹⁹</p>	<ul style="list-style-type: none"> • Press Subsidies Council 	<ul style="list-style-type: none"> • 10 members: 7 nominated by political parties in Swedish Parliament • Chaired by senior legal officer 	<ul style="list-style-type: none"> • Award subsidies based on evaluation of applications submitted by newspapers • Evaluate annual reports submitted by newspapers to ensure subsidies are used in accordance with statute • Prohibited from taking into account either political stand of newspaper or newspaper's stand on private matters
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¹⁹ Presstödsförordningen, 1990:524, with amendments.

Effect of state aid on the press in Europe

The effect of most state aid throughout Europe has been the survival of the newspaper industry – particularly the survival of local and regional newspapers with lower circulation, as well as the second and third newspapers in a particular market. These subsidies also continue to ensure cultural and linguistic diversity of the press.

Minority language newspapers

More than 40 daily newspapers in minority languages are in circulation throughout Europe, and less than five could survive without any financial aid.²⁰ Specifically, Norway grants subsidies to publications for the Sami indigenous community (inhabitants of Northern Scandinavia and Russia, most greatly concentrated in Norway's northernmost province Finnmark), and French regional public authorities in Languedoc-Roussillon and Midi-Pyrénées have financially supported Occitan-language publications.

Media concentration

Despite attempts to avoid it, media concentration can occur regardless of state subsidization. In Austria, for example, one single company – Mediaprint – controlled half of newspaper circulation in 2000. In the Netherlands, the two largest companies controlled 60% of newspaper circulation. In Norway and Finland, 50% and 40% of circulation, respectively, is controlled by two companies.

Despite the relatively high levels of media concentration, evidence suggests that the press subsidy systems in these states have prevented an even higher level of press concentration. When comparing Denmark, which has no direct subsidies and relatively few newspapers, to its Scandinavian counterparts, which have large direct subsidies and many newspapers, it is evident that subsidization has somewhat curbed the monopolization process in the latter countries. Furthermore, in Norway, a number of urban areas formerly without any newspaper now contain at least one. Rather than completely solving the market concentration and newspaper death problems, in countries such as Norway, the press subsidy systems have slowed down the process of monopolization, as many newspapers are kept alive by the subsidies.

Criticism

With the advent of the Internet and the increase in the availability of free, instant news content online and on mobile devices, many have begun to question the current press subsidy model prevalent throughout Europe. Opponents of the model argue that such subsidization schemes interfere with the principle of a free and independent press, and economic liberals argue against distortion of the free market. Additionally, scholars have attacked the current models, noting that most subsidies in fact have little effect on the financial situations of

²⁰ Humphreys, *op.cit.*, p.50, quoting Bojan Brezigar, President of the European Bureau for Lesser Used Languages.

newspapers. To provide long-term viability, they argue, the subsidies must change the market conditions of a failing newspaper, rather than provide continued operating aid, which establishes resource dependency and arguably the loss of market incentives to improve production and operations.

Others have questioned the general exclusion of the digital platform from subsidy systems. In response, however, as mentioned above, the French government in 2009 pledged public support for online-only organizations. This pledge increased the available aid to these organizations from €0.5 million in 2008 to €20 million in 2009. Whether a shift to embrace new media will occur in countries that do not directly or so heavily subsidize print media remains to be seen. The British VAT Act, for example, defines newspapers as publications that consist of several large sheets folded, rather than bound, together and contain information about current events of local, national, or international interest. This definition does not allow newspaper companies to claim VAT exemptions for digital advertising or sales, even though most – if not all – have transitioned to an online platform as well.

Trends and examples of legal regulation

The continued prevalence of state aid for print media throughout Europe suggests its acceptance by and entrenchment in the legal systems of Europe. Most state aid programs have existed for at least 30 years, are codified in statute, and continue to receive increased state funding.

Additionally, a gradual effort to apply these subsidy systems to new and emerging media markets is beginning to take hold, as States are faced with new obstacles to the survival of the printed press.

Examples of legal regulations

Luxembourg

The 1991 Law on the Promotion of Print Media, revised in 1998,²¹ grants generous public subsidies to its linguistically diverse print media – bestowing over €15 million per year to the six daily and four weekly newspapers in circulation throughout the country. One third of the subsidies is divided evenly between the ten beneficiaries. The remaining two thirds are distributed in proportion to the volume of printed pages carrying original content (pages rédactionnelles).

A Commission of six members determines the number of printed pages per organization and calculates the amount of aid to each on the basis of documentation submitted by the beneficiaries. Three members of the Commission represent the State – the President of the Commission and two additional members – and three are nominated, one each, by the Luxembourg Association of Journalism Editors (ALEJ), the Luxembourg Association of Journalists, and the Luxembourg Union of Journalists.

Sweden

The Swedish Statute of Annual Press Subsidies²² authorizes the Press Subsidies Council to distribute operational and/or distributional subsidies to eligible newspapers. The operational subsidies, which may be used only to cover the costs associated with publication, are determined based on the newspaper's weekly volume for high and medium periodicity newspapers (newspapers that are published six or seven times per week and three to five times per week, respectively) and subscription-based circulation for low periodicity newspapers (newspapers that are published once or twice per week). The distribution subsidy pays each newspaper a small sum per copy distributed through a joint distribution system with its competitor, and is designed to remove barriers to entry.

The Press Subsidies Council is prohibited from taking into consideration either the political stand of a newspaper or a newspaper's stand on private matters when determining eligibility. Any newspaper company allocated operational subsidies must submit a report annually to the Press Subsidies Council documenting the use of the subsidy and the costs covered. The Council is responsible, based on the reports submitted, for ensuring that operational subsidies

²¹ See Loi du 3 août 1998 sur la promotion de la presse écrite.

²² See Prestödsförordningen, 1990:524, with amendments.

have been used in accordance with the statute. If it suspects that a subsidy has been granted on the basis of incorrect information, or that the newspaper no longer has the right to the subsidy, it may suspend payment of the subsidy until further notice. Decisions of the Council are final and not eligible for appeal.

Analysis of state aid from freedom of expression standpoint

International standards relating to the right to freedom of expression and media freedom

The right to freedom of expression, including the right to freedom of information, is a fundamental human right. The full enjoyment of this right is central to the achievement of individual freedoms and to the development of democracy, particularly in countries transitioning from authoritarianism to democracy. Freedom of expression is a necessary condition to the realization of the principles of transparency and accountability that are in turn essential for the promotion and protection of all human rights.

The **Universal Declaration of Human Rights**²³ (UDHR) is generally considered the flagship statement on international human rights standards, and is binding on all states as a matter of customary international law. Article 19 of the UDHR guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The **International Covenant on Civil and Political Rights**²⁴ (ICCPR) is an international treaty that imposes legally-binding obligations on State Parties to respect a number of human rights set out in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of opinion and expression in similar terms to those found in Article 19 of the UDHR. Freedom of expression is among the most important of the rights guaranteed by the ICCPR and other international human rights treaties, in particular because of its fundamental role in the underpinning of democracy. The UN Human Rights Committee, the body established to monitor the implementation of the ICCPR, has stated: “The right to freedom of expression is of paramount importance in any democratic society.”²⁵ It has also stressed the importance of free media to the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.²⁶

Global recognition of the importance of freedom of expression is also reflected in the three regional systems for the protection of human rights, the **American Convention on Human Rights**, the **European Convention on Human Rights** (ECHR), and the **African Charter on Human and Peoples’ Rights**, all of which guarantee the right to freedom of expression. These

²³ Adopted by the UN General Assembly on 10 December 1948, Resolution 217A(III).

²⁴ UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.

²⁵ *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

²⁶ UN Human Rights Committee General Comment No. 25, issued 12 July 1996.

instruments are important comparative evidence of the content and application of the right to freedom of expression and may be used to inform the interpretation of Article 19 of the ICCPR.

Standards on media regulation

Along with the obligation to protect and respect the right to freedom of expression and media freedom, states have a positive obligation to create an environment in which this right and freedom can flourish. This obligation stems from Article 2 of the ICCPR, which requires that States “adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the ... Covenant.” Therefore, the primary goal of media regulation is to ensure that diverse and free media can operate. As the European Court of Human Rights (ECtHR) has stated

[Imparting] information and ideas of general interest ... cannot be successfully accomplished unless ... grounded in the principle of pluralism.²⁷

The **UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression**²⁸ has also proclaimed the obligation of its member states to create an environment in which culturally diverse media exist. The Convention establishes that states enjoy the sovereign right to adopt measures to protect intercultural dialogue and the diversity of cultural expression, as well as imposes a duty to adopt measures aimed at enhancing the diversity of media. Press subsidies are a cultural policy instrument available to the states.

International standards on press subsidies

The **UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression** imposes a duty on states to adopt and implement policies and measures for the protection and promotion of cultural diversity. Cultural diversity is strengthened by the free flow of ideas, and diversity of the media enables cultural expressions to flourish within societies. States have obligation to protect this diversity, especially where cultural expressions may be threatened by the possibility of extinction or serious impairment. State aid to print media is therefore an appropriate response to globalization and other factors responsible for the widespread death of regional and local newspapers – many of which represent cultural, ethnic, and linguistic minorities.

The Convention grants states the right to adopt measures to achieve cultural diversity, including measures aimed at enhancing diversity of the media and providing public financial assistance. These measures must aimed at achieving the Convention’s objectives of protecting that diversity of cultural expressions, and encouraging dialogue among cultures with a view to ensuring wider and balanced cultural exchanges. Furthermore, the measures must consistent with a state’s obligation under international law and universally recognized

²⁷ *Informationsverein Lentia and Others v. Austria*, App. Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90, 17 EHHR 93, para. 38, 24 Nov. 1993.

²⁸ UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expression, adopted on 20 October 2005 by the 33rd General Conference, entered into force on 18 March 2007.

human rights instruments, which include the UDHR and ICCPR, and therefore must not be discriminatory.

Discrimination on the basis of political or other opinion is prohibited under Article 26 of the ICCPR, which states that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Resolution 1636 (2008) of the Parliamentary Assembly of the Council of Europe²⁹ obligates all Council of Europe member states to treat media that receive direct or indirect subsidies fairly and with neutrality. Additionally, the Resolution states that member states should take concrete positive action to promote media pluralism, emphasizing the importance of enforcement of legislation against media monopolies and dominant market positions among the media, as well as editorial independence from media owners and the separation of “private” media from the state or state-controlled companies.

As the Report on Resolution 1636 notes, in relevant part:

Media freedom in a democracy requires fair and neutral state subsidies to the media. It could unduly limit media freedom, if a state subsidised individual media in a preferential way. The latter could obviously be abused for political influence.³⁰

Indirect subsidies available to all newspapers on an equal basis meet this standard. In order to ensure the fairness and neutrality of direct subsidies, the qualifications by which they are distributed must not relate to the content or political persuasion of the newspaper. Instead, eligibility must be determined on content neutral basis, in proportion to, for example, the number of printed pages containing original editorial content or the size of the subscription base. Additionally, the body responsible for subsidy allocation must be completely independent from the government. As this body deals public money it is important that it is property accountable. Likewise print media receiving state subsidies should be accountable for the manner in which they utilise public funds. One common and logical way of ensuring financial accountability is a duty for the body allocating the state subsidies to submit a public annual report to parliament. Print media organizations receiving state subsidies should be audited annually and make public they audited accounts.

²⁹ Parliamentary Assembly of the Council of Europe, Resolution 1636 (2008), *Indicators for media in a democracy*, adopted by the Assembly 3 October 2008.

³⁰ Parliamentary Assembly of the Council of Europe, *Report: Indicators for media in a democracy*, Doc. 11683, 7 July 2008, para. 34..

Recommendations

Taking into consideration the above mentioned standards as well as the policies on state aid to print media ARTICLE 19 makes the following recommendations regarding regulation on state subsidies:

- State subsidies should be provided to print media in accordance with a law.
- The law on print media subsidies should have as its objective the media pluralism and maintenance of the cultural and linguistic diversity of the press.
- The law should provide that direct or indirect subsidies shall be allocated in a fair and neutral manner. The law should explicitly prohibit that the eligibility of subsidies depends on the political content or viewpoint of a newspaper.
- If the state decides to indirectly subsidize the print media, the subsidies should be available for all newspapers and magazines.
- Direct subsidies, if available, should be distributed by an independent body on the basis of fair and neutral criteria.
- A newspaper should be able to appeal to court decisions refusing direct subsidization.
- The body allocating state aid to print media should submit a public annual report to parliament on the manner in which it utilizes public funds.
- Regardless of their legal form print media organizations receiving state subsidies should be audited annually like corporations and make public their audited accounts.