

Ukrainian Helsinki Human Rights Union

Association of the human rights NGO
Olehivska str. 36, office 309, Kyiv city, Ukraine, 04071
Phone/fax: +380 44 4174118, e-mail: office@helsinki.org.ua, <http://www.helsinki.org.ua/en>

Only in English

02 October, 2009

2009 Human Dimension Implementation Meeting *Session 12, Freedom of expression, free media and information*

Ukraine

Restrictions of freedom of expression of views in protection of public morality

Restrictions of freedom of expression of views in protection of public morality

The very existence of a separate State controlling body – the National Expert Commission for the Protection of Public Morality [hereinafter NEC or the National Commission), whose activity is directed solely at protecting public morality is not in keeping with democratic principles. In our view, the existence of such a body institutionalizes State censorship, the boundaries of which are not clearly defined and will be steadily broadened. At the present time one observes significant infringements of standards of freedom of speech due to the ever increasing activity of this State body.

Of concern must be the fact that “public morality” and “national security” are being equated, this being a potential source of serious restrictions on freedom of speech. The following is a highly contentious argument from a NEC decision from 23 June 2008.

“To state that the issue of protection of public morality and the of the moral health of civic society, prevention of propaganda of racial and national enmity, fascism and neo-fascism, disrespect for national and religious places of significance, insulting a nation or person on the basis of nationality, propaganda of drug addiction, alcoholism, smoking, as well as fighting denigration of the honour and dignity of the individual, and fighting the spread of pornography and violence are the constitutional duty of the State and a component part of the protection of Ukraine’s national security”.

This quote, as no other, demonstrates the scale of the activity of the Commission for the Protection of Public Morality and the serious threat it poses for rights and freedoms.

NEC’s activities are generating considerable discussion over restriction of freedom of expression. At a meeting of the Verkhovna Rada Committee on Freedom of Speech and Information, Deputies considered the issue of NEC decisions and Broadcasting Council recommendations¹ regarding certain popular programmes. After a lengthy discussion involving National Deputies, representatives of television channels and the Head of NEC Vasyl Kostytsky, the members of the Committee on Freedom of Speech unanimously agreed a decision This “draws the attention of the National Expert Commission and the National Television and Broadcasting Council to the fact that their decisions and recommendations addressed to television and radio broadcasting companies with lists of programmes that the Commission considers should be avoided contain the hallmarks of interference in the editorial policy of television companies which is unacceptable from the point of view of safeguarding the constitutional principle of freedom of speech and current legislation regulating legal relations in the information sphere.”²

¹ Cf. the Internet publication “Telekritika”, <http://www.telekritika.ua/news/2009-01-19/43196>.

² Committee on Freedom of Speech and Information speaks out against interference in editorial freedom <http://www.khpg.org/en/index.php?id=1232621060>.

According to the European Convention on Human Rights and case law of the European Court of Human Rights any restriction on freedom of expression for the purpose of protecting public morality should be imposed solely on the basis of law and must be that necessary in a democratic society. As we will see from the following, legislation is lacking in clarity and foreseeability, and NEC's decisions are not proportionate to the objective set.

Quality and clarity of legal regulation

The term "in accordance with the law" means the accessibility of such a law and compliance with the criterion of quality. It should be in keeping with the principle of the rule of law, and should have sufficiently clear formulations. This clarity should enable people to draw well-founded predictions given certain circumstances of the consequences which a particular action could have and to accordingly modify their behaviour. This requirement does not envisage absolute certainty which would totally exclude any possibility of interpreting the law when applying it. Nonetheless, it demands a certain level of foreseeability which varies depending on the content of a given law, the sphere it is aimed at, and on the number and status of people for whom it is intended.

If we apply these criteria, then it becomes apparent that the Law on the protection of public morality does not comply with the Convention on Human Rights.

The definitions of the terms in the law do not stand up to criticism. For example, the law defines products as of a pornographic, erotic or sexual nature. The definitions, however, do not provide clear criteria enabling one to choose a particular category.

For example, production of a pornographic nature – is any material objects, items, printed, audio- or video production, including advertising, reports and material, the products of the mass media, electronic forms of information the content of which is the detailed presentation of anatomical or physiological details of sexual acts, or which contain information of a pornographic nature. That is, if one removes what the word "production" means, then from this definition it turns out that production of a pornographic nature is production that contains information of a pornographic nature. The definition is thus tautological and does not give clear and foreseeable criteria making it possible to decide what fits that category.

The definition of production of a sexual nature is basically the same.

According to Article 2 of the Law "the criteria for adding production to that which is of a pornographic nature, are determined by a specially authorized executive body in the sphere of culture and art". The single such body is the Ministry of Culture and Science. Despite this being in breach of this norm of the Law and in excess of its authority, NEC passed a Decision on 20 February 2007 which approves "Criteria for classifying as pornographic or erotic production printed, audiovisual, electronic or other products, including advertising, as well as messages and material transmitted or received through communication channels". In further breach of legislation, this normative act was not registered with the Ministry of Justice although it directly pertains to observance of human rights.

On 11 November 2008, NEC adopted in its first reading a new version of these criteria.

It is not only the illegality of adopting these criteria which is baffling, but their content. For example, among formal and substantive elements of pornography, we find the following:

- The lack of plot, intrigue, context, character or mood in a work;
- The use of a pseudonym;
- a purely conventional link between different scenes and episodes;
- the use of non-standard vocabulary.

However no less confusion is generated by the numerous value judgments in a law on the protection of public morality which in no way enables a person to predict how specific behaviour will be assessed.

For example, Article 2 of the Law on the Protection of Public Morality prohibits the production and circulation of products which:

- propagate ignorance, disrespect to ones parents;
- propagate religious hatred, blasphemy.

Overall it would not be possible for anyone to predict whether his or her behaviour would be deemed in breach of this Law. We therefore consider that the Law on the Protection of Public

Morality does not meet the criteria of quality and requires clearer regulation to be in line with the requirements of the European Convention on Human Rights.

It should also be noted that the Law on the Protection of Public Morality envisages mandatory licensing for the circulation of production of an erotic or sexual nature, yet to this day no such licensing has been introduced.

In May 2008 a draft law “On amendments and additions to the Criminal Code of Ukraine (on the protection of public morality)” was tabled in parliament.³ This proposes establishing liability for violations of the Law on the Protection of Public Morality, the running of events of an erotic or sexual nature, or sale of erotic or sexual publications, as well as the sale of any other products which harm public morality.

This law through its lack of terminological clarity gives enormous scope for restriction of freedom of speech through the application of serious criminal penalties. The parliamentary profile committee is proposing that the draft law be passed in its first reading, however there have not yet been hearings in parliament.

Discrimination in legal regulation

In accordance with the Criteria of Pornography passed by the Commission for the Protection of Public Morality⁴, the characteristics of pornography are said to include images of *abnormal or deviant* forms of sexual relations, namely:

– *Homosexual relations* close up, in full view, with demonstration of aroused genitals and intercourse. This includes in publications, where their special homosexual focus is not warned about in the publication’s details and on the cover (packaging) as an item with a sexual focus for a special audience;

– Demonstrate sexual relations with people who show clear signs of disability, defects and developmental anomalies, or clearly suffer from somatic or psychological illnesses.

According to these criteria any production is deemed pornography and banned for production and circulation which, in our view, is a demonstration of discrimination on the grounds of gender, sexual orientation, views and a person’s physical or psychological condition.

It was for this reason that circulation of the single national media outlet of the civic organization of gays and lesbians “Our World” was banned, and its Editor and the Head of the organization prosecuted for distributing pornography.

Appointment of members of the National Commission

Parliament on 20 November 2003 passed the Law “On the Protection of Public Morality”, however for a whole year nothing further happened.

This was linked, in the first instance, with the impossibility, according to law, of forming an expert and controlling extra-departmental State body in the sphere of protection of public morality – the National Expert Commission of Ukraine for the Protection of Public Morality. According to Article 18 of this law the makeup of this Commission should be approved by the Cabinet of Ministers *at the submission* of the Head of the Commission, however the Head of the Commission was *to be elected by the members of the Commission*. It was not possible to fulfil both these conditions when creating the Commission.

Despite this failing in the law, the Cabinet of Ministers in its Instruction No. 862 from 17 November 2004 approved the makeup of the National Commission. At the same time, through Cabinet of Ministers Instruction № 1550 from 17 November 2004 it approved the Provisions on the National Commission, as well as setting a top limit of 90 employees.

After minor changes to the makeup of the Commission, the Cabinet of Ministers with Instruction № 294 from 27 July 2005 again approved the basic makeup of the Commission, however with the same Instruction Yury Boiko was appointed Head of the Commission. Thus, in breach of the Law, the Instruction appointed both members of the Commission and its Head.

However in practice the Commission still did not work and meetings were virtually not held.

³ Draft Law № 1340 from 15.05.2008, author – National Deputy Gennady Moskal

⁴ NEC Decision No. 1 from 20 February 2007.

With Resolution № 97 from 1 February 2006 the Cabinet of Ministers again changed the Head of the Commission, this time appointing Natalya Sumska. Soon afterwards, with Instruction № 614 from 5 April 2006, the Cabinet of Ministers once again approved a new makeup of the Commission, although the old makeup was virtually not changed. According to members of the Commission, one meeting was held at which no specific decisions were taken.

Resolution № 1012 from 26 July 2006 dismissed Natalya Sumska from her position as Head of the Commission.

However after a certain amount of time the Cabinet of Ministers, through a new Instruction, revoked the previous two changes to the makeup of the National Commission, with the members now effectively those who were in the original makeup back in 2004. This was done since these two Instructions of the Cabinet of Ministers were supposedly adopted with violation of Article 18 of the Law “On the Protection of Public Morality”.⁵ Yury Boiko once again headed the Commission.

Later the makeup of the Commission changed more than once due to the formation of a new government and new representatives of the ministries, as well as for other reasons. At the same time the Head of the Commission also changed with Oleksandr Kurdinov, who had worked in the State Committee for Television and Radio Broadcasting being appointed on 5 December 2007.⁶

However the government changed yet again with this leading to another makeup of the Commission between adopted.⁷ At virtually the same time, on 25 June 2008, Vasyl Kostytsky was appointed Head of the Commission.⁸

Such constant changes explain the low level of public activity of the National Commission.

Thus, although the National Commission is made up of representatives of the authorities, journalists, writers, actors, etc, the criteria and procedure for choosing members are unknown. We would also note that the actual procedure for appointing the Head of the Commission is in breach of the Law “On the Protection of Public Morality”.

The Resolutions appointing members of the Commission are also effectively unlawful. On the one hand such appointments have not been made upon the submission of the Head of the Commission as required by law. On the other, according to the Law, the term of office is 5 years, although as we see, membership has normally lasted one or two years.

The powers of the National Commission

The National Commission has the following main controlling and regulatory powers:

- carrying out assessments of any products, works and events to ascertain whether they comply with the Law “On the Protection of Public Morality” (the Law);
- carrying out checks of compliance with the Law.

Where the National Commission gives a negative conclusion regarding products, works and events, their circulation or running is prohibited altogether or permitted given adherence to reasonably strict conditions. It is not clear from the Law whether the opinion must be formalized in a Commission Decision. In practice, the absolute majority of opinions are given by employees of the Commission and are not approved through Commission Decisions. Thus, the members of the Commission do not have any impact at all on these opinions.

In accordance with Article 17 § 3 of the Law, and Article 10 of the Provisions on the National Expert Commission of Ukraine for the Protection of Public Morality, the Commission’s Decisions **must be enforced**. The Decisions are passed by a majority vote at the Commission’s meetings.

⁵ Cabinet of Ministers Instruction N 614- «Issues of the National Expert Commission of Ukraine for the Protection of Public Morality».from 8 August 2007

⁶ Cabinet of Ministers Instruction from 10 October 2007 N 855 “On changes to the makeup of the National Expert Commission of Ukraine for the Protection of Public Morality” from 5 December 2007 N. 1095 “On the makeup of the National Expert Commission of Ukraine for the Protection of Public Morality”

⁷ Cabinet of Ministers Instruction from 11 June 2008 N 835 «On approving the makeup of the National Expert Commission of Ukraine for the Protection of Public Morality”

⁸ Cabinet of Ministers Instruction from 25 June 2008 N 865 “On appointing V.V. Kostytsky Head of the National Expert Commission of Ukraine for the Protection of Public Morality”

Failure to enforce a National Commission Decision can lead to disciplinary and criminal liability, and the National Commission can *also initiate the revoking of licences* of those involved in economic activity who violate the law on protection of public morality (Article 19 of the Law).

Moreover, all products which, according to the National Commission's conclusion, do not meet the requirements of the Law, or whose circulation takes place without such a conclusion, *are liable to be removed from sale*.

In order to exercise its powers, the National Commission has the right without a court order to demand documents and products from the authorities or individuals / entities involved in economic activity. This even exceeds the authority of the law enforcement agencies which must receive a court order to carry out the same actions.

Censorship

According to the Law "On the Protection of Public Morality", without a preliminary positive conclusion from the National Commission the following are prohibited:

- the holding of any visual performances of a sexual or erotic nature by individuals or legal entities;
- the sale and distribution of printed production of a sexual or erotic nature;
- the sale or hire to the public of production of electronic media of a sexual nature, production and audio or video cassettes with recordings of a sexual or erotic nature;
- public demonstrations of cinema, audio or video production of a sexual or erotic nature.

Bearing in mind that the criteria for placing production in these categories are obviously neither clear nor foreseeable, it is extremely difficult to fulfil this condition.

Prior control over the issue of information and production is obvious censorship.

This requirement of the Law is thus in direct breach of Article 15 of the Constitution and Article 45-1 of the Law on Information which both directly prohibit censorship as is any requirement to agree the content of information in advance with a body of power.

Compliance of the restrictions with the criterion of being that "necessary in a democratic country"

According to Article 10 of the European Convention on Human Rights, freedom of expression may be restricted for the purpose of protecting public morality however such interference must be "necessary in a democratic society". The State has wide discretionary powers with regard to needs and necessity of such restriction. However such decisions must be proportionate, that is the possibility of alternative measures must definitely be assessed, as well as the seriousness of the sanctions leading to such a decision.

Criminal persecution of the leader of the organization of gays and lesbians "Our World" for publishing his own newspaper can hardly meet the criterion of proportionality. Not only has the publication been deemed pornographic effectively only for the images of homosexual relations in accordance with the criteria of pornography, but he faces imprisonment for this.

It will also be difficult to assess actions of the authorities involving prohibition or repressive actions when a person circulates a work with the use of certain restrictions in access for minors. For example, the above-mentioned publication of an organization of gays and lesbians was circulated only in a closed envelope and on subscription and was not freely sold.

The problem of appealing against the actions of the National Commission

Problems are encountered if one wishes to appeal against a National Commission Decision or expert conclusion.

On the one hand, for an unknown reason and in breach of the Law, the courts regard the expert conclusions as recommendatory, and therefore not able to be revoked by a court. The problem is exacerbated by the fact that these conclusions are not confirmed through Commission Decisions, and it is therefore not clear whether they are Decisions which can be appealed against. If they are not Decisions, then the question arises of who is the relevant respondent in such a case. In other words, there are problems in a legal sense, with filing a law suit, where the respondent is the National Commission although as a collective body this did not take any decision.

However a greater problem is the lack of clarity in the Law “On the Protection of Public Morality”.

Pursuant to Article 20 of this Law, the expert conclusions of the Commission may be appealed against in civil proceedings. On the basis of this, administrative courts refuse to consider such cases, despite the fact that the appeal is against the actions of a State body. Civil courts have also refused to accept such applications because the dispute involves the sphere of public law, and appeals against the actions of State bodies of power should come under administrative proceedings.

It is because of this that no Decision of the National Commission has been appealed against in the courts, although the first such suits were filed back in 2007.

Overview of the activities of the National Expert Commission for the Protection of Public Morality

There is no annual information provided on the activities of the National Commission. A considerable number of Commission Decisions are also unavailable, while the expert opinions are not available to the public at all.

*Combined table of activities of NEC experts
(1 June 2006. – 31 December 2007)⁹*

Type of product	Number of items
DVDs, CDs and videos	3155
Printed media (journals, newspapers, books, brochures, leaflets, etc)	491
Advertising (clips and external advertising)	29
TV programmes	33
Production of a sexual nature	516
Specially designated places	70
Systems for collecting information (hard disks)	7
Content from mobile telephones	2765
Computer games	46
Internet sites	6
photographs	88
Shows and other visual events	6

Just in that year and a half the National Commission issued 864 conclusions, the absolute majority of which were not reviewed at National Commission meetings and not confirmed in the form of Commission Decisions.

During the same period, the National Commission initiated 68 checks of specially designated areas for the sale of production of a sexual nature and the holding of visual events, and 799 prophylactic raids were carried out.

In 2007, on the basis of National Commission conclusions, 131 criminal investigations were initiated under Article 300 of the Criminal Code (selling production propagating a cult of violence and brutality) and Article 301 (selling pornography), this being 33.7% more than for the analogous period in 2006.

In November-December 2007 the National Commission carried out monitoring of the media regarding “the issue of violence and cruelty in children’s environment, *propagating smoking*, child pornography, *homosexuality*, the results of checks by the law enforcement agencies of observance

⁹ The work of the National Expert Commission for the Protection of Public Morality within the system of safeguarding the information security of the country (M. Boiko). NEC website: <http://moral.gov.ua/>

of current legislation on the protection of public morality”. For example, during a week (20-27 November 2007) information was provided regarding checks carried out by the Prosecutor’s Offices in the Rivne, Sumy and Ivano-Frankivsk regions regarding adherence to the Law “On the Protection of Public Morality”. As a result of these checks, the Ivano-Frankivsk Regional Prosecutor’s Office initiated 4 criminal investigations, issued 57 documents of Prosecutor reaction which set out the demand that those responsible be brought to answer in accordance with the law. In the Rivne region, on the basis of a National Commission conclusion, a criminal investigation was initiated over the distribution of the Tarantino film “Hostel-2” which it is asserted propagates a cult of brutality and violence, and an investigation is underway over the posting on the Internet of an amateur video made by Rivne teenagers who call themselves the “Rivne dopes”.¹⁰

The following are some National Commission Decisions

Following monitoring of TV channels, the Commission states that it established that the series “Matryoshka dolls from the cover” of the soap opera “Happy together”, broadcast on “Novy kanal” is, in accordance with Article 1 of the Law “On the Protection of Public Morality”, production of an erotic nature, and violates the requirements of Article 7 § 4 of this Law. The National Commission therefore decided to inform the management of “Novy Kanal” that in accordance with the said Law, the use of an image of minors in production of a sexual or erotic nature is prohibited. Over the infringements identified, it also decided to approach the Ministry of Culture and Tourism with the request to use the means envisaged in legislation to prevent the violation by the TRC of current legislation on the protection of public morality. This series of the soap opera was banned.¹¹

The National Commission passed a decision regarding the need to carry out monitoring of the printed media sent to public libraries to check that they comply with legislation on the protection of public morality. In order to carry this out, it was decided to approach the Ministry of Culture and Tourism suggesting joint monitoring of material reaching libraries under the jurisdiction of regional Departments of Culture and Tourism, to the Central Department of Culture and Art of the Kyiv City State Administration, the Department of Culture and Tourism of the Sevastopol City Administration and the Ministry of Culture and Art of the Crimea.¹²

The National Commission checked three programmes shown at various times from early morning on specific days: “Material evidence”, “Witness” and “The most notorious Ukrainian maniacs”, and found infringements of legislation on the protection of public morality, namely:

- many features talking about various murders, with documentary film of the mutilated bodies of victims;
- they contain detailed descriptions of crimes committed;
- no special indicators for this category of programme¹³.

In order to observe the requirements of the Law “On the Protection of Public Morality”, the National Commission decided to find that the information contained in these programmes:

- could harm the physical, intellectual and spiritual development of minors, young people;
- may be used to commit crimes which in their content would copy or be similar to those shown in the programmes;
- violates legislation on the protection of public morality, namely Article 62 § 2 of the Law “On television and radio broadcasting”, and Article 2 § 2 of the Law “On the Protection of Public Morality”.¹⁴

¹⁰ Monitoring of the media with regard to the situation with public morality <http://moral.gov.ua/>.

¹¹ Decision of the National Expert Commission for the Protection of Public Morality from 18 December 2008 <http://moral.gov.ua/>. « The National Commission has banned one of the series of “Happy together” because of erotica // <http://korrespondent.net/ukraine/events/752364/print>.

¹² Decision of the National Expert Commission for the Protection of Public Morality from 27 January 2007 <http://moral.gov.ua/>

¹³ Such programme indicators have not, in fact, been designated and there is a system of indicators only for films, and not for all programmes.

¹⁴ NEC Decision No. 3 from 23 October 2008, <http://moral.gov.ua/>

In another case an advertisement for the computer technology "Impression S.T.A.L.K.E.R." contained the image of a young man holding an automatic rifle which NEC considered, to be prohibited under Article 20 § 4.1 of the Law "On advertising".¹⁵ The advertisement was banned solely on the grounds of the automatic rifle.

As we see from these examples, in its decisions NEC does not indicate its arguments as to why one or other work breaches the law on the protection of public morality. It confines itself to merely stating the fact of non-compliance which provides too broad a scope for interpretation. In these decisions there is often even no mention of the relevant expert opinions on which the decisions were supposed to be based. This situation makes it possible to ban or restrict circulation of a work effectively at ones own whim or discretion. Another problem together with this is the difficulty of appealing against such a decision since it is unclear what arguments were used to reach the decision.

In the absolute majority of cases the NEC Decision is passed with the individuals or legal entity that it pertains to being invited, meaning that they do not know what is being discussed and what NEC's arguments are, and cannot present their point of view in response to the Commission's arguments.

For example, when the novel by Oles Ulyanenko "The Woman of his dream" was found to be pornographic, and therefore banned, no arguments were given in the letter to the author about what made the work pornographic. When the author asked, he was sent NEC Conclusion No. 32E from 2 February 2009. However this conclusion was not approved by a NEC Decision, but only by the Acting Head of NEC A. Polok. In this conclusion it is stated that "if a work contains even one episode which falls under the definition of pornographic, the entire publication receives this assessment." Later the conclusion asserts that:

"Furthermore there are episodes in the work where the main aim is to depict in flagrant and naturalist manner the act of sexual intercourse of the character with anatomical details of sexual organs, oral-genital, oral-anal, petting, fisting, masturbatory or ejaculatory actions (for example, pp. 8-11 of the manuscript) and the description of the characters satisfying his lust. Moreover the artistic mastery, linguistic skills of the author could arouse lower instincts in the reader, which gives grounds for declaring it pornographic."

This is NEC's entire argumentation which is in full, together with two other works, contained on 4 pages of a conclusion where a significant part is citing legislation.

Clearly the given decision is lacking in argumentation, and yet the work of a laureate of the prestigious Shevchenko Prize in general concerned with the consequences of moral degradation of society, remains banned.

The activity of the National Television and Broadcasting Council regarding the protection of public morality

Carrying out control over the programme content of Ukraine's television and radio broadcasting organizations, the Broadcasting Council has on many occasions established the presence of programmes whose content has elements suggesting infringement of legislation on the protection of public morality. All programmes identified have been passed by the Broadcasting Council to the National Expert Commission on the Protection of Public Morality with the request to provide an additional opinion regarding their content. If violations of the Law "On the Protection of Public Morality" have been confirmed, the Broadcasting Council has considered these cases at meetings, using the appropriate measures within the boundaries of its powers with respect to the TRC.

During 2008 the Broadcasting Council sent over 20 applications to NEC asking for the latter's assessment as to whether the content of programmes broadcast on national, regional and local TRC complied with the norms of current legislation.

It requested, for example, NEC assessments regarding compliance with legislation on public morality of the following television programmes, etc

- TRC "Kyiv" – advertising clips presented as social advertising,

¹⁵ NEC Decision No. 6 from 7 October 2008, <http://moral.gov.ua/>.

- ICTV – the programmes “Naked and funny”, and four others, one film and a soapbox opera
- Inter – a concert by Russian show producer and comedian Maxim Galkin “We’re together again”; two films and a programme;
- M1 – the programme “Weather”; a video clip and the cartoon the Simpson’s;
- HTH four programmes, including “Witness” and “The most notorious Ukrainian Maniacs”
- Novy Kanal – the programme Camera Club and television soap “Happy together”
- TRC “Studio 1+1” – a film and ad for crisps “Sancho”
- CITI – the programme “Secret life of women. Porno”
- K 1 – the film “Wild Orchids”;
- “Musical television” – the musical serials “Southern Park” and “Beavis and Bathead”¹⁶

In February 2008 a number of civic organizations, associations of parties and particular viewers sent an appeal to the Broadcasting Council regarding the showing on certain television companies of the film “Moment of Truth” which claims that some representatives of the authorities and Ukrainian politicians are encouraging the spread of fascist ideology in Ukraine. The Broadcasting Council set out to obtain expert opinions on the accuracy of the historical facts and the legitimacy of the assertions contained in the film, as well as on the film’s compliance with legislation on protection of public morality and on whether there are legitimate grounds for showing it on television. It approached the History Institute of the Ukrainian Academy of Sciences, the National Expert Committee for the Protection of Public Morality, the Ukrainian Institute of National Remembrance and the Security Service [SBU]. Those State bodies found that the film “Moment of Truth” was lacking in objectivity, biased, partisan and that it contained elements in breach of Ukrainian legislation. In its conclusion, the National Expert Committee for the Protection of Public Morality stated that in accordance with Article 2 of the Law “On the Protection of Public Morality”, it is prohibited in Ukraine to produce and circulated material which propagates war, national or religious enmity, fascism and neo-fascism, denigrates or offends a nation or individual, propagates disrespect for national and religious places of significance. On the basis of these conclusions the Broadcasting Council recommended that Ukrainian TRC **refrain from broadcasting** the film “Moment of Truth”.

In June 2008 two Kharkiv television companies showed the film “Empire of Good”. In analyzing the content of the film, the Broadcasting Council found that in the audiovisual material used regarding people linked with the Orange Revolution, there were attempts to discredit the present Ukrainian government and accuse it of conspiring with the former US President who was claimed to have provided moral, political and financial support to certain political forces. The Broadcasting Council pointed out that the viewer was offered only one view of events and facts which infringes the norms of editorial policy with regard to ensuring accuracy, objectivity, lack of bias and balance of information circulated by the TRC. The Broadcasting Council recommended that the television channels **refrain from broadcasting the film** “Empire of Good”, produced outside Ukraine since its content “could arouse negative publicity and sharpen conflict within society, as well as being viewed as a negative step towards a country with which our country has diplomatic relations”.¹⁷ A strange reason for restricting freedom of expression.

¹⁶ Report of the National Television and Broadcasting Council for 2008, www.nrada.gov.ua.

¹⁷ Report of the National Television and Broadcasting Council for 2008, www.nrada.gov.ua.