



A man holds a candle and placard with the portrait of Ukrainian journalist Georgiy Gongadze during a memorial rally at Independence Square in Kiev, September 16, 2011, to mark the 11th anniversary of the murder. SERGEI SUPINSKY / AFP

"Make freedom of expression a reality, Mr President"

A Report on Press Freedom in Ukraine

1 – 3 April 2012



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Introduction and Executive Summary

“Journalism is printing something someone else does not want printed...

Everything else is just public relations.”

George Orwell

The World Association of Newspapers and News Publishers (WAN-IFRA) and the World Editors Forum, the global organisations for the world’s press, led an international delegation to Ukraine to investigate growing concerns about freedom of expression in the country ahead of the 64th World Newspaper Congress and 19th World Editors Forum to be held in Kiev in September 2012.

Representatives from media and human rights groups, including ARTICLE 19 and Freedom House, supported by the Open Society Foundations (OSF), the Ukraine Association of Press Publishers, and the Independent Regional Press Publishers of Ukraine, joined WAN-IFRA in Kiev from 1 to 3 April 2012.

This mission builds on previous missions to the country by freedom of expression organisations such as the International Press Institute (IPI) and Freedom House in 2011, and Reporters Without Borders (RSF) in 2010.¹ Worryingly, there are growing concerns over developments in Ukraine’s media environment over the past two years that reinforce the negative trend for press freedom found on these previous missions.

The overarching message from the mission’s interlocutors is that there is a culture of corruption and declining independence of media from political and business influence. Political influence and business control are inextricable from one another. There is a lack of pluralism and few objective voices in print and broadcast outlets. A few individuals and companies close to the current government monopolise the media sphere and the authorities have made little progress in the privatisation of state-owned media outlets. Many media outlets are biased and there has been a measured drop in the quality of information distributed through broadcast outlets. The growing prevalence of “sponsored” information in the media is also especially worrying.

The international mission delegation met with various stakeholders, including those from city and regional areas, publishers from print and broadcast, government officials and non-government organisations. While welcoming a law guaranteeing access to information coming into force, as well as the establishment of a presidential Interagency Working Group on media freedom, and with the hope that these mechanisms become increasingly effective and transparent, during the course of the mission the delegation found the following:

- An environment of corruption and lack of transparency that impacts the press, the judiciary and society as a whole;
- The need for a free market for a truly independent press to flourish;

¹ Please visit <http://tinyurl.com/ukrainepf> for a dossier on previous missions by RSF, IPI and Freedom House, and further resources from WAN-IFRA including press releases and protest campaigns on Ukraine.

- Lack of independence and pluralism of broadcasters and the politicisation of news coverage;
- Frequent cases of impunity and lack of prosecution for those who attack the media.

These four themes are explored in the pages that follow, with fourteen key recommendations.

WAN-IFRA and the mission partners remain committed to having an open dialogue with the government of Ukraine and all stakeholders to ensure that the country's path to press freedom and freedom of expression continues to progress.

Challenges for the Printed Press

An environment of corruption and lack of transparency that impacts the press, the judiciary and society as a whole

Against a backdrop of the perception that the Ukrainian public increasingly values infotainment and political talk shows over investigative journalism and news, journalists, editors and publishers alike are loath to allow critical reporting that could undermine either their business interests or incur repercussions from the state. Simply put, journalists are scared to report on news that is likely to impact negatively on public officials, authorities or those in the public sphere.

The mission found that there is a systematic and entrenched practice of politicians, businessmen and others in the public sphere making “envelope payments”, so-called ‘jeans’, to journalists in return for positive news stories. The widespread use of paid editorial disguised as news is endemic in Ukraine and leaves citizens lacking the ability to distinguish between news editorial and paid-for editorial. Even those newspapers considered “independent” are not immune. One stakeholder, who wished to remain anonymous, who considered their newspaper independent and who would not take payments from politicians, did admit to taking payments from publicly listed companies or authorities in exchange for positive editorial or advertising disguised as editorial. However, when negative editorial was printed in the newspaper, a company withdrew its financial support. When pressed about whether this was any different to accepting payments from elected officials, the stakeholder said, “We are not virgins in this business,” suggesting that if they did not accept paid-for content, they would not survive in the market. There is a clear link to “envelope payments” for journalists, paid-for content and the need for sustainable business models for the printed press, which is explored in the next chapter.

There is also a need for the professional development of civil service staff and journalists who utilise the relatively new Access to Information Law, promulgated in January 2011. This act is a welcome step towards countering corruption at all levels and ensuring citizens are duly informed. However, the mission heard from various stakeholders that the wait-time to be given access to requested information was too long and that on more than one occasion, access to information was denied, citing a breach of the Personal Data Collection Law, also promulgated in January 2011. For the Access to Information Law to be effective other legislation should be brought in-line with its main principles, including ‘public interest’ and ‘maximum disclosure’. The mission also heard that some agencies complied with releasing information but others, particularly in regional areas, did not, as a culture of secrecy prevails and local officials are afraid to provide any information without approval from above.

The government has also reportedly pressured the media through indirect (administrative) tactics such as threats to deny broadcasting licenses, misuse of tax inspections and tax revenues, and open-ended investigations without charges that impede operations.

A draft law tabled on 18 October 2011 on the “protection of public morality” (Bill #7132) was met with concern at all levels during the mission, being described by stakeholders as a very powerful lever to manipulate the press. Finally rejected on 21 June, the draft law aimed to prevent the production and distribution of products that harm the public morality. If adopted, this law could have immediately restricted access to electronic information resources declared by a ‘National

Expert Commission on Public Morality' to be pornography, eroticism, hate speech, violence or employing explicit language.

The draft law included the establishment of a government-appointed 'National Expert Commission on Public Morality', with the powers to close Internet news sites or social networks without a court order, violates international standards of freedom of the press and freedom of expression. Furthermore, there is no European equivalent, and promulgating this law would be a step backwards for Ukraine in terms of its aspirations for closer European integration. The current 2004 Law on the Protection of Public Morality is already considered to be "disproportionate interference of public officials in freedom of expression" in a Council of Europe expert analysis².

There is an urgent need for media professionals to be united behind common values on ethics and strong self-regulation. An ethically aware journalism profession, with a self-regulatory council for the press that is separate from government or the judiciary, would be beneficial in Ukraine and indeed, would negate the need for unworkable legislation such as draft Bill #7132 on public morality. Voluntary self-regulation is preferable to the alternative, which is either no regulation or a state regulator³.

The culture of corruption through the use of "envelope" payments, the lack of quality professional and ethical development of journalists and issues surrounding the implementation of the Access to Information act, as well as impunity and attacks on journalists (which is explored in a separate chapter), seriously undermine Ukraine's media in its effort to fulfill the role of watchdog over public institutions. The Interagency Working Group, therefore, could and should have a positive influence on the development of Ukraine's press into one that is strong and fiercely independent.

The vast majority of news journalists in Ukraine are young; therefore there is an urgent need for professional development in ethical reporting and high-level investigative journalism, leading to quality editorial and a better-informed public. This professional development, along with the support of editors and publishers, should be a priority for the industry, otherwise another generation of young journalists will be lost to thinking that receiving "envelope payments" for paid content is the norm. This view was reiterated at a meeting of non-government and civil society organisations during the mission, who all expressed their frustration regarding "envelope" payments and the negative effect this has on maintaining an informed citizenry.

The Interagency Working Group, set up by the President on 6 July 2011, is a positive start for media professionals and the government, its agencies and the public at large to engage in a positive dialogue on issues relating to the media. The mission attended an open session of the Working Group, where many cases of attacks on media professionals - both physical and restrictive (such as pressure to not publish certain stories, bank accounts of journalists being frozen, and authorities not allowing journalists into public spaces during protest marches). This public forum is now pursuing hundreds of cases, which will no doubt lead to greater transparency and a better understanding of media professionals' right to report the news in safety and without fear of reprisal.

² <http://euromediaplatform.org/dgii2004ad1vlop.html>

³ http://www.cjr.org/the_news_frontier/self-regulation_done_right.php?page=2

The Interagency Working Group would benefit from converting to thematic discussions, where experts can put forward their views in order for the government, authorities and media professionals to enact lasting change, rather than being a “public tribunal”.

Sustainable Businesses in News Media

The need for a free market for a truly independent press to flourish.

The written press provides the opportunity to examine in detail and in greater depth important issues that inform public understanding and provide greater accountability.

With this in mind, citizens in Ukraine have access to the printed word via two basic channels – through a network of retail points or through a system of subscription and delivery to their homes. According to the number of outlets per-capita, Ukraine is among the worst countries in Europe – the number of points of sale for the press is eight times less than in less-populated neighbouring Poland and approximately 15 times less than in countries such as France or Germany. In Ukraine there are approximately 8000 points of sale for the press; this translates to one point of sale per more than 5,700 people. This is further underlined by the fact that the population of Poland is 7 million less than that of Ukraine.

The mission heard from numerous newspaper publishers that selling newspapers from kiosks was not profitable and that there were distribution problems, particularly in the regions. Postal distribution is rarely effective due to an ineffective postal system. It can be argued that any restriction placed on the ability to access information – either through the lack of points of access (kiosks) or otherwise - effects the development of freedom of speech, the economic autonomy of the press, and the reinforcement of the right of citizens to access information.

The number of retail points for the printed press (newspapers, magazines, books, etc.) is constantly falling as the profitability of the industry as a whole declines. An average kiosk would turn a profit – before the reduction of general costs – of approximately UAH 1,500 per month, a fraction of the cost effectiveness required. Depending on the region, the printed press contributes to around 40% of overall sales in an average kiosk. Tobacco and alcohol products account for the remainder of sales.

The process of legal registration of press kiosks involves a significant amount of bureaucracy – it takes up a lot of time and demands great financial input. Local powers regard kiosks that sell printed products as “MAFs” (temporary structures) and are generally considered to be businesses in which it is not worth taking an interest from an investor point of view – the risks are simply too high. Restricted access to the printed word significantly increases the risk of government control over information, provoking greater reliance on alternative and unverifiable sources and increasing the potential for information to be manipulated.

The mission found that press publishers were under constant pressure to find new and innovative ways to distribute their newspapers to the general public, but restrictive legislation on kiosks and points of sale hampered the publishers’ ability to sell their newspapers.

Compounding this pressure on the effective distribution of newspapers to enhance point of sale revenue is a proposal for government control on advertising. The Draft Bill No. 10563 calls for a ban on the advertising of medicine, medical equipment, preventive measures, diagnostics, treatment and rehabilitation methods, except in specialised publications meant for medical institutions and

physicians. The mission believes that this is unworkable legislation and constitutes a form of soft censorship that will hurt newspaper advertising revenue.

The mission found that Ukraine urgently needs a programme, accompanied by appropriate legislation that can support the development of retail businesses selling the written press. This programme and any proposed legislation, needs to be developed in consultation with industry organisations.

The mission therefore calls on the Interagency Working Group, under the administration of the President of the Ukraine and in conjunction with industry associations, to establish a pilot programme on the development of the retail trade of the printed press in Kiev and two regional cities, with the aim of adopting a national programme.⁴

⁴ The Ukrainian Press Publishers Association (UAPP) has a detailed plan on the distribution of the printed press in kiosks. To see this plan, please visit <http://tinyurl.com/ukrainePf>

Digital Media and the Digital Switchover

Lack of independence and pluralism of broadcasters, and the politicisation of news coverage

The switchover from analogue to digital broadcasting could offer opportunities for greater pluralism and diversity in the media as well as better accessibility: broadcasting frequencies cease to be a scarce commodity and the greater spectrum can be used to increase the variety and number of available channels and services. The reach of television signal could increase too. The process of digital switchover in Ukraine fails to use these opportunities; moreover, it carries a risk of diminishing the existing pluralism and diversity in the country's broadcasting sector, particularly at the regional level.

According to Geneva-2006⁵, Ukraine should switch to digital signal by June 2015. In order to reach that deadline fully equipped, Ukraine, among other things, has to make sure that technical standards are specified, multiplex operators are chosen, and tenders for digital broadcasting licenses are held.

The mission found that, whilst officially Ukraine is following the required steps, the individual decisions related to it are questionable and detrimental to media freedom. Three issues are a source of particular concern.

Four digital multiplexes are going to form the nationwide multi-channel transmission network, and each of them will have the capacity to transmit 10 television channels, or 40 channels altogether. Out of those, only four are reserved for regional and local broadcasters. Regional and local channels have blossomed in the post-Soviet Ukraine and their number recently reached 300. Similar to the regional printed press, small local channels enjoy high levels of trust among local audiences and demonstrate stronger editorial independence than nationwide channels. Leaving just one slot per multiplex for a regional channel does not reflect the richness of Ukraine's regional and local broadcasting.

In the tender for regional digital licenses called by the Regulator (The National Council on Television and Radio Broadcasting), state-owned broadcasters, broadcasters with political affiliations or recently established companies with unclear ownership structures and near-identical programming concepts were given preference at the expense of those that have been in the market for 15 years or more. In several western regions, including Lviv, none of the private broadcasters received a license to broadcast digitally; overall, 68 existing regional and local broadcasters were denied a digital license. Additionally, five companies that won regional slots were registered after the deadline for license applications had passed, and thus the Regulator should not have admitted their applications.

The aforementioned facts seriously undermine the credibility of the regulating authority, diminish people's access to local information, and are detrimental to the general media freedom situation in the country. Urgent steps need to be taken to ensure that the spectrum allocation happens in a transparent, accountable manner and that the public interest is fully served.

The selection of a digital transmission network operator is another source of alarm. A Cyprus-registered company, *Zeonbud*, won the right to operate the network and currently holds a monopoly

⁵ Final Acts of the Regional Radio-communication Conference for planning of the digital terrestrial broadcasting service in parts of Regions 1 and 3, in the frequency bands 174-230 MHz and 470-862 MHz (RRC-06), Geneva 2006, <http://www.itu.int/pub/R-ACT-RRC.14-2006/en>

in the market as digital terrestrial service provider. Moreover, since regulation of transmission tariffs is missing, the operator was able to set the tariffs at the level that many regional broadcasters consider prohibitive. According to the Independent Association of Broadcasters, the tariffs exceed by five times the actual cost of service. With unclear ownership and credentials, the company holds little credibility within the industry, particularly amongst regional companies. This is exacerbated by the fact that all applicants for digital licenses, prior to application, had to sign a standardised contract with *Zeonbud* on the company's terms and conditions. The dominance of a single player in the market of digital gatekeeping reduces competition and poses a risk of intervention in the distribution of spectrum resources. The government needs to ensure that future tenders for network management are transparent and fair.

And lastly, contrary to the government's original intentions and without clear reasoning, the signal compression standard DVB-T2 was chosen for digital broadcasting, instead of DVB-T, which makes the process cheaper for the network operator, but more expensive for the consumer. Moreover, the more expensive standard puts additional pressure on those broadcasters that had invested in DVB-T, expecting the government to follow its own strategic documents. This, too, may put smaller companies at risk of going off air, thus leaving local consumers with a less diverse and pluralist 'new menu'.

Most of the facts mentioned above suggest that independence of the Regulating Authority is extremely questionable. Legal safeguards of the Regulator's independence need to be reassessed to avoid repetition of similar decisions that are detrimental to media pluralism and diversity in the country. The safeguards should focus on the member selection procedure to avoid political motivation, on accountability to the audience and on transparent decision-making.

Impunity for Violence Against Journalists

Frequent cases of impunity and lack of prosecution for those who attack the media.

A press freedom mission to Ukraine will without doubt include a reference to the disappearance and murder of investigative journalist Georgiy Gongadze, the founder of Internet newspaper *Ukrainskaya Pravda*. Mr Gongadze disappeared on 16 September 2000, his decapitated body found over six weeks later in a forest near Kiev. To date, the instigators have not been brought to justice, despite a ruling by the European Court of Human Rights, on-going calls by intergovernmental organisations such as the Organisation for Security and Safety in Europe, and a decade-long campaign by local and international civil society.

The lack of redress in Mr Gongadze's case has had long-term implications for the media environment in Ukraine, as it exemplifies the attitude of the Ukrainian state, which is unable to adequately protect journalists and unwilling to bring those responsible for violence against journalists to justice. The lack of resolve is duplicated in other cases, such as the murder of Ihor Aleksandrov in 2001 or in a more recent case of an attack on another website founder, Rostyslav Shaposhnikov, who in March 2012 was abducted and severely beaten after his attackers had tried to suffocate him.

According to interlocutors from civil society, Mr Gongadze's case in particular has had a chilling effect on free speech in Ukraine, because of the alleged involvement of such high-level officials as former president Leonid Kuchma. The lack of accountability for violence against journalists has had a resounding effect, as perpetrators and instigators alike are aware that they will not be brought to justice, allowing for a climate of impunity for such crimes to reign.

By holding the current trial proceedings in Mr Gongadze's case against Oleskiy Pukach (a former high-ranking officer in the Ministry of Interior) behind closed doors, the judiciary once again allows those responsible to be shielded from public scrutiny. The mission raised this issue with the Head of the Presidential Administration, Serhii Goloshii, who responded that he believed the judges had decided against an open trial to 'shield' the public from the horrific details of the case. As for ensuring that the broadest possible investigation would encompass all evidence, he stated that, as former Minister of Interior, Yuriy Kravchenko, is no longer alive, he would be unable to testify, therefore leading the investigation to a dead end. (Mr Kravchenko allegedly committed suicide the day before he would have had to testify, and was later named as the sole instigator of Mr Gongadze's murder).

The mission expressed disappointment in the government's response. The lack of reassurance that it has an interest in an independent, transparent and fair judicial process, lead us to believe that from the outset justice will not be done. Without justice in a case of such public importance, the media in Ukraine will retain a sense of fear and reluctance to report on issues of public interest.

Conclusions and Recommendations

While welcoming a law guaranteeing access to information and the establishment of a presidential Interagency Working Group on Media Freedom, with hope that these mechanisms become increasingly effective and transparent, the mission partners make the following recommendations, in four main areas:

1. An environment of corruption and lack of transparency that impacts the press, the judiciary and society as a whole.

One of the roles of government is to foster an environment where a free press can flourish by being independent of governmental, political or economic control. A free press is an antidote to corruption.

- I. The mission calls on authorities to enable media professionals their fundamental right to report openly and without fear of repercussions on issues pertaining to corruption at all levels.
- II. The continued use of “envelope” payments muddies the waters of what is news and what is essentially “public relations”. The public has a right to be able to distinguish between “paid-for advertorials and editorials” and news. The mission calls for an immediate end to “envelope” payments to journalists and other media professionals.
- III. The Interagency Working Group is a positive start for media professionals and the government, its agencies and the public at large to engage in a dialogue on issues of press freedom. The meetings of this group would benefit from thematic discussions, where experts can put forward their views in order for the government and media professionals alike to enact lasting change.
- IV. The Access to Information Law enacted in January 2011 is a positive development towards transparency. The mission calls on Ukraine authorities to ensure that all aspects of this law are adhered to and that information requested is provided in a timely manner. We further recommend that government officials and media professionals alike, specifically at regional level, receive appropriate training in how to access information.
- V. Media ownership should be transparent
- VI. An urgent need for a strong independent media that is self-regulated and where journalists, editors and publishers adhere to the highest ethical and professional standards.

2. The need for a free market for a truly independent press to flourish.

According to the number of outlets per-capita, Ukraine is among the worst countries in Europe for the public to access and purchase the printed press. The number of points of sale for the printed press is eight times less than in neighbouring Poland, and approximately 15 times less than in countries such as France or Germany.

- VII. The mission therefore calls on the Interagency Working Group, under the administration of the President of the Ukraine and in conjunction with industry associations, to establish a pilot programme on the development of the retail trade of the printed press in Kiev and two regional cities, with the aim of adopting a national programme.

3. Lack of independence and pluralism of broadcasters and the politicisation of news coverage.

The switchover from analogue to digital broadcasting could offer opportunities for greater pluralism and diversity in the media, as well as better accessibility. Whilst officially Ukraine is following the required steps as laid out by the Geneva 2006 protocol, the individual decisions related to it are questionable and detrimental to media freedom.

- VIII. The mission recommends increasing the availability of digital channels reserved for regional and local broadcasters in order to fully reflect the richness of regional and local programming.
- IX. The Law on the National Television and Radio Council should be amended so that citizens make up at least half of the council. This would increase transparent operation and independence of a body that is extremely important for ensuring a competitive and high-quality media market in Ukraine. In addition there should be an independent oversight mechanism for the activities of the council.
- X. An open inquiry into why new companies without experience in digital broadcasting were granted licences over long-established regional broadcasters, particularly in the region of Lviv, and when these companies did not meet the application deadline for digital broadcasting licences.
- XI. A formal response by the government of Ukraine as to why it did not follow its own strategic documents on the signal compression standard for broadband and why DVB-T2 was chosen for digital broadcasting, instead of DVB-T.

4. Frequent cases of impunity and lack of prosecution for those who attack the media; call for an open and transparent judicial process.

The lack of redress in Georgiy Gongadze's case has had long-term implications for the media environment in Ukraine, as it exemplifies the attitude of the Ukrainian state, which is unable to adequately protect journalists and unwilling to bring those responsible for violence against journalists to justice.

- XII. Article 171 of the Criminal Code to investigate crimes against journalists and bring those responsible to justice needs fair and effective implementation.
- XIII. The mission calls on the government of Ukraine to have an independent, transparent and fair judicial process in Mr Gongadze murder case in order to restore the public's and international community's belief that the media in Ukraine will be able to report freely on issues of public interest, without fear of reprisal.
- XIV. As part of its international human rights obligations and commitments, the government of Ukraine should incorporate the principles of the recently adopted June 2012 Joint Declaration on Crimes against Freedom of Expression and specifically point 4 on Independent, Speedy and Effective Investigations⁶

⁶ <http://www.article19.org/resources.php/resource/3348/en/joint-declaration-on-crimes-against-freedom-of-expression>

Appendix

Resources:

For more information on previous missions and WAN-IFRA press freedom campaigns in Ukraine, please visit:

<http://tinyurl.com/ukrainepf>

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