



**For immediate release – 20 January 2011**

**STATEMENT**

**UKRAINE: Independent Broadcasters under Threat**

**The High Administrative Court in Kyiv is set to decide on the revocation of the broadcasting licenses of *TVi* and *Chanel 5* - two independent Ukrainian broadcasters operating in the country. The court hearing, set to take place on 25 January 2011, highlights the extent to which independent media and media pluralism is under threat in Ukraine. ARTICLE 19 is concerned by the situation as termination of broadcasting licenses constitute a serious infringement of freedom of expression of the media.**

**Background of the dispute**

*Chanel 5* and *TVi* are two independent broadcasters launched in 2003 and 2008 respectively. *Chanel 5* has national terrestrial coverage. Initially *TVi* was broadcast through satellite and cable, and, after receiving five frequencies from the National TV and Radio Broadcasting Council, it launched terrestrial broadcasting in 2009.

On the eve of the national election, 27 January 2010, the Broadcasting Council awarded *TVi* and *Chanel 5* with 32 and 26 new frequencies respectively. Three broadcasting companies from *Inter Media Group* appealed the decision before the Kyiv Regional Administrative Court claiming that the Broadcasting Council lacked the necessary quorum when deciding on the frequencies.

On 8 June 2010, the Regional Administrative Court decided in favour of *Inter Media Group*. On 30 August 2010, the revocation of the frequencies was subsequently confirmed by the Kyiv Administrative Court of Appeals. The appellate judges declared that all 37 frequencies of *TVi* had expired including the five frequencies originally obtained in 2009 prior to the second allocation in question. Following the court decision on 8 September 2010, the Broadcasting Council annulled the list of frequencies which *TVi* received along with its licence for terrestrial broadcasting.

*TVi* and *Chanel 5* appealed the Kyiv Administrative Court decision before the High Administrative Court. In addition, *TVi* appealed the decision of the Broadcasting Council to revoke its prior frequencies arguing that the broadcasting regulator did not have legal powers to do so. Currently, *TVi* broadcasts on satellite and cable and *Chanel 5* broadcasts on satellite, cable and terrestrial frequencies. However, the revocation of frequencies reduced the audience share of both companies. As a result their economic has situation deteriorated. The survival of *TVi* in particular is under question.

The case of *TVi* and *Chanel 5* is of particular interest for ARTICLE 19 for the following two reasons: courts have a duty to protect the right to freedom of expression and media should be free from political pressure.

### **Courts have a duty to protect the right to freedom of expression**

The revocation of *TVi* and *Chanel 5*'s licenses is not an ordinary legal dispute concerning an administrative issue. Revocation of licences amounts to an interference to broadcasters' right to freedom of expression. To protect the right to freedom of expression, international law sets out criteria for assessment of any interference with this right. Any interference should be based in law, pursue a legitimate aim and be necessary in a democratic society. Furthermore, international law obliges public bodies and courts to protect the right to freedom of expression.

Applied to the present cases, these international standards require that domestic courts determine not only whether the frequencies were granted in accordance with the law. They should also examine whether the revocation is necessary in a democratic society.

Media reports on the decisions of the Regional and Appellate courts raise concerns about the failure of the Ukrainian courts to take into account the freedom of expression aspects of the case. ARTICLE 19 notes that from the media freedom point of view the question whether the revocation of licences is necessary in a democratic society is central to this case. In similar cases, the European Court of Human Rights sought to establish whether national courts had presented relevant and sufficient reasons of the present social need to interfere with the right to freedom of expression. It remains to be seen whether the High Administrative Court will protect the rights of both broadcasters who were obviously not responsible for the fact that the Broadcasting Council lacked the required quorum when it decided on the frequencies.

### **Media should be free from political pressure**

In view of numerous reports, including those from the Council of Europe and EU Parliament, about growing political control over the media in Ukraine, any interference with the right to freedom of expression is considered suspicious. A number of facts concerning the manner of revocation of *TVi*'s and *Chanel 5*' frequencies raise concerns that the interference may have been politically motivated and aims at downgrading the media influence of both broadcasters.

There have been allegations that the head of the Ukrainian Security Service (SBU), Valeriy Khoroshkovskiy had orchestrated the case against *TVi* and *Chanel 5* as it has been noted that he has corporate interests in the revocation of the frequencies. The Khoroshkovskiy family owns *Inter Media Group*, which was a contestant for the frequencies and who disputed their allocation. *Inter Media Group* is the biggest broadcasting player in Ukraine. It supports the current President and the ruling Party of Regions, which according to many national and international observers. Noting that *Chanel 5* and *TVi* are claimed by Ukrainian media watchdog *Telekrytyka* to be the only remaining TV channels with independent and fair TV news coverage, it is reasonable to suspect that authorities are restricting their operations.

ARTICLE 19 is also concerned by reports of SBU surveillance of *TVi* employees in particular the executive director, who is the subject of physical threats and intimidation.

In the summer of 2010, SBU agents were filmed by *TVi* journalists in a vehicle parked outside the *TVi* building surveying the activities of the broadcaster's employees. In December 2010, Ukrainian MP Oles Doniy announced that he had received information according to

which SBU head Khoroshkovskiy gave orders to SBU officers to physically harm the *TVi* executive director.

In April 2010, *TVi* journalists issued a letter expressing concern that the SBU demanded documents submitted by the contestants in the tender for frequencies from the Broadcasting Council. The Press Secretary to the Head of the Council acknowledged that the SBU had indeed approached the broadcasting regulator but has not provided further information. According to the *TVi* executive director the *Inter Media Group* used documents obtained by the SBU from the Broadcasting Council to support their case in the court.

ARTICLE 19 is concerned about the fairness of the court proceedings due to Valeriy Khoroshkovskiy's conflict of interest. In 2010 the head of the SBU was a member of the Supreme Judicial Council which controls judicial appointments and promotions. According to a media report, a member of the same council was the father of the judge from the Regional Administrative Court who ruled for revocation of the frequencies.

ARTICLE 19 will follow the case before the High Administrative Court in view of *TVi* and *Chanel 5*'s right to freedom of expression and of the significant outcome which the court decision will have on the media freedom in Ukraine. In the meantime, we call on:

- The High Administrative Court to take into account the freedom of expression elements in the case concerning the revocation of frequencies and protect the rights of both broadcasters
- The Ukrainian Parliament to investigate all allegations relating to the involvement of the SBU in the case and look into allegations of harassment made by *TVi* employees.

**NOTES TO EDITORS:**

- For more information or to arrange a media interview please contact the ARTICLE 19 Press Office email: [communications@article19.org](mailto:communications@article19.org), or telephone +44 (0) 207 324 2510/2507.
- ARTICLE 19 is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression. It takes its name from Article 19 of the Universal Declaration of Human Rights, which guarantees free speech.