

The right to freedom of speech and opinion in Ukraine: threats and opportunities

This report was prepared by the *Ukrainian human rights platform "Uspishna Varta"*. This report assesses the observance of rights and freedoms on the territory controlled by the government of Ukraine. This report is based on data obtained by the human rights platform "Uspishna Varta" via conducting detailed interviews with victims and witnesses of human rights violations and infringements, experts and human rights defenders, as well as via carrying out activities to assist in the protection of human rights in documented cases. Among them - the monitoring of trials, advocacy work with the duty bearers on respecting human rights, non-governmental organizations, and the media.

General recommendations on the right to freedom of speech and opinion in Ukraine

In order to ensure the right to freedom of speech and opinion enshrined in Article 34 of the Constitution of Ukraine, as well as in Article 10 of the European Convention on Human Rights and Fundamental Freedoms and Article 19 of the International Covenant on Civil and Political Rights, ratified by the state of Ukraine, the following measures should be taken.

The President of Ukraine:

1. To take measures to stop pressure being put on the media and provide explanations for the intervention of the head of state or his subordinates in the activities of issuing licenses and the organization of media inspections.
2. Recall the representatives of the National Council of Ukraine on Television and Radio Broadcasting, appointed by the quota of the President.
3. In order to restore freedom of speech and exchanging information on the Internet, the prohibitions on accessing popular social networks and websites, which were introduced by the decrees of President Poroshenko in May 2017 and May 2018 within the framework of sanctions against Russia, should be lifted.
4. To impose a moratorium on the use of "separatist" articles of the Criminal Code by the Security Service and law enforcement bodies in relation to media representatives, the blogosphere, and Internet users, as well as the tapping and surveillance of journalists by the SBU.
5. To officially recognize the existence of political prisoners in Ukraine and to stop the prosecution of those whose cases are in the courts or at the pre-trial investigation stage; to promote amnesty and the rehabilitation of already convicted political prisoners.
6. To abandon the informal support for bloggers and opinion leaders (the so-called "Porokhobot") who demonstrate hatred and the practice of cyber-bullying against journalists and bloggers expressing an alternative position;

The Parliament (Verkhovna Rada Of Ukraine):

7. To bring legislation in line with international standards and the recommendations of the Council of Europe, the quotas for the Ukrainian language on television and radio should be reduced to 50%. The legislation of Ukraine regarding the introduction of language quotas (laws No. 3822-d of June 16, 2016 No. 5313 of May 23, 2017) should be revised by the Parliament as it contradicts:

- Article 34 of the Constitution of Ukraine, which guarantees the right to freedom of thought and speech, to freedom of expression and belief;
- Article 10 of the Constitution of Ukraine, which guarantees the free development, use, and protection of Russian and other languages of national minorities of Ukraine;
- Article 10 of the European Convention on Human Rights and Fundamental Freedoms and Article 19 of the International Covenant on Civil and Political Rights, ratified by the state of Ukraine;

- The obligations of the state of Ukraine under the European Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages

8. To restore the right to the free exchange of information and to remove all restrictive measures, including bans and restrictions on the import of Russian books, broadcasting of Russian films, and the entry of Russian actors, introduced by the Ukrainian Parliament in 2015-2017. Such bans and restrictions violate the right to freedom of movement, information, and ideology, as well as the expression of one's own opinion, which are enshrined in the Constitution of Ukraine and in international acts ratified by Ukraine. In order to restore the right to the free exchange of information, all restrictive measures should be removed by amending the legislation:

- Law of Ukraine No.1317 "on amendments to some laws of Ukraine concerning the protection of the information television and radio space of Ukraine" dated December 09, 2014;
- Law of Ukraine No.3359 "on amendments to the Law of Ukraine 'on cinematography' (concerning films of the aggressor state)" dated 27 October 2015;
- Law of Ukraine No. 5114 "on amendments to some laws of Ukraine concerning the restriction of the Ukrainian market's access to foreign printed materials with anti-Ukrainian content" dated December 8, 2016;
- Law of Ukraine No. 6682 "on amendments to the Law of Ukraine 'on tour events in Ukraine' regarding the features of organizing and conducting tours with the participation of citizens of the aggressor state" of July 11, 2017, and others.

9. The law "on the condemnation of the Communist and national-socialist (Nazi) totalitarian regimes in Ukraine and the prohibition of propaganda of their symbols", better known as the "law on decommunization" (2015), should be finalized in accordance with the recommendations of the Venice Commission of 18-19 December 2015. In particular:

- The law should contain a less extensive and exhaustive list of prohibited symbols; the concept of propaganda should be clearly defined;
- Only those actions that constitute a real threat to society should entail criminal liability, which should be proportional to the severity of the crime committed, the mere display of symbols or the use of the name should not be punished by imprisonment;
- The Law should make it clear that the prohibition of any association is a measure of last resort only in exceptional cases, in proportion to the gravity of the crime. This is especially true of political parties in light of their important role in a democratic society, and the like.
- The law should regulate equally the scope and detail of the description of acts related to both ideologies – Communist and Nazi.

10. Refuse to consider bills that threaten the free development of the Internet in Ukraine and create a threat of extrajudicial blocking of Internet resources.

11. To hold parliamentary hearings on freedom of speech in Ukraine without delay.

12. To regulate the activities of the National Council of Ukraine on Television and Radio Broadcasting:

- Listen to the report and to recognize the unsatisfactory work of the National Council for 2017.
- Recall the representatives of the National Council appointed by the quota of the Verkhovna Rada.
- Ban the National Council for a period of one year from making unscheduled inspections of the media.
- At the legislative level, to introduce a transparent examination procedure for the content of TV and radio channels, on the basis of which the National Council can make decisions.

National Council of Ukraine on Television and Radio Broadcasting:

13. To be guided in their decisions on imposing fines and depriving media licenses by objective criteria and not by political expediency and the unspoken orders of the Presidential Administration;
14. Objectively consider the violations committed by the media close to President Poroshenko and his circle, including the proper assessment of the calls of journalists and guests of these media agencies of a xenophobic and anti-Semitic nature.

The Security Service of Ukraine and the National Security and Defence Council of Ukraine:

15. Ensure that any restriction of freedom of expression is established only as a specific and individualized way of responding to an obvious threat and is necessary and proportionate;
16. To stop the practice of deporting foreign journalists and banning them from entering Ukraine regulated by the decisions of the National Security and Defence Council and carried out by the SBU, which is a violation of the international obligations of Ukraine in the field of human rights. In particular, the participating States of the OSCE have committed themselves to provide conditions for the work of journalists from one of the participating parties in other participant parties.
17. To apply the provisions of the legislation on combatting separatism in strict compliance with the obligations of States under Part 1 of Article 19 of the International Covenant on Civil and Political Rights, and should not be used to drown out opposition views or criticism or subject them to criminal persecution. In general, it is necessary to impose a moratorium on the use of the so-called "separatist articles" of the Criminal Code (state treason, encroachment on territorial integrity, overthrowing the constitutional system, etc.) in relation to media workers, journalists, and bloggers.

Prosecutor General's Office of Ukraine, Ministry of Internal Affairs:

18. To ensure that the Prosecutor General's office and the National Police conduct a transparent, timely, and effective investigation into attacks against the media and their employees, threats of physical violence, and other criminal acts that may constitute hindering the legitimate professional activities of journalists;
19. To provide an objective investigation into the attacks against journalists, including the cases of the murder of Pavel Sheremet and Oles Buzina;
20. To provide an immediate, effective, and impartial investigation into possible violations in connection with the activities of the website "*Mirotvorets*";
21. To investigate the activities of the leadership of the National Council on TV and Radio on the topic of preventing journalistic activities.

General situation with respect to political rights and freedoms in Ukraine

According to the results of monitoring in April-August 2018, the human rights platform "Uspishna Varta" recorded **99** violations of political rights and freedoms. From these, **62 cases (63%)** were related to the **violation of the right to freedom of speech and opinion**.

28% of all recorded violations of political rights and freedoms involved **right-wing radical organizations**, primarily C14, "National Druzhina", "Bratstvo", "Right Sector", etc. In general, the collective actions of **law enforcement agencies** (SBU, the Prosecutor General's office, the State Border Service, and the National Police) led to the violation of political rights and freedoms in **25%** of recorded cases.

41% of the recorded cases (40) violated the rights of **journalists** - both Ukrainian and foreign; in addition, the rights of some **media companies** were also violated (15 cases, 16%). Among the categories of persons whose rights are violated it is also necessary to mention **political parties** and/or **individual politicians** (mainly the left-wing ideological agenda), as well as **public activists** (13% and 10% of the recorded facts, respectively). Among the regions, **Kiev** is the leader in terms of the number of violations (48); the **Dnepr** (8) and **Odessa** (11) regions are also distinguished.

Threats to freedom of speech and opinion in Ukraine at the level of state policy

During 2014-2018, a number of changes were made to the legislation that regulates the law in question. Some of them significantly restrict the freedom of information exchange and introduce language quotas for television and radio, and also create conditions for disproportionate sanctions against independent media companies. In general, the government introduced measures that prohibited or blocked information, the media or individual journalists who were considered a threat to national security or who expressed views that undermined the sovereignty and territorial integrity of the country.

The PACE resolution “Protection and Promotion of Regional or Minority Languages in Europe” from January 23, 2018 expressed concern that “some projects are aimed at reducing the current rights of national minorities”. PACE recommended that Ukraine “refrain from applying restrictive legal and policy measures, such as subtitling/broadcasting obligations and mandatory quotas for programs in the official language”.

Establishment of language quotas for radio and television

- 1) Law No. 3822-d “*On amendments to the Law of Ukraine 'On television and radio broadcasting' (concerning the proportion of songs in the state language in music radio programs and radio broadcasts)*” dated 16 June 2016.

This law established that from November 8, 2016, radio stations are obliged to broadcast at least 25% of songs in Ukrainian and broadcast at least 50% of programs in Ukrainian during the day; from November 8, 2017, the proportion increased for songs to 30% and 55%, respectively; from November 8, 2018 - to 35% and 60%. For those radio stations that, according to their license, broadcast more than 60% of songs in the languages of the EU, a preferential quota of 25% for songs in the Ukrainian language was established. For failure to comply with these requirements, radio organizations must pay a fine of 5% of their license fee.

- 2) Law No. 5313 “*On amendments to some laws of Ukraine concerning the language of audiovisual (electronic) mass media*”¹ (23 May 2017).

This law stipulates the introduction of similar language quotas for television: 75% of national and regional TV channel should be in the state languages, 60% - local TV channels, and 75% - for TV programs. If broadcasters fail to implement these language quotas, a fine of 5% of their total license fee is provided. Mandatory quotas for European and Ukrainian products also apply to satellite TV channels. The norms of the law will work in full only from the second year of its action - from October 13, 2018.

- 3) Law No. 2766 “*On amendments to the law of Ukraine 'On television and radio broadcasting' (concerning the definition of European broadcasts)*”² from May 17, 2016.

1 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60356

This law stipulates the exclusion of Russian audiovisual products from the quota for European television and radio products (except for satellite broadcasting). The new provisions entered into force on September 15, 2016.

Restriction on the freedom of information and cultural exchange with Russia

- 1) On February 5, 2015 the Verkhovna Rada legislatively banned the broadcasting of films produced in the Russian Federation after January 1, 2014³. On March 29, 2016 the law was updated, the ban also extended to works produced and (or) first published (shown) after January 1, 2014⁴.

Fact: Over the past three years the state has banned the showing of more than 500 movies in Ukraine.

- 2) Law No. 5114 “*On amendments to some laws of Ukraine concerning the restriction of access of foreign printed materials featuring anti-Ukrainian content to the Ukrainian market*”⁵ from December 8, 2016 introduced the licensing principle for the importation of books from Russia and the temporarily occupied territories of Ukraine. Distribution of Russian books without permission is punishable by fines.

Fact: During the period from January 1, 2017 to February 14, 2018, the State Committee banned 30 books published in the Russian Federation, in particular the book “*Stalingrad*” by the British historian Anthony Beevor translated into Russian⁶.

- 3) Law No. 6682 “*On amendments to the law of Ukraine 'On tour events in Ukraine' regarding the peculiarities of the organization and carrying out of tour events with the participation of citizens of the aggressor state*”⁷ from October 5, 2017 introduced a pre-tour inspection of **Russian performing artists** by the Security Service of Ukraine.

Fact: As of May 25, 2018, this list includes the names of 131 Russian figures of culture and art. As of January 2018, the State Border Service of Ukraine banned 104 Russian artists from entry to Ukraine for 3 years.

- 4) 4) In 2014 the National Council of Television and Radio Broadcasting issued a statement in which it demanded that the providers of cable television cease to broadcast **Russian TV channels**, including RBK-TV, “Pervy Kanal”, “Planeta RTR”, “Rossiya 24”, “NTV-Mir”, “Teletsentr Internatsional”, “Rossiya 1”, “NTV”, “TNT”, “Peterburg 5”, “Zvezda”, “Ren TV”, and “LifeNews”. On January 12, 2017, the National Council also banned the broadcasting of the Russian opposition TV channel “Dozhd”.

Censorship at the level of government and state authorities

On January 14, 2015 the Ministry of Information Policy (MIP) was established in Ukraine, which was determined by the main body in the system of Central Executive authorities in the field of the information sovereignty of Ukraine. In 2015, the Minister Yury Stets announced his intention to create a coordination center for bloggers who distribute theses from the authorities on social

2 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54998

3 Law of Ukraine No. 1317 “On amendments to some laws of Ukraine on the protection of the information television and radio space of Ukraine” http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52781

4 Law of Ukraine No. 3359 “On Amendments to the Law of Ukraine 'On Cinematography' (concerning the films of the aggressor state)” http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=56877

5 <http://zakon0.rada.gov.ua/laws/show/1780-19>

6 <https://www.radiosvoboda.org/a/28981382.html>

7 http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62230

networks, received the informal name “porobots” (due to the complimentary nature of their reports on the activities of President Poroshenko).

OSCE representative on freedom of the media Dunja Mijatovic: “The initiative to create a Ministry of Information is a direct threat to freedom of speech and is not the way to counter-propaganda”

The report of *Human Rights Watch* for 2015: the creation in December 2014 of the MIP coincided with the emergence of independent reports of violations by pro-government forces in the East of the country. Ukrainian bloggers and journalists criticised the creation of the new Ministry, fearing that it could lead to censorship.

The media sphere is managed by the **National Council of Television and Radio Broadcasting of Ukraine** (hereinafter – National Council) – a permanent collegial body, whose purpose is to monitor compliance with the laws of Ukraine in the field of broadcasting.

In 2017, the National Council imposed a “fine” on 17 radio stations. The total amount of fines amounted to more than 1 million hryvnia. In March 2018, the National Council imposed a record fine of 327,800 hryvnia (about 10,000 euros) on the radio station “*Pyatnitsa*” for the fact that in the period from 07:00 AM to 14:00 PM the proportion of songs performed in the state language was 29% instead of the statutory 30%.

Based on the National Council's practice of depriving TV channels and radio stations of their licenses in 2014-2018, this measure is used by the leadership of the regulator to put pressure on media that refuse to change their editorial policy in order to compliment President Poroshenko. Thus, the TV channels “*Inter*”, “*1+1*”, *112*, *NewsOne*, and *Zik* stated that they were being pressured via the threat of their licenses being revoked ⁸.

At the meetings concerning the deprivation of licenses, members of the National Council openly talk about the political expediency of their decisions allegedly with the aim of “combating separatism” and “countering Russian aggression”.

On February 3, 2017, the National Council decided not to renew the broadcasting license of “*Radio Vesti*” in Kharkov, and on March 3 - in Kiev. According to the representative of the National Council Ulyana Feschuk, the radio station had 4 active warnings, one of which was imposed because of the direct speech on the air of LPR and DPR militants. Another warning was received by the company for failing to provide on-air recordings, as a result of which it allegedly obstructed the legitimate activities of the National Council. In addition, a warning was issued for the presence on the air of the lawyer Tatyana Montyan, whose speech “insulted honor and dignity, and she was not stopped by the journalist”. During the meeting of the National Council on March 3, representatives of the “patriotic community” in the face of members of right-wing radical groups were present in the room. Contrary to the court ruling, which imposed a ban on revoking the licence of “*Radio Vesti*”, members of the National Council made their decision because “separatist radio cannot broadcast in Kiev while Ukrainian soldiers are fighting in Donbass”.

At the same time, in July 2017, without delay, the National Council reissued seven licenses of LLC “TK TONIS”, including for multi-channel and satellite broadcasting, in connection with the change of ownership and the concept of broadcasting. Now it is the “*Pryamoy*” channel, which, according to independent media experts, is indirectly controlled by President Poroshenko.

8 See the section “Systematic pressure on independent media companies”

In February 2018, more than 60 representatives of the media and media companies appealed to President Poroshenko and other authorities to stop censorship in the country and the blackmailing of editors by the National Council, which they consider as the beginning of curtailing freedom of speech in Ukraine. *“The actual duties of this body were reduced to censorship, constant unscheduled inspections, blackmailing agencies concerning the renewal of licenses etc,”* it is said in the appeal. From the major media, it was signed by journalists from *“Strana”*, *“Era-Media”*, *“Inter”*, *“Vesti”*, ZIK, *NewsOne*, *“112 Ukraine”*, *“Era-FM”*, *UA|TV*, and other media⁹.

Systematic pressure on independent media companies

Independent media companies broadcasting an alternative point of view on the situation in Ukraine are mainly put under pressure by the Ukrainian authorities. The audience of these channels is mainly the Russian-speaking population, which did not support the politicians who came to power after the events of Maidan in 2014.

The facts recorded during 2014-2018 allow to say that a set of measures is used by the authorities to **put pressure on independent media:**

- 1) Searches and the opening of criminal cases against media agencies and their owners by law enforcement agencies;
- 2) Penalties and the threat of revoking licenses by the National Council on Television and Radio Broadcasting;
- 3) Creating an atmosphere of intolerance around these media and their journalists and using hate speech against them by representatives of state bodies and leaders of opinions loyal to them;
- 4) Attacks and threats against journalists and the offices of media agencies by right-wing nationalist groups; the inaction of law enforcement agencies in investigating such attacks;
- 5) Delaying the consideration of media companies' claims in court or ignoring court decisions made in their favor.

The *“Inter”* (Inter Media Group) TV channel

The **“Inter” TV channel** is part of the largest Ukrainian media group *“Inter Media Group”*, which is the leader in terms of TV viewership.

In **the summer of 2014**, the channel announced technological attacks in various regions, where unknown persons jammed the TV signal at the time of broadcasting news programs and political talk shows.

In **January 2015**, the Secretary of the National Security Council Aleksandr Turchynov demanded to deprive the *“Inter”* TV channel of its license because it broadcasted on New Year's Eve a concert with the participation of Russian artists, who *“openly support the position of Russia in the Ukrainian crisis”*.

On **May 25, 2015** the official website of the *Ministry of Internal Affairs of Ukraine* published a message about the beginning of an investigation into two facts of offenses committed almost 20 years ago, allegedly related to the illegal actions of some *“unidentified persons”* associated with the *“Inter”* TV channel.

On **25 February, 2016** militants from the *“Azov”* group blocked the building of *“Inter”* in Kiev, demanding to review the editorial policy of the channel and *“abandon the Kremlin propaganda”*.

⁹ http://eramedia.com.ua/273632-zupiniti_znischennya_svobodi_slova_v_ukran/

On **September 4, 2016** another attack on the TV channel's office and an attempt to set fire to the building was carried out. Several employees were hospitalized with carbon monoxide poisoning, and one received a spinal injury.

On **9 May, 2018** representatives of the paramilitaristic far-right organization “National Corps” (“Azov”) once again laid siege to the office of the Ukrainian TV channel “Inter”. They demanded to remove from the airwaves the festive concert “Victory. One for all”, which the channel planned to show on Victory Day.

On **July 11, 2018** the National Council fined the channel for the amount of 4 million hryvnia. (about \$150,000) for the expressions made by the host of the channel containing a condemnation of Nazism as a manifestation of fascism.

On **July 27, 2018** information was received about the mining of the “Inter” TV channel, which had previously announced the broadcast of the prayer from Vladimir Hill and the procession in the capital. However, after verification, the information was not confirmed and “Inter” was able to broadcast the event.

The “NewsOne” TV channel

On *June 14, 2017* the channel announced the beginning of an information campaign against it in the media and on social networks, the purpose of which being to close it.

On *December 3, 2017* activists from a far-right group (*Korchinsky's “Bratstvo”*) blocked the business center in Kiev, where the TV channel operates.

On 20 April 2018 it became known that the *provider “Ekspress-inform” had stopped the digital broadcasting format of the NewsOne TV channel* in Kiev and the Kiev region.

On June 8, 2018 the Prosecutor General's Office opened criminal proceedings against the official owner of the NewsOne TV channel and opposition politician Evgeny Murayev under part 1 of article 111 (state treason), part 2 of article 383 (knowingly false information) of the Criminal Code of Ukraine.

The “112 Ukraine” TV channel

The repeated application of pressure was also reported by the news information TV **channel “112 Ukraine”**.

In **August, 2014** the channel applied to the National Council of TV and Radio Broadcasting for the purpose of making changes to its satellite and digital licenses due to an increase in information content and programs of its own production. But soon after the National Council issued 6 warnings to the channel for non-compliance with the program concept.

In the **winter of 2015** “112 Ukraine” received a warning after it broadcasted the popular talk show “Shuster LIVE”.

In **March 2015**, the National Council issued another 5 warnings for license violations. In June 2015, members of the National Council once again refused to renew the license of the “112 Ukraine” TV channel.

In **May 2018**, the head of the National Council Yury Artemenko in an interview with “Channel 5” said that in July 2018 the National Council does not intend to extend the license of the “112 Ukraine” TV channel, as it allegedly negatively affects public opinion. The channel regarded the threats of officials as obstruction of journalistic activities and in an open letter demanded the dismissal of the head of the National Council.

Media holding “Vesti Ukraine”

Since 2014, the National Council, representatives of law enforcement bodies, and far-right groups have been systematically putting pressure on the **media holding “Vesti Ukraine”** (radio “Vesti”, the newspaper “Vesti”, the vesti-ukr and ubr.ua websites, the TV channel UBR).

Three days before the presidential election - **May 22, 2014** - the accounts of one of the holding companies were blocked, and the office of the newspaper “Vesti” was *searched by the tax police and the Interior Ministry*.

On **July 5, 2014** the newspaper was attacked by about 50 militants. They broke the facade of the editorial board with stones and molotov cocktails and sprayed tear gas.

In **July, 2014** the National Council issued a warning to the Radio Vesti holding for broadcasting on the air the live speech of representatives of the DPR, although similar materials were broadcasted on the air of many TV channels and radio stations.

In **September 2014**, after the start of the parliamentary electoral campaign, the newspaper “Vesti” *was searched by the SBU* with the seizure of all computers, accounting and business documents, servers, and office equipment.

In **June 2015**, employees of the *tax police* conducted another search at the office of the media holding and editorial offices.

In **February 2017**, *the National Council imposed a fine* on the radio station for the amount of 39,600 hryvnia according to the results of unscheduled inspections in regards to 0.78% of total broadcasts not being in the Ukrainian language (i.e., 49.22% was in Ukrainian, instead of the required 50%),

A few days later, *the National Council refused to extend the license of Radio Vesti in Kharkov and in Kiev*.

On **July 14, 2017** employees of the Main Military Prosecutor's Office, with the assistance of the National Police, conducted a search at the editorial office of the media holding under the supervision of the *Military Prosecutor Anatoly Matios*, whose activities had been previously investigated by the journalists of “Vesti”. Military armored vehicles surrounded the building of the “Gulliver” business center in the center of the capital of Ukraine, where the office of the “Media Holding Vesti Ukraine”. The territory was cordoned off by law enforcement officers.

Despite the protests and concerns of international organizations, on **February 8, 2018** *there was a forceful seizure of the office of the “Vesti” Media Holding* with the active participation of government agencies, law enforcement bodies, and civilian mercenaries. As a result: the prevention of journalists to lawfully occupy the office, the seizure of tools, equipment, and personal belongings, the destruction of editorial office, the spraying of unknown gas at journalists, and the obstruction of journalistic activity.

On **August 29, 2018** the National Council decided to check the radio station “Radio Vesti” in an unscheduled manner in connection with the discovery of signs of violation of the law on language quotas.

The Internet website “Strana.ua”

On **June 22, 2017** the editor-in-chief of the website “Strana.ua” Igor Guzhva was detained on suspicion of extortion. Guzhva denied all charges and stated that he was being pressured in connection with his journalistic activities and the editorial policy of his publication. On 24 June, 2017 the court elected a measure of restraint for Guzhva in the form of around-the-clock house

arrest with the alternative of making a pledge for the amount of 544,000 hryvnia. On June 26 Guzhva paid the pledge, and on June 27 he was released from prison.

On 9 August 2017 the “Strana.ua” publication and the homes of its journalists were searched. The Security Service of Ukraine stated that law enforcement officers checked the computers in the office for the presence of materials containing state secrets.

On February 1, 2018 Igor Guzhva said that he had asked for political asylum in Austria. At the same time Guzhva continues to manage the site, despite being in another country.

Restrictions on freedom of expression and information exchange on the Internet

The blocking of social networks and Internet sites

On May 16, 2017 President Poroshenko signed a decree on new sanctions against Russia, which included, in particular, **blocking access to the popular social networks “VKontakte” and “Odnoklassniki”**. These social networks were especially popular among the Russian-speaking residents of South-Eastern Ukraine, most of who (according to social studies) adhered to Poroshenko's alternative views. Also, the President's decree banned Yandex search engine services, mail.ru, Kinopoisk, and the Kaspersky and Dr.Web antivirus tools.

The total monthly audience of the social networks “VKontakte” and “Odnoklassniki” in Ukraine was **25.3 million** people.

The next restrictions on freedom of speech and opinion were imposed by the decree of the President of **Petro Poroshenko** on May 14, 2018, which introduced the **updated sanctions** of the National Security and Defense Council on May 2, against 1948 individuals and 756 legal persons³. Among them - a **number of Russian media agencies**, as well as the Ukrainian media companies "Media innovation group" (the “Ekonomicheskyye izvestiya” agency) and “Ukrainsky biznes portal” LLC.

In June, the providers of Ukraine received a letter from the SBU demanding to **block about 200 Internet websites**. The document published by journalists includes the sites of the “DPR” and “LPR”, the official websites of the Crimean authorities, many Russian news agencies, as well as all subdomains of the WebMoney payment service. The black list also includes the resources of the state media holding of the Russian Federation “Russia today”.

The OSCE and International Committee for the Protection of Journalists (CPJ) organizations are against the inclusion of foreign media and journalists in the sanctions lists in Ukraine.

Law No. 6688 on the extrajudicial blocking of Internet resources

At the level of **legislative regulation**, the greatest concern of human rights defenders is **draft law No. 6688**, which provides the possibility of the **extrajudicial blocking of websites**. Among the proposed changes are those that threaten the free development of the Internet in Ukraine. Thus, people's deputies initiated the introduction of the principle of temporarily blocking websites for up to 2 days (on the initiative of the prosecutor or investigator) or indefinitely (by the court's decision). Consideration of the application will take place on the day of receipt and can be taken in the absence of the suspect or accused, or even to establish their identity.

According to the human rights activists of “Uspishna Varta”, the fact that the draft law has been submitted to the Parliament is a serious blow to freedom of speech and poses significant threats to the media and the free exchange of information on the Internet, the rights to which are enshrined in

Article 34 of the Constitution of Ukraine, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Articles 18 and 19 of the International Covenant on Civil and Political Rights.

Restrictions on freedom of speech by law enforcement and security

Interference of the Security Service of Ukraine in the work of journalists

Ukrainian and international human rights activists recorded *numerous instances of the SBU interfering in the work of journalists and the activity of public organizations in order to censor materials and voiced opinions concerning the conflict in Donbass and relations with the Russian Federation.*

According to the UN OHCHR (August 2016), members of the Ukrainian media covering sensitive topics (for example, military losses or the illegal activities of Ukrainian military personnel) continue to be put under pressure by the SBU and the Armed Forces of Ukraine (UAF). Some journalists also report self-censorship, which they resort to when they feel that the publication of certain information can be damaging for the UAF, or the fear that Russian or controlled by armed groups media can use such information for propaganda purposes¹⁰. In February 2017, the UN OHCHR again noted that it has repeatedly taken record of testimonies of journalists about the SBU's interference in their professional activities, which is an attack on the freedom of the media and limits the objective coverage of the situation in Eastern Ukraine¹¹.

In an open address to President Poroshenko in February 2018, more than **60 representatives of Ukrainian media companies** demanded to stop censorship in the country and, in particular, to assess the activities of **special units of the SBU, which wiretap and survey journalists**. The letter states that the curator of these units is the Deputy Chairman of the SBU Oleg Frolov, who systematically provides relevant information to the Presidential Administration¹².

“Babchenko's case” and (self) censorship in the media

“Babchenko's case” and censorship in the media. On May 29, law enforcement agencies reported about the murder of the Russian journalist Arkady Babchenko living in Kiev. On the same day, a number of officials claimed that there was a “trace of the Kremlin” in the crime. On May 30, during a briefing the head of the SBU Vasily Gritsak and the Prosecutor General of Ukraine Yury Lutsenko reported the murder of the journalist Babchenko was a dramatisation, and that the journalist is alive. The SBU explained that there was a need to stage the dramatisation in order to identify the clients and perpetrators of the alleged contract killings of more than 30 (later – 47) Ukrainian journalists and public figures. However, the video presented by the SBU of the statements of the detained “client” Boris German raised doubts about the involvement of the Russian special services in this case, and in general about the appropriateness of this staging.

International organizations and diplomatic missions demanded to explain the need to stage the death of Arkady Babchenko, calling it an “extreme measure”⁹. In the opinion of human rights

10 Report on the human rights situation in Ukraine 16 May to 15 August 2016 (No. 15)
<http://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport.pdf>

11 Report on the situation with human rights in Ukraine November 16, 2016 to February 15, 2017 (No. 17), paragraph 93
http://www.ohchr.org/Documents/Countries/UA/UARreport17th_RU.pdf

12 http://eramedia.com.ua/273632-zupiniti_znischennya_svobodi_slova_v_ukran/

activists, law enforcement officials used the situation with the “murder” of Babchenko to force other journalists to censor themselves.

Thus, the International and European Federation of Journalists (IFJ-EFJ) condemned the growing number of threats against journalists in Ukraine made by government officials, and called on the Ukrainian authorities to stop the acts of persecution against journalists and journalists' organizations¹⁰. In particular, authoritative organizations condemned the so-called **list of “26 traitors”** who criticized the government in the situation with Babchenko. The list includes, in particular, the journalist Miroslav Gongadze and the Chairman of the National Union of Journalists of Ukraine Sergey Tomilenko. This list was published by a press secretary of the Prosecutor General's office of Ukraine Larisa Sargan on her page on Facebook. The OSCE representative on freedom of the media Harlem Desir called the publication of this list and the accusations of treason made against journalists “unacceptable and dangerous”¹¹.

Earlier in May, the Secretary of the National Security and Defense Council Aleksandr Turchynov urged the SBU to add the **media agencies** that broadcasted the parade on May 9 from Donetsk and Moscow to the so-called “black list”. At least one media agency (the “Korrespondent” website) is known, against which a criminal case was initiated under Part 2 of Article 436-1 of the Criminal Code of Ukraine (propaganda of the Communist totalitarian regime through the media) because of the organization of a live broadcast of the “military parade” in Donetsk.

Arrests of Ukrainian journalists and bloggers under “separatist” articles

Since 2015, the **practice of bringing journalists and bloggers to criminal responsibility under “separatist” Articles** has become excessively widely used by the SBU. Detainees as a rule have no alternative other than to stay in jail, and court hearings on their cases are deliberately delayed. Contrary to the appeals of international organizations to release these persons as prisoners of conscience, the leadership of the state of Ukraine refuses to recognize the presence of political prisoners in Ukraine.

In 2014-2015, the Parliament of Ukraine adopted a number of amendments to the “special part” of the Criminal Code and increased the terms of imprisonment under articles 110 - 114-1 and 279 up to life imprisonment. These are so-called “separatist” articles, which, according to the legislators, are to be used to protect the territorial integrity and sovereignty of the state.

For example, the speeches of citizens during peaceful assemblies directed against military mobilization (such meetings acquired a mass character in all regions of Ukraine in 2015) are qualified by law enforcement bodies as “obstruction of the activity of the Armed Forces” (Article 114-1 of the Criminal Code). In addition, calls for reconciliation in Donbass are qualified as “treason” (article 111 of the Criminal Code) and calls for a federal structure are qualified as “an attack on territorial integrity” (article 110 of the Criminal Code). Any criticism of the government, including statements about its unconstitutionality, or criticism of the socio-political system established after Maidan, can be qualified by law enforcement bodies as “actions aimed at violent change or overthrow of the constitutional system” (article 109).

Besides this, the SBU widely applied Article 258-3 of the Criminal Code of Ukraine “Creation of a terrorist group or the organization”, which provides criminal punishment for a number of actions, in particular, “participation” or “material, organizational, or other assistance to the creation or activity” of a terrorist group. This formulation allows for a broad interpretation of the law, contrary to the basic principle of legal certainty.

During April-June 2018, the following cases were constantly monitored by the human rights platform “Uspishna Varta”.

The journalist **Ruslan Kotsaba** from Ivano-Frankovsk was accused of high treason for publishing a video calling against military mobilization. On February 7, 2015, SBU officers arrested Kotsaba. He was jailed for 524 days without an alternative option.

On July 14, 2016, the Court of Appeal fully acquitted and released the journalist. On March 30, 2017, the Prosecutor's office received an appeal and the Supreme Court returned the case to the Court of Appeal for reconsideration.

On May 29, 2018, the Lvov Court of Appeal decided to return the indictment in Kotsaba’s case to the Prosecutor's office for revision due to being inadequate to the norms of the law of Ukraine. This is already the second case - after the Dolinsky court of the Ivano-Frankovsk region - where such a decision has been made. The lawyer Tatyana Montyan noted that currently there are 44 procedural documents in the register of court decisions in the case of Ruslan Kotsaba. Prosecutors can send these cases to court. I.e., the final point on the case of Ruslan Kotsaba is not being applied¹⁷.

On August 10, 2018 the blogger reported that the updated case against him has already been registered in the Ivano-Frankovsk city court.

Dmitry Vasilets is an opposition journalist and public figure; **Evgeny Timonin** is an IT-specialist. They were detained by the SBU on November 24, 2015 and were groundlessly kept in jail for 820 days (2 years 3 months.).

They are accused of informationally aiding and abetting terrorism under Article 258-3 of the Criminal Code for a 4-day trip to Donetsk in July 2014.

According to the SBU, E. Timonin helped set up a YouTube channel and a number of other services for the non-existent at that time information resource “Novorossiia-TV”, and D. Vasilets oversaw it, thus they provided information assistance to the terrorist organization “Novorossiia-TV” and its channel, which began to operate in September 2014, 3 months after the trip of D. Vasilets and E. Timonin to Donetsk.

On September 29, 2017 the Andrushevsky court of Zhytomyr, after almost two years of being in pre-trial detention and litigations, issued a guilty verdict and sentenced D. Vasilets and E. Timonin to 9 years in prison.

In December 2017, 25 members of the European Parliament prepared a letter to the Ukrainian government calling for the immediate and unconditional release of Vasilets and Timonin.

On February 21, 2017, the Kiev Court of Appeal overturned the 9-year sentence, and sent the case for a new trial to the court of first instance and changed the measure of restraint to house arrest¹³.

Vasily Muravitsky – opposition journalist and expert-analyst. He was detained by the SBU on **August 2, 2017** on charges of high treason upon the fact of concluding a standard employment contract with an international Russian publication, where he published his analytical column. For these publications Muravitsky was accused of “psychologically manipulating public consciousness” and even fundraising in favor of the “DPR” and “LPR”, and was called a “pro-Kremlin” journalist-blogger. Allegedly, on the instructions of "Russian curators" Muravitsky prepared and distributed anti-Ukrainian materials. Amnesty International declared V. Muravitsky as a prisoner of conscience.

13 <https://uspishna-varta.com/keys/dmitrij-vasilets-i-evgenij-timonin/>

According to lawyers, the Prosecutor's office artificially delayed consideration of the case. On June 27, the Korolevsky court of Zhytomyr changed the measure of restraint, after **11 months in jail** the journalist was transferred to house arrest¹³.

On August 6 the Korolevsky court of Zhytomyr another hearing took place concerning the case of the journalist Vasily Muravitsky. The court denied the Prosecutor's claim and left the journalist under house arrest for another 2 months. Dissatisfied with the court's decision, representatives of the right-wing radical organizations "C14" and "Automaidan" immediately after the court session attacked Vasily Muravitsky and doused him with Zelenka.

Pavel Volkov - journalist and blogger. He was arrested on September 27, 2017 and charged under Part 2 of Article 110 of the Criminal Code of Ukraine - encroachment on the territorial integrity of Ukraine (a group of persons) and Article 258-3 - other assistance to terrorists. Both Articles are incriminated to him for publications on the Internet and an allegedly found badge of a referendum observer in Donetsk. The group of persons (Part 2, Article 110) in the indictment appears as "unidentified", making it possible to unprovenly qualify the article of the prosecution as something more serious.

Despite Pavel's deteriorating health, the court refuses to change the measure of restraint to house arrest. At the same time, during the trial, a significant part of the evidence of the prosecution was declared inadmissible, and the conducted linguistic examinations confirm his innocence.

On July 5 and on August 27 the Shevchenko court of Zaporozhye again extended the measure of restraint imposed on the journalist to October 25, 2018. Volkov's defense sent a request to the European Parliament to pay attention to the arrested journalist¹⁴.

Kirill Vyshinsky, editor-in-chief of RIA Novosti Ukraine, was detained by the SBU on May 15, 2018 on suspicion of treason (Part 1, Article 111 of the Criminal Code of Ukraine)¹⁵. On the same day, the SBU conducted searches at the editorial office and in the homes of some of the employees of RIA Novosti Ukraine. According to the SBU, the reason to suspect Vyshinsky of high treason is that as early as 2014 the journalist allegedly justified the annexation of Crimea, and allegedly supported the self-proclaimed Donetsk and Lugansk "People's Republics". Proof of his "subversive activities" in Crimea allegedly is the state award of the Russian Federation. On May 17, 2018 the Kherson City Court took the decision to arrest Vyshinsky for 60 days without bail.

Vyshinsky's lawyer told "*Uspishna Varta*" that the searches had been carried out with violations, and the pieces of evidence that had been attached by the prosecution were inadmissible. Concern about the detention of Vyshinsky and the consequences that it can lead to in terms of the freedom of the country's media was expressed by the organization Reporters Without Borders (RSF), the Council of Europe, and the UN Office for Human Rights. The OSCE Representative on freedom of the media Harlem Desir called on the government to refrain from imposing restrictions on the work of journalists.

The human rights platform "*Uspishna Varta*" monitored the court hearings on Vyshinsky's case on 17 and 29 May. On June 1, the Court of Appeal of the Kherson region refused to change the measure of restraint imposed on the journalist. During the court session, Vyshinsky stated that he had renounced his Ukrainian citizenship, and appealed to the president of the Russian Federation to defend him¹⁶. On June 22, Kiev did not allow the employee of the Russian consulate to visit Vyshinsky. At the end of June the Russian ombudswoman Tatyana Moskalkova also did not receive consent from Kiev for a meeting. Lyudmila Denisova, the Verkhovna Rada of Ukraine's Human

Rights Commissioner, said that until she is allowed to visit Ukraine's political prisoner Oleg Sentsov, the Russian ombudswoman would not be allowed to see Vyshinsky.

On July 11, the Kherson City Court once again satisfied the Prosecutor's Office's request to extend the term of the editor-in-chief of RIA Novosti Ukraine Kirill Vyshinsky's detention for another 60 days. The lawyer Andrey Domansky petitioned the court to take his client out on bail, arguing that he has many years of experience in human rights and social activities.

After reviewing the response of the government of Ukraine that was addressed to the European Federation of Journalists, the human rights platform "Uspishna Varta" stated that the government's position **in the case of Kirill Vyshinsky** is contrary to international law and the legislation of Ukraine. Based on the government's response, RIA "Novosti Ukraine" is not recognized by the authors of the document as a media agency or office of any of the Russian state news agencies registered in Ukraine. In their accusations against Vyshinsky, law enforcement bodies refer not to the results of the official examination of the content of the site, but to the information of the non-governmental organization with an controversial reputation "StopFake"¹⁴.

Detention of Internet users for posts on social networks

Detention for posts on social media. After the publication of the decree of President Poroshenko on the prohibition of the Russian social networks *Vkontakte* and *Odnoklassniki* in Ukraine in May 2017, during 2017-2018 the SBU publicly stated the facts of detaining persons who, as a rule, were called either administrators of "anti-Ukrainian" groups on social networks, or were the authors and/or distributors of "anti-Ukrainian posts". The detention of users of social networks continued in April-June 2018.

The SBU didn't report either the names or the place of residence of the detainees, and thus human rights defenders and lawyers cannot respond quickly to such cases.

14 <https://uspishna-varta.com/ru/novyny/obviniya-v-adres-kirilla-vyshinskogo-osnovnyyayutsya-na-informacii-sajta-stop-fake>

According to the statistics contained on the website of the Prosecutor General of Ukraine, **273 reports** on crimes under article 109 of the Criminal Code of Ukraine were entered into the Unified register of pre-trial investigations for the period 2017 and the first half of 2018. During this period, the Prosecutor's Office sent 182 indictments to the court (article 291 of the Criminal Procedure Code of Ukraine) to resolve the issue of guilt and 6 claims for the use of coercive measures of a medical nature (article 292 of the Criminal Procedure Code of Ukraine) - if a person committed a crime in a deranged condition or became ill with mental illness after committing a crime. I.e., there are 188 criminal proceedings in the courts of Ukraine.

However, the end result of consideration in court is not so impressive. According to the Unified state register of court decisions, the courts of Ukraine considered only 14 indictments of the Prosecutor under article 109. And most of them are accusations of public calls to violently change or overthrow the constitutional system or seize state power, as well as the distribution of materials calling for such actions. i.e., we are talking about *users of social networks, journalists, and political activists who used their right to freedom of speech and opinion.*

In 9 of the 14 judicial decisions under article 109 that were considered by the courts, the defendants admitted their guilt in full. As a consequence, the court limited itself to questioning the accused or approving an agreement between the accused and the Prosecutor for a guilty plea.

As a rule, the charges are generalized and simplified. Objective and subjective elements of the crime are not specified at all: the procedure established by the Constitution and the Laws of Ukraine for the establishment and operation of Supreme bodies of state power, the violation of which poses a threat to the security of the state in the political sphere, is not disclosed.

The frequency of the practice the indicting the accused under article 109 in a pre-trial deal suggests that prosecutors simply have no evidence to prove their accusations in court.

Despite the great exertion of pressure and control in these criminal cases, the judges acquit the suspect when they start to defend themselves, using their procedural rights. Of the 14 trials we reviewed under article 109, in 2 cases the court cases resulted in acquittal.

Deportation and non-admission of foreign journalists

During 2015-2018, the Security Service of Ukraine (SBU) and the National Security and Defense Council of Ukraine (NSDC) consistently introduced restrictive measures on the work of foreign, primarily Russian journalists in Ukraine. Contrary to the recommendations and comments of international organizations and monitoring missions, the practice of deportation and non-admission of foreign journalists in Ukraine continues.

The practice of deporting and banning foreign journalists from entering Ukraine, regulated by the decisions of the National Security Council and carried out by the SBU, is a violation of Ukraine's international obligations in the field of human rights. In particular, OSCE participating States have committed themselves to ensuring the conditions for journalists from one participating state to work in other participating States. The decision of the National Security Council to ban from entry a number of foreign journalists should be canceled.

On February 19, 2015 the SBU published a **list of more than 100 media agencies of the Russian Federation** (including TV channels, news agencies, newspapers and Internet resources) whose journalists are no longer allowed to attend the press events of state bodies until the end of the anti-

terrorist operation (from April 30, 2018 it is named the Operation of United Forces) in Donbass. A number of journalists from Russia were also not allowed to enter Ukraine and were denied entry for the next five years.

On September 16, 2015 President Poroshenko signed a decree on the decision of the National Security Council (September 2, 2015), in which **41 people from among foreign journalists and bloggers** (mostly Russian) were added to the list of 388 other persons (media professionals, artists, politicians) who were banned from entering Ukraine for a year. On May 31, 2016, the decree¹⁵ of President Poroshenko expanded the original list of persons on who restrictive measures were imposed, and sanctions were put on **17 more Russian journalists**.

On July 8, 2016 the press center of the “Headquarters of the anti-terrorist operation” appealed to the SBU to suspend the accreditation of two Ukrainian and one Russian journalist who made a report from Avdeevka (Donetsk region).

On August 14, 2017 the SBU detained and deported the correspondent of the TV channel “Rossiya 24” *Tamara Nerseyan*, who was charged with damaging the national interests of Ukraine. She was banned from entering the country for the next three years. On July 26, for the same reasons, the SBU deported her colleague **Mariya Knyazeva** and banned her from entering the country on the basis of biased coverage of the situation in Ukraine¹⁶. On 25 August 2017, the SBU refused to accredit two Spanish journalists **Antonio Pampliega** and **Manuel Ángel Sastre**, forbidding them entry for 3 years for “activities against the national interests of Ukraine”.

On August 30, 2017 **Anna Kurbatova**, a journalist working for the Russian Channel 1, was detained by representatives of the SBU and deported from Ukraine. “This is how it will be for anyone who dares to disgrace Ukraine,” said the official press-secretary of the SBU, commenting on the situation¹⁷.

On May 2, 2018 the State Border Service at the request of the SBU didn't allow journalists from Italy, the Czech Republic, and Russia into Ukraine to cover commemorative events in Odessa, citing the fact that these journalists previously “unfairly covered the events in Ukraine”¹⁸.

On June 26, the State Border Service did not permit entry to a South African citizen, the “Russia Today” correspondent **Paula Slier**, and the Russian TV presenter, representative of the Union of Journalists of Russia **Evgeny Primakov**, who arrived in Kiev for the OSCE conference.

On July 10 the **British journalist John Warren** was not allowed to enter Kiev and was banned from entry for 3 years because of unauthorized visits to the Crimea in September-October 2015.

On July 18, the SBU banned the Chairman of the Union of Journalists of Russia **Vladimir Solovyov** from entering the country for three years.

Status of societal respect for the right to freedom of opinion and expression

The report of the monitoring mission of the UN OHCHR¹⁹ in the annual report of the US State Department on “Human Rights Practices for 2017”²⁰ noted that violence and harassment against journalists in Ukraine remained a problem during 2016-2017. Human rights groups and journalists

15 On May 31, 2016 the Decree of the President on the enactment of the decision of the National Security Council from May 20, 2016 “On some personal special restrictive measures (sanctions)

16 <https://ria.ru/world/20170726/1499199922.html>

17 <https://www.facebook.com/giolena11/posts/1418205421561265>

18 <https://dpsu.gov.ua/ua/news/Prikordonniki-ne-propustili-dlya-visvitlennya-podiy-v-Odesi-gromadyan-Italii-CHehii-ta-Rosii/>

19 Report on the human rights situation in Ukraine 16 May to 15 August 2016 (№15)

<http://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport.pdf>

20 Country Reports on Human Rights Practices for 2017

<https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=277231#wrapper>

have criticized the government's inaction in addressing these crimes, which creates a culture of impunity.

Physical violence against journalists in connection with their professional activity

According to the monitoring “**Index of physical safety of journalists in Ukraine**”, which the National Union of Journalists carries out together with partner organizations, during 7 months of 2018 **53 incidents** of physical aggression against journalists were recorded.

At the end of 2017, the National Union recorded 90 cases of physical aggression against media employees. Among the regions where media representatives are attacked most often - Kiev and the Kiev region (29 incidents); Odessa (10), and Donetsk (6)²¹ The organization requires law enforcement bodies to publicly report on the investigation of crimes against journalists and to make efforts to actually punish the attackers. The media community also demands parliamentary hearings on the physical safety of journalists.

On May 14, 2015 the Parliament adopted the law on amendments to the Criminal Code of Ukraine that stipulate **increased punishment for threats or violence against journalists**. In addition to the existing provision of article 171 (obstruction of professional activities of journalists), which was rarely put into practice because of its ambiguity, four additional articles were added. They stipulate criminal liability for threats and bodily harm to journalists or their families, intentional damage to journalist's property, violation of the rights to life, and detention of a journalist as a hostage. The UN OHCHR considered that the law can make a positive contribution to the protection of media workers and promote freedom of expression in Ukraine²².

There is still **no progress in investigating the murders of journalists and bringing suspects to justice**.

On June 1, 2018 the Prosecutor General Yury Lutsenko said on the air of the Ukrainian TV channel that there is no progress in the investigation into any of the narratives in the case of the murder of journalist **Pavel Sheremet**, who was blown up in his car on July 20, 2016. An alternative investigation conducted by independent organizations revealed that investigators had not questioned key witnesses and that the security camera recordings had not been verified.

On June 7, the Shevchenkivskyi court re-started the preparatory hearing on the case of the murder of journalist **Oles Buzina** (killed on April 16, 2015), canceling all previous results of the case. Scheduled for June 15, the next hearing on the case of the murder of Buzina was postponed to August 9 for a formal pretext - the jury did not issue a memo.

Meanwhile, in the corridor representatives of right-wing radical groups shouted slogans: “Judge the separatist and not the soldiers!”, “Judges remember, power is not eternal!”, “Disqualify the judges!”.

The process of reading the indictment to those accused of murdering the journalist Vyacheslav Veremiy (killed in 2014) continues, the Darnitsky district court continues to extend the period of detention of an accomplice to the murder of the journalist until September 13.

21 <http://nsju.org/index.php/article/6822>

22 Report on the human rights situation in Ukraine 16 February to 15 May 2015, paragraph 72
<http://www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf>

Police inaction and the lack of punishment for attacks on, and even the murders of journalists has generated a **wave of violence of right-wing radical groups against media representatives who “nationalists” consider to be “separatists”**. Law enforcement bodies do not prevent the riots and attacks of such groups, and they are not held accountable for the commission of crimes.

In addition, the following facts of attacks, including by right-wing radical groups against media and journalists, during 2017-2018 were documented:

On December 12, 2017 the journalist of the “NewsOne” channel **Ruslan Kotsaba** was beaten up on one of the streets of Kiev whilst polling citizens. The likely offender, who belonged to a far-right organization (“Right Sector”), posted information about the attack on Facebook.^{23,24}

On January 25, 2018 about 50 members of far-right groups broke into the **office of the "Union of Orthodox Journalists"** (linked to the Ukrainian Orthodox Church), insulted the members of the Union, and checked the information on their computers. The police present at the scene did not intervene. The group “C14” posted on Facebook a video of the attack committed by its members against the office.

According to the UN OHCHR, on 3 February, 2018 a female reporter was blocked by members of the far-right “C14” group, who threatened her. The police officers who were present did not intervene. On February 13, members of the far-right organization “Right Sector” forcibly took the journalist out of the courtroom in Odessa, calling him a “separatist”. The police who were present in the courtroom did not intervene. A criminal case was initiated under Article 171 of the Criminal Code²⁵.

On May 19, 2018 members of the right-wing nationalist group “C14” in **Kiev** during the right-wing radical March threatened to exercise physical violence and to restrict the freedom of the correspondent of the **Youtube channel KTime** Maksim Osovsky, preventing the implementation of journalist activities²⁶.

On 20 July, 2018 the well-known blogger **Pavel Khomiv** was beaten up in **Lvov**. According to preliminary information, the incident involved former members of the radical group “Right Sector”. Law enforcement officers detained the attackers at first, but then soon released them.

On June 21, 2018 during a protest of nationalists in Kiev near the patrol police department the journalist of “**Sharj.NET**” Antonina Beloglazova suffered as a result of the actions of a malefactor, who poured an unknown transparent substance with a notable chemical smell on her head from a plastic bottle.

On the eve of a procession (July 27, 2018) disturbing news came from the information and educational department of the Ukrainian Orthodox Church about threats being made to children by members of radical groups with symbols of the organization “Svoboda” and an attack on the editor of the local newspaper “**Vesti Borznyanshchiny**” Sergey Bliznyuk, who wrote an article about an Orthodox youth camp in the **Chernigov region**. The clergy and laity unanimously adopted an appeal to the President and Minister of Interior in connection with the attacks on the Orthodox children's camp and the beating up of a journalist.

23 <https://rian.com.ua/video/20171212/1030364364/pravosek-udaryl-v-listo-kotsabu.html>

24 <https://rian.com.ua/video/20171212/1030364364/pravosek-udaryl-v-listo-kotsabu.html>

25 A report on the situation with human rights in Ukraine November 16, 2017 – 15 Feb 2018 (No. 20), paragraph 85
http://www.ohchr.org/Documents/Countries/UA/ReportUkraineNov2017-Feb2018_RU.pdf

26 <https://www.facebook.com/UspishnaVarta/posts/401001283699365>

On August 3, 2018 in Kiev at the **“Ukrainski Novini” press center** about 20 representatives of an unknown right-wing radical group tried to disrupt the press conference. The attackers littered the press center with leaflets and threw chicken eggs at the speakers, as well as the administrator of the press center. The staff of the agency called the police, who arrived at the scene after the attackers had left.

Hate speech and the website “Mirotvorets”

Both Ukrainian and international organizations have repeatedly expressed concern about the activities of the “Mirotvorets” website²⁷, which publishes lists of people (along with their personal data) who are allegedly associated with armed groups and are designated as “terrorists”. Such a list violates the presumption of innocence, the right to privacy, and the protection of personal data²⁸.

The website was created in 2014 and positions itself as the “Internet representation of the Center for Research of Signs of Crimes against the National Security of Ukraine, Peace, Humanity, and the International Law”. The website contains an open database of the personal data of people gathered illegally (hacking, phishing) and via open source intelligence and published without the consent of those people whose data is being published, and who the authors call “separatists” or “agents of the Kremlin”. The Ministry of Internal Affairs of Ukraine, SBU, and departmental and other law enforcement bodies of the country were listed among the partners of the website (since its launch and until May 13, 2016). The adviser to the Minister of Internal Affairs Anton Gerashchenko openly declares that he is the initiator of the creation of this website.

On 10 May, 2016 the “Mirotvorets” website published the personal data of 4,068 Ukrainian and foreign journalists who were reportedly accredited to work in the “Donetsk People's Republic”. In particular, they published the names, phone numbers, and addresses of the journalists of global media such as *AFP*, *Al Jazeera*, *Le Monde*, *BBC*, *Reuters*, and *Forbes*. The list also includes non-journalists who worked in Donetsk before the conflict.

The *UN OHCHR* expressed concern that the people on this list are portrayed in the regions controlled by Ukraine as cooperating with terrorists, and this could put them at risk. The OHCHR recalled the importance of ensuring the protection of personal data in order to prevent abuse, and notes that the website that published the data is the same website that is used by government forces at the contact line checkpoint.

On May 24, 2016 the website “Mirotvorets” published the data of another 304 media employees (300 foreign and 4 Ukrainian), which led to negative consequences for the persons included in this list. Some media workers received threats and insults and were called “separatists”. A number of journalists stated that their bank accounts had been frozen because they had been included in the list or had criticised the events of Maidan. The UN OHCHR also noted an increase in the online attacks of “trolls” and disinformation campaigns in social media against activists and media professionals involved in investigative journalism and transparency issues. Physical and online attacks are often not investigated, or investigations are delayed²⁹.

Human Rights Watch, in a report on the results of 2016, stressed that journalists were attacked by nationalists in connection with their work in the East of Ukraine. The authorities began an

27 <https://myrotvorets.center/>

28 Report on the human rights situation in Ukraine 16 February to 15 May 2015 (№10)
<http://www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf>

29 Report on the human rights situation in Ukraine 16 May to 15 August 2017 (№19)
http://www.ohchr.org/Documents/Countries/UA/UARepor19th_EN.pdf

investigation, but the publication of such a list was welcomed among high-ranking officials. Subsequently, several of the journalists were threatened³⁰.

After a significant international response, the National Police opened criminal proceedings against the “Mirotvorets” website on 7 July 2017, and the Parliamentary Commissioner for Human Rights called for the website to be closed. However, as of May 25, 2018, both the activities of the “Mirotvorets” website and attacks on the editorial offices of major media holdings and individual journalists remain unsolved; the perpetrators have not been brought to justice. The “Mirotvorets” website is still operational.

In December, 2014 **Anton Gerashchenko**, a people's deputy from the "People's Front" faction and adviser to the Minister of Internal Affairs **Arsen Avakov**, publicly called himself the **initiator of the creation of the website**.

Gerashchenko himself indicates **Georgiy Tuka**, who in 2015-2016 headed the Lugansk regional military-civil administration, and since 2016 - the **Deputy Minister for temporarily occupied territories and internally displaced persons of Ukraine**, as the **founder of this website**.

At the same time, according to the open register of public organizations of the Ministry of Justice, the “**Center for Research of Signs of Crimes against the National Security of Ukraine, Peace, Humanity, and the International Law**” named by Gerashchenko isn't officially registered as a public organization. But there is some organization called “**Narodny Tyl**”, the founder and head of which is Georgiy Tuka.

The specified Internet resource has several IP-addresses located outside Ukraine.

Thus, it is almost impossible to ban and close the website “Mirotvorets”, as well as to exclude a person from the list of this website via the ruling of the national courts.

In addition to this, it is common practice when Ukrainian citizens are found guilty without trial only because of the fact that they were included in the list of the website “Mirotvorets”. All of this, in the government's opinion, does not affect the protection of personal data expressed in the relevant Law. **Thus, the state maintains this illegal practice by its silence.**

Moreover, the **information on the “Mirotvorets” website** (to which information can be sent by any person) is **recognised by the courts of Ukraine when making decisions**.

Having studied judicial practice, the lawyers of “Uspishna Varta” came to the conclusion that ***the data of the “Mirotvorets” website is being used in court decisions at all stages - from the beginning of the pre-trial investigation to the conviction of the person:***

Information on the “Mirotvorets” website is recognised by the Ukrainian courts as a sufficient basis for:

- Violating a person's banking confidentiality, extracting information from communication channels (phone numbers);
- Detention and election for a suspect of a preventive measure in the form of detention;
- Extending the period of detention of the accused for the reason that in their case, in the opinion of the prosecution, the appointment of the deprivation of liberty is expected;

30 <https://www.hrw.org/ru/world-report/country-chapters/297738>

- Identification of suspects;
- Starting a special pre-trial investigation (in absentia), which allows, under certain circumstances, to carry out an investigation and trial in the absence of the suspect/accused.

In numerous rulings, judges also accept information from the “Mirotvorets” website as material evidence.

The use of this website applies not only to criminal cases, but also to civil legal relations and fact-finding acts, such as, for example, deprivation of parental rights or permission to travel abroad without a father.

The use of the “Mirotvorets” website's data by the judicial system, which is reflected in the rulings of certain judges, violates article 6 of the Convention, which guarantees everyone the right to a fair trial.

ABOUT THE HUMAN RIGHTS PLATFORM “USPISHNA VARTA”

The **"All-Ukrainian Association 'Uspishna Varta'"** is a human rights platform that brings together lawyers, public figures, and volunteers in order to protect the political and civil rights and freedoms of Ukrainian citizens and to provide people and/or organizations, which are subjected to persecution for their political beliefs, with support.

Our main function is monitoring violations of the rights and freedoms of Ukrainian citizens and the publication of such violations for a prompt response and the protection of the affected people and organizations. We collect evidence and proof of the abuse of rights and transfer the facts of violations to responsible law enforcement authorities in Ukraine. If there is no reaction from such agencies, the facts are sent to global community and international organizations.

The “Uspishna Varta” human rights platform is guided solely by the principles of non-violence and respect for the law and international standards in the field of human rights. The law, the lives of people, and peace in the state are priorities for us.

The mission of the platform is to change the climate of opinion in Ukraine by demonstrating and supporting an alternative viewpoint on the order by discussing the value of human life and observing civil and political rights in the state.

The human rights platform “Uspishna Varta” was created on the initiative and with the support of the Ukrainian public figure and philanthropist Aleksandr Klymenko.

More information about our initiative can be found at uspishna-varta.com

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