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Current Situation of Media in Ukraine

1. INTRODUCTION

When becoming independent in 1991, Ukraine declared its intention to develop a civil society, guarantee freedom of speech and other universal human rights. These intentions were confirmed in the 1996 Constitution of Ukraine and in the commitments Ukraine made when joining the Council of Europe in 1995. Ukraine is a participating State of the CSCE/OSCE.

During nine years of independence, the Ukrainian media went through a period of parting with communist dogma and stereotypes, as well as establishing non-governmental media. Many acts regulating the functioning of the media and the work of journalists were passed and they guarantee freedom of speech and non-interference by the Government in the activities of the press.

At the same time, the development of the situation around the Ukrainian media during the transition raises serious concern. Ukrainian society is going through a deep economic crisis, accompanied by almost daily experienced cases of corruption. There are problems in guaranteeing freedom of speech characteristic of both the capital, Kyiv, and the regions of Ukraine.

The newly re-elected President Leonid Kuchma emphasised in his inauguration speech on 30 November 1999 that he "will devote special attention to establishing the political structure of the Ukrainian society, strengthening democratic institutions, providing guarantees for the rights and liberties of persons and citizens." He added that "this is possibly one of the most determinant factors contributing to strengthening the State, the civilized character of power, and the construction of a civil society." It is clear that guaranteeing freedom of speech is one of the most crucial elements in this endeavour and this fundamental right should consequently be treated as a priority matter by the Government of Ukraine. As to international relations, The President also underlined the interest of his Government to promote Ukraine's integration into Euro-Atlantic structures. The European Union (EU), in its common strategy paper on Ukraine, adopted by the Helsinki Summit in 1999, put emphasis on the consolidation of democracy and good governance, human rights and the rule of law. The EU stressed the need for developing the efficiency, transparency and democratic character of its public institutions, including the development of free media. The EU itself will undertake efforts to foster these goals, including measures for increasing co-operation among journalists and relevant authorities in order to contribute to the development of free media.

2. MEDIA LEGISLATION

2.1. International and Domestic Media Law.

Ukraine has considerable legislation regarding media, including both domestic regulatory acts and ratified international conventions.

In particular, Ukraine has signed and ratified the European Convention on Human Rights and the International Covenant on Civil and Political Rights that outlay basic principles of freedom of speech and media. Furthermore, all the OSCE States, including Ukraine, made a political commitment concerning media during the Istanbul Summit. The Istanbul Security Charter holds that the States will "reaffirm the importance of independent media and the free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society."

The Constitution of Ukraine provides for international treaties ratified by Ukraine to become part of national law, and Article 4 of the Information Act states that international treaties and agreements, ratified by Ukraine,

as well as principles and standards of international law shall be part of the legislation on information. Article 50 provides also that in case of conflict between international treaties and provisions of national law of Ukraine, international law shall prevail.

The Constitution of Ukraine guarantees freedom of speech, expression of views and collection, keeping, use and dissemination of information (Article 34), it bans censorship (Article 15) and collection, keeping, use and dissemination of confidential information regarding individuals without their consent and guarantees legal protection and the right to refute untrue information (Article 32).

These rights may be restricted “in the interest of national security, territorial integrity or public order, to prevent disturbances or crimes, to protect the health of the population, to protect the reputation and the rights of other people, to prevent the dissemination of confidential information, and to safeguard the authority and impartiality of the judiciary” (Article 34).

Media legislation of Ukraine comprises the following acts:

- *The Information Act* (2 November, 1992) regulates collection, keeping, use and dissemination of information, types of information, the right to receive information and the principles of access to it, issues regarding ownership of information and its protection, as well as the liability mechanism in cases of infringements of the information law;
- *The Print Media Act* (16 November 1992) provides the legal basis for the operation of print media, the procedure for state registration of publications, the rights and obligations of the journalists as well as the relations between the media and the public and other organizations;
- *The TV and Radio Act* (21 December 1993) provides the legal basis for the operation of TV and Radio broadcasters on the territory of Ukraine, sets forth the procedure for their incorporation and licensing, broadcasting rules, providing airtime for pre-election campaigns and for broadcasting official announcements and provides for liability for infringements of the law. This Act established a National TV and Radio Broadcasting Council;
- *The National TV and Radio Broadcasting Council of Ukraine* (23 September 1997) establishes the powers and competence of the National Council;
- *The Information Agencies Act* (28 February 1995) provides the legal basis for the operation of Ukrainian information agencies and establishes the conditions for dissemination of their information products;
- *The Act on the Procedure for Media Coverage of the Activities of Government Bodies and Local Authorities in Ukraine* (23 September 1997) provides for compulsory media coverage of the activities of the authorities;
- *The Act on Government Support for the Media and Social Protection of Journalists* (23 September 1997) provides the basis for legal and economic support by the government for the media as well as for social protection of journalists;
- *The Advertising Act* (3 July 1996) establishes general provisions for advertising and restrictions for advertising of certain types of products and services in the media. The act does not cover political advertising;
- *The Intellectual Property Act* (23 December 1993) regulates and protects intellectual property rights;
- *The State Secrets Act* (1999) defines information that is considered a state secret;
- *The Act on the Public Television and Radio Broadcasting System* (18 July 1997) regulates the operation of public broadcasting systems in the country;
- *The Civil Code* establishes the legal principles for protection of human rights, honour, dignity, and the business reputation of people and organizations, and the mechanisms for indemnification of damages;
- *The Civil Procedure Code* establishes the procedure for litigation for the purpose of protection of the honour, dignity and business reputation of citizens;
- *The Criminal Code* provides for liability for public calls for nationalistic, racial and religious hostility, disclosure of state secrets, slander, persecution of citizens for criticism, etc.

There are also additional decrees by the Cabinet of Ministers, by the President and by other government agencies that regulate the work of the media.

Regulations passed by the government often change the rules of the game in the media market and allow for manipulating the media. For example, in June 1999 the Cabinet of Ministers increased annual charges for using radio frequencies tenfold for the period 1 July — 31 December 1999. According to this document, charges for using radio frequencies were increased ten-fold as compared to the current level, which had been determined in paragraph 1 of Decree No 1135 of the Government of 17 September 1996 and titled “On the improvement of the mechanisms for use of radio frequencies”. Agency rules were also amended for obtaining permits for the use of transmitters. This led to several regional channels discontinuing broadcasting.

In March 1999 the Cabinet of Ministers passed the decree On the Implementation of Articles 14 and 16 of the Ukrainian Act on Government Support for the Media and Social Protection of Journalists.

In fact, this Decree provides that the journalists in state and municipal media are civil servants. For instance, the Editor-in-Chief of a print medium established (or co-established) by the Parliament (*Verkhovna Rada*) or by the Cabinet of Ministers is equal to the Deputy Speaker of the *Verkhovna Rada*, Deputy Premier Minister, etc., all the way down to the correspondent of a regional newspaper who is equal to a First and Second Grade Expert from the corresponding government authority.

The Decree provides that the salaries of this category of journalists equal the salary of the senior staff and experts in the corresponding state or local authority that is the founder of the relevant media. There are also some pension privileges provided for journalists.

There are approximately 8,000 journalists in state and municipal media today. *Golos Ukraini*, *Uryadoviy Courier*, *Rabochaya Gaseta*, the newspapers of the *Verkhovna Rada* and the Cabinet of Ministers of the Autonomous Republic of Crimea and the *Viche* Magazine (published by the *Verkhovna Rada*), as well as newspapers of the local authorities are all state-owned publications. The News Agency *DINAU-Ukrinform* is also state owned. State-owned electronic media are broadcasting companies in the system of *Gosteleradio Ukraini*, and in particular: the National TV and Radio companies, State Broadcasting Company *Krym*, the Kyiv and the Sevastopol State Regional Broadcasting Companies, as well as 23 district broadcasting companies. To sum up, there are no equal opportunities for the work of journalists at a legislative level and there is a possibility for the state authorities to exercise control, including financial, over the journalists working for the state media. This Decree puts at a disadvantage journalists working for the non-governmental media. On the eve of the presidential elections in Ukraine, the Central Election Committee issued a directive on the rules for the use of media for pre-election campaigning during the elections of the President of Ukraine in 1999. This regulation defines political advertising.

The Ukrainian law establishes the right for individuals and legal entities, both from Ukraine and from other countries, to set up print media. However, foreign citizens are not allowed to establish news agencies — they may only act as co-founders. As far as the electronic media are concerned, the law prohibits foreign legal entities and individuals from setting up TV and radio broadcasting organizations and from owning more than 30 percent of the authorised capital stock.

As a result of the restrictions in the law and serious financial risks, foreign investment in Ukrainian media is both insignificant and complicated. Recently there has been a trend towards decreasing western investment projects in Ukrainian media. The Norwegian company Orcla Media, which in 1998 bought majority stock in the newspapers *Visokiy Zamok* in Lviv and *Industrialnoe Zaporozhie* in Zaporozhie, has discontinued further operations and, in reality, has pulled out of the Ukrainian market.

Ukrainian law prohibits the establishment of any barriers to the legal distribution of print media. At the same time, a special permit is needed for distribution of foreign print media. The import of newspapers and magazines is subject to duties, determined by customs law. In May 1998, the Cabinet of Ministers passed a Decree increasing by 20-30 percent customs duties for import of periodicals. This refers mainly to Russian publications, since they account for 90 percent of the overall volume of imports. The current Ukrainian postal charges for delivery of Russian periodicals are several times higher than the charges for Ukrainian periodicals.

2.2. State Authorities Dealing with the Media.

State authorities dealing with the media are:

- The *Verkhovna Rada* Committee on Information and Freedom of Speech, that drafts legislation in the area of media and monitors the compliance of state authorities with the law in Ukraine. Ivan Chizh, a deputy of the *Verkhovna Rada*, is chairing the Committee.
- The State Committee on Information, established in March 1999 replacing the Ministry of Information, which carries out registration of print media and news agencies and outlines information policy of the state. It also deals with other issues of regulating the work of media. The information committees in the regions of Ukraine are subordinate to the State Committee on Information and they carry out registration of periodicals in the regions. Oleg Bai was appointed President of the State Committee on Information in April 1999.
- The National TV and Radio Broadcasting Council, that deals with issuing licences to broadcasting organizations, keeping the state register of broadcasting organizations, monitoring compliance with broadcasting legislation and the use of radio frequencies. It comprises appointees of the President (four members) and the *Verkhovna Rada* (four members). The term of office of the members of the previous

Council ended in December 1998. On 16 March 1999 the *Verkhovna Rada* appointed four members of the National TV and Radio Broadcasting Council. In September 1999 the *Verkhovna Rada* passed an amendment to the National TV and Radio Broadcasting Council Act. According to the new version, the *Verkhovna Rada* and the President have to appoint their representatives on the Council within 30 session (for the *Verkhovna Rada*) or working (for the President) days upon expiry of the term of office of the previous members of the Council. The provisions of this act have not been complied with - since the President has not appointed his representatives, the National Council is not operational.

- The State Committee on TV and Radio Broadcasting manages state TV and radio broadcasting and controls the operation of national and regional state-owned TV and Radio companies. On 22 April, the Ukrainian parliament endorsed the appointment of Alexander Savenko as President of the State Committee on TV and Radio Broadcasting.
- The State Agency on Intellectual Property, the Committee on State Secrets and Technical Protection of Information, the Radio broadcast, Radio links and TV Concern, which directly broadcasts the signal on the air, also deal with issues of media regulation.
- The State Committee on Telecommunications and Information Technologies replaced the State Committee on Telecommunications, the State Committee on Information Technologies and the Higher Radio Frequency Directorate with the Cabinet of Ministers. This agency controls the allocation of TV and Radio frequencies in Ukraine and issues permits for use of transmitters.

2.3. The Stance of the Verkhovna Rada.

The situation in the media in Ukraine was repeatedly discussed in the Ukrainian Parliament in 1999. In February 1999 hearings took place in the *Verkhovna Rada* on issues related to freedom of speech. Parliament established a committee to investigate the media situation after Presidential Decree No 1033/98 was passed, as well as to look into cases of persecution of journalists and opposition media (Decree No 1033/1998 provides for the establishment of state joint stock companies: *Ukrainian TV and Radio Broadcasting* and *Ukrainian Publishing Society*).

On 16 February, the *Verkhovna Rada* admitted that the activities of the Government in securing freedom of speech and meeting the information needs of the population were not satisfactory. Parliament appointed an enquiry board to investigate the persecution of opposition media through the State Tax Administration, the Chief State Prosecutor's Office and the official executive authorities. This interim committee of the *Verkhovna Rada* would also check claims that the Security Council of Ukraine was part of this persecution.

The Decree indicated that Parliament should make amendments to some laws in order to restrict some of the powers of the State Committee on Telecommunications as far as licensing of broadcasters is concerned and to focus the licensing policy of the National TV and Radio Council. It was also agreed to draft an Information Code of Ukraine.

On 15 June 1999, the *Verkhovna Rada* appealed to some international organizations expressing concern with regard to the situation of the media in Ukraine. The appeal indicates numerous infringements of freedom of speech by the executive authorities, influencing opposition and independent media. The Parliament noted, that "on the eve of the presidential elections, the executive structures established total control over the information space of Ukraine and gave advantage to the coverage of the campaign of one candidate only — the current president in office — by means of subordinating the financial strapped media to influential owners."

On 23 September 1999, regarding the discontinuation of the coverage of the sessions of the *Verkhovna Rada*, the Parliament passed a decree "On the information blockade of the work of the *Verkhovna Rada* of Ukraine". It brings to the attention of "President Kuchma, in his capacity as a guarantor of the Constitution of Ukraine, the anticonstitutional and illegal actions of the Cabinet of Ministers of Ukraine — the information blockade of the work of the *Verkhovna Rada* of Ukraine and the factual deprivation of the people of their constitutional right to information, as well as the necessity to introduce measures not to allow such infringements in the future."

2.4. Draft Laws.

Draft laws are being prepared "On Radio Frequencies in Ukraine", "On Cable TV", "On Information Sovereignty and Information Security of Ukraine". Currently there is also a bill on amendments and an addendum to the Advertising Act, which provides a definition of the concept of political advertising and the mechanisms for its use.

The Parliamentary Committee on Freedom of Speech and Information drafted a bill some years ago on abolishing the system of state subsidies to media. The draft provides for a prohibition for state authorities and

organizations subsidised partly by the state to set up media outlets. Gradual denationalisation is planned of the ones that are currently fully or partially owned by the state. The authors of this draft are planning to redirect all the money from the state budget used to subsidise media in order to support the sector as a whole (to develop an information infrastructure, publishing facilities, a system of distribution, reduce the price for transport, etc.) The state authorities may use budget funds exclusively for dissemination of official information (legal acts and regulations, etc.) This information will be published in newsletters and specialised publications and will be circulated amongst a targeted audience.

State subsidies would only be given to media providing information about Ukraine abroad. State TV and radio should be reorganised as a public broadcaster. This idea has been introduced with the enactment of the “Act on the Public Television and Radio Broadcasting System in Ukraine”, but has not been implemented.

The concept of denationalisation of the media is an alternative to the “Act on Government Support to the media” and to the “Act on media coverage of the activities of government bodies and local authorities in Ukraine” as well as to a number of other legislative acts.

3. PRINT MEDIA

3.1. Quantitative Characteristics.

On 1 January 1999 there were 8,300 publications registered in Ukraine. Only 4,018 were actually published. 3,463 are published regularly. 673 publications are state-owned - fully or in part, and all of them are published regularly.

The overall circulation is 9,286,000. The circulation of nation-wide publications is 2,541,000. The rest are regional publications.

Two thirds of the publications are in Russian. Throughout 1999 the number of bilingual publications increased from 152 to 173, however, the number of the publications in Ukrainian was reduced from 372 to 369.

The following newspapers have the largest circulation:

- *Fakti I Komentarii* - 2,000,000
- *Silski Visti* - 548,000
- *Golos Ukraini* (published by the Verkhovna Rada) - 236,700
- *Uryadovii Courier* (published by the Cabinet of Ministers) - 128,200
- *Communist*, published by the Communist Party, has a circulation of approx. 70,000.
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Local publications are very influential in comparison with publications as a whole. According to opinion polls, 51.5 percent of the readers prefer local newspapers and 22.7 percent the regional ones. On the other hand, the proportion of local to central newspapers, in rural areas, is 50:1. A significant part of national publications are distributed in cities.

According to *Socis-Gallup*, only 18 percent of the citizens of Ukraine read newspapers on a regular basis. 14 percent do not read newspapers at all.

Fakti I Komentarii formally appears to be independent. It is controlled by *Verkhovna Rada* Deputy, Viktor Pinchuk, who is close to the family of the President. It directly supported Leonid Kuchma during elections. *Silski Visti* is circulated mainly in rural areas. This newspaper is left-of-centre and during the presidential elections supported the Speaker of Parliament, Alexander Tkachenko.

Golos Ukraini supported the representatives of the Kanev Four, and in the second round the Communist leader. The policy of this newspaper is seriously influenced by the left-of-centre parliamentary majority and by the Speaker of Parliament, Alexander Tkachenko, who was elected to the *Verkhovna Rada* by the Socialist and Rural Party Coalition.

The *Uryadovii Courier* newspaper is published by the Cabinet of Ministers and is actively supporting the political forces that are loyal to the executive branch, supported by the NPD and the *Zlagoda* Union, controlled by former Prime Minister Valerii Pustovoitenko.

Established in 1996, *Den Daily* is an opposition newspaper and one of the largest non-governmental newspapers in Ukraine. During its first year, 3 million USD were invested into *Den*.

Having remained sufficiently objective, at the start of the elections *Den* supported Evgeni Marchuk openly and criticised the current President. Regardless of its circulation of 58,000, *Den* is believed to be quite influential since most of its readers are politicians and decision-makers. After Evgeni Marchuk became Secretary of the National Security and Defence Council, *Den* shifted and became loyal to the authorities; as a result several journalists have left.

Zerkalo Nedeli Weekly (circulation 31,000) has a special place in the Ukrainian market. The newspaper offers a large number of analytical articles on political, economic and social topics and is quite an influential publication. *Zerkalo Nedeli* is partly financed from abroad, and as a result it is relatively independent. Due to a lack of subsidies, the Fakti reduced its circulation to 600,000 after the presidential elections. The Ukrainian tax policy towards Russian publications resulted in the appearance of some newspapers from Russia, that were formally registered in Ukraine. They are *Komsomolskaya Pravda - Ukraina* (270,000), *Argumenti I Fakti- Ukraina* (110,000), *Izvestia - Ukraina*, *Trud - Ukraina* (110,000), *Moskovskii Komsomolets - Ukraina* (101,500), *Stolichnie Novosti* (52,000) (the Ukrainian version of *Moskovskie Novosti*). Notwithstanding some local information published in these newspapers (10 - 30 percent of the newspaper) they are essentially copies of Russian newspapers. These publications are popular in the eastern parts of Ukraine, where Russian speakers prevail. These newspapers, except for *Stolichnie Novosti*, which is owned by Vadim Rabinovich, were used to a lesser extent by the authorities in the election campaign. Still, most newspapers of Russian origin favoured Leonid Kuchma. Except for a few exceptions, one can hardly speak of an opposition or a free press. All publications serve the interests either of authorities currently in power or clans who are trying to come to power. The situation of the local press is similar. It also is dependent on the authorities or on financial-political groups that end up controlling them.

3.2. Monopoly in the Area of Printing and Distribution of Publications.

A significant number of printing facilities in Ukraine are state-owned. This allows publishing houses to set extremely high prices for their services since there is no competition. In 1999, this problem worsened — in September 1998 the President signed a Decree ‘On the Improvement of State Management in the Area of Information’, which provided for the establishment of state-owned companies *Ukrteledradio* and *Ukrpoligrafizdat*, which hold 100 percent of the shares in the state publishing enterprises and TV and radio companies. A state monopoly was established in the printing sector. On 23 December 1998, the *Verkhovna Rada* passed a Decree, urging the President to repeal his Decree of 16 September 1998. The Union of Journalists of Ukraine made a similar appeal. The majority of experts believe that the establishment of state stock companies was done to ensure that Leonid Kuchma won the elections.

This establishment of a state monopoly led to a situation where *Ukrpoligraphizdat* confiscated premises and property from local newspapers. Rental contracts and incorporation agreements were terminated unilaterally. The printing monopoly allows the state to influence the process of printing the newspapers. For instance, in January 1999 in Cherkassy, the state printing house, without an explanation, changed the printing schedule of all the newspapers in favour of *Nova Doba*, owned by the local authorities. As a result, the other newspapers were not supplied to the readers on time.

At *Ukrpoligraphizdat* publishing house the more critically oriented newspapers (such as *Politika* in Kyiv and *Dneprovskaya Pravda* in Dnepropetrovsk) were refused publication. In October 1999, on the eve of the elections, the publication of *Veteran*, *Rakurs*, *Nashe Zavtra*, and *21 Vek* newspapers was discontinued. The publisher refused to print them. The editor of *21 Vek*, Yuri Yurov, said that he was warned that the newspaper would not be printed unless its content was changed. There was a similar situation in Sevastopol, where *Sevastopolskaya Pravda* (supporting Piotr Symonenko) was refused by the local publishing house.

There is yet another problem — the distribution of the publications. This is concentrated in the hands of *Ukrpochta* and *Ukrpechat* (formerly *Soyuzpechat*). There are currently no alternatives available for the supply and distribution of newspapers in Ukraine. In April 1999, *Soyuzpechat* Retail Agency refused to sign a contract with *Kyivskie Vedomosti* because they published critical articles against *Soyuzpechat*.

3.3. State Publications - The Problem of Unfair Competition.

The state media, and more specifically their financing from the state budget, is a serious problem for the development of media in Ukraine. Over 160 million hryvnia (\$50 million) were allocated in the 1999 budget for financing state media. State publications are also financed through local budgets.

The Decrees, that the Cabinet of Ministers passes every year on subscription and distribution, provide privileges to more than 150 publications founded by state structures. Compensation is provided from the budget. Annual budget subsidies are also provided for smaller publications established by the authorities.

Because of subsidies, state media are in a more favourable position as compared to private publications. They offer subscriptions at below market prices and also decrease the advertising rates. This unfair practice seriously undermines the basis of the non-governmental newspapers.

3.4. News Agencies.

Currently, there are state and privately owned news agencies in Ukraine. *DINAU* is one of the state-owned agencies and under the Cabinet of Ministers. The Crimean Information Agency is also state-owned and was established by the Council of Ministers of this autonomous region. They are also financed from the budget.

Interfax - Ukraina, *UNIAN* and *UNIAR* are the largest privately-owned news agencies. There are also regional information agencies, among them *Infobank* (Lviv), *Sobor* (Dnepropetrovsk), and *ATN* (Kharkiv). News agencies are also subjected to pressure and part of the political process. The press secretary of Leonid Kuchma, Alexander Martinenko, was previously the general manager of *Interfax-Ukraina*. *Sobor* Agency was, until recently, controlled by former PM Pavel Lazarenko.

State agencies receive certain privileges. According to the Decree of the Cabinet of Ministers of 4 June 1999, executive authorities must provide a centralised subscription for *DINAU* to all regional media, which were founded, or co-founded, by the state authorities.

4. ELECTRONIC MEDIA: TV and Radio

4.1. Quantitative Characteristics.

There are 830 broadcasting licences issued to TV and Radio organizations in Ukraine. There are 253 TV companies, 211 radio companies and 52 TV and radio companies in the state register. 133 broadcasters are owned by the State or by the municipalities and 282 are privately owned.

According to the National Council in Ukraine, there are 107 active cable TV operators. Only 52 have a licence. Ten operators have applied for a licence. The rest operate illegally. The total TV cable network audience is approximately 3 million viewers, including 500,000 in Kyiv as well as in Donetsk region, 200,000 in the Lugansk region and 100,000 each in the regions of Odessa, Lviv and Crimea.

Because of the difficult economic situation, television is the only source of information for many Ukrainians. Opinion polls show that 99 percent of the population of Ukraine have the possibility to watch TV; 80 percent watch TV every day and another 12 percent once or twice a week. The ratings of the channels are: *Inter* 49 percent, *I+I* 48 percent and *UT-1* 33 percent.

There are three nationwide TV channels operating in Ukraine: *UT-1*, *UT-2* and *UT-3*.

UT-1 broadcasts programmes of the National TV Company and several private TV companies (*Era*, *Gravis*, *Alternativa*, *Studia Plus*, *Media Show*, etc.). *UT-1* broadcasts 18.7 hours a day. The channel has an audience of 50 million people.

UT-1 became the main campaigning tool during the presidential elections. The information broadcasts of *UT-1* were used for campaigning in favour of the current President and discredited other candidates. Most claims for breaches of the election law were filed against *UT-1*. These claims focused on *Akcenti*, *7 Dnei* and *UTN-Panorama* programmes. *UT-1* broadcasts programmes by TV companies close to the President: *Gravis* — this company is controlled by Alexander Volkov (Parliament Deputy, former assistant to the President), *Era* — a TV company controlled by Vadim Rabinovich (President of *Rico Holding Group*, Israeli citizen), Viktor Pinchuk (Parliament Deputy, partner of Leonid Kuchma's daughter) and Andrei Derkach (Parliament Deputy, son of the head of the Security Council of Ukraine).

UT-2 broadcasts programmes of *Studia I+I* 12 hours daily in the morning and evening slots. The rest of the time is given to programmes from regional state TV companies. The audience of this channel is approximately 45 million.

Studia I+I is a joint venture. CME (Central European Media Enterprises) owns part of it. Recently the Russian company *Media Most* (owned by Vladimir Gussinski) bought shares in *Studia I+I*.

Until autumn 1998, *Studia I+I* was controlled by Vadim Rabinovich and gave exclusive advertising rights to *Prioritet* Advertising Agency, which was part of *Rico Holding Group*. In autumn 1998, the management of *I+I*

broke up with Rabinovich and his agency. According to experts, Alexander Volkov kept control over the company.

The information programme *TSN* tried to stay impartial and unbiased during the presidential campaign; however, they often sided with Leonid Kuchma. The main presidential candidates were introduced in Vyachislav Pihovshchak's *Epicentre - nesecretnie materiali*. On the eve of the elections *TSN* planned to show debates between the candidates live for five days. The international organization, *Freedom House*, provided financial support for these debates. After the first day of the debates the anchor fell ill and the debates were discontinued. According to Opposition media, the debates were cancelled by the management of *Studio 1+1*.

UT-3 broadcasts programmes by the Independent Ukrainian TV Corporation (UNTC) *Inter*. Their audience is approx. 35 million viewers. UNTC is a joint Russian-Ukrainian venture. The Russian TV channel ORT owns 29 percent of the shares. During the general elections *Inter* supported the SDPU (u). This was because the Managing Director, Alexander Zinchenko, was on the party list of the SDPU (u). After becoming a Parliament Deputy, Zinchenko resigned as Managing Director and is now the honorary president of the Channel. During the elections, the programmes *Podrobnosti* and *Podrobnosti Nedeli* openly supported the current president.

STB is the only TV company in Ukraine that broadcasts its programmes nation-wide via satellite. Part of the shares are owned by *Norkros-corporation* affiliated with the Russian oil company, Lukoil. *STB* broadcasts in 23 cities. During the elections, *STB* was strongly pressured by the executive authorities. For six months it was under the threat that its broadcasts would be discontinued, it was subject to criminal litigation, its accounts were frozen. As a result of this pressure, in early October, Vladimir Sivkovich resigned from the Administrative Council of the *STB* and sold his shares to another shareholder. After that the accounts of the company were cleared. Sergei Kutsiy, who was the former head of the Press-Office of the President, then joined the Administrative Council. According to statements by a group of journalists from *STB*, since Sergei Kutsiy joined the channel, the programmes of *STB* are subjected to direct and open censorship.

ICTV is a private TV channel and a Ukrainian-American joint venture. The audience is approx. 22 million viewers. Until October 1998, 50 percent of the shares of the channel were owned by the state. However, the state sold its share for 2,200,800 hryvnia (approx. \$1 million) and *ICTV* became a 100 percent private TV company. Analysts believe that the sale was related to the forthcoming elections. During the presidential elections, Alexander Volkov controlled the channel. The information programme *Novini zvidusil* broadcast on *ICTV* is produced by the TV Company *Gravis*, a company controlled by Alexander Volkov.

4.2.Licensing.

The National TV and Radio Broadcasting Council issues broadcasting licences. Currently the National Council is not fully operational and cannot carry out its functions. This slows down the development of the TV and Radio market and creates conditions for administrative abuse. No company has the right to broadcast without a licence. During the presidential campaign, the TV company *Ulichnoe Televidenie*, that campaigned in favour of Leonid Kuchma, carried out broadcasts on channels used by regional state TV and radio companies without a licence from the National Council

In order to obtain a licence, future broadcasters must submit an application and enclose copies of their incorporation papers. The application should contain basic information about the founding members of the company and its broadcasting plans. The licence is issued for a fee, the amount determined by the Cabinet of Ministers. Currently the fee is approximately \$2,000. The fee is 90 percent less when a licence is issued to a state TV and radio company. It is twice as much if programmes from abroad make up more than 20 percent of the broadcasting time, and five times as much if such programmes take up more than 35 percent. The licence is issued for a period of no less than five years for on-the-air broadcasters and for ten years for cable operators.

TV and radio companies also need to obtain a frequency licence issued by the State Electricity Inspectorate. Currently, TV and radio organizations must obtain a permit to use transmitters, even if they do not own them but rent them from the state radio and TV transmission centres.

The legislation also regulates the language of broadcasting. According to the current criteria, 85 percent of the programmes are expected to be in Ukrainian. Currently 87-91 percent of the broadcasts of state TV are in Ukrainian. The majority of regional TV companies in Eastern Ukraine do not comply with this requirement. There have been no oppressive measures against them although the restrictions on the volume of broadcasts in other languages may also become another tool for influencing the media

5. GENERAL PROBLEMS FOR MEDIA FREEDOM

There are a number of problems which are characteristic both for the print and the electronic media. One of the major problems is the current economic crisis that led to a decline in the purchasing power of the population. This not only resulted in a sharp drop in newspaper circulation, but it also hit the advertising market. Because of the poor advertising market, most media cannot develop economically and become self-sufficient. The situation gets worse because of the unfavourable tax system.

As a result, state-owned media exist on state subsidies and non-governmental media are controlled by financial-political clans that — depending on their loyalty to the authorities — determine the policy of the publication. That is why all media in Ukraine are practically more or less politically involved and serve the interests of the authorities or political and financial circles supporting them, and not the interests of the readers or the viewers. The situation is also aggravated by the inadequate education and lack of professionalism of journalists. Many journalists served the ideological interests of the Communist Party and were part of the propaganda machine. The years of relative independence the early 90s did little to change their mentality. There is a clear need for more professional education, vocational training, and awareness among journalists. The Council of Europe and national and international NGOs, among them IREX/ProMedia, are working specifically in this field, giving further opportunities to journalists through numerous training courses.

All media also face restrictions on access to information from the Government, in spite of legal guarantees. One should note the extremely low level of legal awareness, since few are aware of civil servants taken to court by newspapers and journalists for violations of the Information Law.

5.1. Violence and Death of Journalists.

In recent years, many journalists have been subjected to physical threats and criminal prosecution.

Forty journalists have died in tragic circumstances over the past years in Ukraine.

A whole series of incidents are related to *STB*. On 4 March 1999, the President of the *STB*, Nikolay Knyazhickiy, announced at a news conference that he had grounds to believe that there were attempts to exercise pressure on the staff of *STB*. In particular, on 23 February, retired Leut.-Col. of the Ministry of Interior, Alexander Deneiko, advisor to Mr Knyazhickiy, was killed. On 26 February, the camcorder and tapes of one of the cameramen were stolen. On 1 March the cellar under Knyazhickiy's flat was set on fire. On 3 March two people wearing masks broke into the flat of Dmitriy Dahno, commercial director of *STB*.

Maryana Chornaya died under suspicious circumstances (the official version is suicide) on 24 June 1999. She was a member of *STB* staff and the *Suspilstvo Centre* Fund. She was found hanging in a flat. Prior to her death, her flat was broken into and robbed by unidentified persons.

In July 1999, the management of *1+1* Channel announced that there had been threats of physical retribution against journalists and management of the channel since October 1998. Observers relate these threats to the fact that the management of the Channel broke up with media-magnate Vadim Rabinovich.

Igor Bondar, co-founder and director of the local *AMT TV*, and Boris Vihrov, President of the Odessa Court of Arbitration, who were in the same car, were killed in Odessa in May 1999. The assassins have not yet been found.

In July 1999, officials from the local tax authorities in Cherkassy threatened and used violence against the Editor of *Antenna* newspaper, Valeriy Vorotnik.

On 5 October 1999, the flat of the Editor of Lviv newspaper *Postup*, Orest Drul, was broken into. The burglars threatened him if the newspaper did not stop publishing some of its stories. The Editor himself admitted that his newspaper had published several critical pieces against the Deputy Head of Lviv's Regional Administration. In autumn 1999, law enforcement authorities attempted to expel from the country the family of the *Simon TV* commentator, Zurab Alasani. *Simon TV* supported Evgeni Marchuk in the presidential elections and covered the other candidates.

On 26 January 2000, in the Crimean Parliament, Deputy Alexander Ryabkov and several of his assistants forcefully confiscated the camcorder and the tape (with footage of a conflict inside Parliament) from the correspondent of *Crimean TV*, Osman Pashaev.

5.2. Inspections by Tax Authorities and other Regulating Bodies.

One of the means of exercising pressure over opposition publications is through the use of tax and other regulating bodies to block the work of the media. Ukrainian law allows for the operations of any organization to be suspended following a resolution by the Fire Safety Department, the Health and Anti-Epidemic Service or any other government structure.

The past two and a half years, *Den* was inspected more than 30 times by various state regulatory bodies. During the attempts to close down *STB* in spring 1999, claims against it were raised by the Health and Anti-Epidemic Service. The reason for the inspection was a complaint by a group of students from the University of Economics regarding the poor reception of *STB TV* and possible health hazards because of radio-magnetic radiation. According to the Health and Anti-Epidemic Station, *STB* was the “source” of this hazard. These allegations were proven incorrect. Journalists from *STB* carried out an enquiry and established that this “initiative” did not come from the students. In a meeting with journalists, the “claimants” withdrew their signatures.

5.3. Litigation. Court decisions.

Another way of exercising pressure over the media, particularly the opposition one, was through excessive claims filed for protection of honour and dignity of officials. This has already led to the closure of a number of print media. Under Ukrainian law there are no limits to the amount of such a claim. As a result very high figures were demanded without any supporting evidence and courts often ruled against the newspapers.

Claims for protection of honour and dignity filed against the media comprise 99 percent of all claims in which media are involved. In 1995, 980 claims against media were filed in court. In 522 cases the court ruled in favour of the plaintiff. The amounts claimed totalled 1,906,943 hryvnia and the amounts awarded by courts totalled 124,292 hryvnia. In 1996, 1,042 claims were filed and in 582 cases courts were ruled in favour of the plaintiff. The amounts claimed and awarded were 138,363,922 hryvnia and 711,608 hryvnia respectively. In 1997, 1,257 claims were filed and in 654 cases courts ruled in favour of the plaintiff. The sums were excessive: a total of 90,388,344,951 hryvnia were claimed, and 1,518,984 hryvnia were awarded by courts.

In March 1998, on the eve of the parliamentary elections, *Vseukrainskie Vedomosti* was closed following a ruling by the Court of Arbitration on a claim of 3.5 million hryvnia (\$1,75 million) in favour of the *Dinamo - Kyiv* football club as compensation for moral damages for publishing information on the sale of one of the players to the Italian *Milan*. *Vseukrainskie Vedomosti* were critical towards the government, they supported the *Hromada* party and this was actually the main reason for closing this newspaper, according to its Editor-in-Chief, Vladimir Ruban.

Similarly, in 1998, the Minister of Interior, Yuri Kravchenko sued *Kyivskie Vedomosti*. Kravchenko claimed 5 million hryvnia (\$2,5 million) from the newspaper because of a series of critical articles regarding his work as a minister. According to the decision of the *Starokiev District Court*, the newspaper had to pay 5 million hryvnia, and the journalists Sergei Kiselyov and Genadiy Kirindyassov had to pay 20,000 and 7,000 hryvnia respectively. As a result, *Kyivskie Vedomosti* discontinued publication. In December 1998, the Supreme Court of Ukraine revoked this ruling and sent the case for further investigation. After that the newspaper started publishing again.

In December 1998, the Prosecutor's Office in Kyiv initiated criminal litigation under Article 125 (slander) of the Criminal Code of Ukraine against journalists from *Zerkalo Nedeli* for publishing a satirical article with characters that did not exist in reality. The case was filed without defining the individuals that were slandered and was closed after a public statement by the President that he did not see anything offensive in this article.

On 6 October 1998, the Pechera District Court in Kyiv closed *Politika* after the article *Spy Story - 2* was published. The representatives of the newspaper were notified about the ruling as late as on 8 December in a regular Court session. On 23 December 1998, Oleg Lyashko, Editor-in-Chief of *Politika*, was arrested and was charged with slander (Article 125 of the Criminal Code, when almost all other cases are brought to court under the Civil Code). On 8 February the City Court of Kyiv revoked the ruling by the Pechera District Court that suspended the publication of *Politika*.

In June 1999, *Politika* was finally closed but until then it had to change printing houses seven times. More than 20 criminal claims were raised against it by officials overall amounting to approx. 120 million hryvnia. Oleg Lyashko was finally acquitted on 23 December 1999. However, the prosecutor has appealed to the Court of Cassation, so the ruling is not yet final.

During visits by the OSCE/FoM Office to Kyiv in 1999, it became clear that current libel laws and their application in Ukraine are important issues with respect to freedom of media and to freedom of expression of journalists. Earlier in 1999, there were a number of initiatives by the Government, Parliament and Supreme Court to address these issues (especially the high libel fees) which have not yet produced a result. During his visit in May 1999, Freimut Duve, whose mandate includes the possibility of providing assistance to OSCE participating States with a view to promote compliance with relevant commitments, suggested organising a roundtable on the topic. The roundtable was organised together with the Council of Europe and IREX/ProMedia and in co-operation with the Government of Ukraine and the Office of the OSCE Project Co-Ordinator in Ukraine. It was held on 2 December 1999 in Kyiv and was attended by more than 100 persons. The objective of the libel roundtable was to assemble responsible Ukrainian agencies (executive, legislative, judiciary) as well as the Ukrainian media to provide an analysis of the current situation and to prepare recommendations on possible and constructive steps forward. International experts (from other OSCE participating States and from the Council of Europe) provided advice as to international standards and gave positive examples. The media widely covered the roundtable. The recommendations of the roundtable are in the Annex of this report.

5.4. Out-of-Court Closure of Newspapers.

In addition to open prosecution, there is a practice of out-of-court closure of newspapers by the executive authorities. In January 1998, following a written order by the Minister of Information, Zinovii Kulik, publication of *Pravda Ukraini*, which supported the *Hromada* Party, was suspended. Breaches in the registration of the newspaper were announced as the official reasons for suspension. Prior to that, *Pravda Ukraini* published a series of articles on corruption among the executive branch. In September 1998, Alexander Gorobets, Editor-in-Chief of *Pravda Ukraini* was arrested for “attempted rape”. On 24 May 1999, the court found Gorobets guilty of “attempting to force into a sexual relationship in abuse of an official position” and sentenced him to seven months and 24 days imprisonment. But because the accused had already been detained for more than seven months during the investigation he was released in the courtroom.

Pravda Ukraini managed to re-start publication only after replacing its Editor and becoming loyal to the executive authorities.

On 13 January 1999, in Dnepropetrovsk, after an interview with the Ministry of Interior, the Editor of the newspaper of the Regional Council of Dnepropetrovsk, Vladimir Efremov, was detained for two days. The newspaper was supporting the *Hromada* party and Pavel Lazarenko.

Such practices are not used against media loyal to the authorities.

During the election campaign and after the elections for President, candidates like Natalya Vitrenko, Piotr Symonenko and others filed claims for protection of their honour and dignity against various media. Natalya Vitrenko’s claim against Den and against journalist Tatyana Korobova amounts to 500,000 hryvnia (\$100,000).

5.5. Termination of Broadcasting.

During the election campaign, out-of-court termination of broadcasting of TV channels was practised. The reason was the new rules regarding permits for operation of transmitters and use of frequencies that were introduced by the Cabinet of Ministers. In addition, as a result of inspections by the regulatory bodies, opposition TV channels were fined and sanctioned.

In December 1998, Prime Minister Valeriy Pustovoitenko, while visiting the National Radio and TV Company, asked whether Channel 11 in Dnepropetrovsk, that supported Pavel Lazarenko, was not yet closed down. On the very same day the police searched the premises of Channel 11 for reasons related to “the fight against organised crime.”

On 9 March 1999, Channel 11 went off the air. The official reason given was the absence of a frequency licence for broadcasting the signal on the radio relay network. This TV company issued an appeal. They believed that the real reason for this closure was the “opposition stance of the channel that offered its airwaves to political opponents of the current authorities”. After the channel fell under the control of Viktor Pinchuk, broadcasting re-started. As a result Channel 11 is now loyal to the authorities.

On 22 February 1999, the *Visti tizhnya* programme was not broadcast on *ICTV*. *Vecherni visti*, the daily information programme of *ICTV* has not been shown since 15 March. Both programmes were produced by the TV information agency *Vikna*, headed by well-known reporter Nikolay Kahishevski. The management of *ICTV* explained that their refusal to work with *TVIA Vikna* was for economic reasons. But this explanation raises doubts, since, according to statements in some media, the channel relied on the production capacity of *Vikna* and offered them free advertising time. This is why it is likely that there may be political reasons for cancelling

programmes by *Vikna*. Nikolai Kahishevski explained the cancellation because of the influence of the new owner, Alexander Volkov.

In September 1999, the tax administration froze the accounts of *Gravis TV*. At the same time they started inspecting *ICTV* due to the fact that it had signed a co-production contract with *Gravis*.

In summer 1999, STB was threatened with closure. In late May and early June the management of the channel received two instructions from the State Electricity Inspectorate. In the documents the inspectorate urged them to “immediately cease the operation of the station upon receipt of these instructions until a proper permit was issued”.

According to the Head of the State Electricity Inspectorate, Valentin Kolomiyets, the reason for the sanction was the fact that the channel’s licence had ended on 28 April 1999. In addition, *STB* changed the satellite broadcaster (from INTEL-SAT to AMOS-1) without notifying the regulating body, *Ukrchastotnadsor*. The President of *STB*, Dmitrii Prikordonnii, noted that the request to terminate satellite broadcasting by *STB* was illegal, since the legal framework in this area was not finalised yet. The law had no provisions as to what sanctions should be taken in these cases.

Dmitrii Prikordonnii did not exclude the possibility that this issue was related to the contract between *STB* and *Verkhovna Rada* for the production and broadcasting of the *Parliamentski Vikna* programme, covering the work of Parliament. The conflict around *STB* could be explained because of the presidential election campaign. Prikordonnii emphasised: “We are not going to support any of the candidates, but we will give equal opportunity to all candidates who want to use the airwaves of *STB*.” In September 1999, a criminal claim was filed in court against *STB* for tax evasion and the accounts of the company were frozen. Following the freezing of the accounts, *STB* cancelled the *Parlamentski Vikna* programme.

On 17 June 1999, the accounts of *Simon TV* and Radio in Kharkiv were frozen following an order by the police. According to the station’s director, it was planning a series of programmes on all the presidential candidates. Letters were sent to the candidates inviting them to take part in these programmes. Shortly before the accounts were frozen, *Simon* showed a series of programmes about Evgeni Marchuk.

In July 1999 after the news conference by Evgeni Marchuk was broadcast by TV studio *ATB Studia-2*, its licence was terminated and the Arbitration Court imposed financial sanctions on the TV station.

On 26 July 1999, in Crimea the broadcasts by the non-governmental TV and Radio companies *Chernomorskaya*, *ITV*, *Ekran*, and *Kerch* were terminated. The reason was an order by the regulator *Ukrchastotnadsor* to the Broadcasting Centre in Crimea (RTPC) stating that they had no permits for use of transmitters.

The three TV stations re-started broadcasting (except *Chernomorskaya*) after their programmes turned loyal to the authorities and any criticism of the current president was suspended. *Chernomorskaya* re-started just before the second round of elections when campaigning was prohibited.

The suspension of broadcasting of these TV stations in Crimea took place at a time when State TV and Radio station *Krym* did not have any licences and permits, but its broadcasting was not suspended.

In October 1999, the Editor-in-Chief of *VIKKA TV*, Viktor Borissov, was dismissed after airing live presidential candidate Alexander Moroz. He was dismissed after the company changed ownership.

5.6. Regional cases

Two cases can be presented to exemplify the situation in the regions of Ukraine. The OSCE Representative on Freedom of the Media has intervened on behalf of both cases.

The case of the Crimean *Chernomorskaya Zarya* illustrates a difficult situation where a state-owned media finds itself between the legislative and executive branches of state power conflicting with each other. The *Chernomorskaya Zarya* is a small bi-weekly district newspaper founded by the district council. In 1996, the newspaper shifted its political support from the council to a recently elected new Head of District Administration. This move resulted in a serious conflict with the district council, as its understanding was that the newspaper was an organ of the city council and was obliged to be the council’s mouthpiece. In November 1997, the conflict had deteriorated to the extent that the council decided to stop supporting the newspaper financially and established a competing newspaper, *Chernomorskiye Izvestiya*. The district administration financed *Chernomorskaya Zarya* for a short time, but after some further changes in the administration, the newspaper was left with no support, which has led to the non-payment of salaries and accrued debt. In addition to financial problems, the newspaper has been forced to stop publishing at the town publishing house and to

find alternative publishing facilities in another city. The city council has also tried to evict the newspaper from its premises claiming that *Zarya* was using the premises as well as the equipment illegally. One of the most disturbing facts is that *Zarya* has been put under severe judicial pressure. Around 20 libel and other lawsuits have been filed against the newspaper. The situation has not improved over the years, in spite of several interventions by the Representative on Freedom of the Media.

In the second case, Petro Hois, the Editor-in-Chief of the opposition Uzhgorod newspaper *RIO*, was arrested and jailed on 25 February 1999 for several days on alleged libel charges based on an article attacking Viktor Medvedchuk, a Deputy Speaker of Parliament. However, the article was never published. The article included a statement from Serhy Ratushnyak, the former mayor of Uzhgorod, who fled Ukraine in 1998 after criminal charges were brought against him. However, his statement was not published in full, but edited for potentially libelous allegations and the final article did not include any names. Mr Hois was fined 30,000 hryvnia in October and, as he was unable to pay, the bank accounts of the newspaper were closed down by the tax authorities. Currently Mr Hois is working for another newspaper but expects to be unemployed in the near future.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1. Conclusions

The conclusions that can be drawn from this report are discouraging:

The situation as a whole is characterised by the executive authorities in Ukraine controlling the majority of the governmental periodicals and electronic media and being able to also influence the majority of non-governmental media, including through closing down publications or TV channels. The executive authorities determine the policy of the majority of the media in Ukraine and coerce them into being loyal through often hidden pressure which results in new forms of indirect censorship: The authorities exercise their pressure through judicial bodies as well as through economic leverage and fiscal organizations. There are major problems with the professional activity of journalists.

The parliamentary and presidential elections of 1998 and 1999 had a serious impact on the Ukrainian media. The recent presidential elections took place with significant infringements of freedom of the press. The joint preliminary statement (1 November 1999) on the observation of the first round of the presidential elections by the OSCE/ODIHR and the Parliamentary Assembly of the Council of Europe (PACE) states that: "Both the publicly funded electronic and print media, and private broadcasters comprehensively failed to meet their obligations and it can be concluded that the media coverage of the campaign and of the candidates in the first round did not live up to the required legal provisions and OSCE commitments." The preliminary statement regarding the observation of the second round (14 November 1999) similarly stated that "The electronic and State-owned media comprehensively failed to live up to their legal obligation to provide balanced and unbiased reporting on the candidates and the campaign in their news coverage of the second round." The ODIHR Observation Mission also "received reports and allegations of pressure on certain media outlets to provide better and greater coverage of the activities of the incumbent. These outlets complained of an unwarranted number of inspections by numerous authorities including tax, fire and safety inspectors." ODIHR concluded that the 1999 elections showed no improvement over the coverage in the media of the campaign for the 1998 parliamentary elections. The final report of ODIHR is still pending.

Even though censorship has been abolished, there is still no real free and independent journalistic media landscape in Ukraine. This has to a great degree limited the possibility of public debate on major social issues. The parliamentary elections of 1998 and the recent presidential elections of 1999 have highlighted the deficits in the media sphere. The abuses by the executive authorities, especially through arbitrary measures and pressure against media, were also exacerbated during the election campaign period.

The various state monopolies that exist in the media sphere are hindering the development of free and independent media.

There is no lack of relevant laws, but there is still a lack of the non-partisan rule of law and of independence of the judiciary in Ukraine, as seen in many media cases. The result is uncertainty and distrust in the courts and that the journalists and the media cannot count on them on issuing fair decisions. The judiciary is also not familiar with international legal standards regarding media. This was clearly seen in many recent libel law cases in Ukraine.

6.2. Recommendations

The following recommendations can be made to the Government of Ukraine:

- The Government should undertake initiatives to enhance public awareness of international standards and obligations in the field of free media and press freedom. The culture of tolerance, pluralism and broadmindedness needed in a democracy should also be promoted. The Government must ensure that executive authorities refrain from arbitrary measures and other pressure against journalists and the media.
- As there is a need for greater openness and access to information for journalists, the Government and other public authorities should provide greater access to information on their activities and improve their own public information programmes. Such transparency could contribute to the quality of media coverage on official activities.
- The Government needs to take measures to strengthen the independence of the judiciary to guarantee fairness and equality of all citizens.
- The Government should promote the lifting of monopolies in the media sphere, e.g. in printing and distribution.

Annex to the Current Media Situation in Ukraine

Free Media and Libel Legislation in Ukraine

Roundtable in Kyiv

2 December 1999

Conclusions and Recommendations

On 2 December 1999, the OSCE Representative on Freedom of the Media, the Council of Europe and Irex/ProMedia held in Kyiv a public roundtable on Free Media and Libel Legislation in Ukraine in co-operation with the Government of Ukraine and with the Office of the OSCE Project Co-ordinator. The roundtable at the Institute for Foreign Affairs of Kyiv University was attended by over 100 participants, among them Government and Parliament officials, judges, lawyers and journalists (see programme attached).

- Background: Current libel laws and their application in Ukraine are important issues with respect to freedom of the media and freedom of expression of journalists. Most of the media cases in courts are libel cases. High libel fees have become one of the means that lead the media into bankruptcy and foster a climate of self-censorship. Earlier in 1999, a number of initiatives were taken by Government, Parliament and the Supreme Court of Ukraine to address these issues.
- The objective of this roundtable proposed by the OSCE Representative during his visit to Kyiv in May 1999 was to assemble responsible Ukrainian agencies (executive, legislative, judiciary) as well as the Ukrainian media to provide a detailed analysis of the current situation and to prepare recommendations on possible steps forward. The participation of experts from the Council of Europe and from Poland provided information on relevant international legal standards and practices.
- Findings: The proliferation of libel cases seems to be linked to the fact that many media outlets, at this stage, are closely affiliated with political interests or movements and often lack editorial independence. Libel suits have become instruments that are used against political opponents behind the media. Such libel cases have led to bankruptcy of the media concerned and to the intimidation of journalists.

Although there is no longer a state monopoly on media, the concept of free media being essential for a public debate in a democracy is not widespread. The old thinking approach to media as a messenger between those in power and the people remains strong. The Government's own information policy is considered to be rather restrictive. Government officials often lack experience and tolerance in their relationship with the media and file cases against journalists who are understood to be frivolous.

As to the court decisions on libel cases, rule of law is not generally guaranteed. This applies especially to the regions. Apparently, courts have often failed to uphold national law and are accused of being influenced by politicians and not by relevant legal standards. On the other hand, **the legal basis for handling libel and defamation cases, the legislative framework of Ukraine, could be considered to be generally sufficient, if applied in compliance with international legal standards applicable in Ukraine.**

- European legal standards applicable in Ukraine, a member of the Council of Europe since 1995: Ukraine's legal practice (and to a lesser degree some elements of its legislation) should be brought into line with European standards as stated in Article 10 of the European Convention on Human Rights

(ECHR) and as interpreted in the binding decisions of the European Court on Human Rights. The Convention is an integral part of Ukrainian law and directly applicable by domestic courts.

The case law, developed by the European Court on Human Rights on libel and freedom of speech, implies the following specific guidance:

- Opinions and information “that offend, shock or disturb the State or any sector of the population” are also protected by the European Convention on Human Rights.
- It is in the interest of democratic society that media are enabled to exercise their rightful role of “public watchdog” in imparting information of serious public concern including on controversial political issues. The public has also a right to receive such information and ideas. It would be unacceptable for a journalist to be debarred from expressing critical value judgements unless he or she could prove their truth.
- The limits of acceptable criticism are accordingly wider as regards politicians than they are for a private individual. Public figures inevitably and knowingly lay themselves open to close scrutiny of their every word and deed by both journalists and the public at large, and they must consequently display a greater degree of tolerance. In cases of ruthless and abusive lawsuits filed by public figures against media, the plaintiffs, i.e. the public figures, could be convicted themselves.
- The amount of damages in any case of libel should be proportionate and it should not have a chilling effect on critical reporting. Instead of rewarding high amounts of damages, it may be sufficient in many cases to order the publication of a summary of the judgement in the media concerned, as is the practice in many European countries. Such solutions are preferable in situations where economic resources of the media are limited.

Recommendations to the Government of Ukraine on promoting free media and reducing libel cases:

- The Ukrainian national Law on Information states the applicability and precedence of international conventions over national regulation. The Government should **take action on the basis of its relevant international commitments as a Participating State of the OSCE and as a member of the Council of Europe** to promote freedom of expression and free media. As one of the signatories to the OSCE Charter for European Security, the Government of Ukraine has recently committed itself to “ensure the basic conditions for free and independent media (...) as an essential component of any democratic, free and open society.” As a member of the Council of Europe, Article 10 of the European Convention on Human Rights as well as the case law of the European Court on Human Rights are applicable in Ukraine and provide clear guidance also on handling of libel cases.
- While the legal framework as such may be considered as basically sufficient, if correctly applied by the domestic courts and other public authorities in line with the international standards mentioned above, the provisions of the current civil and criminal codes relevant to libel and defamation could be reviewed.
- Apart from possible improvements of the legal framework, **urgent action** by the Government and by other public authorities is required **to ensure the proper application by the courts of domestic law in compliance with the above mentioned European legal standards.** The Government should make use of the assistance offered by the Council of Europe and other organizations concerning the training of judges, lawyers, etc.
- The Government should undertake initiatives — in co-operation with the OSCE, the Council of Europe, other international organizations and with NGOs - **to enhance public awareness of European standards in the field of free media and press freedom.** The culture of tolerance, pluralism and broadmindedness needed in a democracy should be promoted.
- Furthermore, Government officials should be encouraged to set an example in renouncing frequent and unjustified libel suits.
- The Government and other public authorities should provide greater access to information on their activities and improve their own public information programmes. Such transparency could contribute to the quality of media coverage on official activities.