



13 July, 2006

Only in English

**Written submission of the Ukrainian Helsinki Human Rights Union
for The second Supplementary Human Dimension Meeting on
*Freedom of the Media: Protection of Journalists and Access to Information***

**UKRAINE: FREEDOM OF EXPRESSION
Session II
Vienna, 13-14 July 2006**

Review of new legislation

The main trends as to the legal regulation of the activities of the mass media and freedom of information in Ukraine in 2005 were: inconsistency and unevenness in legislative policy; the lack of coordination between the new laws and the existing legislation; the passing of laws and other normative legal acts which weakened pressure on the activities of the mass media, which were, after some time, followed by legislative acts with entirely opposite, even reactionary, content. The main reasons for this appear to be the absence of a single policy in the sphere of legislative regulation of the activities of the mass media, a struggle between different political factions which has intensified on the eve of the parliamentary elections, as well as permanent conflict between the legislative and executive branches of power.

The first positive change in 2005 related to legislative regulation of the media came about with a new version of *the Law "On the National Television and Radio Broadcasting Council of Ukraine"* (NTRBC) passed on March 3. It strengthened the guarantees of the independence of this regulatory body in the area of television and radio broadcasting. The procedure for appointing of the members of the Council in general became more democratic, but the Law still does not allow the representatives of the Mass Media to suggest candidates for the membership in the National Council. Under the Law, the Verkhovna Rada and the President still have the right to dismiss the panel of members, which seriously jeopardizes the conditions for the independence of the National Council. Among the amendments which made life easier for television and radio companies was the removal of the right of the Council to temporarily (for a period of up to two months) suspend the licences of television or radio companies. It introduced a normative regulation of the procedure for the review of certain issues in the Council, which have been up till then effectively non-existent.

The Law passed on 22.12.2005 "*On access to court rulings*" (which came into force on June 1 2006) is a significant step forward in the process of improving the legislation aimed at safeguarding access of the public to information.

On 12 December 2005 the Verkhovna Rada passed *the Law "On introducing amendments to the Civil Code of Ukraine in connection with the right to information"*, which was a positive step of legislative provisions in ensuring freedom of speech in Ukraine. The amendments were brought about by the need for clearer definitions in certain provisions of the Law in order to avoid more than one possible interpretation in practical application, as well as by the need to bring the terminology of the Code into line with the terminology of the Constitution and of the existing legislation. Moreover, the law cancelled the strange ban on using the first and last names of people without their consent. It also declared that a person will not be held accountable for publicising incorrect information, which was taken from an official source and was referenced properly.

New version of *the Law "On Television and Radio Broadcasting"* from 12.01.2006 illustrates the inconsistencies in the legislative policy related to the regulation of the information activities of the

Mass Media. This Law, in the opinion of many specialists, will have a negative impact on the development of television and radio broadcasting, given the flaws it contains. It was effectively created by the NTRBC, and this once again demonstrates that the body which is to implement a law must not create it. Apart from using unclear definitions and containing mutually exclusive provisions, it considerably broadens the powers of the NTRBC, removing any kind of control over the latter, as well as removing any role for the President and Parliament in formulating and implementing information policy in the area of television and radio broadcasting. It does not contain any list of the rights of journalists of television and radio companies (TRC). Furthermore, the NTRBC lobbied for itself an extension of their term of office up to 5 years and made the dismissal procedure much more complicated. However, together with these drawbacks, the Law does contain some progressive norms. For example, the procedure for the management of the NTRBC was improved; the licensing procedure, despite certain contradictions, is defined in reasonable detail; owners of media outlets are obliged to adopt editorial charters.

The picture of changes which took place in legislation pertaining to freedom of expression over the year would not be complete without a review of the issue concerning **the creation of public (civic) broadcasting**. In the 20th century Mass Media turned into a number of monopolistic organisations, which mould and manipulate public opinion, instead of providing people with reliable and socially significant information. We believe that this situation can be improved through the creation of public television. At present most people in Ukraine agree that there is a need to create public broadcasting, but a discussion is still raging as to what model of public broadcasting will be the most acceptable for Ukraine.

Concentration of the media and ensuring media pluralism

According to unofficial information, the Ukrainian national media is de facto under the control of several individuals. This creates a threat of the information being unvaried and that there is a lack of truly comprehensive coverage of socially important issues from different points of views. It is virtually impossible to obtain exact information about individuals controlling the mass media, because there is a lack of openness with regard to people really having power over the media.

Ukrainian legislation does not take the need for media pluralism into account, relying solely on the general anti-monopoly legislation which, in turn, does not provide for the specific features of the television and radio information market. For example, in Ukraine there is no legislation on the so-called cross ownership, meaning that there are no restrictions on a single individual (entity) at the same time owning national television channels and newspapers. We are unaware of examples where any of the provisions of anti-monopoly legislation have been applied to mass media by the Anti-Monopoly Committee of Ukraine.

On January 24, 2006 UHHRU made the first ever attempt in Ukraine to publicise information about the owners of the first level of the 10 largest nationwide media outlets. Afterwards there were other initiatives aiming at publicising information about owners of media outlets.

One should note that the Ukrainian mass media appears to be fairly free and actually there are no flagrant threats to pluralism. However the further we get from the revolutionary events of 2004, the more clearly one can see the ideological direction of various television channels and radio stations, as well as an unbalanced coverage of various positions by these same outlets. One sees cases of manipulation with information more and more; certain events or opinions are ignored by some national media outlets. The number of such cases, for example, rose during the parliamentary electoral campaign.

Observance of the rights of journalists and of media outlets

Over the last few years there has been a significant decrease in the number of attacks on journalists, as well as in the administrative pressure placed on the mass media. Despite general positive trends, the Ukrainian media and journalists confront such problems as corruption and trading with the broadcasting time on the radio and television. This has actually led to a restriction of freedom of speech: some couldn't get into the news because of the lack of funds, and meanwhile others were providing only positive information about themselves. All television channels and radio stations without exception, and to a lesser extent newspapers and information agencies, officially or unofficially present in their broadcasts and publications, and in particular in news reports, material

that has been commissioned. This material is most often paid for unofficially, and does not comply with the standards of modern journalism. The Ukrainian media and journalists have proven to be entirely unprepared for such a phenomenon, and there are as yet no programs to counter it in society.

Murders, beatings and other physical violence against journalists

In the last two years no cases have been recorded of journalists being murdered in Ukraine. However none of the murders of journalists which happened earlier has been fully investigated and none of the culprits have yet been punished. In the case involving the murder of Georgy Gongadze, the supposed perpetrators of the crime did end up in court, however the investigation is still not transparent, and there have still been no answers to a lot of questions. In particular, it is not known who ordered the killing. The accused are still on trial and there are, in fact, serious fears regarding the level to which the requirements of a fair trial are being observed in this case. Other cases has not been investigated properly either. Cases involving physical violence against journalists have continued. There were many cases recorded throughout the year involving intimidation of journalists or members of their families. The cases of intimidation were directly connected to the journalist activities of the victims or the members if their families.

Censorship

In November 2005 journalist Vakhtang Kipiani's two ready TV programmes "Double evidence", one on the events in Beslan and the other on the poisoning of the President Viktor Yushchenko, were suspended with no explanations given. The journalist considers this to be a politically motivated censorship.

Obstruction of journalists' activities

Cases are becoming more frequent of journalists finding their professional activities hindered by deliberate actions of the state officials, security guards, etc, aimed at limiting journalists' legitimate rights to gather information. Most often this manifests itself in a ban on carrying out filming; demanding a permit for photographing public buildings, etc, when such a permit should not even exist; not allowing certain journalists to enter certain state institutions; not admitting journalists to press conferences. Despite the sometimes fairly obvious incidents, law enforcement bodies refuse to launch criminal proceedings on those incidents, in particular on the basis of *Article 171 of the Criminal Code of Ukraine* (obstructing a journalist's lawful professional activities). As a result, just as during 2003 and 2004, throughout 2005 not one person was held criminally liable for this crime.

The limitation of freedom of speech in the electoral process

The new version of the *Law "On the Election of State Deputies of Ukraine"* from the 7th of July 2005 substantially restricted freedom of speech and could have generally paralyzed the activities of the mass media during the electoral campaign of 2006. It should be noted in particular that for some unknown reason, the text of the law which parliament voted for was significantly different from the text which the President signed. How this could have happened, and why, remains a mystery.

Amendments to the *Law "On the election of State Deputies of Ukraine"* which brought it into compliance with the Constitution of Ukraine were only introduced in November 2005 as the result of a major campaign by the public and the mass media. However even these amendments could not fundamentally improve the situation. Electoral legislation effectively restricted political discussion through the broad interpretation of the concept "political advertising", which now covered any criticising or positive remark about the candidate. Serious sanctions were envisaged for the violations of the conditions on broadcasting such advertising. As a consequence, the election campaign became sterile, bland and quite simply boring.

We think that the Law on the elections, and its practical application as it is developing, present the following picture: candidates for the office of Deputy have the opportunity to freely discuss election issues, while journalists and the mass media may only provide coverage of these debates on the basis of agreements with political parties (blocs), that is, representing their interests. They themselves are not able to freely express their opinions, since any critical comments are treated as pre-election campaigning. They are therefore forced either to abandon any coverage of the election campaign or resort to serious self-censorship.