

ARTICLE<sup>19</sup>

# Addressing ‘hate speech’ through media self-regulation: Belarusian practice in European perspective

March 2019

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## Executive summary

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In this report, ARTICLE 19 seeks to contribute to the development and strengthening of media self-regulation as a means to address ‘hate speech’ in Belarus.

In Belarus, ‘hate speech’ is a pervasive problem that affects various segments of society, in particular LGBT persons, ethnic and racial minorities and women; while the media regularly serves as a platform for the expression of ‘hate speech.’ Generally, the environment is one in which hateful statements are at least tolerated if not deemed acceptable outright. This problem is exacerbated by a lack of comprehensive legal protection against discrimination.

The Belarusian Government tightly controls civic spaces, curtailing the right to freedom of expression. Independent journalists and media-outlets work in a very difficult environment, facing harassment by State and non-State actors and stringent controls that are tantamount to censorship. At the same time, State run media is used by the authorities as a tool to campaign against human rights defenders and opposition politicians, among others. Given the restrictions on human rights, opportunities for promoting equality and combating ‘hate speech’ in Belarus are limited. Legislation is often abused to impose illegitimate restrictions on the right to freedom of expression, rather than to protect groups at risk of discrimination and marginalisation.

Despite these challenges, ARTICLE 19 believes there are few limited opportunities for civil society in Belarus to tackle ‘hate speech’ without using the repressive State machinery, including through independent media self-regulation.

Self-regulation is the preferred model for the press. It is considered the most effective system for promoting ethical and deontological standards. In practice, the situation is more complicated. There is no consistency in how self-regulation of the press is applied across Europe, and its mechanisms vary from country to country. Additionally, such mechanisms face challenges and are often ineffective. In countries with more restrictive environments for freedom of expression, media self-regulation either does not exist or is severely limited. Given this, ARTICLE 19 welcomes the efforts of the Commission on Ethics of the Belarusian Association of Journalists, the country’s independent journalistic organisation, in working towards more ethical journalism despite a hostile environment for freedom of expression in the country through self-regulation of the profession.

This report first outlines relevant international law and standards in the area, followed by examination of existing models of media self-regulation across a number of European States and their role in addressing ‘hate speech.’ Subsequently, the practice of the Belarusian media self-regulatory body is contrasted with examples of practice from a host of European countries, looking into ethical standards and functions, as well as the means used to promote and enforce them. Finally, the brief provides suggestions for further developing and strengthening self-regulation of the press in Belarus, with a view to enabling it to effectively address ‘hate speech.’

ARTICLE 19 acknowledges that strengthening the existing self-regulation model in Belarus may raise practical challenges and problems. However, we believe that these problems, albeit complex, should be further debated and explored as part of a dialogue between independent Belarusian media and civil society. We believe it is important to collectively engage more broadly on these issues, which are of major importance to the protection of the right to freedom of expression and the right to equality.

## Table of contents

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Executive summary .....	2
Table of contents .....	4
Introduction .....	5
International human rights law and standards .....	7
Self-regulation of the press as a means to tackling ‘hate speech’ .....	11
Self-regulation of the press: Belarus practice in a European perspective .....	13
Conclusions and recommendations .....	22
About ARTICLE 19 .....	24
End notes .....	25

## Introduction

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There is no universally accepted definition of the term ‘hate speech’<sup>i</sup> in international human rights law although the term is frequently used in legal and non-legal settings. This contributes to the adoption of vague and overbroad laws that are often misused to target dissent, including expression of at risk and marginalised groups, whom such laws should be protecting. One such country in which this misuse is prevalent is Belarus.

‘Hate speech’ is a pervasive problem in Belarus, affecting various segments of society, in particular LGBT persons, racial and ethnic minorities and women. For example:

- Media monitoring by ARTICLE 19 and partner organisations between December 2016 and March 2017 showed that LGBT issues are relatively absent from media coverage, whereas casual homophobia and transphobia are common among influential opinion makers especially in State-owned/controlled media. Hence, ‘hate speech’ against LGBT people is considered acceptable in the country. The problem is exacerbated by the lack of specific legal protections against discrimination on the basis of sexual orientation or gender identity.<sup>ii</sup>
- ARTICLE 19 in its monitoring of anti-LGBT ‘hate speech’ in the media found that homophobic and transphobic speech by public opinion makers often intersected with misogyny.<sup>iii</sup> Further, the UN Committee on the Elimination of Discrimination against Women has expressed concern about the prevalence of discriminatory stereotypes and patriarchal attitudes regarding the roles and responsibilities of women and men in society and in the family, which it also saw reflected in the media.<sup>iv</sup>
- In 2017, the UN Committee on the Elimination of Racial Discrimination expressed concern over reports of ‘hate speech’ in the media and the lack of clarity surrounding the extent to which racial discrimination-related criminal legislation is applied in practice, and expressed regret over the lack of progress in adopting comprehensive legislation concerning ‘hate speech’ in line with the Committee’s guidance on the matter.<sup>v</sup>

Moreover, the Belarusian Government tightly controls civic spaces, curtailing freedom of expression, association and assembly, rights which enable people to speak out in defence of equality. The media and information environment in Belarus remains one of the most restrictive in Europe. Media is strictly controlled by the Government, through legislation that does not comply with international human rights law. Nevertheless, a number of independent Internet publications continue to engage in critical reporting. Belarusian law requires official registration of media outlets and allows the authorities to shut them down on the basis of even minor violations of the law. Journalists are subjected to arbitrary detentions, intimidation and a restrictive accreditation process. Furthermore, the country’s governance system has been based on an all-powerful State, driven by presidential decrees with the Executive also controlling the judiciary and the media. Belarus is not a member of the Council of Europe, and regularly ignores recommendations from international human rights bodies on the advancement of human rights.

Given the tight restrictions on human rights in Belarus, opportunities for promoting equality and combating 'hate speech' are limited. Despite this hostile environment for journalists and media workers in Belarus, there exists an independent journalistic association, the Belarusian Association of Journalists (BAJ). Its members mostly work for independent media outlets that are still operating in Belarus. Within the BAJ, there is a Commission on Ethics that issues decisions on cases of breach of journalistic ethics. Although not binding, the decisions raise public awareness, including concerning groups at risk of discrimination.

Efforts by civil society organisations (CSOs) have had a positive impact on media discourse, with attitudes among some in the media, and the approach of the BAJ Commission on Ethics, showing that there are opportunities to work towards the promotion of more accurate and ethical coverage of marginalized and at risk groups in Belarus. This report provides some suggestions for effective use and strengthening the media self-regulation mechanism in Belarus, comparing it with existing mechanisms from a range of European countries, as well as policy work of ARTICLE 19 on 'hate speech.'<sup>vi</sup> ARTICLE 19 believes it is important to collectively engage more broadly on responding to 'hate speech' while protecting the right to freedom of expression, including in countries where the environment for freedom of expression is more hostile.

## International human rights law and standards

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International and regional human rights law and standards provide for protection of the right to freedom of expression<sup>vii</sup> and the right to equality.<sup>viii</sup> States have positive obligations to ensure the effective protection of human rights, including in the sphere of relationships between private actors, whose behaviour may be regulated where this is necessary to guarantee the effective exercise of the rights of individuals to freely receive and impart information and ideas.<sup>ix</sup>

These protections must be the backbone of any State responses to ‘hate speech’ intolerance and discrimination.

Exceptionally, States may limit the right to freedom of expression, if such limitation meets all the requirements of the three-part test, namely:

- That the restriction is provided for by law: any limitation on freedom of expression must have a basis in law,<sup>x</sup> which moreover must be public, accessible, predictable and foreseeable,<sup>xi</sup> thus enabling individuals to regulate their conduct;
- That the restriction is in pursuit of a legitimate aim, such aims having been exhaustively listed in human rights treaties, including respect for the rights or reputations of others; or the protection of national security or public order (ordre public), or of public health and morals; and
- That the restriction is necessary in a democratic society: the aim of the restriction must be proportional to the means used to reach it. States must demonstrate, in a specific and individualised manner, the precise nature of the threat to the legitimate aim, and the necessity<sup>xii</sup> and proportionality<sup>xiii</sup> of the action taken, in particular by establishing a direct and immediate connection between the expression concerned and the identified threat.<sup>xiii</sup> The least restrictive measure<sup>xiv</sup> capable of achieving a given legitimate objective should be imposed.

Additionally, under Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR), States Parties are required to prohibit “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”<sup>xv</sup>

### Freedom of expression and ‘hate speech’

As noted earlier, ‘hate speech’ is an emotive concept for which there exists no universally accepted definition under international human rights law.<sup>xvi</sup> Based on international freedom of expression standards (see above), ARTICLE 19 argues that approaches to ‘hate speech’ should be scaled according to its severity. It has proposed that appropriate and effective responses to ‘hate speech’ should differentiate between:

- ‘Hate speech’ that must be prohibited: international criminal law and Article 20(2) of the ICCPR require States to prohibit certain severe forms of ‘hate speech,’ including through criminal, civil and administrative measures,<sup>xvii</sup>
- ‘Hate speech’ that may be prohibited: States may prohibit other forms of ‘hate speech,’ provided they comply with the requirements of Article 19(3) of the ICCPR (and, mutatis mutandis, relevant regional human rights treaties); and,
- Lawful ‘hate speech’ which should be protected from restriction under Article 19(3) of the ICCPR but nevertheless raises concerns in terms of intolerance and discrimination, and thus merits a critical response by the State.<sup>xviii</sup>

Simultaneously, ARTICLE 19 also argues that responses to ‘hate speech’ are premised on three complementary areas of actions for States, specifically:

- Creating an enabling environment for the exercise of the right to freedom of expression, and protecting the right to equality and non-discrimination;
- Enacting a range of positive policy measures to promote freedom of expression and equality, including in the field of media regulation, with a view to tackling prejudice and discrimination without limitations on freedom of expression; and
- That limitations on expression should be considered only for the most severe forms of ‘hate speech,’ i.e. incitement to hostility, discrimination or violence, in exceptional circumstances that are in accordance with international human rights law.

## Freedom of the media

The European Convention on Human Rights (the European Convention) does not explicitly mention freedom of the press, but the European Court of Human Rights (the European Court) has, through its case law, developed a body of principles and rules granting the press a special status with strong protection. In its jurisprudence, the European Court has recognised the “public watchdog” role of the press.<sup>xix</sup> In particular, it has stressed the special function of the press in political debate noting that:

The pre-eminent role of the press in a State governed by the rule of law must not be forgotten ... Freedom of the press ... enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.<sup>xx</sup>

In addition, the European Court also affords freedom of the press strong protection where matters of public interest other than political issues are publicly debated.<sup>xxi</sup>

The State, by virtue of the press’ duty “to impart information and ideas on matters of public interest”,<sup>xxii</sup> and the public’s right to receive such information, has less possibility to interfere. However, this added



protection is subject to the proviso that journalists “are acting in good faith ... and provide ‘reliable and precise’ information in accordance with the ethics of journalism.”<sup>xxiii</sup>

The pivotal role of independent and pluralistic media in a democratic society also features prominently in the principles to which the Participating States in the Organisation for Security and Cooperation in Europe (OSCE) are committed. Approaching the issue from the perspective of international cooperation, the foundational 1975 Final Act of the Conference on Security and Co-operation in Europe, in this regard, already emphasised “the essential and influential role of the press, radio, television, cinema and news agencies and of the journalists” in the development of mutual understanding between the Participating States and committed to improve the circulation of, access to, and exchange of information.<sup>xxiv</sup> This commitment to the furthering of free, independent and pluralistic media has since remained a mainstay of OSCE declarations and principles. In 1997, this led to the establishment of the office of the Representative on Freedom of the Media, whose mandate it is to, inter alia, monitor relevant media developments in Participating States and advocate and promote full compliance with OSCE principles and commitments regarding freedom of expression and free media.<sup>xxv</sup> The successive Representatives have frequently expressed serious concerns over restrictions on the media and attacks on journalists in Belarus.<sup>xxvi</sup>

### The media and ‘hate speech’

The media plays a critical role in reporting on and challenging ‘hate speech.’ However, any policy measures directed at the media should respect the fundamental principle that media regulation should be undertaken by bodies independent of political influence, which are publicly accountable and operate transparently. Unfortunately, in many countries, concentration of media ownership, State interference in the media, and a lack of independence in the media regulatory environment more broadly, make it difficult to address failings in ethical coverage.

Accordingly, ARTICLE 19 has argued that, as a moral and social responsibility, mass media should take steps to:

- Ensure that their workforces are diverse and representative of society as a whole. In particular, it is critical that marginalised groups are able to freely access and use media for the production and circulation of their own content.
- Address as far as possible issues of concern to all groups in society;
- Seek a multiplicity of sources and voices within different communities, rather than representing communities as monolithic blocs; and
- Adhere to high standards of information provision that meet recognised professional and ethical standards.<sup>xxvii</sup>

Further, the rights of correction and reply should be guaranteed to protect the right to equality and non-discrimination, and the free flow of information. These rights are best protected through self-regulatory systems.<sup>xxviii</sup>

All media should also play a role in combating discrimination and in promoting intercultural understanding, including by considering the following:<sup>xxix</sup>

- Taking care to report in context and in a factual and sensitive manner, while ensuring that acts of discrimination are brought to the attention of the public;
- Being alert to the danger of discrimination or negative stereotypes of individuals and groups being furthered by the media;
- Avoiding unnecessary references to race, religion, gender and other group characteristics that may promote intolerance;
- Raising awareness of the harm caused by discrimination and negative stereotyping; and
- Reporting on different groups or communities and giving their members an opportunity to speak and to be heard in a way that promotes a better understanding of them, while at the same time reflecting the perspectives of those groups or communities.

Professional codes of conduct for the media should reflect the principle of equality and, accordingly, steps should be taken to promulgate and implement such codes. In particular, professional development programmes for media professionals should raise awareness of the role the media can play.

# Self-regulation of the press as a means to tackling ‘hate speech’

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The self-regulation model of the media is a framework that relies entirely on voluntary compliance by the media industry (while legislation plays no role in enforcing the relevant standards). It differs from the co-regulation model, sometimes also called “regulated self-regulation”, which contains elements of the self-regulatory model but is underpinned by legislation. The *raison d’être* for a self-regulation model is holding its members accountable to the public, promoting knowledge within its membership, and developing and respecting international standards. It relies first and foremost on members’ common understanding of the values and ethics that underpin professional conduct.

Self-regulation is considered to be the least restrictive means available through which the press can be effectively regulated and the best system through which high standards in the media can be promoted.<sup>xxx</sup> At the same time, ARTICLE 19 recognises that this must be meaningful and effective. Accordingly, ARTICLE 19 has identified several requirements<sup>xxxii</sup> for self-regulatory bodies, which should:

- Ensure their independence from government, commercial and special interests;
- Be established via a fully consultative and inclusive process – the major constitutive elements of their work should be elaborated upon in an open, transparent and participatory manner that allows for broad public consultation;
- Be democratic and transparent in their selection of members and decision-making;
- Ensure broad representation, with a composition that includes representatives of civil society;
- Adopt a code of ethics for the sector it seeks to regulate;
- Have a robust complaints mechanism and clear procedural rules to determine whether ethical standards were breached in individual cases, and have the power to impose only moral sanctions; and
- Work in the service of the public interest, and be transparent and accountable to the public.

Furthermore, self-regulatory bodies can play an important role in promoting knowledge and understanding of ethical rules throughout the sector, for instance by adopting and disseminating recommendations and guidelines, or offering trainings to their members. The OSCE, in its guidance on media self-regulation, equally stresses the importance of a commitment to the Code of Ethics. In relation to the participation of tabloid journalists, for instance, the OSCE provides:

Concerning the participation of the so-called “yellow press”, which tends to disregard codes of ethics, the OSCE distinguishes between two scenarios: if they have signed the code of ethics, they should be equally involved with all respective duties and responsibilities; if they have not signed, they should not be a threat to the press council.<sup>xxxiii</sup>

ARTICLE 19 believes that when considering the approaches to ‘hate speech’ through media self-regulation, the Belarus stakeholders can consider experiences from other countries. In ARTICLE 19’s experience,<sup>xxxiii</sup> given that self-regulatory mechanisms are embedded in a specific domestic regulatory, economic and political context, it is neither possible nor appropriate to develop a “one-size-fits-all” set of recommendations. ARTICLE 19 finds that in order for the press’ self-regulatory mechanisms to effectively address ‘hate speech’:

- Sanctions for violations of the code of ethics must be clear and effective, and there must be an effective mechanism for their enforcement;
- Procedures must be streamlined and designed so the threshold for filing a complaint is low. Procedural rules must be clear, and guarantee appropriate due process at each stage of the proceedings concerning violations of the code of ethics;
- Self-regulatory bodies have an important role in building the capacity of the journalistic profession, with a view to internalising deontology and ethics. This capacity-building can take the form of targeted teaching activities, but is also done through the development of guidelines for reporting on at-risk groups, and through the inclusion of reasoning in decisions concerning violations of the deontology that clarifies how compliance with the code of ethics is evaluated in practice;
- Self-regulatory bodies have an important role in informing the public, including about their existence and specific role in tackling ‘hate speech’; and
- Diversity in the self-regulatory body’s membership is an important factor in ensuring that the concerns of individuals and groups who are targeted by ‘hate speech’ are heard.

# Self-regulation of the press: Belarus practice in a European perspective

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As set out above, a variety of practices exist in the area of self-regulation of the press, and one is not necessarily preferred over the other, so long as the outcomes satisfy the requirements laid out in the previous chapter. In this section, ARTICLE 19 first outlines the situation of self-regulatory bodies in Belarus, and then follows up with comparative examples from European countries that could be considered by the BAJ in the development of its own practice with regard to ‘hate speech.’

## Journalists’ associations in Belarus

There are two professional associations of journalists in Belarus: the Belarusian Union of Journalists (BUJ) which includes journalists working for State-owned media; and the Belarusian Association of Journalists (BAJ), which primarily comprises journalists working with scarce independent media. The BUJ is not considered to be independent and does very little with regard to journalism ethics.

BAJ has over 1,000 members who work in various periodicals, on radio and television, and in publishing companies. Some members of the organization are employees of State-run media. In addition to the central office in Minsk, the association has 5 regional branches.

ARTICLE 19 stresses that with regard to developing the BAJ’s self-regulatory mechanism and its capacity to address ‘hate speech,’ rather than focusing on the nature of the employer, the more important issue is that the BAJ’s members commit to abide by the ethical and deontological principles of the Association and agree to participate in the mechanisms to develop and enforce them. Each journalist’s commitment in this regard is welcomed, and it is immaterial whether these journalists are employed by independent or State-run media, or if they work freelance.

## BAJ Code of Journalistic Ethics and ‘hate speech’

The BAJ Declaration on Principles of Journalistic Ethics (BAJ Declaration) states a commitment to prevent discrimination on multiple grounds, introducing an open-ended list of protected characteristics, including on the grounds of race, nationality, religion, sex, sexual orientation, political and other views. The current Declaration was adopted in 2006. Additionally, BAJ also adopted the Code of Journalistic Ethics, which does not mention non-discrimination on any grounds.

ARTICLE 19 welcomes the inclusion of a commitment to preventing discrimination in the BAJ’s Declaration. We recommend the Code of Journalistic Ethics also explicitly prohibit discrimination. We further recommend that the BAJ follow the practice of many other European press codes to frame the provision in an open-ended manner. For instance:

- In Austria, the Press Council’s Code states “any discrimination on grounds of age, disability, sex or any ethnic, national, religious, sexual, ideological or other grounds is inadmissible.”<sup>xxxiv</sup>
- In the UK, IMPRESS’ Standards Code requires publishers not to make prejudicial or pejorative references to a person based on their age, disability, mental health, gender reassignment or identity, marital or civil partnership status, pregnancy, race, religion, sex or sexual orientation, or any other characteristic that makes that person vulnerable to discrimination. These characteristics must not be referred to unless they are relevant to the story.<sup>xxxv</sup>

In addition to the inclusion of a non-discrimination clause in the Code of Journalistic Ethics, ARTICLE 19 further invites the BAJ to consider introducing additional guidelines to address other minority issues<sup>xxxvi</sup> as well as ‘hate speech.’ For instance, in the UK, IMPRESS has included a provision in its Standards Code dealing specifically with ‘hate speech’ (however, only to the extent that it constitutes incitement to hatred).<sup>xxxvii</sup>

### BAJ Commission on Ethics

The BAJ Commission on Ethics, elected by the BAJ Congress every 3 years from its members, serves as the Association’s body that hears complaints regarding violations of the Code of Journalistic Ethics. The Commission comprises 7 members.

In order to enhance the Commission’s effectiveness in tackling ‘hate speech,’ ARTICLE 19 underlines the importance of diversity in the body’s composition. We recommend that the composition of the Commission of Ethics be organised so as to include representatives of the public, whose participation can provide significant benefits in terms of credibility, transparency and accountability. In light of the Belarusian authorities’ continuous violations of the right to freedom of expression and interference with press freedom, ARTICLE 19 recommends that the Commission never include public officials.<sup>xxxviii</sup> As for the participation of the public, there are varying practices from other European countries that the BAJ could consider, for instance:

- The European Federation of Journalists (EFJ), in its guidelines for action concerning journalism practice and media diversity inclusiveness,<sup>xxxix</sup> has equally underscored the need to improve the role of press councils and their structure with a view to promoting diversity. By way of example, the EFJ asks how press councils make decisions, and who sits in its decision-making body for decisions relating to gender, minority rights, refugees and immigrants.
- In the Netherlands, the Press Council considers ethics complaints in a chamber composed<sup>xl</sup> of the Council’s chairperson (always a journalist)<sup>xli</sup> or one of their three deputy chairpersons (who must be jurists pursuant to the statutes<sup>xlii</sup> and, in practice, are usually current or former members of the judiciary);<sup>xliii</sup> two journalist members of the Press Council; and two non-journalists (one Press Council member who was appointed upon nomination by the participating publishers, broadcasters and journalists’ unions who fund the Council’s work<sup>xliv</sup> and another Council member who was appointed following a public procedure).

- In Sweden, tasks of enforcing ethical standards are divided between the Press Ombudsman and the Press Council. The former is appointed by a special committee consisting of the Chief Parliamentary Ombudsman, the chairperson of the Swedish Bar Association and the chairperson of the National Press Club. The Press Council is composed of a judge, who acts as chairperson, one representative each of the four founding press organisations (the Swedish Newspaper Publishers’ Association, the Magazine Publishers’ Association, the Swedish Union of Journalists, and the National Press Club), and three representatives of the general public who are not allowed to have any ties to the newspaper business or to press organisations.<sup>xlv</sup>

### BAJ Commission on Ethics’ complaints procedures

The Commission on Ethics’ meetings are held:

- To consider a specific complaint against a member;
- On their own initiative – to consider, in the opinion of the majority of the commission members, violations of professional ethics and situations that have aroused the increased interest of the journalistic community; and
- To discuss and prepare documents relating to the work of the Commission itself and the problems of professional ethics. In 2018, for example, a meeting was convened to discuss amendments to the Statute of the Commission, a new version of which has not yet been adopted by the BAJ Council.

The Commission mainly considers complaints related to members of BAJ, however, in exceptional circumstances, the Commission can also consider outside cases. In an interview given to ARTICLE 19, Sergey Vaganau, current Chairman of the Commission, stressed the importance of expressing the opinion of the BAJ Commission on Ethics in especially serious cases concerning breaches of journalistic ethics, including cases relating to non-BAJ members.

For example, the Commission considered the case of Vecherniy Mogilev, a local governmental newspaper which in 2014 published an article entitled ‘Transsexual Detained in Belarus for the First Time in History.’ The story focused on the detention of a transgender man, who had been arrested for alleged theft. His name was changed in the original publication, but the place and year of sex reassignment surgery he had undergone was indicated. The story linked the defendant’s alcoholism and theft with his transgender status, and expressed outrage that he was raising three children. Calling him “it” and a “weepy and hermaphroditic being”, the story mentioned a “blue lobbying” (‘blue’ is colloquial derogatory for ‘gay’) and “influences from the West flooding with pederasty elements.” LGBT activists requested that the Commission on Ethics look into the story.<sup>xlvi</sup> The Commission found the story ‘in serious conflict’ with journalistic ethics.<sup>xlvii</sup> The case demonstrated that although the Commission couldn’t influence the journalist who wrote the article, or the editorial policy of Vecherniy Mogilev – as the journalist was not a member of BAJ – the decision of the Commission condemning ‘hate speech’ towards a transgender person raised visibility and awareness and resulted in other media outlets joining in to stand firmly against unethical coverage of transgender issues. Moreover, as a result, the media increased their coverage of transgender people in Belarus and highlighted the daily struggles of transgender people in Belarus.

Currently, the Commission has capacity to consider more complaints than the number of complaints actually received. Exact statistics on the number of meetings held are not maintained. The Commission receives up to 20 appeals a year, however, sometimes an appeal contains only a request to explain how to act in a given situation. The Commission may consider more than one complaint at one meeting. It all depends on the complexity of the conflict.

ARTICLE 19 recommends that the BAJ develop a more robust procedure, defining more clearly the functions of the Commission and its complaints mechanism. This will ensure adequate access to the mechanism as the Commission's case load increases, allowing it to continue to provide a timely remedy. Clear procedural rules are also key to the mechanism's effectiveness by ensuring that due process is maintained throughout. A first important issue to consider pertains to admissibility criteria.

A first consideration in this regard is whether complaints should concern only publications by BAJ members. A variety of practice exists across Europe; one is not necessarily preferred over the other: what matters is that the practice is clear and contributes to the complaint mechanism's effectiveness in the development and enforcement of journalistic ethics in Belarus.

For example, in Austria<sup>xlviii</sup> two procedures are foreseen:

- An independent procedure, which the Austrian Press Council can start *ex officio*, and can concern any potential violation of media ethics in any print outlet or on a related website, even by those who are not members of the Press Council. The Council can then issue an opinion as to whether the material complies with the principles of the Code of Ethics; or
- A complaints procedure, initiated by a reader who is individually affected by the material in question. It may be assigned to an ombudsperson to seek a mutually agreed settlement, and if this fails, the Press Council's Senate decides on the matter. In order to lodge a complaint, the offended person must declare they will not commence legal action and will accept the arbitration and in return, the media organization must also accept the Press Council as the forum for dispute resolution.

Thus, the Press Council can address all relevant matters in the media landscape and, in providing guidance on issues concerning media ethics, is not restricted to violations by its members only. This function is clearly distinguished from the Council's role in the resolution mechanism for complaints by members of the public who were affected by a violation of the Code of Ethics, which cannot be effective when the concerned media organisation does not accept the Council's authority.

A second consideration regarding admissibility criteria concerns the characteristics of the complainant. In many European countries, members of the public must show that they have an interest in the matter at hand. For instance, in the Netherlands, the press self-regulatory body's bylaws foresee two types of cases, namely:

- Those brought to its attention by a complainant, who needs to have a direct interest in obtaining a decision from the council,<sup>xlix</sup> or



- Opinions published on its own initiative on matters concerning journalists' behaviour that is of general scope and of principled importance.<sup>1</sup>

A similar practice exists in Flanders, where the statutes specify that the Press Council sovereignly decides whether a complainant has a "sufficient interest" that justifies filing a complaint; or that the Council can decide, at its own initiative, to consider "a certain journalistic practice."<sup>li</sup>

In the UK,<sup>lii</sup> a different threshold concerning the complainant's interest applies depending on the nature of the complaint:

- The Independent Press Standards Organization (IPSO) hears complaints of any complainants if such complaints relate to a significant inaccuracy that has been published on a general point of fact. For complaints related to other clauses of its Code of Practice, the complainant must be directly affected or must be a representative group that must demonstrate: a) how the group it represents has been affected; b) that the breach is significant; and c) that the public interest would be served by IPSO considering the complaint.
- IMPRESS accepts complaints from individuals personally affected by a personal breach of the code, and by representative groups where it represents a group affected by a potential breach and there is some public interest in the complaint. If the complaint concerns a matter of accuracy, any third party may also bring a complaint.

A third consideration is the privacy of the person to whom the impugned article pertains. In this regard, the OSCE has noted that it "may be dangerous to launch an investigation if those at the centre of an article or broadcast have not made a complaint themselves ... Self-regulatory bodies may breach an individual's privacy under human rights legislation if they initiate investigations without consent. Moreover, it is often impossible for anyone but those concerned to know how an apparently offensive article or broadcast has come out ... Those seeking to adjudicate it would find it difficult to obtain a full picture of the situation without the view of one of the central actors."<sup>liii</sup> A number of different solutions have been developed, aiming to address this problem. For instance:

- In Sweden, any interested member of the public can lodge a complaint with the Ombudsman against newspaper items they regard as a violation of good journalistic practice. But the person to whom the article relates must provide written consent if the complaint is to result in formal criticism of the newspaper.<sup>liv</sup>
- In Germany, there is a general right of complaint that is extended to everyone, not just those who have a "direct interest."<sup>lv</sup> The press council has confirmed this broad right to complain, while also reserving the right not to accept complaints in cases of recognizable misuse in line with its rules, for instance when complaints are raised in the context of organized campaigns against individual media.<sup>lvi</sup> In cases of such abuse, the matter is also referred to the plenary meeting of the council.<sup>lvii</sup>

In addition to conditions relating to the status of the complainant and the latter's relation to the alleged deontological breach, the rules and procedures of the press' self-regulatory bodies in many European countries, also foresee other admissibility criteria.

ARTICLE 19 recommends that the BAJ additionally consider introducing rules regarding the timeframe within which a complaint must be made, similar to, for example:

- Sweden, where complaints must be filed with the Ombudsman within three months of the original publication.<sup>lviii</sup>
- The Netherlands, where a complaint must be made with the concerned media within three months following the impugned behaviour and, in case this does not resolve the grievance, with the Press Council within six months.<sup>lix</sup>
- Germany, where the Press Council “does not usually accept any complaints concerning processes that themselves or whose first publication date back more than one year. In the case of complaints relating to violations of the right to data protection it shall be based on the moment when the complainant became aware of them.”<sup>lx</sup>

Moreover, as practice develops, ARTICLE 19 recommends that the BAJ consider establishing rules concerning the exhaustion of other mediation avenues before it can accept requests pertaining to hearing a complaint. In many countries, such an intermediate step, consisting of mediation, is foreseen, which must be exhausted before a complainant can turn to the Press Council’s ethics commission asking it to issue a decision on the alleged deontological misconduct. For instance:

- In the Netherlands, a complainant must present their grievance to the concerned media first, which then has one month to resolve the complaint. Only afterwards, if the complainant is not satisfied with the proposed resolution, or if the media has not responded, can the Press Council hear the complaint.<sup>lxi</sup>
- In Germany, the Code prescribes that the Press Council may mediate between parties, which entails that procedural deadlines are deferred. Further, the impugned media has the possibility to rectify the alleged infringement themselves within three weeks following its communication. The Press Council decides whether the rectification is adequate, entailing that it is “suitable for maintaining professional ethics and, thus, restoring the standing of the press. This action shall be public unless repeated publication about the event would contravene the interests of the party/parties concerned.”<sup>lxii</sup>
- In Flanders (Belgium), the Press Council’s statutes specify that it is competent to deal with complaints after mediation.<sup>lxiii</sup> The Secretary-General, who is not a Press Council member,<sup>lxiv</sup> upon receipt of a grievance, mediates as soon as possible with a view to reaching an agreed settlement.<sup>lxv</sup>
- In Sweden, a stepped procedure is foreseen: members of the public complain to the Ombudsman, who initiates mediation and an inquiry. Where the Ombudsman considers that the evidence obtained is weighty enough to warrant a decision by the Press Council, he or she initiates the proceedings before the latter body. (The complainant may appeal the Ombudsman’s decision to dismiss the matter directly to the Press Council).<sup>lxvi</sup>

In addition to provisions concerning the participation of witnesses and experts, in some European countries, the rules concerning the ethics commission’s functioning also provide for the possibility of assistance for the complainant or the impugned media in proceedings before the commission. For instance:

- In the Netherlands, “assistance” is always allowed (conditional only on prior notification to the secretary), whereas the participation of witnesses and experts depends on the chairperson’s assessment that this would benefit the proceedings. They can be invited upon the proposal of either party or ex officio by the chairperson.<sup>lxvii</sup>
- In Flanders (Belgium), both the complainant and the impugned media are entitled to the assistance of one person of their choice.<sup>lxviii</sup> Generally defined “third parties” can be heard or can be invited to assist the Council, upon the latter’s initiative and decision.<sup>lxix</sup>

All Commission meetings are public. The Commission itself invites interested parties and is open to witnesses who can provide assistance in especially difficult cases. ARTICLE 19 welcomes the Commission’s commitment to the participation of the parties and openness to hear relevant outside witnesses, and recommends this be solidified in the Commission’s rules of procedure, not only to ensure the preservation of this good practice but also because this signal of transparency may serve to enhance the mechanism’s credibility.

Various models exist with regard to the participation of the parties in the proceedings, which the BAJ may consider in the elaboration of its rules of procedure. For example:

- In the Netherlands, the complainant and the media or journalist whose behaviour or writing are at issue, are invited to be heard by the deontological body.<sup>lxx</sup>
- In Flanders (Belgium), the Council hears the parties who request to be heard, or can invite them on its own initiative.<sup>lxxi</sup>
- In Germany, there is no strict obligation that the parties be invited to the hearing, although they may be asked.<sup>lxxii</sup>

As for the outcomes of the complaints, the Commission on Ethics usually issues its decision within a month. The Commission’s meetings are usually convened after a detailed discussion by e-mail correspondence between members of the Commission. As a result of the discussion, it may be decided to refuse to consider the complaint, if a complaint is not related to the work of the Commission. Such cases are very rare, but the author of the complaint always receives an explanation on the grounds of the refusal.

The decision of the Commission is of a recommendatory nature and is, therefore, not binding. The decision contains a conclusion regarding the journalist’s adherence to professional ethics standards, as well as recommendations. The BAJ website publishes decisions by the Commission, based on their findings. A member of the BAJ can express disagreement with the decision of the Commission in the form of a public statement or an appeal to the BAJ Council. Sergey Vaganau recalls only one such case, when one newspaper’s editors publicly refused to cooperate with the Commission, expressing disagreement with the publications of the Chairman of the Commission regarding professional ethics.

ARTICLE 19 notes the large divergence across Europe as concerns the outcomes of press councils’ self-regulatory mechanisms. With regard to sanctions, the OSCE has noted that “a self-regulatory body would have grave difficulty introducing fines or compensation unless it had a statutory basis – and that, of course, would conflict with the notion of the system being self-regulatory.”<sup>lxxiii</sup> Moreover, “there is evidence that financial penalties are not an effective punishment, as increased sales from an intrusive story can outweigh the subsequent fine.”<sup>lxxiv</sup> Accordingly, the OSCE states, the major sanction is the “critical adjudication” which the offending media is obliged, by voluntarily joining the system, to publish.<sup>lxxv</sup> A notable exception, to an extent, in this regard is Denmark.<sup>lxxvi</sup> In this country, the press council can order for a decision to be published in a manner specified by the council if the case concerned press ethics and the complaint was well-founded. Non-compliance with a publication order, to which the editor may add no further comments, is punishable with a prison sentence or a fine. It has happened occasionally that a fine of about EUR 670 was imposed.<sup>lxxvii</sup>

In most European countries, however, practice is for media self-regulatory bodies to dispense rulings based on opinion, which the offending media should publish. The implementation in practice differs:

- In the Netherlands, for instance, the Press Council Foundation has entered into a voluntary agreement with several chief editors, whereby the medium gives an undertaking that it will cooperate with the Council’s procedure where necessary and publish the decision.<sup>lxxviii</sup>
- In Sweden, it is the press council’s charter that sets out the obligation for concerned media to publish critical rulings by the council.<sup>lxxix</sup> Whether or not the press council’s decision is also published on its website depends on the preference of the complainant. Furthermore, the council briefly reports on its decisions in industry publications.<sup>lxxx</sup>
- In Germany, a distinction is drawn based on the seriousness of the breach. In case the self-regulatory body issues a “public reprimand”, the medium concerned is obliged to publish the decision. Less severe sanctions, namely a *Hinweis* (advisory notice) or *Missbilligung* (notice of disapproval), are not accompanied by such an obligation.<sup>lxxxi</sup>
- In Flanders, decisions are communicated to the parties. The council determines, on a case by case basis, whether and how the decision will be published by the media outlet concerned. Furthermore, the self-regulatory body also publishes its decisions on its website and they are part of the annual report.<sup>lxxxii</sup>

ARTICLE 19 recommends that the BAJ establish clear rules concerning the dismissal of a complaint. In many European countries, the rules pertaining to the ethics commission’s functioning specify the conditions that must be met for a complaint to be dismissed. Usually, the possibility of an appeal is also foreseen. For example:

- In the Netherlands, the chairperson and secretary first assess whether the Press Council is competent, whether the complaint was filed within the statute of limitations, whether the complainant has a direct interest and whether the complaint is well-founded. If it is *prima facie* evident that the conditions are not met, they can dismiss the complaint. The complainant and the media against whom the complaint

was directed are informed of this decision and the complainant can appeal this decision. The appeal is considered by a fully-composed ethical commission, which can dismiss the appeal or sustain it and subsequently consider the case following the normal procedure.<sup>lxxxiii</sup>

- In Germany, there is prior scrutiny of complaints and where the Council is evidently not the competent body, the complainant is notified. If a complaint is evidently unjustified, it is rejected. The complainant has the possibility to appeal this decision and the Complaints Committee decides on the appeal.<sup>lxxxiv</sup>

In order to enhance the effectiveness of the complaints mechanism in providing redress to the targets of ‘hate speech,’ ARTICLE 19 recommends the BAJ consider elaborating a similar duty for the offending media to publish the decision with the concerned stakeholders, taking full account of the challenging operating environment for the press as well as persons belonging to at risk minorities and human rights defenders in Belarus.

### Informing the public and building the capacity of journalists

The media’s self-regulatory bodies have an important role to play in informing the public, and in building the capacity of the members of the profession, as an integral part of their role in tackling ‘hate speech.’

The OSCE has defined the “promotion of mutual respect and cultural understanding” as one of the envisaged objectives of media self-regulation, which is “meant to make [the noise level of democracy] acceptable for the public ... The media have a strong interest in making that freedom not only tolerable but also enjoyable. Responsible self-regulation is the way to achieve that.”<sup>lxxxv</sup> Furthermore, the OSCE guidance also provides that “media professionals bear a heavy responsibility for the quality of discourse in society and in the world.”<sup>lxxxvi</sup>

The OSCE has furthermore flagged as “crucial” that the public know about its right to complain in order for any self-regulatory mechanism to be effective.<sup>lxxxvii</sup> The best way to do this, still according to the OSCE, is “for media outlets themselves to publish information telling readers how to complain.” Other options are advertising campaigns and “perhaps the most straightforward method is to release regular – and hopefully newsworthy – information about the self-regulator’s activities to as many interested parties as possible.”<sup>lxxxviii</sup>

The former chairperson (2010-2015) of the Finnish Council for Mass Media, Risto Uimonen, has described the position’s functions as follows: “Our main task is to handle the complaints. But in addition to that my personal duty as the Chair is to speak out on a wider basis, to speak for a good standard of the press in public.”<sup>lxxxix</sup>

Lastly, media self-regulatory bodies also build the capacity of journalists, developing guidance on good journalistic practice and the interpretation of the Code of Ethics. In this regard, they can organise trainings and develop guidance on reporting on at risk groups, among other things.

## Conclusions and recommendations

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Self-regulation is inherently idiosyncratic, but experience from other jurisdictions with an established practice in the matter can serve to guide developments in Belarus, including in the area of ‘hate speech.’ In order to further progress the nascent self-regulatory practice of the Belarus Association of Journalists, with a view to developing a robust mechanism for addressing ‘hate speech’ through self-regulation, ARTICLE 19 makes the following recommendations:

To the authorities of Belarus:

- Adopt a legal framework that adequately protects against discrimination and ensures that all restrictions on freedom of expression meet international freedom of expression standards;
- Take effective policy measures with a view to increasing social cohesion, and reducing exclusion of and hatred towards at risk groups;
- Respect the right to free expression and to information and create an enabling environment for media freedom, including by stopping the harassment and persecution of journalists and media workers, and, in relation to the issue at hand, by supporting the press’ self-regulation; and
- Respect, protect and fulfil all its human rights obligations under international law, including by adequately addressing the detailed recommendations of the UN Treaty and Charter bodies.

To the BAJ:

- Strengthen professional ethical standards, so as to provide clear guidance that will serve to effectively address ‘hate speech’ by:
  - Including an open-ended clause regarding grounds for discrimination in the Code of Ethics;
  - Including explicit guidance concerning minority issues in the Code of Ethics, or separately develop guidelines; and
  - Including explicit guidance concerning ‘hate speech’ in the Code of Ethics, or separately develop guidelines.
- Consider broadening the membership of the Commission on Ethics, with a view to ensuring its inclusive and representative character, by:
  - Involving representatives of the public in proceedings where relevant, through active engagement with independent civil society organisations; and
  - Ensuring in particular the representation and participation of at risk and minority groups in the development of guidelines on matters that concern them.
- Develop a more robust procedure for complaints, with a view to strengthening the enforcement of professional ethical standards, by:
  - Establishing clear rules concerning the admissibility criteria for complaints, including on characteristics of the complainant, and on a timeframe within which a complaint must be made. As practice develops, rules concerning the exhaustion of any mediation avenues put in place may also be considered;
  - Establishing clear rules regarding the dismissal of a complaint, including nature of the reasoning that should accompany such decisions and the procedure for challenging it;

- Establishing a clear and effective sanctions regime, capable of providing effective redress for the targets of ‘hate speech’; and
  - Establishing clear rules concerning the participation of the parties and the public, as well as clear rules concerning recusal by members of the Commission on Ethics, and the procedural mechanisms necessary to enforce them.
- Build journalists’ and the public’s knowledge of journalistic ethical standards with a view to ensuring their relevance, including through the promotion of the self-regulatory mechanism as a means to enforce the standards.

To Belarus journalists:

- Actively apply the highest deontological and ethical standards throughout professional activities, including those concerning ‘hate speech’ and reporting on at risk and vulnerable communities; and
- Engage with the BAJ and its Commission on Ethics, with a view to strengthening the independent self-regulation of the media in Belarus.

To Belarus civil society:

- Engage with the BAJ and its Commission on Ethics, with a view to ensuring its representative and inclusive character, including through participation where appropriate in the development, dissemination and enforcement of ethical standards.

To the international community:

- Support efforts by the Belarus journalistic profession and civil society to tackle ‘hate speech’ through the independent self-regulation of the media.

## About ARTICLE 19

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ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, freedom of expression and equality, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19’s overall legal expertise, the organisation publishes each year a number of reports, comments on legislative proposals as well as existing laws that affect the right to freedom of expression and other materials. This work, carried out since 1998, as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation.

If you would like to discuss this report further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law and Policy Team or the European and Central Asia Team, you can contact us by e-mail at [legal@article19.org](mailto:legal@article19.org) or at [europe@article19.org](mailto:europe@article19.org).



## End notes

<sup>i</sup> For example, the Council of Europe's Committee of Ministers considers 'hate speech' as "all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, migrants and people of immigrant origin;" see Recommendation No. R(97)20 of the Council of Europe Committee of Ministers on 'hate speech,' 30 October 1997; or the European Court, *Gündüz v Turkey*, App. No. 35071/97, 14 June 2004, paras 22 and 43. Furthermore, homophobic and transphobic 'hate speech' are defined as "all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons;" see Recommendation CM/Rec (2010)5 "on measures to combat discrimination on the grounds of sexual orientation or gender identity." Given there is no universally accepted definition, in this report, the term 'hate speech' is always used between quotation marks, indicating any expression that is abusive, insulting, intimidating, harassing and/or that incites to violence, hatred or discrimination.

<sup>ii</sup> ARTICLE 19, *Challenging hate: Monitoring anti-LGBT "hate speech" and responses to it in Belarus, Kyrgyzstan, Moldova, Russia and Ukraine*, February 2018.

<sup>iii</sup> *Ibid.*, p. 16.

<sup>iv</sup> UN Committee on the Elimination of Discrimination against Women, *Concluding Observations on the eighth periodic report of Belarus*, UN Doc CEDAW/C/BLR/CO/8, 25 November 2016, para. 20-21.

<sup>v</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding Observations on the combined 20<sup>th</sup> and 23<sup>rd</sup> periodic reports of Belarus*, UN Doc CERD/C/BLR/CO/20-23, 21 December 2017, para. 16-17.

<sup>vi</sup> ARTICLE 19 has issued a number of policy documents detailing the complexities of international law in tackling 'hate speech' and has long argued that one of the most effective means of responding to intolerance and 'hate speech' is to introduce a range of 'positive measures' by the States, media and civil society rather than imposing criminal sanctions.

<sup>vii</sup> Among others: Article 19 of the International Covenant on Civil and Political Rights (ICCPR); Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention).

<sup>viii</sup> Among others: Articles 2(1), 26 and 27 ICCPR; Article 14 and Protocol No. 12 ECHR.

<sup>ix</sup> Human Rights Committee, *General Comment No. 34 on Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34, 12 September 2011, para 7.

<sup>x</sup> While the European Court of Human Rights (European Court) in its case law has exceptionally accepted that common law rules (see *The Sunday Times v UK*, App. No. 6538/74, 26 April 1979) or principles of international law (see *Groppera Radio AG v Switzerland*, App. No. 10890/84, 28 March 1990; *Autronic AG v Switzerland*, App. No. 12726/87, 22 May 1990) constituted a legal basis, normally a basis in national law is required. Freedom of expression is such an important value that its restriction must receive the democratic legitimacy derived from parliamentary debate and elections.

<sup>xi</sup> European Court, *The Sunday Times v UK*, *op. cit.*, para 49.

<sup>xii</sup> European Court, *Observer and Guardian v UK*, App. No. 13585/88, 26 November 1991, para 71-72.

<sup>xiii</sup> Also see *General Comment No. 34*, *op. cit.*, para 22.

<sup>xiv</sup> European Court, *Barthold v Germany*, App. No. 8734/79, 25 March 1985, para 58-59. Also see Inter-American Court of Human Rights, *Advisory Opinion OC-5/85 on Compulsory membership in an association prescribed by law for the practice of journalism*, 13 November 1985, para 46.

<sup>xv</sup> Article 20(2) ICCPR; unpacked further in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, A/HRC/22/17/Add.4, Appendix, 5 October 2012. While the European Convention does not contain such an obligation, the European Court has recognised that certain forms of harmful expression must necessarily be restricted to uphold the objectives of the Convention as a whole (see e.g. *Erbakan v Turkey*, Application No. 59405/00, 6 July 2006, para 56; *Gündüz v Turkey*, Application No. 35071/97, 14 June 2004, para. 22).

<sup>xvi</sup> For example, the Council of Europe's Committee of Ministers considers 'hate speech' as "all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, migrants and people of immigrant origin;" see Recommendation No. R(97)20 of the Council of Europe Committee of Ministers on 'hate

speech,' 30 October 1997; or the European Court, *Gündüz v Turkey*, App. No. 35071/97, 14 June 2004, paras 22 and 43. Furthermore, homophobic and transphobic 'hate speech' are defined as "all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons;" see Recommendation CM/Rec (2010)5 "on measures to combat discrimination on the grounds of sexual orientation or gender identity."

<sup>xvii</sup> Importantly, ARTICLE 19 also argues that the grounds for discriminatory hate should include all those that appear under the broader non-discrimination provisions of international human rights law. This is in line with the interpretation of international human rights instruments as living instruments with a view to supporting the principle of equality on a broad understanding of the term. C.f. European Court, *Tyrer v UK*, App. No. 5856/72, 15 March 1978; or Nowak, CCPR Commentary: 2<sup>nd</sup> revised edition, p. 628.

<sup>xviii</sup> ARTICLE 19, 'Hate Speech' Explained: A Toolkit, 2015, p. 18.

<sup>xix</sup> European Court, *Lingens v Austria*, Application No. 9815/82, 8 July 1986.

<sup>xx</sup> European Court of Human Rights, *Castells v Spain*, Application No. 11798/85, 23 April 1992, para. 43.

<sup>xxi</sup> See e.g. European Court of Human Rights, *Kurlowicz v Poland*, Application No. 41029/06, 22 June 2010 (concerning problems in local communities); *Galus v Poland*, Application No. 61673/10, 15 November 2011 (decision) (concerning the functioning of an elementary school); *Dubowska and Skup v Poland*, Application Nos. 33490/96 and 34055/96, 18 April 1997 (decision) (concerning environmental pollution).

<sup>xxii</sup> European Court, *Observer and Guardian v UK*, op. cit., para. 59(b).

<sup>xxiii</sup> European Court, *Fressoz and Roire v France*, Application No. 29183/95, 21 January 1999, para. 54.

<sup>xxiv</sup> Organization for Security and Co-operation in Europe, Conference on Security and Co-operation in Europe: Final Act of Helsinki, 1 August 1975.

<sup>xxv</sup> OSCE Plenary Meeting, Decision No. 193: Mandate of the OSCE Representative on Freedom of the Media, PC.DEC/193, 5 November 1997.

<sup>xxvi</sup> The OSCE Freedom of the Media Representative's press statements on Belarus (from July 1999 onwards) are available at: <https://bit.ly/2Hds4xO>.

<sup>xxvii</sup> ARTICLE 19, The Camden Principles on Freedom of Expression and Equality, April 2009, Principle 6.

<sup>xxviii</sup> Ibid., Principle 7.

<sup>xxix</sup> Ibid., Principle 9.

<sup>xxx</sup> Note the difference with broadcast media, where statutory or co-regulation models have traditionally been deemed necessary as the allocation of frequencies on the spectrum, which are a limited natural resource, requires the intervention of public authorities in order to create a diverse and pluralistic broadcasting landscape.

<sup>xxxi</sup> ARTICLE 19, Freedom and Accountability: Safeguarding Free Expression Through Media Self-Regulation, 2005.

<sup>xxxii</sup> OSCE Representative on Freedom of the Media, The Media Self-Regulation Guidebook: all questions and answers, 2008, p. 57.

<sup>xxxiii</sup> See inter alia, ARTICLE 19's country studies series, Responding to 'hate speech,' with publications on Austria, Germany, Hungary, Italy, Poland and the United Kingdom; available at [www.article19.org](http://www.article19.org).

<sup>xxxiv</sup> ARTICLE 19, Austria: Responding to 'hate speech' (Austria Hate Speech), 2018, p. 39.

<sup>xxxv</sup> ARTICLE 19, United Kingdom (England and Wales): Responding to 'hate speech' (UK Hate Speech), 2018, p. 39. By comparison, IPSO's Editors' Code of Practice's clause on discrimination is not open-ended, stating that "the press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability" and that details about these characteristics must be avoided unless genuinely relevant to the story.

<sup>xxxvi</sup> See also OSCE, The Media Self-Regulation Guidebook: all questions and answers, op. cit., p. 26

<sup>xxxvii</sup> ARTICLE 19, UK Hate Speech, op. cit., p. 39.

<sup>xxxviii</sup> C.f. Under the OSCE's guidance, according to which participation of public officials is possible but should be limited and defined in agreement with all other stakeholders; see OSCE, The Media Self-Regulation Guidebook: all questions and answers, op. cit., pp. 57-58.

<sup>xxxix</sup> Mediane: Media in Europe for Diversity Inclusiveness, Journalism practice & Media Diversity Inclusiveness: Guidelines for Action, September 2013, available at: <https://bit.ly/2XMUKmm>.

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- <sup>xl</sup> Dutch Council for Journalism, Regulations, Article 1(1), available (in Dutch) at: <https://bit.ly/2Hcpc4i> .
- <sup>xli</sup> Ibid.
- <sup>xlii</sup> Ibid.
- <sup>xliii</sup> See e.g. current membership, available (in Dutch) at: <https://bit.ly/2NR1X2I>.
- <sup>xliv</sup> Dutch Council for Journalism, op. cit., Participants.
- <sup>xlv</sup> Office of the Press Ombudsman, Swedish Press Council, How self-regulation works, available at: <https://bit.ly/2J6FL3t>.
- <sup>xlvi</sup> The article was noticed by other journalists. Online platform Tut.by published a response, criticising the newspaper for biased coverage and dissemination of false information; see, e.g. Nasha Niva, "It": How Mogilev newspaper made a monster out of a modest village transsexual man, 26 December 2015, available (in Belarusian) at: <https://nn.by/?c=ar&i=142015>; or TUT.by, "Leave them alone. We are not villains". How a family lives in an ordinary village when dad is transsexual, 6 February 2016, available (in Belarusian) at: <https://bit.ly/2EPsPcR>.
- <sup>xlvii</sup> Resolution of the Commission on Ethics, Vecherniy Mogilev committed gross violations of journalistic ethics, 17 February 2015, available (in Belarusian) at: <https://bit.ly/2H9gzrn>.
- <sup>xlviii</sup> ARTICLE 19, Austria Hate Speech, op. cit., pp. 35 et seq.
- <sup>xlix</sup> Dutch Council for Journalism, Regulations, op. cit., Article 2.
- <sup>l</sup> Ibid., Article 12.
- <sup>li</sup> Flemish Council for Journalism, Statutes, Article 22, available (in Flemish) at: <http://www.rvdj.be/node/67>.
- <sup>lii</sup> ARTICLE 19, UK Hate Speech, op. cit., pp. 38 et seq.
- <sup>liii</sup> OSCE, The Media Self-Regulation Guidebook: all questions and answers, op. cit., p. 44.
- <sup>liv</sup> Office of the Press Ombudsman, How self-regulation works, op. cit.
- <sup>lv</sup> German Press Council, Complaints Procedure, Section 1(1), available (in German) at: <https://bit.ly/2DtDAEi>.
- <sup>lvi</sup> Ibid. See also Daphne Koene, Press councils in Western Europe, 2009, p. 92-93.
- <sup>lvii</sup> German Press Council, Complaints Procedure, op. cit., Section 3(4).
- <sup>lviii</sup> Office of the Press Ombudsman, How self-regulation works, op. cit.
- <sup>lix</sup> Dutch Council for Journalism, Regulations, op. cit., Article 2a.
- <sup>lx</sup> German Press Council, Complaints Procedure, op. cit., Section 2(1).
- <sup>lxi</sup> Dutch Council for Journalism, Regulations, op. cit., Article 2a(1).
- <sup>lxii</sup> German Press Council, Complaints Procedure, op. cit., Section 6(1)-(5).
- <sup>lxiii</sup> Flemish Council for Journalism, Statutes, Article 22, available (in Dutch) at: <http://www.rvdj.be/node/75>.
- <sup>lxiv</sup> Flemish Council for Journalism, Regulations, op. cit., Article 4.
- <sup>lxv</sup> Ibid., Article 19.
- <sup>lxvi</sup> Office of the Press Ombudsman, How self-regulation works, op. cit.
- <sup>lxvii</sup> Dutch Council for Journalism, Regulations, op. cit., Article 6(5)-(7).
- <sup>lxviii</sup> Flemish Council for Journalism, Regulations, op. cit., Article 9.
- <sup>lxix</sup> Ibid., Article 25.
- <sup>lxx</sup> Dutch Council for Journalism, Regulations, op. cit., Article 6(3).
- <sup>lxxi</sup> Flemish Council for Journalism, Regulations, op. cit., Article 25.
- <sup>lxxii</sup> German Press Council, Complaints Procedure, op. cit., Section 8(2).
- <sup>lxxiii</sup> OSCE, The Media Self-Regulation Guidebook: all questions and answers, op. cit., p. 37.
- <sup>lxxiv</sup> Ibid., p. 36.
- <sup>lxxv</sup> Ibid., p. 36.
- <sup>lxxvi</sup> The Danish model follows the “regulated self-regulation” model.
- <sup>lxxvii</sup> Daphne Koene, op. cit., p. 64.
- <sup>lxxviii</sup> Ibid., p. 35.

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- <sup>lxxix</sup> Swedish Press Council, Code of Ethics for Press, Radio and Television, op. cit., Rule 6.
- <sup>lxxx</sup> Daphne Koene, op. cit., p. 50.
- <sup>lxxxi</sup> German Press Council, Complaints Procedure, op. cit., Section 12 and 15
- <sup>lxxxii</sup> Flemish Council for Journalism, Regulations, op. cit., Article 29
- <sup>lxxxiii</sup> Dutch Council for Journalism, Regulations, op. cit., Article 4.
- <sup>lxxxiv</sup> German Press Council, Complaints Procedure, op. cit., Section 5.
- <sup>lxxxv</sup> OSCE, The Media Self-Regulation Guidebook: all questions and answers, op. cit., p. 20.
- <sup>lxxxvi</sup> Ibid., p. 21.
- <sup>lxxxvii</sup> Ibid., p. 45.
- <sup>lxxxviii</sup> Ibid.
- <sup>lxxxix</sup> Lara Fielden, Regulating the Press: A comparative study of international Press Councils, 2012, p. 62.